

More on 20 VSA 2307 and the storage and reclamation of seized firearms.

Hoping to answer some questions from the last hearing and possibly give some perspective, we would like to draw attention to a couple provisions in this law that often get overlooked; specifically, subsection (d) which deals with fees, subsection (g) which deals with forfeiture, and subsection (h) which deals with immunity.

Subsection (d) paragraph (1) STATES: “A law enforcement agency that stores firearms, ammunition, or weapons pursuant to subdivision (b)(1) of this section may charge the owner a reasonable storage fee, not to exceed: (A) \$200 for the first firearm or weapon, and \$50.00 for each additional firearm or weapon up to 15 months, prorated on the number of months the item is stored; and (B) \$50.00 per firearm or weapon per year for each year or part thereafter.”

This obviously has serious implications for anyone subject to having their property seized, but especially for folks with a number of firearms or even one or two firearms which may not have a high dollar value, yet retain a high sentimental value i.e., family heirlooms and antiques. Under current law, someone who owns some old rifles passed down from family members might conceivably find themselves in a position where they are forced to pay (possibly several times the value of the gun) to have their property -and with it their constitutional rights- restored once their legal issues are resolved.

Subsection (g) Paragraph (2)(A)(i) further states: “if the owner fails to retrieve the firearm, ammunition, or weapon and pay the applicable storage fee within 90 days of the court releasing the items, the firearm, ammunition, or weapon may be sold for fair market value.” Considering this, it is quite possible that someone could not only have their property confiscated but might permanently lose their right to keep and bear arms along with that property if they cannot afford to PAY to get it back.

Furthermore, Section (h) states that: “A law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms, ammunition, or weapons stored or transported pursuant to subsection (c) of this title.” While it does provide an exemption for negligence, this part makes it clear that the people taking the guns likely will not put forth much of an effort to preserve any of their value.

To briefly recap: Someone who has had their firearms confiscated as a condition of an RFA must first pay the state to reclaim their property, and thus, their constitutional right to keep and bear arms. If they cannot afford to pay, they lose their property and their rights permanently. If they can afford to pay, and are willing to do so, what they get back might be in much worse condition than when it was taken and for this, they have no recourse.

More specific concerns regarding due process:

In the last hearing, during Judge Grearson's testimony, the question was raised about the specific method of separating the defendant from their firearms and whether that method involved voluntary relinquishment or outright seizure. [The judge indicated that it would be largely voluntary and offered the following:](#) *"I would be surprised if any officer ever obtained a warrant because you only get a warrant if there's a crime. Or in other words, if there is evidence of a crime that's what a search warrant does so, they really wouldn't have a basis to get a search warrant in advance of serving the order and they may or may not have one after."*

With respect to the court's position, it seems there is a double standard of sorts when it comes to upholding Second Amendment rights vs. Fourth Amendment rights. If there is not enough evidence for the court to determine that a person's protections against search and seizure must be lawfully suspended, why then is that evidence considered sufficient for the court to order this person to "voluntarily" turn over their guns, which are also protected by an entire other constitutional amendment?

Again, when dealing with constitutional rights, we believe that only the highest standard of evidence should be applied when making the determination that a person is dangerous enough that they should be separated from those rights.

More general concerns

The term "fishing for guns" has been used to describe this sort of legislation and we have been repeatedly assured that this is not the case, however we find ourselves left to consider a few unanswered questions in conclusion. If it is already a broadly accepted and relatively unchallenged assumption that the court has the absolute authority to confiscate firearms from a person subject to an RFA, and furthermore, if the court has expressed repeated concerns over tampering with the existing system, why then does this idea get pushed year after year? What is the purpose of creating new legislation with subtle caveats about taking guns from people not even involved, if not for the purpose of "fishing" or finding more ways to take guns from more people?

Upon further evaluation, we continue to oppose this bill as we continue to find ourselves with more questions than answers. We appreciate the opportunity to contribute and hope that the committee will take these concerns into consideration upon further discussion of H.133. Thank you.

In Liberty,

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