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Senator Richard Sears, Chair

January 29, 2021

Vermont Senate Judiciary Committee

Dear Senator Sears,

Please accept my regards in lieu of the friendly handshake we would normally share in the statehouse halls, and congratulations to all Judiciary members on their re-election.

The attached includes brief comments on the current position of Vermont Traditions Coalition regarding Senate Bill 30, *An Act Related to prohibiting possession of firearms at childcare facilities, hospitals and certain public buildings*.

I have also included two research documents we believe are relevant and will be of interest to the Senators in deliberations on the Bills prohibitions, goals and outcomes. The RAND Corporation documents in particular find tenuous and inconclusive the research available to support the arbitrary choice of restricting lawful firearms possession at most public places. We urge your members to review these as some of the most up-to-date and reliable data and systematic review available. A second document outlines their systematic review criteria and research methods & standards.

Also included as attachments are some Reports from the National Council of State Legislators. These provide analysis of the effectiveness of robust citizen participation in the development and legitimacy of controversial legislation. We support the position of many advocates and membership groups that complex legislation on social issues not directly related to Covid response or post Covid recovery efforts be indefinitely postponed. We recognize substantial legislation; including Constitutionally mandated legislative work such as budget and tax Bills must be passed. We support and applaud efforts by legislators to overcome the many obstacles to fulfill these in the past year.

It is our firm position that most non-Covid policy initiatives be delayed at least until normal indoor gathering allows for statehouse activities and also the citizen groups freedom of association for collective action and redress to legislative process. These include resumed access to the statehouse, legislators, statehouse staff, membership

actions that include citizen-lobbyist days and other such exercise of speech, association and redress of grievances contained in our U.S. and Vermont Constitutions.

These bare minimum efforts are the essential tools and life blood of the Vermont citizen legislature so cherished by all of us. Without them the clarity, effectiveness and legitimacy of any laws could be regarded as deficient by Vermonters who care about freedom and democratic process.

Perhaps, being spoiled by the blessing of a true citizen legislature with extraordinary freedom of access to our elected representatives, now is the time to reflect, cherish and honor that gift by holding off non-essential legislation until we return to normal operations. On behalf of the members of Vermont Traditions Coalition, asking for anything less than that would be a failure to serve those thousands who entrust myself and Executive Director Mike Covey in our positions.

Vermont Traditions Coalition has been serving as a conduit for citizen involvement, informed analysis and constructive engagement with legislators, state and local officials since 2001. While we endure the unusual circumstances today join me in looking forward to better days when we can restore what UVM Prof. Frank Bryan called the "human scale political tradition" that we all cherish.

Please post this letter and attached commentary on S. 30 as witness testimony for Friday January 29, 2021

In Liberty,

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Attachments

## **Vermont Traditions Coalition comments on S. 30 - 01-29-2021**

RAND Corp. studies (see attached links) assess various firearms laws and restrictions including the statutory or regulatory imposition of so-called "Gun Free Zones". Available data, systematic review of the available social science and research methods concluded these rules and laws that prohibit the lawful possession of firearms in designated facilities are ineffectual.

At the very least RAND concludes the research to-date does not adequately support their infringement based on any reasonable scrutiny of the Constitutional freedoms they regulate. Even a narrowly tailored restriction at, for example, a building used for public business such as restrooms and amenities at a state park or campground needs to be considered in the light of a rational and narrow state interest. Absent even a moderate likelihood that state interest can be served such restrictions should be considered as infringement beyond the reach and rejected out of hand.

RAND states in part, regarding these rules:

"Gun-free zones are intended to reduce violent crime, suicides, unintentional firearm injuries and deaths, and mass shootings in specific locations. In theory, the gun-free zone reduces or eliminates the presence of guns in these areas, thereby eliminating the risk of unintentional firearm injuries due to recklessness, escalatory conflicts, or criminal activity."

It summarizes reviews of the research as follows.

"We found no qualifying studies showing that gun-free zones decreased any of the eight outcomes we investigated."

These eight outcomes included mass shootings, suicides, officer involved shootings, violent crimes and unintentional injuries and deaths. No qualifying studies supported the conclusion.

RAND exercises stringent scholarly standards, data requirements, supported analysis and these standards are available in the second document provided. They introduce these as follows:

"Our review of evidence concerning the effects of 18 policies on eight outcomes used the Royal Society of Medicine (Khan et al., 2003) approach to conducting systematic reviews of a scientific literature. This approach consists of five steps: framing questions for review, identifying relevant literature, assessing the quality of the literature, summarizing the evidence, and interpreting the findings. To augment this protocol and strengthen the robustness of our methodological approach, we consulted guidelines from the Campbell Collaboration to ensure that our review criteria were based on relevant factors prescribed for reviews of social and policy interventions (e.g., determination of independent findings, statistical procedures) (Campbell Collaboration, 2001)."

Re: Trespass, existing statutes and S. 30

S. 30 provides no additional safety or options for premises security not already available in existing statute as explained by several witnesses and supported by Legislative Counsel Erik Fitzpatrick. In a January 22, 2021 email exchange the following is given as a response to questions of premise security and charging a person with Trespass.

"It is true that the sign is enough to provide notice against trespass under 3705(a)(1)(B), and this point is confirmed by *State v Pixley*, 208 VT 529."

<https://law.justia.com/cases/vermont/supreme-court/2018/2017-374.html>

Pixley concludes, in part:

"The statute allows notice of trespass to be given by actual communication or by "signs or placards so designed and situated as to give reasonable notice." Id. § 3705(a)(1)(B). We conclude that the statute allows notice to be proven with objective evidence of reasonable notice through signage and without showing that a defendant subjectively saw and understood the signs.

We reach this conclusion foremost from the plain language of the statute, which allows the State to demonstrate notice in several ways, including through "actual communication" by law enforcement or the person in lawful possession or by signs that provide "reasonable notice."

Further committee discussion seems to bare out these options exist if they are properly posted (as they regularly are at hospitals and some state buildings like courthouses). Likely these options were not previously known to many committee members. However, as a former hospital security staff, bartender and caretaker for property management, I can say with certainty there is a working knowledge of these options in various professions. Administrators at colleges, airports, parking facilities and hotels also typically have a working knowledge of some aspects of Trespass statute, Trespass orders and police response procedures. An unfortunate experience where the law has been seen as a possible tool is the areas of homeless "camping" in areas such as Burlington's waterfront and Lakeside neighborhood areas.

Simply put there is little mystery about what can and cannot happen, proper signage wording, and police response procedures with regards non-violent Trespass citation under 13 VSA 3705. Properly used it can achieve the objectives proponents of S. 30 seek in their legislation. State Police, Sheriffs, local prosecutors can all play a role by being conduits for accurate information, procedures and signage wording for interested institutions and premises agents.

It is likely even more clarity will be forthcoming from witnesses responding to the Chair's inquiries and from additional sources. I would recommend a short testimony from Sheriffs regarding responses to disturbances at hospitals. As security at Copley

Hospital in Morristown it would be standard operating procedure to notify local police as soon as an individual was seen as not cooperative with hospital rules. Late at night that would be the Lamoille County Sheriff dispatch center. Their responses and explanations of procedures under VT Rules of Criminal Procedure 3 would be helpful I believe.

The complexities of Procedure Rule 3 are really only relevant when responding to either a threatening situation or other criminal act such as burglary or squatting. The cascade of possible charges for intransigent trespassing persons could be covered briefly by Defender General Matt Valerio while he also could provide an excellent primer for folks seeking to properly ensure fair treatment of legitimate visitors rules. I would seek his counsel if needed.

Re: Citizen Legislature and Human Scale Democracy (see links posted below)

Two National Council of State Legislators (NCSL) research papers are provided for your convenience to support our position on postponing action on legislation that affects complex social policy. The process, ability for member based advocacy groups to organize and meet effectively, access restrictions for citizen-legislator interaction and the rights to free association and redress to grievances with Bills and Regulatory Rules are all radically altered by these times. Restricted as we are to even visit with each other at church, the grocery store parking lot and school functions, to name just a few, we strongly urge you to review these helpful tools.

To quote a few relevant excerpted points:

"Scholars identify three core functions of legislatures: linking citizens to government, legitimizing government actions and making decisions (Copeland and Patterson 1994).

"Attention to the concerns of constituents and opportunities for citizens to participate in the legislative process help to legitimize government action and enhance public support for representative democracy. The very notion of representative democracy assumes that public participation in the decision-making process improves the quality of decision-making."

"This role of linking citizens and their government is closely related to the complicated concept of legitimacy. Citizens who regard their government as legitimate are more likely to obey laws, support the regime and accommodate diverse points of view. Citizen participation in the legislative process is vital to creating this sense of legitimacy."

"The case for open meetings of committees is that it allows the public to know what decisions are made and how their legislators vote at what is sometimes the most critical stage of legislation. Woodrow Wilson's slogan about the League of Nations, "open

covenants, openly arrived at," captures the argument in favor of open legislative committee meetings."

As a final note, truly the human scale of a Vermont citizen legislature has always included the intimacy of interaction, accidental and planned, by the citizens, advocates, legislators and the press. Lest we forget the 4th estate, their hinderance during virtual government and now virtual legislature, directly and significantly affects the public's ability and Right to know what goes on Under the Golden Dome. And likewise, legislators rely heavily on the responses to a robust journalistic reporting in their deliberations and understanding of constituents demands.

Please accept these comments and documents as Vermont Traditions Coalition position regarding S. 30. Thank you for your attention and patience in these unusual times.

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