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January 29, 2018

Senator Richard Sears
Chair, Senate Judiciary Committee
VIA e-mail only

Re: H.422 / Removal of Firearms

Dear Senator Sears:

Thank you for the opportunity to comment on H.422, which pertains to removal of firearms from individuals cited or arrested for a crime of domestic violence.

The first sentence of our state Constitution guarantees all Vermonters the right to enjoy life and liberty. For victims of domestic violence, this right often rings hollow. All too often, their abusers deprive them of their liberty and of their lives. Domestic violence is the most common cause of homicide in Vermont.

Our state Constitution also provides Vermonters with the right to bear to firearms in the defense of themselves and the State. Vermont has a culture of responsible gun ownership, and the vast majority of Vermonters who own firearms do so responsibly. Nonetheless, the reality exists that firearms are also an instrumentality of homicide.

A victim's right to life and a gun owner's right to bear arms could be viewed as conflicting, and no doubt there are some participants in political discourse who seek to enflame both the perceived and actual conflicts that exist between these rights. Fortunately, Vermonters have a long tradition of constructive engagement on such issues, and I look forward to a reasoned and respectful exchange of ideas regarding H.422.

In my view, H.422 treads a narrow but honorable path between the right to life and the right to bear arms. It applies only to those facing a criminal domestic violence charge, and firearm removal is subject to review by a judge in the criminal case.

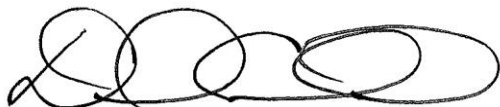
Under existing law, individuals facing domestic violence charges are subjected to conditions of release (13 V.S.A. Sec. 7554) that often restrict constitutional rights on a temporary basis, such as the right to travel, the right to free association, and the right of free speech. These conditions are imposed to protect the victim, protect the public, and ensure the defendant's appearance at trial. Infringement of these freedoms on a temporary basis in connection with a criminal case is part of the existing system. It is within the context of this system, however imperfect it may be, that H.422 is intended to operate, and it is within the context of this system that H.422 makes sense.

Although I support H.422 as passed by the House, I would recommend the following changes in the event your Committee determines that the bill does not currently strike the appropriate balance between competing rights:

- Offer as an alternative to seizure of firearms the on-site disabling (trigger locks or gun safes) of firearms by the police at the gun owner's residence.
- Limit applicability of H.422 to felony crimes of violence, recognizing that such crimes typically involve serious injury, a second or subsequent offense, or a violation of a court order of protection.
- Require that firearms be made available for retrieval by the lawful owner within 48 hours of a finding of "no probable cause" to support a criminal charge, a dismissal of the charge, or an acquittal.

Thanks very much to you and your committee for your work on this matter. Please do not hesitate to contact me with your questions or concerns.

Best Wishes,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end.

David J. Cahill
Windsor County State's Attorney