

TESTIMONY

of

Bernard H. Teodorski
then National Vice President
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on

H.R. 26

"To amend Title 18, United States Code, to provide that the firearms prohibitions applicable by reason of domestic violence misdemeanor conviction do not apply if the conviction occurred before the prohibitions became law."

"Domestic Violence Offender Gun Ban"

before the

House Committee on the Judiciary Subcommittee on Crime

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Good morning, Mr. Chairman and distinguished members of the House Subcommittee on Crime. I would like to thank you for giving me the opportunity to address you this morning. I am Bernard H. Teodorski, National Vice President of the Fraternal Order of Police. I am the elected spokesperson of 277,000 rank-and-file police officers—the largest organization of police professionals in the United States. I am here this morning to testify about the pressing need to amend the "Domestic Violence Offender Gun Ban," a law passed on the last day of the 104th Congress.

The Fraternal Order of Police strongly supports H.R. 26, introduced by Subcommittee member Congressman Bob Barr. This amendment, Mr. Chairman, will make the prohibitions on the possession of firearms and ammunition apply prospectively to all persons. The current interpretation of the law imposes a firearms disability on any person, including law enforcement officers and military personnel, who at any time was convicted of a misdemeanor crime of domestic violence—including convictions obtained over twenty years ago! The Fraternal Order of Police feels as Mr. Barr does—that the current interpretation of this law does not reflect the intent of Congress, and that the law needs to be amended to make it enforceable, effective, and equitable.

Let me now state unequivocally for the record that I, the Fraternal Order of Police, and every police officer I know personally, condemns domestic violence. It is an ugly, cowardly crime. No police officers look forward to answering a call to handle a "domestic." We as police officers have seen firsthand the repugnance of these crimes. It should also be noted here that statistics show that domestic violence incidents are among the most dangerous calls officers respond to, and the ones which most often result in officer injury or even death.

Domestic violence, Mr. Chairman, is not something we in the law enforcement community take lightly.

The Fraternal Order of Police does not condone domestic violence, regardless of whether a State classifies it as a misdemeanor, felony, or other designation. Domestic violence is always a serious crime, and we support the vigorous prosecution of domestic violence offenders—whom we as police officers arrest—to the fullest extent of the law. It is my understanding that Senator Frank Lautenberg of New Jersey pushed for the adoption of this law because it would "catch" offenders who manage to "cop a plea" and escape more serious punishment for their actions. I share with Senator Lautenberg his frustration, as do most police officers when they learn that the offender whom they arrested for a serious crime pled to a lesser offense, and will be back on the streets in short order without having paid his or her debt to society. Whether these "deals" are cut to lighten a caseload or expedite a prosecution is often irrelevant, because many times justice is not served. No one is more aware, or more frustrated, than the victims of these crimes and the officers who struggle to keep the offenders behind bars.

I would respectfully submit here today, though, that Senator Lautenberg's "Domestic Violence Offender Gun Ban" is ill-crafted, ill-conceived and does not in any meaningful way address the real problems of domestic violence. It will not prevent or end the problems of domestic violence in this country. The current law is inequitable and unfair, particularly to police officers who are being specifically targeted under the enforcement guidelines of this law.

Mr. Chairman, let me make this more clear to you and the distinguished Members of the Subcommittee. The Bureau of Alcohol, Tobacco, and Firearms have been given no special funding to enforce the law, but have issued some guidelines to local and State law enforcement agencies, including how the law applies to law enforcement officers. The end result is that no one is knocking on doors looking for prohibited persons in their neighborhood beats. Police officers are not visiting persons who have been convicted of domestic violence misdemeanors, or combing court records to find out what cases dealing with domestic violence meet all the requirements to prohibit firearm possession. Military commanders are not undertaking a comprehensive review of the troops under their command. Federal agents are not checking the backgrounds of federally licensed firearms dealers to determine if they might be affected, and thus unable to conduct business.

Mr. Chairman, no one else in these United States is being asked to sign a form stating that they do not have in their background a misdemeanor conviction for domestic violence that might prohibit them from possessing a firearm. Police officers are. To my knowledge, there is no other class of American citizen that is facing the loss of his or her livelihood because of this new law. Police officers are.

Police officers around the country are being investigated by their chiefs or police administrators to determine if they are disabled, and thus, are unable to perform their sworn duties as law enforcement officers. This is not an indication that chiefs and police administrators support this new law; I believe that most of them do not. Nor is there any evidence that suggests domestic violence or abuse is prevalent or common among police officers—both which might explain why enforcement of this law is limited to the ranks of law enforcement. The reason is much simpler, Mr. Chairman: liability.

No State or local government can afford to have one of its police officers carrying a firearm on duty if there is a possibility that the officer could be prohibited by Federal law from carrying that firearm. Imagine the repercussions that might occur if a veteran officer with a disabling misdemeanor was involved in an incident which required the use of his or her firearm. Potentially that officer could be subject to a lawsuit, suits could be filed against the State or local government which employs the officer and issued him or her the firearm, in addition to Federal felony charges on the officer for possessing a firearm in the first place!

Let me emphasize that enforcement of the new gun ban is a liability concern clear and simple. It is patently unfair to police officers that they are singled out; that this law, whose very constitutionality is seriously questionable, is being enforced solely among law enforcement officers.

This is what we find most objectionable about the law and its current interpretation. In creating this huge new category of prohibited persons, ATF was not given any enforcement priority or resources to enforce the new law. For the first time in the history of gun control, an amendment to the Gun Control Act of 1968—the Lautenberg amendment--applies to law enforcement officers and other "government entities." Thus, because of liability concerns, State and local police management are running background checks and enforcing this law on police officers who might have had a disagreement with their spouse twenty years ago, who has since become an

exemplary police officer with no repeat of the incident, and not among repeat domestic violence offenders in the community at large.

The net effect of the new law, then, Mr. Chairman, is clearly not what was intended by Congress. It is ineffective and does not, in any meaningful way, address the real concerns of domestic violence. The law is an enforcement nightmare, and has created a huge new class of prohibited persons, with no way to tell definitively whether or not an individual is considered convicted of a domestic violence misdemeanor without a comprehensive review of the facts in each and every individual's case. This makes equitable enforcement of the law impossible, and therefore ineffective at combating domestic violence. The law is being enforced solely for liability reasons among a specific segment of the population whose jobs depend on their ability to carry a firearm! Clearly, this was not the intent of Congress. This law will not get rid of bad cops, but it will get rid of good ones. Officers who, as kids, may have had an error in judgment and have since gone on to serve their communities, departments and agencies with honor and distinction due the badge they wear, should not lose their jobs because of this law. You cannot let that happen; it weakens the law enforcement community, which in turn weakens the effort against domestic violence.

Police officers should be hired only after a thorough and complete background check. Many police departments would not even consider the application of an individual who had any misdemeanor conviction on their record, domestic violence or otherwise. Other departments would not retain any officer who obtains a conviction for a misdemeanor or similar offense. No department would hire or retain an officer who is a domestic abuser because no department, Mr. Chairman, wants a bad cop on their force. Cops who are abusers should not be cops. I want to make that clear. I do not support that, nor would the Fraternal Order of Police. The "Domestic Violence Offender Gun Ban" does not make it easier to prevent incidents of domestic abuse on the force or anywhere else. The law does not make it any more likely that bad cops will be discovered, decertified, and dismissed from their jobs. What the new law does do, Mr. Chairman, is unfairly penalize good officers who made a single mistake, paid the cost of that mistake and went on for their lives. I know that Congressman Barr will agree with me when I say that I am sure Congress did not intend to additionally penalize these officers with the loss of their livelihoods.

Let me give you some examples, Mr. Chairman, of the kind of officers who are being disarmed and are facing the loss of their jobs because of this new law.

Lieutenant Dale Barsness of the Minneapolis, Minnesota Police Department plead guilty in 1991 to a fifth degree domestic assault against his wife. Lt. Barsness, head of his department's homicide unit, was forced to give up his firearm in December. In Minnesota, without a gun, you cannot be a law enforcement officer. Fortunately, a judge in Hennepin County used a little-known rule to set aside his guilty plea by demonstrating that the conviction created a "manifest injustice." Lt. Barsness is now back on the job—where he belongs.

There is an officer in Alapartta, Georgia—a ten-year veteran of his department—who plead guilty in the mid-1980s to a misdemeanor during his divorce, which may, under the new Federal statute, disable him. He has been placed on desk duty for ninety days, in the hopes that Congress

or the courts can clarify the law's application. If the current interpretation stands, this officer could lose his job.

The Attorney General in Georgia, Mike Bowers, has ruled that persons with a conviction for a misdemeanor crime of domestic violence will disqualify them from becoming police officers, but leaves the decision of how to handle currently certified and employed officers who may have such a conviction up to the individual departments and agencies. The ruling adds to the legal jeopardy and uncertainty for all law enforcement officers.

This ruling has already caused the termination of four veteran deputies in Fulton County, Georgia, and ten more may also face termination if the law remains in place with its current interpretation.

An officer with the Allen County Sheriff's Department successfully had his plea of guilty to a misdemeanor offense thrown out, allowing him to continue to possess a firearm and return to work. This veteran patrol officer, while returning his children to his estranged wife, inadvertently violated a court restraining order by entering her home with the children. His wife pressed charges, and, to avoid additional problems, the officer pled guilty to a misdemeanor and paid a small fine. With the passage of the "Domestic Violence Gun Ban," that small fine became a job-threatening disability. Fortunately, his attorney was able to convince a judge that his client was not properly advised that his constitutional right to bear arms would later be infringed upon as a result of this plea. Nor, I would add, could he have been because the law was not enacted—or even pending in Congress—at the time of the offense.

William Stafford, a twelve-year veteran with the Mobile, Alabama Police Department has a wife and three adopted children. Because of a conviction under his State's Family Violence Act, the new Federal law prevents him from carrying a firearm, meaning that he may lose his job with the force.

In Denver, Colorado, three officers were forced to turn in their guns and have been placed on administrative leave until further notice. Without a reversal or a clarification, they will lose their jobs--a twenty-six year veteran, a twenty-four year veteran, and a four-year veteran of the Denver Police Department.

Fidel Ortega, an eighteen-year veteran of law enforcement and an instructor at the police academy, has been disarmed for a domestic violence conviction he plead to twenty-one years ago. I believe I should note here that he has been happily married to the "victim" for twenty years now.

Four police officers in Detroit, Michigan, have been suspended without pay because of disabling convictions. One officer's conviction was fifteen years ago, and media reports are describing these four officers as the "first in a long list" as police management continues to carefully comb the background records of every man and woman on their force. This, Mr. Chairman, is a terrible waste of manpower and resources that could be better utilized by fighting crime on the streets!

Our State Lodge Attorney in Indiana has informed me that, at this time, at least six veteran officers are facing termination because of this new law. The State Lodge attorney in New Jersey tells me that between seventy-five and one hundred officers may fall into the new class of prohibited persons, placing their jobs at risk.

At least one officer in Jacksonville, Florida faces termination because of this law. It should be noted that, in Florida, a State statute prevents the expungement of any offense in which domestic violence is an element. Law enforcement officers in Florida have no legal recourse if disabled.

Another four officers have been disarmed in Arizona, and ten to fifteen sworn officers in Wyoming may be affected. The Maryland Port Police have suspended one officer who plead guilty to a misdemeanor eight years ago.

These, Mr. Chairman, are just a few examples of whom the "Domestic Violence Gun Ban" is affecting--not domestic abusers, but hundreds of good, veteran law enforcement officers who made a mistake--a terrible, but not unforgivable mistake, early in their lives.

In contrast, one person, one civilian, in the entire nation has been indicted under this new law.

It is for these reasons that the Fraternal Order of Police strongly supports H.R. 26. Mr. Barr's bill would make the provisions of the law, the firearms disability, apply only to individuals who were convicted on or after the date of the law's enactment, thus making the law effective, enforceable, and equitable. Every individual, including law enforcement officers, will be placed on notice that, as a society, we have zero tolerance for domestic violence. That a charge of domestic violence, even a misdemeanor crime, carries with it a severe penalty—the loss of a constitutional right. Congressman Barr's bill accomplishes this goal.

The law will be effective—courts, prosecutors and law enforcement agencies will know when a conviction is handed down that the individual has lost the right to possess firearms. The law will be made enforceable—law enforcement officers and Federal agents will be able to identify and prosecute violators without the costly and resource-draining need to search out court records in every State where the individual lived and review the facts of that case to see if they fit the criteria of the disabling Federal statute. And the law will be made equitable—and not further punish solid citizens and good, veteran officers for offenses which they have already paid for years ago.

The Fraternal Order of Police has also reviewed Congressman Stupak's bill, H.R. 445, which would restore the "official use" exemption. We are not here to argue that police officers should be necessarily exempt from the laws that the rest of the populace must follow, nor to argue for an elite class of domestic abusers. Our objections to the law introduced by Senator Lautenberg, and passed by the 104th Congress, existed before the "official use" exemption was deleted from the provision. I would like the record to clearly state that the Fraternal Order of Police was alone in the law enforcement community in opposing the bill when it was initially introduced. The deletion of the "official use" exemption for law enforcement officers, which apparently motivated many of the other law enforcement organizations to take a position on this law, is not our sole objection, though clearly it is a perfect example of the law's unfairness to police officers.

Let me review, briefly and for the record, the legislative history of the "Domestic Violence Offender Gun Ban" and the genesis of the Fraternal Order of Police's position on this issue.

The original bill offered by Senator Lautenberg in March of last year would have revoked, permanently, the constitutional right to bear arms for any person who was indicted for a "misdemeanor crime of domestic violence." Our objections to this legislation was very straightforward—nowhere in the United States Code or any State statute that we are aware of is there any provision restricting or prohibiting the exercise of a constitutional right for a person not adjudicated guilty of any crime. For that matter, nowhere in the United States Code or any State statute that we are aware of is there a provision in which a misdemeanor conviction would prohibit the exercise of a constitutional right. Clearly, the bill raised some serious constitutional questions.

Senator Lautenberg deployed this bill to effectively block the passage of another bill strongly supported by the Fraternal Order of Police, which was, ironically, a bill aimed at a vicious breed of domestic abuser—the stalker.

The "Interstate Stalking Punishment and Prevention Act" passed the House of Representatives early last year through the efforts of Congressman Ed Royce of California, but was blocked from a Senate vote by Senator Lautenberg, who objected to considering the bill unless his "Domestic Violence Offender Gun Ban" was incorporated into the legislation. The "anti-stalking" bill's Senate sponsor, Senator Kay Bailey Hutchison of Texas wisely refused to incorporate his amendment, fearing that the controversial nature of the gun ban would prevent the passage of good legislation. Senator Hutchison's bill expanded the definition of "victim" to afford greater protections to persons who find themselves targeted by stalkers. The bill also recognized the need to give protections to the victim's immediate family, who might also be harassed or threatened by stalkers. And, most importantly, the bill untied the hands of law enforcement by making effective across State lines court-issued restraining orders. Under the legislation, court orders issued in one State could be enforced in another State, which, in effect, disarms any person other than an on-duty law enforcement officer. The Brady Law, of which the F.O.P. is a strong supporter, provides that persons under a court-issued restraining order cannot possess firearms or ammunition. Passage of the "anti-stalking" bill would have effectively disarmed potential stalkers utilizing court restraining orders—which would be enforceable across State lines. Restraining orders are more easily obtained than indictments or convictions, and the F.O.P. felt that passage of the "Interstate Stalking Punishment and Prevention Act" would have given law enforcement a powerful tool in preventing stalking and other domestic violence crimes. Crimes of domestic violence are difficult crimes to investigate and prosecute, and law enforcement needs every tool in its arsenal to punish offenders. The F.O.P. believed that this bill provided such a tool.

The sad fact was that Senator Lautenberg chose to hold this good bill hostage for three months—preventing it from reaching the Senate floor for a vote. I wrote to Senator Lautenberg in early July, asking him to withdraw his objections to the "anti-stalking" bill and let the measure pass without his amendment. I did not receive a reply. Women's and victims' rights groups joined Senator Hutchison at a press conference to urge Senator Lautenberg to allow the measure to go forward for a vote. He refused, and the measure languished where it was.

Senator Lautenberg was ultimately successful in his drive to include his language into an otherwise good and solid piece of legislation. The new language made some accommodations to constitutionality--the law would have required a conviction instead of an indictment, and would require that the individual have been represented by counsel in order for the conviction to be a disabling one. The disability would take effect regardless of the date of conviction, so there remained some question as to the constitutionality of the bill. This version passed the Senate as an amendment to the Commerce, State, Justice and the Judiciary appropriations measure, which did not pass the Senate and was pulled from floor consideration by Majority Leader Trent Lott.

I want to reiterate at this time that the Lautenberg bill retained the 925(a) exemption for "government entities" that has been a consistent part of gun control since the adoption of the original Gun Control Act of 1968. Meaning that police officers and military personnel would be unable to possess privately any firearms if they were disabled, but they would be exempt from that disability while on-duty or deployed. The Fraternal Order of Police was still opposed to the measure, even with this exemption in place. To my knowledge, we were the only police organization to register opposition to the Lautenberg amendment.

This opposition was based on the fact that we do not believe the law would make any real progress in the prevention of domestic violence crimes or the punishment of domestic violence offenders. Dressing up gun control measures as domestic violence laws does not make for good legislation, and the Fraternal Order of Police does not support bad legislation.

The Lautenberg Amendment appeared and passed into law in its final form as a small part of H.R. 4278, the huge Omnibus Consolidated Appropriations Act of 1996, now Public Law 104-208, Div. A, Sec 101(f), 58 Title VI, Section 658 as the "Domestic Violence Offender Gun Ban." The legislation now provides that any person who at any time earned a conviction for a misdemeanor crime involving the use or attempted use of physical force by a current or former spouse, parent, guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. A conviction for this offense would revoke the constitutional right to bear arms if the person so convicted was represented by counsel and tried before a jury, or knowing and intelligently waived those rights. And even more striking change was the deletion of the 925(a) exemption for "government entities" that I have mentioned here today in my remarks. This exemption, a consistent element in every gun control measure since the enactment of the Gun Control Act in 1968, was removed for these misdemeanor offenses. Current Federal law makes it a felony for a law enforcement officer who has a misdemeanor conviction for the purposes of this statute to possess firearms, which can be seized as assets, and thus rendering him or her unable to be a police officer. Ironically, the same Federal law would permit a police department to hire or retain an officer with a felony conviction, as that officer would be exempt under 925(a). It goes without saying that no one with a felony conviction should be a police officer, but I think that this demonstrates a lack of clarity and consistency with respect to current Federal legislation. It furthers my belief that Congress did not and does not intend the law to be enforced as it is being enforced today.

The bill introduced by Congressman Barr, H.R. 26, goes to the heart of many of the objections the Fraternal Order of Police had with respect to the original bill, and those in its final form. By making the disabling provisions prospective, there is no huge category of prohibited persons created instantaneously. Prospective application of the disability will make the law effective, enforceable, and equitable. This amendment has the support of an overwhelming majority of rank-and-file police officers. Just last week, the Coalition of California Law Enforcement Associations (CCLEA), which represents 75,000 officers--nearly all of California's finest--voted to endorse Congressman Barr's bill. I urge every member of this Subcommittee to swiftly pass H.R. 26 and put an end to the uncertainty faced by hundreds, perhaps thousands, of officers around the country.

This Subcommittee should also be aware that on 21 January, the Fraternal Order of Police, acting in the interest of our membership, filed in Federal court for an injunction to block the application of the law. We believe that the law is unconstitutional, and that officers around the country are being unfairly deprived of their civil rights with the current interpretation and enforcement of the legislation. Ultimately, though, we feel it is the responsibility of Congress to enact the laws, which law enforcement officers are sworn to enforce to the best of our ability. We share the view of Congressman Barr that the legislation as it is currently interpreted does not reflect the intent of Congress. As the elected representative of the largest organization of police professionals in this nation, I urge you to pass H.R. 26 for the relief of law enforcement officers who put so much on the line for their communities every day. At this time, this law is not preventing domestic violence, or contributing in any meaningful way toward combating it. Instead, it is threatening the livelihoods of police officers and their families—making them victims, not offenders.

In closing, I would like to thank the Chairman, Congressman Bill McCollum, for inviting me to testify, and the other distinguished members of this Subcommittee for giving the Fraternal Order of Police a chance to put its views on record. Thank you.