

Discussion in Senate Judiciary

March 15, 2018 - 8:45 AM - 10:00 AM

Discussion opens with Eddie Cutler scheduled to give further brief testimony. Cutler proceeds. Suggests a study be done, or to otherwise allow expert testimony from John Lott. Sears explains why he said no to the John Lott request - outside interests. Cutler makes further points against the mag ban, such as people with mags cannot move here.

Dick Sears (in addressing Cutler during Cutler's testimony):

"...I will say about Senator Rodger's bills, I do support, um, 4 of his bills. The reason I didn't take up the bill that, um, repeals the magazine ban is because it is in the courts right now. And, um, as a matter of fact, my, my statement in the journal of last year, when I voted No on the Magazine Ban, is part of Max Mish's defense, um, against the charges in Bennington for carrying the magazines. Um, which surprised me that I was part of that, I didn't offer to be part of it, but my statement is. And, I'm hoping that they do find it either unconstitutional through the, um, effort of the lawsuit or through the Max Mish case. Um, but, that's my, that's one, that's the reason we didn't take up the repeal of the magazine ban."

Discussion continues...off topic. Sears addresses Cutler that he understands Cutler's concerns:

Dick Sears:

"...As I said, my, my hope is that they do find the ban unconstitutional, the magazine ban portion of S.55, unconstitutional."

Cutler's testimony ends but not before he asks Baruth for another debate (discussion taken offline).

Cutler concludes; Sears addresses Cutler:

Dick Sears: *"I think I've made my comments clear. I will say that, you know, one thing I regret about last year on S.55 is I got cornered. I felt that I needed to vote No, but when I voted No I lost all control of the situation. I had no influence whatsoever... and the current make up of the Senate and House lead me to believe that it's not going to be any better if I say No. So that is weighing very heavily on my mind."*

Discussion continues with Erik Fitzpatrick (Legislative Counsel) doing a walk thru of what will be a Committee Bill which now contains S.1, S.72 and S.22. Sears mentions that S.2 and S.13 may need a little revision but they will be taken up later. Discussion at hand is S.1, removing the sunset clause on the current exemption to out-of-state (oos) shooters coming into Vermont for a competition. Current language of mag ban law is read and explained versus what S.1 would change.

Dick Sears (during Legislative Counsel's Walk Thru) : *"...And, um, I, I, I mean... If I remember back to our original discussion on the Senate Floor, this was an area where we tried, I think we had almost*

unanimous support to change this but because they didn't want to have a conference committee or they didn't want have to go back and have another House vote they didn't allow it. Okay. That was one of the points where I made about losing control of the debate.

Jeanette White: *"Actually, I don't think it was that..."*

Dick Sears: *"Uh, I think it would have been if it had been by itself, if it wasn't part of a larger thing that would have basically, um, taken the ban out on High Feeding devices."*

Jeanette White: *"Okay..."*

Discussion continues concerning S.1 portion. Baruth asks for clarification on someone moving here from out of state, and then asks about "established". Further discussion about this facet, with Senators wanting to insure that new contests could be covered for competitions not yet contemplated. Consensus is to allow them, but they need to be "sanctioned"; swap out "established" for "sanctioned" or "sponsored". "Establish" would not allow a new competition. Should definition of "ranges" be included?" Evan Hughes mentions a point about language of non-residents; what if a Vermont resident attending an oos college wants to come back into Vermont for a UVM shooting competition?

Phil Baruth interrupts: *"Mr. Chair. So, I would, um, not be able to support this, if, we're contemplating changing it to Vermont resident because you're just, at that point you're, you're undermining the ban itself. I would be able to support it if we, swapped out the word 'established' for 'sanctioned'?"*

Dick Sears: *"Maybe we should just repeal the ban..."*

Jeanette White raises an interesting point about an oos person being able to come into Vermont with a High-cap mag and compete, but her neighbor who didn't own one before can't compete because they don't own a High-cap mag before?

Phil Baruth: *"Well, in that case, I would say, let's, get, let's not repeal the sunset."*

Jeanette White: *"Or let's just repeal the ban."*

Phil Baruth: *"Well, that's my point, if what you want to do..." (trails off - unintelligible)*

Dick Sears: *"That would be the simpler thing to do..."*

Phil Baruth: *"...the, the, the, what we passed last year, and, and allow this to go forward, this piece of law, I can support that, but in effect you'd be re-writing it to weaken the ban, if we, if we..."*

Dick Sears: *"Why don't we just repeal the ban?"*

Phil Baruth: *"I thought you said we were not doing that?"*

Dick Sears: *"Well, I wasn't planning to, but if we are going to get into such a debate about how we're gonna define an existing shooting contest... I might... My number one goal here is to, um, allow established shooting contests to continue to go on past July 1st of 2019. So: If the only way we can get some, um, consensus is to repeal the ban, then we don't have to worry about whether it's a Vermont resident, a New Hampshire resident or, any other resident."*

Joe Benning: *"So moved."*

Laughter. Further discussion. Benning suggests that Vermonters are being placed at a disadvantage with White agreeing. Baruth says he cannot support weakening the ban, goes back to his support of removing sunset, suggestion of the wording change. Suggests that if the Committee is going to go down the road of undoing the ban for Vermont residents: He can't see it passing the Senate, he can't see it passing the House, and he won't vote for it.

Jeanette White: *"But I don't understand why would we want to put Vermont residents at a, at a disadvantage."*

Phil Baruth: *"I don't view it as putting them at a disadvantage. If it were up to me, I would say that no one can own a high-capacity magazine(cut off by Dick Sears)"*

Dick Sears: *"I would prefer to have a line, that, that...If you would prefer to not repeal the ban today, then the language needs to read that for the purposes of shooting contests one may possess a high-capacity magazine whether you are from Vermont, or New Jersey or Alaska."*

Further discussion about Vermonters at a disadvantage. Dick Sears makes an analogy with golf and golf rules, and how everyone plays by the same set of rules at a given tournament.

Dick Sears: (speaking to Phil Baruth) *"...But, we all play under the same rule. And the way you're trying to make it, Vermonters would be at a disadvantage."*

Phil Baruth: *"It is not the way I am trying to make it, it is the way the law currently is."*

Dick Sears: *"Well, well, the law was stupid."*

Dick Sears: *"And, frankly, Phil, that, that ban came out of the House with no debate, and never got discussed in any Committee of the Senate, and, I, I find it the most objectionable thing that happened in S.55 because the Senate never got the opportunity. Now you're defending it as if it was part of a Senate bill, it never was."*

Phil Baruth: *"I, I..."*

Dick Sears: *"It never got debated in the Senate."*

Phil Baruth: *"I'm defending it... It did get debated in the Senate."*

Dick Sears: *"Where? And when?"*

Phil Baruth: *"Everything we passed was under debate"*

Dick Sears: *"Yeah, but it wasn't allowed to be changed, because you had the votes to not change it. And, you, you, what happened, was, that, you know, I still have nightmares about what happened..."*

Phil Baruth: *"It would be allowed to be changed if you had the votes."*

Sears returns the discussion to the language change to allow a Vermonter to compete without a disadvantage, and suggests that non-resident vs non-resident language be removed. A great deal of confused discussion ensues about of how competitions or even magazines work, who could possess or not. Confusion prevails over the definition of transfer, and whether it was legal or not to hand a high-cap magazine between two people. Grandfathering enters discussion, further discussion ensues which may prove useful, but nothing leaps out. A point of order is called by Benning as to what motion is being discussed, there are at least two, possibly three.

Sears would like to see anyone be able to compete, resident or non-resident, but only for the purposes of the competition. Baruth states he could not support that as he feels it weakens the ban. Nitka asks a question about whether "high-capacity ammunition" is supplied by a club. Further discussion about only using mags these at competitions.

Baruth makes a point of mentioning that there was a magazine give-away on the state house lawn; Sears points out that it was completely legal. More discussion on oos vs Vermonters.

Phil Baruth: *"But suppose somebody goes to another state and buys one, brings it in for purposes of using in a shooting contest..."*

Dick Sears: *"Then they have violated the law"*

Phil Baruth: *"I don't believe they would..."*

Dick Sears: *"They have violated an unenforceable law."*

Phil Baruth: *"I don't, I don't believe they would..."*

Dick Sears: *"They have violated an unenforceable law, unless you're are stupid enough to buy 'em with a photo at the, wherever Max bought his; or his girlfriend bought his.*

Jeanette White attempts to interject a thought, Dick Sears continues...

Dick Sears: *"I mean that's, that can go on today. You go out, you go to New Hampshire, and if they don't have a, a recording, a video recording of you buying the high capacity magazine and you bring it back in, how do you enforce that? Today? Without, without..How do you know that that magazine wasn't possessed prior to October 1st, 2018?"*

Phil Baruth returns to his original support for S.1, and what he will accept for language.

Jeanette White returns to her point about Vermonters being placed at a disadvantage. She continues with an explanation for why she voted for the bill (S.55), but did not support the ban portion - only voted because she wanted the bigger bill - she never had the opportunity to vote on just the mag ban portion. Many reasons why she didn't support the ban in the first place. Discussion returns to how to correct the wording of S.1, which then gets tweaked. Baruth digs in about his concern that the bill would be weakened. Erik Fitzpatrick starts looking for wording.

John Rodgers interjects incorrectly (I believe) and says it is illegal for him to hand his friend a rifle with a high-capacity mag in it, as that would be a transfer.

Baruth acquiesces that if we are only talking about grandfathered magazines, then he would be okay with allowing those mags to be borrowed at a competition. General agreement on movement of the bill forward. Bill more brings up a point about "sanctioned", consensus seems to agree on "organized". Off topic discussion ensues. Dick asks for a vote; but as final language has not been written, Baruth asks to postpone the vote until he can read the new language.

Discussion on S.1 portion ends, on to discussion about S.72. Judge Grearson had suggested a wording clarification, which was accepted; Erik Fitzpatrick does the walk thru.

Sears explains that he has talked to Ashe and Grad about what will happen to the Committee bil under discussion once it leaves - what will be added to it? He has a commitment from Ashe that he will stick with whatever Senate Judiciary does. He explains that he is less worried about it getting Christmas treed like what happened last year, as long as he votes for the bill.

Dick Sears: *"...I think that, it was partly done out of...; I'm going to use the word 'out of control'; a lot of people thought it was a great bill...so, with all due respect to all of them. We all admit that things got added on that we never anticipated being added on to a bill that we passed last year, and I thought it would just going to be about Waiting Periods. And, you know in hindsight, many of the people would..would....part of the reason that it got out of control of this Committee is because this Committee voted No on it.*

Sears continues that he has done his best to insure that just the Committee bill in front of them would be taken up, and nothing would be added to it downstream. Baruth re-iterates that if what is in front of them passes the Committee, he will defend it. Conversation pauses, with Nitka then speaking.

Alice Nitka: *"I would certainly vote to improve this bill by amending it; and I like the bill. BUT: I don't have confidence in the system anymore as what happened on the floor of the House last year. Some of us think that what came out of there could have been done in Committee. I think there could have been some meeting of the minds with all the groups, if it had been done in the Committee and we wouldn't be in any of these positions today."*

Dick Sears: *"I agree."*

Alice Nitka: *"Therefore, I don't trust the system any more."*

Jeanette White attempts to interject a thought, is cut off by Dick Sears.

Dick Sears: *"That's a major statement by a long term Senator/Representative. Alice I respect you. Deeply. As Vice Chair I understand where you are coming from."*

Discussion about what is being voted on, clarification is given that the vote at hand is to add S.72 into the Committee bill. Discussion ends. S.72 is unanimously added. Dick Sears again indicates that S.2 and S.13 will be handled later.

Discussion now generally turns to S.22 / Waiting Period. Sears reads a statement that he made last year on the Senate floor that has been used in the Max Mish case. He quotes from his statement made on the Senate floor which has been made part of the Max Mish case...

Dick Sears: *"Mr. President, it is unfortunate that I am forced to vote No on a bill that I reportedly sponsored. When I have looked at firearm restrictions I have been guided by one principle: Will the proposed legislation keep firearms out of the hands of individuals who should not possess them. When law enforcement officers, or gun owners or State's Attorney's tell us that something is unenforceable, we should listen. Yes, most Vermonters are law abiding and would follow the law, so I ask who is this legislation designed for? Law abiding citizens or the criminal element and deranged individuals will not abide by the law, for that reason, I cannot support the section dealing with magazines."*

Dick Sears continues and additionally states that his primary concern is suicides by firearm, and that a witness in the Public Hearing of 2019/03/15 suggested that some of the firearm purchases at gun shows are "impulse buys". One person's tragedy should not impact everyone else. Dick Sears shares comments from some of the speakers at the Public Hearing on 2019/3/15 and he refers to a statement made by a firearms dealer...

Dick Sears: *"...But he said, a 48-hour waiting period, this is also not...; he talked about the, secure storage, and I would put that in the category of magazines, an unenforceable law. Where we already have a process. I appreciate that you have decided to drop this secure storage part that I would argue that's the same as magazines, it's unenforceable, and, um, there are laws on the books that deal with neglect of a child and abuse of a child.*

Sears continues with reciting data about suicide. He refers to some testimony, and that one person indicated that most gun purchases are impulse buys. He proposes to amend S.22 to a waiting period of 24 hours, and limit it to sale of handguns. 1 day waiting period limited to handguns. He is willing to compromise on 24 hours and just handguns. The spirit is to compromise.

Baruth speaks to compromise, and is okay with 24 hours and just handguns. White asks why 48? Baruth explains there was a choice of 1 or 2 or 3 days, so he went in the middle. Benning explains a couple of concerns, he speaks to Right of Self-Defense. He also questions whether a waiting period will really work, and suggests a study. Points out that a firearm can be used for suicide or self-defense. A Waiting period for all guns would close gun shows, and he reminds the Committee that they have to support the Constitution. He continues, speaking to the reduction of the limit and the reducing of the limit to just handguns. He continues:

Joe Benning: *"...So I am glad you are moving in the direction you are. But I am also now firmly in the camp of, this is yet another step. I wasn't there last year. Now I am because of what went on last year. And I think you heard very clearly from Clay Branson (name may be different) the other day that this was another step in a group that is growing, and that's the concern that I have is that we are taking yet another step on that slope...*

Benning continues that he does not feel there is enough adequate evidence, and he speaks to the Andrew Black situation, and questions how long the parent's really knew there was a problem. He speaks of personal experience of two friends who both committed suicide, both had guns all their life. Speaks to Baruth about the experience he had shared about his daughter getting upset with Social Media - that social media is so depressing. Andrew Black was in that situation - Benning seems to think that he was sending out the warning signals. Then he brings up the fact that the Committee will soon be bringing up abortion, and asks what right does the state have to try and intercede with a personal decision on suicide. He is really struggling with this.

Sears thanks Benning, but feels that perhaps a waiting period would help. He only came to this conclusion recently. It will not solve it. 89% of suicides were done by handgun according to a study by VPR. Benning counters by saying that they worked very hard last year to protect people who are in danger (ERPO), but are now throwing those people under the bus in order to address the possibility of a law that MIGHT stop a suicide. He believes that people just do not wake up one morning and decide to commit suicide.

Alice Nitka brings up Death with Dignity, and relates people who shot themselves because that had terminal cancer.

Sears now turns to get White's stance. White suggests that suicide is impulsive. Tells a story of her neighbor's son who had accidentally crashed his mom's new car, then climbed a nearby mountain and hung himself. She therefore thinks that a brief waiting period may help. She suggests that if a victim buys a gun to defend themselves, that gun may now be used against the victim when the perpetrator returns. In the spirit of compromise, she will accept the 24 hours and just handguns.

Baruth reads from a letter from the DV people who is vehemently against allowing a victim to defend themselves, which suggests that incidents with firearms happen with a higher frequency in households that have firearms in them versus households that don't, and which also states that firearms are not used in self-defense. More discussion ensues.

Committee takes a break, comes back with Legislative Council.

Discussion turns to S.2.

Disclaimer:

This transcript was written by Chris Bradley of the Vermont Federation of Sportsmen's Clubs. It was created by listening to the testimony that occurred before the Senate Judiciary on the morning of March 15 which concerned S.1, S.22 and S.72 becoming part of a Committee Bill. Quoted Statements i are as accurate as reasonably possible, but may contain unintended errors or omissions, and this is not a complete word-by-word transcript. Statements in quotes were felt to be particularly interesting and were transcribed as accurately as possible. Audio recordings can be obtained from the Statehouse Copy Room. I wish to thank Eddie Cutler of GOVT for making a video recording of the proceedings.