

March 28th, 2022

The Honorable Robert E. Craven, Sr. – Chair
House Judiciary Committee
State House
Providence, RI 02903

RE: House Bills 6616 (oppose), 7302 (For), 7456 (for), 7570 (for), 7891 (for), 7763 (for), 7300 (oppose), 7889 (oppose), 7764 (oppose), 7457 (oppose), 7358 (oppose)

Dear Chair Craven:

I understand the House Judiciary Committee is considering a large number of bills concerning firearms, their components, possession and use this coming Wednesday. I would have loved to be at the Committee meeting in person to testify to my positions on the various bills – both for and against – however as you know, I have an active law practice and my clients' legal needs must come before my personal agenda during the work hours. Instead, I submit this written testimony to the Committee about my legal concerns and thoughts on various bills that will be considered.

There are several bills which should be supported by every member of the General Assembly who believes the citizenry should have meaningful and easy access to the courts to seek redress for their legal concerns. HB 7302 is such a bill that must be supported to provide everyday citizens with cost-effective, easy access to the courts to seek review of the decision of a licensing authority to deny a concealed carry permit. As of right now, the only way a person may seek review of such a denial, whether it comes from the Attorney General or a police chief, is to petition the Rhode Island Supreme Court to issue a writ of certiorari, which as any lawyer knows is no easy task. It is discretionary and Supreme Court practice is particularly time consuming and expensive for lawyers and clients alike. To create a cause of action in the Superior Court to appeal these decisions would be to give Rhode Islanders access to our court of general jurisdiction to present evidence and have a hearing on the merits, all while being able to offer attorneys the ability to represent these clients at a more reasonable price level and at the court with which most are familiar. It is meaningful due process that would be available to more permit applicants to ensure the licensing authorities are being held to the letter of the law when they deny a person a carry permit – something that is rarely being done right now because the current process to do so is so onerous. This shouldn't be a political issue but one of fairness – a notion that neither political party should want to avoid.

I also support HB 7456, which would recognize out of state concealed carry permits from states that recognize Rhode Island's permit. Rhode Island is currently an outlier in this area. Rhode Island refuses to recognize any other state's permit, yet at least 27 other states will recognize Rhode Island's permit in their states in one form or another. Our neighboring state, Massachusetts, their permit is recognized in at least 28 other states in some form. Reciprocity is currently an issue where Rhode Island has lagged behind even in other areas of licensing, though that has started changing in recent years. For example: a lawyer could not waive into the Rhode Island Bar without at least taking an attorney's exam up until a few years ago. Now, Rhode Island accepts Uniform Bar Exam scores administered in other states and even lowered the minimum passing score. All lawyers are required to undergo many of the same background requirements required for permit holders so putting in place a system where Rhode Island could feel comfortable recognizing another state's concealed carry permit could be tailored to

ensure that our citizens are protected in conformity with Rhode Island values much in the same way that our state does with lawyers, doctors and other licensed professionals. I urge the Committee to set a framework to allow this kind of reciprocal recognition with our sister states. This could also be accomplished through the passage of HB 7570 or HB 7891.

For purposes of consistency and clarity among the licensing authorities, I urge the Committee to pass HB 7763, which would definitively define the “suitability” clause in permit applications, standardize the applications for the license, and create a cause of action in the lower courts of our state if an application is denied. As an active attorney practicing in this area of law, I can say each licensing authority has its own opinions on suitability which causes many applicants to bring their applications to so-called “friendlier jurisdictions” who tend to follow the law as currently written. This bill would remove any ambiguity about who is or is not suitable to receive a permit and allow all people applying for a license to understand well in advance of applying what will be required of them during the application process – something that many, many people do not know in advance of applying because, in some cases, the licensing authority does not even offer applications, in violation of current state law.

There are many other bills which have good components to them and should be vigorously discussed, but I also want to address the bills with which I have severe legal concerns. HB 7300 is absolutely an undue hardship to the fundamental right to keep arms in one’s own home for self defense, as recognized by the United States Supreme Court in *Heller v. District of Columbia* and applied to the states in *McDonald v. City of Chicago*. Rhode Island already has a statute that criminalizes unsafe storage of a firearm where children would have unlawful access to it. This bill, if passed, would effectively gut the holding in *Heller* in that no person with children in their home could have a firearm readily accessible to them in the event of a breaking & entering or home invasion without putting themselves in jeopardy of criminal prosecution. One can never know when a situation like this will arise so having a gun locked up in a safe and inaccessible during a home invasion situation because of a law like this leaves the homeowners or occupants at the mercy of their attacker(s). It is understandable that we want to protect children from irresponsible gun handling, but this is a law which not only endangers the gun owners themselves, but endangers their children by removing the last line of defense in a very lethal situation.

There are several other bills, such as 7889, 7764, 7457, 7358, and 6616 which I believe would conflict with the constitutional right to keep and bear arms, particularly in light of the anticipated United States Supreme Court decision in *New York State Rifle & Pistol Association Inc. v. Bruen*. It is very likely that the legal landscape of Second Amendment law will be meaningfully different when the Court issues that decision in June, so to consider and pass bills which could either lessen or limit one’s ability to either be licensed to carry a firearm, ammunition, or firearm components, (such as magazine limits,) before knowing how the US Supreme Court will weigh in on these issues would be putting the cart before the horse. As legislators, it is incumbent upon you all to know the legal landscape of the area upon which you seek to legislate and given the potential breadth of this upcoming decision, I would strongly urge the Committee to hold these bills for further study to determine whether or not they will comply with any decision of the United States Supreme Court in June. It is the prudent thing to do so that our state is not in a legal quagmire should bills pass which are inconsistent with any holding of the United States Supreme Court.

I would be remiss if I failed to address the issue of eliminating the ability of local licensing authorities – the chiefs of police of each individual town or city – to issue concealed carry licenses under R.I.G.L. §11-47-11. I see that the Senate Committee on the Judiciary will consider this issue but I was

unable to find the House counterpart. This would be an extraordinarily inappropriate change in our laws. First, all applicants, whether applying locally or through the Attorney General, must undergo the same rigorous background investigation and qualification process. The biggest difference, and the difference that would likely conflict with the right to bear arms, would be that forcing all applicants to apply to the Attorney General under R.I.G.L. §11-47-18 would then require the applicant to demonstrate a particularized “need” to have that permit, which is exactly the issue the United States Supreme Court is currently considering in *Bruen*. Currently, local applicants need only present any proper reason for wanting a permit and if those applicants meet the objective criteria and background checks for obtaining a permit, our Supreme Court has said that applicant is entitled to that permit. This is not so for Attorney General applicants. Our Supreme Court has held that R.I.G.L. §11-47-18 vests the Attorney General with nearly unlimited discretion to accept or reject an application for a pistol permit. Having this as the only available path for Rhode Islanders to obtain a pistol permit would effectively bar most law-abiding citizens the ability to legally carry a firearm in this state given the Attorney General’s discretion to determine a person’s “need” to carry a firearm. It would be utterly irresponsible for the General Assembly to pass any bill related to this without first watching what the U.S. Supreme Court decides in *Bruen*, as the N.Y. statute in question is substantially identical to R.I.G.L. §11-47-18. If New York’s statute is invalidated as a result of the decision in *Bruen* and Rhode Island has repealed R.I.G.L. §11-47-11, the right to bear arms in Rhode Island will be in legal purgatory since there would be no effective way to obtain a permit without another re-write of our law.

I realize this is a long piece of testimony and I appreciate the Committee’s time and thoughtfulness in considering my legal opinions on these matters. I believe in protecting everyone’s individual constitutional rights – no matter what they are – and the right to keep and bear arms is no different. I urge the Committee to use prudence, patience and common sense when considering these bills during this session.

Respectfully,

Charles C. Calenda

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cc: House Judiciary Committee Members