Vermont Federation of Sportsman's Clubs
Testimony on H.230 – Senate Judiciary Committee
April 6th, 2023

My name is Chris Bradley, and I am the President and Executive Director of the Vermont Federation of Sportsman's Clubs.

The Federation, as an organization and as individuals, are fully aware of the nexus between firearms and suicide, and we have worked to address that. For example, we worked extensively on the Vermont Gun Shop Project, until that effort was no longer funded by the VDMH.

Sections 1-2 - Findings and Legislative Purpose
In reviewing this section, we note that these listed facts do not mention that the biggest risk factor reported among Vermont deaths by suicide was related to people having a mental health diagnosis: Something that was present in 68% of reported suicides in the last report dated 2017-2018.

We note that this section does not tell us how many times a Vermonter in crisis went to a gun store, bought a firearm, and then went home and used it to commit suicide. We only know that anecdotally: Testimony before the House Committee on Health Care revealed only two such events in the past 10 years.

We note that this section does not tell us if a person committing suicide with a firearm already owned that firearm, or otherwise had unfettered access to it.

We further note that this section does not inform us of how many times a person committed suicide because they had a terminal illness.

In considering a bill to reduce suicides: These are some very significant numbers that we should know, and yet not only do we not know them, a simple amendment that would only allow this data to be captured moving forward was voted down by the majority in the House. Why?

Section 3 (Secure Firearms Storage)
We need to be crystal clear here that laws which require firearms to be locked up or made inoperable was struck down in the 2008 by the SCOTUS in District of Columbia *v.* Heller, as any such law does not allow for the use of that firearm for self-defense.

I quote from the Heller decision: "***Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.***"

That is the written opinion of the highest court in our land; that sentence tells us that it is completely unconstitutional to force citizens to lock up their firearms; yet that is precisely what Section 3 of H.230 dictates.

Moving beyond Heller, we further consider Section 3 using the SCOTUS's decision in NYSRP v Bruen.

Under Bruen, any existing or proposed law that impacts the core of the Second Amendment must be deemed to be presumptively unconstitutional UNLESS the government can prove that the law aligns with the historical test and traditions of our country's founding.

Historians have examined this, and other than laws that speak to how excessive amounts of gunpowder should be stored, which has little if anything to do with the storage of firearms, there are no analogous laws that support forcing an honest and law-abiding citizen to keep their firearms locked up when not in use.

To be clear on this point: The Federation DOES support Safe Storage. We do not want to see accidents with firearms, and it is clear from statistics that Vermonters who own firearms are careful with them.

Section 3 fails Constitutional muster on not one but two SCOTUS decisions, and there is simply no way that it can be enforced.

Section 4–8 - Changes to Extreme Risk Protection Order (ERPO) Laws

While we see some merit to considering the addition of a family member to the list of those who may file a petition for an ERPO, we are not aware of any situation to date where a family member contacted a State's Attorney or the Attorney General with an ERPO concern, that concern was rebuffed, and the person in question then immediately went out and did something.

We most assuredly agree that a family member is likely to be the first to detect a person who is at risk of harming themselves or others, and evidence points to the fact that this reporting is how the majority of ERPOs get initiated today. However: We feel strongly that bringing an extreme action should require some level of involvement and vetting by Law Enforcement – which is why this bill was originally written as it was. Won't this have a potential negative effect on our existing court backlog?

Regarding the addition of "Household member", we feel that this definition is too broad, as it encompasses renters, roommates, ex-partners and even ex-spouses to name a few. Again we ask: Are there situations where requests to a State's Attorney or the Attorney General has failed to intercede when the facts warranted it from whatever source?

In specific reference to the constitutionality of Extreme Risk Protection Orders, we need to alert you to the case of G.W. v. C.N which was decided on December 22, 2022 by the New York Supreme Court and which involved the constitutionality of that state's ERPO when examined under Bruen.

That opinion stated the following: "***The question presented is whether CPLR Article 63-a (Extreme Risk Protection Order Statute) sufficiently protects a New York's citizen's due process rights when, as here, the state denies a fundamental right, to wit: By infringing on that citizen's right to keep and bear arms under the Second Amendment of the United States Constitution. This court holds that CPLR §63-a does not sufficiently protect a citizen's rights and therefore is unconstitutional.***"

According to Federal Law: Property cannot be taken from a defendant without the defendant having the opportunity to defend themselves. Yet: This is ***exactly*** what happens Ex Parte in 13 VSA 4054 (Extreme Risk Protection Orders; Emergency Relief; temporary ex Parte order), and it is also exactly what happens 15 VSA 1104 (Domestic Relations; Abuse Prevention; Emergency relief).

In the strongest possible terms, it is the belief of the VTFSC that the failure to recognize the concept of Due Process in those referenced statutes makes them BOTH unconstitutional. With 13 VSA 4054 before you in regards to a suggested amendment, you may well have a duty to correct this error as you contemplate other changes.

Further than that, when the ERPO statutes were first considered by this Committee, after a great deal of discussion it was determined that the standard of evidence for both a Temporary ERPO and a Final ERPO should be based on Clear and Convincing evidence. We supported that version.

Subsequently however, the House changed the standard of evidence to be Preponderance for a temporary ERPO order, which caused us to drop support as that standard is simply too low. It is, as Judge Grearson put it: "The weight of a feather placed on one side of a balanced scale".

I will therefore must mention that we seem to have a disparity between our Domestic Violence Statutes, which have Preponderance as being the standard for both temporary RFAs and final RFAs, and the ERPO statutes which have Preponderance for a temporary ERPO, but Clear and Convincing for a final ERPO.

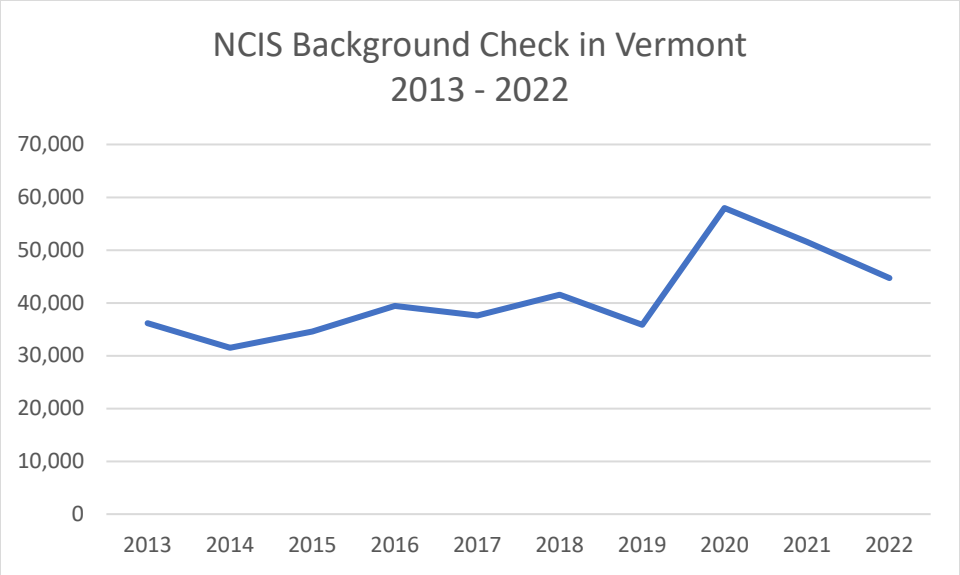
Section 9 – Waiting Periods

When I testified on this bill in HCHC, they were still undecided as to whether this section should require a 48 or a 72-hour waiting period. Regarding either waiting period: Whatever waiting period is chosen, that waiting period plus 5 minutes will defeat it, and a waiting period means nothing when lethal means are already owned.

Per data from the Rand Corporation, there is apprently no conclusive study about the effectiveness of one waiting period over another for a person who is intent on suicide, beyond conjecture.

The truth is that the vast, vast majority of suicides committed by firearms are done with firearms already owned, not firearms just purchased, a situation that this bill does not consider at all.

For the period of time from 2014 through 2023, the NCIS system recorded that there were 440,881 background checks run on the purchase of firearms in Vermont. That's an average of 44,088 per year; an average of 3,674 a month, an average of 122 per day, or almost 5 per hour (using a 24-hour day).



Against a very small number of people who were intent on killing themselves buying buying a firearm across a 10-year period, there were 440,879 other purchasers that apparently did not have that in mind.

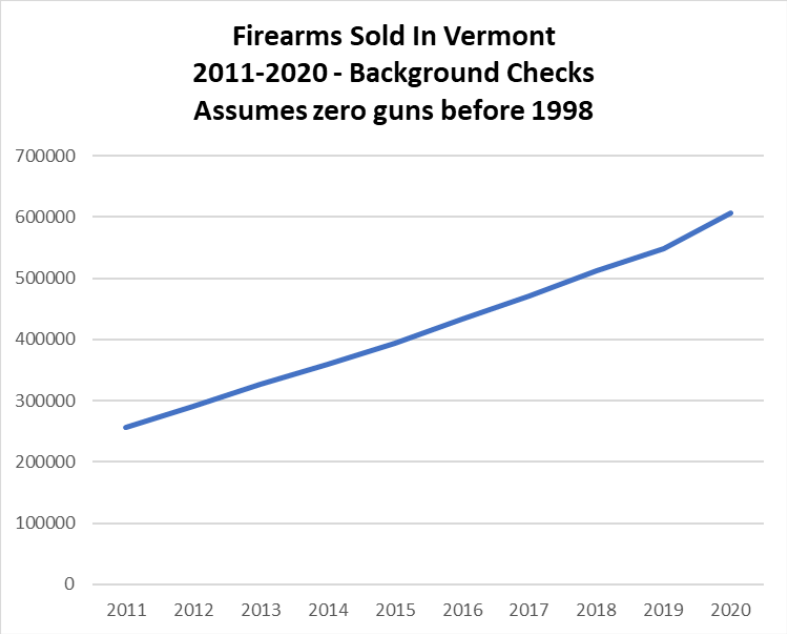
A significant point to be made here is the number of Vermont homes that have firearms in them, which means there are significant numbers of Vermonters who already have access to lethal means.

We ask: If the sole point of this bill is to stop people who do not own guns from buying one so that they can kill themselves with it, what is the point of subjecting an ***already-existing*** firearm owner to any waiting period?

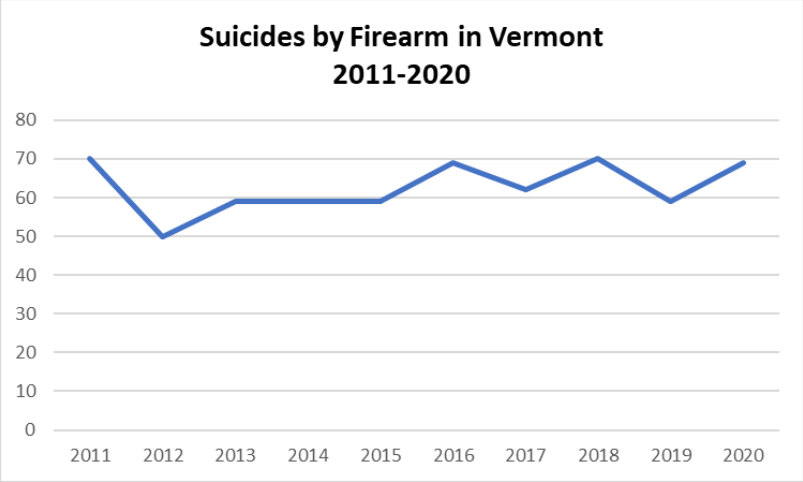
How would we measure the tragedy of someone who had an immediate need to purchase a firearm for their defense because of the threat of a known assailant, but were not able to because of a waiting period, and were then killed by that known assailant?

As noted above, Vermonters buy an average of 44,088 firearms per year. Since 1998, Vermont has used the FBI's NCIS system for background checks. Between 1998 and 2010, 229,624 firearm background checks were completed in Vermont, indicating that there were at least that number of firearms sold.

Assuming that NO GUNs existed in Vermont prior to 1998, and then graphing the increase of firearms in Vermont per FBI NCIS background checks, we see the following:



In comparison, below is the number of suicides by firearm in VT across the same period:



Based on the above, it seems clear that an increase of approximately 376,409 additional firearms into Vermont did not seem to impact the number of suicides by firearm at all. More firearms did not equate to any corresponding increase in suicide by firearm. Given that the Vermont population only increased by about 20,000 across this period, it would seem that as a society, we have a fairly constant percentage of people in crisis.

I conclude with the following thoughts.

First: The fastest growing demographic of new gun owners are people of color, with purchases by females exceeding purchases by males, and data shows that a significant portion of crime is against people of color. Women overall are a high demographic of new firearm purchasers.

Second: If Vermont ever establishes a Waiting Period, the long history of gun shows here in Vermont will be dealt a death blow, when to the best of our knowledge there is not a single story in Vermont where a gun show was used to purchase a firearm that was then immediately used by the purchaser to kill themselves. Gun shows are very popular amongst the sporting communities here in Vermont, they fully conform to state and federal firearm laws, and they bring much needed revenue to local economies.

Finally, I must beat the drum of unconstitutionality one last time. In all my research to date, I have yet to find an active challenge to any Waiting Period law under the Bruen decision. What I did find however was the case of Silvester *v.* Harris. In 2014, a challenge was made to California's 10-day waiting period law. This case was heard in the United State District Court of California, which ruled in 2014 that CA's law was unconstitutional. In making that ruling, the opinion stated:

"***Defendant has identified no laws in existence at or near 1791 (founding) or 1868 (14th Amendment ratified) that imposed a waiting period of any duration between the time of purchase and the time of possession of a firearm.***"

In the Final Order, the District Court ruled: "***The Court has found that the 10-day waiting periods (of Penal Code § 26815(a) and § 27540(a)) violate the Second Amendment.***"

Upon receiving this verdict, the case was immediately appealed by California to the 9th Circuit. As was expected, the 9th Circuit overruled the lower court, and they did so by using a two-step means-end test and intermediate scrutiny.

That two-step means-end test and intermediate scrutiny has been specifically ruled as invalid by SCOTUS when dealing with the 2nd Amendment in the NYSRP v Bruen decision. In making that ruling, SCOTUS directed that the proper method of evaluating 2nd Amendment laws was a close examination of the text, history and tradition (I.E., historical analogues) of what the founders had in mind at the founding of our country.

Under Bruen, and as the District Court pointed out, there was no historical analogue to a having a Waiting Period to purchase a gun at the time of our founding and it therefore ruled the law as being unconstitutional. We also know that in order to over-rule the District Court's decision, the 9th Circuit used a testing scheme which SCOTUS has now specifically ruled as being incorrect.

That decision was then reviewed in 2018 by SCOTUS in Silvester *v.* Becerra, which denied certiorari. A dissenting opinion in that decision was written by Judge Clarence Thomas who stated the following:

"***The Ninth Circuit's deviation from ordinary principles of law is unfortunate, though not surprising. Its dismissive treatment of petitioner's challenge is emblematic of a larger trend. As I have already explained, the lower courts are resisting this Court's decision in Heller and MacDonald and are failing to protect the Second Amendment to the same extent that they protect other constitutional rights."***

And;

"***Nearly 8 years ago, this Court declared that the Second Amendment is not a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees'. By refusing to review decisions like the one below, we undermine that declaration. Because I still believe that the Second Amendment cannot be 'singled out for special – and especially unfavorable – treatment', I respectfully dissent from the denial of certiorari.***"

Under the Bruen lens, and given the strength of Judge Thomas's statement coupled with the renewed interest in the 2nd Amendment by SCOTUS post-Bruen, it must be seen that a waiting period is unconstitutional AT LEAST for those that already own firearms, and likely for new purchasers as well.

The ability to defend oneself is a right, and as you consider a waiting period, I remind the committee of a quote from Dr. Martin Luther King: "***A right delayed is a right denied***".

Thank you for the opportunity to speak; if you have any questions, I will do my best to answer them.