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Vermont Attacks the US Constitution (Again): Closing the "Charleston Loophole"

Vermont's progressive, gun-fearing Legislature commenced its 2020 legislative session on January 7, using its large Democrat majorities in both houses to ramrod a host of ambitious bills down the throats of the citizenry, beginning with an ill-considered "gun bill" which hit the [House Judiciary Committee](#) the morning of January 9. The arrogance of this overwrought (and overconfident) cabal is evident to all but themselves.

The "Firearms and Domestic Violence Bill" (H 610) is the first of a phalanx of intended assaults on the Bill of Rights. But its proponents forgot something -- the pretense of Constitutionality.

This bill seeks to close what leftist ideologues dub the "Charleston loophole," but which federal law retains as a Constitutional default provision. When a person seeks to purchase a firearm, they must undergo a background check in which they are either instantly approved, instantly rejected based on past criminal history, or are placed on hold pending a three-day delay to permit federal authorities to make further inquiries to determine whether they are legally disqualified from the purchase. If the three days elapse without action, a federally licensed gun dealer may proceed with the sale.

The criminal who opened fire on a defenseless black congregation in Charleston, South Carolina in 2016 obtained the murder weapon via a legal purchase, despite a three-day delay, when authorities failed to intercede. Such purchases constitute a minority of gun sales, but the Left has seized on this case as an opportunity to brand their virtue-signalling crusade as a necessary evil to protect the public. Whether or not Vermont's earnest effort would actually save lives, it most clearly falls far shy of constitutional acceptability.

Federal efforts to "close the loophole" have sought to extend the three day [hold to ten days](#), to allow investigators more time for due diligence. Vermont's pushy majority came out swinging for a more distant fence, and introduced a law to simply prohibit the purchase if the three days pass in silence. The [shoddy bill states](#):

This bill proposes to: (1) eliminate the "default proceed" process created in Federal firearms background check law (commonly referred to as the "Charleston loophole") by prohibiting the transfer of a firearm unless the National Instant Criminal Background Check System has affirmatively determined that the transferee is not prohibited from possessing firearms.

In hearings before Vermont's House Judiciary Committee, the bill was supported by both Erik Fitzpatrick of the "nonpartisan" [Office of Legislative Counsel](#) and Vermont's ultra-progressive and openly partisan Attorney General TJ Donovan, who [stated in testimony](#) that he "...fully support[s] this bill." Neither of these gentleman addressed Constitutionality in their eager endorsement, reflecting that *both* are either so woefully incompetent, or so bloatedly overconfident, that they neglected even a pretense of homage to our nation's founding document.

The reason that federal law contains a three-day limit is that at some point, lacking evidence of criminality, every citizen of legal age possesses a right to purchase a firearm -- some might even want to use said weaponry in self defense, against rampaging serial killers (like the one being employed to deprive them of that ability). What Vermont seeks to enact would mean that its citizens will be deprived of that right *solely* because bureaucrats in the federal government failed to find any evidence to halt the sale. Because they have come unhinged, they have forgotten what "shall not be infringed."

If women had to wait for a mental health approval prior to acquiring an abortion, or protesters were deprived of their right to free speech because government allowed three days to lapse and did nothing, the Left would comprehend what a giant FAIL they have launched in the Green Mountain State. But thus far, neither of these advocates, nor the two attorneys who sit on the Judiciary Committee, have batted a biased eyelash. The Office of Legislative Counsel is supposed to police legislation for *exactly* such problems, but this is just one of many laws in which that function has been skirted.

In addition to creating an absurd roadblock that would fail Constitutional scrutiny even in Vermont's knee-jerk liberal courts, this statute fails because of federal preemption -- it conflicts with federal law concerning statutes which govern not only the Second Amendment but interstate commerce. But it gets better... er, worse. If a would-be gun buyer is denied a firearm because no one did anything, the Vermont government proposes to... not do anything. That is, there is *no appeal process* in the statute for a person denied the right to purchase a firearm. As in, *no Due Process*, at all. (Perhaps this is the consequence of Vermont's marijuana legalization, and these people are high on more than their power trip).

Vermont offers a backdrop that should cause more than just Vermonters to pause here. It has one of the worst business climates, and economies, in the nation. Its pension system is dramatically underfunded. An opioid epidemic, with an aging population, fleeing workers and taxpayers, unbearable property taxes, the highest per capita

student spending in the United States, and crumbling credit ratings, it faces a bleak future when the national economy falters. These economic conditions are what push shooters to attack schools, desperate dealers to deal drugs, despairing citizens to use opioids, young people to commit suicide, and marriages to collapse under acrimonious stress.

But instead of addressing these underlying problems, these tax-hungry bureaucrats seek to tax marijuana, tax gasoline via a [carbon tax](#), consolidate and close local schools (as costs steadily increase nonetheless due to increasing administrative costs), provide steady raises and more jobs for state employees, and otherwise [ignore the suffering citizenry](#). Vermont's Legislature, in other words, is aggravating the circumstances that increase violence, suicide, and domestic abuse, while focusing numerous bills on seizing guns as the culprit. Wrong culprit.

The complete [lack of constitutional consideration](#) observed in this legislative circus is commonplace in this bombastic legislature, where "saving the children" equates to terrifying them with "active shooter alerts" to condition them for slaughter, [climate change activism](#) that buses them to events to [block traffic and break laws](#), and prolific [Black Lives Matter displays](#) at their schools so they can be taught how to be "racial justice warriors" [against their own culture](#) and family members.

Vermont has had no mass shootings. It *has* had a mass collapse of mental health services. Following the closure of one of its [largest psychiatric care facilities](#) in 2012, this problem has worsened, with medical hospitals routinely clogged with mental health patients (or substance abusers, or the two combined) waiting weeks or months for lack of beds in appropriate facilities, at high costs with no service provision for the mentally ill. This is [crippling small rural hospitals](#), and has been [continuing unabated since 2011](#). Now, Vermont's chief remaining facility for mental health services, the [Brattleboro Retreat](#), has announced it will likely close due to years of financial failure. The Legislature is nonplussed -- it must protect the children from guns!!

But it is *not* protecting the children: it is terrifying them, politicizing them, and exposing them to increasing numbers of homeless, drug-addicted, mentally ill adults. Vermont boasts one of the [lowest crime rates](#) in the nation, but one of the highest rates of unconstitutional blunders such as H 610 -- it is clear which direction the criminal conduct is headed.