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COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

May 3, 2000

Captain Jeffrey B. Miller
Legislative Liaison
Pennsylvania State Police
1 800 Elmerton Avenue
Harrisburg, PA 17110

Dear Captain Miller:

We would like to take this opportunity, albeit a month or so late, to welcome you and congratulate you on your appointment as legislative liaison for the Pennsylvania State Police. We look forward to working with you on issues that are of importance to my constituents and to the Commonwealth as a whole.

It is one of those issues which prompts our letter. We are aware that the Pennsylvania State Police maintain information concerning the purchasers of handguns within the Commonwealth. Further, this information is available instantly via any C.L.E.A.N. terminal. For better or worse, it seems to us that maintenance of such information is prohibited by law. Consider the following:

- 18 Pa.C.S.A. § 6111.4. Registration of firearms.

Notwithstanding any section of this chapter to the contrary, **nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth.** For the purposes of this section only, the term "firearm" shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon. **(emphasis added)**

- 18 Pa.C.S.A. § 6111. Sale or transfer of firearms.

* * *

(b) Duty of seller.--No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

* * *

(1.1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

* * *

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), **no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.** (emphasis added)

18U.S.C. §922.

* * *

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

* * *

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—
(A) assign a unique identification number to the transfer;
(B) provide the licensee with the number; and
(C) **destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.** (emphasis added)

- 28 C.F.R. § 25.9. Retention and Destruction of Records in the System

* * *

(d) The following records of state and local law enforcement units serving as POCs (*Points of Contact*) will be subject to the Brady Act's requirements for destruction:

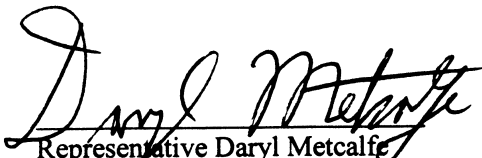
(1) **All inquiry and response messages (regardless of media) relating to the initiation and result of a check of the NICS that allows a transfer that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions;** and

(2) **All other records relating to the person or the transfer created as a result of a NICS check that are not part of a record system created and maintained pursuant to independent state law regarding firearms transactions.** (emphasis added), (*material in italics added*)

As we mentioned above, we seem compelled to reach the conclusion that the State Police maintain the handgun ownership records in violation of law. We would appreciate a response concerning this dilemma, and would ask that you please point out any positive law which would permit retention of this information.

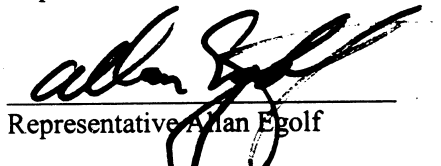
Thank you in advance for your time and attention to this matter.

Sincerely,

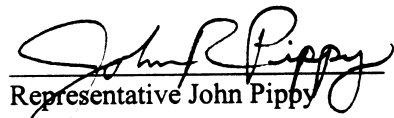

Representative Daryl Metcalfe

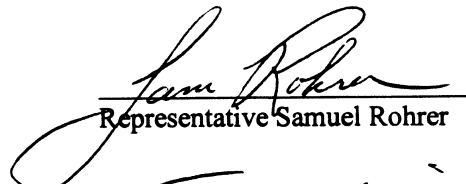

Representative Teresa Forcier

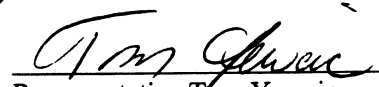

Representative Dennis Leh



Representative Alan Egolf

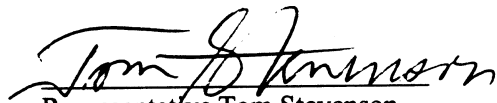

Representative Scott Hutchinson

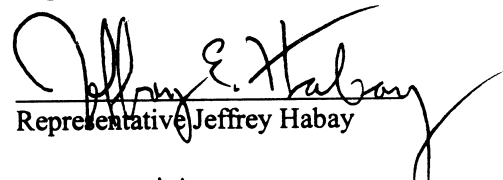

Representative John Pippy

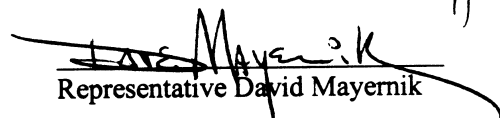

Representative Samuel Rohrer

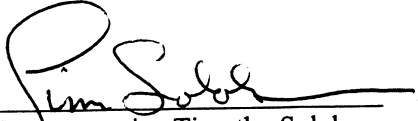

Representative Tom Yewcic



Representative Bob Bastian

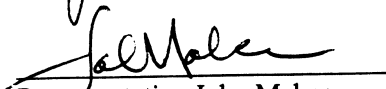

Representative Tom Stevenson

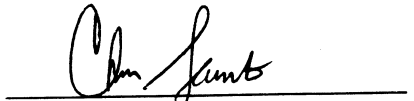

Representative Jeffrey Habay

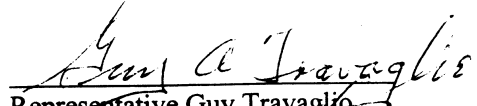

Representative David Mayernik

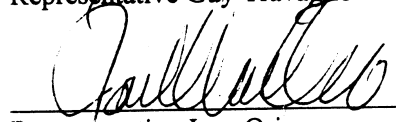

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