Good morning ladies and gentlemen of the House Judiciary Committee, my name is Eric Davis, and I am the President of Gun Owners of Vermont, an all-volunteer, non-profit advocacy group dedicated to the preservation of the right to keep and bear arms.

I'd like to thank the committee for having us back today and I apologize for not being ready to give testimony yesterday as scheduled. We went the last few days expecting some more drastic modifications to this bill before we had to testify on it again and were surprised to see when we finally received the amendment that it remained largely unchanged except for a relocation of the wording.

As we grow to understand this bill, we see that it actually contains two separate issues in that it has obvious implications for the standards of evidence used in different legal proceedings, but more directly, it focuses on the power of the court to act upon a finding that abuse has occurred in a domestic relationship. In this particular case, H.133 seems an attempt to clarify the court's assumption that one of its "tools" is the arbitrary suspension of constitutional rights, specifically the right to keep and bear arms. For the purposes of this testimony, we will save evidentiary standards for another conversation and focus solely on the latter question of whether or not the court does, and/or should have this power.

I'm actually very grateful for the opportunity to wait till the end to give this testimony, because it has allowed us to hear what legislative counsel and the Judiciary have to say about this, as well as a few more hours to do a little background research as to how this policy came about.

In the walkthrough yesterday, legislative counsel Erik Fitzpatrick explained it as follows: "*If the court already has this power, where does it come from? The answer is, it comes from the inherent powers of the judicial branch of government, as an independent and co-equal branch of government, there is inherent authority and power. This is a concept that is universally recognized that the judiciary has some inherent authority, just as the executive branch does and legislative branch does. And of course, there is certainly debate about what that inherent authority includes, but the fact that it exists is universally recognized by the supreme court.*"

Mr. Fitzpatrick cited the case from 2007 in the Nevada Supreme Court, Halverson vs Hardcastle which included language describing the "inherent powers of the judiciary" as being derived from the separation of powers doctrine which establishes it as one of the three branches of government (legislative, executive, and judicial) as well as "by the sheer existence of the judiciary in itself." Also noted was a caveat -presumably also determined by the court itself- that "the court's inherent power should be exercised only when traditional methods fail, or in an emergency." Very broad wording indeed.

With the limited time available, we looked up the Halverson vs Hardcastle case, and interestingly enough, could find no mention about the courts inherent authority to suspend constitutional rights, rather, the Halverson case seemed to deal with the authority of a superior court judge to discipline a subordinate. We were unable to find a direct reference to the possession of firearms in this case, however there may be some other examples of case law out there which do give more detail on the presumed "inherent ability" of the court to act in this manner which we are not familiar with. We would certainly be interested in investigating this further should time allow.

Upon pondering this a bit more, we are left with a few questions. We noticed in *Halverson* that when justifying its power to act on unspecified matters, the court repeatedly cites "long standing assumptions" and "universal acceptance" that they have this power, much like the arguments we are hearing in favor of H.133. We are left to wonder, that if these powers are not, as the Federation pointed out, specifically spelled out by law (as in the law created by the legislative branch) where exactly did these assumptions of power originate? At what point in time did the court take it upon themselves to assume that they have the independent and absolute authority to suspend constitutional rights "in an emergency, or if traditional methods fail?"

Furthermore, if these powers are not specified by legislation, how might they be challenged legally by the people? If the court has usurped this power, how could we possibly expect them to rule impartially on whether or not they should have it? To narrow our focus directly to the point of this bill is to ask the question: should this be allowed to continue?

Before we answer that question, we should consider a few more things. First, if we look at existing law, 15 VSA 1104 already gives the court authority require the defendant to (paraphrasing here) (A) stop abusing family members and pets, (B) refrain from interfering with the plaintiff's personal liberty, (C) to maintain physical separation, and (D) to refrain from contacting the defendant or abused family members.

The amendment to H.133 as we now know, seeks to establish a section (E) which specifically spells out the court's authority to confiscate firearms based on an initial, pre-trial determination of abuse, and without notice to the defendant. We would once again like to point out that when pressed for details on the authority to actually confiscate the guns in question, the court admitted that even though this wording would give them the power to "require" relinquishment, it gives them no power to issue a search warrant to enforce that relinquishment without probable cause to suspect that a crime has been committed.

If these things hold true, and if the court has long taken the position that they have they have the inherent authority to suspend a person's second amendment rights in the event "that traditional methods cease to work or in the case of an emergency" (in this case, a ruling of abuse having occurred),

then why would the court at this point simply not assume that it also has the authority to sidestep fourth amendment rights as well and issue a search warrant for seizure of the firearms without evidence of a crime? Additionally, if this inherent power has gone unchallenged for so long, why is there a sudden need for specificity?

We keep hearing that this "inherent power" is universally accepted, and that "judges are in agreement" however, the fact that we are here discussing this bill as such today, suggests that this might not be the case.

It is also concerning to us that the one modification to this bill other than moving the placement of the language was to strip out the wording that there must be evidence or at least a mention of firearms in the report for this action to be carried out against the defendant.

We understand the court's position that it would be unfortunate for that sort of language to hinder their ability to decide whether or not the abuse has occurred, however, to strip that language entirely -and with it, all safeguards on the defendant's right to keep and bear arms- suggests that the court seeks to retain ABSOLUTE control over the decision to seize guns, as long as the evidentiary standard is met to determine that abuse has in fact occurred and regardless of the context in which guns may or may not be involved in that particular incident.

Again, let me reiterate: the court seeks the ABSOLUTE power to suspend constitutional rights by requiring the defendant to relinquish their firearms over a civil issue, regardless of circumstance and without a hearing.

Moreover, when considering this process in the context of taking place within the framework of due process, we find it sorely lacking. Going back to legislative counsel's description of due process, he states: *"Generally that means notice and opportunity to be heard."* Mr. Fitzpatrick states that he believes that these conditions are being met in this instance and gives the following explanation: *"…here you can see that there is a depravation happening….. however, it occurs, there definitely is a depravation of the persons firearm that is only happening because the law requires. So, the question is, is there sufficient due process given that there is this depravation is happening and I think the answer to that is yes, the key point here is that generally speaking, when you talk about notice, and an opportunity to be heard, the hearing has to be held pre-depravation… here you see that this doesn't happen… the property is taken first and then the hearing happens afterward (14 days) and that is what is known as a post-depravation hearing, and that is permitted under constitutional due process requirements as long as there is a 'prompt and meaningful hearing' as the court describes, afterwards."*

He also goes on to state that the court has been careful not to quantify what they consider to be "prompt and meaningful" rather they seek to retain the absolute discretion of setting the time period for the defendant's hearing and thus their due process in each instance.

We live in a country who's basic, founding documents are based on the principles of protecting individual rights from the horrors of unchecked government. The folks who gave us the Bill of Rights also enshrined in our system of justice a right to counsel, the right to have a fair and speedy trial by one's peers, and the guarantee that all twelve of those peers return a UNANIMOUS conviction of a crime based upon evidence beyond a reasonable doubt *BEFORE* a person might be deprived of their life, liberty, and property.

We cannot imagine that these same folks envisioned a system of checks and balances that gives an absolute and arbitrary power to one branch of government with which they might suspend and reinstate constitutional rights at will over a civil matter. While the court's intentions seem honorable with this particular policy, we shudder at the implications of a body of government that has broad and liberal discretion to interpret its own rules of operation when dispensing justice and then be the sole arbiter of whether or not it should have that power.

In conclusion, we return to the question at the crux of our debate: Should the court at their own discretion, regardless of past assumptions, have the power to suspend a person's constitutional right to keep and bear arms and do so without prior notice to the accused. After consideration of these factors outlined above, we conclude that that answer must be a resounding no.

We continue to oppose this bill.

In Liberty,

Eric Davis
President,
Gun Owners of Vermont
www.gunownersofvermont.org