

SUBMISSION OF MICHAEL F. KRAEMER, ESQ. TO THE HOUSE
JUDICIARY COMMITTEE IN SUPPORT OF H.B. 5436

March 26, 2025

Issue Presented: Is the proposed assault weapons ban constitutional under the Second Amendment?

Conclusion: Yes. Although the U.S. Supreme Court has not ruled on this issue, every United States Court of Appeals which has been presented with this issue, both before and after the *Bruen* decision, has ruled that state assault weapons bans are constitutional. In addition, earlier this year the Supreme Court refused the gun lobby's appeal of a 3rd Circuit Court of Appeals decision upholding Delaware's assault weapons ban.

Discussion: I submit this statement in support of the proposed assault weapons ban, which is HB-5436. My focus is not on the merits of the bill, since the Committee should be well aware of the dangers of allowing weapons designed for the military to be available to the public. Indeed, the many mass shootings and murders of the last decade were made possible in large part because of the mass killing power of the AR-15 assault rifle and other similar weapons. Rather, I want to focus on the applicability of the Second Amendment to these weapons as explained by the many federal courts of appeals and district courts which have rejected challenges to assault weapons bans in other states.

The starting place to consider whether the Constitution guarantees the right to own an assault weapon is the United States Supreme Court decision in *Columbia v. Heller*. In this case, which ruled that individuals had the right to maintain a handgun at home for personal protection, Justice Antonin Scalia wrote: "Like most rights, the right secured by the Second Amendment is not unlimited...[It] is not a right to keep and carry any weapon whatsoever and for whatsoever purpose." He went on to identify some of the restrictions on gun ownership which remained permissible under the Constitution.

Subsequent to the *Heller* decision, all five U.S. Courts of Appeals which ruled on legal challenges to state law bans on assault weapons determined that such laws were constitutional under the Second Amendment. This includes the 1st Circuit Court of Appeals, whose jurisdiction includes Rhode Island, in *Worman v. Healey* in 2019.

In *New York State Rifle & Pistol Assn. v. Bruen*, the Supreme Court revisited the Second Amendment in connection with a challenge to a New York's law concerning the carrying of concealed weapons. Since the *Bruen* decision in 2022, no federal court of appeals has ruled that the Second Amendment guarantees the right to own an assault weapon. While there have been numerous cases brought by the gun lobby on this issue, after the *Bruen* case, the 3rd,

4th, 7th and 9th Circuit Courts of Appeals have all determined that assault weapons bans met constitutional muster and/or refused to enjoin the enforcement of state laws to that effect. The U.S. Supreme Court declined to hear gun lobby appeals of decisions by the 3rd and 7th Circuit Courts of Appeals rejecting challenges to AW bans. Also, the 1st Circuit Court of Appeals upheld the decision of Chief Judge John McConnell of the U.S. District Court in Rhode Island that the high capacity magazine ban enacted by the General Assembly was lawful under the Second Amendment.

When you consider the arguments put forth by gun control advocates and by the gun lobby, I urge you to make your decision on HB-5436 on the merits and not on the mistaken belief that the Second Amendment applies. Don't be fooled by the slogans on the yellow t-shirts or the bogus legal claims made by gun lobby spokesmen. By their logic, not only is assault weapons ownership protected by the Second Amendment, but the same goes for 50 caliber machine guns, flame throwers, Howitzers and stinger missiles. That is not the law and no federal court of appeals has ruled that the Second Amendment protects the right to own an assault weapon.

Respectfully submitted,

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