

STATEMENT OF THE HONORABLE KEN CUCCINELLI
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BEFORE THE UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES

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Opening Statement before the U.S. Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies regarding the President's recently announced Executive Actions related to gun violence of Kenneth "Ken" Cuccinelli, II, 46th Attorney General of Virginia and current partner in the Second Amendment law firm of United Self Defense Law, PLLC.

Nothing – not one thing – in the President's executive actions *related to guns* that we are discussing today would have any meaningful effect on tragedies like Virginia Tech in my state or San Bernardino, much less more common gun-related street crime. However, the President's focus on improving *mental health care* does have the potential to assist in avoiding future tragedies, particularly given that over 60% of all gun deaths are mental-health related.

There are two basic categories of actions advanced by President Obama in his recent Executive Actions, those relating to guns and law enforcement, and those relating to mental health care.

Everything the President advocates costs money, so let me begin by saying that it would be my strenuous hope that, given the fact that our national government is astonishingly bankrupt, that this Congress would cut more money than it proposes to spend on any of these programs. Presumably you would cut lower priority expenditures if you decide that funding more FBI agents or more mental health care is of greater importance, and I would urge you in the strongest possible terms to do exactly that.

The President's actions directed at stemming gun violence appear to be in some cases merely aspirational, and in other cases intentionally intimidating and harassing of law-abiding citizens in an effort to get them to shy away from selling guns that they legally own.

The procedural proposals to more quickly and smoothly run background checks are unarguable, so long as they are paid for. All of us want the laws on the books to be enforced, and if that can be done more efficiently and effectively than we are doing today, that would be wonderful.

However, when the President (and the Attorney General) seek to intentionally create confusion and ambiguity about when someone selling a single gun might be in violation of a law with 5

year jail penalties, one can only call that dishonorable intimidation of the citizenry by its government.

I would note that this jail threat includes a problem found across the entire universe of federal regulatory law, namely, there is no clear mens rea requirement – no necessity for a finding of culpable intent on the part of the hypothetical offender/citizen. This is another of a long list of examples of Presidents (plural and bi-partisan) expanding federal power using regulatory bodies that have been imbued with criminal law-making authority. Now our President wants federal law enforcement authorities to “crack down” on people selling as few as one gun by forcibly classifying them as “gun dealers.” This is obviously ludicrous, but the President and Attorney General don’t seem to care.

Please remember to put yourself in the position of the individuals involved. From an individual citizen’s perspective, having your own federal government simply investigating you to make sure one gun sale that you conducted privately and innocently (perhaps to then use the money to go buy a different gun, for example) is an excruciating and painfully expensive experience fraught with peril.

And that is exactly how this President wants it. His rhetoric surrounding the release of his proposed actions makes it very clear that while he cannot do much, he can threaten much, and that he intends his bureaucracy to torment many of my fellow citizens who also happen to be gun owners.

As a lawyer who has worked on hundreds of mental commitment cases and been deeply involved in how my own community’s mental health care system interacts with the judicial system, I would urge efforts to improve mental health care at the state and local level to address some of the problems of violence in this country. The federal government’s role in such efforts should be purely supportive, as this is one of many types of challenges best addressed at the local level.

In addition to the dearth of mental health care available throughout most of our country, as it relates to public safety, we have a challenging balance to strike between patient privacy and liberty, public safety, and yes, liability.

It would be my hope that the federal government would do two things, and only two things, in the area of mental health care: first, provide funding to expand mental health care in the states by cutting lower priority programs in the federal government, and second, get out of the way of the states. Eliminate all of your federal rules and requirements and trust the states to find ways to provide better and more cost-efficient care over time.

Other than providing funding for mental health care, the President vaguely mentioned the Department of Health and Human Services removing barriers to states reporting information about people disqualified from purchasing guns due to mental health reasons. I would urge this committee to go much farther than that and urge HHS to cut back and simplify HIPPA more

generally, as the impediments to basic – though protected – information sharing cause significant problems and inefficiencies.

In the case of the Virginia Tech tragedy, the shooter's Virginia public high school had figured out how to manage the shooter's mental health issues, but they were not allowed to talk to Virginia Tech about the subject. Thus, Virginia Tech didn't even know they had a seriously mentally ill student when Cho (the shooter) arrived as a freshman. While we fixed that under Virginia law, such opportunities for improved information sharing exist throughout our legal system.

I will finish by calling your attention to very serious concerns I have about threats to due process rights referenced in the President's rhetoric. And when I say "referenced," I mean his threats... not due process rights.

If the Social Security Administration is going to make conclusions resulting in the loss of Second Amendment rights by citizens, then such citizens must have notice that their Second Amendment rights are at risk and they must have an opportunity to be heard in protection of those rights. Loose talk by this President about sweepingly denying people the right to buy a gun without any adjudicatory process is irresponsible, and actual steps in that direction would be downright tyrannical. I wish I could assume that no one on this committee would ever fund or countenance such action, but how about if I just express my hope that none of you would be so unconstitutionally rash?

I am happy to answer any questions that you may have.