NATIONAL ASSOCIATION FOR GUN RIGHTS
STANDING UP FOR FREEDOM
DEFENDING THE SECOND AMENDMENT

The Honorable Kevin Bryant
Lieutenant Governor
State House
Columbia, SC 29202

January 24, 2018

Dear Lieutenant Governor Bryant,

The National Association for Gun Rights is excited about the growing effort to pass Constitutional Carry in South Carolina.

We appreciate the Legislature's work on House Bill 3930 (specifically as amended by the House on April 5, 2017, a copy of which is attached and to which all comments below are directed). This bill and the work done on it have made contributions to the fight for the Second Amendment. We welcome H. 3930 as a vehicle, as much as H. 3700, in reaching our mutual goal of advancing the right to keep and bear arms in South Carolina.

However, after consultation with our legal counsel, Bradley Pierce (who contributed heavily to this letter), we do have several specific concerns with the bill as it currently stands. These suggestions below are made in the spirit of continuing the discussion for the benefit of everyone involved in advancing freedom in South Carolina. On behalf of our 50,000 members and supporters in South Carolina, we urge you to consider adapting H. 3930 to address these concerns.

CRITERIA FOR CONSTITUTIONAL CARRY LEGISLATION

To aid the discussion, we believe it is helpful to begin with the definition of Constitutional Carry in the following four criteria. These define the legislation as it has been, and continues to be, passed across the nation.

1. **NO EXTRA REQUIREMENTS.** ***"If you are not prohibited from possessing the handgun, you are not prohibited from carrying it."*** — Constitutional Carry legislation should remove restrictions which prohibit a person who lawfully possesses a handgun from carrying, whether carried concealed or openly.
2. **EQUAL PLACES.** ***"If citizens* with *a license are not prohibited from carrying there, neither are those* without *a license."*** — Regarding restrictions on where a person can carry, Constitutional Carry legislation should remove inequalities between someone who has a license and someone who does not.
3. **CLEAR.** ***"No fear that you may be ignorantly breaking the law."*** — Constitutional Carry legislation should avoid and, as much as is practicable, eliminate any confusing

language which might lead people to either (a) refrain from carrying because of legal uncertainty, or (b) accidentally carry unlawfully.

4. **GUN RIGHTS, NOT GUN PRIVILEGES. "*Government does not grant the right to self-defense.*"** — Constitutional Carry legislation should recognize the freedom to keep and bear arms in self-defense as a God-given human right, not a privilege bestowed by any governing body.

Based on these criteria, our concerns with H. 3930 are discussed below.

DUTY TO DECLARE

Currently, S.C. Code Ann. § 23-31-215(K) creates a "duty to declare" on a permit holder to notify a law enforcement officer that the permit holder is carrying a handgun when the officer requests identification. Although the bill strikes that subsection, it simply moves it to the new 16-23-510(C) (Section 1 of the bill), where such duty would apply to any person carrying a handgun. However, reenacting this "duty to declare" is both legally and practically problematic.

Under H. 3930, the reenacting of a "duty to declare" that a person is carrying a firearm is constitutionally problematic. It treats the bearing of arms as a privilege, rather than a right. "Papers please?" may be an acceptable request to someone performing some activity which is not constitutionally protected, but it should have no place in the exercise of a constitutional right. Moreover, a "duty to declare" makes a criminal out of anyone who exercises their right to remain silent.

Furthermore, a "duty to declare" creates practical problems. First, it creates tense situations for persons stopped for minor traffic violations when they are forced to declare that they are carrying a firearm. Secondly, persons who are liable to use the firearm in a criminal manner are the last people who would be obeying such a duty. Finally, requiring law-abiding citizens to make such a declaration would only tend to create a false sense of security that persons who fail to declare are therefore not carrying. Of course, law enforcement officers are trained—and rightfully so—to approach each situation with the assumption that a person may be armed. Removing this duty to declare would not undermine that training; instead, it would further reinforce it. In fact, it is for these reasons that so few of the states which provide for Constitutional Carry have such a "duty to declare." The few who do are working to repeal them.

Consequently, a "duty to declare" fails to meet the criteria we believe are fundamental to Constitutional Carry legislation.

EXCEPTION SWALLOWS THE RULE AND CREATES CONFUSION

In accordance with criteria three and four, we also believe that Constitutional Carry legislation should treat a person's right to carry as generally allowed, but with existing exceptions, instead of generally prohibited with exceptions.

Currently, S.C. Code Ann. § 16-23-20 is a general prohibition on carrying a handgun, but with a number of exceptions, currently delineated as paragraphs (1) through (16).

H. 3930 handles this general prohibition on carrying in § 16-23-20 first by modifying it to apply only to those who carry with the intent to use unlawfully. Effectively, this is a repeal of the general prohibition, which would satisfy Constitutional Carry criteria if no other changes were made.

However, H. 3930 then recreates that general prohibition as a new subsection (B) to § 16-23-20 and applies it everywhere outside a person's real property. Subsection (B) then incorporates the existing 16 exceptions (with some modifications) and adds three more. The final exception listed is a new paragraph (19) which excepts from the general prohibition on carrying a person who "is not otherwise prohibited by law from possessing a handgun." Of course, this exception makes the preceding 18 exceptions superfluous. Moreover, amending the statute in this manner makes the preceding 18 exceptions confusing.

For example, the exception in paragraph (9) creates an exception to the general prohibition on carrying for a person in a vehicle, but requires the gun to be secured or carried concealed. But if a person who "is not otherwise prohibited by law from possessing a handgun" is excepted from the general prohibition on carrying, then why is the exception in paragraph (9) needed? Since the exception in paragraph (19) already covers that person, there is no requirement for that person to secure the handgun or conceal it. However, because paragraph (9) still exists, there will be confusion about this fact.

Although we could go through all nineteen exceptions, one more example is enough to illustrate the confusion that the current structure would create. Paragraph (10) would except from the general prohibition on carrying a person who is "carrying a handgun unloaded and in a secure wrapper." Does this mean that everyone must carry unloaded and in a secure wrapper? Of course not; as long as a person satisfies exception (19), then the person can carry loaded and wrapper-less. However, like the other exceptions, the existence of paragraph (10) would create confusion.

To provide for a general rule which allows the carrying of handguns, the cleanest thing would be to remove the general prohibition, which the bill already does in § 16-23-20(A). After all, under Constitutional Carry legislation, most adults will have the ability to lawfully carry a handgun, and it will be the exception that someone may not. Then, the new subsection (B) could read in one of two ways:

1. Subject to subsection (A) and Section 16-23-510, a person who is not otherwise prohibited by law from possessing a handgun is not prohibited from carrying a handgun openly or concealed.

   or

2. A person may not carry a handgun off of any real property the person occupies as a resident, owner, or lessee unless the person is not otherwise prohibited by law from possessing a handgun.

Of course, option 1 fulfills Constitutional Carry criteria much better, but both options eliminate the confusion of the current structure.

OPEN CARRY AMBIGUITY

It appears that the intent of H. 3930 includes removing the current prohibition of openly carrying a handgun. We strongly support this intent, but believe that a current statutory provision which the bill fails to amend causes the bill to violate the criteria provided above by creating or failing to eliminate some language which would tend to create confusion regarding open carry.

The bill fails to amend the term "concealable weapon," defined in S.C. Code Ann. § 23-31-210(5). The term is problematic because it requires that the weapon must remain concealed because it "must be carried in a manner that is hidden from public view in normal wear of clothing…" Although much of H. 3930 does well to use the term "handgun" or "firearm," there remain several places where use of the term "concealable weapon" would create confusion.

For example, in Section 6, amending 23-31-215, the bill amends subsection (O) to read as follows: "A permit issued pursuant to this article is not required for a person carrying a concealable weapon in a manner not prohibited by law." Because "concealable weapon" requires actual concealment, this subsection (O) implies that a permit *is* required for a person who would choose to openly carry a handgun.

Another example can be found in Section 8, amending 23-31-220, which among other things provides, "*Nothing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon… the right of a public or private employer to prohibit a person, including a person who is licensed under this article, from carrying a* ***concealable weapon*** *upon the premises of the business or work place or while using any machinery, vehicle, or equipment owned or operated by the business*" (emphasis added). This implies that a prohibition remains in the article which would prevent an employer from disallowing open carry by employees.

These are not the only two uses of the term "concealable weapon" which create issues, but they are illustrative of the others. Thankfully, the fix for this issue is quite easy, and does not even require changing the use of the term. In fact, the term "conceal***able*** weapon" already implies that the weapon must be *capable* of being concealed without necessarily requiring actual concealment. Because this is the implication of the term already, changing the definition of the term to agree with its implication would make the law more understandable and clear. In this instance, all problems currently created by the term would be resolved by simply striking the following final clause from 23-31-210(5), as follows: "*'Concealable weapon' means a firearm having a length of less than twelve inches measured along its greatest dimension* ~~*that must be carried in a manner that is hidden from public view in normal wear of clothing except when needed for self-defense, defense of others, and the protection of real or personal property.*~~"

VEHICLE STORAGE AMBIGUITY

Here again, the intent of the bill appears to be to meet criteria described above by allowing for a person without a permit to keep a handgun in a vehicle where a person *with* a permit can already do so. However, in doing so, these provisions tend to create confusion regarding who may lawfully do so and how. Moreover, these amendments create a disparity between how a person with a permit may store a firearm in a vehicle and how a person without a permit may do so.

Sections 3 and 4 of the bill, amending sections 16-23-420 and 16-23-430, are written with the apparent design, among other things, of providing parity between those with a permit and those without one when it comes to storing a firearm in a vehicle on a school campus. However, both sections are phrased in an ambiguous manner that would tend to create confusion. In Section 3, for example, the added language to 16-23-420(A) is modified by the existing phrase "luggage compartment of the vehicle," as follows:

> The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the ~~weapon~~ firearm remains concealed from common observation inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the **luggage compartment of the vehicle either possessed by a person** with a valid permit issued pursuant to Article 4, Chapter 31, Title 23, or is not loaded and in a locked container or a locked firearms rack that is in or on the motor vehicle. The provisions of this section related to publicly owned buildings do not apply to any portion of the property leased to an individual or a business or to the occupants or invitees of such leased premises during reasonable ingress to or egress from the leased premises.

(bold emphasis added).

This implies that the luggage compartment and/or the vehicle themselves cannot be loaded or must be in a locked container, etc. Obviously, this was not the intention and should be corrected.

Additionally, the existing language discussing those with a permit is vastly separated from a discussion of those without, which also creates confusion. This latter issue is repeated in 16-23-430.

In addition to confusion, these amendments treat permit holders differently than those without a permit. Specifically, permit holders may store their handguns loaded, while non-permit holders must store them unloaded.

Consequently, these discussed amendments in Sections 3 and 4 of the bill fall short of the Constitutional Carry criteria by creating confusion and by allowing for disparity between those with and without a permit.

SUBJECTS GUN OWNERS TO DOUBLE PROSECUTION

Existing 23-31-215(M)(10) restricts concealed carry in places "clearly marked with a sign prohibiting the carrying of a concealable weapon." H. 3930 strikes this and moves it to a new

Section 16-23-510(A). When it does so, however, the bill fails to recodify an important sentence in 23-31-215(M)(10), as follows:

> A person who violates a provision of this item, whether the violation is wilful [sic] or not, only may be charged with a violation of Section 16-11-620 and must not be charged with or penalized for a violation of this subsection.

The Section 16-11-620 referred to in that sentence already provides a penalty for entering premises after warning or refusing to leave on request. Consequently, by removing this sentence, H. 3930 subjects gun owners to double prosecution for violations of 16-11-620 and the new 16-23-510(A). To avoid this, the sentence struck in 23-31-215(M)(10) should be repeated in the new 16-23-510(A).

SECTION 12 APPLICATION CLAUSE

Finally, the Application Clause contained in Section 12 is problematic because it tends to create confusion. Upon codification, this clause would likely not be found in the text of the statute, which means that it would likely be missed by most people reviewing the law. We believe that the bill, as amended, makes the content of this clause superfluous. However, if some believe it is necessary, we would prefer to see it included in the text of a statute, and not as a mere note, so that it will be more easily discovered by those attempting to comply with the law and thereby better meet the criteria for Constitutional Carry legislation.

CONCLUSION

The National Association for Gun Rights appreciates that H. 3930 is an attempt toward meeting the criteria for Constitutional Carry legislation as it has been and continues to be passed across the country. However, in its current version, we believe the bill falls short of fully meeting such criteria.

We urge you to consider amending the bill to clear up the concerns detailed above and look forward to working with you toward that end.

Sincerely,

Brenden P. Boudreau

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