

LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2003

—————
JUNE 22, 2004.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. COBLE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 218]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 218) to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Law Enforcement Officers Safety Act of 2003”.

SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

“§ 926B. Carrying of concealed firearms by qualified law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified law enforcement officer’ means an employee of a governmental agency who—

“(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

“(2) is authorized by the agency to carry a firearm;

“(3) is not the subject of any disciplinary action by the agency;

“(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

“(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

“(6) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.

“(e) As used in this section, the term ‘firearm’ does not include—

“(1) any machinegun (as defined in section 5845 of the National Firearms Act);

“(2) any firearm silencer (as defined in section 921 of this title); and

“(3) any destructive device (as defined in section 921 of this title).”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

“§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified retired law enforcement officer’ means an individual who—

“(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

“(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

“(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

“(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

“(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

“(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms; and

“(6) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is—

“(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

“(2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

“(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

“(e) As used in this section, the term ‘firearm’ does not include—

“(1) any machinegun (as defined in section 5845 of the National Firearms Act);

“(2) any firearm silencer (as defined in section 921 of this title); and

“(3) a destructive device (as defined in section 921 of this title).”

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement officers.”.

PURPOSE AND SUMMARY

A State has traditionally, in the exercise of its sovereignty, controlled who within its borders may carry concealed weapons and when law enforcement officers may carry firearms.

Current law allows an individual State to decide whether or not it wishes to allow out-of-State officers to carry a concealed weapon within that State’s borders. Current law allows active, but not retired, Federal law enforcement officers to carry a concealed weapon anywhere within the jurisdiction of the United States. However, it does not allow active and retired State and local law enforcement officers to carry a concealed weapon without the permission of each specific State.

H.R. 218, the “Law Enforcement Officers Safety Act of 2003,” would override State laws and mandate that retired and active police officers could carry a concealed weapon anywhere within the United States.

BACKGROUND AND NEED FOR THE LEGISLATION

Currently, some States do not permit a law enforcement officer from other States to carry a concealed weapon within their borders.

This legislation would allow current and retired police officers to carry a concealed weapon in any of the 50 States.

The Fraternal Order of Police (“FOP”) and the Law Enforcement Alliance of America (“LEAA”) support the legislation, while the Police Executive Research Forum (“PERF”) and the International Association of Chiefs of Police (“IACP”) oppose this legislation.

LEAA argues that this legislation will “allow tens of thousands of additionally equipped, trained and certified law enforcement officers to continually serve and protect our communities regardless of jurisdiction or duty status at no cost to taxpayers.” FOP contends that this legislation will help its members to protect citizens in the wake of a terrorist attack and that it is even more necessary since September 11, 2001.

Additionally, supporters argue that this legislation must include retired officers as well as current officers because retired officers need to be able to protect themselves and their families and because they are just as trustworthy as they were when they were employed full time. Supporters also maintain that active and retired law enforcement officers often have to defend themselves outside their own State from criminals whom they have arrested.

Opponents of this legislation argue that this is an issue of States’ sovereignty. The States have traditionally had the right to determine who is eligible to carry firearms in their communities. This legislation would disregard the judgment of State authorities on what many believe is an important public safety issue. Statistics from the Southern States Police Benevolent Association indicate that a number of States forbid officers from other States to carry concealed weapons when not on official duty. Some States do not allow any of their citizens to carry concealed weapons and therefore might object to being required to allow officers from other States to carry concealed weapons.

IACP expressed concern that because of difficulty in verifying the identity and eligibility of out-of-State law enforcement officers, passage of the bill could lead to a tragic situation where officers from other jurisdictions are wounded or killed by local police. PERF argues that the bill could put police agencies at risk for liability for an officer who misuses a weapon in another State. PERF also argues that the requirements on retired police officers are insufficient and difficult to implement. Many States do not currently permit their own law enforcement officers to carry concealed weapons, yet this legislation would force all the States to allow retired officers to carry a weapon.

At the hearing on H.R. 218, the Fraternal Order of Police asked that a list of law enforcement officers that were killed while off duty be included in the record. The FOP could not supply information as to whether these officers were acting outside their State or jurisdiction. FOP indicated that these deaths were viewed as “line-of-duty” by the National Law Enforcement Officers Memorial. Although these deaths may be viewed as “line-of-duty” deaths for purposes of the Memorial, the Committee notes that for purposes of Public Safety Officer Benefits (PSOB) program the definition of a “line-of-duty” death is unchanged by this legislation.

COMMITTEE AMENDMENTS

Two amendments were adopted during the markup. Chairman Sensenbrenner offered an amendment, which passed 21-7, to require retired officers to carry proof that they have received firearms standards certification in the last twelve months along with their photographic identification. The original legislation included a requirement that all retired officers must receive standards certification every 12 months and carry photographic identification from the agency for which the individual was employed as a law enforcement officer. To help officers who may pull over such individuals ascertain their good standing, the amendment clarified that the identification must show the officer has received certification in the last 12 months or the officer must carry a separate certification proving that he is current in meeting applicable standards.

Representative Scott offered an amendment to require the definition of a "qualified law enforcement officer" to exclude someone who was under the influence of alcohol or drugs. This amendment passed by a voice vote.

HEARINGS

The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 218 on June 15, 2004. Testimony was received from four witnesses, representing four organizations, with additional materials submitted.

COMMITTEE CONSIDERATION

On June 15, 2004, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 218 by a voice vote, a quorum being present. On June 16, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 218, with an amendment, by a vote of 23-9, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were recorded votes during the Committee consideration of H.R. 218, including recorded votes on several amendments and final passage.

1. Chairman Sensenbrenner offered an amendment, which passed 21 yeas to 7 nays, to require retired officers to carry proof that they have received training in the last twelve months along with their photographic identification.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Hostettler		X	
Mr. Green	X		
Mr. Keller	X		
Ms. Hart		X	
Mr. Flake			
Mr. Pence	X		
Mr. Forbes			
Mr. King		X	
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn			
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman	X		
Total	21	7	

2. Ranking Member Conyers offered a substitute amendment, which was defeated 11 yeas to 21 nays, to allow States that did not wish to exempt out-of-State law enforcement officers from conceal and carry laws to opt out of the exemption for a 2-year period before the legislative took effect.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan		X	
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	11	21	

3. Representative Scott offered an amendment to include a provision that the exemption under this law shall not be construed to supersede or limit the rules, regulations, policies, or practices of any State or local law enforcement agency. This amendment was defeated by a vote of 11 yeas to 21 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Schiff		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	11	21	

4. Representative Scott offered an amendment to limit the weapons an officer could carry in other States to exclude semiautomatic assault weapons. This amendment was defeated by a vote of 13 yeas to 19 nays.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	19	

5. Representative Scott offered an amendment to require any active or retired law enforcement officer who wished to carry a concealed weapon outside his State to receive certification from the Bureau of Alcohol, Tobacco, Firearms and Explosives. This amendment was defeated 13 yeas to 21 nays.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher		X	
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff		X	
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	21	

6. On the motion to report H.R. 218 favorably as amended, the vote was 23 yeas to 9 nays.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon			
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake		X	
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher	X		
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan	X		
Mr. Delahunt		X	
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	23	9	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 218, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 218, the "Law Enforcement Officers Safety Act of 2003."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for Federal costs), who can be reached at 226-2860, and Lauren

McMahon and Melissa Merrell (for the State and local impact), who can be reached at 225–3220.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 218—Law Enforcement Officers Safety Act of 2003.

H.R. 218 would exempt certain current and former law enforcement officers from State laws prohibiting the carrying of concealed firearms. CBO estimates that the bill would have no impact on Federal spending or receipts.

H.R. 218 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would permit qualified current and former State and local law enforcement officers to carry certain concealed firearms. Currently, 17 States prohibit anyone from carrying concealed weapons and 32 States prohibit out-of-State, off-duty law enforcement officers from carrying concealed weapons; this bill would preempt those laws.

States and law enforcement agencies also would have to provide an annual certification or identification process that demonstrates that the retiree has met the State’s or agency’s training and qualification standards to carry a firearm. Because most States have a reauthorization system in place, CBO estimates that the costs for those governments to comply would be insignificant and well below the annual threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation). H.R. 218 contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, and Lauren McMahon and Melissa Merrill (for the State and local impact), who can be reached at 225–3220. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 218, will allow State and local law enforcement officers, who are responsible for prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Unless otherwise indicated, this section describes the bill as reported.

Section 1. Short Title

This section designates this bill as the “Law Enforcement Officers Safety Act of 2003.”

Section 2. Exemption of Qualified Law Enforcement Officers From State Laws Prohibiting the Carrying of Concealed Firearms

This section would preempt State laws to allow any active duty qualified law enforcement officer, who is carrying the photographic identification issued by the police agency he works for, to carry a concealed firearm that was shipped or transported in interstate or foreign commerce.

A “qualified law enforcement officer” is defined as someone who is authorized to prevent, investigate and detect law violations and who has arrest authority; is authorized by the employing government agency to carry a firearm; is not the subject of any disciplinary action; meets standards, if any, established by the agency which require the officer to regularly qualify in the use of firearms; and is not prohibited by Federal law from receiving a firearm; and who is not under the influence of alcohol or drugs.

Section 3. Exemption of Qualified Retired Law Enforcement Officers From State Laws Prohibiting The Carrying of Concealed Firearms

This section would preempt State laws to allow any qualified retired law enforcement officer, who is carrying the photographic identification issued by the police agency he worked for, and a certification that he has met firearms standards within 12 months to carry a concealed firearm that was shipped or transported in interstate or foreign commerce.

A “qualified retired law enforcement officer” is defined as someone who retired in good standing from service with a public agency other than for reasons of mental instability; before retirement, was authorized to prevent, investigate and detect law violations and had arrest authority; before retirement, was employed as a law enforcement officer for more than 15 years or retired from service due to a service-connected disability after completing a probationary period; has a non-forfeitable right to benefits under the agency retirement plan; and during the last twelve months has met the State’s standards for training and qualification for active law enforcement officers to carry firearms; and is not prohibited by Federal law from receiving a firearm.

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 italics and existing law in which no change is proposed is shown in roman):

CHAPTER 44 OF TITLE 18, UNITED STATES CODE

CHAPTER 44—FIREARMS

Sec.

921. Definitions.

* * * * *

926B. *Carrying of concealed firearms by qualified law enforcement officers.*

926C. *Carrying of concealed firearms by qualified retired law enforcement officers.*

* * * * *

§926B. Carrying of concealed firearms by qualified law enforcement officers

(a) *Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).*

(b) *This section shall not be construed to supersede or limit the laws of any State that—*

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) *As used in this section, the term “qualified law enforcement officer” means an employee of a governmental agency who—*

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.

(d) *The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.*

(e) *As used in this section, the term “firearm” does not include—*

(1) any machinegun (as defined in section 5845 of the National Firearms Act);

(2) any firearm silencer (as defined in section 921 of this title); and

(3) any destructive device (as defined in section 921 of this title).

§926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term “qualified retired law enforcement officer” means an individual who—

(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms; and

(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for train-

ing and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(e) As used in this section, the term "firearm" does not include—

(1) any machinegun (as defined in section 5845 of the National Firearms Act);

(2) any firearm silencer (as defined in section 921 of this title); and

(3) a destructive device (as defined in section 921 of this title).

* * * * *

MARKUP TRANSCRIPT
BUSINESS MEETING
WEDNESDAY, JUNE 16, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

The first item on the agenda is H.R. 218, the "Law Enforcement Officers Safety Act of 2003." The Chair recognizes the gentleman from North Carolina, Mr. Coble, Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security for a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 218 and moves its favorable recommendation to the full House.

[The bill, H.R. 218, follows:]

108TH CONGRESS
1ST SESSION

H. R. 218

To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mr. CUNNINGHAM (for himself, Mr. BARTLETT of Maryland, Mr. GIBBONS, Mr. JENKINS, Mr. SHUSTER, Mr. MCINTYRE, Mr. FRANK of Massachusetts, Mr. CALVERT, Mr. WAMP, Mr. WELDON of Pennsylvania, Ms. GINNY BROWN-WAITE of Florida, Mrs. MALONEY, Mr. SHIMKUS, Mr. MICA, Mr. SHAYS, Mr. ISAKSON, Mr. MOORE, Mr. CRANE, Ms. BERKLEY, Mr. McHUGH, Mr. CRAMER, Mr. KLECZKA, Mrs. CUBIN, Mr. MCGOVERN, Mr. LEWIS of California, Mr. HINCHEY, Mr. STUPAK, Mr. HALL, Mrs. JO ANN DAVIS of Virginia, Mr. HUNTER, Mr. TERRY, Mr. RYAN of Ohio, Mr. ALEXANDER, Mr. DUNCAN, Mr. BILIRAKIS, Mr. BAIRD, Mr. BISHOP of Georgia, Mr. LEWIS of Kentucky, Mr. STRICKLAND, Mr. HOLDEN, Mr. POMEROY, Mr. SAXTON, Mr. LINDER, Mr. ROGERS of Alabama, Mr. COBLE, Mr. ETHERIDGE, Mr. SCHIFF, Mr. SIMMONS, Mr. FRANKS of Arizona, Mr. WALSH, Mr. KING of New York, Mrs. KELLY, Mr. HOEFFEL, Mr. BUYER, Mr. REHBERG, Mr. HAYWORTH, Mr. RAHALL, Mr. SOUDER, Mr. GREEN of Texas, Mr. RYUN of Kansas, Mr. KANJORSKI, Mr. FORBES, and Mr. BAKER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Law Enforcement Offi-
3 cers Safety Act of 2003”.

4 **SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OF-**
5 **FICERS FROM STATE LAWS PROHIBITING**
6 **THE CARRYING OF CONCEALED FIREARMS.**

7 (a) IN GENERAL.—Chapter 44 of title 18, United
8 States Code, is amended by inserting after section 926A
9 the following:

10 **“§ 926B. Carrying of concealed firearms by qualified**
11 **law enforcement officers**

12 “(a) Notwithstanding any other provision of the law
13 of any State or any political subdivision thereof, an indi-
14 vidual who is a qualified law enforcement officer and who
15 is carrying the identification required by subsection (d)
16 may carry a concealed firearm that has been shipped or
17 transported in interstate or foreign commerce, subject to
18 subsection (b).

19 “(b) This section shall not be construed to supersede
20 or limit the laws of any State that—

21 “(1) permit private persons or entities to pro-
22 hibit or restrict the possession of concealed firearms
23 on their property; or

24 “(2) prohibit or restrict the possession of fire-
25 arms on any State or local government property, in-
26 stallation, building, base, or park.

1 “(c) As used in this section, the term ‘qualified law
2 enforcement officer’ means an employee of a governmental
3 agency who—

4 “(1) is authorized by law to engage in or super-
5 vise the prevention, detection, investigation, or pros-
6 ecution of, or the incarceration of any person for,
7 any violation of law, and has statutory powers of ar-
8 rest;

9 “(2) is authorized by the agency to carry a fire-
10 arm;

11 “(3) is not the subject of any disciplinary action
12 by the agency;

13 “(4) meets standards, if any, established by the
14 agency which require the employee to regularly qual-
15 ify in the use of a firearm; and

16 “(5) is not prohibited by Federal law from re-
17 ceiving a firearm.

18 “(d) The identification required by this subsection is
19 the photographic identification issued by the governmental
20 agency for which the individual is, or was, employed as
21 a law enforcement officer.

22 “(e) DEFINED TERM.—As used in this section, the
23 term ‘firearm’ does not include—

24 “(1) any machinegun (as defined in section
25 5845 of title 26);

1 “(2) any firearm silencer (as defined in section
2 921); and

3 “(3) any destructive device (as defined in sec-
4 tion 921).”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for such chapter is amended by inserting after the item
7 relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

8 **SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW EN-**
9 **FORCEMENT OFFICERS FROM STATE LAWS**
10 **PROHIBITING THE CARRYING OF CON-**
11 **CEALED FIREARMS.**

12 (a) IN GENERAL.—Chapter 44 of title 18, United
13 States Code, is further amended by inserting after section
14 926B the following:

15 **“§ 926C. Carrying of concealed firearms by qualified**
16 **retired law enforcement officers**

17 “(a) Notwithstanding any other provision of the law
18 of any State or any political subdivision thereof, an indi-
19 vidual who is a qualified retired law enforcement officer
20 and who is carrying the identification required by sub-
21 section (d) may carry a concealed firearm that has been
22 shipped or transported in interstate or foreign commerce,
23 subject to subsection (b).

24 “(b) This section shall not be construed to supersede
25 or limit the laws of any State that—

1 “(1) permit private persons or entities to pro-
2 hibit or restrict the possession of concealed firearms
3 on their property; or

4 “(2) prohibit or restrict the possession of fire-
5 arms on any State or local government property, in-
6 stallation, building, base, or park.

7 “(c) As used in this section, the term ‘qualified re-
8 tired law enforcement officer’ means an individual who—

9 “(1) retired in good standing from service with
10 a public agency as a law enforcement officer, other
11 than for reasons of mental instability;

12 “(2) before such retirement, was authorized by
13 law to engage in or supervise the prevention, detec-
14 tion, investigation, or prosecution of, or the incarcer-
15 ation of any person for, any violation of law, and
16 had statutory powers of arrest;

17 “(3)(A) before such retirement, was regularly
18 employed as a law enforcement officer for an aggre-
19 gate of 15 years or more; or

20 “(B) retired from service with such agency,
21 after completing any applicable probationary period
22 of such service, due to a service-connected disability,
23 as determined by such agency;

24 “(4) has a nonforfeitable right to benefits under
25 the retirement plan of the agency;

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point. The Chair recognizes the gentleman from North Carolina, Mr. Coble to strike the last word.

Mr. COBLE. I thank the Chairman.

Mr. Chairman, we had a hearing and a markup of this bill yesterday. And as I said at the hearing, this bill has been visible on Capitol Hill for almost a decade, I think almost 8 years to be exact. Furthermore, Mr. Chairman, we have reasonable Members who adamantly support this bill, who mildly support it, who adamantly oppose it and who mildly oppose it. So we have people all over the field on this bill.

I think most of the Members have been thoroughly exposed to it and probably are well familiar with it. Current law allows active, but not Federal law enforcement officers to carry a concealed weapon anywhere within the jurisdiction of the United States; and it does not allow active and retired State law enforcement to carry a concealed weapon without the specific permission of each specific State. H.R. 218, which has been introduced by Representative Cunningham, would override State laws and mandate that retired and active police officers carry a concealed weapon anywhere within the United States.

The legislation is fairly broad in some areas. It allows current and retired State and local law enforcement officers to carry a concealed weapon anywhere in the country. It also contains a fairly broad definition of "law enforcement officers," which includes an employee of a Government agency who is authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of or the incarceration of any person for any violation of law, and has statutory powers of arrest.

I say in conclusion, Mr. Chairman, you are going to vote your conscience on this because we have Members on this Committee who are for it and many who are against it. With that, I yield back the balance of my time.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes for a statement.

It is no secret that I am opposed to this legislation. I believe it violates the principles of federalism and undermines the authorities of the States. The State has traditionally, in the exercise of sovereignty, controlled who within its borders may carry concealed weapons and when law enforcement officers may carry firearms. Current law allows an individual State to decide whether or not it wishes to allow out-of-State officers to carry a concealed weapon within that State's borders. Current law allows active, but not retired Federal law enforcement officers to carry a concealed weapon anywhere within the jurisdiction of the United States; and it does not allow active and retired State law enforcement to carry a concealed weapon without the specific permission of each State.

H.R. 218 would override States' right-to-carry laws and mandate that retired and active police officers could carry a concealed weapon anywhere within the United States. This legislation would disregard the judgment of State authorities on what many believe is an important public safety issue.

While approximately 33 States do specifically allow individuals to carry concealed weapons, that leaves 17 other States that do not.

H.R. 218 would supersede the laws of those 17 States, including Wisconsin, and allow current and retired law enforcement officers from anywhere within the United States to carry a concealed weapon in those States, regardless of State law. Such a measure is an affront to State sovereignty and the Constitution, which I cannot support.

Statistics from the Southern States Police Benevolent Association indicate that some States forbid officers from other States to carry concealed weapons when not on official duty. Other States do not allow any of their citizens to carry concealed weapons and, therefore, might find it objectionable to allow outside citizen-officers to carry concealed weapons within their borders.

At the hearing before the Crime Subcommittee yesterday, the International Association of Chiefs of Police argued that the variation among the States on firearms training and other policies and procedures with regard to police officers, such as authority to carry firearms off duty and use-of-force policies, will create a dangerous environment for out-of-State officers and citizens. Laws regulating the carrying of firearms must remain within the jurisdiction of the State government where they can be more effectively monitored and enforced.

I believe the issues at hand could be addressed by the States in an appropriate manner through the use of reciprocity agreements, many of which already exist. I urge my colleagues to oppose this legislation, and yield back the balance of my time, and recognize the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, H.R. 218, the "Law Enforcement Officers Safety Act of 2003," authorizes so-called "qualified" active and retired Federal and State law enforcement officers to carry concealed weapons interstate without regard to State and local laws prohibiting or regulating such carriage.

Now, a law enforcement officer includes not only police and sheriffs and other—what we would think of as law enforcement officials, but also includes corrections, probation, and parole judicial officers and just about anyone who has statutory power of arrest and who are engaged by their employment by a Government entity in the prevention, detection, investigation, supervision, prosecution or incarceration of law violators.

In the past, we have considered this bill under the title "Community Protection Act." the rhetoric surrounding the bill has indicated that its purpose is to aid and protect the public by putting tens of thousands of armed law enforcement officers in a position to protect the public as officers travel from State to State and jurisdiction to jurisdiction. From the name of the current bill, it appears that emphasis is now on the safety of officers as they travel, yet the statutory language is the same.

One of the problems with even suggesting that the purpose of a Federal law is for Federal law enforcement officers to insist on protecting the public outside their jurisdiction is that it may give them encouragement or a sense of obligation to attempt to do so.

I submitted for the record at the hearing before the Subcommittee yesterday dozens of reports and instances where even in the same jurisdiction off-duty, plainclothes law enforcement officers have shot other off-duty officers or gotten shot by them or uniformed officers in gun battles where the plainclothes officers were

mistaken as criminals. If off-duty officers in the same jurisdiction who engage themselves in law enforcement activities are being shot by their fellow officers, encouraging out-of-State officers to engage in such activities through a Federal law will certainly only add to the problem.

Now, perhaps in some jurisdictions, where there are many officers, like New York City where they have tens of thousands of officers, officers may be trained how not to shoot their fellow police officers. This training may not be available in jurisdictions where there are only a couple of dozen officers where everyone knows each other.

There is a specter of individually determined engagement in law enforcement actions by out-of-State, plainclothes, off-duty officers who are not trained for the specific situation that gives police chiefs and local and State governments huge concern. Clearly, they see these officers as more of a challenge to effective law enforcement than a help.

The bill not only takes away the ability of local law enforcement leaders to manage the concealed firearm activities of out-of-State officers, but even of their own officers. Not only will they lose the ability to determine what officers can do with agency-issued guns in their possession, without drastic action as requiring the guns to be checked when the officers are off duty, but they will have no say over what officers do off duty with their own guns and certainly no control over concealed weapons activities of retired officers within their jurisdiction, local or out-of-State.

I don't know what the liability implications are for local jurisdictions whose officers may be engaged in out-of-State law enforcement activities. We were not given clear answers on this. The liability insurance implications alone should give the Congress cause for pause in imposing an interstate, concealed-carry provision on State and local governments.

State legislatures can authorize out-of-State, off-duty officers to carry concealed weapons within their jurisdictions; and some have, although most have not. The primary organizations supporting the legislation representing—supporting the legislation represent rank-and-file line officers for the most part, while those opposing the legislation represent managers and employers. These are the people who are directly responsible to the public for setting public policy for officers' conduct.

The Federal Government should not usurp State and local options by choosing sides in the employer-employee dispute. I would hope we defeat the legislation, and I thank the Chairman and yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point.

Are there amendments?

And the Chair recognizes himself to offer an amendment and the Clerk will report the amendment.

The CLERK. Amendment to H.R. 218 offered by Mr. Sensenbrenner, page 6, strike lines 7 through 9 and insert the following: (d) The identification required by this subsection—

[The amendment offered by Mr. Sensenbrenner follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. SENSENBRENNER

Page 6, strike lines 7 through 9 and insert the following:

- 1 (d) The identification required by this subsection is—
- 2 (1) a photographic identification issued by the
- 3 agency from which the individual retired from serv-
- 4 ice as a law enforcement officer that indicates that
- 5 the individual has, not less recently than one year
- 6 before the date the individual is carrying the con-
- 7 cealed firearm, been tested or otherwise found by the
- 8 agency to meet the standards established by the
- 9 agency for training and qualification for active law
- 10 enforcement officers to carry a firearm of the same
- 11 type as the concealed firearm; or
- 12 (2)(A) a photographic identification issued by
- 13 the agency from which the individual retired from
- 14 service as a law enforcement officer; and
- 15 (B) a certification issued by the State in which
- 16 the individual resides that indicates that the indi-
- 17 vidual has, not less recently than one year before the
- 18 date the individual is carrying the concealed fire-
- 19 arm, been tested or otherwise found by the State to

1 meet the standards established by the State for
2 training and qualification for active law enforcement
3 officers to carry a firearm of the same type as the
4 concealed firearm.

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the Chair will recognize himself for 5 minutes.

This amendment I am offering today makes a small, but very important change to this legislation. The original legislation included a requirement that all retired officers must receive training every 12 months and carry photographic identification from the agency from which the individual was employed as a law enforcement officer.

To help officers clarify the good standing of individuals they may encounter during a traffic stop or other similar situations, I have included in my amendment that the identification must show that the officer has received training in the last 12 months or the officer must carry a separate certification proving that he is current in his training. I believe that this amendment is an improvement to the legislation, and I ask my colleagues to support it.

You know, I would note that the identification in the originally introduced legislation does not require that the identification include that the officer or retired officer is current in training because the provisions of the legislation are limited to those who are current in training. There ought to be something that the officer carries, that he or she indeed qualifies under the legislation. My amendment fixes it up, and I would urge support for the amendment.

The gentleman from New York.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, I cannot resist the opportunity to speak in support of the Chairman, and it is rather rare on this Committee that I do so. The amendment makes eminent sense. I agree with the Chairman in opposing the underlying bill.

It seems to me that one of the problems with this kind of legislation is, even if you require training, it may be that a given jurisdiction, let us say New York City, Chicago or wherever, might require and have good reason to require one level of training to permit the carrying of firearms in a city of that size or whatever, where there are thousands of police officers who don't know each other. Another jurisdiction and perhaps smaller, less—more rural might require a different level of training; and there is nothing to standardize the levels of training in this bill so that even—so as to guarantee an adequate level of training in the locality.

I think the bill is a bad bill. It will be improved if there were a standard level of training. This amendment improves the bill somewhat and therefore, I support it, but it still doesn't make the bill acceptable for all the reasons the Chairman said in his opening statement.

I yield back.

Chairman SENSENBRENNER. Gentleman from North Carolina.

Mr. COBLE. I think this is very narrowly defined and probably is an improvement to the bill, and I support the amendment.

Chairman SENSENBRENNER. Gentlewoman from Texas.

Ms. JACKSON LEE. I would like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I will have an amendment to assist the States in having more time. I happen to have had the opportunity to dis-

cuss this legislation with a number of my constituents, and it is well known of my position on dealing with gun ownership and the second amendment rights versus the necessary protective rights to secure communities from gun violence. I believe, however, that short of the liability issue, we do have legislation that can be effective and can be utilized in a safe manner.

I believe, however, the Chairman's amendment with respect to more specific identification makes this bill stronger. And I think in the backdrop of homeland security and the need to more effectively identify individuals who are carrying weapons who can be a support versus a threat to the community is important.

In order to decipher those who are carrying guns legally versus illegally, a photographic identification is imperative. Even though these individuals have been previous law enforcement officers, the fact that they are carrying concealed weapons makes it even more imperative that we have the kind of photographic identification that is possible.

Just having had an officer in my community, Richard Matthews—excuse me, Matthew Richards—being wounded in a very violent manner, obviously, I think the more opportunity we have for the safe carrying of firearms in this instance, only in this instance, I think is appropriate; and I think an identification that is rock solid, if you will, identity-theft solid, because I think that is important, is a valuable addition to the legislation.

Mr. CHABOT. Would the gentlelady yield?

Was it received as a result of a shooting by a retired police officer?

Ms. JACKSON LEE. I don't think you were listening to me, and I don't think you were hearing me, because obviously you didn't hear me speak in support of the bill. The point I was making is that there is violence on the streets, and the more we can provide opportunity for a secure quality of life, the better off we are.

The officer was shot in a criminal activity.

Mr. CHABOT. He wasn't shot by a retired police officer, was he?

Ms. JACKSON LEE. I am not going to answer that question because I don't think you understand what I am saying.

Mr. CHABOT. I understand what you are saying.

Chairman SENSENBRENNER. Gentleman from Florida.

Does the gentlewoman yield back?

Ms. JACKSON LEE. I do, and I support the amendment.

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. Mr. Chairman, I want to engage in a little colloquy just to clarify my understanding.

The gist of the language as it reads now in the base bill is, during the most recent 12-month period, they have to show that the individual, at his expense, has met the standards for training and qualification for active law enforcement officers to carry firearms. And your amendment just says, you have a photo ID proving that?

Chairman SENSENBRENNER. If the gentleman would yield, the answer is "yes."

Mr. KELLER. It wouldn't, for example, have the effect of gutting the bill by saying that if your State doesn't allow police officers to carry firearms, that they would be exempt, because in that par-

particular case, those States where they are not allowed to require them, they wouldn't be able to get a photo ID saying they met the requirements of using this particular gun and carrying a concealed weapon permit.

Chairman SENSENBRENNER. To my knowledge, no.

Mr. KELLER. I yield back.

Chairman SENSENBRENNER. Question is on the amendment offered by the Chair. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it.

Recorded vote is ordered. The question is on agreeing to the amendment that was offered by the Chair. Those in favor will, as your names are called, answer "aye"; those opposed, "no." and the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green.

Mr. GREEN. Yes.

The CLERK. Mr. Green, yes. Mr. Keller.

Mr. KELLER. Yes.

The CLERK. Mr. Keller, yes. Ms. Hart?

[No response.]

The CLERK. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

[No response.]

The CLERK. Mr. King.

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Carter?

[No response.]

The CLERK. Mr. Feeney.

Mr. FEENEY. Aye.

The CLERK. Mr. Feeney, aye. Mrs. Blackburn?

[No response.]

The CLERK. Mr. Conyers.

Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher.
Mr. BOUCHER. No.
The CLERK. Mr. Boucher, no. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler.
[No response.]
The CLERK. Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner.
Mr. WEINER. Pass.
The CLERK. Mr. Weiner passes. Mr. Schiff.
Mr. SCHIFF. Pass.
The CLERK. Mr. Schiff passes. Ms. Sánchez.
Ms. SÁNCHEZ. Pass.
The CLERK. Ms. Sánchez passes. Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Chairman SENSENBRENNER, aye.
Chairman SENSENBRENNER. Members in the Chamber wish to
change or cast their vote?
Gentleman from Texas.
Mr. CARTER. Aye.
The CLERK. Mr. Carter, aye.
Chairman SENSENBRENNER. Further Members?
Gentleman from New York, Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Chairman SENSENBRENNER. Gentleman from Massachusetts, Mr.
Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Gentleman from New York, Mr.
Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Chairman SENSENBRENNER. Further Members who wish to cast?
Gentleman from Indiana.
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.

Chairman SENSENBRENNER. Gentlewoman from California, Ms. Sánchez.

Aye.

Ms. SÁNCHEZ. Ms. Sánchez, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?

Gentleman from California, Mr. Schiff.

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye.

Chairman SENSENBRENNER. Gentlewoman from Pennsylvania Ms. Hart.

Ms. HART. No.

The CLERK. Ms. Hart, no.

Chairman SENSENBRENNER. Further Members wish to change or cast their vote? The clerk will report.

The CLERK. Mr. Chairman, there are 21 ayes and 7 noes.

Chairman SENSENBRENNER. And the amendment is agreed to.

The Chair now recognizes the gentleman from Michigan, Mr. Conyers, out of order for a public service announcement in case anybody missed what he had to say.

Mr. CONYERS. It is with great sorrow to the gentleman from California, Mr. Berman; the gentlelady from California, Ms. Lofgren; the gentleman from California, Mr. Schiff; the gentlelady from California, Ms. Sánchez; but most of all, my dear, beloved Maxine Waters, because the Lakers have been—it is with sorrow—I mean, this wasn't just an ordinary victory. I mean, this was severe.

And then I want to say what Mr. Weiner said, who is very concerned about this, was there any car overturned last night. It was about midnight or so, Mr. Weiner, and you will be happy to know that unlike New York, nothing happened untoward.

And so I just report this. I know nobody was following it very closely. I yield.

Mr. BERMAN. Would the gentleman yield? We view what happened last night to the Lakers as a metaphor for what will happen to the Republicans.

Chairman SENSENBRENNER. And the Chair will have the last word saying that he is always happy to recognize the gentleman from Michigan to give bad news to his fellow Democrats.

Are there further amendments to H.R. 218?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, 048.

[The amendment offered by Mr. Scott follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. SCOTT OF VIRGINIA

Page 3, line 15, strike “and”.

Page 3, after line 15, insert the following

- 1 (5) is not under the influence of alcohol or an-
- 2 other intoxicating or hallucinatory drug or sub-
- 3 stance; and

Page 3, line 16, strike “(5)” and insert “(6)”.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 218 offered by Mr. Scott of Virginia. Page 3, line 15, strike "and," period. Page 3 after line 15, insert the following:

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and.

Page 3, line 16, strike "(5)" and insert "(6)".

Chairman SENSENBRENNER. Gentleman from Virginia is recognized for 5 minutes in support of his amendment.

Mr. SCOTT. Thank you, Mr. Chairman.

This amendment is self-explanatory. It comes under the section defining the term "qualified law enforcement officer." qualified law enforcement officer is someone who is authorized to engage in such and such, is authorized by the agency to carry. But it also says, "is not subject to any disciplinary action by the agency" and also "is not prohibited by Federal law from receiving a firearm"; and this amendment would insert, "is not under the influence of alcohol or other intoxicating or hallucinatory drug."

You don't want people who are intoxicated carrying these firearms in other jurisdictions under the guise of being a, quote, "qualified law enforcement officer."

I would hope that we would insert this provision into the bill, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. The gentleman from Virginia and I discussed this issue yesterday during the hearing. I think it is an amendment that probably will improve the bill, and I support it.

Mr. SMITH OF TEXAS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. I have a question to the gentleman from Virginia, Mr. Scott, and it is this: When would this condition apply? You say, "is not under the influence of alcohol or other hallucinatory drug or substance." at what point is that condition imposed?

Mr. SCOTT. If the gentleman would yield. I would say that the officer is authorized to carry a firearm out of State in somebody else's jurisdiction in violation of their local laws, but that would not occur if the law enforcement officer is drunk.

Mr. SMITH. At any point while he is out of State or—is the implication that if he is drunk at any point while he is out of State, he cannot carry the license?

Mr. SCOTT. If he happens to be drunk or under hallucinating drugs, then he should not be carrying his firearm, in violation of local ordinances. And when he sobers up, I guess he could regain his firearm.

In violation of the local ordinances.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Those opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I have an amendment at the desk.
[The amendment offered by Ms. Jackson Lee follows:]

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 218
OFFERED BY MS. JACKSON LEE**

Page 6, line 17, strike “2” and insert “4”.

Page 6, line 22, strike “2” and insert “4”.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 218 offered by Ms. Jackson Lee:

Page 6, line 17, strike "2" and insert "4".

Page 6, line 22, strike "2" and insert "4".

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. My good friend Mr. Chabot may not have heard me in my earlier comments, so let me clarify my comments.

I am a cosponsor of this legislation after review and after discussing this with many of my constituents on the basis of the utilization and the opportunities of protections by retired officers carrying concealed weapons. And with the amendments that have been offered, this amendment is a simple process.

Mr. SCOTT. Point of order. Parliamentary inquiry.

Chairman SENSENBRENNER. The floor belongs to the gentleman from Texas.

Ms. JACKSON LEE. I would like to withdraw the amendment for a moment, please.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

The gentleman from Michigan.

Mr. CONYERS. I have what amounts to a substitute.

[The amendment offered by Mr. Conyers follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. CONYERS

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Law Enforcement Offi-
 3 cers Safety Act of 2004”.

4 **SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OF-**
 5 **FICERS FROM STATE LAWS PROHIBITING**
 6 **THE CARRYING OF CONCEALED FIREARMS.**

7 (a) IN GENERAL.—Chapter 44 of title 18, United
 8 States Code, is amended by inserting after section 926A
 9 the following:

10 **“§ 926B. Carrying of concealed firearms by qualified**
 11 **law enforcement officers**

12 “(a) Notwithstanding any other provision of the law
 13 of any State or any political subdivision thereof, an indi-
 14 vidual who is a qualified law enforcement officer and who
 15 is carrying the identification required by subsection (d)
 16 may carry a concealed firearm that has been shipped or
 17 transported in interstate or foreign commerce, subject to
 18 subsection (b).

1 “(b) This section shall not be construed to supersede
2 or limit the laws of any State that—

3 “(1) permit private persons or entities to pro-
4 hibit or restrict the possession of concealed firearms
5 on their property; or

6 “(2) prohibit or restrict the possession of fire-
7 arms on any State or local government property, in-
8 stallation, building, base, or park.

9 “(c) As used in this section, the term ‘qualified law
10 enforcement officer’ means an employee of a governmental
11 agency who—

12 “(1) is authorized by law to engage in or super-
13 vise the prevention, detection, investigation, or pros-
14 ecution of, or the incarceration of any person for,
15 any violation of law, and has statutory powers of ar-
16 rest;

17 “(2) is authorized by the agency to carry a fire-
18 arm;

19 “(3) is not the subject of any disciplinary action
20 by the agency;

21 “(4) meets standards, if any, established by the
22 agency which require the employee to regularly qual-
23 ify in the use of a firearm; and

24 “(5) is not prohibited by Federal law from re-
25 ceiving a firearm.

1 “(d) The identification required by this subsection is
2 the photographic identification issued by the governmental
3 agency for which the individual is employed as a law en-
4 forcement officer.

5 “(e) DEFINED TERM.—As used in this section, the
6 term ‘firearm’ does not include—

7 “(1) any machinegun (as defined in section
8 5845 of title 26);

9 “(2) any firearm silencer (as defined in section
10 921); and

11 “(3) any destructive device (as defined in sec-
12 tion 921).”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for such chapter is amended by inserting after the item
15 relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

16 **SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW EN-**
17 **FORCEMENT OFFICERS FROM STATE LAWS**
18 **PROHIBITING THE CARRYING OF CON-**
19 **CEALED FIREARMS.**

20 (a) IN GENERAL.—Chapter 44 of title 18, United
21 States Code, is further amended by inserting after section
22 926B the following:

1 **“§ 926C. Carrying of concealed firearms by qualified**
2 **retired law enforcement officers**

3 “(a) Notwithstanding any other provision of the law
4 of any State or any political subdivision thereof, an indi-
5 vidual who is a qualified retired law enforcement officer
6 and who is carrying the identification required by sub-
7 section (d) may carry a concealed firearm that has been
8 shipped or transported in interstate or foreign commerce,
9 subject to subsection (b).

10 “(b) This section shall not be construed to supersede
11 or limit the laws of any State that—

12 “(1) permit private persons or entities to pro-
13 hibit or restrict the possession of concealed firearms
14 on their property; or

15 “(2) prohibit or restrict the possession of fire-
16 arms on any State or local government property, in-
17 stallation, building, base, or park.

18 “(c) As used in this section, the term ‘qualified re-
19 tired law enforcement officer’ means an individual who—

20 “(1) retired in good standing from service with
21 a public agency as a law enforcement officer, other
22 than for reasons of mental instability;

23 “(2) before such retirement, was authorized by
24 law to engage in or supervise the prevention, detec-
25 tion, investigation, or prosecution of, or the incarcer-

1 ation of any person for, any violation of law, and
2 had statutory powers of arrest;

3 “(3)(A) before such retirement, was regularly
4 employed as a law enforcement officer for an aggregate of 15 years or more; or

5
6 “(B) retired from service with such agency,
7 after completing any applicable probationary period
8 of such service, due to a service-connected disability,
9 as determined by such agency;

10 “(4) has a nonforfeitable right to benefits under
11 the retirement plan of the agency;

12 “(5) during the most recent 12-month period,
13 has met, at the expense of the individual, the State’s
14 standards for training and qualification for active
15 law enforcement officers to carry firearms; and

16 “(6) is not prohibited by Federal law from receiving a firearm.

17
18 “(d) The identification required by this subsection
19 is—

20 “(1) a photographic identification issued by the
21 agency from which the individual retired from service as a law enforcement officer that indicates that
22 the individual has, not less recently than one year
23 before the date the individual is carrying the concealed firearm, been tested or otherwise found by the
24
25

1 agency to meet the standards established by the
2 agency for training and qualification for active law
3 enforcement officers to carry a firearm of the same
4 type as the concealed firearm; or

5 “(2)(A) a photographic identification issued by
6 the agency from which the individual retired from
7 service as a law enforcement officer; and

8 “(B) a certification issued by the State in which
9 the individual resides that indicates that the indi-
10 vidual has, not less recently than one year before the
11 date the individual is carrying the concealed fire-
12 arm, been tested or otherwise found by the State to
13 meet the standards established by the State for
14 training and qualification for active law enforcement
15 officers to carry a firearm of the same type as the
16 concealed firearm.

17 “(e) DEFINED TERM.—As used in this section, the
18 term ‘firearm’ does not include—

19 “(1) any machinegun (as defined in section
20 5845 of title 26);

21 “(2) any firearm silencer (as defined in section
22 921); and

23 “(3) a destructive device (as defined in section
24 921).”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for such chapter is further amended by inserting after the
3 item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement officers.”.

4 (c) EFFECTIVE DATES.—

5 (1) Except as provided in paragraph (2), this
6 Act and the amendments made by this Act shall
7 take effect 2 years after the date of the enactment
8 of this Act and shall cease to have effect 17 years
9 after the date of the enactment of this Act.

10 (2) A State may by State law enacted during
11 the period that begins on the date of the enactment
12 of this Act and ends 2 years thereafter choose not
13 to have this Act and the amendments made by this
14 Act take effect in that State.

Chairman SENSENBRENNER. The clerk will report the substitute. The CLERK. Amendment to H.R. 218, offered by Mr. Conyers:

Strike all after the enacting clause and insert the following—
Mr. CONYERS. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered and the gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

I rise and I am going to shortly yield to my colleague from Virginia, but this amendment will simply protect States' rights in its current form.

What we have is a sweeping, unprecedented override of State and local gun safety laws that is totally unwarranted. There is no precedent for what is intended to be accomplished. This Congress or any other has never passed a law giving current and former State and local employees permission to carry weapons in violation of controlling State and local laws.

Congress has never passed a law interfering with the ability of State and local police chiefs to regulate their own officers carrying firearms. This, among other things, is why the National Conference of Mayors, AFSCME, the International Association of Chiefs of Police, the Police Executive Research Forum, the National Organization of Black Law Enforcement and major city police chiefs all over the country are reluctantly opposed to this legislation.

And I yield to my colleague from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding.

Mr. Chairman, I think this substitute would be much better policy than the underlying bill. First, it allows States—I believe it allows them to opt out and certainly doesn't allow this Federal law to supersede local law that applies to everybody else.

You have under the underlying bill the idea that notwithstanding concealed weapons laws that apply to everybody, somebody from out of State can come in if they are, quote, a "qualified law enforcement officer" and supersede and carry weapons in violation of those laws.

The bill—the amendment also makes it clear that this conceal-carry doesn't apply to machine guns and other military assault-type weapons, so you certainly don't want people from out of town carrying assault weapons. It also has a sunset so that after 17 years—so that if this thing frankly doesn't work, it will sunset after 17 years.

I would hope that we would adopt the substitute as much better policy than the underlying bill. And I yield back to the gentleman from the Detroit Pistons.

Mr. CONYERS. I return to the Chair my unused time.

Chairman SENSENBRENNER. Gentleman from North Carolina Mr. Coble.

Mr. COBLE. Mr. Chairman, I would like to ask my friend from Michigan—but I first want to extend my congratulations to the Pistons and say to my friend, Mr. Berman, that I was cheering for the Pistons and hope you hold me harmless for that.

Mr. Conyers, in your amendment, I assume that if a State does not opt out within that 2-year period, the exemption would lie—the exemption would take effect?

Mr. CONYERS. Could I yield to the gentleman from Virginia?

Mr. SCOTT. Yes.

Mr. COBLE. I thank the gentleman.

Folks, as I said earlier, we have people on this Committee, reasonable folks all, on each side of this issue; and I don't know that anyone's mind is going to be changed today.

But I say to my friend from Michigan, I will oppose this respectfully, because I think this bill has been kicking around, John, for 8 years. I don't see any good purpose of a 2-year delay. And for that reason I reject it.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman, I have to confess that I am worried about this Committee and what we consistently do. I thought this Committee consisted of the most vigorous defenders of States' rights that we had in the Congress. And yet, I could tape record a message that I have tried to deliver over and over and over and over again about my opposition to imposing this Committee's and Congress's will on States in areas that have always, always been reserved to the States. And I keep wondering when my friends who say they believe in States' rights are going to stand up and actually believe in States' rights.

I am worried about this Committee and the direction that we are headed. And I just—I can't imagine anybody opposing this amendment if they really believe in States' rights.

I mean, I might oppose it because I would much, much prefer an opt-in provision as opposed to an opt-out provision that would allow States, if they chose to follow this law, to decide affirmatively that they were going to follow the law as opposed to their own State law. But I can't believe that this Committee is going to pass a bill that in the first paragraph says, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed weapons. How blatant can we be in the face of States' rights?

The first sentence of the bill says that we are just disregarding every State law that is out there and somehow our judgment on this issue is so much better than State legislators'. And, I mean, I am flabbergasted that we could be debating this bill as it was written; and I would be even more flabbergasted if my States' rights friends on this Committee don't finally step up and say, yes, I not only rhetorically believe in States' rights, but this is going too far.

Let us at least give our States' counterparts—in the federalism that our founders created for us, let us at least give them the right to opt out of this bill. I would be flabbergasted if we did not do this.

And if we don't stand up for States' rights here, when will you ever stand up for States' rights? That is the question I would ask.

I yield back.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. This legislation, as it is, is a common-sense piece of legislation that will greatly improve the ability of law enforcement

officers to protect themselves, their families and our communities. It has very broad bipartisan support in Congress.

This legislation, as it is, already passed the Senate in the form of an amendment 91 to 8. It has 295 cosponsors and will likely get about 90 percent votes in the House. It passed by a voice vote yesterday.

It is supported in the law enforcement community. We heard from Chuck Canterbury, the President of the Fraternal Order of Police, they support it; Mr. William Johnson, the President of the National Association of Police Organizations, they support it.

And so I have to oppose this opt-out amendment, which has been offered in the name of States' rights, because it would essentially gut the bill and give us the same inconsistent patchwork of coverage that exists today. And let me give you an example of what I am talking about.

Let us say that a police officer and his family in my district of Orlando, Florida, would like to go on a nice vacation to Washington, D.C., to see the monuments. He would have to travel through six different States. So he would be in Florida, which would be fine. Then he would go to Georgia which, let us say they opted out; he would be illegal.

Then he would go to South Carolina, which would be fine. And then he would go to North Carolina, which would be illegal if they opt out. Then he would go to Virginia, which would be fine. Then he would go to D.C., which would be illegal if they opt out. It is the same exact problem that exists today.

Why is it that we authorize pilots to have firearms, but not police officers?

Criminals do not observe any jurisdictional lines when they seek revenge against officers who have enforced society laws against them. That is why this is an attractive, common-sense piece of legislation which I urge my colleagues to support as it is.

Some of the things that were said simply need some clarification. Mr. Scott said it also has language about, these folks can't carry machine guns. The base bill already says they can't carry machine guns. It is not needed.

Mr. Watt expressed some frustration about States' rights, and let me say that sometimes the States do some things better and sometimes you need the Federal Government to intervene when you have an inconsistent patchwork.

I live in Orlando, Florida. I would like to take my family on a car ride from Disney World to Disneyland in California. And I would imagine if I took the Federal highways, I would get there a couple of days before you would if you took the State highways, because there was an inconsistent patchwork.

Mr. WATT. Would the gentleman yield?

It is quite obvious the gentleman doesn't have much appreciation for the constitutional framework in which we are obligated to operate. Just because you might get there faster using an interstate highway than I would get there using State highways is no reason to tell the States that they can't have State highways. That is just patently ridiculous.

Mr. KELLER. Reclaiming my time, you said I didn't appreciate the Constitution in that analogy. And there is something in the Constitution that is called the commerce clause. And that is why

we have the interstate highway system. I think it is a pretty good idea. I don't think we want to rip that up in name of the argument that the commerce clause doesn't mean anything.

Mr. WATT. Would the gentleman yield?

Mr. KELLER. No. I already yielded once.

I ask my colleagues to oppose this amendment. It guts the legislation. I don't doubt your sincerity or your motives; i think you can make your argument with a straight face. But because of the inconsistent patchwork that exists today, I ask my colleagues to vote down this amendment.

I yield back my time.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. WATT. Would the gentleman yield?

Mr. DELAHUNT. I move to strike the last word, Mr. Chairman. And I am going to yield to my colleague from North Carolina, but I want to comment on the candor, and I respect that, of the gentleman from Florida. But I guess the issue is, does the amendment to the Constitution reserving rights to the State, when does it count anymore? When does it matter?

I mean, clearly, fighting crime, if you will, those decisions, I think historically have been made at the State and local level. And as we continue to proceed with Federal preemption, in effect, what we are doing is, we are stripping from the States their sovereignty, if you will, and diminishing it to the point where we might as well just simply repeal States' rights.

And what is particularly surprising is that I remember back in 1994, during that particular campaign, there was considerable discussion about devolution and States' rights. Why don't we just bury it and, you know, continue to exercise Federal preemption when it suits our convenience?

You know, each State should be able to make its own judgment about whether private citizens should be allowed to carry concealed weapons whether they are on-duty, off-duty or retired police officers. And it is clear that States have addressed this issue. This is not something that the States have avoided.

There is considerable discussion going on within State legislatures to deal with this particular issue. To cite one example, in 1995, a retired police chief was shot and killed while trying to stop a robbery in New Jersey. And that particular incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number of conditions.

In drafting this law, the New Jersey legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large by including a number of important safeguards that are not included in this particular base bill. New Jersey's law is limited to handguns. New Jersey law has a maximum age, age 70. New Jersey's law requires that retired police officers must file renewal applications yearly, and this doesn't exist. I am just enumerating some of them.

With that, I will yield to my friend from North Carolina, Mr. Watt.

Mr. WATT. I thought I had heard about the most expansive reading of the commerce clause that I could hear in justification of preempting State laws when we dealt with tort reform or some of the

other issues. But this interpretation that this is somehow acceptable under the commerce clause, there is no trade.

You know, a police officer puts a gun in his pocket and goes into another State that is protected under the commerce clause? Give me a break. That is even further beyond the pale than I have ever heard you try to justify as a justification for preempting State law. And this is the group that always said that they believed in States' rights.

When are you going to believe in States' rights? When is anybody going to step up and say that States' rights have some meaning in our federalist system? I mean, surely you all don't believe this is justified under the commerce clause.

I yield back.

Chairman SENSENBRENNER. Gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HOSTETTLER. If I could return us to the actual Constitution and the wording of the 10th amendment with regard to States' rights that everyone is concerned about here, I think it is very informative. It says, quote, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States—nor prohibited by it to the States—are reserved to the States respectively or to the people." so the 10th amendment clearly states that there are powers not—that there are powers that are prohibited by the Constitution with regard to the States.

The supremacy clause says, "This Constitution and the laws of the United States shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." so the States' rights argument is a very valid argument.

I am a very strong proponent of States' rights to the extent that the Constitution does not prohibit a power to the States.

Now, if we turn to the second amendment of the Constitution, the second amendment is an interesting amendment in that, unlike the first amendment to the Constitution, it does not explicitly preclude only the Federal Congress from acting. The first amendment, as we know, says, "Congress shall make no law respecting an establishment of religion," and it is widely understood that when the Federal Constitution refers to Congress, it is referring to the Federal Congress and not the States.

But when you move to the second amendment of the Constitution, there is no explicit discussion of the Federal Congress. It says very clearly, quote, "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed," period, unquote.

Shall not be infringed by whom? Shall not be infringed, period. Shall not be infringed by the Federal Congress, shall not be infringed by the States, period, as opposed to the first amendment, which only explicitly refers to the Federal Congress.

And so, while the spirit of George Wallace is well on the other side—is alive and well on the other side of the aisle, it is important

for us to understand that what the Constitution says is what it means. And that means that the 10th amendment has prohibited, via the second amendment and the supremacy clause, the right of the State to infringe on the right of the people to keep and bear arms.

Mr. BERMAN. Would the gentleman yield?

Mr. HOSTETTLER. Yes.

Mr. BERMAN. As I understand the gentleman's argument—

Mr. HOSTETTLER. It is the Constitution. It is not my argument.

Mr. BERMAN. But accepting that it is the Constitution, the gentleman is contending that the Constitution prohibits the States from prohibiting the people from bearing arms. Essentially, is that a fair summary?

Mr. HOSTETTLER. Prohibiting the State from prohibiting the people to keep and bear arms.

Mr. BERMAN. Why is this then an amendment only about—why is this a bill only about peace officers? What about State laws on concealed weapons?

Mr. HOSTETTLER. Reclaiming my time, there is a bill that has been introduced that would actually, by way of article 4 of the Constitution, full faith and credit, grant individuals whose rights have not been restricted by the States, whose second amendment rights have not been restricted by the States to do this bill.

I am not saying that this is a perfect bill. I am saying this is a good first step. There is legislation that has been introduced to apply the full faith and credit clause that once again grants Congress the authority to make rules regarding judicial proceedings and acts and rules of other States to be bound by other States.

So, reclaiming my time, the States' rights argument is a great argument. You will be hearing your words echoed to you in future discussion of other areas where we will talk about States' rights with regard to violence against women and other things.

Mr. WATT. When? When? When?

Mr. HOSTETTLER. When it comes to reauthorization. But this particular situation, there is legislation that has been introduced that says that if a State has not restricted the right of the people to keep and bear arms, that the full faith and credit clause and the—

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. HOSTETTLER. And I will get you information on that bill.

Mr. BERMAN. Does that apply to marriage as well?

Chairman SENSENBRENNER. Let's not go there.

The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan, Mr. Conyers. Those in favor will say aye.

Opposed, no.

Chairman SENSENBRENNER. The ayes appear to have it.

Mr. KELLER. rollcall.

Chairman SENSENBRENNER. Those in favor of the Conyers amendment in the nature of a substitute will, as your name is called, answer aye.

Those opposed, no.

And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.
 The CLERK. Mr. Hyde, no. Mr. Coble.
 Mr. COBLE. No.
 The CLERK. Mr. Coble, no. Mr. Smith.
 Mr. SMITH. No.
 The CLERK. Mr. Smith, no. Mr. Gallegly.
 [No response.]
 The CLERK. Mr. Goodlatte?
 [No response.]
 The CLERK. Mr. Chabot.
 Mr. CHABOT. No.
 The CLERK. Mr. Chabot, no. Mr. Jenkins.
 Mr. JENKINS. No.
 The CLERK. Mr. Jenkins, no. Mr. Cannon.
 Mr. CANNON. No.
 The CLERK. Mr. Cannon, no. Mr. Bachus.
 [No response.]
 The CLERK. Mr. Hostettler.
 Mr. HOSTETTLER. No.
 The CLERK. Mr. Hostettler, no. Mr. Green.
 Mr. GREEN. No.
 The CLERK. Mr. Green, no. Mr. Keller.
 Mr. KELLER. No.
 The CLERK. Mr. Keller, no. Ms. Hart.
 [No response.]
 The CLERK. Mr. Flake.
 [No response.]
 The CLERK. Mr. Pence.
 Mr. PENCE. No.
 The CLERK. Mr. Pence, no. Mr. Forbes.
 [No response.]
 The CLERK. Mr. King.
 Mr. KING. No.
 The CLERK. Mr. King, no. Mr. Carter.
 Mr. CARTER. No.
 The CLERK. Mr. Carter, no. Mr. Feeney.
 [No response.]
 The CLERK. Mrs. Blackburn.
 Mrs. BLACKBURN. No.
 The CLERK. Mrs. Blackburn, no. Mr. Conyers.
 Mr. CONYERS. Yes.
 The CLERK. Mr. Conyers, yes. Mr. Berman.
 Mr. BERMAN. Aye.
 The CLERK. Mr. Berman, aye. Mr. Boucher.
 Mr. BOUCHER. No.
 The CLERK. Mr. Boucher, no. Mr. Nadler?
 [No response.]
 The CLERK. Mr. Scott.
 Mr. SCOTT. Aye.
 The CLERK. Mr. Scott, aye. Mr. Watt.
 Mr. SCOTT. Aye.
 The CLERK. Mr. Scott, aye. Ms. Lofgren.
 Ms. LOFGREN. Aye.
 The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee.
 Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye. Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Ms. Waters, aye. Mr. Meehan.
 Mr. MEEHAN. No.
 The CLERK. Mr. Meehan, no. Mr. Delahunt.
 Mr. DELAHUNT. Aye.
 The CLERK. Mr. Delahunt, aye. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. Aye.
 The CLERK. Ms. Baldwin, aye. Mr. Weiner.
 Mr. WEINER. No.
 The CLERK. Mr. Weiner, no. Mr. Schiff.
 Mr. SCHIFF. No.
 The CLERK. Mr. Schiff, no. Ms. Sánchez.
 Ms. SÁNCHEZ. No.
 The CLERK. Ms. Sánchez, no. Mr. Chairman.
 Chairman SENSENBRENNER. Aye.
 The CLERK. Chairman Sensenbrenner, aye.
 Chairman SENSENBRENNER. Members in Chamber wish to cast or
 change their votes?
 Gentleman from Florida, Mr. Feeney.
 Mr. FEENEY. No.
 The CLERK. Mr. Feeney, no.
 Chairman SENSENBRENNER. Gentleman from New York, Mr.
 Nadler.
 Mr. NADLER. Aye.
 The CLERK. Mr. Nadler, aye.
 Chairman SENSENBRENNER. Gentleman from Virginia, Mr.
 Forbes.
 Mr. FORBES. No.
 The CLERK. Mr. Forbes, no.
 Chairman SENSENBRENNER. Further Members who wish to cast
 or change their votes?
 If not, the clerk will report.
 Gentlewoman from Pennsylvania, Ms. Hart.
 Ms. HART. No.
 The CLERK. Ms. Hart, no.
 Mr. Chairman, there are 11 ayes and 21 noes.
 Chairman SENSENBRENNER. And the amendment in the nature of
 a substitute is not agreed to.
 Are there further amendments.
 Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the
 desk.
 [The amendment offered by Ms. Jackson Lee follows:]

AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 218
OFFERED BY MS. JACKSON LEE

Page ~~8~~, line ~~17~~, strike "2" and insert "4".

Page ~~8~~, line ~~22~~, strike "2" and insert "4".

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 218 offered by Ms. Jackson Lee: Page 7, line 7, strike "2" and insert "4".

Page 7, line 12, strike "2" and insert "4".

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes in support of her amendment.

Ms. JACKSON LEE. I thank the distinguished Chairman very much.

Let me begin the reasoning for this amendment. It is to recognize the differing legislative schedules that many States have. This amendment simply changes the number from 2 years to 4 years. This would be an effective recognition of what I hope is an acceptable premise as discussed previously in the Constitution that we do believe and appreciate States' rights. This has an opportunity to allow State legislatures like the State of Texas, that meets every other year, the appropriate time to consider either opting out or enacting the legislation.

Because we have had an in-depth discussion on this matter and I believe this amendment has validity, at this time, Mr. Chairman, I am going to offer to withdraw the amendment because I would like to work further as this legislation moves to the floor of the House in order to assure that a reasonable consideration of this time frame be accepted, and so I might consider 3 years as opposed to 4 years. So I would like to engage in this discussion at that point.

At this point, I will withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, O38.

[The amendment offered by Mr. Scott follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. SCOTT

Page 3, after line 21, insert the following:

- 1 (e) This section shall not be construed to supersede
2 or limit the rules, regulations, policies, or practices of any
3 State or local law enforcement agency.

Page 3, line 22, strike “(e)” and insert “(f)”.

Page 6, after line 9, insert the following:

- 4 (e) This section shall not be construed to supersede
5 or limit the rules, regulations, policies, or practices of any
6 State or local law enforcement agency.

Page 6, line 10, strike “(e)” and insert “(f)”.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 218 offered by Mr. Scott:

Page 3, after line 21, insert the following: (e) This section shall not be construed to supersede or limit the rules, regulations, policies, or practices of any State or local law enforcement—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment would simply protect the ability of the police chief to control what goes on with his police officers. The bill apparently allows—as we heard during the hearing, the bill supersedes the ability of the chief of police to control his own officers. Obviously, it limits his ability to see what comes into his jurisdiction.

If an out-of-towner comes in with a firearm, the bill obviously gives him no control over that. But the bill apparently supersedes his ability for off-duty police officers of his own force. If he should want to decide to prohibit his own officers from carrying concealed weapons when they are off duty, this bill will override his power over his own police officers.

This amendment would just say that it should not be construed to supersede or limit the rules, regulations, policies, or practices of any State law enforcement agency so that the police chief can say no firearms in bars, no firearms when you are off duty, and that would be a decision that the police chief could make about his force.

The bill overrides that. The amendment reinstates the power of the police chief over his own police officers. I would hope that the Committee would accept the amendment.

I yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. I supported Mr. Scott on his last amendment, but I will mildly resist this one.

As I said before, Mr. Chairman, I don't think anybody is going to change their mind today. We are familiar with this bill.

Mr. Scott, let me ask you a question, if I may. Are you concerned about the ensuing liability that may rear its head?

Mr. SCOTT. Well, the liability is obviously an issue. If the police chief decided that he didn't want officers of his own force going over, possibly exposing the city to liability, that ought to be a decision that the police chief would have, if they are not trained in whatnot.

This bill just includes concealed weapons. It has nothing to do with hunting and that kind of thing.

Ms. LOFGREN. Would the gentleman yield?

Mr. COBLE. I will yield.

Ms. LOFGREN. I think this is an important amendment. Thinking back to my many years in local government, there are many peace officers that you would not think of as peace officers. We have park police, we have transit police, for example, we have all the correctional officers in Santa Clara County, where I served. There is a huge issue. And some of those peace officers actually are not even trained in weapons. So there is a liability issue for some segments

of peace officers that really looms very large to local governments, as I recall, and I think to make sure that local governments have an opportunity to regulate their own peace officers is an important thing in terms of exposure.

I just thought sharing that personal experience I had for 14 years in Santa Clara County, the board of supervisors, might be helpful.

Mr. COBLE. I thank the lady, and I yield back.

Chairman SENSENBRENNER. The question is on the amendment.

Mr. DELAHUNT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I want to pose a question to Mr. Scott or to the Chair of the Subcommittee, because I want to be clear.

There are, obviously, instances where local chiefs of police, for disciplinary reasons, will insist that a particular officer provide or relinquish, if you will, control of his firearm for, again, a variety of disciplinary reasons pending an outcome of possibly a grievance or possibly a probationary period.

Does the underlying bill eviscerate, if you will, the ability of the local police chief, in fact, to have that management prerogative? If the Chairman can respond to that, or the Ranking Member?

Mr. SCOTT. If the gentleman will yield.

Mr. DELAHUNT. I yield.

Mr. SCOTT. Page 3, line 11, of the bill defines qualified law enforcement officer as one who is not subject to any disciplinary action by the agency. But that just raises the question of what disciplinary action by the agency means. If he just tells the officer, don't carry your gun, that might not technically be disciplinary action. It is just that he may not want that particular officer that day to carry the weapon. I don't know if that would be disciplinary action or not.

The bill clearly prohibits the chief of police from prohibiting his officer going on vacation with a firearm. And as the gentlelady from California says, this is not just police and sheriff, that is anybody with arresting powers, game and fisheries, probation and parole officers, and everybody else.

Mr. DELAHUNT. Well, reclaiming my time. I think what will potentially occur here, if the amendment is not adopted, we will be eviscerating and undermining the management prerogatives of local chiefs of police.

And I presume, and I think I heard the Ranking Member of the full Committee indicate, that the International Association of Chiefs of Police opposes this bill. I presume that is the rationale for their opposition. But clearly we are, I think, going down a very dangerous road by undermining the control of the chiefs of police and the senior command staff of local police departments.

With that, I yield back.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. KELLER. I think the bill already has the language that you have to have your police ID with you. So if they were subject to some disciplinary activity and they removed their badge and their police ID, I think they are already covered.

If you look at the language of the amendment, it seems well meaning and innocuous: This section shall not be construed to supersede or limit the rules, regulations, policies, or practices of any State or local law enforcement agency. I think the intention is pure, and I see what you are trying to do there. My concern is that it would be interpreted in an overly broad manner to essentially, by a back door, achieve your opt-out objectives.

I will give you one example. I think in the Chairman's State of Wisconsin, you can't have a concealed weapon permit no matter who you are. So I assume the rules, if you look at the rule book of some local Wisconsin agency, it probably says we will follow the laws of the State of Wisconsin. So if that is the case and we cannot supersede the laws of the State of Wisconsin, then all of a sudden we, de facto, have an opt-out provision here where a police officer cannot go through Wisconsin.

That is something a reasonable judge, interpreting this in an overly broad manner, could come to the conclusion of. So for that reason, I have to oppose the amendment as written.

I don't oppose your intention. I think there should be control over individual officers, but because it can be interpreted overly broad to essentially result in an opt-out situation, I would have to oppose the amendment and ask my colleagues to oppose it.

Mr. DELAHUNT. Would the gentleman yield?

Mr. KELLER. Yes, I will.

Mr. DELAHUNT. You are talking about potential interpretations. Would you respond to my argument, relative to undermining control of a local police department, undermining control by the senior command staff and by the chief of police?

I think what we are doing here is, we are intruding, if you will, on the relationship between the senior command staff, the chief of police, and the local police personnel. This is—again, I just think it is a very dangerous precedent we are establishing. This goes beyond, I think, anything that was raised by the gentleman from North Carolina, Mr. Watt, in terms of States' rights. This is getting right into the heart and soul of the management of a public safety agency.

Mr. KELLER. Yes, I will respond, and thank you.

If you look at the definition of a qualified law enforcement officer, on page 3 of the bill, it talks about the officer having to have identification that is required by this subsection in the form of photographic identification, identified by the Government or agency for which the individual is or was employed as a law enforcement officer.

So, in effect, if you have a situation where a chief of police believes that he needs to suspend an officer for some untoward conduct, and he asks for his badge and he asks for his ID, then that particular officer is no longer a qualified law enforcement officer and will not be authorized under this bill to carry the concealed weapon in that jurisdiction or across State lines.

Mr. SCOTT. Will the gentleman yield?

Mr. KELLER. Yes.

Mr. SCOTT. The definition of qualified law enforcement officer is so broad that it does not really even require the carrying of a firearm in the conduct of your normal business. If you have statutory powers of arrest, your agency can say, we don't want anybody carrying firearms because we don't have any training for firearms.

And yet, under this bill you are still a qualified law enforcement officer if you have statutory powers of arrest and supervise or anything else. So you can go to another State and you are exempt from their concealed weapons laws; is that right?

Mr. KELLER. I wouldn't interpret it that way, because it specifically says a qualified law enforcement officer is someone who is "not the subject of any disciplinary action by the agency."

Mr. SCOTT. That is not disciplinary. Your agency does not allow anybody in your agency to carry a firearm because there is no firearms training. They are technically a qualified law enforcement officer, and that person can carry out of State and violate other people's concealed—in fact, can violate the local concealed weapons laws; is that right?

Mr. KELLER. That is not my interpretation, no.

Mr. SCOTT. Well, that is what the bill says.

Mr. KELLER. Yield back.

Chairman SENSENBRENNER. The question is on the——

Ms. WATERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman, I have been listening to this debate, and the gentleman talks about the officers having identification, but I don't see anything in this legislation for verification of the identification.

I am not impressed with the fact that someone representing themselves as a law enforcement officer has a picture and even a badge. How do we know if they really are law enforcement officers, and how does the jurisdiction in which this officer attempts to enter know and how are they able to verify, do they have the means by which to do that, to ensure that this really is a law enforcement officer?

Having said that, raised that question, Mr. Chairman, I simply want to say that this bill goes over the top. States' rights and sovereignty have been debated here, but I want you to know, I come from Los Angeles, where we have a lot of experience with police training, the use of force, choke-holds, and what to do in a police-involved shooting; where we have special roll-out procedures that take place so that we can have documentation about what took place, and on and on and on.

Now, I suspect that there may be some police officers from Timbuktu, Mississippi, who could come to Los Angeles and be absolutely frustrated, overwhelmed, and lost in a situation where they could get involved with a shooting and not know our rules, not understand our roll-out procedures. And then, I suspect that my city

council would be responsible for the liability that results because this officer did not follow the rules of my jurisdiction.

I think this preemptive bill is an abuse of power. We can sit here at the Federal level and preempt every State in the United States on this issue because, I guess, the Republicans on the opposite side of the aisle have the power to do that. So I don't even want to discuss with you States' rights, which is supposed to be the linchpin of Republican philosophy. I just want to talk about common sense and good judgment, and I want to talk about why would you use your power to preempt all of these jurisdictions across the United States when, in fact, you are setting up police officers to get in trouble, you are setting up jurisdictions to have to be presented with liability problems?

This is unwise, and I think you deserve to do better public policy-making than this.

Ms. LOFGREN. Will the gentlewoman yield?

Ms. WATERS. I yield to the gentlewoman from California.

Ms. LOFGREN. I thank the gentlelady for yielding.

I have a question, I guess for Mr. Keller. And I understand what the attempt is, but I think it needs some refinement.

"is authorized by the agency to carry a firearm," section 2, is, I think, meant to prevent what we have expressed concern about. This is not a hypothetical, because it is reality in my county. We have over a thousand correctional officers that run the county jail system. They are authorized to use firearms, but they do not actually have them. The firearms are actually stored at the facilities. They are trained to use them, the firearms, at the correctional facility should an emergency occur. They are not authorized to carry firearms at home or off duty, nor are they trained to do that. They are trained for the correctional system only.

Would, in your judgment, the authorization outlined in section 2 allow the chief of the Corrections Department to limit, as has been done in that county and many others, for liability reasons, or not?

Mr. KELLER. Well, all I would say to my colleague is, until I see your policies and procedures and detailed information about what is authorized and what is not authorized, I am in no real position to offer a legal opinion. And if I did give a legal opinion, I think it would not carry substantial weight on your side of the aisle in any event.

Ms. LOFGREN. What is your intention?

Mr. KELLER. What is my intention? My intention is to vote "no" on this amendment because I think it is a back door opt-out.

Ms. LOFGREN. No, no, no. What is your intention on line 17, page 2, item 2?

Mr. KELLER. First of all, you are asking me as if I am the author of it.

Ms. LOFGREN. Maybe I should ask Mr. Coble.

Mr. KELLER. Yes.

Ms. LOFGREN. Mr. Coble, on line 17—

Chairman SENSENBRENNER. Time of the gentlewoman from California, Ms. Waters, has expired.

Mr. CANNON. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. May I just inquire of the Chair if we have any idea how many amendments we expect and how long we intend to go today in this markup?

Chairman SENSENBRENNER. The Chair will say that we have to get done this bill and the first responders bill. The first responders bill, the sequential referral expires on Monday, so we must report that bill out today.

Mr. CANNON. And do we have any idea how many amendments we have remaining on this bill?

Chairman SENSENBRENNER. We have three amendments left to do.

Mr. CANNON. Thank you. I yield back.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I would like to return to the subject I was discussing when the gentlelady, Ms. Waters, yielded to me. And I guess the question is to Mr. Coble.

I am looking at the amendment in the nature of a substitute. We are not working off of that. Well, then, let me just put it to Mr. Coble: the real situation that we have in Santa Clara County, where you have an individual that is authorized by the agency to carry a firearm.

In the situation of the Department of Corrections in Santa Clara County, the correctional officers are authorized to use firearms, the firearms are actually locked at the local jail, and they are to be used only in the case of a riot or uprising. They are not actually trained to patrol. For liability reasons—and this has been a huge issue during negotiations and everything else—the officers are not permitted to carry the firearms home because they are not trained to carry the firearms home. The county is afraid they will get sued and have to pay a lot of money.

So would the authorization in that case, would it include the scope of the authorization or not? What is the intention of the author?

Mr. COBLE. If the gentlelady would yield.

Ms. LOFGREN. I would yield.

Mr. COBLE. Zoe, I guess the best answer I can give you would be on page 3, item 4, which provides that they meet the standard, if any, established by the agency which requires the employee to regularly qualify in the use of a firearm.

Ms. LOFGREN. But in this case they have qualified to use it, but the scope of use has been limited to only a particular place and time.

So I guess if we agree that the local rules will prevail, then you have actually solved the problem. If a court were to look at our discussion here and what the intention of the author was, perhaps we have solved this.

Mr. SCOTT. Would the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. SCOTT. Well, I would say that on page 3, line 13, it says "and meets standards, if any," which kind of begs the question what "if any" means. There may not be any standards at all.

And let us go back to the qualified law enforcement officers, which is about anybody who has statutory powers of arrest. The agency may decide we are not going to have standards, so we are not going to have anybody carrying firearms. Although you are technically a law enforcement officer, don't carry firearms.

But what does this bill say? Let's read it. "notwithstanding any other provision of the law of any State or any political subdivision, an individual who is technically a qualified law enforcement officer and is carrying ID, may carry a concealed firearm." that is what it says.

Ms. LOFGREN. Reclaiming my time, in California, as the other Members from California will know, you become a law enforcement officer when you are accepted for peace officer standards and training training, if you are POST certified. That includes weights and measure inspectors, it includes zoning administrators. It is very, very broad, and only some of those people actually get training. I mean, real cops obviously do, but there are a lot of people with POST training who are legally police officers, who are qualified under law, but who don't ever use a gun—museum guards.

Mr. SCOTT. If the gentlelady would yield.

Ms. LOFGREN. I yield.

Mr. SCOTT. It says "meet standards, if any." if there are no standards, then you don't have to meet any standards, but notwithstanding any other provision of law, an individual may carry the concealed weapon.

Ms. LOFGREN. Reclaiming my time, I guess the question is, is the standard the State standard or could it also be local standards?

I guess what Mr. Coble has said is that it could be local standards. And if that is the case, I think the problem is solved. So I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. SCOTT. Recorded vote, please, Mr. Chairman.

Chairman SENSENBRENNER. Recorded vote is requested. Those in favor of the Scott amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins.

[No response.]
 The CLERK. Mr. Cannon.
 [No response.]
 The CLERK. Mr. Bachus.
 [No response.]
 The CLERK. Mr. Hostettler.
 [No response.]
 The CLERK. Mr. Green.
 Mr. GREEN. No.
 The CLERK. Mr. Green, no. Mr. Keller.
 Mr. KELLER. No.
 The CLERK. Mr. Keller, no. Ms. Hart.
 [No response.]
 The CLERK. Mr. Flake.
 [No response.]
 The CLERK. Mr. Pence.
 Mr. PENCE. No.
 The CLERK. Mr. Pence, no. Mr. Forbes.
 Mr. FORBES. No.
 The CLERK. Mr. Forbes, no. Mr. King.
 Mr. KING. No.
 The CLERK. Mr. King, no. Mr. Carter.
 Mr. CARTER. No.
 The CLERK. Mr. Feeney.
 Mr. FEENEY. No.
 The CLERK. Mr. Feeney, no. Mrs. Blackburn.
 Mrs. BLACKBURN. No.
 The CLERK. Mrs. Blackburn, no. Mr. Conyers.
 Mr. CONYERS. Aye.
 The CLERK. Mr. Conyers, aye. Mr. Berman.
 Mr. BERMAN. Aye.
 The CLERK. Mr. Berman, aye. Mr. Boucher.
 Mr. BOUCHER. No.
 The CLERK. Mr. Boucher, no. Mr. Nadler.
 Mr. NADLER. Aye.
 The CLERK. Mr. Nadler, aye. Mr. Scott.
 Mr. SCOTT. Aye.
 The CLERK. Mr. Scott, aye. Mr. Watt.
 Mr. WATT. Aye.
 The CLERK. Mr. Watt, aye. Ms. Lofgren.
 Ms. LOFGREN. Aye.
 The CLERK. Ms. Jackson Lee.
 [No response.]
 The CLERK. Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Ms. Waters, aye. Mr. Meehan.
 Mr. MEEHAN. Aye.
 The CLERK. Mr. Meehan, aye. Mr. Delahunt.
 Mr. DELAHUNT. Aye.
 The CLERK. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. Aye.
 The CLERK. Ms. Baldwin, aye. Mr. Weiner.
 Mr. WEINER. Pass.

The CLERK. Mr. Weiner passes. Mr. Schiff.
 Mr. SCHIFF. Pass.
 The CLERK. Mr. Schiff passes. Ms. Sánchez.
 Ms. SÁNCHEZ. Pass.
 The CLERK. Ms. Sánchez passes. Mr. Chairman.
 Chairman SENSENBRENNER. Aye.
 The CLERK. Chairman Sensenbrenner, aye.
 Chairman SENSENBRENNER. Are there Members in the Chamber who wish to cast or change their votes?
 The gentleman from California, Mr. Gallegly.
 Mr. GALLEGLY. No.
 The CLERK. Mr. Gallegly, no.
 Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.
 Mr. HOSTETTLER. No.
 The CLERK. Mr. Hostettler, no.
 Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins.
 Mr. JENKINS. No.
 The CLERK. Mr. Jenkins, no.
 Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus.
 Mr. BACHUS. No.
 The CLERK. Mr. Bachus, no.
 Chairman SENSENBRENNER. Are there further Members in the Chamber who wish to cast or change their votes?
 If not—the gentleman from New York Mr. Weiner.
 Mr. WEINER. No.
 The CLERK. Mr. Weiner, no.
 Chairman SENSENBRENNER. The gentlewoman from California, Ms. Sánchez.
 Ms. SÁNCHEZ. No.
 The CLERK. Ms. Sánchez, no.
 Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.
 Mr. SCHIFF. No.
 The CLERK. Mr. Schiff, no.
 Chairman SENSENBRENNER. The gentlewoman from Pennsylvania, Ms. Hart.
 Ms. HART. No.
 The CLERK. Ms. Hart, no.
 Chairman SENSENBRENNER. The Clerk will report.
 The CLERK. Mr. Chairman, there are 11 ayes and 21 noes.
 Chairman SENSENBRENNER. The amendment is not agreed to.
 Are there further amendments? The gentleman from Virginia, Mr. Scott.
 Mr. SCOTT. Mr. Chairman, I know we are trying to move right along, so I will be very brief on this.
 I have an amendment at the desk, number 33.
 [The amendment offered by Mr. Scott follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. SCOTT

Page 4, line 2, strike “and”.

Page 4, line 4, strike the first period, the close quotation marks, and the second period and insert “; and”.

Page 4, after line 4, insert the following:

1 (4) any semiautomatic assault weapon (as de-
2 fined in section 921).”.

Page 6, line 15, strike “and”.

Page 6, line 17, strike the first period, the close quotation marks, and the second period and insert “; and”.

Page 6, after line 17, insert the following:

3 (4) any semiautomatic assault weapon (as de-
4 fined in section 921).”.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 218, offered by Mr. Scott. Page 4, line 2, strike "and". Page 4, line 4, strike the first period, the closed quotation marks, and the second period.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from Virginia will be recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this language goes on page 6, where it says "define term"; and where it says "firearm shall not include a machine gun, a silencer, or destructive weapon," this would add "semiautomatic assault weapon" as defined in section 921.

Since we have decided that people, without authority to carry firearms, even in their own agency, who may have no training, can carry concealed weapons in violation of the local ordinances and local agency regulations, we just want to make sure that this bill does not allow them to carry military assault weapons concealed in violation of local laws and regulations.

I think it is pretty straightforward, and people know what we are voting on. I will, therefore, yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Again, Mr. Chairman, we know where we are going on this. I will mildly resist this amendment.

Ms. WATERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Well, I don't know what a mild resistance is. Are you opposed to this concealed assault weapons?

Mr. COBLE. Well, do you know what resist is?

Ms. WATERS. No, I don't.

Mr. COBLE. Well, we'll wait for the vote then, I guess. Mr. Scott knows.

Ms. WATERS. Mr. Chairman and Members, let me just support the gentleman's amendment and ask my colleagues to support that amendment. It would be outrageous for us not to.

Mr. DELAHUNT. Will the gentlewoman yield?

Ms. WATERS. Yes, I yield.

Mr. DELAHUNT. My understanding, and I could be incorrect, but the definition of a firearm under Federal law includes a bomb or a grenade. I would request respectfully if my colleague from Virginia—if he would be willing to accept a friendly amendment to his amendment which would include a bomb and/or grenade.

Mr. SCOTT. Mr. Chairman, I think that is under part 3, already in the bill, "a destructive device as defined in section 921." I think is already included. I think that is the bomb section. It is not outlined in the bill, but it is cross-referenced on line 16.

Mr. DELAHUNT. And you are satisfied that that is included, or maybe?

Mr. SCOTT. Well, I am just aiming at the military assault weapons right now.

Mr. DELAHUNT. But I need some sort of reassurance that either a bomb or a grenade is somehow included within the base bill.

Maybe one of the proponents of the base bill can—I have not had an opportunity to read in detail. Mr. Keller, I see you standing there. Maybe you can help me.

Mr. KELLER. Well, thank you, Mr. Delahunt. I am looking at 921, because that wasn't provided, but I can tell you that——

Chairman SENSENBRENNER. Time belongs to the gentlewoman from California.

Ms. WATERS. Who is asking the gentlewoman to yield?

Mr. KELLER. Will the gentlewoman yield?

Ms. WATERS. Yes.

Mr. KELLER. Mr. Delahunt asked me if certain guns are included or not, and because section 921 was not passed out with this, I am trying to look it up right now. I can tell you that there are various semiautomatic weapons that are legal. In fact, the common gun carried by a police officer is a 9-millimeter.

So I am trying to look at what 921 says. Until I see it, I really cannot respond to it.

Ms. WATERS. Reclaiming my time. Anybody else need any time?

Mr. DELAHUNT. If the gentlewoman would continue to yield to me.

Ms. WATERS. Yes, I yield to Mr. Delahunt.

Mr. DELAHUNT. My question is regarding a bomb or grenade.

Mr. CARTER. Would the gentleman yield?

Mr. DELAHUNT. I yield.

Mr. CARTER. I think the definition you are thinking about is a deadly weapon definition, not a firearm definition. I think a hand grenade and a bomb fall under a deadly weapon definition, not a firearm definition.

Mr. DELAHUNT. If the gentlewoman would continue to yield.

Ms. WATERS. I continue to yield.

Mr. DELAHUNT. I would like to have some reassurances that at least once this bill comes out of Committee that we could address that issue with some clarity and some certitude so that we do not have retired police officers walking around with a concealed grenade or bomb, if that would be acceptable to the Chair.

Chairman SENSENBRENNER. Well, it would be acceptable to the Chair, but I don't know about some of the people over here.

Mr. DELAHUNT. Well, I think I have got my answer.

Mr. KELLER. If you will yield.

Mr. DELAHUNT. I yield.

Chairman SENSENBRENNER. Time belongs to the gentlewoman from California.

Ms. WATERS. I will mildly yield.

Mr. KELLER. Thank you. I think it is just kind of a back-door way of reauthorizing the assault weapons ban, so however you feel about that is probably how you feel about this.

Ms. WATERS. On my time, how does the gentleman feel about it?

Mr. KELLER. I am not going to reauthorize the assault weapons ban.

Chairman SENSENBRENNER. Does the gentlewoman yield back the balance of her time?

Ms. WATERS. Unless Mr. Delahunt needs some more time to address this. What about Mr. Scott? Mr. Watt? Mr. Conyers?

If not, then the gentlewoman will yield back.

Chairman SENSENBRENNER. The question is on the Scott amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. SCOTT. Recorded vote, Mr. Chairman.

Chairman SENSENBRENNER. Recorded vote is requested. Those in favor of Scott Amendment No. 33 will, as their names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus.

[No response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart.

[No response.]

The CLERK. Mr. Flake.

[No response.]

The CLERK. Mr. Pence.

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes.

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King.

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Carter.

Mr. CARTER. No.

The CLERK. Mr. Carter, no. Mr. Feeney.

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mrs. Blackburn.

Mrs. BLACKBURN. No.

The CLERK. Mrs. Blackburn, no. Mr. Conyers.

Mr. CONYERS. Aye.

The CLERK. Mr. Conyers, aye. Mr. Berman.

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye. Mr. Boucher.

Mr. BOUCHER. No.

The CLERK. Mr. Boucher, no. Mr. Nadler.

Mr. NADLER. Aye.
 The CLERK. Mr. Nadler, aye. Mr. Scott.
 Mr. SCOTT. Aye.
 The CLERK. Mr. Scott, aye. Mr. Watt.
 Mr. WATT. Aye.
 The CLERK. Mr. Watt, aye. Ms. Lofgren.
 Ms. LOFGREN. Aye.
 The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee.
 [No response.]
 The CLERK. Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Ms. Waters, aye. Mr. Meehan.
 Mr. MEEHAN. Aye.
 The CLERK. Mr. Meehan, aye. Mr. Delahunt.
 Mr. DELAHUNT. Aye.
 The CLERK. Mr. Delahunt, aye. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. Aye.
 The CLERK. Ms. Baldwin, aye. Mr. Weiner.
 Mr. WEINER. Aye.
 The CLERK. Mr. Weiner, aye. Mr. Schiff.
 Mr. SCHIFF. Aye.
 The CLERK. Mr. Schiff, aye. Ms. Sánchez.
 Ms. SÁNCHEZ. Aye.
 The CLERK. Ms. Sánchez, aye. Mr. Chairman.
 Chairman SENSENBRENNER. No.
 The CLERK. Chairman Sensenbrenner, no.
 Mr. BACHUS. Mr. Chairman.
 Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus.
 Mr. BACHUS. I would like to be recorded no.
 The CLERK. Mr. Bachus, no.
 Chairman SENSENBRENNER. Further Members who wish—the gentlewoman from Pennsylvania, Ms. Hart.
 Ms. HART. No.
 The CLERK. Ms. Hart, no.
 Chairman SENSENBRENNER. The Clerk will report.
 The CLERK. Mr. Chairman, there are 13 ayes and 19 noes.
 Chairman SENSENBRENNER. And the amendment is not agreed to.
 Are there further amendments to the bill?
 Mr. SCOTT. Mr. Chairman.
 Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.
 Mr. SCOTT. Mr. Chairman, I have an amendment at the desk, the last amendment I have.
 [The amendment offered by Mr. Scott follows:]

AMENDMENT TO H.R. 218
OFFERED BY MR. SCOTT OF VIRGINIA

Page 3, strike lines 18 through 21 and insert the following:

1 “(d) The identification required by this subsection
2 is—

3 “(1) a photographic identification issued by the
4 governmental agency for which the individual is em-
5 ployed as a law enforcement officer; and

6 “(2) a document, obtained by the individual at
7 the expense of the individual, that indicates that the
8 individual has, not less recently than one year before
9 the date the individual is carrying the concealed fire-
10 arm, been tested or otherwise found by the Bureau
11 of Alcohol, Tobacco, Firearms, and Explosives to
12 have received sufficient training, and to be suffi-
13 ciently physically and mentally fit, to carry across
14 State lines a concealed firearm of the same type as
15 the concealed firearm.”.

Page 6, strike lines 7 through 9 and insert the fol-
lowing:

1 “(d) The identification required by this subsection
2 is—

3 “(1) a photographic identification issued by the
4 governmental agency for which the individual was
5 employed as a law enforcement officer; and

6 “(2) a document, obtained by the individual at
7 the expense of the individual, that indicates that the
8 individual has, not less recently than one year before
9 the date the individual is carrying the concealed fire-
10 arm, been tested or otherwise found by the Bureau
11 of Alcohol, Tobacco, Firearms, and Explosives to
12 have received sufficient training, and to be suffi-
13 ciently physically and mentally fit, to carry across
14 State lines a concealed firearm of the same type as
15 the concealed firearm.”.

Chairman SENSENBRENNER. Does the gentleman have a number on the amendment?

Mr. WATT. 050.

Chairman SENSENBRENNER. The Clerk will report amendment 050.

The CLERK. Amendment to H.R. 218, offered by Mr. Scott of Virginia. Page 3—

Mr. SCOTT. Mr. Chairman, I move the reading be waived.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from will be recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, insofar as we have just, by the defeat of the last amendment, allowed these people who may not even be able to carry firearms on duty to be able to carry military assault weapons concealed, I would hope that we would have national standards since this bill has national implications.

Now, there are different standards in different police forces, depending on what they are going to be using their weapons for. For example, in New York City, the training in using a firearm may include training to how to determine who is a police officer and who isn't. That training may not be available if the training is just for a police department where everybody noesknows each other.

I would hope that since people are going to be going from jurisdiction to jurisdiction nationally, we would have national standards. This bill requires the ATF to develop the standards so anyone wanting to take advantage of this bill would get ATF-certified training.

I yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, for the record, I am going to be real brief about this.

The gentleman from Virginia and I have had a harmonious relationship on the Committee. His smile can be disarming and, therefore, sometimes it is tough for me to forcefully resist.

Now, if my mildly resisting him bothers anybody, so be it. But I say to my friend from Virginia, I mildly resist this amendment, and yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I am happy to hear my friend from North Carolina standing up for States' rights finally. He is letting the standards be set by the States. Yet if we pass this bill of federalizing and preempting all State law—it seems to me that if we are going to do that, it makes a lot more sense to have a Federal standard for identification of who would be qualified to take advantage of it.

So, I mean, I think this is a mistake. The bill itself is a mistake. But if you are going to do it, if you are going to federalize this anyway, it seems to me you are going to need some Federal standards for compliance.

So I will yield to my friend from Virginia.

Mr. SCOTT. I thank the gentleman for yielding, and point out that not only do you need Federal standards, you need some standards. Page 3, line 13, requires the qualified law enforcement officer to meet standards, if any. So at least this amendment would require some standards.

Mr. WATT. I yield to my friend from Massachusetts. He looks like me he needs me to yield.

Mr. DELAHUNT. Yes, I would suggest to my colleague from North Carolina that this would be permissible under the commerce clause.

Mr. WATT. Well, that is probably about as good an explanation of the commerce clause as we have heard earlier.

I will yield back.

Ms. WATERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. A few minutes ago I started to talk a bit about Los Angeles. And when I talk about Los Angeles, I am really talking about the greater Los Angeles area, which includes not only the City of Los Angeles but all of those jurisdictions around Los Angeles where we have had so many police problems.

I think in my early days of—when I first met Mr. Conyers years ago, Mr. Conyers was heading up the task force of the Congressional Black Caucus that dealt with police harassment and abuse; and we had had any number of police-involved shootings in Los Angeles. Since that time, we have gone through an awful lot in that city and the surrounding areas with police-involved shootings and there has been a lot of training and a lot of development that has occurred, again which helps to train police officers so that they know more about when to pull a gun, when they are at risk, what to do after a shot is fired, what kind of roll-out we have from the police department in order to get to the scene very quickly to determine what happened.

This has taken us years to develop. And to think that there would be others now who could enter this jurisdiction—again, I facetiously alluded to Timbuktu, Mississippi, but what I really mean is, there are small jurisdictions where police officers and others who are not police officers, who are museum guards and other kinds of so-called police personnel who would qualify to come into our jurisdiction carrying a weapon and certainly could get involved in a shooting, in a killing, without the benefit of the training that we have so rigorously developed in that area.

So, again, I am at a loss to understand, first of all, why we are doing this. But then to be so reckless in the way that it is done, that would disregard all of the training and development that many of these jurisdictions have had to go through. I mean, there are some police chiefs and others who have worked very, very hard to get rid of the stigma of abusive police, and to put them back into a position where, now, all of this could be undermined is beyond my comprehension.

So I would ask my colleagues to seriously—if you are supporting this unwise preemptive legislation, at least require some training and some standards. That is the least that you can do.

I know that many people are concerned in an election year about police and whether or not they will be considered as supportive of police or whether or not they will fall in the column of law and order or not law and order. But give me a break. I think even the police are divided on this issue. So you have someone to fall back on to say that not all police organizations support this unwise preemptive legislation of people who would be coming into jurisdictions, untrained, with no standards.

You don't have to be afraid. If you can't stand up for that, you can't stand up for anything.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Scott amendment. Those in favor will say aye.

Those opposed, no.

The noes appear to have it. The noes have it, and the Scott amendment is not agreed to.

Mr. SCOTT. A recorded vote, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia asks for a recorded vote.

Those in favor of Scott amendment 050 will, as your names are called, answered aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. No.

The CLERK. Mr. Hyde, no. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green.

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart.

[No response.]

The CLERK. Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence.

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes.
 Mr. FORBES. No.
 The CLERK. Mr. Forbes, no. Mr. King.
 Mr. KING. No.
 The CLERK. Mr. King, no. Mr. Carter.
 Mr. CARTER. No.
 The CLERK. Mr. Carter, no. Mr. Feeney.
 Mr. FEENEY. No.
 The CLERK. Mr. Feeney, no. Mrs. Blackburn.
 Mrs. BLACKBURN. No.
 The CLERK. Mrs. Blackburn, no. Mr. Conyers.
 Mr. CONYERS. Aye.
 The CLERK. Mr. Conyers, aye. Mr. Berman.
 Mr. BERMAN. Aye.
 The CLERK. Mr. Berman, aye. Mr. Boucher.
 Mr. BOUCHER. No.
 The CLERK. Mr. Boucher, no. Mr. Nadler.
 Mr. NADLER. Aye.
 The CLERK. Mr. Nadler, aye. Mr. Scott.
 Mr. SCOTT. Aye.
 The CLERK. Mr. Scott, aye. Mr. Watt.
 Mr. WATT. Pass.
 The CLERK. Mr. Watt passes. Ms. Lofgren.
 Ms. LOFGREN. Aye.
 The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee.
 Ms. JACKSON LEE. Aye.
 The CLERK. Ms. Jackson Lee, aye. Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Ms. Waters, aye. Mr. Meehan.
 Mr. MEEHAN. Aye.
 The CLERK. Mr. Meehan, aye. Mr. Delahunt.
 Mr. DELAHUNT. Aye.
 The CLERK. Mr. Delahunt, aye. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. Aye.
 The CLERK. Ms. Baldwin, aye. Mr. Weiner.
 Mr. WEINER. Pass.
 The CLERK. Mr. Weiner passes. Mr. Schiff.
 Mr. SCHIFF. No.
 The CLERK. Mr. Schiff, no. Ms. Sánchez.
 Ms. SÁNCHEZ. Aye.
 The CLERK. Ms. Sánchez, aye. Mr. Chairman.
 Chairman SENSENBRENNER. No.
 The CLERK. Chairman Sensenbrenner, no.
 Chairman SENSENBRENNER. Are there Members in the Chamber
 who wish to cast or change their vote?
 The gentlewoman from Pennsylvania, Ms. Hart.
 Ms. HART. No.
 The CLERK. Ms. Hart, no.
 Chairman SENSENBRENNER. The gentleman from North Carolina,
 Mr. Watt.
 Mr. WATT. Aye.
 The CLERK. Mr. Watt, aye.

Chairman SENSENBRENNER. Gentleman from New York, Mr. Weiner.

Mr. WEINER. Aye.

The CLERK. Mr. Weiner, aye.

Chairman SENSENBRENNER. Further Members in the Chamber who wish to cast or change their votes?

If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 13 ayes and 21 noes.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments?

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman, I move to strike the last word on the bill.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Before doing that, let me say that the House is in recess now. There are four recorded votes that are scheduled for 1:00 p.m. It is the Chair's intention to go through until 1:00 p.m. We have to get the first responders bill out because the sequential referral expires on Monday. And if we are not finished with the first responders by 1:00 p.m., then we will have to come back this afternoon.

The gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman. I won't take the entire 5 minutes, but I wanted just to make a couple of comments about the bill, because I feel strongly that we are making a serious mistake by passing this bill.

For the last 5 or 6 years, my local law enforcement and State law enforcement representatives have come to visit me to lobby me. These are people who have—some people on this Committee might find this surprising—given me awards for support of the police because I have consistently supported trying to find resources for them and trying to support their efforts to make our neighborhoods and communities more safe. And on each occasion the one issue on which they have lobbied me and I have not been able to support them is this issue. So I have had a lot of discussions with them over the years about it.

I think we are making a serious mistake constitutionally, first, because I think there is no way to reconcile what we are doing today with the constitutional separation of powers and the Federal system that we are operating in. But I also think that even if it were constitutional, we are doing it in a way that is very irresponsible, as has been pointed out by all of the proposed amendments which have been voted down.

There are some very practical considerations here, and I don't think we are giving anywhere near the kind of serious considerations to those practical conversations that we should be giving to them. Ms. Waters has raised very practical considerations. In a number of the cities in my congressional district, the larger cities, the standards of police training are so much more rigorous than some of the more rural areas in my congressional district that I just think it would be a disaster for somebody from a rural area to come into one of those cities armed with a gun and assume that all of a sudden they become a member of the Charlotte police force

and are authorized to do anything that they think is appropriate as a police officer.

The Charlotte police force has gone through a number of different experiences with firearms use by police officers that have led them to have much, much more rigorous standards in an urban context than the standards that are applicable in suburban or rural context. And this bill just invites problems of the kind that have been identified by Ms. Waters, the kind that have been identified by Ms. Lofgren, and a number of amendments.

So, as a practical matter, even if we did not have the constitutional constraints, which I think is more our obligation as a Judiciary Committee to give honor to than to anybody else in Congress. Even if we did not have those constitutional constraints, I would think that this was a terrible policy substantive idea, and I can't say that any more vigorously than I have said it.

I wanted just to get that on the record, and I will yield back.

Chairman SENSENBRENNER. The gentleman's time has expired. A reporting quorum is present. The question occurs on the motion to report the bill H.R. 218 favorably, as amended. Those in favor will say aye.

Opposed, no.

The ayes appear to have it.

Mr. WATT. I ask for a recorded vote.

Chairman SENSENBRENNER. A rollcall vote is requested. Those in favor of reporting H.R. 218 favorably, as amended, will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith.

[No response.]

The CLERK. Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

[No response.]

The CLERK. Mr. Chabot.

Mr. CHABOT. Pass.

The CLERK. Mr. Chabot passes. Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon.

[No response.]

The CLERK. Mr. Bachus.

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller.

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Ms. Hart.

Ms. HART. Aye.

The CLERK. Ms. Hart, aye. Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence.
 Mr. PENCE. Aye.
 The CLERK. Mr. Pence, aye. Mr. Forbes.
 Mr. FORBES. Aye.
 The CLERK. Mr. Forbes, aye. Mr. King.
 Mr. KING. Aye.
 The CLERK. Mr. King, aye. Mr. Carter.
 Mr. CARTER. Aye.
 The CLERK. Mr. Carter, aye. Mr. Feeney.
 Mr. FEENEY. Aye.
 The CLERK. Mr. Feeney, aye. Mrs. Blackburn.
 Mrs. BLACKBURN. Aye.
 The CLERK. Mrs. Blackburn, aye. Mr. Conyers.
 Mr. CONYERS. No.
 The CLERK. Mr. Conyers, no. Mr. Berman.
 Mr. BERMAN. No.
 The CLERK. Mr. Berman, no. Mr. Boucher.
 Mr. BOUCHER. Aye.
 The CLERK. Mr. Boucher, aye. Mr. Nadler.
 [No response.]
 The CLERK. Mr. Scott.
 Mr. SCOTT. No.
 The CLERK. Mr. Scott, no. Mr. Watt.
 Mr. WATT. No.
 The CLERK. Mr. Watt, no. Ms. Lofgren.
 Ms. LOFGREN. Pass.
 The CLERK. Ms. Lofgren passes. Ms. Jackson Lee.
 Ms. JACKSON LEE. Aye.
 The CLERK. Ms. Jackson Lee, aye. Ms. Waters.
 Ms. WATERS. No.
 The CLERK. Ms. Waters, no. Mr. Meehan.
 Mr. MEEHAN. Aye.
 The CLERK. Mr. Meehan, aye. Mr. Delahunt.
 Mr. DELAHUNT. No.
 The CLERK. Mr. Delahunt, no. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. Aye.
 The CLERK. Ms. Baldwin, aye. Mr. Weiner.
 Mr. WEINER. Aye.
 The CLERK. Mr. Weiner, aye. Mr. Schiff.
 Mr. SCHIFF. Aye.
 The CLERK. Mr. Schiff, aye. Ms. Sánchez.
 Ms. SÁNCHEZ. Aye.
 The CLERK. Ms. Sánchez, aye. Mr. Chairman.
 Chairman SENSENBRENNER. No.
 The CLERK. Chairman Sensenbrenner, no.
 Chairman SENSENBRENNER. Members who wish to cast or change
 their vote? The gentleman from Texas, Mr. Smith.
 Mr. SMITH. Mr. Chairman, I vote aye.
 The CLERK. Mr. Smith, aye.
 Chairman SENSENBRENNER. The gentleman from Ohio, Mr.
 Chabot
 Mr. CHABOT. Aye.
 The CLERK. Mr. Chabot, aye.

Chairman SENSENBRENNER. Gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Ms. Lofgren, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?

If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 23 ayes and 9 noes.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical or conforming changes. All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

DISSENTING VIEWS

“The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.” Madison, *Federalist Paper #45*

In exercising its authority to keep internal order, a State has traditionally controlled who within its borders may carry concealed weapons and when law enforcement officers may carry firearms. This legislation undermines that power of the individual States and frustrates the principles of federalism. As long as they do not infringe on the rights granted under the Second Amendment to the Constitution, laws regulating the carrying of concealed firearms should remain within the jurisdiction of the State government where they can be more effectively monitored and enforced.

Currently, Federal law allows an individual State to decide whether or not it wishes to allow out-of-State officers to carry a concealed weapon within that State’s borders. Current law allows active, but *not retired*, Federal law enforcement officers to carry a concealed weapon anywhere within the jurisdiction of the United States. Current law does not require that the States allow active and *retired* State and local law enforcement officers to carry a concealed weapon without the permission of each specific State. H.R. 218 would override State “right to carry” laws and mandate that retired and active police officers could carry a concealed weapon anywhere within the United States.

This legislation would disregard the judgment of State authorities on what many believe is an important public safety issue. Although we understand approximately 33 States do specifically allow individuals to carry concealed weapons, that leaves approximately 17 other States that do not. Additionally, we understand that at least 6 States and the District of Columbia currently forbid officers from other States to carry concealed weapons; 31 States restrict carrying a concealed weapon to an officer on-duty and 9 States allow an out-of-State officer to carry a concealed weapon. H.R. 218 would supersede the laws of those States and allow current and retired law enforcement officers from anywhere in the United States to carry a concealed firearm in those States, regardless of State law. Such a measure is an affront to State sovereignty and the Constitution, which we cannot support.

The International Association of Chiefs of Police in its testimony before the House Judiciary Subcommittee on Crime, Terrorism, and

Homeland Security on June 15, 2004, testified that authorities for police officers to carry firearms when off-duty, use-of-force policies, and firearms training standards vary significantly from State to State. This variation in training has the potential to create a deadly situation for both law enforcement and citizens if this legislation becomes law.

Several organizations and several Members of Congress have expressed concern over who will bear the responsibility and thus, the liability, for officers who carry concealed weapons outside their jurisdiction and choose to use those weapons. It is unclear who will be asked to bear the liability of an individual performing law enforcement duties outside his jurisdiction; however, there is a good chance that a law enforcement agency that authorizes its officers to carry a concealed weapon off-duty out-of-State could be held responsible. This should concern Members of Congress because we are asking our home States to bear the responsibility for a law we pass and in which they have no say.

The definition of law enforcement officer in this legislation is also cause for concern. Several Members and two witnesses at the hearing on this legislation also raised this issue. Generally, we think of a law enforcement officer as someone who is actively engaged in making arrests; however, this legislation uses an expanded definition which includes those who “engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.” This broad definition could encompass different individuals in different States including probation and parole officers and jail or prison guards. These officers, while performing an admirable service, will not necessarily have the experience of the beat police officer, yet, this legislation insists we allow them the same authority to carry concealed weapons anywhere in the country.

We believe the issues at hand could be addressed by the States in an appropriate manner through the use of reciprocity agreements, many of which already exist. Such an approach would allow an individual State to have the final say on whether or not it believes allowing out of State officers to carry concealed weapons within its borders would enhance or undermine public safety.

F. JAMES SENSENBRENNER, JR.
JEFF FLAKE.

ADDITIONAL DISSENTING VIEWS

While we strongly agree with the dissenting views submitted by Chairman Sensenbrenner (except for the implication that the Second Amendment to the U.S. Constitution confers an individual right to keep and bear arms), we offer this additional set of dissenting views to expand upon the many flaws inherent in H.R. 218, the “Law Enforcement Officers Safety Act.”

This legislation is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding State and local gun-safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger that H.R. 218 poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

A. H.R. 218’S SWEEPING OVERRIDE OF STATE AND LOCAL GUN SAFETY LAWS IS UNPRECEDENTED AND UNWARRANTED.

There is no precedent for what the supporters of H.R. 218 intend to accomplish. Congress has never passed a law giving current and former State and local employees the right to carry weapons in violation of controlling State and local laws. Congress has never passed a law interfering with the ability of State and local police chiefs to regulate their own officers’ carrying of firearms.

Every year, thousands of our fellow citizens are killed by guns. The rate of firearm deaths among children is nearly twelve times higher in the United States than in other industrial countries. These deaths are senseless, and we all know that the vast majority of them could be prevented by sensible gun laws. It is shameful that we are not doing more in Congress to achieve gun safety and reduce gun violence. The “gun show loophole,” which allows firearms to be purchased illegally at gun shows, should have been closed long ago, and there are many other steps that Congress should take to protect our citizens from the scourge of gun violence.

At the very least, Congress should refrain from interfering with gun-safety laws enacted by States and local governments. Today, each State has the authority to decide what kind of concealed-carry law, if any, best fits the needs of its communities. Each State can make its own judgment about whether private citizens should be allowed to carry concealed weapons, and whether on-duty, off-duty, or retired police officers should be included or exempted in any prohibition.

There is no evidence that States or local governments have failed to consider the interests and needs of law enforcement officers. Consider, for example, New Jersey law. In 1995, retired police chief John Deventer was shot and killed while heroically trying to stop

a robbery. This incident prompted New Jersey to enact a law allowing retired officers to carry handguns under a number of conditions. In drafting this law, the New Jersey legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large, by including a number of important safeguards that are not contained in H.R. 218. For example:

- New Jersey’s law is limited to handguns. H.R. 218 is not.
- New Jersey’s law has a maximum age—70. H.R. 218 does not.
- Under New Jersey’s law, retired police officers must file renewal applications yearly. There is no application process under H.R. 218.
- New Jersey’s law requires retirees to list all their guns. No such record is required under H.R. 218.
- New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under H.R. 218.

By enacting H.R. 218, Congress will be gutting all of the safeguards contained in the New Jersey statute—as well as the judgment of other States that have considered this issue.

The sponsors of H.R. 218 have presented no evidence that States and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than States, cities, and towns to decide how to best protect police officers, schoolchildren, church-goers, and other members of their communities. Congress should bolster, not undermine, the efforts of States and local governments to protect their citizens from gun violence.

H.R. 218 will override most “safe harbor” laws at the State level. It will override laws that categorically prohibit guns in churches and other houses of worship, since only laws that permit private entities to post signs prohibiting concealed firearms on their property will remain in force. In most States, churches are not currently required to post signs in order to have a gun-free zone. H.R. 218 will also override laws that prohibit concealed weapons in places where alcohol is served. Surely, it is reasonable for a State to prohibit people from bringing guns into bars, to prevent the extreme danger that results when liquor and firearms are together.

At the local level, H.R. 218 inexplicably overrides all gun-safety laws, without exception. In the 1990’s, Boston, New York, and other cities made great strides in the fight against crime precisely because they were able to pass laws that addressed the factors that lead to violence—including the prevalence of firearms in inner cities. As Congressman Henry Hyde has said, “the best decisions on fighting crime are made at the local level.” By overriding all local gun-safety laws, H.R. 218 will undermine the ability of cities to fight crime. The bill will indiscriminately abrogate “safe harbor” laws in Boston, New York City, Cincinnati, Columbus, Chicago, Kansas City, and many other cities and towns.

B. H.R. 218 WILL UNDERMINE THE SAFETY OF OUR COMMUNITIES AND
THE SAFETY OF POLICE OFFICERS.

Some argue that H.R. 218 is needed because the “complex patchwork of Federal, State and local” concealed-carry laws prevents officers from protecting themselves and their families from “vindictive” criminals. Supporters of this bill have distributed two lists of officers and prison guards who were killed while off-duty or in retirement. The stories of these slain men and women are tragic, and their killers deserve to be severely punished. But none of these incidents involved officers who were killed outside their home State. They do not demonstrate a need for a Federal override of State and local gun-safety laws. To the contrary, as New Jersey’s response to the tragic shooting of Chief Deventer shows, States and local governments are best equipped to implement polices, regulations, and laws that protect the safety of their own law enforcement officers, and also protect the public at large.

The supporters of H.R. 218 also argue that by authorizing officers to carry guns across State lines, in violation of whatever State and local gun-safety laws would otherwise apply, they will be able to effectively respond to crimes and terrorist attacks. As the majority argues, the bill will enable “law enforcement officers nationwide to be armed and prepared when they answer that call, no matter where, when, or in what form it comes.” The Committee apparently envisages a nation-wide unregulated police force, consisting of retired officers and off-duty officers who are armed while on vacation or traveling outside their home jurisdictions.

This bill is no way for the Federal Government to support State and local law enforcement. Congress should be providing full funding for first responders employed by State and local governments; communications gear and other law enforcement technology; and specific assistance programs such as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program. Congress should also enact needed gun-safety measures to protect the safety and security of all Americans. We should strengthen Brady Law criminal background checks for gun purchases, close the “gun show loophole,” reauthorize the assault weapons ban, and amend Federal law to ensure that all “cop killer” bullets are banned.

H.R. 218 stands in stark contract to such needed gun-safety legislation. Allowing off-duty or retired officers with concealed weapons to go into other jurisdictions will only make conditions more dangerous for police officers and civilians. As the Executive Director of the IACP explained in a letter dated February 12, 2003:

One of the reasons that this legislation is especially troubling to our nation’s law enforcement executives is that it could in fact threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by the local officers. Police departments throughout the nation train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their coworkers will respond when faced with different situations. Injecting an armed, unknown officer, who has received

different training and is operating under different assumptions, can turn an already dangerous situation deadly.

H.R. 218 neither promotes consistent training policies among different police jurisdictions nor limits the conditions under which officers may use their firearms. The idea that more crimes will be prevented when more concealed weapons are carried by untrained and unregulated out-of-State, off-duty, and retired officers is pure fiction.

However, we do know that it will expose many officers to increased risks and danger. In a June 15, 2004, hearing before the Crime Subcommittee, Rep. Scott submitted for the record dozens of reports on instances where, even in the same jurisdiction, off-duty, plain clothes law enforcement officers have shot other off-duty officers, or gotten shot by them or uniform officers, in gun battles where the plain clothes officers were mistaken as criminals. If off-duty officers in the same jurisdiction who engage themselves in law enforcement activities are being shot by their fellow officers, encouraging out of State officers to join in such activities through a Federal law will certainly only add to this problem.

It is important to note that in giving off-duty and retired police officers broad authority to nullify State and local gun-safety laws, H.R. 218 is not limited to the carrying of officers' authorized weapons. In most police departments, officers may seek authorization to carry a range of weapons. If an officer wants to carry a weapon other than his service weapon (typically, a nine-millimeter semi-automatic pistol), he must prove that he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate that he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, the initial version of this bill provided that as long as an officer received authorization to carry a particular kind of firearm (such as his service weapon), he could carry concealed *any other* kind of firearm while off-duty or retired—even if he never received authorization from his own police department to carry that other weapon. Because the term “firearm” is defined very broadly under Federal law, *see* 18 U.S.C. §921(a)(3), as long as an officer was authorized to use his service weapon on the job, the initial version of this bill would have allowed him to carry a concealed bomb or grenade while off-duty or in retirement.

Serious safety problems are also raised by the bill's override of gun-safety laws for retired officers, a category that is defined to include anyone who has served in a law enforcement capacity for fifteen years “in the aggregate” before retiring or resigning and taking a different job. There is no requirement under H.R. 218 that a retiree demonstrate a special need for a firearm. While H.R. 218 provides that an officer must have technically left law enforcement in “good standing,” it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The bill does not draw a distinction between officers who served ably and those who did not. Officers who retire in “good standing” while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their

lives. As the International Association of Chiefs of Police has observed:

This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of “mental instability.” Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police management structure that identifies such problems in current officers.

C. H.R. 218 WILL UNDERMINE DISCIPLINE AND CONTROL
WITHIN POLICE DEPARTMENTS.

Perhaps the most troubling aspect of H.R. 218 is its potential to undermine the effective and safe functioning of police departments throughout the nation. The bill removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on-duty or off-duty.

Section 2 of the bill provides that regardless of “any other provision of the law of any State or any political subdivision thereof,” any individual who qualifies as a law enforcement officer and who carries photo identification will be authorized to carry any firearm. In a variety of contexts, including the Federal preemption of State law, courts have interpreted the term “law” to include agency rules and regulations. The Supreme Court has ruled that this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices promulgated by State and local police departments. See *Norfolk & Western Ry. Co. v. Am. Train Dispatchers’ Assoc.*, 499 U.S. 117 (1991).

As discussed in Section B, above, there is no requirement in H.R. 218 that active-duty officers be authorized to carry each firearm that they wish to carry concealed. All that subsection (c)(2) requires is that an officer be authorized to carry “a firearm.” Pursuant to subsection (c)(4), the officer need only satisfy the agency’s standards with respect to “a firearm.” In other words, once an officer qualifies to carry a service weapon, he will have the right under this bill to carry *any* gun, on-duty or off-duty—even if doing so violates his own police department’s rules.

Thus, if Congress enacts this legislation, police chiefs will be stripped of their authority to tell their own officers, for example, that they cannot bring guns into bars while off-duty; that they cannot carry their service weapons on vacation; or that they cannot carry certain shotguns, rifles, or handguns on the job.

As the International Association of Chiefs of Police stated in a letter to the Committee, “under the provisions of H.R. 218, police chiefs and local governments would lose the authority to regulate what type of firearms the officers *they employ* can carry even while they are *on duty*.”

As a result, the legislation would effectively eliminate the ability of a police department to establish rules restricting the ability of officers to carry only department-authorized firearms while *on duty*. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with the weapon under departmental regulations. Carrying an unauthorized weapon thus presents a risk of injury to the officer, fellow officers, and citizens, for the weapon itself may be unsafe or otherwise unsuitable for police use, and the officer may not be sufficiently proficient with its use to avoid adverse consequences.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the line of duty risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff's injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that H.R. 218 "has the potential to significantly and negatively impact the safety of our communities and our officers."

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and States to cut back on funding for law enforcement. The Administration's budget proposes to eliminate all Federal funding for such critical programs as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program. The last thing Congress should do now is pass a bill that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers' use of firearms and to maintain discipline.

D. CONCLUSION

To address many of the aforementioned deficiencies, during the Committee's markup of H.R. 218 we offered a series of amendments. Among other things, our amendments would have provided the States with a 2-year time period to "opt out" of the bill's coverage; prevented H.R. 218 from preempting the rules, regulations and policies of local police departments; and placed limits on the ability of officers to carry weapons that they hadn't been properly trained to use—namely, semi-automatic assault weapons. Unfortunately, many of our colleagues were unwilling to adopt these modest proposals.

Each State and local government should be allowed to make its own judgment as to when citizens and out-of-State visitors may

carry concealed weapons—and whether active or retired law enforcement officers should be included in or exempted from any prohibition. In the words of the International Association of Chiefs of Police, it is “essential that State and local governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities.”

H.R. 218 will unnecessarily damage the efforts of States and local governments to protect their citizens from gun violence. It will also expose State and local governments to unnecessary liability and nullify the ability of police chiefs to maintain discipline and control within their own departments. For these reasons, we respectfully dissent.

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