

**Eric Davis, President, Gun Owners of Vermont**

**Interim Testimony on H.610 version 6.1**

**House Judiciary 02/12/20**

Hello, my name is Eric Davis, I am the president of Gun Owners of Vermont and I thank the committee for the opportunity to speak today. I would like to begin by acknowledging the committee's efforts to improve this bill over the last few weeks, but we unfortunately still have some lingering concerns about this proposed legislation.

**Section 1**

We appreciate the attempt to find common ground on this part of the bill, however we remain concerned that Section 1 still weighs heavily on the side of infringement with only a small theoretical chance of a benefit. The Brady check already delays good people access to their rights for three days under the assumption that they are guilty until proclaimed innocent by the NICS check. As we previously discussed, approximately 98% of all hits on the NICS check are false positives. This means that the wrongfully accused 98%, will still have their natural right of self-defense suspended for up to an additional 4 weeks on the justification of catching the tiny fraction of the remaining 2% who MIGHT slip through this theoretical loophole.

We would humbly suggest that progress might be easier made regarding more effective background checks by reviewing the reporting system and the tools that law enforcement have at their disposal to ensure that firearms don't end up in the wrong hands. Instead of chasing hypothetical scenarios where we default to removing rights from good people, perhaps we should ask some different questions. For instance, are prohibited persons being properly reported to the NICS system by law enforcement, and the courts? Are NICS denials being thoroughly investigated by law enforcement? If so, how many of the denials in Vermont each year result in the prosecution of that individual for attempting to illegally purchase a firearm? What is the strategy of our law enforcement to combat straw purchases and theft, the two most common ways of obtaining firearms illegally? In an effort to find common ground, I think we can all agree that there are certain individuals in our society who should not have access to deadly weapons and that we should at least try to manage that risk. How we handle these folks as a society is up for contentious debate, but we believe progress toward safety can be made in numerous areas without compromising the right of good people to obtain a firearm.

With respect made to the efforts to improve this part of the bill, we still believe that Section 1 has way too much "bad" in exchange for a very small, and purely theoretical "good." We continue to oppose this section.

## Section 2

Regarding section 2 and seizing firearms from persons subject to RFAs, the committee has heard much testimony on the legality, but not much on the logistics of such a proposal. Out of curiosity, we started crunching some numbers and the results were staggering.

We begin with The Small Arms Study, conducted by the Graduate Institute of International and Development Studies in Geneva, Switzerland which estimates there are currently 393 million privately owned firearms in the U.S. We chose this study for the purposes of this illustration accepting that this estimate is likely lower than the actual number based on other available data. Keep in mind there is no way to get a clear number and all we have are educated guesses based on the number of firearms manufactured since the GCA in 1968 mandated firearms be serialized. Actual numbers are very likely to be much higher due to several factors but for the sake of this example we will use the number of 393 million or a rate of 1.205 guns per resident in the United States.

626,299 residents in the state of Vermont x 1.205 firearms per person = 754,690 guns in VT. This number is also likely low since a rural state like VT will have a much higher ownership rate per capita than the national average. There have been over 600,000 background checks conducted in the State of Vermont just since the Brady Bill in the 1990s so the actual number of civilian owned firearms in VT could well be double, or even triple our estimate. Again, for the sake of argument we are using the lowest possible number given the available data.

Again, there is no way of knowing for sure, but some estimates put the number of gun owning households in VT between 70 and 80 percent and again, for the purposes of this argument, we have intentionally watered down the number to a safe guess of 60%. 259,589 households in VT x 60% ownership rate of firearms = 155,753 Households owning a total of 754,690 guns or approximately 4.845 guns per gun owning household in VT.

There was a total of 3,380 RFA (relief from abuse) orders filed in VT in 2018. If 60% of these households possess firearms, that shakes out to 2,028 RFAs involving firearm confiscation at an average of 4.845 firearms per household. If we take the 2,028 RFAs multiplied by 4.845 guns per incident -again, using the lowest possible estimates to calculate the rate of gun ownership- that makes 9,826 firearms that would have been confiscated in 2018 under H.610 just from RFAs.

Vermont has 69 law enforcement agencies which employ 1,103 people. Each law enforcement agency would be tasked with the seizure and storage of 142.4 firearms per year on average in addition to the firearms seized in regular crimes. Assuming that 20% of the 1,103 law enforcement personnel in VT are administrative and do not see field work, that means that 882 officers across 69 departments would be

tasked with 2,028 gun confiscation incidents per year or 29.4 incidents per department. This also does not consider the fact that many law enforcement agencies in VT rely on mutual aid from neighboring departments for such tasks. Considering this the number of high-risk gun confiscations per LEO would be much higher.

That is 2,028 incidents per year in which the volatility of an already difficult and dynamic situation will be unnecessarily escalated by the rigidity of a law mandating the seizure of firearms. It is 2,028 times that we put the lives of our LEOs at risk serving a warrant for gun confiscation when it may not be necessary. If the court already has the discretion, why mandate the use of force and potentially escalate a bad situation? Why impose the logistical burden on these departments if we don't have to? Applying extra layers of bureaucracy and force where it may not be warranted increases the risk dynamic for the victim, the defendant, and the law enforcement officers. Like Section 1, Section 2 of this bill defaults heavily to the curtailment of the right to own a firearm and the circumvention of due process on the justification that a crime MIGHT someday be committed. This law assumes guilt for ALL 3,380 defendants, subsequently stripping them of their rights without trial.

It also bears noting that the undertone of this discussion assumes that the defendant in the RFA will be male and the victim a female. While statistics will likely show this assumption to be mostly accurate, as I'm sure everyone is aware, abuse comes in all shapes and sizes and domestic violence is not a fixed narrative, rather, every incident is different. Is it not possible for the dominating and abusive partner in the relationship (regardless of gender) to also be manipulative enough to use an ERPO or RFA in their favor? It would seem quite possible to have an incident where an RFA is wrongfully filed against the actual victim of the abuse, subsequently stripping them of their ability to obtain a firearm as a last line of defense. Again, this law takes power and discretion from its rightful place in the courts and mandates the unnecessary use of force against potentially undeserving people.

In section 2, (3)(A)(ii) we have questions regarding implementation. Prohibiting the defendant from residing at a residence where firearms "can be accessed by the defendant," seems subjective and open to broad interpretation. What would be the specific requirements for the homeowner securing their firearms and who would be responsible for making sure the homeowner complies? Are we not only restricting the homeowners right to keep a firearm at the ready for their own protection, but also subjecting them to an illegal search of their property by a police officer to make sure their guns are actually locked up? This burden will be imposed on an individual who has not even been implicated in a crime and is just trying to help a friend. The implications of such a law are broad. Will a homeowner who does not own a gun safe soon be required to screen visitors for potential prohibited persons? Again, we believe this rigid, blanket policy of force is misguided and unnecessary when the courts already have the proper discretion to prohibit possession when the situation calls for it.

## **Section 5**

In Section 5 (6)(B) we take great exception with the wording that exempts law enforcement from any damages incurred during the seizure, transportation and storage of the defendant's firearms. We heard testimony from the commissioner of public safety about how law enforcement needs to be exempt from such things because someone will eventually "sue the government and it will cost the taxpayers money."

If I might project from the perspective of a (dare I say common) Vermont gun owner, this part of the bill is particularly rotten from our perspective. The thought of first being falsely accused, followed by the circumvention of one's due process and right to a fair trial, for the purpose of stripping them of their natural right to self-defense is bad enough. But to hear the government agency who would oversee the trampling of these rights, state that their organization must be immune from any accountability for damages incurred during the process, on the grounds that it would cost the rights trampers too much of our taxpayer money to defend themselves against us, frankly blows our minds. We acknowledge the wording of the bill includes an exception for negligence, however the cynic in all of us should question the fairness of a system that first allows government to bypass multiple safeguards which are enshrined in our constitution and then relies on itself to determine if it has been negligent or committed any wrongdoing.

We believe it practical to conclude that persons suffering gun confiscation under this law would likely see their firearms damaged and devalued through improper storage practice with no recourse. Antique and collectable firearms are very common, very expensive and very susceptible to damage if not handled and stored properly. Furthermore, accessories like scopes are incredibly sensitive to mishandling and can often be worth more than the firearms themselves. A bill which mandates unlawful confiscation of private property is bad enough, but to leave citizens with no avenue to recover damages incurred during the seizure of that property is horrendous. It might be able to be made legal from a technical standpoint, but on grounds of morality, when viewed through the paradigm of individual rights, it does not pass muster. Frankly, it's not even close. We strongly oppose this section.

## **Sections 6 - 10**

In sections 6-10, we are concerned that expanding Vermont's relatively new ERPO law before there has been time to evaluate its effectiveness as is, will further increase the risk of misuse. The existing law has already been used in Vermont with mixed results; consider the incident in Middlebury where a man had his firearms removed from his home because his nephew's friend talked about stealing one of them to shoot someone.

We have also seen these laws turn deadly as was the case in Maryland in 2018 when a 61-year-old man was shot and killed by police officers serving an ERPO. Gary J. Willis had not been convicted or even accused of a crime when police arrived to confiscate his guns. Confused and irate, Willis resisted the officers attempts to disarm him and was shot and killed in the struggle. Michelle Willis, the man's niece, told reporters that one of her aunts had requested the red flag order against Willis but she declined to give a reason. She reported that her uncle "likes to speak his mind," but "wouldn't hurt anybody."

We believe that taking a relatively new law, which already has serious implications to due process, as well as little to no observable data as of yet to determine its effectiveness, and expanding the scope and threshold of the manner in which it might be abused, is highly unadvisable. Considering the many different dynamics of modern family relationships, adding family and household members (as defined in 15 VSA 1101) to the list of people who may request an ERPO, significantly increases the chance for abuse of this law. As defined, a "household member" could mean almost anyone. A vindictive ex, a disgruntled sibling, or even your daughter's deadbeat boyfriend that you've been trying to get out of your house for the last few months. Are we sure that it's a good idea to give these people the power to send police on a gun confiscation raid to someone's home on a whim? We think not.

**In conclusion:**

This law might stop a criminal someday, it may even save a life, who knows? But for now, what we know for certain is that this legislation harms innocent, law-abiding Vermonters by curtailing their guaranteed rights of due process and self-defense. Suspending the rights of individuals -even temporarily- on the pretense that they MIGHT offend, sets a dangerous precedent, and can be nothing less than infringement. The practice of denying the natural rights of individuals based on the presumption of guilty until proven innocent has no place in a free society.

When comparing the balance of suspending the constitutional rights of every Vermonter vs the uncertainty, wishful thinking and conjecture offered by this bill in return, there is no comparison. The potential benefit in this proposed equation is greatly outweighed by the absolute certainty that this law will unnecessarily harm the good people of Vermont. We strongly oppose this bill.