VTFSC Testimony

H.133 - House Judiciary

2/17/2021

Chair Grad, Vice-Chair Burditt, Ranking Member Christie, distinguished Committee members and respected others who may be watching: Thank you for allowing me to speak again on H.133.

For the record, my name is Chris Bradley, and I am both the President and Executive Director of the Vermont Federation of Sportsmen's Clubs.

I begin by acknowledging that the VTFSC is aware of 20 VSA 2307(b)(1) which states: "***A person who is required to relinquish firearms, ammunition, or other weapons in the person's possession by a court order issued under 15 VSA Chapter 21 (abuse prevention) or any other provision of law consistent with 18 USC § 922(g)(8) shall, unless the court orders an alternative relinquishment pursuant to subdivision to subdivision (2) of this subsection, upon service of the order immediately relinquish the firearms, ammunition, or weapons to a cooperating law enforcement agency or an approved federally licensed firearms dealer...***".

According to our research on the genesis of Title 15, Chapter 21, Abuse Prevention; we believe we understand that when these statutes were created, the possibility of infringing on the rights of firearms owners was not envisioned. In proof of that, I ask you to search the entirety of Title 15, Chapter 21, Abuse Prevention -that would be statutes §1101 through §1173 - for the word "firearm", "ammunition", "weapon", "relinquish", "relinquishment", "confiscate" or "confiscation". You will find no such references.

It is apparent that when the Legislature crafted the 15 VSA Chapter (abuse prevention) statutes, and in the crafting of subsequent amendments - of which there are many - with the exception of this latest one there has never been any amendment that extended the RFA statute to provide the authority to suspend the right to keep or bear firearms or the relinquishment of firearms, or else it would have provided specific language to specify that power.

Title 15, Chapter 21 was written to provide for a way to legally enforce separation between two people who are in a relationship where abuse has occurred, and that abuse is likely to continue.

It was written to empower our courts, and the judges that preside over them, to take whatever actions were necessary - ***within the context of separating the two parties*** - to include removing the defendant from the shared residence; requiring that distance be kept between the two parties; requiring that there be no contact; require no threatening actions or behavior; as well as addressing the status of any dependent children.

That was it. That was the intended purpose of Title 15, Chapter 21. No relinquishment of Constitutionally protected property was ever envisioned when these statutes were first written in the late 70s.

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At some point in the past, we believe an incorrect interpretation arose in 13 VSA 1103(c)(1) which 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...***", such that something that the legislature never addressed was incorrectly extended to include the relinquishment of firearms.

Subsequent to that interpretation being made, 20 VSA 2307 (Disposition and Fee For Storage Of Unlawful Firearms) was passed in 2013, which is where I began this testimony.

Since 15 VSA Chapter 21 never references the words "firearms", "ammunition", "weapons", "relinquish", "relinquishment", "confiscate" or "confiscation", it appears that the only currently operative phrase in 20 VSA 2307 that applies is "***or any other provision of law consistent with 18 USC § 922(g)(8)***".

So what ***is*** consistent with 18 USC § 922(g)(8)?

According to 18 USC § 922(g)(8), a defendant cannot **POSSESS** firearms, which generally means they cannot have them in their immediate custody and/or control. If you are physically distanced from a firearm you own, you are not in possession of it, and that's the law.

Federal law does not recognize Ex Parte processing for the removal of property that is related to a constitutional right. Per Federal Law, the only way the defendant can be forced to relinquish firearms is through a hearing where the defendant has the opportunity to be present and defend themselves.

THAT'S Federal Law and it recognizes Due Process.

It is our understanding that in almost all RFA cases, at the point in time when the RFA is served on the defendant, we understand that the defendant is then typically immediately removed from their residence, bodily if necessary.

By removing the defendant from their residence, we have effectively removed the defendant's ability to possess any weapons or firearms because the defendant will be forced to leave them all behind when the police escort them out. If the defendant is later found in possession of a firearm while the RFA was or is in effect, they will have broken the conditions of the RFA and that has some severe consequences.

It is really unfortunate that we do not know today how many times the intent of 15 VSA 1104 has been abused, we only know anecdotally that it is somewhat rare. It has been suggested however in testimony that however rare they may be - the number of these are not likely decrease, in fact it was conjectured that they may well increase. How could they not increase as the initial misinterpretation is now codified into law?

However: We again come back to the basic fact that what can currently occur under section 15 VSA 1104 (Emergency Relief from Abuse), and apparently has been occurring, as well as what will occur

under the proposed amendment(s) under consideration: Vermont is or would be perpetuating the use of the lowest standard of evidence that is possible, a standard that is influenced by just the weight of a feather, without the required level of Due Process that our Constitutions absolutely require.

We cannot, and will not, accept the fact that an existing law has been interpreted as meaning something that the Legislature never intended and/or specifically addressed, nor can we accept the fact that the proposed amendment(s) steps all over the basic Constitutional Right of Due Process.

We do not believe you can accept these facts either, and it's up to this Committee, the House and Senate beyond you, to correct.

In searching for a solution that might have been acceptable to all, we thought we saw what appeared to be a very simple and straight-forward answer. That answer was to leave 15 VSA 1104 pretty much alone, but allow the judge to interpret 15 VSA 1103(c)(1) as meaning that they have the latitude to immediately refer the defendant, if the abuse is likely to continue, for further possible prosecution under 13 VSA 4053 - which is an Emergency Protection Order that occurs with the defendant present.

This seemed a perfect solution. We have Domestic Abuse Civil case with a judge possibly granting a temporary RFA order with whatever stipulations that bear on separating the parties. If the judge is sufficiently moved by the evidence presented that abuse is likely to continue DESPITE the separation order: The judge could immediately refer the case for possible prosecution under the Extreme Risk Protection Order statute. Two cases. One to protect the victim. The other to address a threat.

Given that there situations, however rare, where there does appear to be a need to consider relinquishment of both WEAPONS and FIREARMS, we thought that the defendant could be immediately "plugged into" an existing statute that was specifically designed to handle the separation of a person from weapons (not just firearms) who may be at risk of harming others.

We even noted that 13 VSA 4053(c)(3)(C) (Petition for Extreme risk protection order) specifically references 15 VSA Chapter 21 which are the Abuse Prevention Orders. Why would that be? Could it be that the authors of the ERPO statutes foresaw that the EPRO laws may well be accepting cases that originated from DV cases?

In very briefly discussing this possible solution with Judge Grearson, he expressed concerns about how it would work and what the purpose it would serve, but beyond that I will not attempt to convey his views.

The bottom line is this. In order to effect the relinquishment of firearms in a manner that comports to Federal Law and the US and Vermont Constitution's requirement for **Due Process**, something that is at the very core of our legal system, the VTFSC must very respectfully insist that in order for a relinquishment to occur: The standard of evidence to require Relinquishment must be Clear and

Convincing; and language should be added that the defendant must be noticed and that a hearing must be scheduled before the court where the defendant can be present.

All of which is already in 13 VSA 4503.

In point of fact, and in order to be in line with similar statutes, we strongly suggest a re-consideration of raising the existing standard of evidence with the handling of Final Orders in a Domestic Violence cases (15 VSA 1103) so that they are put in sync with the standard employed in a Final Hearing of an ERPO case (13 VSA 4053) for consistency; and further we request a re-consideration of the standard now in 13 VSA 4054 - as that should be Clear & Convincing as well and had that higher standard after it passed the Senate when originally crafted after lengthy debate.

Anything less is unconstitutional, and we conjecture that anyone who is forced to relinquish their firearms without Due Process has possible grounds to raise a constitutional challenge on this issue.

In reading Benson v Muscari - which was provided to us all by Legislative Counsel - we note that the court ordered that the defendant not POSSESS firearms, and while the court struck out the provision of "other weapons" as being overly broad - it did say that because the Final Order to Vincent Muscari was to not "possess" - that was upheld as an acceptable limitation as it aligned with Federal Law.

Relinquishment however was never ordered in that case.

One further point about the re-surfaced issue of the storage of firearms that are relinquished. While the issue of storage is one consideration, the issue of transport to that location is another.

For anyone who owns a number of firearms, it is not acceptable to just toss these into the trunk of a cruiser or stack them up on a back seat or both, and then go bouncing down a typical Vermont road.

Safely storing them with care is one aspect: Safely transporting them is another.