

Statements from GrassRoots GunRights Regarding H. 3292 Made Before the House General Laws subcommittee on February 17, 2011

Mr. Chairman, members of the General laws subcommittee, thank you for the opportunity to speak. I am here today to give voice to thousands of gun owners in SC who are not able to be here to speak for themselves. Many of them have already contacted you via email or postcard to say "GrassRoots GunRights speaks for me."

H. 3292 is a well intentioned bill, and GrassRoots GunRights is grateful for such a well intentioned bill. But, years from now, when one of us is forced to stand in front of a judge and jury, we will not be judged by your good intentions. No, your good intentions will be of no value to us then. All that will matter - as one of us stands in front of the judge and jury - is what the words of the law actually say. As one of us sits in prison because the words you choose to make into law now were well intentioned, but poorly drafted, will give us little comfort.

GrassRoots GunRights has already provided all of you with a thorough, detailed 15 page analysis of what is right and wrong with H. 3292. Plus, GrassRoots GunRights has proposed amendments to sections of law that H. 3292 already proposes to amend but fails to amend as well as the law should be amended. Since you will already be proposing amendments to these existing sections of law as part of H. 3292, now is the right time to pass additional amendments to protect gun owners from these unjust laws.

Section 1 of this bill proposes enacting a new Section 16-23-510. While at first glance, one would believe this is just a restatement of existing law, that would be wrong. This new proposed section limits our rights in a way that existing law does not, and is worse than existing law. This new proposed section refers to a subsection C, but fails to include a subsection C. GrassRoots GunRights has proposed an amendment that both provides a subsection C and restores the rights gun owners lost in the redrafting transfer from one section of law to another. A full explanation is provided in the GrassRoots GunRights analysis provided last week.

I have been told that you will be amending H. 3292 to delete the "Transportation and Storage of Firearms in a Locked Vehicle" language from Section 2 of this bill. If that is true, then I need not address the various problems with that part of the bill. If that is not true, then please read carefully the GrassRoots GunRights analysis and proposed amendments that are needed to make the "Transportation and Storage of Firearms in a Locked Vehicle" language applicable to all law abiding citizens.

Thank you to the bill's sponsors for Section 3 of H. 3292. It is a pleasure to see a bill drafted that recognizes that it is people who can be good and evil - not inanimate objects, and punishes people for doing evil - not for mere possession of a tool that can be used for good or evil.

There are numerous problems with Section 4 of H. 3292, which amends existing Section 16-23-420. The biggest problem is that H. 3292 will create a legislative trap for otherwise law abiding

gun owners. As currently drafted, a gun owner who obeyed SC law would still be in violation of federal law - and thus be subject to a 5 year prison sentence and a lifetime federal firearms disability. Gun owners deserve better than being set up for a fall. GrassRoots GunRights has proposed amending Section 16-23-420 in such a way as to give fair notice to gun owners as to what they need to do to remain in compliance with both state and federal law. The exact wording can be found in the GrassRoots GunRights analysis you were provided last week.

And, since you are amending Section 16-23-420 anyway, why not fix some of the other problems found in the existing law? For example, from all appearances both from the outside of the building and from the web site and brochures, the SC Aquarium is a privately run business. Any armed CWP holder - or any armed gun owner if H. 3292 passes - visiting the SC Aquarium would believe they were in complete compliance with all laws when entering the SC Aquarium. But, they would be wrong. The SC Aquarium is housed in a "publicly owned" building. Thus, by innocently walking into the SC Aquarium, a CWP holder is committing a felony. I could point out any number of other scenarios that would just as easily and wrongfully ensnare otherwise law abiding people because of how poorly Section 16-23-420 is currently worded, but all you need do is read the GrassRoots GunRights analysis. Gun owners deserve better. Justice demands better. So, if you are going to amend Section 16-23-420 as part of H. 3292, then do the job right and fix the other problems too so as to avoid the injustices that GrassRoots GunRights has already outlined in our analysis of H. 3292. The amendments in H. 3292 DO NOT fix this problem.

Columbia and Charleston both create a problem for otherwise law abiding CWP holders - a single wrong step and they could become a felon. Both cities have educational buildings interspersed throughout the city which are surrounded by private and public property. CWP holders can carry on private and public property, but it is a felony to carry on college property unless it is part of the street right-of-way. So, when a CWP holder goes strolling around the beautiful city of Charleston, how can she know whether the sidewalk she is walking upon is within the right-of-way or not? Section 16-23-420 needs to be amended to protect an otherwise law abiding person when walking on the sidewalks adjacent to the street.

Currently, Section 16-23-420 allows a person to possess a firearm in their vehicle on a public street open "full time" to vehicular traffic. So, what does "full time" mean? If a street is closed once a year for a football game, fair, festival, or marathon is it open "full time"? GrassRoots GunRights proposes deleting the word "full time" so as to remove any ambiguity as to what is legal. Then, if the street is open when the gun owner is driving down it, it is legal.

There are frequent bills to change where a person is allowed to possess a firearm in a vehicle, and there will continue to be changes made in the years ahead. Instead of trying to list the allowed locations in Section 16-23-420, it would be better to state that a firearm in a vehicle must not violate state or federal law. Then, when the state and federal laws change, Section 16-23-420 will automatically stay up to date and gun owners will not end up being ensnared when they follow the law only to find that some other section of law was overlooked and not changed when the other laws were changed. This has already happened with the SC CWP law. The CWP law has been amended, and the renumbered sections were not all properly re-referenced throughout the law. Lets make it easier for otherwise law abiding people to obey the law.

There are numerous other problems with Section 16-23-420 that need to be fixed, and now is the time to do so. In the interests of saving time, GrassRoots GunRights asks you to actually read the GrassRoots GunRights analysis of H. 3292 wherein all such problems are thoroughly detailed with proposed amendments. Then, fix it.

Section 5 of H. 3292 amends existing Section 16-23-430. Just as with Section 16-23-420, the H. 3292 proposed amendments will legislatively entrap otherwise law abiding gun owners. Many of the same solutions needed to fix Section 16-23-420 are needed to fix Section 16-23-430.

One of the best aspects of H. 3292 is how it makes criminal intent the basis of committing a crime in amended Sections 16-23-20 and 16-23-460. Finally, the law will recognize that tools are neither good nor evil, it is the person using the tool that is good or evil.

Section 16-23-430 needs to be amended to recognize that very same principle. Pens and pencils are objects which may be used to inflict bodily injury or death, as anyone who has watched a spy thriller movie can attest to. So, should we prosecute every student and teacher that brings a pen or pencil to school? It would be absurd to do so. But, it is even more absurd that the law would allow it. Fix the law to punish those who do evil, not those who simply possess a tool that can be used for good or evil.

Additionally, change the law to treat otherwise law abiding people with respect. I carry a knife with a blade over 2" long because a short bladed knife is not as useful a tool. When I pull into the school driveway to pick up my daughter, I should not need to have placed my knife in the console or glove box prior to turning into the school driveway in order to avoid committing a felony as current law dictates. If I am not getting out of my vehicle, then I should be allowed to keep the knife in my pocket in my vehicle.

GrassRoots GunRights has proposed amendments to fix the problems with existing Section 16-23-430. Since H. 3292 will already amend Section 16-23-430, now is the time to fix the other problems, too.

As stated earlier with regards to amending existing Section 16-23-460, it is a pleasure to see the law changed to punish wrongdoing instead of punishing mere possession of an inanimate tool as Section 6 of H. 3292 will do.

The changes to Section 16-23-465 are long overdue. But, the changes do not go far enough. Seventy-five percent (75%) of the people in the USA live where a CWP holder can carry into restaurants that serve alcoholic beverages, and consume those beverages. There are no problems in those states that treat CWP holders like the responsible people they have proven themselves to be. The people of SC are just as responsible as the people in the rest of the USA, and we should be treated as such.

We know that criminals prefer to work in "gun free zones." By denying responsible gun owners the privilege of carrying in restaurants that serve alcoholic beverages, you are creating another "gun free zone" for the criminal element. By denying responsible gun owners the right to consume alcoholic beverages while carrying, you are still creating "gun free zones" because a

number of responsible gun owners will decide to disarm rather than break the law when they want to have a glass of wine with their dinner.

I have heard from GrassRoots GunRights members who complained that when they went into a rural gas station to pay their bill, they discovered there was a small lunch grill serving beer in the back. There was no indication of this on the outside of the building. Changing Section 16-23-465 is needed to protect innocent law abiding gun owners from becoming criminals - with a severe penalty that includes never being allowed to possess another gun for the rest of one's life - in situations like this.

Section 8 of H. 3292 amends existing Section 23-31-215, the heart of the CWP law.

Making SC honor an out-of-state CWP just as it honors an out-of-state drivers license is another long overdue step. But, there are still some states that require a reciprocity agreement prior to allowing CWP holders from other states to carry in that state. Thus, it is important that SC still require SLED to enter into reciprocity agreements with other states and to maintain and publish the list of such states. H. 3292 fails to require SLED to do so. Considering all of the budgets constraints SC agencies are under, failure to require SLED to do this could result in SLED no longer doing so and thereby cause SC CWP holders to not be able to carry in other states.

Changing the SC CWP law from requiring an undefined "favorable" background check which is subject to abuse to instead providing that a CWP will be issued if there is no information to disqualify the applicant is another good change. Unfortunately, H. 3292 only makes this change for CWP renewals, but not for initial CWP applications. H. 3292 needs to be amended so that initial CWP applications are treated to the same new standard as renewal applications.

The courts will most likely find the 21 year old age requirement to obtain a CWP as being unconstitutional since the court already found it was unconstitutional to discriminate against young adults on the basis of age for possession of a handgun. GrassRoots GunRights proposes changing the age for obtaining a CWP to 18 so as to not force a young adult to incur legal expenses to establish her rights - rights that are sure to be upheld by the courts.

Section 9 of H. 3292 amends Section 23-31-220 in an effort to overrule the flawed SC AG opinion that held that a local government could ignore the state firearms pre-emption law with regards to CWP holders and ban CWP carry on public property within its borders. The AG opinion was based upon sub-item 1 of Section 23-31-220. Unfortunately, the significant changes to Section 23-31-220 found in H. 3292 are made to sub-item 2. Thus, the changes in H. 3292 will not do what the changes are intended to do. Please adopt the GrassRoots GunRights proposed amendments for Section 23-31-220(1) found in the GrassRoots GunRights analysis delivered to you last week to ensure that the flawed SC AG opinion is properly overruled. Rep. Pitts stated earlier that a new SC AG opinion is going to be issued that overrules the flawed earlier SC AG McMaster opinion regarding Oconee County, and therefore Section 23-31-220 does not need to be fixed. But, the fact of the matter is that an AG opinion is not law. Thus, the LAW needs to be fixed to ensure otherwise law abiding CWP holders are not forced to go to court and spend a fortune to fix what can and should be fixed here and now.

GrassRoots GunRights supports the changes proposed in Section 10 of H. 3292. These changes will strike a good balance between the rights of property owners and the rights to privacy and effective self-defense.

Section 11 of H. 3292 provides that any pending criminal or civil actions are not affected by H. 3292, which means that someone can be convicted years from now for something that is no longer a crime. GrassRoots GunRights believes that the existing gun control laws under consideration are unconstitutional, and should never have been enacted or enforced in the first place. Thus, GrassRoots GunRights would like to see H. 3292 amended to make H. 3292 controlling over all pending criminal actions, which might well save some gun owner from being convicted in the future of something that should never have been a crime in the first place.

Thank you, and I am available to answer any questions or help in drafting any amendments.

[The General Laws subcommittee would not allow anyone to speak for more than three minutes. Therefore, it required several GrassRoots GunRights members each speaking for three minutes to get the entire statement read.]