Vermont Federation of Sportsman's Club
Testimony on S.4 – Wednesday 1/24/2023 – 9AM
Chris Bradley – President & Executive Director, VTFSC

For the record, my name is Chris Bradley and I am the President and Executive Director of the Vermont Federation of Sportsman's Clubs (VTFSC). If you are not aware, the VTFSC has existed in Vermont since 1875, we were formed to help re-establish white-tailed deer in Vermont after they were hunted to near extinction in the state, and we helped establish what is today known as the Vermont Fish & Wildlife Department. Our organization represents the sporting interests of approximately 50 member clubs in Vermont and their approximate 14,000 members.

Thank you for inviting the VTFSC to speak on S4; I will be as brief as possible, and I am happy to field any questions you may have about my testimony or the VTFSC.

Section 1 – Prosecuting juveniles as adults

We support this section

Section 2 & 3 – Prohibit premises from supporting various crimes

These two sections do not directly relate to our interests; however, we embrace and support the intent.

Section 4 & 5 – Duplicate Federal Law in State Statute

Currently, Federal law covers both the illegal activity of defacing serial numbers, as well as straw purchases, both of which should be prosecuted. We did listen to the Sheriff who wanted the flexibility to charge an offender under similar state laws, but there is a whole slew of Federal laws that will remain with no parallel State law. Do we wish to have State versions of all of them?

We make the following observations:

- Currently, both of these offenses are covered by Federal law, and as such have been, or should be, prosecuted by the Federal Government. We are not aware that the Feds have been lax in their prosecution of these crimes in Vermont, but if they are not aggressively prosecuting, then we should contact our Congresspeople to have them address that.

  Having Vermont law enforcement prosecute these cases is an added burden and cost to Vermont law enforcement, Vermont courts and Vermont prisons, and therefore Vermont taxpayers.

- If Vermont does take on these offenses, we have a concern that the Feds, knowing that Vermont has taken these on, may well stop prosecuting these cases.

- Under Federal law, we believe we understand that these offenses are punishable for up to 10 years and/or $15,000, while Vermont's versions would be up to 5 years and/or $100,000.

- In the case of straw purchase, there is another Federal crime that will have been broken, making false statements on a Federal Form, which we believe can be charged by the Feds as an additional offense.

Section 6 – Prohibiting Firearms from specific persons

Page 7, line 16 is worded as "has been *charged* with:". We believe that this may run afoul of Bruen.

On September 19th, 2022 in US v Quiroz, a federal law barring those under indictment was ruled unconstitutional.

We are also concerned about the definition of "Fugitive from justice" (page 8, lines 7-8). What constitutes "fled"; does that mean out-of-state? Are non-violent crimes included? If a person is an innocent witness in someone's else's criminal case, but they avoid showing up in court, do they become prohibited?

Section 7, 9, 10 & 11

We have no issues with these sections

Section 8 – Prohibit possession of semi-automatic assault weapons by person under 21

In the 1939 case of US v Miller, the Supreme Court of the United States (SCOTUS) ruled that firearms "***in common use at the time***" are protected by the Second Amendment.

In the 2008 case of DC v Heller, SCOTUS ruled that a law-abiding citizen had a right to have an operable firearm in their own home. Their decision struck down a DC ban that required firearms be disassembled and/or locked up as being unconstitutional and stated "***The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditional lawful purposes, such as self-defense in the home.***" This ruling however only applied to a Federal enclave (D.C.).

In the 2010 case of MacDonald v Chicago, SCOTUS ruled that an outright prohibition on possessing a handgun was unconstitutional, and stated that the "***2nd Amendment right is fully applicable to States.***" It further stated that the constitutional right to bear arms in public for self-defense is not "***a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees***."

In the 2021 case of Caetano v Massachusetts, SCOTUS ruled that the carrying of a stun gun was allowed by the Second Amendment and stated "***…the 2nd Amendment extends prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.***"

In the 2022 case of NYSRP v Bruen, SCOTUS ruled that law-abiding citizens had a right to bear arms outside of the home. In making that ruling it stated that "***The exercise of other constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense is no different.***"

Beyond just ruling on the case, SCOTUS went further and set a new standard by which all 2nd Amendment cases must be judged. Gone are the days when Courts could determine for themselves whether they should apply "strict scrutiny", "intermediate scrutiny", or rational-basis standards / means-to-end tests. SCOTUS stated: "***Under Heller, when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation***."

I am not a lawyer, nor do I pretend to be, it is my understanding however that, if a regulation pertains to a specific type of firearm, and that firearm is in "***common use***", the 2nd Amendment presumptively covers ownership and possession of that firearm as being constitutional with no further testing required. For all other existing or proposed regulations and laws concerning firearms, the burden is on the government to show that regulation or law aligns with the text, history and tradition of our Nation's firearm regulation (historical analogue).

As a Nation, we have now been given a very clear and concise manner with which firearms laws can now be judged, and this new interpretation has and will impact a large number of Courts and a number of existing laws, as well as new laws being proposed as our Courts react.

Section 8 of S.4 is at the nexus of two issues regarding firearms: A Prohibition of those under 21 from possessing a wide range of firearms, and an "assault weapon" ban.

Concerning an age Prohibition: On August 25, 2022, the Western District Court of Texas ruled in Firearms Policy Coalition v McGraw that a prohibition on carrying a handgun by those under 21 was struck down as unconstitutional. Other cases are pending such as Young v Hawaii.

In regards to the question as to whether there were historical prohibitions on the age of a person in order to possess a firearm – such laws did not exist at that time of the founding, and based on that: Age Prohibitions on firearms, especially for those 18 and older, are unconstitutional.

Concerning an "assault weapons ban", we set aside any detailed discussions of the numerous problems and issues found in the various definitions of "assault rifles", "assault pistols" or "assault shotguns" as moot, since the basic premise (I.E. an "assault weapon ban") of what is contemplated is not constitutional and our Courts are making this clear.

Assault Weapons bans have been, and are being, struck down as unconstitutional, as these firearms are arguably "in common use" for lawful purposes by law-abiding citizens.

Simple put: Section 8 of S.4 does not, and will not, pass constitutional muster, and this is not just the VTFSC, GOVT, VTC or the NRA saying this. It is SCOTUS saying this, with numerous Courts following their lead, such as the District Court of Southern California (Renna v Bonta/Becerra and Miller v Bonta); the District of Southern New York (Lane v James), 4th Circuit

Court (Bianchi, Dominic, et al v Frosh), and the District Court of Colorado (Rocky Mountain Gun Owners v Superior) to name a few we are aware of. More are bubbling up, literally every week.

This is not a matter of "Let's pass it and see what the Courts say". Courts have already spoken; more will be speaking in the coming months; such that it appears futile to attempt to argue that firearms like the AR-15, which we understand is the prominent firearm at the core of what Section 8 of S.4 looks to address, are not in "common use". They are in common use, with tens of millions having been sold to law-abiding citizens after going through a background check.

While a lengthy read, I encourage all to read the Benitez decision in Miller v Bonta, which provides an exceptionally expansive analysis on the text, history and tradition as it applies to the AR-15 and similar firearms. I quote from the introduction to the initial decision rendered in the District Court of Southern California by Judge Benitez:

"***Like the Swiss Army Knife, the popular AR-15 is a perfect combination of home defense weapon and homeland defense weapon. Good for both home and battle, the AR-15 is the kind of versatile gun that lies as the intersection of the kinds of firearms protected under DC v Heller and United States V Miller. Yet, the State of California makes it a crime to have an AR-15 type rifle. Therefore, this Court declares the California statutes to be unconstitutional.***"

Having shared that quote, I wish to share a "balancing" quote from the Heller decision.

"***Like most rights, the Second Amendment is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed carry weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons or the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. Miller's holding that the sorts of weapons protected are those "in common use at the time" finds support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons.***"

We heard Legislative Counsel Erik Fitzpatrick caution the committee about the Bruen decision. We heard Defender General Valerio also provide caution – and we heard his offer to provide a person from his office that will speak in-depth to what I am addressing now.

Ladies and Gentleman: Section 8 of S.4 needs to be pulled and dropped, or pulled and split out into its own bill so as to allow the other meaningful provisions of S.4 to be addressed. Within the next few months, and across the coming year, the ramifications of the Bruen decision will continue to be resolved, which we are confident will only further underscore the unconstitutionality of Section 8.

Based on the information we have, we believe that Judge Benitez will re-issue his rulings on the CA "Assault Weapons" Ban by this next month (February), and we know he will not be changing his mind in light of Bruen.

If Benitez's decision is appealed, which hit likely will be the case, it will go back to the 9th Circuit where a 3-judge panel already upheld Benitez's original decision 2-1, with the 1 dissenting judge rendering his decision based on past precedents of the 9th Circuit (which were flawed as they did not comport to Bruen).

If the 9Th upholds; the "assault weapons ban" will cease in CA. If the 9th strikes it down, there will be an emergency appeal to SCOTUS – and we are confident that SCOTUS will follow Benitez's crystal-clear logic.

Accompanying this testimony is a document I researched regarding 2nd Amendment decisions both historic and recent. We do not profess it to be complete, but are confident in what we found and are now sharing. This listing shows firearm-related laws that have been, or are in the process of being, struck down.

As Senate Judiciary moves forward, as well as House Judiciary, the VTFSC offers its expertise and knowledge to help all concerned find paths forward that can help solve and address violent crime, while fully aligning with the 2nd Amendment's focus on the unalienable right to keep and bear arms.