Ladies and gentlemen of the committee, good afternoon and thank you for the opportunity to speak on H.610

As we’ve seen, there are a few different parts of this bill and I would first like to address section 1 regarding the so called “Charleston Loophole.” To understand this obscure occurrence, one must first be familiar with the process of purchasing a firearm.

When a person buys a firearm through an FFL (Federal Firearms Licensee), a background check is conducted through the National Instant Criminal Check (NICS) system which is operated by the FBI. Under current Vermont law (13 V.S.A. 4019) all transfers of a firearm, including private sales must be done in this fashion.

Upon informing the dealer of their intent to purchase the firearm, the dealer will require the buyer to complete ATF form 4473 (copy enclosed for reference), and produce a valid, picture identification. When the form is completed and signed, the dealer then initiates the background check through the NICS system either electronically or by phone. The moment the call comes through on the FBI’s end the transaction is issued a unique identification number which stays with it throughout the process.

Usually the “instant” background check is exactly that and will report back to the dealer within a few minutes one of three ways: proceed (with the transaction), deny (means the person has been found to be prohibited from owning firearms), or delay, which basically means they are not sure yet and have to do some more homework on the buyer.

Under current federal law, the FBI has three full business days from that point before the “default proceed” status is reached. It is important to note that this “default” proceed order does not mean that the FFL MUST proceed with the transaction, rather they have the option to use their discretion in such cases. After the three day window is up and regardless if the transaction proceeds or not, the FBI will continue to gather information and try to make a determination on the buyer for up to 88 days (3 months from the original inquiry) until federal law requires that transaction to be purged from the NICS system. During this time, if the FBI determines the buyer to be a prohibited person, that triggers an order of operations in response to that information. The FBI will first call the FFL to determine if the transaction was completed. They also call the ATF to inform them of their findings. If the transaction was completed, the ATF will then take measures to retrieve the firearm from the prohibited individual. If the transaction did not proceed, the FBI will in turn notify the ATF of the denial at which point it will be ATF’s judgement whether to pursue the individual for attempting to acquire a firearm illegally.

Using FBI data from 2017, approximately 31 percent of transactions turned up “hits” on the initial search and required further investigation. 20 percent were completed during the three-day window while the other 11 percent were delayed for additional research past the three days. Ultimately the FBI found that 1.2 percent of delayed transactions resulted in denial. This means that 98.8 percent of initial “hits” on the NICS system resulting in further investigation were false positives and the purchaser was NOT a prohibited person. Furthermore, the FBI’s own research shows that the NICS system allows a huge number of these delayed background checks to go uncompleted every year past the 90-day period. The FBI failed to complete approximately 1.3 million background checks from 2003 to 2013 and another 1.1 million from 2014 to 2019 respectively. Prohibiting the transfer of a firearm while waiting on a large government bureaucracy to deliver a report could have profound implications for good people who seek to lawfully acquire a firearm, especially when compounded by such high rates of misidentification in the NICS system. Under this law, lawful citizens will be denied their constitutional rights indefinitely and with limited mechanism of appeal. We believe that the implementation of such a provision in the current law is misguided and the burden will once again fall unfairly on the good people of Vermont.

We also think that it is prudent to acknowledge an important piece of context in that the right to keep and bear arms is the only right which is both protected by the constitution and also requires the pre-screening of any and all individuals attempting to exercise that right. We don’t require background checks for peaceful assembly, nor for petitioning our elected officials. We don’t require a background check for an individual to be protected from unlawful search and seizure nor to have a timely trial by an impartial jury of their peers. We do not require background checks to guarantee that our people shall not be subject to slavery and involuntary servitude as protected by the thirteenth amendment, nor is there any sort of vetting required for women to vote as protected by the nineteenth amendment. We don’t require pre-approval to speak one’s mind openly through the press or by individual expression and we certainly do not require it to practice the religion of our choosing. Religious zealotry is by far the leading cause of murder, oppression and genocide over the history of mankind yet the idea of a “public safety measure” requiring people to obtain the government’s permission each time before attending church sounds downright ludicrous -as it should. Yet when it comes to the right to keep and bear arms, which at its core is the fundamental right of self-defense with which we are all born; the right which preserves all of the others, we have only for the last 26 years imposed this restriction which most everyone now considers routine. Article 16 and the Second Amendment have become the “well, it depends..” amendments.

Regardless of one’s personal opinions on the constitutionality of background checks for firearm sales, the fact remains that we require them, and for the most part, the NICS system does a good job of screening for prohibited persons. Sometimes they even do a little too well. As we have previously indicated, research shows that the overwhelming majority of delays on the NICS system are false positives due to similar names and assorted other reasons. When this happens, the best-case scenario for the wrongfully identified purchaser is a delay in the sale and their ability to obtain a weapon for protection, the worst-case scenario is an outright denial which takes months of legal action and personal hardship to correct just to maintain one’s rights. In this scenario, the question must be asked if we are not only violating this person’s right to self-defense, but also their right not to be deprived of life, liberty, or property, without due process of law as guaranteed by the fifth and sixth amendments. The point is that even without this proposed change in the law, the system already errs HEAVILY on the side of restricting people’s rights on the CHANCE that they MIGHT be a threat to public safety.

As the committee heard from Henry Parro, a local firearms dealer with over 30 years of experience, it is already an extremely rare occurrence that a firearm is sold to a prohibited person past the three-day waiting period and in each case, the ATF is immediately on the task of separating that individual from the firearm. The term “Charleston Loophole” which identifies this obscure corner of the law is a misnomer created by gun control advocates for what might be best described as a microscopic pinhole in an otherwise broad and heavy canvass of a law. And it is disingenuous at best. When researching this specific phenomenon, we came up with some interesting results. After many hours of searching for a statistic on how many crimes are committed annually with firearms that slip through this alleged loophole, we found clear documentation of exactly ONE: the Charleston shooting itself which inspired the name. This is not to suggest that no crimes have otherwise been committed with a firearm obtained through a default proceed, but to recognize that the problem is so very miniscule that there is no observable data if in fact a problem even exists. It also bears noting that upon completion of the investigation into the Charleston Shooting, the FBI determined that the drug possession charge on the shooter’s record was a misdemeanor and not a felony which means that at the time of purchase, the shooter was NOT a prohibited person under the criteria. While this information in no way lessens the abhorrence of the crime that was eventually committed, it does show that the NICS system worked as designed. This information also points to one very important conclusion: For all intents and purposes, the problem that this law proposes to address exists almost exclusively IN THEORY.

Given this information, section 1 appears clearly to us as a solution in search of a problem. If implemented, this policy will most certainly catch far more innocent people than criminals and we strongly oppose this part of the bill.