



Michael Mower <mikemower@utah.gov>

HB 76

Spencer Cox <spencercox@le.utah.gov>
To: Mike Mower <Mikemower@utah.gov>

Sat, Apr 13, 2013 at 3:49 PM

Mike,

Thanks for your kindness. I have made a few revisions to the document and have attached the latest version here. I am not posting it online, but have shared it with a few legislators that wanted to know my position. I have no problem with you sharing it with any colleagues. Thanks for your friendship and leadership on this and every issue.

Spencer

Representative Spencer J. Cox
Utah House of Representatives, District 58
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435.494.1269

On Apr 12, 2013, at 8:38 AM, Michael Mower <mikemower@utah.gov<mailto:mikemower@utah.gov>>
wrote:

Well written, well reasoned, and much appreciated! Do you you mind if I share this with some of my colleagues or should I hold off?


On Thu, Apr 11, 2013 at 6:37 PM, Spencer Cox <spencercox@le.utah.gov<mailto:spencercox@le.utah.gov>>
wrote:
Mike,

It was great to talk to you today. I thought you might be interested in my thoughts on HB 76. This document represents my thoughts on why I was wrong and Gov. Herbert was right. It is fairly long and detailed (by design). It is still a work in progress, but I want to be prepared in case my "switch" vote becomes public.

Thanks for all you do!

Spencer

Representative Spencer J. Cox
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 **HB 76.docx**
164K



Michael Mower <mikemower@utah.gov>

HB 76

Michael Mower <mikemower@utah.gov>

Mon, Apr 15, 2013 at 9:22 AM

To: Spencer Cox <spencercox@le.utah.gov>

Cc: John Pearce <jpearce@utah.gov>

Thanks. I appreciate your willingness to stand up on this issue. We all appreciate your willingness, I should say.

Regards, Mike Mower

[Quoted text hidden]

Over the past few weeks, I have often been asked, "What was the most surprising thing you faced as a freshman legislator." The answer is easy: the speed of the process. Although I knew that I would be making hundreds—even thousands—of very important decisions in a short amount of time, nothing could really prepare me for the intensity of the decision-making process. As a former county commissioner, mayor and city councilman, I prided myself on taking as much time—even weeks or months if necessary—to ensure that I understood the consequences (intended and unintended) of important decisions. Unfortunately, as state legislators, we do not always have that luxury.

With that in mind, I think it is normal for thoughtful legislators to look back on the legislative session and wonder if mistakes were made. I must admit that I have spent several restless nights rethinking some bills and wondering if I made the right decisions. One of the bills I supported, HB 76, has caused me particular concern. HB 76, the so-called "Constitutional Carry" bill, would allow a person to conceal a weapon WITHOUT obtaining a Concealed Weapon Permit ("CWP"). Because of the Governor's decision to veto HB 76, I now have a rare opportunity to reconsider a difficult decision. This has given me several weeks to think, research and talk to constituents on both sides of the debate.

Let me begin by admitting that voting in favor of HB 76 was the easy thing to do. It is much easier to say, "I voted for HB 76 because I believe in the 2nd Amendment." That statement is short, concise and requires no thought or nuanced understanding. However, what if I told you that, after a great deal of reflection, I am now opposed to HB 76, in part BECAUSE I support the 2nd Amendment? While I recognize that this is a long explanation, I sincerely hope you will stay with me to the end as I attempt to explain the logic behind this decision.

As I return and listen to the debate on the House Floor, I now realize that legislators on both sides of the issue were making the wrong arguments. Instead of debating the underlying issues associated with HB 76, it sounds more like legislators were debating the Obama federal gun control proposals. Let me be very clear. I absolutely oppose the Obama Administration's proposals to limit assault weapons, limit high capacity clips and take guns away from law-abiding citizens. I also oppose the creation of a national gun registry. Ironically, not one proposal put forward by the Obama Administration would have done anything to prevent the tragic shootings in Sandy Hook. I will do anything in my power to fight against our Federal Government infringing the rights of lawful citizens to own guns. However, that is NOT what HB 76 is about. We must be wise enough to separate the logic and the emotions of these two distinct issues.

Under current Utah law, a person may own a gun and carry it with them anywhere they want WITHOUT a permit. The only caveat is that the gun must be visible ("open carry") and unloaded. Now, the term "unloaded" really does NOT mean unloaded in the traditional sense. It simply means you cannot have a round in the chamber. It is perfectly acceptable to have a fully loaded clip in the gun. As such,

under current Utah law, a lawful citizen can clearly keep and bear arms without HB 76 and without a permit.

If, however, you would prefer to hide your weapon and keep a bullet in the chamber, you need to obtain a CWP. It is important to note that Utah's CWP has been recognized as one of the easiest to obtain in the country. You do not even have to fire a weapon to get a CWP. The required class, although short in length, provides critically important information on gun safety, when/where/how to use a weapon and the laws governing concealed arms. Because of this, Utah is routinely recognized as one of the top states for preserving 2nd Amendment freedoms. In fact, Gun and Ammo Magazine recently ranked Utah as the 3rd friendliest gun state—even without HB 76.

With this as background, there are really two questions that I have had to grapple with: 1) Is HB 76 a good idea/policy; and, if not, 2) does Utah's CWP requirement violate the 2nd Amendment?

Let me begin on the policy side. After thorough consideration, I believe that HB 76 is bad policy and could ultimately harm our 2nd Amendment rights. Every year up to 800 CWP requests are actually *denied*. While it is absolutely correct that criminals will stick a gun in their pants without any regard for laws or the CWP process, there are still thousands of people that should NOT carry concealed and do NOT carry concealed because they can NOT carry concealed under current law. Furthermore, just as critical to me are the good people who DO qualify for a CWP that will now begin to carry concealed without having received any instruction on gun safety or when/how to engage an active shooter. This part worries me greatly.

Let me give you a telling example of a potential mass-murder that you probably did not hear much about. In November of last year, an armed gunman began shooting up a mall in Portland, killing "only" two people before taking his own life. The important part of this story involves a CWP holder that was shopping at the time. Seeing the active shooter, the CWP holder drew his handgun and took aim. However, at that moment, and because of his CWP training, the CWP holder had the presence of mind to recognize that he did not have a clear line of fire. Innocent bystanders were standing behind the shooter and, the properly trained individual, did not fire. Fortunately, simply drawing his weapon was enough to distract the shooter. Fearing the police had already arrived, the shooter withdrew and took his own life. Without CWP training, this already terrible story could have become even more tragic.

So, why does this matter—and how could this further erode our 2nd Amendment rights? I truly believe that, if HB 76 becomes law, at some point an uneducated concealed carrier is going to do something very, very stupid. We might not like it, or agree with it, but every major tragedy has been and always will be used to reduce our freedoms. Whether it is 9/11 or Sandy Hook, those that desire to limit personal freedoms and increase government intervention will use tragedy to direct public

opinion. One simply needs to look at the massive gun control legislation recently passed in Connecticut and New York to see how these events play out. As such, when our tragedy happens, the backlash will put the entire CWP framework at risk. If we, as responsible gun owners, cannot require at least a little training, I fear that we are opening ourselves up for much more serious regulations down the road.

If Utah's CWP process was onerous, I could better understand the push for HB 76. However, I can honestly say that I have never had a complaint about the class or its limited requirements. Most people, including—significantly—law enforcement, feel that at least a modicum of training is good policy. As such, I believe that HB 76 is bad policy.

However, the debate does not—and should not—end there. If Utah's current CWP law really does violate the 2nd Amendment, I have a sworn obligation to support HB 76. No matter how easy it is to obtain a permit, if that process violates the Constitution, it must be changed.

Some have argued that the 2nd Amendment is an “absolute” right and refuse to accept any limitations relating to weapons whatsoever. Such an argument cannot be sustained logically or historically. Every right, including constitutional and “God” given rights, have limits. As a rule, most people believe in the simple mantra that, “your rights end where mine begin.” The 1st Amendment “Freedom of Speech” is a perfect example. Generally, you are free to say just about anything. However, the minute you slander me or yell “fire” in a crowded theater, your speech is no longer protected by the Constitution. In other words, your “free” speech just became very “expensive.” As a society, we have determined, the appropriate “balance” between your right to free speech and my right to be free from harm.

How does this line of reasoning apply to the 2nd Amendment? First, during a recent interview, conservative Supreme Court Justice Antonin Scalia pointed out that, because of laws in existence at the time, even the framers of the Constitution recognized some limitations to the 2nd Amendment. As such, Justice Scalia argues that some limitations are “undoubtedly” permissible. The question then becomes whether the CWP process is the kind of limitation that can be put in place without “infringing” the right to “bear” arms.

If we again return to our maxim that “your rights end where mine begin,” we can apply the CWP requirement. Because of the 2nd Amendment, I believe that I cannot limit your ability to own and transport a gun to protect yourself and your family. However, I also have a competing right to protect myself and my family from the danger of an untrained and uninformed concealed carrier. In other words, in addition to the right to bear arms, we have the competing right to NOT get shot in the back of the head by someone doing something stupid when shots are fired.

I believe the CWP and Utah's current framework strikes the appropriate balance between these competing rights. If I openly carry, you have an opportunity to see

that I have a weapon and, if you do not trust me or do not feel safe, you can make a personal decision to leave—but you cannot take away my gun or make me leave (unless I am doing something illegal). If I have my weapon concealed, at the very minimum you are entitled to the assurance that I have had the tiniest bit of training. Simply put, if something goes down, you can rest assured that my knowledge of how/when to use my concealed weapon exceeds what I learned watching late-night re-runs of Dirty Harry.

By now I think we can all agree that it would have been nice for the drafters of the Bill of Rights to give us a little more direction on this matter. Even more frustrating is the inclusion of the “well regulated Militia” language. In case you have forgotten, here is the 2nd Amendment in its entirety:

“A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”

That’s it. Less than 30 words. While some interpret this lack of direction by the Framers as evidence of an “absolute” right (incorrectly as shown above), the better argument is that the States, pursuant to the 10th Amendment, should be left to decide what, if any, limitations might be reasonable without infringing. This would help explain why the Utah Constitution includes its own “right to bear arms” provision. Article I, Section 6 of the Utah Constitution reads:

“The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.”

Obviously the inclusion of Section 6 in the Utah Constitution would have been wholly unnecessary if the 2nd Amendment was clear and absolute. Furthermore, the drafters of the Utah Constitution recognized that the Legislature had full power to define the lawful use of arms. As such, there is a strong argument to be made that the Legislature is fully within its constitutional powers to provide some reasonable, non-infringing requirements on those that would hide weapons on their person.

For these reasons, I believe that Utah’s CWP law does NOT violate the 2nd Amendment.

Let me finish by recognizing that reasonable people can, and should, disagree with me. As a country boy, raised on a farm, I love guns. I own guns. I want more peaceful, intelligent, law-abiding citizens to own guns and to conceal those guns. I love the fact that President Obama has become the greatest gun salesman in the history of the world. I want to maintain this right for my children and grandchildren. I now believe that Utah’s Concealed Weapons Permit process is the best way to maintain that right, while balancing the rights of everyone to protect themselves. Just as the Federal Government is wrong to use the tragedy and

emotion of Sandy Hook as an excuse to infringe our 2nd Amendment rights, so too should we be careful to avoid using emotion and anger against the Federal Government as an excuse to imbalance a logical—and constitutional—system that is a model for the nation. For this reason, I will not be supporting a veto override of HB 76.