VTFSC Testimony Outline
House Government Operations
May 20th, 2025 @ 1PM

Core Issues:

1) **2nd Amendment**
The Second Amendment was NOT written to guarantee a citizen's Right to self-defense. The Right to self-defense pre-existed the Bill of Rights. The Second Amendment was written specifically for situations like this: It was written to ban the government from infringing upon a citizen's right to self-defense.

In considering self-defense, it makes sense that when the government is providing security – such as at Legislatures, Courts and Polling places – citizens could be disarmed, or otherwise required to not be armed.

For all other places, without that government-provided security, people have a right to self-defense

Without any provided security, a ban on firearms in this place or that means there will be plenty of unarmed victims at that location, and we need to look no further than the effectiveness on a ban on guns in schools to recognize this.

2) **Vt Supreme Court - Rosenthal Decision**
In 1903, the case of State v Rosenthal rose to the Vermont Supreme Court. That case involved the City of Rutland passing an ordinance that banned the carrying of weapons in Rutland without a permit signed by the Mayor or Chief of Police, with one of the listed weapons being "pistol".

The Vermont Supreme Court struck the ordinance down as being unconstitutional, describing the ordinance as being "***...repugnant to the Constitution and the laws of the state...***"

3) **Interest Balancing**
Perhaps we all might agree that this Charter Change is an attempt to balance public safety against the individual right of self-defense, an approach called "interest balancing." So, what did SCOTUS say about "interest balancing" or the "means-justifies-the-end" (means-end) approach to the justification of such a law?

"***Since Heller and McDonald, the Courts of Appeals have developed a "two-step" framework for analyzing Second Amendment challenges that combines history with means-end scrutiny. The Court rejects that two-part approach as having one step too many. Step one is broadly consistent with Heller, which demands a test rooted in the Second Amendment's text, as informed by history. But Heller and McDonald do not support a second step that applies means-end scrutiny in the Second Amendment context. Heller's methodology centered on***

constitutional text and history. It did not invoke any means-end test such as strict or intermediate scrutiny, and it expressly rejected any interest-balancing inquiry akin to intermediate scrutiny."[1]

The Charter Change presented represents a "means-end" / "interesting balancing" law, it cannot be interpreted any other way, with both supporting theories being specifically rejected by SCOTUS. Based on that: This Bill is unconstitutional.

In considering "interest-balancing" further, SCOTUS had this to say:

"***Historical analysis can sometimes be difficult and nuanced, but reliance on history to inform the meaning of constitutional text is more legitimate, and more administrable, than asking judges to 'make difficult empirical judgments' about 'the costs and benefits of firearms restrictions,' especially given their 'lack [of] expertise' in the field. Federal courts tasked with making difficult empirical judgments regarding firearm regulations under the banner of 'intermediate scrutiny' often defer to the determinations of legislatures. While judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment 'is the very product of an interest balancing by the people,' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense.***"[2]

4) **Supreme Court, 2nd Circuit and District Courts of NY**
There are three Circuit Courts that are known to be "anti-gun": These are the 1st, 2nd and 9th Circuit Courts.

   a. In 2008, SCOTUS decided D.C. v Heller, which made clear that a citizen had a right to have a loaded firearm in the home.

   b. In 2010, SCOTUS decided McDonald v Chicago, which made it clear that a citizen had a right to bear arms outside the home.

   c. In 2022, SCOTUS decided NYSRP v Bruen which struck down a law that had been in the books for over 109 years which required a citizen to obtain a permit to carry a firearm outside the home. The criteria to obtain such a permit however

[1] Supreme Court of the United State, NYSRP v Bruen, Syllabus page 2, paragraph 3

[2] Supreme Court of the United State, NYSRP v Bruen, Syllabus, page 2, paragraph 4

was placed so high that it effectively prevented almost everyone from obtaining that permit, with "self-defense" not being a valid reason.

Let me be clear. It was the 2nd Circuit's recalcitrance in properly understanding the 2nd Amendment which gave us the Bruen decision.

d. 1 week after the Bruen decision, NY passed the Concealed Carry Improvement Act (CCIA), which, among other things, banned the possession of firearms in 16 different "sensitive" locations.

e. In late 2022, the Northern District Court of NY, relying heavily on the Heller, MacDonald and Bruen decision, issued an 184-page opinion against the CCIA and granted a Temporary Restraining Order (TRO) against the enforcement of a ban ***in all 16 of those "sensitive" locations***, ruling that the plaintiffs would likely succeed on their merits. That decision was appealed to the 2nd Circuit.

f. On December 8th, 2024, the 2nd Circuit wrote a 261-page opinion that overturned the stay of enforcement on all 16 "sensitive" locations, and while they did give Bruen some consideration, they did not weight it appropriately.

Specific to guns in bars, SCOTUS had already opined that Territorial laws were not to be given much weight in historical analysis, as they were transitory and these laws did not typically survive when the territory became a state. The 2nd Circuit put weight on those territorial laws which SCOTUS did not recognize, and in considering those territorial laws – one must consider that all of the other existing states HAD NO SUCH LAWS banning guns in bars – although they did have concern over drunks with firearms.

g. At present, and as Vermont is under the 2nd Circuit, there is "cover" for the consideration of creating a ban on guns in bars. Likewise in the 9th Circuit, there is a decision that bans guns in bars – but in the 9th they also stated that a ban on guns in Hospitals was unconstitutional.

h. All of this is to say that the 2nd Circuit, after being rather severely spanked in the Bruen decision, is not yet where it needs to be in understanding how to interpret the 2nd Amendment, and we believe that – eventually – the Antonyuk case WILL be finalized. When it is it WILL be appealed to SCOTUS, and we are confident that the existing NY bans on having firearms in those 16 places will be struck down.

5) Pre-Emption Statute – 24 VSA 2295

a. In place in Vermont for 37 years, and De facto law of Vermont for over 200 years

b. If this bill is passed, 24 VSA 2295 will be broken as if it were repealed.

c. As of March 4, 2025, Burlington had 28,952 voters.

- 9,823 Burlingtonians voted, which was 33% of the voters.
- 8,335 Burlingtonians voted for this ban which was 86.7% of those that voted.
- The total population of Vermont as of July 2024 was 648,493 people with 506,474 being adults.
- 8,335 Burlington adult voters are 1.64% of Vermont's adult population.

d. As opposed to putting forth a bill to amend or repeal 24 VSA 2295, we question whether it is appropriate to allow 1.64% of Vermont's adult population to effectively kill a statute that has been in place for 37 years.

6) **Bill and Ballot item**

In creating a ballot item for Town Meeting as well as the wording of the ordinance itself, Burlington clearly did not consult with any Constitutional lawyers, thereby ending up creating a bill which Legislative Counsel initially stated was "Unconstitutional" due to it being "Constitutionally vague."

If the bill itself is "constitutionally vague" requiring Legislative Counsel to clean it up, that brings up two challenging issues:

a. Did the voters know that this was not just guns in bars as the media portrayed it?

Did the Burlington voters know that this Charter Change would:

- Affect hotels?
- Affect restaurants?
- Affect parking lots of bars, restaurants and hotels?

  Vermont Statute (9 VSA 4451(6)) provides a definition of "premises"

- Not affect stores which sell alcohol?
- Not affect outdoor venues?

b. Further than that, and in consideration that Senate Government Ops Committee made changes to the wording of this bill, at what point do those changes modify what the voters thought they were voting for, whatever that was?

7) **Fails to Exempt Itself from 24VSA 1971**
Invalid as it does not exempt itself from 24 VSA 1971, but it does exempt itself from 24 VSA 2291(8) and 24 VSA 2295.

8) **Existing Vermont Laws**

   a. **13 VSA 3705 – No Trespass law**

   b. With the noted exception of having any law that deals with drunks having guns, just about anything "bad" you do with a gun has a law behind it:

      - Simple Assault - 13 VSA 1023
      - Aggravated Assault – 13 VSA 1024
      - Reckless endangerment – 13 VSA 1025
      - Criminal Threatening – 13 VSA 1702
      - Carrying with intent to Injure – 13 VSA 4003
      - Carrying While Committing a Felony – 13 VSA 4005
      - Negligent use which Wounds – 13 VSA 4009
      - Aiming at another – 13 VSA 4011
      - Extreme Risk Protection – 13 VSA 4053

9) **House Government Ops Usually Handles Charter Changes First**
While there are apparently two notable exceptions to the historical practice of having Charter Change first start in the House, perhaps due to the House representing a broader cross-section of Vermont. We believe the original ordinance before us is essentially the exact same ordinance that the House Judiciary refused to move 10 years ago, and the members of that committee at that time didn't try to "correct" it.

So, why did this Charter Change originate in the Senate?

10) **Other State's Laws**
You have heard that there are several states have laws that ban guns in bars, including states like Texas and Florida. Everytown for Gun Safety lists 15 such states.

What you need to know about those other state laws is:

- Concealed Carry licenses are typically exempted,
- Some laws make a distinction between whether you are drinking or not,
- Some laws only pertain to that part of the establishment which is a "bar" while not pertaining to the portion which is a restaurant, and
- Some laws only apply depending upon the percentage of the establishment's revenue that is based on alcohol sales.

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Ideally: We should first have a legislative discussion about 24 VSA 2295, with a bill brought forward to amend or repeal it. What is occurring now is that Burlington broke the law without penalty; they are attempting to be the tail that wags the dog through questionable actions, a constitutionally vague bill, and what was a constitutionally vague ballot item. If it is so critically important to whittle down a law that has been embraced by most of the States and has served Vermont for 200 years without strong supporting evidence of the need to change it – then a clean democratic process is required, and this is not it.

The process leading up to this bill was tainted if not outright illegal; the creation of the ballot item and bill were, at best, poorly written; and with all that plus the constitutional vagueness and attempts to divine the will of the voters – Burlington needs to do this again, but right.

Other Issues:

- Drunks with guns – behavior versus location
- No Signage requirement – "knowingly"?
- Inside vs Outside
- Completely ineffective w/o screening
- Forfeiture vs No Forfeiture language
- Vulnerability of everyone: employees, patrons, vendors, security guards

Summary

The Federation understands that the irresponsible consumption of alcohol impairs good judgment, and we agree that the irresponsible consumption of alcohol and the carrying of firearms has no place. The same is true for alcohol and driving. Yet, in considering alcohol and driving, we have the concept of a "designated driver" who stays sober to ensure the safety of their friends, with the ability to measure the level of impairment. Certainly: It is a safe bet that almost everyone in this room has consumed some small amount of alcohol and then driven a vehicle knowing they were not truly impaired.

Many Vermonters choose to regularly carry firearms, or otherwise have them nearby, and these firearms provide the means to self-defense. What a law such as this does is discriminate, as it discriminates against honest and law-abiding citizens who chose to carry for self-defense; people who we should not have any concern about whatsoever as they obey the law. And because they MAY obey – we disarm them? What disarms the "bad" people?

24 VSA 2295 makes us a Dillion's Rule state, and it has served the State of Vermont exceptionally well by law for 37 years and De facto for 200 years. By adhering to that Rule – Vermont has avoided creating a patchwork of conflicting laws that can only serve to entrap

innocent Vermonters and tourists who are unaware of city lines or laws that have constitutional implications.

And Burlington wants more business from Vermont's citizens?

In the discussion of this bill in Senate Government Operations, a Senator from Windham asked (and I paraphrase): "With all the money Burlington has, why couldn't they get a constitutional lawyer?"

Why are we dealing with a vague Charter Change that was the result of a Constitutionally vague Burlington Ballot item?

If we want to change what 24 VSA 2295 does, then let's have that discussion with a bill that addresses amending or repealing that statute, as that is what would be more "fair", straight-forward and more in keeping with a democratic process that Vermonters expect and deserve.

Put this on the wall and let us see a bill that amends or repeals 24 VSA 2295.