



VERMONT FEDERATION OF SPORTSMEN'S CLUBS, INC.

ORGANIZED 1875

affiliated with the National Rifle Association



H.33

Good Morning, my name is Clint Gray; I am the Northern Vice President and the Immediate Past President of the Vermont Federation of Sportsmen's Clubs, Inc. The Vermont Federation of Sportsmen's Clubs, Inc. was founded in 1875 and is one of the oldest and largest sportsmen's organizations in the State of Vermont. We consist of 45 clubs and approximately 8,000 plus members that are responsible citizens.

Before I begin on H.33 I want to take the time to thank you for your efforts on H.35, Clean Water Act. More important included in H.35, the balance between clean water and sportsmen's activities within the proposed bill. We will continue to support H.35 as long as there is no change in that balance.

I also want to thank you Mr. Chairman for stepping up and stopping the bashing of the Agency of Natural Resources. One would not recognize the Agency of Natural Recourse from the testimony of the proponents and the great work that is done by its very dedicated personnel.

Now turning to H.33, the Vermont Federation of Sportsmen's Clubs, Inc. is opposed to H.33 in its entirety. We take firearm safety, hunting, fishing and trapping very seriously. This is why the Federation and its member clubs invest so much time in the training of shooters and hunters; the development of safe ranges and the training of firearm instructors and range safety officers. The Federation conducts hunter education programs; let's go fishing seminars and trapping programs, advance hunting education day and women on target programs.

The Federation does not engage in the legislative or regulatory process in a hasty manner. We believe that laws should not be enacted based upon emotion or public relations campaigns. Instead, legislation must be based upon sound public policy and comply with the state and federal constitutions. It is the Federation's

position that H.33 in its entirety does not meet these standards and must be opposed.

Vermont has a form of Dillon's Rule and the Legislative process has served Vermont very well for many years.

The Federal government grants authority to the states and that is consistent. The State Government grants authority to the municipalities and that is also consistent. When municipalities attempt to supersede the state laws, this created chaos.

The name of John Forest Dillon (1831-1914) has been forever linked to a basic principle of municipal law followed in Vermont and the majority of states – which municipalities can only legislate within the limits permitted by the state legislature. Dillon was admitted to the Iowa bar in 1852. Before his time, the issue of corruption in municipal government was very real and it was often expected that officials would help themselves to the “spoils” of office. America was a young country and still figuring out the rules. He was elected to judgeship in 1858 and was progressively elevated to various judicial levels until President Grant appointed him to the Eighth Circuit Federal level in 1869. Throughout his long career, he held a broad outlook and saw the law develop day-by-day in the organic framework of municipal actions of young states. He saw a strong need for some kind of manual of practice – a how-to guide of government practice and civil procedure that could be trusted, due process, and financial instruments to pay for public improvements such as schools. He wrote a book “Municipal Corporations”, in 1872 which remains highly influential today.

Dillon's Rule: “Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.” While others argued successfully to create a home rule-based state/municipal framework, Dillon's Rule has prevailed in most states, and hundreds of U.S. court decisions have employed that line of thinking to determine the scope of municipal powers and rights.

Title 24 Chapter 061: Regulatory Provisions; Sub-chapter 011: Miscellaneous Regulatory Powers. Section 2291: Enumeration of Powers.

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city or incorporated village shall have the following powers. There are 27 of them.

I bring to your attention Section 8 which states: “To regulate or prohibit the use of discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. section 5227.

Furthermore, Title 24 chapter 061, subchapter 011: Miscellaneous Regulatory Powers; Section 2295. Authority of municipal and county governments to regulate firearms, ammunition, hunting, fishing and trapping.

Except as otherwise provided by law, no town, city or incorporated village, by ordinance, resolution or other enactment, shall directly regulate hunting, fishing and trapping or the possession, ownership transportation, transfer, sale, purchase, carrying, licensing or registration of traps, firearms, ammunition or components of firearms or ammunition. This section shall not limit the powers conferred upon a town, city or incorporated village under section 2291 (8) of this title. The provisions of this section 24 V.S.A. 2295 shall supersede any inconsistent provisions of a municipal charter.

This preempts Vermont municipalities from enacting restrictive firearm laws, leaving any constitutionally permissible regulation to action by the legislature.

State v Rosenthal (1903) “Rutland city council had adopted an ordinance which required a person to obtain permission from the mayor or police chief if they wanted to concealed carry in the city. The Court, in a one page decision, unanimously and unequivocally struck down the ordinance, stating “the carry of firearms for one’s defense is a fundamental right of a citizen stating that the ordinance is repugnant to the Constitution.”

Now how does this apply? This proposed bill is an attempt is to stop hunting, fishing, trapping, non-motorized canoeing, kayaks and wildlife viewing which state law preempts that attempt. More importantly the provisions of this section 24 VSA 2295 shall supersede any inconsistent provisions of the municipal charter and

preempts the Vermont municipalities from enacting restrictive firearms laws, leaving any constitutionally permissible regulation to action by the legislature.

Testimony has shown concern for fishermen on the ice not having a port-a-potty and in the case of Berlin Pond, the land mass surrounding the surface water is posted against trespassing. So if a fisherman even wanted to walk to the shoreline onto the land mass and relieve himself, he would be subject to prosecution under Title 13 V.S.A. 3705, Unlawful Trespass.

With all that said the law is very clear that this proposed bill is against current state law and should be voted down.

The Vermont Federation of Sportsmen's Clubs, Inc. opposes H.33 and we are strongly opposed to having an ordinance that shall control (trump) state law and state rule.

Thank you