

Committee of ...

HCR 5020

Testimony of Attorney General Kris Kobach

January 23, 2024

Mr. Chairman and Members of the Committee. I am strongly in favor of adding the text of HCR 5020 to the Kansas Constitution. I believe that the robust constitutional protection of gun rights is not only consistent with the text of the constitution and intentions of the framers of the Constitution, but it is also essential to a free society and the preservation of other constitutional rights.

To understand the impact of this proposed amendment, one needs to consider two things: First, the ability of a state constitutional amendment to go beyond the protection of the federal Bill of Rights; second, what happened June 2022 with the holding of the United States Supreme Court in the case of *New York State Rifle and Pistol Assn. v. Bruen*.

First, it is essential to recognize that a state constitution can protect a right beyond what the federal constitution does. In other words, even if the Second Amendment of the United States Constitution does not extend so far as to protect the conduct involved in a particular case, a state constitutional provision may protect that conduct.

Second, as the *Bruen* Court held, the Second amendment protects the individual right to keep and bear a handgun not only inside the home, but also outside the home. More importantly, the Supreme Court elevated the Second Amendment above other constitutional rights by holding that the typical balancing test in which governmental interests are weighed against the asserted right apply. Instead, a constitutional test that is even more protective of the right to keep and bear arms was explained by the court. Any law restricting the right to keep and bear arms is presumptively unconstitutional. The only way that the government can justify the restriction is by showing that the regulation is consistent with the nation's historical tradition of firearms regulation. Strict scrutiny is not the test: there is no balancing of an asserted "compelling government interest" against the protected conduct, and there is no assessment of whether the restriction is "necessary" to advancing that interest.

The proposed constitutional amendment would complement the Second Amendment protections under *Bruen*, giving Kansas gun owners even more constitutional protection. It should be recognized that in most constitutional challenges to a government restriction, the plaintiff will bring both a state constitutional claim and a federal constitutional claim if possible.

The constitutional protection for the right to keep and bear arms in Kansas would be expanded in two ways. First, under the Kansas Constitution, the strict scrutiny test could be applied in addition to the historical tradition test of the Second Amendment. Second, the Kansas Constitution would expressly protect accessories, ammunition and components. The Second Amendment may very well protect those aspects of firearms too, but the U.S. Supreme Court has yet to address that question.

For all of these reasons, I urge the committee to support HCR 5020.