

STATE OF VERMONT

SUPERIOR COURT
Windham Unit

CIVIL DIVISION
Docket No. 315-8-18 WMCV

GUN OWNERS OF VERMONT, Inc.)
1644 Route 121)
Westminster, Vermont 05158)

Plaintiff,)

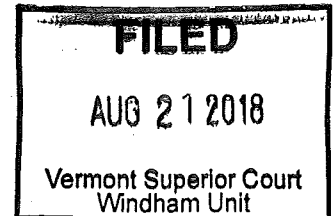
v.)

MATTHEW BIRMINGHAM, in his Official)
Capacity as Director of the Vermont)
State Police,)
Vermont State Police Headquarters)
45 State Drive)
Waterbury, VT 05671-1300)

T.J. DONOVAN, in his Official Capacity as)
Attorney General of the State of Vermont,)
Office of Attorney General)
109 State Street)
Montpelier, VT 05609)

TRACY KELLY SHRIVER, in her Official)
Capacity as State's Attorney for Windham)
County,)
185 Main St | PO Box 785)
Brattleboro, VT 05302)

Defendants.)



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Gun Owners of Vermont, Inc. (GOVT), by and through the undersigned attorneys, hereby files this Complaint against the above-captioned Defendants, in their official capacities as state officials responsible under Vermont law for administrating and enforcing the State's laws and regulations regarding firearms. Plaintiff seeks declaratory and injunctive relief.

With regard to declarative relief Plaintiff seeks: (1) a declaration that 13 V.S.A. § 4019, requiring citizens to seek and obtain the services of a Federal Firearms Licensee (FFL) in order to lawfully transfer their privately and legally owned firearms, is unconstitutional under Chapter 1, Article 16 of the Vermont Constitution; (2) a declaration that 13 V.S.A. § 4020 is unconstitutional under Chapter 1, Articles 7 and 16 of the Vermont Constitution; and (3) a declaration that 13 V.S.A. § 4022 banning law abiding citizens from purchasing or possessing bump-fire stocks is unconstitutional under Chapter 1, Article 16 of the Vermont Constitution.

With regard to injunctive relief, Plaintiff respectfully requests this Honorable Court to: (1) compel Defendants from enforcing 13 V.S.A. § 4019 and allow Plaintiff's members to transfer privately owned firearms without being forced to use an FFL; (2) compel Defendants from enforcing 13 V.S.A. § 4020 and allow the sale of firearms to Plaintiff's members under 21 years old; and (3) compel Defendants from enforcing 13 V.S.A. § 4022, and allow Plaintiff's members to purchase and possess bump-fire stocks.

In support of its complaint against Defendants, Plaintiff asserts the following:

INTRODUCTION

1. “Although other state constitutions have changed over the years ... Vermont’s still reads much the same as it did in 1777. The uncompromising demand for liberty and freedom still rings loud and clear...” Charles Martin, *The 1777 Constitution: Liberty Demanded*, VERMONT LIFE, Fall 1986 at 48. The shortest and least amended constitution in the United States, it is described as “remarkable,” and “bold and imaginative.” Christopher Graff, *State Constitution Model for Federal Bill Of Rights*, THE TIMES ARGUS, September 17, 1987; Thomas P. Salmon, *Foreword* to William C. Hill, THE VERMONT STATE CONSTITUTION: A REFERENCE GUIDE, xv, Library of Congress (1992).

2. Following the Declaration of Independence, the colonies began drafting their own constitutions. The hallmark of the Vermont Constitution is its commitment to civil rights. From the very beginning the Vermont Constitution stood out among the other state constitutions and the U.S. Constitution for guarantees of freedom. Predating the federal constitution by more than a decade, it was the first to prohibit slavery and grant universal suffrage to all men over the age of 21.

3. It also included language protecting the rights of the people to keep and bear arms that is clear and unequivocal. "That the people have a right to bear arms for the defense of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power." VT. CONST. ch. 1 art. 16. In a related provision, Vermont copied Pennsylvania in declaring "that the inhabitants of this State, shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, and on other lands..." Stephen P. Halbrook, *The Right To Bear Arms In The First State Bills Of Rights: Pennsylvania, North Carolina, Vermont, And Massachusetts*; 10 VT. L. REV. 255, 291 (1985) (internal quotations omitted).

4. The above language clarifies what Vermont's founding fathers considered to be the fundamental character of the right to carry arms. To "bear arms" meant to possess and carry weapons for defense of self and state or for hunting. "Keeping and bearing arms was not only an abstract right, but also a constant practice of Vermont's founding fathers. Led by Ethan and Ira Allen, the Green Mountain Boys sought independence first from New York, and later from Great Britain. In his detailed accounts of their exploits, Ira Allen vividly described the role of firearms in the hands of the people for purposes of defending the person..." *Id.* at 288. Pistols in the pocket and an arsenal at home were options available to every free citizen of the Green Mountain State.

5. Chapter 1 of the Vermont Constitution outlines the fundamental rights of the people, preceding the Frame of the Government contained in chapter 2. The Bill of Rights in the U.S. Constitution is an afterthought by comparison. In fact, the Bill of Rights was not added to the U.S. Constitution until 1788, eleven years after Vermont's Chapter 1. Since the 1970's there have been hundreds of cases in which state appellate courts have viewed the scope of rights under state constitutions as broader than those secured by the federal constitution as interpreted by the United States Supreme Court. William C. Hill, *THE VERMONT STATE CONSTITUTION: A REFERENCE GUIDE*, 25-26, Library of Congress (1992) (quoting *State v. Jewitt*, 146 Vt. 221 (1985)).

6. Vermont has a long proud history of responsible law-abiding firearm ownership and use. The state is an outlier, one with few gun restrictions and a low rate of gun violence. "Vermont served as the ultimate example of what unfettered gun ownership could bring — a wooded Valhalla where peace and prosperity were ostensibly guaranteed not by restrictive laws but by responsible citizens and their firearms." Eric Benson, *Vermont's Long, Strange Trip to Gun-Rights Paradise*, THE TRACE (July 9, 2015) <https://www.thetrace.org/2015/07/vermont-gun-rights-constitutional-carry/>. "Vermont ... consistently has either the lowest or second-lowest number of murders in the country. And FBI statistics show that the state routinely ranks as one of the five safest." Charles C. W. Cooke, *Vermont: Safe and Happy and Armed to the Teeth*, NATIONAL REVIEW (June 24, 2014) <https://www.nationalreview.com/corner/vermont-safe-and-happy-and-armed-teeth-charles-c-w-cooke/>. Until the signing of the legislation at issue in this case, Vermont had almost no laws curtailing the people's rights under Article 16 and at the same time was one of the safest states in the nation.

7. Despite Vermont's history of protecting civil rights, and despite its record of nonviolent and responsible firearms use, the government has curtailed the people's fundamental rights with a flurry of hastily slapped together measures passed and signed into law in 2018. This legislation is a knee-jerk, emotional reaction that solves no problem. "Remember that the people have the final say, that the constitution doesn't get changed until the people vote on the changes." Christopher Graff, *Legislators Tinker With State's Constitution*, THE TIMES ARGUS (February 28, 1995) at 9.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 4 V.S.A. § 31(1) because this is an original civil action. Plaintiffs seek remedies pursuant to, *inter alia*, 12 V.S.A. § 4711.

9. Venue is proper in this Court under 12 V.S.A. § 402(a) because at least one party resides in Windham County.

PARTIES

10. Plaintiff, Gun Owners of Vermont, Inc. ("GOVT") is a non-profit association legally incorporated under the laws of Vermont. Founded in 1996, GOVT began with just ten members. Today, GOVT has approximately 7,000 members, most of whom reside in the State of Vermont. GOVT's mission is to preserve, promote and pass on to future generations of Americans the right of the people to keep and bear arms to uphold the second amendment to The Constitution of the United States and Article 16 of The Vermont State Constitution; to actively oppose all proposed gun control bills; to vacate or expunge current law that violates the intent of the second amendment to The Constitution of the United States. GOVT actively works to supply facts to members about pro-gun and anti-gun legislation, legislators' voting records, statements, and to

lobby on the state level. GOVT's principal place of business is in Windham County: 1644 Route 121, Westminster, VT 05158.

11. GOVT has members who own bump-fire stocks. On October 1, 2018, bump-fire stocks will be illegal to own in Vermont. Furthermore, GOVT has members who regularly sell firearms and otherwise transfer firearms to other persons. Such action is now illegal under the new law at issue in this complaint. Lastly, GOVT has members under the age of 21 who will be unable to purchase or possess firearms without first completing an approved hunter safety course.

12. Defendant T.J. Donovan is the Attorney General of Vermont. As Attorney General, he is responsible for directing and supervising the prosecution of all criminal offenses under Vermont law, including the law governing bump-fire stocks, private sales of firearms, and the new age restriction. His official address is Office of the Attorney General, 109 State Street, Montpelier, VT 05609. He is being sued in his official capacity.

13. Defendant Matthew Birmingham is the Director of the Vermont State Police. Colonel Birmingham oversees all three divisions of the State Police - the Field Force Division, the Criminal Division, the Support Services Division. His official address is Vermont State Police Headquarters, 45 State Drive, Waterbury, VT 05671. He is being sued in his official capacity.

14. Defendant Tracy Kelly Shriver is the State's Attorney for Windham County, where Plaintiff GOVT has its principal place of business. As State's Attorney, she is responsible for prosecuting or directing and supervising the prosecution of all criminal offenses under Vermont law. This includes the law governing bump-fire stocks, private sales of firearms, and the new age restriction. Her official address is 185 Main Street, PO Box 785, Brattleboro, VT 05302. She is being sued in her official capacity.

FACTUAL ALLEGATIONS

15. On April 11, 2018, Governor Phil Scott signed Senate Bill 55 into law. The Bill amends Title Thirteen of Vermont Statutes to add §§ 4019, 4020, and 4022.

16. 13 V.S.A. § 4019 requires that, *inter alia*, parties to a firearm transfer “physically appear together with the firearm before a licensed dealer and request that the licensed dealer facilitate the transfer.” Pursuant to the statute, the transfer cannot take place until the FFL agrees. The transfer must be conducted in the same manner as if the licensed dealer were selling the firearm from his or her own inventory. “A person who violates this subsection shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both.” Id.

17. 13 V.S.A. § 4020 prohibits the sale of firearms anyone under 21 years old unless such person can provide a certificate indicating they have completed an approved hunter safety course. “A person who violates this subsection shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both.” Id.

18. 13 V.S.A. § 4022 becomes effective October 1, 2018 and prohibits the possession of bump-fire stocks. “A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.” Id.

MEMORANDUM OF LAW

Vermont’s Constitution provides strong protections for the people’s right to keep and bear arms for the defense of self and state and to hunt.

19. Vermont’s constitutional protection of the people’s right to bear arms is unequivocal, declaring “the people have a right to bear arms for the defense of themselves and the State...” VT. CONST. ch. 1 art. 16.

20. There has been little litigation over Article 16 because the Vermont legislature has traditionally safeguarded that civil right. There are two cases that hint at the boundaries of Article 16.

21. The Vermont Supreme Court held that prohibiting the carrying of a loaded rifle or shotgun in a vehicle on a public highway “does not literally prohibit the bearing of any arms but only requires that, when rifles and shotguns are carried in mechanically propelled vehicles on public highways, that they be unloaded.” State v. Duranleau 128 Vt. 206, 210 (1969).

22. The legislature was addressing the specific problem of people hunting from their vehicles when it enacted the statute at issue in Duranleau. The legislature tailored a narrow and effective solution: people can still own and carry rifles and shotguns, but the guns must be unloaded in vehicles on public highways. Accordingly, the Court, upheld the narrow restriction.

23. Conversely, when Rutland attempted to prohibit the concealed carrying of pistols, the Court held that the ban was “inconsistent with and repugnant to the Constitution and the laws of the state.” State v. Rosenthal, 75 Vt. 295, 610 (1903).

COUNT ONE

13 V.S.A. § 4019 violates Chapter 1, Article 16 of the Vermont Constitution.

24. 13 V.S.A. § 4019, prohibits private sales of firearms without first obtaining the approval of an FFL. The right to keep and bear arms is meaningless without the right to obtain them.

25. Assuming the transferor and transferee are able to gain the agreement of an FFL, the associated costs, inconvenience, and invasion of privacy are a significant and unjustified burden on the fundamental right provided for in Chapter 1, Article 16. The statute is, therefore, unconstitutional.

COUNT TWO

13 V.S.A. § 4020 violates Chapter 1, Article 16 of the Vermont Constitution.

26. 13 V.S.A. § 4020 prohibits the sale of firearms to people under the age of 21 who have not attended and completed a course approved by the Commissioner of the Department of Fish and Wildlife. This requirement serves no legitimate government interest.

27. This statute constitutes an unjustified burden on the fundamental right to keep and bear arms for the defense of self and the state. Accordingly, the statute is unconstitutional.

COUNT THREE

13 V.S.A. § 4022 violates Chapter 1, Article 16 of the Vermont Constitution.

28. 13 V.S.A. § 4022 bans entirely the possession of bump-fire stocks. The Vermont Supreme Court, in Rosenthal, held that the ban on carrying a certain category of firearm was unconstitutional. An outright ban on a category of firearm – that which has a bump-fire stock – is, therefore, clearly “inconsistent with and repugnant to the Constitution and the laws of the state.” Rosenthal, 75 Vt. at 610.

COUNT FOUR

13 V.S.A. § 4020 is unconstitutional pursuant to Chapter 1, Article 7 because it unjustifiably curtails the fundamental rights of people under 21 years old.

29. Chapter 1, Article 7 of the Vermont Constitution explains that the Vermont government is for the “common benefit” of the people and mandates equal protection under the law. The Common Benefits Clause is “the first and primary safeguard of the rights and liberties of all Vermonters.” Baker v. State, 170 Vt. 194, 202 (1999).

30. In this case, the government has singled out a group – people under 21 years old – and curtailed their fundamental rights. Furthermore, that curtailment serves no legitimate

government interest. Therefore, under any analysis 13 V.S.A. § 4020 is unconstitutional and cannot stand.

PRAYER FOR RELIEF

31. WHEREFORE, Plaintiff prays for an order and judgment:
- a. Declaring that 13 V.S.A. § 4019 violates Chapter 1, Article 16 of the Vermont Constitution and is thus devoid of any legal force or effect;
 - b. Enjoining Defendants and their employees and agents from enforcing 13 V.S.A. § 4019;
 - c. Enjoining Defendants and their employees and agents from applying 13 V.S.A. § 4019 so as to prohibit GOVT members from privately transferring firearms;
 - d. Declaring that 13 V.S.A. § 4020 violates Chapter 1, Articles 7 and 16 of the Vermont Constitution and is thus devoid of any legal force or effect;
 - e. Enjoining Defendants and their employees and agents from enforcing 13 V.S.A. § 4020;
 - f. Enjoining Defendants and their employees and agents from applying 13 V.S.A. § 4020 so as to prohibit GOVT members under 21 years of age from purchasing firearms;
 - g. Declaring that 13 V.S.A. § 4022 violates Chapter 1, Article 16 of the Vermont Constitution and is thus devoid of any legal force or effect;
 - h. Enjoining Defendants and their employees and agents from enforcing 13 V.S.A. § 4022;
 - i. Enjoining Defendants and their employees and agents from applying 13

V.S.A. § 4022 so as to prohibit GOVT members from purchasing or possessing bump-fire stocks;

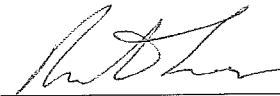
- j. Awarding Plaintiff reasonable costs, including attorneys' fees, incurred in bringing this action; and
- k. Granting such other and further relief as this Court deems just and proper.

Dated at White River Junction, Vermont this 21th day of August, 2018.

Respectfully submitted,



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ERN: 6868; VT Bar: 5260

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