

ACLU-VT Testimony on H. 422

Senate Judiciary Committee

March 15, 2018

Thank you for giving me the opportunity to testify on H. 422 as passed last year by the House.

The ACLU defends the constitutional rights of all people and that includes Second Amendment rights. At the same time, there are many regulations and restrictions that can be adopted that will protect the public and do not violate the Second Amendment right to bear arms. The ACLU supports reasonable and constitutional regulations of firearms, which is why it is so important that any bills on this subject passed by the Vermont Legislature are crafted to withstand constitutional challenges—it would be futile to pass laws only to have them overturned by the courts.

Our position is consistent with the 2008 decision of the U. S. Supreme Court in *District of Columbia v. Heller* (554 U.S. 570), in which the Court found an individual right to possess a firearm “to use that arm for traditionally lawful purposes, such as self-defense within the home.” Justice Scalia, writing for the Court in *Heller*, noted that “like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose....”

So while reasonable firearms regulations can be fashioned in a manner consistent with legal and constitutional precedent, H. 422, as passed last year by the House, is problematic with regard to constitutional rights, including due process. The legislation as drafted is overly broad, provides no opportunity for a post-deprivation hearing, and gives law enforcement sweeping authority to remove firearms indefinitely unless the owner asks for their return. This legislation would be improved by the addition of a swift post-deprivation hearing, removing the burden of requesting the return of the firearms from the owner, and narrowing the reason for removal: currently, removal is allowed for the protection of the officer or any other person, not simply those who were involved in or are immediately adjacent to the alleged incident or danger (i.e. the alleged perpetrator’s family and alleged victim). It goes beyond domestic violence to any act where a person may attempt to



PO Box 277
Montpelier, VT 05601
(802) 223-6304
acluvt.org

Julie Kalish
President

James Lyall
Executive Director

inflict harm on any other person. While due process principles generally favor a pre-deprivation hearing or the requirement of a judicial warrant, we understand that this bill is meant to address emergency circumstances wherein those options may not be available, so a swift and thorough post-deprivation hearing may be constitutionally permissible.

Again, the ACLU supports the legislature's efforts to enact firearms regulations that enhance public safety while respecting the constitutional rights of all people.



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