

WRITTEN TESTIMONY

For 2/3/2023 Public Safety Finance and Policy hearing on HF 14, HF 15, HF 396, HF 601
SUBMITTED BY STEVEN KENDALL JOSEPH MCCARNEY

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HF 14: UNIVERSAL BACKGROUND CHECKS

- (1) Universal Background Checks (“UBC”) are unnecessary and do not reduce violent crime.
 - a. Minnesota does not have high rates of violent crime with firearms. The upswing in violent crime that has been present since 2020, is not the result of Minnesota not having UBC. It is instead due to other factors, including but not limited to, poor governance, especially at the local and county level, notably in Minneapolis, St. Paul, and Hennepin and Ramsey County.
 - b. Additionally, UBC does not lead to a reduction in violent crimes with firearms. Violent criminals that are willing to harm or threaten to harm a lawful citizen with a firearm, are not going to be deterred due to UBC. The majority of guns used by violent criminals are obtained illegally, and thus UBC will not stop them.
- (2) UBC is one part of creating a soft registry.
 - a. There is no justifiable or Constitutional purpose in maintaining a firearm registry.
 - i. Firearm registries do not inhibit crime, and historically in countries across the world, firearm registries have been used for the purpose of confiscation of firearms from non-criminal citizens.
 - b. Form 4473’s (The background check form) must be retained by FFL’s and eventually end up in ATF records and databases.
 - i. If background checks were simply about barring prohibited purchasers from buying a firearm, then Form 4473 records would not be kept and maintained in the fashion that they are. Thus, the actual purpose of UBC, soft registration, is evident.
 - c. Along with UBC, the other essential component of a soft registry is requiring mandatory reporting of lost or stolen firearms.
 - d. The Firearms Owners’ Protection Act of 1986 forbids the creation and maintenance of any firearms registry other than that associated with the National Firearms Act of 1934. *See* 18 U.S.C. § 926 (“No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States **or any State** or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.”) (Emphasis Added).
- (3) UBC is powerless against 3d printed firearms.
 - a. 3d printing technology already allows citizens to manufacture their own firearms without a background check. 3d printing technology continues to advance, and its progress and evolution will continue.

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HF 15: RED FLAG CONFISCATION ORDERS

- (1) This bill turns Citizen’s Fundamental Constitutional Second Amendment Rights into a revocable privilege, and on a shockingly low evidentiary standard.
 - a. Fundamental Constitutional rights should not be stripped from citizens on a “preponderance of the evidence standard.” “More likely than not,” especially at an ex-parte hearing, is insufficient to strip a Constitutional right.
 - b. The Supreme Court recently clarified the test for evaluating the constitutionality of gun control legislation. See *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111, 2126 (2022) (“**In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's “unqualified command.”**”) (Emphasis Added).
 - c. HF 15, as written, is not in accordance with the standard delineated in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, as there does not exist a historical analog in the United States’ historical regulation of firearms that is consistent with Red Flag Confiscation Orders.
- (2) Due Process is Insufficient
 - a. A Fundamental Constitutional Right should not be able to be stripped by operation of an ex-parte hearing, and without the accused first having the opportunity to defend themselves in court and face their accuser.
- (3) Storage
 - a. This bill does not provide for proper storage and maintenance of seized firearms.
 - i. Firearms require certain conditions for proper storage.
 1. Proper storage is essential to prevent damage to firearms in the form of scratches, dents, dings, and rust. Proper storage includes but is not limited to controlling humidity and temperature, and periodic maintenance and application of oil, wax, or other preservatives.
 - a. No part of this bill provides for proper storage and maintenance of seized firearms. This demonstrates either ignorance of proper firearms storage, or a contempt for the Constitutional rights of citizens of the State of Minnesota, including Second Amendment rights and property rights.
 - ii. Not all firearms are replaceable.
 1. A family heirloom firearm that was made in the 1920’s and which was owned by a citizen’s great grandfather cannot be replaced, and no amount of money can compensate that citizen for damage to that firearm. Thus, if such a firearm was seized pursuant to a Red Flag Confiscation Order and then thrown into a police evidence

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locker or some other improper method of storage, and was then left for months, it may be returned to that citizen rusted, dented, dinged, damaged, or destroyed. A citizen's fundamental Constitutional rights including their Second Amendment and property rights are unreasonably inhibited and damaged by this bill.

(4) Red Flag Confiscation Orders create a dangerous environment for both citizens and law enforcement.

- a. Citizens have been killed during the execution of Red Flag Confiscation Orders in other states. (*See Gary Willis, a resident of New Jersey, who was killed by law enforcement on or about November 5, 2018, at on or around 4a.m. – 5a.m., during the execution of a Red Flag Confiscation Order, the validity of which, was questioned by family members.*)
 - i. Gary Willis' life mattered, and still matters to this day, whether or not the government of the State of New Jersey thinks so. Allowing Red Flag Confiscation Orders in Minnesota, fosters an environment of unexpected confrontation, often at night or in the early morning, and puts the lives of law enforcement and citizens unnecessarily at risk.

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HF 396: STORAGE REQUIREMENTS

- (1) This Bill unreasonably infringes on the right to self-defense within the home.
 - a. Many citizens have firearms in their home for the lawful purpose of self-defense against an unlawful intruder. Such an unlawful intruder would be likely to unlawfully enter a citizen's home at night.
 - i. Requiring a locking device to be upon a citizen's firearm which is kept in the home for the purpose of lawful self defense inside the home is unreasonable and puts the citizen's life at risk in the case of an unlawful entry by an unlawful intruder.
 - ii. A citizen should not have to attempt to remove a gun lock from their firearm in the dark after they have been roused from their sleep.
 - iii. An unlawful intruder is not going to wait for a citizen to take their gun lock off before unlawfully harming the citizen inside the citizen's home.
 - iv. Requiring ammunition to be kept separately from a firearm unreasonably restricts a citizen's right to lawful self-defense inside the home.
 1. This bill was authored by someone who either doesn't understand what lawful self defense with a firearm inside the home entails, or doesn't care, and has contempt for citizens exercising their Constitutional Right of maintaining a readily and reasonably accessible firearm in their home for the purpose of lawful self-defense inside the home.
- (2) This Bill unreasonably endangers citizens attempting to lawfully use a firearm for the purpose of lawful self-defense inside the home.
 - a. An unlawful intruder is unlikely to wait for a citizen to remove a trigger lock and access their ammunition.
- (3) This Bill, if enacted, would violate the Constitutional Rights of citizens of the State of Minnesota.
 - a. Please read: *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 2787, 171 L. Ed. 2d 637 (2008) ("**Similarly, the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.**") (Emphasis Added).
- (4) This Bill makes no distinction between homes that have children and homes that do not.
 - a. It is not reasonable to require a citizen without children, and without the likelihood of children ever being inside the citizen's home, from being regulated in the same manner as a citizen with children in their home, especially young children.

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HF 601: MANDATORY REPORTING LOST + STOLEN FIREARMS

- (1) This bill places an unnecessary restriction upon lawful citizens.
 - a. Lawful citizens should not be burdened with having to report any part or possible portion of their exercising of a fundamental Constitutional Right to law enforcement.
 - b. Violent criminals are not going to report to law enforcement if their firearms are lost or stolen.
- (2) This bill will not reduce violent crime.
 - a. This bill contains no indication or provision that law enforcement will go out and seek to find firearms that are reported lost or stolen.
 - i. Therefore, at best this bill will be a burden upon lawful gun owners, and will only apply in the criminal context, long after a violent crime has already been committed.
 - b. Ultimately, there is no evidence, cited nor provided, that mandatory reporting of lost or stolen firearms will reduce violent crime, suicide, or unintentional injuries and deaths.
- (3) Mandatory Reporting is one part of creating a soft registry.
 - a. There is no justifiable or Constitutional purpose in requiring Mandatory Reporting of lost or stolen firearms.
 - i. This type of bill is an essential component in creating a soft registry.
 - ii. Firearm registries do not inhibit crime, and historically in countries across the world, firearm registries have been used for the purpose of confiscation of firearms from non-criminal citizens.
 - b. The Firearms Owners' Protection Act of 1986 forbids the creation and maintenance of any firearms registry other than that associated with the National Firearms Act of 1934. *See* 18 U.S.C. § 926 (“No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States **or any State** or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.”) (Emphasis Added).