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Rearming Felons: Federal Jurisdiction under 18 USC § 925(c)

Ryan Laurence Nelson†

Two men have been convicted of felonies. Both have served a prison term of more than one year; both have identical backgrounds and criminal histories; both are sorry and have repented. However, one man lives in Pennsylvania, the other lives in Colorado. Currently federal law prohibits both men from possessing a firearm because of their respective criminal convictions and sentences.¹

Each man has filed a petition with the Secretary of the Treasury ("Secretary") requesting reinstatement of his federal firearms privileges, and each has given the same reasons for requesting relief. However, only the Pennsylvania felon will have an opportunity to once again legally carry a firearm. Why will only the Pennsylvania felon have an opportunity to have his firearms privileges reinstated?

The answer can be found in the text and interpretation of 18 USC § 925(c), a statute that permits the Secretary to reinstate a felons' firearms privileges, and also permits federal courts to review applications that the Secretary denies.² In 1993, despite years of providing financial support, Congress removed funding from the Secretary, specifically the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), to review § 925(c) petitions, and the cir-

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¹ See 18 USC § 922(g) (2000) (making it unlawful for anyone convicted of a crime punishable by more than one year in prison “to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce”).

² See 18 USC § 925(c) (2000):

A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief . . . . Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial.
circuits disagree over whether the courts can nevertheless exercise jurisdiction over restatement requests. Various federal courts have assumed that they have jurisdiction over petitions to reinstate federal firearms privileges, while other courts have denied jurisdiction over the same matters. This Comment argues that courts do not have jurisdiction to hear § 925(c) petitions filed by individual felons where Congress has denied funding for review of those petitions.

Part I of this Comment outlines relevant federal firearms regulations as they have developed over time. Part II discusses the core issues that have divided the circuit courts. Part III analyzes the text of § 925(c) and its legislative history. Part IV critiques the doctrine requiring exhaustion of administrative remedies (the “exhaustion doctrine”) before resorting to the courts and why the courts cannot assume jurisdiction without proper initial review by the ATF and determination by the Secretary. Part V explores other policy considerations that cut against jurisdiction.

I. A BRIEF HISTORY OF RELEVANT FIREARMS LEGISLATION

The Second Amendment to the United States Constitution is commonly cited as the constitutional provision that guarantees the right of the people to keep and bear arms. Within the limitations and rights of this amendment, Congress has developed a substantial body of law, predominately in the 20th century, regulating firearms in the United States.

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3 Compare Rice v Bureau of Alcohol, Tobacco, and Firearms, 68 F3d 702, 710 (3d Cir 1995) (granting jurisdiction over 18 USC § 925(c) petitions), with Saccacio v Bureau of Alcohol, Tobacco, and Firearms, 211 F3d 102, 104-05 (4th Cir 2000) (denying jurisdiction to hear 18 USC § 925(c) petitions absent a final determination on the merits and denial of relief by the Secretary).

4 See Mullis v United States, 230 F3d 215 (6th Cir 2000); McHugh v Rubin, 220 F3d 53 (2d Cir 2000); Saccacio v Bureau of Alcohol, Tobacco, and Firearms, 211 F3d 102 (4th Cir 2000); Owen v Magaw, 122 F3d 1350 (10th Cir 1997); Burtch v United States Department of the Treasury, 120 F3d 1087 (9th Cir 1997).

5 See Bean v Bureau of Alcohol, Tobacco, and Firearms, 253 F3d 234 (5th Cir 2001); Rice, 68 F3d 702.

6 See US Const Amend II (“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.”).

A. Early Regulations Restricting Firearms Privileges

Prior to the 1930's, the only federal provision regulating firearms in the United States was a 1927 ban on using the mail to send firearms capable of concealment on one's person. Since that time, Congress has revised and supplemented the federal firearms laws extensively.

Beginning in the early 1930's, Congress began regulating the use of firearms because of heightened public concern over increased criminal activity. In response to these concerns, Congress passed the National Firearms Act of 1934. The Act regulated a number of types of weapons, required firearm registration, and required firearms "dealers" to obtain licenses to ship or receive firearms in interstate commerce. The Act also made it a crime to possess a firearm that had been shipped by a party who did not pay the necessary tax.

Congress addressed firearms regulations again in the 1930's, passing the Federal Firearms Act in 1938. The 1938 Act not only required firearms dealers and manufacturers to obtain licenses when shipping firearms in interstate commerce, but also prohibited those convicted of a "crime of violence" from possessing firearms shipped in interstate commerce. The Federal Firearms Act marked the first time Congress restricted persons from possessing firearms due to a criminal conviction. Subsequently, Congress changed this provision to effectively preclude any person convicted of a felony under federal law from carrying or otherwise possessing a firearm.

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8 See id at 589–90, citing 18 USC § 1715 (1982).
10 See Hardy, 17 Cumb L Rev at 590–91 (cited in note 7) (describing the revisions to federal firearms laws in light of increased criminal activity in the 1930's).
11 48 Stat 1236 (1934).
12 See Hardy, 17 Cumb L Rev at 591–95 (cited in note 7), citing HR 9066, 73d Cong, 2d Sess (1934).
13 See National Firearms Act, 48 Stat 1236 § 6 (1934).
14 52 Stat 1250 (1938).
15 See Hardy, 17 Cumb L Rev at 598 n 71 (cited in note 7) (summarizing 52 Stat 1250 (1938)).
16 See id.
B. The “Relief From Disabilities” Program

In addition to restricting individuals, federal firearms laws also regulated corporations. The Federal Firearms Act prohibited corporations convicted of felonies from possessing firearms and did not treat them any differently from individual felons. Later, however, Congress revised aspects of the firearms laws in a manner specifically favorable to corporations. Under a 1965 amendment to the Federal Firearms Act of 1938, felonious corporations could petition the ATF for “relief” from the “disability” of not being able to purchase and possess firearms. This program was instituted primarily as a favor to Winchester, a firearms manufacturer and a division of the Olin Mathieson Corporation. In 1962, the Olin Mathieson Corporation was convicted of a felony charge involving a kickback scheme to foreign governments. This conviction prohibited its subsidiary, Winchester, from possessing or otherwise engaging in the firearms trade. The firearms relief program, instituted in the 1965 amendment to the Federal Firearms Act, allowed Winchester to remain in business. At the time, neither the Treasury Department nor the Department of Justice’s report to the House Committee on Ways and Means objected to the firearms relief program.

Although carefully crafted, the “relief from disability” program was not expressly limited to corporations; thus, individual felons also filed petitions under the program. In 1992, at the height of the relief from disabilities program, Congress spent approximately $3.7 million annually to process, investigate, and make a final recommendation on about one thousand § 925(c) ap-

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18 See generally Authorizing the Secretary of the Treasury to Grant Relief From Certain Provisions of the Federal Firearms Act, HR Rep No 89-708, 89th Cong, 1st Sess 2–3 (1965).
19 Id.
21 See HR Rep No 89-708 at 3–4 (cited in note 18) (describing the program as created for the benefit of the Olin Mathieson Corporation).
22 United States v Olin Mathieson Chemical Corp, 368 F2d 525, 525–26 (2d Cir 1966).
25 See S Rep No 89-666 at 1–6 (cited in note 23) (noting both departments’ agreement).
26 See Hardy, 17 Cumb L Rev at 643 (cited in note 7).
applications, although approximately three thousand to four thousand applications were received each year by the Secretary. Therefore, Congress spent approximately thirty-seven hundred dollars to process each "relief from disability" application.

In 1986, Congress enacted the Firearms Owners Protection Act ("FOPA"), which expanded the number of persons or firearms dealers who could seek relief under 18 USC § 925(c). FOPA permitted any person or dealer whose federal firearms privileges had been revoked to petition the Secretary to provide relief from their federal firearms disability. Additionally, FOPA instituted the first opportunity for judicial review of petitions denied by the Secretary of the Treasury after an investigation by the ATF. Under this amendment, the court has discretion to review such decisions and may add to the record if necessary to make an equitable determination.

C. Suspension of Appropriations

Starting in 1993, however, Congress began to withhold all funding from the ATF to process § 925(c) petitions, purportedly eliminating the Secretary of the Treasury's ability to review these applications. This restriction on funding has continued through the date of publication of this Comment. Although Congress did

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30 See Firearms Owners' Protection Act, 100 Stat 449 (1986); 18 USC § 925(c) ("The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice.").

31 See Firearms Owners' Protection Act, 100 Stat 449 (1986).

32 See Treasury Department Appropriations Act, 1993, Pub L No 102-393, 106 Stat 1729, 1732 (1992) ("[N]one of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 USC 925(c). ").

not repeal § 925(c) from the United States Code,\textsuperscript{34} this denial of funding has made it practically impossible for the ATF and the Secretary to take any action on § 925(c) applications.\textsuperscript{35} One of the primary motivations for this withdrawal of funding was the belief of some members of Congress that too much money was being spent to rearm felons.\textsuperscript{36} Some congressmen stated that the funds could be better used on law enforcement activities.\textsuperscript{37}

The last notable piece of legislative activity involving § 925(c) occurred in 1995. Republicans on the House Appropriations Committee attempted to pass a provision that would have renewed an individual felon’s ability to apply for relief from their federal firearms disabilities.\textsuperscript{38} The provision would have allowed felons to pay a fee to have the ATF review their application.\textsuperscript{39} The provision passed out of committee, but the Appropriations Committee removed it less than two weeks later.\textsuperscript{40} Although there does not appear to be any discussion of the issue on the House floor, the media, including the Washington Post, noted that the proposal “ran into heavy criticism from law enforcement groups and gun-control activists,” which resulted in its prompt removal from further consideration.\textsuperscript{41}

Independent of the funding issue, § 925(c) allows those prohibited from possessing a firearm under federal law to petition the Secretary to remove an applicant’s firearms disability.\textsuperscript{42} The

\textsuperscript{34} A number of attempts have been made to repeal § 925(c), but none of these attempts have been reported out of committee. See note 128.

\textsuperscript{35} See, for example, Rice v Bureau of Alcohol, Tobacco, and Firearms, 68 F3d 702, 709 (3d Cir 1995) (noting that due to lack of funds, ATF would not undertake an investigation).

\textsuperscript{36} Statements on Bills and Joint Resolutions, 103d Cong, 1st Sess, in 139 Cong Rec S 10847 (Aug 6, 1993) (statement of Senator Lautenberg) (“It is hard to imagine a more outrageous waste of hard-earned taxpayer dollars.”); 142 Cong Rec S 12164 (Oct 2, 1996) (statement of Senator Simon) (opposing judicial review as a waste of taxpayer money).

\textsuperscript{37} 139 Cong Rec S at 10849 (cited in note 36) (statement of Senator Lautenberg) (noting Treasury Secretary Bentsen’s agreement that § 925(c) review is not the best use of resources); 142 Cong Rec S 12164 (Oct 2, 1996) (cited in note 36) (statement of Senator Simon).

\textsuperscript{38} Stephan Barr, GOP Backs Off Proposal On Firearms for Felons, Wash Post A04 (July 12, 1995).

\textsuperscript{39} Id.

\textsuperscript{40} Id.

\textsuperscript{41} Id.

\textsuperscript{42} A copy of the petition for relief from disability is available on the ATF web site. See Bureau of Alcohol, Tobacco and Firearms, Application for Restoration of Firearms and for Explosives Privileges, available online at <www.atf.treas.gov/forms/pdfs/f32101.pdf> (visited Nov 18, 2001) [on file with U Chi Legal F].
Secretary may grant such relief if the applicant “will not be likely to act in a manner dangerous to public safety and . . . granting of the relief would not be contrary to the public interest.” However, when the Secretary denies relief from firearms disabilities, the applicant may petition the United States District Court for the district in which he resides for review of such denial, and the court may use its discretion to admit additional evidence “where failure to do so would result in a miscarriage of justice.” These provisions are the subject of substantial judicial disagreement.

II. CONFLICTING JUDICIAL INTERPRETATIONS OF § 925(c)

Courts have not come to a uniform decision regarding the proper interpretation of § 925(c) in light of the funding restrictions placed in the federal appropriations acts. The majority of circuits have held that the courts may not exercise jurisdiction over § 925 petitions, while a minority of courts take the opposite view.

A. The Majority View: Denying Review

Following Congress’s denial of funds for § 925(c) petitions, the Ninth Circuit was the first circuit court to expressly deny § 925(c) petitions on the basis of lack of jurisdiction. In Burtch v United States Department of the Treasury, the Ninth Circuit held that § 925(c) was clear on its face, and that the language of the statute as well as the relevant appropriations acts provided a clear message from Congress suspending petitions under

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43 18 USC § 925(c).
44 See id.
45 See Mullis v United States, 230 F3d 215 (6th Cir 2000); McHugh v Rubin, 220 F3d 53 (2d Cir 2000); Saccacio v Bureau of Alcohol, Tobacco, and Firearms, 211 F3d 102 (4th Cir 2000); Owen v Magaw, 122 F3d 1350 (10th Cir 1997); Burtch v United States Department of the Treasury, 120 F3d 1087 (9th Cir 1997).
46 See Bean v Bureau of Alcohol, Tobacco, and Firearms, 253 F3d 234 (5th Cir 2001); Rice v Bureau of Alcohol, Tobacco, and Firearms, 68 F3d 702 (3d Cir 1995).
47 The Fifth Circuit denied review of a § 925(c) petition when it decided United States v McGill, 74 F3d 64 (5th Cir 1996), but did not affirm the lower court’s decision, which had denied the petition, based on lack of jurisdiction. The McGill court held that the language used by Congress in its appropriations acts expressed a clear intention to suspend relief, but the court apparently abandoned this position with its recent decision in Bean v Bureau of Alcohol, Tobacco, and Firearms, 253 F3d 234 (5th Cir 2001), rehearing en banc denied, 2001 US App Lexis 20565, *1 (5th Cir). Bean held that Congress’s “suspension” of funds, due to the passage of time, has resulted in a complete preclusion of relief for petitioners before the ATF; therefore, jurisdiction exists to review § 925(c) petitions.
48 120 F3d 1087 (9th Cir 1997).
§ 925(c). The *Burtch* court felt that the clarity of the statutory text precluded any analysis of the legislative history.

The Tenth Circuit followed this line of reasoning in *Owen v Magau*, holding that because the Secretary of the Treasury had not expressly denied an application, the courts could not review the matter until the ATF had issued a final determination and denial. The *Owen* court also stated that the ATF was the best agency to investigate and deal with the fact-finding required by Congress, and that the courts were ill-suited for that task.

The Fourth Circuit entered the fray with its decision in *Saccacio v Bureau of Alcohol, Tobacco, and Firearms*. The court, interpreting the word "denial" to mean "an adverse determination on the merits" rather than "a refusal to act," held that the statute effectively denied the courts the ability to exercise jurisdiction when the ATF simply refused to act on § 925(c) petitions. The court acknowledged that the petitioner in the matter, Saccacio, may not have "been afforded the ultimate relief for which he applied"; nevertheless, because he had not received a denial from the Secretary of the Treasury under the definition the court established, it lacked jurisdiction.

The Second Circuit in *McHugh v Rubin* held that Congress's intent through its appropriations statutes was "clear and manifest" and that the Congress "could not have stated more clearly that the ATF is prohibited from acting on applications submitted by individuals pursuant to § 925(c)." The Second Circuit based its decision on the plain language of the statute, but also noted in its reasoning that the legislative history of the statute confirmed its reading. The court also held that the inability of the ATF and the Secretary of the Treasury to act did not constitute an effective

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49 Id at 1090 (holding that "the failure to appropriate investigatory funds should be interpreted as a suspension of that part of § 925(c)").

50 See id ("Because the statute is clear on its face, we conclude, unlike the Fifth Circuit, that we should not examine legislative history.").

51 122 F3d 1350 (10th Cir 1997).

52 Id at 1354.

53 Id ("The BATF has the requisite manpower and expertise for making this determination, while the courts do not.").

54 211 F3d 102 (4th Cir 2000).

55 Id at 104, citing *Burtch*, 120 F3d at 1090.

56 *Saccacio*, 211 F3d at 104.

57 220 F3d 53 (2d Cir 2000).

58 See id at 58.

59 Id at 58 n 2 ("[T]he legislative history, which we need not consult in light of the plain meaning of the appropriations statutes, does confirm [denying jurisdiction].").
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denial of the petitions for review.60 Further, the McHugh court determined that to have jurisdiction over a § 925(c) appeal, the Secretary must have acted on the petition in question prior to judicial review, specifically by undertaking an investigation through the ATF.61 Finally, the court acknowledged that the district courts were no more empowered under the statute to review applications than the ATF, and that the statute grants courts the authority merely to add to the record of evidence, not to create an evidentiary record from scratch.62

The latest court to deny jurisdiction is the Sixth Circuit. In Mullis v United States,63 the court reversed the district court and held that the court did not have jurisdiction to review § 925(c) firearms relief petitions.64 The Mullis court held that the legislative history and appropriations provisions provided a clear message of congressional intent, and that any court action would be impractical and ill-suited to the functions of the judiciary.65 In addition, the Mullis court considered its responsibilities under the Administrative Procedures Act, which requires courts to set aside agency decisions only when they are unreasonably delayed or otherwise unlawful.66 The court felt that the decision of the ATF not to undertake an investigation due to the restrictions on funding were not “unlawfully withheld or unreasonably delayed” and therefore did not warrant judicial interference.67

B. The Minority View: Allowing Jurisdiction

The Third Circuit was the first federal appellate court to address whether courts have jurisdiction under § 925(c) when Congress withholds funds, and it was the first appellate court to affirm jurisdiction. In Rice v Bureau of Alcohol, Tobacco, and Firearms,68 the court held that district courts may exercise jurisdiction over the ATF's “refusal” of § 925(c) petitions.69 The Third Circuit did not view the ATF appropriations restrictions as manifesting a clear intent to repeal § 925(c), and it therefore refused to

60 Id at 60–61.
61 McHugh, 220 F3d at 59–60.
62 See id.
64 Id at 221.
65 See id at 219–20.
66 See id at 219, discussing 5 USC § 706 (1994).
67 Mullis, 230 F3d at 219.
68 68 F3d 702 (3d Cir 1995).
69 Id at 707 (noting that none of the appropriations bills “expressly preclude a court from reviewing [ATF]'s refusal to process an application for relief”).
strike down the statute on a theory of implied repeal. While the court acknowledged that the restrictions essentially prohibited the ATF from processing applications for relief, it believed that the language was not clear enough to effectuate repeal of the statute or to otherwise preclude judicial review.

Next, the Rice court discussed whether a decision of the Secretary constituted a "denial" under the text of the statute, and whether Rice had exhausted his administrative remedies. The court acknowledged that a person is entitled to administrative relief only when the proscribed administrative remedy is exhausted. Citing extensively from the United States Supreme Court's decision in McCarthy v Madigan, the court noted that it must balance the interests of the individual in retaining a prompt judicial hearing with the interests favoring exhaustion. The Court also drew from the Supreme Court's decision in Coit Independence Joint Venture v Federal Savings & Loan Insurance Corp, which held that the lack of a reasonable timeframe for administrative hearings rendered exhaustion inadequate, in which circumstance, judicial review could commence.

Consistent with Rice, the Eastern District of Pennsylvania held that so long as Congress has not repealed the statute providing judicial review, where the only congressional action is a denial of appropriations to the ATF, courts could exercise jurisdiction to review § 925(c) petitions. The court essentially relied upon controlling authority in Rice and held that the mere revocation of appropriations could not effectuate the denial of relief. According to the court, the denial of government funding constituted a miscarriage of justice sufficient to warrant judicial review.

The development of the law in the Fifth Circuit is more turbulent. After Congress withheld the ATF's funding to review

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70 Id.
71 See id (holding that "Congress has not repealed the statute or restricted judicial review to deprive the district court of subject matter jurisdiction over Rice's challenge").
77 See Palma v United States, 48 F Supp 2d 481, 485 (E D Pa 1999) ("Congress has not changed the law providing legal authority to grant relief in appropriate cases, and § 925(c) remains on the books."). overruled on other grounds, 228 F3d 323 (3rd Cir 2000).
78 Palma, 48 F Supp 2d at 485–86.
79 See id at 486.
§ 925(c) petitions, the Fifth Circuit was the first to deny federal judicial review of the petitions. In *United States v McGill,* the court held that the language Congress used to restrict appropriations from being spent on § 925(c) petitions precluded judicial review. The *McGill* court held that Congress could suspend or repeal federal laws through an amendment to an appropriations bill, as long as the intent of Congress to abrogate was clear.

While not directly affirming the district court's decision on the basis of lack of jurisdiction, the *McGill* court specifically held that Congress, in the relevant appropriations acts, barred funding for petitions filed under § 925(c), and that this clear denial mooted the jurisdictional question decided by the lower court. Additionally, the court noted that while Congress had prohibited all petitions from being reviewed in 1993, it modified this restriction in 1994 to allow review of corporate petitions while maintaining the restrictions on review of those petitions submitted by individuals. The court found that these legislative acts strengthened the view that Congress wanted to maintain a ban on investigations of petitions filed by individuals.

In 2000, Judge Joe Fisher of the Eastern District of Texas effectively dismissed *McGill* in *Bean v Bureau of Alcohol, To-

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80 The Third Circuit first addressed this issue in *Rice,* 68 F3d 702, but held that courts have jurisdiction.
81 74 F3d 64 (5th Cir 1996).
82 See id at 67 (concluding that Congress intended to preclude relief, not to shift the burden to the courts).
83 Id at 66 ("Thus, the question of whether the appropriations bill suspended the relief available under § 925(c) turns on the intent of Congress.").
84 See id at 66-67 ("Although we doubt that the district court has original jurisdiction ... we pretermit that question because ... Congress suspended the relief provided by § 925(c).")
85 See *McGill,* 74 F3d at 67-68.
86 Id. See also Treasury Department Appropriations Act, 1995, 108 Stat at 2385:

Provided further, That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c). Provided further, That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under 18 U.S.C. 925(c).

But see 1993 Treasury Appropriations Act, 106 Stat at 1732 ("Provided further, That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c).")

87 Judge Fisher served for forty years on the federal bench after being appointed by a reluctant President Eisenhower in 1959. He was reported to be a very fair and principled jurist, but his tenure was not without controversy. Judge Fisher was named one of the best trial judges in the nation and displayed his principle both on and off the bench. In 1979, he ignored a presidential order requiring air-conditioning systems in federal build-
Bean inadvertently left two hundred rounds of ammunition in plain view in his automobile while traveling across the Mexico-U.S. border to attend a gun show as a dealer. He was convicted of firearms violations under Mexican law and sentenced to a term of five years in a Mexican prison but was transferred to the United States to serve out the remainder of his sentence, in accordance with an international treaty. Bean’s conviction resulted in the automatic revocation of his firearms privileges under 18 USC § 922(g)(1).

After “diligently” searching the legislative history, Judge Fisher interpreted the Fifth Circuit’s holding in McGill as requiring that Congress clearly suspend relief in order for jurisdiction to fail. Therefore, the district court undertook what it considered an extensive review of the legislative record to find “clear” language and determined that congressional intent was not as clear as the Fifth Circuit believed. Essentially, the court found that McGill gave improper weight to a Senate Report dealing with Treasury Appropriations while giving no weight to a Subcommittee Report of the Senate Committee on Appropriations. The Senate report stressed the need to correct and avoid injustices through the use of petitions for relief, while the House report noted the need to spend resources previously allocated to reviewing these petitions on preventing violent crime.

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ings to run at no lower than eighty degrees, ordering his set at no higher than seventy-four. He clashed with the media on access to his courtroom during certain testimony and also with civil rights activists fighting for broader desegregation orders. He also presided over the landmark case allowing workers a cause of action against asbestos manufacturers for their injuries, which was upheld by the Fifth Circuit. Judge Fisher died just four months after deciding Bean at the tender age of ninety. The preceding detail is taken from Kevin Carmody, Judge Opened Door For Injured Workers, Austin American-Statesman A1 (June 20, 2000).

88 89 F Supp 2d 828 (E D Tex 2000).
89 Id at 829.
90 Id.
91 Id.
92 See Bean, 89 F Supp 2d at 832 (“[T]he [McGill] court concluded that relief from federal firearms disabilities under Section 925(c) had been ‘clearly’ suspended by the Appropriations Acts.”).
93 See id ("This Court has concluded that in looking at the legislative history as a whole, it does not reach the level of ‘clarity’ needed to suspend the type of relief which is expressly provided for in the statute.").
94 Id at 833-34 (noting that “[t]he transcript of a Senate subcommittee hearing provides insight as to the true reason for the funding cuts”).
95 See id at 832-33.
Judge Fisher noted that the inclusion of some kind of judicial review was important. Thus, while Congress expressed its intent that the ATF not undertake review of § 925(c) petitions, the courts were under no such restriction. The court held that the judicial branch was well-suited to determine a petitioner's ability to possess a firearm, even in the absence of an initial review and a "conclusive" decision from the ATF. Finally, the court held that the exhaustion doctrine would not apply because Congress "gave the district courts discretion to create or supplement the administrative record when necessary to avoid a miscarriage of justice."

On appeal, the Fifth Circuit upheld jurisdiction and allowed for relief, overturning McGill. The court noted that a 1992 Senate bill introduced to eliminate the § 925(c) relief program had never made it out of committee. The Court attributed great significance to this failed attempt by Congress to revoke § 925(c), implicitly noting that Congress's failure to revoke the statute, or rather its declination to act, was indicative of its intent to keep § 925(c) on the books. Additionally, "the effective non-temporary 'suspension' of statutorily created rights" due to the annual denial of funding persuaded the court that the inability of the Secretary to make a decision constituted a de facto exhaustion of administrative remedies for which the court could exercise jurisdiction.

96 Bean, 89 F Supp 2d at 833 ("Adding judicial review to the existing legislation was intended to afford individuals not inclined to engage in criminal activity the 'essential' opportunity to demonstrate trustworthy character.").
97 See id at 835 (holding that Congress did not intend to suspend all relief, but rather to suspend ATF investigations).
98 Id at 836.
99 Id at 837.
100 Bean v Bureau of Alcohol, Tobacco, and Firearms, 253 F3d 234, 239 (5th Cir 2001). The Fifth Circuit appears to have misread its own decision in McGill. While the Bean court claimed McGill held that "federal courts have no jurisdiction to hear appeals from individuals," Bean, 253 F3d at 237 n 4, the McGill panel expressly stated that while "we doubt that the district court has original jurisdiction to consider an application to remove the Federal firearm disability, we pretermit that question because it is clear to us that Congress suspended the relief provided by § 925(c)." McGill, 74 F3d at 65-66 (1996) (emphasis added).
101 See Bean, 253 F3d at 237-38. See also Stop Arming Felons (SAFE) Act, S 2304, 102d Cong, 2d Sess, in 138 Cong Rec S 2675 (March 3, 1992).
102 See Bean, 253 F3d at 238-39.
103 Id at 239.
III. STATUTORY INTERPRETATION AND LEGISLATIVE HISTORY

Courts disagree over how to interpret Congress's appropriations acts based on the wording of § 925(c). The threshold questions to answer are whether and under what circumstances the text of the statute allows the courts to exercise jurisdiction over § 925(c) petitions, and whether the legislative history and the appropriations acts suspend all review of individual's § 925(c) petitions. The doctrine requiring exhaustion of administrative remedies will be discussed in the next section.

Both the Ninth Circuit and the Fourth Circuit are satisfied that § 925(c) is clear on its face and that no further historical analysis is needed. The other federal appellate courts engage in some degree of probing into the historical record to determine Congress's intent. Such review has not, however, produced uniform results. Those circuits that have analyzed the legislative record are split over its proper interpretation.

A. The Plain Meaning of § 925(c)

The Ninth and Fourth Circuits are each satisfied that the plain meaning of § 925(c), specifically the term denial, is clear, obviating any need for further analysis of the legislative history. Under § 925(c), the grant of jurisdiction to the courts stipulates that "[a]ny person whose application for relief from disabilities is denied by the Secretary may file a petition ... for a judicial review of such denial." The courts have jurisdiction when the application is denied by the Secretary. The use of the word "deny" in its various forms is significant. The statute does not offer a definition of what constitutes a denial. The Ninth Circuit offered its own definition, noting that it views a denial under § 925(c) as requiring that the Secretary make "an adverse determination on the merits" and that denial "does not include a refusal to act."
Such a reading of the term denial is supported in the text of the statute. Section 925(c) indicates that the role of the court in such a situation should be to “admit additional evidence where failure to do so would result in a miscarriage of justice.” If the district courts were intended, based upon the text of the statute, to make an initial determination independent of the Secretary, then presumably the statute would not provide for the admission of additional evidence and the standard by which to admit that evidence, namely the avoidance of a miscarriage of justice.

One could argue that the court could admit additional evidence even when there is no body of evidence to start with. This technically could be viewed as adding to an initially empty body of evidence. This view can be accepted only if one views this clause in a vacuum, independent of the statutory scheme allowing for review by the Secretary. The entire paragraph constituting § 925(c) cannot be parsed and viewed independently of the other provisions and must be read as a unified whole. Toward this end, the plain language of § 925(c) does not support a grant of jurisdiction to the courts.

B. Original Intent and Legislative History of § 925(c)

While the plain language of § 925(c) can be read to support a denial of jurisdiction, an analysis of the legislative history also supports this view. None of the courts interpreting § 925(c) have attributed any significance to the original impetus for § 925(c): the desire of Congress to create an exception under which the nation’s largest firearms manufacturer could apply for relief. The exception was created for the Olin Mathieson Corporation and its firearms subsidiary Winchester, but it incidentally allowed individual felons to petition for relief as well. So strong was the desire to protect Olin Matheson that the court specifi-
cally stayed entering its sentence against Olin Mathieson so that Winchester had an opportunity to request that Congress change the law, which Congress did.\footnote{See Hardy, 17 Cumb L Rev at 598 n 73 (cited in note 7) ("The court stayed judgment of conviction to give [Olin Mathieson] an opportunity to seek legislative change."); United States v Olin Mathieson Chemical Corp, 368 F2d 525, 525–26 (2d Cir 1966) (affirming the decision of the lower court).}

While this original intent is not dispositive of the issue, it informs analysis of Congress’s subsequent actions. In 1986 through FOPA, Congress expanded the relief from disabilities program to include individuals who had felony firearms convictions—individuals who under the previous scheme could not apply.\footnote{See Griffin, Note, 23 Okla City U L Rev at 981 (1998) (cited in note 9) ("FOPA expanded the categories of who is eligible for relief. Congress accomplished this by amending the relief provision so that any person prohibited from possessing firearms may now seek relief.") (citations omitted).} In 1992, however, Congress eliminated all funding for ATF review of § 925(c) petitions beginning with the 1993 fiscal year, yet one year later Congress allowed funding exclusively for review of corporate petitions, not for individuals.\footnote{Compare 1994 Treasury Appropriations Act, 107 Stat at 1228–29 (allowing funds to investigate corporate petitions, while prohibiting funds for other § 925(c) investigations), with 1993 Treasury Appropriations Act, 106 Stat at 1732 (prohibiting the use of funds for ATF § 925(c) investigations without exception for corporations).} By taking these actions, Congress essentially reverted to the original scheme designed in 1968 to protect and assist corporate felons.\footnote{HR Rep No 89-708 at 2–3 (cited in note 18) (noting congressional attention to the Olin Mathieson problem).} Members of Congress expressed their views that Congress should not be in the business of arming individual felons.\footnote{See Statements on Bills and Joint Resolutions, 103d Cong, 1st Sess, in 139 Cong Rec S 10847 (cited in note 36) (statement of Senator Frank Lautenberg).} But in allowing for review of corporate petitions for relief under the appropriations statute, Congress was reverting to the true intent of the original 1968 amendment, which was to allow corporate petitions for relief; however, this language and the legislative history surrounding it also restricted individual felons from seeking relief.

C. Misgivings Regarding the Arguments of the Pro-Jurisdiction Courts

In Rice, the Third Circuit relied primarily on the doctrine of exhaustion in addressing the plaintiff’s claim, but it nevertheless analyzed the issue of jurisdiction.\footnote{Rice, 68 F3d at 706–07.} The Rice court believed that Congress could only suspend substantive legislation or preclude
judicial review of administrative action through appropriations statutes where it makes its intention to do so abundantly clear.\textsuperscript{122} The Fifth Circuit similarly held that abrogation through appropriations are disfavored, that Congress's continual suspension of funds effectively constituted a denial of administrative remedies, and that Congress had the opportunity to repeal § 925(c) in 1992 and failed to do so.\textsuperscript{123} Judge Fisher, in the district court proceedings of \textit{Bean}, placed particular emphasis on the role of traditional statutory interpretation in making his finding of jurisdiction.\textsuperscript{124}

However, Judge Fisher failed to consider the totality of the legislative history, ignoring the original intent of the statute, the congressional decision to allow expenditures for review of corporate petitions while prohibiting spending for individual petitions, and the failed 1995 amendment addressing alternative funding for the program.

Additionally, the Fifth Circuit based its decision on "congressional action/inaction and its continuing effect," primarily noting the failed 1992 legislation that would eliminate § 925(c), legislation that was introduced before Congress's actual suspension of funds, and Congress's failure to actually invalidate § 925(c).\textsuperscript{125} However, the Supreme Court has noted that congressional silence is a poor guidepost for determining congressional intent.\textsuperscript{126} To the contrary, while Congress has not expressly repealed § 925(c), it has acted clearly every year since 1993 through its appropriations statutes to preclude review of individual petitions for relief.\textsuperscript{127} Further, the Fifth Circuit ignores the failed 1995 attempt in the House of Representatives to remove the appropriations restriction. Such congressional action must also be considered in fleshing out the complete legislative history of § 925(c).\textsuperscript{128}

\begin{itemize}
\item \textsuperscript{122} Id at 707.
\item \textsuperscript{123} See \textit{Bean v Bureau of Alcohol, Tobacco, and Firearms}, 253 F3d 234, 236–38 (5th Cir 2001).
\item \textsuperscript{124} \textit{Bean}, 89 F Supp 2d at 832–34.
\item \textsuperscript{125} \textit{Bean}, 253 F3d at 237–38.
\item \textsuperscript{126} See \textit{Zuber v Allen}, 396 US 168, 184 (1969) ("Legislative silence is a poor beacon to follow in discerning the proper statutory route.").
\item \textsuperscript{127} See note 33.
\item \textsuperscript{128} It should be noted that members of Congress have introduced legislation since 1992 to repeal § 925(c). See \textit{Leave No Child Behind} Act of 2001, HR 1990, 107th Cong, 1st Sess, in 147 Cong Rec H 2710 (May 24, 2001); \textit{Stop Arming Felons} (SAFE) Act, HR 2281, 106th Cong, 1st Sess (June 18, 1999); \textit{Stop Arming Felons} (SAFE) Act, HR 1228, 105th Cong, 1st Sess, in 143 Cong Rec H 1297 (Apr 8, 1997); \textit{Stop Arming Felons} (SAFE) Act, S 1068, 104th Cong, 1st Sess, in 141 Cong Rec S 10569–71 (July 24, 1995); \textit{Stop Arming Felons} (SAFE) Act, S 1400, 103d Cong, 1st Sess, in 139 Cong Rec S 10847 (Aug 6, 1993); \textit{Stop Arming Felons} (SAFE) Act, S 2304, 102d Cong, 2d Sess, in 138 Cong Rec S 2675 (Mar 3, 1992). This legislative history and failure to report each of these bills out of committee
Alternatively, however, the Fifth Circuit may be motivated by the original intent of the § 925(c): to allow for commercial dealers of firearms to obtain relief from Federal firearms disabilities. While not providing relief to a corporate petitioner, the court seemed swayed that Bean, “a licensed firearms dealer,” had been arrested while “participating in a gun show.” The court appeared to grant jurisdiction at least in part because it viewed the exception created for the Olin Mathieson Corporation as analogous to the needs of Bean. To the extent that the Fifth Circuit created an exception for corporate felons, its decision may not be inconsistent with the original intent of § 925(c), but the decision still appears to misinterpret the legislative history, the exhaustion doctrine, and the decisions of the other courts of appeals.

The Rice court similarly indicated that Congress should have repealed § 925(c) instead of attempting to abrogate it through appropriations acts. The Supreme Court has held that “[t]he meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction,” including the appropriations acts. By reading the text in a vacuum, the Rice court is tossing aside valuable clues and insight as to what goals Congress was trying to achieve through its legislative history and abrogation through appropriations.

D. Suspension of Relief, Not Suspension of ATF Relief Nor Modification of the Statute

In a defense of the claim that courts have jurisdiction, Ronald Griffin argues that Congress actually intended to modify the text of § 925(c) through its appropriations acts. Griffin based this argument on the belief that Congress viewed the ATF's budget as
wasteful and wanted to help those individuals who "hunt and collect guns in a lawful manner." Further, he contends that "Congress knew the judiciary was acting upon relief applications and wanted the BATF to handle corporate applications and the judiciary to handle applications from individuals." Griffin claims that the legislative history demonstrates Congress's historical desire to provide relief to non-violent felons, unfortunately, Griffin presents no evidence of congressional sensitivity to the needs of non-violent felons when it passed the funding restrictions in its 1993 appropriations acts, or when the House Appropriations committee upheld the status quo funding scheme. To the contrary, the record indicates no such sensitivity or leniency.

IV. THE EXHAUSTION DOCTRINE

Even if courts hold that they have jurisdiction over § 925(c) petitions, they still may not satisfy the requirements of the exhaustion doctrine. As the Supreme Court has stated, "[t]he doctrine of exhaustion of administrative remedies is one among related doctrines—including abstention, finality, and ripeness—that govern the timing of federal-court decisionmaking." Essentially, the doctrine of administrative remedies states that where there is an administrative remedy available, an individual must exhaust that remedy before turning to the courts. The Third Circuit relies primarily on this theory.

A. Background

The leading cases regarding the exhaustion of administrative remedies are Darby v Cisneros142 and McCarthy v Madigan.143

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134 See id.
135 Id at 1001.
136 See id at 1002.
137 See Griffin, Note, 23 Okla City U L Rev at 998–1000 (cited in note 9).
138 See note 185 and accompanying text.
140 See McCarthy, 503 US at 144–45 ("This Court long has acknowledged the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.").
141 See Rice, 68 F3d at 707–08 (evaluating the exhaustion doctrine in its grant of jurisdiction).
Darby and Madigan both establish the grounds upon which the courts may impose an exhaustion requirement. The McCarthy Court stated that the exhaustion doctrine is required because it "serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." The exhaustion doctrine applies with special force when "the action under review involves exercise of the agency's discretionary power or when the agency proceedings in question allow the agency to apply its special expertise.

The McCarthy Court outlined three sets of circumstances in which courts may initiate legal proceedings before administrative action has been exhausted. First, courts will not require exhaustion where strict adherence to administrative action will result in undue prejudice to subsequent assertion of the action in question. Second, courts will not require administrative action where there is doubt regarding the agency's ability to make its determination and provide relief. Finally, a court may view the administrative action as inadequate if the body is biased or has otherwise predetermined the issue in question. But where Congress has "meaningfully addressed" the appropriateness of requiring exhaustion, that intent is persuasive.

B. Refusal of § 925 Petitions Does Not Meet the Exhaustion Doctrine Criteria Defined in McCarthy

The ATF's refusal or inability to complete an investigation is not a circumstance that satisfies the McCarthy exceptions. First, there would not be any prejudice regarding the subsequent exercise of a right. The Supreme Court has established that the right to possess a firearm after a disabling conviction is not a right, but a privilege. Congress is under no more of an obligation to provide a speedy review of an individual's § 925(c) petition than it is to create the scheme by which such petitions are reviewed in the

144 Id. See also Darby, 509 US 137 (the Darby court made its decision in part on the basis of the Administrative Procedures Act, which is not directly at issue in this analysis).
145 503 US at 145.
147 Id at 146–47.
148 Id at 147, quoting Gibson v Berryhill, 411 US 564, 575 n 14 (1973).
150 McCarthy, 503 US at 149.
151 Lewis v United States, 445 US 55, 66 (1980) ("This Court had recognized repeatedly that a legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a firearm.").
first place. Consequently, the courts are under no obligation to expediently review denials of this privilege.

Next, McCarthy holds that the exhaustion doctrine will not be applied if there is some doubt that the agency is authorized to provide relief. As examples, the Court notes that an agency may not be properly authorized to make a decision where it lacks institutional competence, where the procedure is inadequate, or where the agency may be competent but lacks the authority to enact the relief needed. Only the last of these provisions could be used to support jurisdiction over § 925(c) petitions, but the authority noted by the Court to support this prong involved a claim that would have been utterly futile in light of a binding state supreme court decision which effectively removed from the agency the power to grant relief. Denial of funds does not fall within the allowable categories under this second exception.

The final McCarthy exception also does not apply, because the “predetermination” contemplated by the Court involves bias or other unfairness in the adjudication of the claim by the administrative agency. There are no claims that the ATF’s investigative or review procedures or its officers are biased in their decision making; to the contrary, the ATF cannot be biased where, for financial reasons, it is prohibited from undertaking any investigation regardless of the petitioner.

C. Congressional Intent Does Not Favor Exhaustion

The language of the statute allows the courts to review decisions of the Secretary when the Secretary denies a petitioner relief. The statute provides that “[a]ny person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial.” At issue is what constitutes a “denial” by the Secretary, and whether this exhausts the administrative remedies available.

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152 See id (noting that Congress does not have to create an exception to the firearms laws).
153 McCarthy, 503 US at 147.
154 See id at 147–48.
156 McCarthy, 503 US at 148 (exhaustion is not required where a decision has been predetermined based on discrimination, harassment, or other like considerations).
157 18 USC § 925(c).
158 Id.
A pivotal factor in considering the exhaustion doctrine is congressional intent.\textsuperscript{159} As the \textit{McCarthy} Court noted, "even in this field of judicial discretion, appropriate deference to Congress's power to prescribe the basic procedural scheme under which a claim may be heard in a federal court requires fashioning of exhaustion principles in a manner consistent with congressional intent and any applicable statutory scheme."\textsuperscript{160} However, "where Congress has not clearly required exhaustion, sound judicial discretion governs."\textsuperscript{161}

Section 925(c) grants authority to review petitions for relief from disability to the ATF.\textsuperscript{162} It establishes the criteria to be used by the Secretary, and it states that the courts may review a denial of a petition.\textsuperscript{163} The statute also stipulates that the court may admit "additional evidence where failure to do so would result in a miscarriage of justice."\textsuperscript{164} This language permits reviewing courts to supplement the record, not create a new record. Additionally, the appropriations statutes do not provide any more information that could be construed as a grant of authority to the courts in the absence of an ATF denial. Senator Paul Simon indicated as much in 1996 when he reaffirmed that "the goal of [§ 925(c)] has always been to prohibit convicted felons from getting their guns back—whether through the ATF or the courts. It was never our intention to shift the burden to the courts."\textsuperscript{165} Other congressmen echoed Senator Simon's sentiments.\textsuperscript{166}

D. The Statute Grants Permissive, Not Mandatory, Action by the ATF

If Congress restored funding to the ATF budget for review of individuals' § 925(c) petitions, under the text of the statute there would be nothing prohibiting the Secretary of the Treasury from resuming the normal process of review. Under this scenario, if

\textsuperscript{159} See \textit{Patsy v Board of Regents of the State of Florida}, 457 US 496, 501 (1982) (noting that legislative purposes are of "paramount" importance in the exhaustion context).

\textsuperscript{160} \textit{McCarthy}, 503 US at 144, citing \textit{Patsy}, 454 US at 501–02.

\textsuperscript{161} \textit{McCarthy}, 503 US at 144.

\textsuperscript{162} 18 USC § 925(c).

\textsuperscript{163} Id.

\textsuperscript{164} Id.

\textsuperscript{165} 142 Cong Rec S 12164 (statement of Senator Simon) (cited in note 36).

the Secretary chose to deny a petition, the courts could exercise jurisdiction over a felon's appeal. However, nothing in the statute requires the Secretary, under any circumstances, to act on § 925(c) petitions. The statute merely states that individuals "may" petition the Secretary for relief, and the Secretary "may" grant such relief if certain conditions are met. Congress could have easily stated that the Secretary "shall" grant relief if the Secretary judges that the applicant meets certain criteria. The permissive nature of the language allows for agency discretion. The Act anticipated that the ATF would undertake an investigation and that the Secretary "may" choose to grant relief.

Congress did not intend to force § 925(c) decisions through the Treasury Department or the courts. The original House report makes this clear, noting that the committee reporting the bill "in no way intends to determine whether Olin, or others to whom this bill will be applicable, should be allowed to manufacture and sell firearms" but that it would be "desirable to authorize the Secretary of the Treasury to grant relief" in appropriate cases. These considerations render the exhaustion doctrine inadequate to support jurisdiction or reinstatement of firearms privileges for felons.

V. PRUDENTIAL AND POLICY CONSIDERATIONS

In addition to the statutory interpretation and textual construction methods of analyzing the statute, as well as the exhaustion issues, there are a number of prudential and policy arguments that cut against the exercise of jurisdiction over § 925(c) petitions absent a denial from the Secretary.

A. Financial Considerations Are Not a Factor

Supporters of granting jurisdiction in § 925(c) cases argue that Congress denied funds to the ATF because of budget concerns with that department, but did not prevent other resources from being expended in reviewing the petitions. At least one court and one commentator have argued that Congress's denial of

167 See 18 USC § 925(c).
168 Id.
169 See HR Rep 89-708 at 3 (cited in note 18) (recognizing that the Secretary should be allowed, but not compelled, to grant relief).
170 Id.
171 See, for example, Griffin, Note, 23 Okla City U L Rev at 998 (cited in note 9) (arguing that Congress withdrew ATF funding but not judicial relief).
funding does not preclude other agencies, specifically the courts, from expending resources on § 925(c) petitions.172

In Bean, the Eastern District of Texas ruled that courts could assert jurisdiction because Congress did not revoke the ability of petitioners to seek review of their claims—but Congress only shifted the burden of paying for this process from the ATF to the courts.173 Under this theory, in order for the parties to bring evidence and be heard before a court, they must themselves investigate and bring forward statements and other materials for the bench to review.174 Furthermore, Griffin has also argued that Congress only eliminated funding for administrative action, leaving the courts untouched as an alternative avenue of funding.175

This argument, however, fails to acknowledge that the courts, in hearing and ruling on § 925(c) petitions, will still expend resources. Notably, there is no evidence that the courts are necessarily fiscally more efficient than the Treasury. Instead, courts are generally considered less efficient at the type of fact-finding required in § 925(c) petitions.176 Further, even if the courts were fiscally more efficient than the ATF, saving money is not the primary purpose of the statute, for Congress expressed its desire to eliminate the possibility for individual felons to reacquire their firearms through personal subsidizing of costs or shifting the funding burden to the courts.177 Even proponents of jurisdiction acknowledge that the legislative record is clear that Congress believes that the ATF has special skills and that courts

172 See Bean, 89 F Supp 2d at 836 (noting that the cost burden would be shifted to the applicant in judicial proceedings); Griffin, Note, 23 Okla City U L Rev at 998 (1998) (cited in note 9).
173 Bean, 89 F Supp 2d at 836.
174 See id.
175 Griffin, 23 Okla City U L Rev at 998 (cited in note 9) (“Congressional concern appeared to be with the BATF’s inefficient and wasteful administrative review process rather than a desire to curb the availability of relief itself.”).
176 See Owen, 122 F3d at 1354 (“The BATF has the requisite manpower and expertise for making this determination, while the courts do not.”); Mullis, 230 F3d at 220:

These institutional disadvantages make it highly unlikely that Congress intended district court[s] to review an applicants’ dangerousness to society in the first instance. Nor would the costs to the courts in making an investigation be less than the costs to the ATF. They might well be greater since there would be no investigation or testimony by trained agents for the court to rely on.
177 See S Rep No 89-666 at 1–5 (cited in note 23) (noting the original intent of the relief from disabilities program).
are less well-suited to undertake the kind of investigation and fact finding mandated under the statute.\textsuperscript{178}

The effective defeat of the 1995 amendment, which would have allowed felons to pay a fee to have the ATF review their cases, provides additional support for Congress's implicit desire that felons' firearms privileges not be reinstated for any reason, even if individual applicants pay for investigations themselves.\textsuperscript{179} Although the full Congress did not raise the issue, the Appropriations Committee recommended removing the funding restriction from the statute, but reversed itself in the face of public criticism.\textsuperscript{180} This reversal is additional evidence that important considerations, in addition to fiscal responsibility, motivated Congress when it addressed this issue.\textsuperscript{181}

B. Courts Should Not Aggressively Try to Rearm Felons

Rewriting rules and making exceptions so that individuals with a firearms disability can have such a disability removed is not a popular position.\textsuperscript{182} The Supreme Court has established that the ability to possess a firearm after a disabling conviction is not a right but a privilege.\textsuperscript{183} Thus, Congress is acting within its power when it revokes firearms privileges from convicted felons.\textsuperscript{184}

Congressional testimony demonstrates Congress's desire to keep firearms away from felons. For instance, after the \textit{Rice} court made its decision, then-Senator Paul Simon, one of the original sponsors of the ban on funding before Congress, was highly critical, saying that:

This misguided decision could flood the courts with felons seeking the restoration of their gun rights, effectively shifting from ATF to the courts the burden of considering these applications . . . . Given this conflict in the circuit courts, it is important that we again clarify our original

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\textsuperscript{178} See Griffin, Note, 23 Okla City U L Rev at 996 (cited in note 9).
\textsuperscript{179} See Stephen Barr, \textit{GOP Backs Off Proposal On Firearms For Felons}, Wash Post A04 (July 12, 1995) (detailing the defeat of the proposal allowing for felons to pay for their § 925(c) investigations).
\textsuperscript{180} See id.
\textsuperscript{181} Id.
\textsuperscript{182} See, for example, \textit{Lewis v United States}, 445 US 55, 66 (1980) (noting congressional concern about firearms possession by felons).
\textsuperscript{183} See id (finding that Congress may prohibit felons from possessing firearms).
\textsuperscript{184} Id ("[A] legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a firearm.").
\end{flushright}
and sustaining intention. The goal of this provision has always been to prohibit convicted felons from getting their guns back—whether through ATF or the courts. It was never our intention to shift the burden to the courts.\textsuperscript{185}

Giving guns to felons is not a politically popular position, and it draws an emotional response from many, including the Violence Policy Center ("VPC"), a public interest organization, which describes the "relief from disabilities" program as a "second chance club" supported by the National Rifle Association.\textsuperscript{186} The VPC says that of one hundred felons who had been granted relief by the Secretary, five had convictions for sexual assault, eleven had burglarized, thirteen had been convicted of narcotics charges, and four had committed homicide.\textsuperscript{187} These kinds of statistics do not make for good public relations, and provide strong policy arguments against allowing government sanctioned "relief."\textsuperscript{188}

**CONCLUSION**

This Comment has shown that Congress has expanded its regulation of firearms over the last century. An extensive analysis of the legislative history provides a valuable tool to understand the current debate over § 925(c). A thorough reading of the legislative record on the subject of federal firearms regulations, when considered in its entirety, provides a clear picture of the proper reading of § 925(c) in light of the appropriations acts that deny funding for this provision. The legislative history demonstrates congressional desire to allow § 925(c) relief petitions to be filed by corporate petitioners only and not by individual felons.

Even if courts read the relevant history as an endorsement of jurisdiction by Congress, they must respect the doctrine of exhaustion of administrative remedies. Congress established a scheme that anticipates a full review and determination on the merits by the ATF before any judicial review takes place. Congress did not suspend funding for individual relief petitions only to provide applicants with a means to circumvent the ATF.

\textsuperscript{185} 142 Cong Rec S 12164 (statement of Senator Simon) (cited in note 36).


\textsuperscript{187} See id.

\textsuperscript{188} See *Bean v Bureau of Alcohol, Tobacco, and Firearms*, 253 F3d 234, 236–38 (5th Cir 2001), 253 F3d 234, 237 (5th Cir 2001) (noting that the views of the Violence Policy Center contributed to the restriction of funds by Congress).
Rather, Congress intended to suspend application of the statute for individuals while leaving its provisions intact for review of corporate petitions—thus reverting to the original intent of the statute as introduced in the 1960's.

Finally, other policy considerations weigh heavily in this debate. Congress and many courts have expressed serious reservations over granting felons, who have in many cases committed heinous crimes, the right to once again possess a firearm, regardless of whether the felons themselves pay for the necessary applications. Barring further action by Congress or the Courts, however, felons under the jurisdiction of the Third and Fifth Circuits may have their firearms petitions reviewed by the courts, while other felons may not. This disparity should be resolved in favor of waiting for congressional authorization—even if it never comes.