

# S.C.O.P.E Legal Update

## January, 2022

### More Gun Control Coming in '22

WAMC interviewed Assemblywoman Pat Fahy and she says what I already knew: more gun control is coming in Albany next year:

“With the new legislative session days away in Albany, we’re speaking with members of the Senate and Assembly about their expectations for 2022. It will be Governor Kathy Hochul’s first budget process, and it comes just ahead of an election. Capital Region state Assemblywoman Pat Fahy is a Democrat from the 109th district, who chairs the Banking Committee ... I’ve carried major gun legislation, and we are going to continue to do more”

The two big issues (which may) come up are microstamping, bills A-7926/S-4116 and A-8131/S-7456, and banning lead hunting ammo A-5728/S-5058

<http://www.gunpoliticsny.com/?p=24678>

### Paulin (NY Democrat) Champions Legislation to Combat Gun Violence in New York

Assemblymember Amy Paulin...highlighted several gun control bills she authored for which she will seek passage in the upcoming New York State legislative session.

- Restrictions on Gun Dealers A837, sponsored by Paulin in the Assembly and Brian Kavanaugh in the New York State Senate, imposes stringent restrictions and practices on gun dealers with respect to record keeping and reporting of gun sales. Specifically, this bill: (1) requires gun dealers to display and store weapons in a secure manner; (2) provides that guns may be sold only at the location listed on the dealer's federal firearms license or at gun shows; (3) requires that all dealer employees making retail gun sales must be at least 21 years of age and must receive adequate training; (4) provides that children may not enter premises where guns are sold unless accompanied by a parent or guardian; (5) requires gun dealers to maintain sales records and periodically submit them to the state police; and (6) requires gun dealers to establish internal compliance procedures, and to certify compliance on an annual basis. The additional requirements set forth in this bill will help to reduce the diversion of firearms to the illegal market, and will also assist police departments, prosecutors and other law enforcement officials in their efforts to trace and recover illegal weapons.
- 10-day Waiting Period on Gun Deliveries A449, sponsored by Paulin in the Assembly and Jeremy Cooney in the New York State Senate, establishes a mandatory 10-day waiting period before a licensed gun dealer may deliver a firearm to a purchaser.

- Removing Guns from Homes with Family Violence A5455/S5026, sponsored by Paulin in the Assembly and Peter Harckham in the New York State Senate, requires the removal of guns from homes where there has been reports of domestic violence.
- Red Flag Extreme Risk Legislation Paulin also announced today that Governor Hochul has signed into law critical, life-saving legislation that she sponsored in the New York State Legislature with Senator Pete Harckham, that requires mental health facilities to provide information about New York's Red Flag Law and obtaining extreme risk protection orders for patients upon their discharge or conditional release.

<https://scarsdale10583.com/section-table/101-village-voices/9330-paulin-champions-legislation-to-combat-gun-violence-in-new-york>

### **Hochul Signs Bill That Aims to Clamp Down on 'Iron Pipeline' and Fight Gun Trafficking**

Governor Kathy Hochul has signed a Queens senator's bill into law that requires the state to publish a quarterly report about the origins of guns used in crimes — including who purchased them and where.

The bill, sponsored by State Sen. Michael Gianaris, aims to crack down on guns being transported into New York from other states. It was signed into law by Hochul Wednesday.

The legislation requires the Division of Criminal Justice Services and New York State Police to report on where a firearm was bought if it was used in a crime in New York state. Furthermore, the report must include information as to whether the perpetrator had a license or permit to possess the firearm.

<https://astoriapost.com/hochul-signs-gianaris-bill-that-aims-to-clamp-down-on-iron-pipeline-and-fight-gun-trafficking>

### **Members Of The Firearm Industry Launch Battle To Have New York (Firearms Nuisance) Statute Declared Unconstitutional**

The National Shooting Sports Foundation® (NSSF®) and a group of fourteen firearm manufacturers, distributors, and retailers filed a lawsuit and moved for a preliminary injunction in federal court today challenging as unconstitutional a New York law designed to blame the industry for the criminal misuse or unlawful possession of firearms in New York no matter where they were purchased.

Specifically, New York's "public nuisance" law would subject members of the firearm industry to civil lawsuits for the criminal misuse or unlawful possession of firearms in New York. The law would impose liability on industry members for firearms lawfully sold anywhere in the United States that end up being criminally misused or illegally possessed in New York thereby allegedly contributing to a "public nuisance" in the state. Today's

lawsuit challenges the New York law as preempted by the federal Protection of Lawful Commerce in Arms Act (PLCAA). It also challenges the law as unconstitutionally vague in violation of the Due Process Clause of the United States Constitution. The lawsuit further challenges the law as an impermissible attempt by New York State to regulate interstate commerce in violation of the Commerce Clause of the Constitution.

New York is trying to use the threat of crushing liability to coerce out-of-state businesses to adopt sales practices and procedures not required by Congress or the law of the state where they operate. The Constitution reserves the power to regulate interstate commerce solely to Congress. This law interferes with the sovereignty of other states to make policy choices about how firearms should be sold in their state, subject only to the Second Amendment and federal law.

The challenged law permits lawsuits by victims of criminal acts and citizens claiming they have been harmed by an alleged public nuisance in New York. It also allows lawsuits by the State and any local government, like the City of New York. Both New York State and the City of New York were part of a wave of similar lawsuits filed over twenty years ago that led to Congress passing the bipartisan PLCAA in 2005.

<https://www.nssf.org/articles/members-of-the-firearm-industry-launch-battle-to-have-new-york-statute-declared-unconstitutional/>

### **AG Letitia James wants New Yorkers to have more power to sue gun manufacturers**

NYS Attorney General Letitia James (has once again) set her sights on the gun industry, a group that's recently been a frequent target in the state.

In an appearance on "The View," the AG told the talk show's hosts California's Governor Democrat Gavin Newsom has it right:

"When I heard about that, I said to my team, 'We need to follow his [Gov. Newsom's] lead,'" James said. "And the reason why is because gun manufacturers and gun distributors in this country are immunized. No liability whatsoever. They're the only industry that is protected in this country," James told the show's hosts Tuesday.

Over the weekend, Newsom said he wants to empower private citizens in the state to enforce a ban on the manufacture and sale of assault weapons in the state, flipping on its head the authority claimed by conservative lawmakers in Texas to outlaw most abortions once a heartbeat is detected. Friday, the Supreme Court allowed the Texas law to remain in effect.

New York State did pass a law against gun manufacturers over the summer, allowing the products gun manufacturers to be considered a public nuisance. however, what California wants, and now what AG James wants for New York would go even further.

<https://cbs6albany.com/news/local/ag-letitia-james-wants-new-yorkers-to-have-more-power-to-sue-gun-manufacturers>

### **New York's Bid to End NRA Gets Skeptical Reaction From Judge**

A New York judge expressed skepticism about the state's attempt to dissolve the National Rifle Association over decades of financial malfeasance, asking why the matter couldn't be resolved in a way that would "preserve an entity of this vintage."

"The question is why can't the two be separated?" Manhattan state court judge Joel M. Cohen asked at a Friday hearing over an NRA request to dismiss the state's suit against the 150-year-old organization. "Why can't you address the financial issues without dissolving the entire entity?"

Cohen repeatedly asked Conley how the public would be served by dissolving the NRA rather than changing the "very small core" of management accused of wrongdoing. Conley agreed the NRA's alleged actions were the result of "entrenched management."

The NRA has said James, a Democrat who this week abandoned a run to be New York governor, is seeking its "corporate death" for political purposes. At Friday's hearing, the NRA argued the bankruptcy court ruling actually warrants dismissal of the case because the judge held that the NRA could be reformed.

"The NRA can continue to fulfill its mission, improve governance, improve internal controls," said NRA attorney Svetlana Eisenberg.

<https://www.bloomberg.com/news/articles/2021-12-10/nra-dissolution-suit-gets-skeptical-reaction-from-n-y-judge>

### **Yates County legislature approves county building gun ban, but ban does not apply to concealed carry**

The Yates County Legislature has approved a weapons ban in buildings owned or leased by the county.

The measure passed at the legislature's final meeting of the year, 11-1. Terry Button cast the only "no" vote. The law passed after it was changed to allow people with concealed carry permits to bring guns into county buildings. The law fell short of passage in September when the vote in favor of it was 7-6. With one legislator absent, it came up short of the eight votes needed for passage.

<https://www.fingerlakes1.com/2021/12/30/yates-county-legislature-approves-county-building-gun-ban-but-ban-does-not-apply-to-concealed-carry/>

### **Republicans warn ATF taking 'giant leap toward a federal firearm registry'**

A group of House Republicans is warning that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) could be laying the groundwork for a backdoor federal gun registry.

Republican Rep. Michael Cloud of Texas led 51 of his colleagues in a letter to acting ATF Director Marvin Richardson on Monday, expressing their concern over a proposed rule by the agency that Republicans fear could eventually lead to a backdoor gun registry around Congress' prohibition.

The recently-proposed rule essentially removes the 20-year burn date that the federal firearms licensees must abide by, requiring them to preserve firearm purchase records older than two decades.

<https://www.foxnews.com/politics/republicans-atf-groundwork-backdoor-federal-gun-registry>

### **How Biden Is Reshaping The Courts**

Biden campaigned on offsetting Trump's conservative stamp by nominating judges from diverse backgrounds, and he's gotten more judicial nominees confirmed through the Senate than any president at this point in his first term in decades. Almost half of the 61 judges he's nominated to the lower courts have been confirmed — a larger share than Trump or former President Barack Obama ....

Take the 2nd Circuit Court of Appeals, a powerful, traditionally liberal circuit court in the New York area. Thanks to Trump's appointments, Republican-appointed judges actually had a narrow advantage on the court when Trump left office, but Biden has already been able to appoint three of the 13 active judges on the circuit, shifting the balance of power back toward the liberal judges on the court. The 2nd Circuit now has six judges appointed by a Republican president and seven appointed by a Democrat, which means the chance of drawing a panel with two or three Democratic-appointed judges overseeing a case is higher than it was when Biden took office.

<https://fivethirtyeight.com/features/how-biden-is-reshaping-the-courts/>



## **Biden’s Court-Packing Plans Canned, For Now**

In late 2019, five U.S. Senators, all Democrats, threatened to “restructure” (read “pack”) the U.S. Supreme Court if the Court went ahead with a challenge to New York’s gun-control laws.

That particular case was called “moot” by the high court. But the issue didn’t go away. It impacted the 2020 presidential election. Both then-candidate Joe Biden and Kamala Harris, at the time, would not say whether they were for adding justices to the U.S. Supreme Court or not.

Later, after Biden became president of the United States, he issued an executive action (one of almost 50 in his first 100 days) directing the formation of a commission to study the U.S. Supreme Court.

Biden’s Presidential Commission on the Supreme Court recently, and unanimously, approved a nearly 300-page report. It has little to say about the “Membership and Size of the Court.” It devotes just one chapter—28 of the 300 pages—to this topic. Rather than making any formal recommendations for court packing, the commission simply laid out the arguments for and against it.

<https://www.americas1stfreedom.org/articles/2021/12/16/biden-s-court-packing-plans-canned-for-now>

## **Law prof suggests rewrites of First and Second Amendments that do not mention free press or bearing arms**

Mary Anne Franks, the Michael R. Klein Distinguished Scholar Chair at the university, wrote that the first two amendments, which include the rights to free speech, religion and bearing arms, "inspire religious-like fervor in many Americans" and that both are "deeply flawed in their respective conceptualizations."

The professor claims that the two amendments "tend to be interpreted in aggressively individualistic ways that ignore the reality of conflict among competing rights."

The result, according to Franks, is that "the most powerful members of society" benefit from these rights at the expense of vulnerable groups. Franks did not elaborate on individuals in these groups.

<https://www.foxnews.com/us/university-of-miami-law-professor-first-second-amendments>

## **California ban on high-capacity magazines reinstated by U.S. appeals court**

A divided U.S. appeals court on (Nov 30) reinstated California's ban on high-capacity magazines, calling it a reasonable means to try reducing gun violence following a spate of mass shootings nationwide.

By a 7-4 vote, the 9th U.S. Circuit Court of Appeals rejected claims by firearms owners that banning magazines with more than 10 rounds of ammunition violated their right to bear arms under the U.S. Constitution's Second Amendment.

One of Tuesday's dissenters, Circuit Judge Patrick Bumatay, said high-capacity magazines have been used for centuries, with millions in use today, and deserved protection under the 2008 Supreme Court decision giving individuals a right to bear arms.

Chuck Michel, president of the California Rifle & Pistol Association, said his group will appeal to the Supreme Court. He said courts should stop treating the Second Amendment "like a second-class gift from government."

<https://www.reuters.com/world/us/us-appeals-court-reinstates-california-ban-high-capacity-magazines-2021-11-30/>

## **California Grabs Gun-Owners' Data**

In a last-minute "budget-trailer bill," California's legislature passed, and Gov. Gavin Newsom (D) signed, a mandate that the state give gun-owners' personal data to the University of California Firearm Violence Research Center (UCFC) at UC Davis.

The UCFC was created by the state of California in 2017 and is funded by the state. It is, effectively, a state-run gun-control group that focuses on creating advocacy "research" to substantiate anti-Second Amendment activists' claim that gun ownership is a "disease" that needs to be "cured" with gun control.

<https://www.americas1stfreedom.org/articles/2021/12/1/california-grabs-gun-owners-data>

## **California governor says he will use legal tactics of Texas abortion ban to implement gun control**

California Gov. Gavin Newsom expressed his "outrage" Saturday at a Supreme Court decision to allow the Texas six-week abortion ban to remain in effect and said he would use similar legal tactics to tackle gun control in his state....

In light of the Supreme Court's decision, Newsom said he directed his staff to draft a bill that would allow private citizens to seek injunctive relief "against anyone who manufactures, distributes, or sells an assault weapon or ghost gun kit or parts in the State of California."

The bill would also provide for statutory damages of at least \$10,000 in addition to attorney's fees, the governor's statement said.

<https://www.cnn.com/2021/12/12/us/california-gun-control-texas-abortion-legal-tactics/index.html>

### **Dems Renew Push for Gun-Control Bills After Oxford Shooting**

Democrats vowed Wednesday to push new gun-control legislation and to revive stalled bills in Michigan's Republican-led Legislature following a mass shooting that left four high school students dead and others with serious injuries.

Democratic Gov. Gretchen Whitmer, who opposes relaxing restrictions, said gun violence is a public health crisis. She called for unspecified "actions" beyond "thoughts and prayers" but did not elaborate. She has previously backed a measure that would let judges order the seizure of firearms from people who pose a significant risk to themselves or others.

In June, (Sen. Rosemary Bayer, a Democrat) introduced legislation aimed at holding accountable adults who fail to secure their firearms. The 15-year-old charged in Tuesday's slayings, Ethan Crumbley, used a handgun that his father had bought four days earlier, authorities said.

The bill would require adults to keep a firearm in a securely locked box or container if they know it is accessible to minors. If a minor obtained the gun and used it to kill or injure, the adult would face up to five years in prison. There would be exceptions if minors have permission for activities such as target practice and hunting.

<https://www.usnews.com/news/best-states/michigan/articles/2021-12-01/dems-renew-push-for-gun-control-bills-after-oxford-shooting>

### **New Gun Tax for Cook County, Previous Gun Tax Ruled Unconstitutional**

On November 4, 2021, the Cook County (where Chicago is located), Illinois board amended a gun and ammunition tax which had been ruled unconstitutional by the Illinois Supreme Court on October 21, 2021.

The last lawsuit took nearly six years, from December 17, 2015, to October 21, 2021 to work its way to the Supreme Court, and for the Court to find the gun tax unconstitutional. The Cook County Board took two weeks to re-institute the amended tax.

<https://www.ammoland.com/2021/11/new-gun-tax-for-cook-county-previous-gun-tax-ruled-unconstitutional/#ixzz7EKE5nfKe>



## En Banc Sixth Circuit Splits 8-8 Over Bump Stock Ban

In March, a divided panel of the U.S. Court of Appeals for the Sixth Circuit rejected a Bureau of Alcohol, Tobacco & Firearms regulation declaring that bump stocks constitute illegal "machine guns" under federal law, overturning a district court ruling to the contrary. Among other things, the panel majority concluded that the ATF's interpretation was not eligible for Chevron deference. In June, the entire court granted a petition for rehearing en banc.

Yesterday, the full court affirmed the original district court judgment in *Gun Owners of America v. Garland* by an equally divided vote, without an opinion for the court.

<https://reason.com/volokh/2021/12/04/en-banc-sixth-circuit-splits-8-8-over-bump-stock-ban/>

