



STATE OF FLORIDA

**ASHLEY MOODY
ATTORNEY GENERAL**

July 26, 2019

The Honorable Charles Canady
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Canady and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility as Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On June 26, 2019, this office received a letter from the Secretary of State (a copy of which is attached) advising that the initiative petition entitled "Prohibits possession of defined assault weapons" had met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes.

The proposed amendment would amend Article I, Section 8 of the Florida Constitution as follows:

ARTICLE I, SECTION 8. Right to Bear Arms.—

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

RECEIVED, 07/26/2019 05:28:29 PM, Clerk, Supreme Court

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

(e) The possession of an assault weapon, as that term is defined in this subsection, is prohibited in Florida except as provided in this subsection. This subsection shall be construed in conformity with the Second Amendment to the United States Constitution as interpreted by the United States Supreme Court.

1) Definitions –

a) Assault Weapons - For purposes of this subsection, any semiautomatic rifle or shotgun capable of holding more than ten (10) rounds of ammunition at once, either in a fixed or detachable magazine, or any other ammunition-feeding device. This subsection does not apply to handguns.

b) Semiautomatic - For purposes of this subsection, any weapon which fires a single projectile or a number of ball shots through a rifled or smooth bore for each single function of the trigger without further manual action required.

c) Ammunition-feeding device - For purposes of this subsection, any magazine, belt, drum, feed strip, or similar device for a firearm.

2) Limitations –

a) This subsection shall not apply to military or law enforcement use, or use by federal personnel, in conduct of their duties, or to an assault weapon being imported for sale and delivery to a federal, state or local governmental agency for use by employees of such agencies to perform official duties

b) This subsection does not apply to any firearm that is not semiautomatic, as defined in this subsection.

c) This subsection does not apply to handguns, as defined in Article I, Section 8(b), Florida Constitution.

d) If a person had lawful possession of an assault weapon prior to the effective date of this subsection, the person's possession of that assault weapon is not unlawful (1) during the first year after the effective date of this subsection, or (2) after the person has registered with the Florida Department of Law Enforcement or a successor agency, within one year of the effective date of this subsection, by providing a sworn or attested statement, that the weapon was lawfully in his or her possession prior to the effective date of this subsection and by identifying the weapon by make, model, and serial number. The agency must provide and the person must retain proof of registration in order for possession to remain lawful under this subsection. Registration records shall be available on a permanent basis to local, state and federal law enforcement agencies for valid law enforcement purposes but shall otherwise be confidential.

3) Criminal Penalties - Violation of this subsection is a third-degree felony. The legislature may designate greater, but not lesser, penalties for violations.

4) Self-executing - This provision shall be self-executing except where legislative action is authorized in subsection (3) to designate a more severe penalty for violation of this subsection. No legislative or administrative action may conflict with, diminish or delay the requirements of this subsection.

5) Severability - The provisions of this subsection are severable. If any clause, sentence, paragraph, section or subsection of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

6) Effective date - The effective date of this amendment shall be thirty days after its passage by the voters.

The ballot title for the proposed amendment is: "Prohibits possession of defined assault weapons." The ballot summary for the proposed amendment states:

Prohibits possession of assault weapons, defined as semiautomatic rifles and shotguns capable of holding more than 10 rounds of ammunition at once, either in fixed or detachable magazine, or any other ammunition feeding device. Possession of handguns is not prohibited. Exempts military and law enforcement personnel in their official duties. Exempts and requires registration of assault weapons lawfully possessed prior

to this provision's effective date. Creates criminal penalties for violations of this amendment.

Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, this petition provides the following information:

1. The name and address of the sponsor of the initiative petition:

Gail Schwartz
Ban Assault Weapons NOW
6619 South Dixie Highway #148
Miami, Florida 33143

2. Name and address of the sponsor's attorney, if the sponsor is represented: Unknown.

3. A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot: As of June 26, 2019, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 766,200 valid signatures are required for placement on the 2020 general election ballot.

4. The current status of the signature-collection process: As of June 26, 2019, Supervisors of Elections have certified a total of 91,211 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2020 general election ballot.

5. The date of the election during which the sponsor is planning to submit the proposed amendment to the voters: Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 3, 2020, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2020.

6. The last possible date that the ballot for the target election can be printed in order to be ready for the election: Unknown.

7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement

is not filed concurrently with the request: The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on June 26, 2019.

8. The names and complete mailing addresses of all of the parties who are to be served: This information is unknown at this time. Section 16.061(2), Florida Statutes, requires that a copy of the petition be provided to the Secretary of State and to the principal officer of the sponsor:

Laurel M. Lee
Secretary of State
Florida Department of State
R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32399-0250

Gail Schwartz
Ban Assault Weapons NOW
6619 South Dixie Highway #148
Miami, Florida 33143

While not required by law, this office provides copies of the petition to:

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

The Honorable Bill Galvano
President, The Florida Senate
Senate Office Building
404 S. Monroe St.
Tallahassee, FL 32399-1100

The Honorable Jose Oliva
Speaker, Florida House of Representatives
The Capitol, Room 420
402 S. Monroe St.
Tallahassee, FL 32399-1300

In accordance with the provisions of Article IV, section 10, Florida Constitution, I respectfully request this Honorable Court's opinion as to whether the proposed amendment "Prohibits possession of defined assault weapons" complies with the single-subject requirement of Article XI, section 3, Florida Constitution, and whether the ballot title and summary of the amendment comply with the substantive and technical requirements in section 101.161(1), Florida Statutes.

Additionally, the Office of the Attorney General requests the opportunity to present argument in opposition to placement of this proposed amendment on the ballot. The proposed amendment's title and summary are not clear and unambiguous and do not comply with the requirements of section 101.161(1), Florida Statutes. Indeed, the title and summary should not be submitted to Florida voters because the title and summary fail to inform voters of the chief purpose of the proposed amendment and are affirmatively misleading.

Specifically, the ballot title and summary do not inform Florida's electorate that, by defining "assault weapons" as "any semiautomatic rifle or shotgun capable of holding more than ten (10) rounds of ammunition . . . in a fixed or detachable magazine," the amendment would ban the possession of virtually *every* semi-automatic long-gun. To be included on the ballot, the sprawling practical effect of the amendment must be revealed in the ballot language. Because that effect is not revealed, the ballot language is deficient.

Moreover, the ballot title and summary do not inform Florida's electorate that virtually every lawful owner of a semi-automatic long-gun will be forced to register with the Florida Department of Law Enforcement, or that this registry would be available to all local, state, and federal law enforcement agencies. Nor do the ballot title and summary state the time within which preexisting long-gun owners must register their firearms that meet the proposed amendment's definition of "assault weapon" and avail themselves of the amendment's grandfathering provision.

Furthermore, the ballot language fails to disclose that the proposed amendment would take effect 30 days after passage. The proposed amendment's delayed effective date is particularly critical information for voters to possess because the grandfathering provision is keyed to that date, and the ballot language does not disclose that the proposed amendment would create a 30-day window within which new purchases of "assault weapons," as defined by the proposed amendment, would be eligible for grandfathering.

Finally, the ballot language and summary do not reveal that the amendment, if passed, would not merely "[c]reate[] criminal penalties for violations" of the assault weapons ban but would also grant the Legislature plenary authority to increase (but never to decrease) the severity of those penalties.

For all these reasons, voters will not be able to understand the true meaning and ramifications of the proposed amendment, making the ballot language clearly and conclusively defective.

Respectfully submitted,

A handwritten signature in blue ink that reads "Ashley Moody". The signature is written in a cursive, flowing style.

Ashley Moody
Attorney General



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

June 26, 2019

The Honorable Ashley Moody
Attorney General
Department of Legal Affairs
PL-01 The Capitol
Tallahassee, Florida 32399-1050

Dear Attorney General Moody:

Section 15.21, Florida Statutes, provides that the Secretary of State shall submit an initiative petition to the Attorney General when a sponsoring political committee has met the registration, petition form submission and signature criteria set forth in that section.

The criteria in section 15.21, Florida Statutes, has been met for the initiative petition titled **Prohibits possession of defined assault weapons**, Serial Number **19-01**. Therefore, I am submitting the proposed constitutional amendment petition form, along with a status update for the initiative petition, and a chart that provides a statewide signature count and count by congressional districts.

Sincerely,

Laurel M. Lee
Secretary of State

LL/am/ljr

pc: Gail Schwartz, Chairperson, Ban Assault Weapons NOW
Enclosures

JUN26'19 RCVD - NHO

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SUMMARY OF PETITION SIGNATURES

Political Committee: **Ban Assault Weapons Now**

Amendment Title: **Prohibits possession of defined assault weapons**

Congressional District	Voting Electors in 2016 Presidential Election	For Review 10% of 8% Required By Section 15.21 Florida Statutes	For Ballot 8% Required By Article XI, Section 3 Florida Constitution	Signatures Certified
FIRST	386,504	3,093	30,921	336
SECOND	360,098	2,881	28,808	1,533
THIRD	356,715	2,854	28,538	3,165
FOURTH	428,190	3,426	34,256	1,810
FIFTH	316,115	2,529	25,290	5,339
SIXTH	385,918	3,088	30,874	2,051
SEVENTH	370,466	2,964	29,638	3,510
EIGHTH	409,569	3,277	32,766	234
NINTH	362,593	2,901	29,008	3,662
TENTH	320,548	2,565	25,644	2,657
ELEVENTH	417,253	3,339	33,381	1,965
TWELFTH	386,775	3,095	30,942	3,270
THIRTEENTH	367,818	2,943	29,426	5,361
FOURTEENTH	336,289	2,691	26,904	4,734
FIFTEENTH	340,331	2,723	27,227	2,919
SIXTEENTH	403,805	3,231	32,305	6,587
SEVENTEENTH	360,061	2,881	28,805	3,068
EIGHTEENTH	388,772	3,111	31,102	1,690
NINETEENTH	389,415	3,116	31,154	3,011
TWENTIETH	291,984	2,336	23,359	6,475
TWENTY-FIRST	355,842	2,847	28,468	5,228
TWENTY-SECOND	361,305	2,891	28,905	7,284
TWENTY-THIRD	342,784	2,743	27,423	5,122
TWENTY-FOURTH	269,446	2,156	21,556	5,225
TWENTY-FIFTH	269,983	2,160	21,599	1,093
TWENTY-SIXTH	294,742	2,358	23,580	1,859
TWENTY-SEVENTH	304,012	2,433	24,321	2,023
TOTAL:	9,577,333	76,632	766,200	91,211

CONSTITUTIONAL AMENDMENT PETITION FORM

Note:

- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.
- Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes].
- If all requested information on this form is not completed, the form will not be valid.

Your name _____
Please print name as it appears on your Voter Information Card

Your address _____

City _____ Zip _____ County _____

Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable).

Voter Registration Number _____ OR Date of Birth _____

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

BALLOT TITLE: Prohibits possession of defined assault weapons

BALLOT SUMMARY: Prohibits possession of assault weapons, defined as semiautomatic rifles and shotguns capable of holding more than 10 rounds of ammunition at once, either in fixed or detachable magazine, or any other ammunition-feeding device. Possession of handguns is not prohibited. Exempts military and law enforcement personnel in their official duties. Exempts and requires registration of assault weapons lawfully possessed prior to this provision's effective date. Creates criminal penalties for violations of this amendment.

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article I, Section 8

Full text of proposed constitutional amendment:

ARTICLE I, SECTION 8. Right to Bear Arms.—

- (a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.
- (b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.
- (c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.
- (d) This restriction shall not apply to a trade in of another handgun.
- (e) The possession of an assault weapon, as that term is defined in this subsection, is prohibited in Florida except as provided in this subsection. This subsection shall be construed in conformity with the Second Amendment to the United States Constitution as interpreted by the United States Supreme Court.

1) Definitions -

- a) Assault Weapons - For purposes of this subsection, any semiautomatic rifle or shotgun capable of holding more than ten (10) rounds of ammunition at once, either in a fixed or detachable magazine, or any other ammunition-feeding device. This subsection does not apply to handguns.
- b) Semiautomatic - For purposes of this subsection, any weapon which fires a single projectile or a number of ball shots through a rifled or smooth bore for each single function of the trigger without further manual action required.
- c) Ammunition-feeding device - For purposes of this subsection, any magazine, belt, drum, feed strip, or similar device for a firearm.

Continues on reverse

2) Limitations -

a) This subsection shall not apply to military or law enforcement use, or use by federal personnel, in conduct of their duties, or to an assault weapon being imported for sale and delivery to a federal, state or local governmental agency for use by employees of such agencies to perform official duties

b) This subsection does not apply to any firearm that is not semiautomatic, as defined in this subsection.

c) This subsection does not apply to handguns, as defined in Article I, Section 8(b), Florida Constitution.

d) If a person had lawful possession of an assault weapon prior to the effective date of this subsection, the person's possession of that assault weapon is not unlawful (1) during the first year after the effective date of this subsection, or (2) after the person has registered with the Florida Department of Law Enforcement or a successor agency, within one year of the effective date of this subsection, by providing a sworn or attested statement, that the weapon was lawfully in his or her possession prior to the effective date of this subsection and by identifying the weapon by make, model, and serial number. The agency must provide and the person must retain proof of registration in order for possession to remain lawful under this subsection. Registration records shall be available on a permanent basis to local, state and federal law enforcement agencies for valid law enforcement purposes but shall otherwise be confidential.

3) Criminal Penalties - Violation of this subsection is a third-degree felony. The legislature may designate greater, but not lesser, penalties for violations.

4) Self-executing - This provision shall be self-executing except where legislative action is authorized in subsection (3) to designate a more severe penalty for violation of this subsection. No legislative or administrative action may conflict with, diminish or delay the requirements of this subsection.

5) Severability - The provisions of this subsection are severable. If any clause, sentence, paragraph, section or subsection of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

6) Effective date - The effective date of this amendment shall be thirty days after its passage by the voters.

DATE OF SIGNATURE

X _____
SIGNATURE OF REGISTERED VOTER

Initiative petition sponsored by Ban Assault Weapons NOW, 6619 S. Dixie Highway, #148, Miami, FL 33143

If paid petition circulator is used:

Circulator's name

Circulator's address

RETURN TO:

Ban Assault Weapons NOW
6619 S. Dixie Highway, #148
Miami, FL 33143

For official use only: Serial number 19-01
Date approved 1/11/2019

Attachment for Initiative Petition

Prohibits possession of defined assault weapons Serial Number 19-01

1. **Name and address of the sponsor of the initiative petition:**
Gail Schwartz
Ban Assault Weapons NOW
6619 South Dixie Highway #148
Miami, FL 33143
2. **Name and address of the sponsor's attorney, if the sponsor is represented:**
Unknown
3. **A statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot:** As of June 26, 2019, the sponsor has not obtained the requisite number of signatures to have the proposed amendment placed on the ballot. A total of 766,200 valid signatures are required for placement on the 2020 general election ballot.
4. **If the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process:** As of June 26, 2019, Supervisors of Elections have certified a total of 91,211 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2020 general election ballot.
5. **The date of the election during which the sponsor is planning to submit the proposed amendment to the voters:** Unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 3, 2020, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2020.
6. **The last possible date that the ballot for the target election can be printed in order to be ready for the election:** Unknown
7. **A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request:** The Secretary of State forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on June 26, 2019.
8. **The names and complete mailing addresses of all of the parties who are to be served:** This information is unknown at this time.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing petition has been furnished by U.S. Mail on this 26th day of July, 2019, to the following:

Laurel M. Lee
Secretary of State
Florida Department of State
R.A. Gray Building
500 S. Bronough St.
Tallahassee, Florida 32399-0250

Gail Schwartz
Ban Assault Weapons NOW
6619 South Dixie Highway #148
Miami, Florida 33143

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

The Honorable Bill Galvano
President, The Florida Senate
Senate Office Building
404 S. Monroe St.
Tallahassee, FL 32399-1100

The Honorable Jose Oliva
Speaker, Florida House of Representatives
The Capital, Room 420
402 S. Monroe St.
Tallahassee, FL 32399-1300

/s/ Edward M. Wenger
Edward M. Wenger (FBN 85568)
CHIEF DEPUTY SOLICITOR GENERAL
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
edward.wenger@myfloridalegal.com