

Follow up points to S.4 – Eric Davis – Gun Owners of Vermont – 02/21/23.

-What is an assault weapon?

During mark up on Wednesday, February 15th Senator Sears posed this question to the committee in consideration of exactly what weapons would be prohibited under section 8 of this bill. Unfortunately, there is no scientific definition of what constitutes an “assault weapon”, only individual interpretations of the phrase which are purely subjective.

The description in Section 8 is broad and vague – and in our opinion, intentionally so. S.4 states: “Semiautomatic assault weapon” means: (A) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following features: whereupon it gives a list of cosmetic features such as adjustable stocks, forward grips, and threaded barrels – none of which affect the overall lethality of the weapon, nor the internal mechanics of the firearm that control things like rate of fire.

While the concern may lie with weapons such as the AR-15 which have gained notoriety in recent years with their use in several high-profile mass shootings, the fact is that the description given in Section 8, casts a wide net across a plethora of other firearms which have long been in common use among adults and individuals under 21 alike. My first firearm was a Ruger 10/22 rifle that I began shooting (under the supervision of my father) at around 7 years of age. This firearm operates on a semiautomatic action (one round per trigger pull), feeds from a detachable magazine, and commonly comes factory equipped with a combination of features from the prohibitive criteria laid out in Section 8.

Senator Sears also posed the question asking if his 9mm semiautomatic pistol might be considered an “assault weapon” under this language. Legislative counsel Erik Fitzpatrick answered that he did not believe it would. We realize that Mr. Fitzpatrick likely believes this to be true however, that may not be the case at all.

Many handguns in common use would fall under the criteria laid out in this bill, including but not limited to:

- 1) Anything with a threaded barrel, regardless if you had purchased a muzzle device like a suppressor or not. (Remember, muzzle breaks and flash suppressors are very common accessories sold in most sporting goods stores, while silencers are available with NFA paperwork and are becoming more and more common each year.)

- 2) Anything with a manufactured weight of slightly over 3 pounds, including the popular “Desert Eagle” handguns which have been in production since 1982.
- 3) Any pistol which is a semiautomatic version of an automatic firearm. This includes the wildly popular Beretta 92 model which was the standard issue duty pistol for the U.S. Army from 1985 – 2017 (A full auto version of this pistol was manufactured in the late 1970s for police and military use only), and the even more wildly popular line of handguns manufactured by Glock, as they all use the same basic design concept and from that concept, Glock produces the model G18, which is a full auto pistol manufactured for law enforcement and military use only.

These are just a few examples, but there are a litany of other handgun models -of which there are MILLIONS in civilian circulation- that might get swept up in the wide and arbitrary dragnet cast by the descriptions put forth in this legislation, which, once again, are purely cosmetic, and have no distinct relevance to the overall function of the firearm.

I might also pick apart the descriptive criteria of the shotguns put forth in Section 8 and cite numerous other examples, but by now, I think by now everyone probably gets the point. At the heart of the issue is the ambiguity of the phrase which Senator Sears asks us to define; and the very reason the Senator finds the need to ask this question is that this is NOT a technical term. Not one which has any intrinsic meaning within the realm of purpose, function, design, manufacturing, sales, collectability, etc., of the firearm. The term is highly prejudicial -intentionally so- as it intends to evoke a dramatic quality such as might be useful to a Hollywood set, or in advertising for a TV action movie, rather than any real-life form or function.

As an interesting aside, it bears mention that in 2013, when Senator Baruth introduced [the very first iteration of the “assault weapon” ban](#), the definitive criteria was basically the same with one notable exception: After the enacting description of “a semiautomatic rifle with the ability to accept a detachable magazine”, the firearms in question then must have possessed TWO of the following cosmetic features to be arbitrarily deemed an “assault weapon.” The current legislation requires only ONE, thus casting a wider net over more guns that are ubiquitous among law-abiding people and protected under the “common use” wording in the 2008 Supreme Court ruling of [DC v. Heller](#).

-Re. prohibitions on individuals based on age.

After my last testimony, Senator Baruth asked me if GoVT was of the opinion that the constitutional protection of the right to keep and bear arms extended to very young people as well as adults. I admittedly balked a little bit at the time as there are a few things to consider here, and I was put on the spot by a “gotcha” question where if I answered “no” it could be taken as support for restrictions based

on age and if I answered “yes” we might be easily portrayed as extremists who want to give machineguns to eight-year-olds (touché.)

Like many things, it’s not quite that simple and after having some time to consider the matter fully, there are a few things in play here which warrant a closer look.

First, there seems to be no general consensus on the age of adulthood, nor when a person is old enough to make very important and personal life decisions with autonomy. Lawmakers and society alike seem to have a different set of criteria for adulthood depending on the issue at hand, whether it’s owning a firearm; age of consent; consuming a controlled substance; voting; getting a tattoo; responsibility for criminal behavior; or receiving certain types of controversial healthcare such as birth control, an abortion, and more recently, “gender-affirming care.”

Our personal opinions are all over the map on these things but when it comes to the protections of individual rights enshrined in the constitution, age does not appear to be limiting factor. In addition to the age restrictions on firearms which are currently falling across the country under the new scrutiny applied by *Bruen*, I would call the committee’s attention to another Supreme Court case from 1967.

In that year, the decision [re Gault](#) broadly held that the due process of criminal courts must also be applied to juvenile courts when SCOTUS threw out the conviction of a fifteen year old based on a confession coerced without council present at the time.

Justice Fortas who authored the opinion in *re Gault* wrote: “it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase *due process*.” and that: “... under our constitution, the condition of being a boy does not justify a kangaroo court.”

Based on this wording, and the new standards of scrutiny handed down in *Bruen*, we believe it would be extraordinary to assume that the Second Amendment might be viewed by the courts as a second class right, afforded only to those 21 and older. The question at hand is not whether people of a certain age are mature enough to keep and bear arms -indeed, every individual is different- the question is whether people of a certain age should or should not have rights AGAINST LAWS which preemptively punish them for the bad actions of a few. The rest of the constitution knows no age limits and the Second Amendment is no exception.

In closing, we continue to stand by our assertion that this type of legislation in Section 8 targeting specific firearms and specific age groups does not pass muster. It is impractical, immoral, and

unconstitutional by all current metrics, and again, we respectfully encourage it to be removed from this bill in its entirety.

Thank you again for your consideration.

In Liberty,
Eric Davis
President, Gun Owners of Vermont