

January 9, 2017

The Honorable Charles Grassley
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Howard C. Nielson, Jr. to the United States District Court for the District of Utah

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of Giffords Law Center to Prevent Gun Violence, I write to urge you to reject the nomination of Howard C. Nielson, Jr. to serve on the U.S. District Court for the District of Utah.

Giffords Law Center weighs in on judicial nominees only rarely—most recently to urge the rejection of the highly unqualified nominee Brett Talley—but we are compelled to oppose Nielson’s nomination. We believe that Nielson’s extreme and dangerous views on gun policy and the Second Amendment, coupled with serious concerns about his ability to maintain the independence and impartiality required under the rules of judicial conduct, disqualify him for a life-tenured seat on the federal bench.

During the course of his legal career, as a lawyer for the National Rifle Association (“NRA”) and allied groups, Nielson has advocated a range of gun-lobby positions that lie well outside the mainstream and, if adopted by the federal judiciary, would seriously threaten public safety and undermine efforts to reduce gun violence. The Supreme Court, in the late Antonin Scalia’s opinion in *District of Columbia v. Heller*, held that the right to keep and bear arms was “not unlimited” and that a range of longstanding gun laws were fully constitutional.ⁱ But Nielson has taken an extreme, absolute view of the Second Amendment that contradicts *Heller* and would undermine foundational public safety laws.

For example, as the NRA’s lawyer, Nielson argued that the federal law barring handgun sales to 18-20 year olds must be struck down under the Second Amendment.ⁱⁱ For decades, Congress has barred federally licensed gun dealers from selling handguns to young people between the ages of 18 and 20 because they are almost four times more likely to commit gun homicides than older adults: while young people aged 18-20 represent only four percent of the population, they commit 17 percent of gun homicides.ⁱⁱⁱ In arguing (unsuccessfully) that this important federal law was unconstitutional, Nielson suggested that jurisdictions that enact lifesaving gun laws, and courts that uphold such laws from gun-lobby challenges, are engaging in “massive resistance” analogous to efforts to resist desegregation undertaken in the aftermath of the landmark decision in *Brown v. Board of Education*.^{iv}

Representing the NRA in another case, Nielson urged the Supreme Court to strike down the state of Texas's reasonable decision to limit permits to carry concealed guns in public to law-abiding adults at least 21 years of age.^v Again comparing judicial deference to longstanding public safety laws to the Civil Rights Era resistance to desegregation, Nielson maintained that it violated fundamental constitutional principles for a state like Texas to conclude that it would not license teenagers to carry hidden, loaded guns in public. In a separate case, Nielson argued that it is unconstitutional for a government agency to require a "good reason" or "proper reason" before issuing a permit to carry a concealed weapon.^{vi}

And as a lawyer for the Illinois State Rifle Association, Nielson argued that it violated the Second Amendment for a city in Illinois to restrict access to the kind of military-style assault rifles and large capacity ammunition magazines that have been used to such deadly effect in mass shootings in Aurora, Newtown, Orlando, Las Vegas, Sutherland Springs and so many other American cities.^{vii} Straining credulity, he went so far as to argue that such weapons are not "dangerous" and that the features that make them so attractive to mass shooters actually make them "safer" than other firearms.^{viii} The position Nielson took was rejected by the Supreme Court,^{ix} and in fact, has been rejected by every Court of Appeals to consider similar restrictions on assault weapons and large capacity magazines.^x Indeed, the full Fourth Circuit Court of Appeals recently ruled that such military-style weapons are not protected by the Second Amendment, forcefully rejecting Nielson's position that the Second Amendment renders these weapons constitutionally *immune* from regulation.^{xi}

Mr. Nielson's nomination for a life-tenured federal judgeship should be rejected on the basis of his alarming views on gun policy and the Second Amendment. As an organization dedicated to reducing gun violence in America and creating safer communities for all, Giffords Law Center must oppose his nomination. We urge you to vote against confirming him to be a federal district court judge.

Sincerely,

Robyn Thomas
Executive Director

ⁱ *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & 627 n.26 (2008) (holding that the Second Amendment is "not unlimited," and does not confer a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," and a identifying a non-exhaustive list of "presumptively lawful regulatory measures," that do not violate the Second Amendment, including "longstanding prohibitions on the possession of firearms by felons and the mentally ill," laws forbidding guns in "sensitive places" like schools and government buildings, and "conditions and qualifications" on the commercial sale of firearms").

ⁱⁱ *NRA v. McCraw, Petition for Certiorari*, No. 13-390 (2014).

ⁱⁱⁱ Compare U.S. Census population data, 2012 (persons aged 18 to 20 make up 4.2% of the U.S. population and adults aged 21 and over make up 72% of the population) with FBI Supplementary Homicide Report, 2012 (persons aged 18 to 20 committed 17.35% of gun homicides and adults aged 21 and over committed 76.5% of gun homicides).

^{iv} *NRA v. McCraw, Petition for Certiorari*, No. 13-390 (2014).

^v *NRA v. BATFE, Petition for Certiorari*, No. 13-137 (2014).

^{vi} *Grace v. District of Columbia, Brief of Plaintiffs-Appellees*, No. 16-7067 (D.C. Cir. 2016).

^{vii} *Friedman v. City of Highland Park, Petition for Certiorari*, No. 15-133 (2015).

^{viii} *Id.* (emphasis in original).

^{ix} *Friedman v. City of Highland Park*, 136 S. Ct. 447 (2017) (denying petition for certiorari filed by Nielson).

^x See *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc) (rejecting challenge to Maryland law prohibiting assault weapons and large capacity magazines); *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015) (affirming denial of preliminary injunction in challenge to local law prohibiting large-capacity magazine possession); *New York State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) (rejecting challenge to New York and Connecticut laws prohibiting assault weapons and large capacity magazines); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015) (rejecting challenge to Illinois municipal law prohibiting assault weapons and large capacity magazines); *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244 (D.C. Cir. 2011) (rejecting challenge to District of Columbia law prohibiting assault weapons and large capacity magazines).

^{xi} See *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017).

ABOUT GIFFORDS LAW CENTER

For nearly 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.