

Vermont Federation of Sportsmen's Clubs

Testimony on H.133 - Chris Bradley

Thursday, February 4th, 2021

Chair Grad, Vice-Chair Burditt, Ranking Member Christie and House Judiciary Committee Members -

For the record my name is Chris Bradley and I am both the President and Executive Director of the Vermont Federation of Sportsman's Clubs (VTFSC), with the VTFSC representing approximately 60 member clubs across the state with over 11,000 members and growing.

Thank you for allowing me to address you on [H.133](#).

Prior to launching into my testimony, I would just like to make the Committee aware that this year the VTFSC made a commitment to try and establish working relationships with leadership, individuals, groups and organizations that are typically involved in discussions about proposed legislation that touches upon firearms.

To that end, we have reached out to individuals like Senator Baruth and organizations like The Vermont Network Against Domestic Violence and Sexual Abuse and others. These conversations are cordial and polite, we are completely open going into them that we may not be able to agree: But we believe that this is precisely the type of discussion and conversation we need before bills get submitted, and I commit to you we will continue to seek pre-committee dialogue.

As for my testimony: I begin by stating that the VTFSC fully recognizes the need, in what is hoped to be very rare situations, where there may be a requirement to separate a person from their firearm(s) by due process of law, in compliance with the Vermont and U.S. Constitutions.

We further understand that this is what is implied by [15 VSA 1103\(c\)\(1\)](#) when it states: "***The court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff....***".

Based on that, we fully understand the intent of H.133 is simply to codify what is essentially existing practice, and because of that: The VTFSC's initial reaction was that we could and perhaps should support this bill.

Unfortunately, and after further consideration: We cannot support this bill in its current form, although I will offer a 5-word change which would change it into something we could support.

The crux of our problem with both [15 VSA 1103](#) and [1104](#), as well as [13 VSA 4054](#) (ERPO, Emergency Relief, temporary ex parte order), is that the standard of evidence in each of those statutes is "Preponderance".

As a quick review of standards of evidence that gives our judges a basis to make rulings: It is generally accepted that there are three basic standards. The lowest is **Preponderance**, and to use an analogy provided by Judge Grearson: You can think of Preponderance as being a feather dropped on one side or the other of a balanced scale. To have a Preponderance, the scale needs only to move slightly, which would mean a certainty of something above 50%.

Clear & Convincing is the next higher standard, and if we think in terms of percentages: The weight on one side of the side of the scale would be a degree of certainty of about 71% or higher. Beyond Reasonable Doubt is a still higher standard, which kicks in at about 91% certainty.

As an another point of concern under [15 VSA 1104](#), I believe that a defendant can be ordered out of their own house - a residence that they pay for - based only on the weight of a feather.

However: When it comes to seizing / or relinquishing property that is specific to a constitutional right, and even though this is *somewhat* of a standard in current Vermont law: We do not believe that the weight of a feather should constrain a constitutional right any more than the weight of a feather should constrain your right of free speech, religion or assembly.

Just so we are all aware of the impact to Vermonters that are involved with RFAs, in looking at data from the Vermont Judiciary Annual Statistical Report for FY19, we see that there were **3,307** RFAs filed. Of those, 617 were immediately denied, with the judge apparently not feeling the feather's weight. As a side note then, please remember that about **1 in 5** filings immediately fail for some reason, with such reasons including frivolous and punitive actions that are not unknown in domestic relations.

That leaves **2,674** RFAs where the weight of a feather was felt, and because of Preponderance language and the fact that firearms are not uncommon in a significant percentage of Vermont households: Every one of those **2,674** cases could have resulted in an order to require the relinquishment of firearms.

Of those **2,674** granted RFA cases, we then see that **1,469** or well over **1/2** were subsequently denied or withdrawn, for whatever reason(s).

That's **1,469** Vermonters which may have had their property removed - due to nothing more than the weight of a feather. To me: It does not matter that this infringement on rights was only for a short period of time. To me: This appears to have the effect that almost 1,500 Vermonters may have lost their right to self-defense.

Sadly: While we know the number of RFAs that get filed, and how that number breaks down across time, it appears that we do not know some rather basic numbers, such as:

- How many times are firearms an issue in RFA Proceedings today?
- How many times does a court require the relinquishment of firearms in Temporary RFA situations today?
- When Temporary RFA orders are issued that require relinquishment, how many are subsequently withdrawn or denied?

If we don't have these numbers, and I do not think we do, I think we all might agree that having accurate numbers such as these would make your decisions more informed and possibly easier to make. Perhaps that is something that this committee has jurisdiction over and can look into.

As another concern that factors into our lack of support is the inconsistency between our new ERPO laws found in Title 13 in comparison to existing Domestic Relation laws found in Title 15. A rather glaring difference between the two is that in [13 VSA 4058\(b\)\(2\)](#) there is language that provides a criminal penalty for someone making false claims or statements in an ERPO case, with this being a criminal charge of not more than one year or fined not more than \$1,000.

We see no similar language in Title 15, yet we know that these false claims are likely to be occurring, as something must be accounting for the number of Temporary RFS being immediately denied, as well as the number of Temporary RFAs that had a Temporary Order issued but were later denied or withdrawn.

Should we not have consistency for making false statements and claims when a Constitutional Right is impacted in existing Title 15 statutes?

Back to the point: You may have noted that I previously referred to Preponderance as being *somewhat* of a standard when handling hearings where the defendant is or is not in court. I phrased it that way because it is not universal, and that there have been differences of opinion between the House and Senate when it comes to the standard of evidence required for the legal confiscation of firearms.

For example, you may recall that a couple of years ago the Legislature passed S.122, with S.122 being a bill directed at Extreme Risk Protection Orders (ERPOs). In passing the ERPO statutes, it was understood by all that these statutes were specific to removing firearms from individuals who may be a danger to themselves or others.

S.122 created both [13 VSA 4053](#) and [4054](#), with [13 VSA 4053](#) handling an ERPO when the defendant is present, and [4054](#) handling an ERPO Ex Parte. Speaking very broadly: Those two statutes do for ERPO what [15 VSA 1103](#) and [1104](#) do for Domestic Violence in regards to hearings where the defendant is or isn't present.

After much debate, and I believe because both [13 VSA 4053](#) and [4054](#) directly impacted rights that are protected under the 2nd Amendment and Article 16: The Senate opted to set the standard of evidence as Clear & Convincing for **BOTH** [4053](#) and [4054](#). I further believe they did so knowing what the standards of evidence were in [15 VSA 1103](#) & [1104](#).

S.122 then passed the Senate with both 13 VSA 4053 and 4054 being Clear & Convincing, it went over to the House, the House changed the standard in 4054 to Preponderance but left 4053 as Clear & Convincing, and they became law as things came down to the wire.

It is not just the Federation or associated groups that believe that the removal of firearms requires a higher standard of evidence than just Preponderance; the Senate initially decided on Clear & Convincing in regards to ERPOs, and I believe that this was because a constitutional right was in the balance.

As one more side note, and just for reference: When it comes to separating a person from their firearms in Federal Law, United States Code that addresses this issue does not allow for Ex Parte proceedings, the defendant must be present.

As mentioned previously, with the inclusion of just 5 words, the Federation would support this bill, and we suggest the following change:

*An order issued under this section may, if the plaintiff's complaint or affidavit includes information that the defendant possesses, owns, or controls firearms, and the court finds **by Clear and Convincing evidence** it necessary to protect the plaintiff or the plaintiff's children, require the immediate relinquishment, until the expiration of the order, of all firearms that are in the defendant's possession, ownership, or control or that another person possesses or controls on behalf of the defendant.*

As you consider that change, and in the spirit of being fair and consistent when the removal of constitutional rights are being considered, we additionally ask that another new section for Title 15 be added into this bill that is specific to criminal penalty being added for making false statements and claims.

Thank you

Chris Bradley
President & Executive Director, VTFSC
454 S Main, Northfield VT 05663
vtfsc.president@gmail.com
(802) 371-8758