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Matt,

I hope you have had a chance to get some of the news on House judiciary proceeding on H.133, An act relating to emergency relief from abuse orders and relinquishment of firearms.

As Chris Bradley, Eric Davis and I have now all testified, we see an unusual and unsustainable conflict between the RFA statute as currently applied and the recent (2018) ERPO statute with regards firearms confiscation. The lower evidentiary requirements in the statutory RFA Finding versus the higher evidentiary standard and specificity of the relation to firearms in the ERPO statute begs the following questions.

Since the effective date of the ERPO statute 13 VSA 85, 4053 (<https://legislature.vermont.gov/statutes/section/13/085/04053>) which the Court has applied with great success and without complaint, how can the previous practice of "exercising judicial discretion" under the RFA Finding of threat of abuse continue to be the tool exercised for confiscation of firearms in these cases?

It would seem, and we have specifically argued, that the specified intent and effect of duly passed Acts & Resolves of the Legislature of the State of Vermont would supersede and negate the need for use of "created" discretionary powers?

Finally, with Defendants being noticed for an RFA demanding firearms relinquishment, would not the Defendant at the Time of Service of the initial RFA Order have a Due Process right to refuse compliance and demand an ERPO procedure under the law? Or at least, a valid Search Warrant under VRCP 41?

All three of us are anxious to hear your wisdom on these suppositions and assertions now before the Committee. Judge Gearson has vehemently defended current practice with facile explanations about Court administrative practices, citing the demand of 13 VSA 4053 for:

" A State's Attorney or the Office of the Attorney General may file a petition requesting that the court issue an extreme risk protection order prohibiting a person from purchasing, possessing, or receiving a dangerous weapon or having a dangerous weapon within the person's custody or control. The petitioner shall submit an affidavit in support of the petition."

We answer that the exact process both in Ex Parte and Final Hearings for ERPOs are happening smoothly and issuance of initial emergency RFA to impose all the other conditions against contact, harassment or threatening behavior would not be hindered by demanding the ERPO take over the proper statutory role of firearms confiscation.

As these RFAs do not often assert any actual criminal use of the firearms owned or possessed by Defendant but merely assert the existence of firearms and other dangerous weapons, we disagree with Judge Gearson asserting the "differences of the two statutes". He asserts the need for a Petition to be brought by an AG or State's Attorney is an unacceptable bottleneck. However, in the cases of threats of suicidal behavior he makes no such assertion that ERPOs fail to suffice. Is he faulting the statutory detailed ERPO process for being cumbersome, or simply defending now superseded "judicial discretion"? We cannot say from his statements to the Committee so far.

No written defense of the origins and citations of specific precedent have been provided by him or the Asst. AG Mr. David Scherr as to when and what has been established within this judicial discretion under the RFA statute with regards firearms confiscation. Although Judge Gearson has repeatedly and correctly pointed out that the sole evidentiary requirement of Preponderance in the RFA Petition is only to establish a practice of and/or likely future abusive behavior, he has correctly stated that the Conditions and Restrictions are entirely subjective to the stated goals of the statute. Consequently, there is in the RFA statute and discretionary subjective Conditions imposed as to firearms NO evidentiary standard asserted whatsoever by the Vermont Judiciary.

At least in the ERPO procedure the stated goal is clear to all, including Defendant and Defendants Counsel. An arbitrary justification for infringement of a Constitutionally enumerated right under Article 16 and the 2nd Amendment as mere Conditions of a Civil Order NOT RELATED to the underlying evidentiary Findings seems a thin gruel

substitute for Substantive Due Process under Vermont's Common Benefits Clause and Articles 1, 4, 11 and 16 of the Vermont Constitution.

Not only does the Vermont Judiciary assert no linkage between the evidentiary standard in an RFA and the denial of the Rights of the Defendant, it asserts the use of that arbitrary discretion as an justification to deny the access to a defined and statutory procedure established under ERPO

(<https://legislature.vermont.gov/bill/status/2018/S.221>). That denial of access includes a Clear and Convincing evidentiary standard that Defendant's Counsel could argue against the hearsay often clouded in the initial RFA affidavit filed by Plaintiff.

Consequent to these and other points I have included in my written testimony and Adjunct Statement (see link below), I have asserted a basis for Appeal likely based on Plain Error, under VRCP 12, 41, 52 and especially 57

(<https://casetext.com/rule/vermont-court-rules/vermont-rules-of-criminal-procedure/ix-supplementary-and-special-proceedings/rule-57-procedure-not-otherwise-specified>).

I am also intrigued by Rule 52 as to the possible Appeal if Defendant raises these conflicts at an RFA hearing and they are on record moving forward with subjective Conditions of confiscation of firearms under the Final RFA especially. After 14 days it is likely substantial progress could have been made on a parallel ERPO proceeding. Indeed, Judge Grearson does not contradict that likelihood.

Cases of interest as to Rule 52:

https://casetext.com/search?q=plain%20error%20vermont&PHONE_NUMBER_GROUP=P&sort=relevance&p=1&type=case

Please call me at 802-888-9390 so we can briefly discuss these assertions. I am anxious to see where we may have been correct as well as where we may have erred in our analysis.

I am expecting we will have to repeat our argument later this Spring before Senator Sears and his Judiciary Committee. I will also leave another voicemail message for you later today.

In Liberty, Bill

William R. Moore

February 17th, 2021 House Judiciary Committee Session with Chris Bradley, William Moore and near the end, Chief Superior Court Judge Brian Grearson:

<https://www.youtube.com/watch?v=4dzkUz60bw>

Attachment here and above; my Adjunct statement which is the basis for this letter.

<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Judiciary/Bills/H.133/Witness%20Documents/H.133~William%20Moore~Witness%20Testimony~2-17-2021.pdf>