

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

## January, 2023

### Gun Rights Advocates Seek Supreme Court Intervention to Block New York Restrictions

In an appeal to the Supreme Court, gun rights advocates write that a circuit court ruling has 'the effect of indefinitely suspending the protections afforded New Yorkers by the Second Amendment.'

Second Amendment advocates are waiting for action by the Supreme Court amid an escalating dispute over New York's gun laws in the federal courts.

In a request filed to Justice Sonia Sotomayor, lawyers in the case of Antonyuk v. Nigrelli are asking the justice to either unilaterally act to reverse an appellate court order that allows a New York gun law to take effect, or refer the matter to the full court.

In response to Bruen, New York implemented a new set of restrictions. On November 7th, District Court Judge Glenn Suddaby halted implementation of some of New York state's new post-Bruen gun regulations. He wrote that the state's requirements that applicants prove their "good moral character" and provide their social media history for review by officials, among other requirements, were unconstitutional. In response to Judge Suddaby's ruling, the attorney general, Letitia James, asked the Second Circuit to stay the order while the appeals process plays out, which the circuit riders granted, allowing the Concealed Carry Improvement Act to take effect. Gun rights advocates are now asking Justice Sotomayor to vacate the stay.

In their Supreme Court brief, the applicants wrote that the circuit riders' actions have "the effect of indefinitely suspending the protections afforded New Yorkers by the Second Amendment and affirmed by this Court in Bruen." The Court could act as soon as Tuesday.

A provision in New York's Concealed Carry Improvement Act allowing the government to ban firearms from "sensitive" places — such as houses of worship, public transportation, and private property — was challenged in a separate lawsuit which has also made its way to the Second Circuit.

In his decision striking down the "sensitive" places provision, a federal district court judge at Buffalo, John Sinatra, said that the law directly contradicts the Second Amendment and the Supreme Court's jurisprudence. It was "inconsistent with the nation's historical traditions, impermissibly infringing on the right to keep and bear arms in public for self-defense," he wrote in the ruling in a case titled Hardaway v. Nigrelli. Judge Sinatra's ruling was also stayed by the Second Circuit after an appeal by Ms. James. Plaintiffs' briefs are due on December 29.

<https://www.nysun.com/article/gun-rights-advocates-seek-supreme-court-intervention-to-block-new-york-restrictions>

## **Federal Court (Again) Blocks New York State Ban on Firearms in Houses of Worship**

The United States District Court for the Western District of New York (on December 29) issued a preliminary injunction against the state of New York, stopping the state's prohibition on firearms at houses of worship. A lawsuit challenging the law was filed by First Liberty Institute and the law firms Clement & Murphy PLLC and Ganguly Brothers PLLC on behalf of His Tabernacle Family Church, a nondenominational Christian church in Horseheads, New York, founded by Pastor Micheal Spencer....

In his order, Judge John Sinatra said, "Plaintiffs have demonstrated that the State permits countless other private actors hosting secular activities to do what a house of worship may not. The houses of worship exclusion is not a neutral law of general applicability."

In late 2020, the Supreme Court issued its opinion in Roman Catholic Diocese of Brooklyn v. Cuomo, chiding New York for singling out religious groups and restricting how they worship in violation of the First Amendment. And in June 2022, the Court issued its opinion in New York State Rifle & Pistol Association v. Bruen, invalidating New York's unprecedented effort to suppress the Second Amendment right to carry a firearm outside the home. Just days later, New York enacted expansive new laws that defy both of those rulings by establishing a total ban on carrying firearms in houses of worship. New York now imposes criminal liability on any person who carries a firearm into a place of worship regardless of whether that person possesses a license to carry a firearm under New York law, and regardless of whether the religious community would prefer to authorize congregants to carry a firearm.

<https://firstliberty.org/media/breaking-federal-court-blocks-new-york-state-ban-on-firearms-in-houses-of-worship/>

## **City of Buffalo files first of its kind lawsuit against gun industry**

The city of Buffalo announced Tuesday it has filed a "first of its kind" lawsuit against the gun industry, seven months after a teenager killed 10 people and wounded three others at a Buffalo grocery store.

The lawsuit was announced by Mayor Byron Brown and names as defendants some of the nation's biggest firearm manufacturers, including Beretta, Smith & Wesson, Bushmaster, Glock and Remington. The suit, filed in state Supreme Court in Buffalo, also names ghost gun retailers Polymer and Arm or Ally as defendants.

The lawsuit said the plaintiffs are looking for compensatory and punitive damages as well as an abatement fund "with sufficient capital to eliminate the public nuisance [gun manufacturers] are responsible for creating, exacerbating, and/or perpetuating." The lawsuit requests a jury trial.

The lawsuit charges the gun manufacturers and retailers have "maintained the public nuisance of unlawful possessing, transportation and disposition of firearms and the utilization of guns in the commission of an offense" by marketing firearms to emphasize their "high capacity and ease of

concealment." The suit alleges that such marketing, including its use in movies and social media, appeals to prospective purchasers with criminal intent.

The lawsuit also faults manufactures for not training dealers "to avoid straw sales and other illegal transactions" and for refusing to terminate contracts with distributors who sell to dealers with disproportionately high volumes of guns traced to crime scenes.

The five top gun companies named in the suit "acknowledged that they have no system process in place to gather safety data related to their products, and they were unable to produce any internal analyses of the dangers caused by sellers of their military-style weapons to civilians."

[https://abcnews.go.com/US/city-buffalo-files-kind-lawsuit-gun-industry/story?id=95615548&fbclid=IwAR0RrPviJFgijCsm\\_\\_9WZg-JQTgsP1fhOzUj1wJnJLnDZcK-VOUDMJfsd3E](https://abcnews.go.com/US/city-buffalo-files-kind-lawsuit-gun-industry/story?id=95615548&fbclid=IwAR0RrPviJFgijCsm__9WZg-JQTgsP1fhOzUj1wJnJLnDZcK-VOUDMJfsd3E)

### **Rochester announces lawsuit against gun companies**

The City of Rochester is taking aim at gun manufacturers. It plans to sue them over the relentless gun violence on our streets. Tuesday afternoon Mayor Malik Evans announced this new public safety initiative against firearm companies.

Evans says gun violence is now the leading cause of death for young children, and teenagers in our city. Standing with members of his leadership team, Evans says it's time to go after gun manufacturers, and hold them accountable for the proliferation of guns on our streets. The city is about to file its litigation.

Local attorney Sheldon Boyce thinks this lawsuit is a bad idea.

"You may as well sue automobile manufacturers for drunk driving. The guns in fact have all been illegally sold. I think my understanding is that last year all the homicides were committed with guns that have been illegally possessed. They're not people that have a pistol permit, many buy the guns legally. So I think it's just ridiculous to blame the manufactures," said Boyce.

News10NBC reached out to the City to find out how much this lawsuit will cost taxpayers. We have yet to hear back from city leaders.

<https://www.whec.com/top-news/city-announces-lawsuit-against-gun-companies/>

## **New York bill would end NRA's ability to certify gun-safety trainers**

A bill before the New York State Legislature would remove the National Rifle Association's ability to certify gun-safety instructors.

Under Senate Bill 9601, the state Department of Criminal Justice Services would develop a curriculum for gun-safety training. The legislation comes several months after the Supreme Court struck down the state's concealed-carry laws, which required that a person show "proper cause" to want to carry a gun.

State Sen. Sean Ryan, D-Buffalo, who introduced the new bill, said it was brought forward because of the NRA's support for that lawsuit.

<https://kiowacountypress.net/content/new-york-bill-would-end-nra's-ability-certify-gun-safety-trainers>

## **New laws in NY on social media and illegal gun reporting**

(In the beginning of September) two laws went into effect in New York State. One, requires social media networks to provide and maintain mechanisms for reporting hateful conduct on their platforms.

Another law that took hold on Saturday, Dec. 3, requires enhanced reporting by law enforcement to state and federal databases whenever an illegal gun is recovered. It also requires gun dealers to enact uniform security and reporting standards.

[https://www.wktv.com/news/state/new-laws-in-ny-on-social-media-and-illegal-gun-reporting/article\\_ee90a0fc-73e4-11ed-a1ca-37202294b9b4.html](https://www.wktv.com/news/state/new-laws-in-ny-on-social-media-and-illegal-gun-reporting/article_ee90a0fc-73e4-11ed-a1ca-37202294b9b4.html)

## **Use of 'Red Flag' law jumps following Hochul's directive**

In the wake of May's mass shooting at a Tops market in Buffalo, the state has both broadened who is eligible for red flag orders, but also specifying instances in which they are required to be ordered — particularly for law enforcement who encounter a person who poses a serious risk of harm to themselves or others.

Over the past six months, courts across the state have approved more than 2,000 temporary orders of protection, red flags that are intended to prevent a person from possessing or purchasing a firearm, according to state data provided to the Times Union. That's triple the overall number that had been filed in the first 21 months of the law being on the books.

In addition, the rate at which courts are not only approving temporary orders of protection but also final extreme risk protection orders — which call for the person to not have access to a firearm for one year — has increased since the directives from Gov. Kathy Hochul and the state Legislature in the late spring.

Since then, a final order of protection is issued after a temporary order in about three-quarters of cases, up from two-thirds of the time, according to a review of the state data.

State police were the first group to be required to file a temporary extreme risk protection order when they encounter someone who meets a certain legal criteria of posing a serious risk to themselves or others. The governor issued the directive to State Police in May following the Buffalo massacre, which was committed by a young man who was screened by his school for mental health challenges but not necessarily for potentially perilous access to firearms.

Data obtained by the Times Union from the State Police show the massive spike in the orders that were filed by troopers following Hochul's executive order.

In the final four months of 2019, when the red flag laws went into effect, State Police filed 26 emergency risk protection orders, according to the data obtained.

In 2020 and 2021, the number of orders issued by state police were 96 and 95, respectively. By 2022, they more than quadrupled: Data obtained — running only through mid-October — showed 415 red flag orders filed.

In the Finger Lakes region, it went from two in 2021 to at least 43 this year.

<https://www.timesunion.com/state/article/Use-of-Red-Flag-law-jumps-following-governor-s-17658887.php>

### **DEC addresses new semi-automatic gun laws**

New York State recently adopted new requirements for the purchase and transfer of ownership of semi-automatic rifles and the purchase, possession, storage, and transport of firearms, rifles and shotguns in sensitive or restricted areas in New York. Refer to [gunsafety.ny.gov](https://gunsafety.ny.gov) for details about how these laws affect gun owners.

This sample Q&A is intended to provide clarity for how the new requirements will affect hunters, hunter education instructors, and hunting-related activities. These questions and answers are not intended to be exhaustive, nor do they constitute legal advice.

<https://www.oneidadispatch.com/2022/11/25/dec-addresses-new-semi-automatic-gun-laws/>

### **Democrats Introduce Gun Law Tweaks**

Two bills have been introduced...by Sen. Jeremy Cooney, D-Rochester, and Sen. John Mannion, D-Syracuse, seeking to remove some places listed as sensitive places in the June gun legislation. Cooney's S.9600 proposes to amend the June gun laws by allowing firearm safety shooting instruction at a camp regulated by state Public Health Law or at an approved shooting range as long as instruction is being provided by a certified shooting instructor. Cooney also proposes allowing authorized persons who have to deal with an emergency wildlife situation — like a rabid

raccoon approaching campers — to use a gun as long as they are authorized by the state DEC, state Health Department or other law enforcement agency.

<https://www.post-journal.com/news/page-one/2022/11/bills-introduced/>

### **The strange intersection of gun rights and legal weed in New York State**

As cannabis legalization hits major milestones in New York, state residents will soon enjoy increased access to legal marijuana; but in doing so, they could decrease their access to legally possess firearms.

“This is an ongoing issue because of the federal illegality of cannabis, in that it’s a Schedule 1 substance,” said Michelle Fields, an attorney and advisor to The Mary Jane Consulting Group, and a board member of the New York City Cannabis Industry Association.

ATF released that memo in 2011 when 17 states had legalized medicinal cannabis and many more were considering establishing medical programs. It says that after receiving many inquiries, the bureau reached the conclusion that because marijuana is a federally illegal drug, federal firearms laws bar medical cannabis patients from legally owning guns.

“Any person who uses or is addicted to marijuana, regardless of whether his or her state has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by federal law from possessing firearms or ammunition,” the memo reads.

<https://www.syracuse.com/marijuana/2022/11/the-strange-intersection-of-gun-rights-and-legal-weed-in-new-york-state.html>

### **A.T.F. Moves to Close ‘Ghost Guns’ Loophole in Federal Rule**

On Tuesday (December 27), the Bureau of Alcohol, Tobacco, Firearms and Explosives directed vendors who sell partially finished frames of Glock-style handguns — the pistol grip and firing mechanism — to treat them like fully completed firearms, which are subject to federal regulations. The move, outlined in an open letter to federally licensed gun dealers, requires sellers to mark the parts with serial numbers, and for buyers to undergo criminal background checks.

The guidance could severely restrict the sale of unregulated and untraceable “80 percent” frames and receivers that have been linked to thousands of crimes, a top goal of the gun control movement. Such parts only require simple alterations to become operational.

The move, should it survive likely legal challenges from gun rights groups, would be among the most significant executive actions President Biden has taken

Under the new guidance, vendors and manufacturers who fail to comply with the technical requirements outlined in the letter would face penalties ranging from the possible loss of their federal licenses to criminal prosecution.



Yet the move, which the Justice Department described as a clarification of the regulation, is not without risk. Because the rule was created through executive action, rather than a statute validated by Congress, it has given companies confidence that they can keep selling individual gun parts.

Administration officials, speaking on condition of anonymity because they were not authorized to publicly discuss possible litigation, said the new guidance would almost certainly be challenged in federal court on the grounds that it violates the Gun Control Act of 1968, which allows people to build firearms for their personal use without submitting to background checks or applying serial numbers.

The guidance will only serve “to further confuse the industry as to when an unfinished, incomplete item is a ‘frame’ or ‘receiver’ — and thus regulated,” said Larry Keane, a top official with the National Shooting Sports Foundation, a gun industry trade group.

<https://www.nytimes.com/2022/12/27/us/politics/ghost-guns-atf-rule.html>

### **Democrats prime statehouses to rewrite ‘red flag’ gun laws**

Democratic lawmakers in states that have recently experienced highly publicized mass shootings like Illinois, Michigan and Colorado are preparing their own gun safety agendas for the new year. At the top of the list: enacting or expanding “red flag” laws that allow courts to temporarily confiscate guns from someone deemed dangerous, and Illinois lawmakers may act as soon as next month....

But opponents to red flag laws argue that the legal procedures for removing guns violates a person’s due process rights and could be used as a tactic in domestic disputes. Republican critics and gun groups like the National Rifle Association have defeated proposed legislation in a number of GOP-controlled states like Arizona, Nebraska and Kentucky as recently as this year.

Everytown for Gun Safety and its grassroots networks earlier this month launched a resource center, a “first-of-its-kind effort to provide comprehensive support and guidance to state and local leaders on the effective implementation of lifesaving gun laws.” The launch is backed by an initial \$2 million investment, and the early focus will center on red-flag laws.

States are just now applying for grants provided in the gun package signed by President Joe Biden over the summer, which is designed to encourage more states to adopt red flag laws by providing model legislation and implementation funding.

<https://www.politico.com/news/2022/12/21/statehouses-red-flag-gun-laws-democrats-00074807>

### **Democratic Sen. Chris Murphy questions law enforcement funding for 'Second Amendment sanctuaries'**

Sen. Chris Murphy, D-Conn., said Sunday that there needs to be a "conversation" about whether to continue to fund law enforcement in a "Second Amendment sanctuary state" or counties that are "refusing to implement" gun laws that are on the books.

Murphy said "Second Amendment sanctuaries" are counties that have declared that they are "not going to enforce state and federal gun laws" and that there needs to be discussion in the Senate over whether they want to continue to fund law enforcement in these counties.

<https://www.foxnews.com/media/democratic-sen-chris-murphy-questions-law-enforcement-funding-second-amendment-sanctuaries>

### **Oregon gun control law battered with setbacks, outcry from cops before even taking effect: 'Grave problems'**

The Oregon Department of Justice has requested a temporary delay over a gun control requirement that Oregon residents receive a permit in order to purchase firearms after law enforcement officials came out in full-force that they lack the infrastructure, funds and personnel to create such a program.

The NRA says the state's move is a "concession that there are grave problems" with the measure.

Oregon's Measure 114 narrowly passed at the ballot box last month, when 50.7% of Oregonians threw their support behind the gun restrictions. The law is set to take effect on Thursday, before Oregon's election is certified.

Ammunition magazines capable of holding more than 10 rounds will be banned under the law, and the measure requires the creation of a permit-to-purchase program. Such a program includes Oregonians applying for the permit to purchase or transfer firearms, submitting fingerprints, completing a law enforcement firearms training course and passing a background check, among other requirements. The permits can cost up to \$65 and last for five years with a new background check required for every gun purchase.

Law enforcement officials have sounded the alarm on the program, including some who submitted affidavits in the NRA-ILA backed lawsuit.

"Measure 114 placed a substantial amount of work on all law enforcement agencies but came with very little direction, no funding, and no additional staffing," retired Marion County Sheriff Jason Myers, who serves as the executive director of the Oregon State Sheriff's Association, wrote in an affidavit

<https://www.foxnews.com/us/oregon-gun-control-law-battered-setbacks-outcry-cops-effect-grave-problems>

### **A Federal Judge Suggests That Oregon's 10-Round Magazine Limit Does Not Implicate the Second Amendment**

The federal lawsuits argue that the 10-round magazine limit violates the Second Amendment. The cases are notable because they will provide an indication of how judges are apt to apply the constitutional test that the Supreme Court prescribed in *New York State Rifle and Pistol*



Association v. Bruen, the June 23 decision that upheld the right to carry guns outside the home for self-defense.

So far the signs are not promising for those who hoped that Bruen would be a "wrecking ball to dismantle gun control laws nationwide." In response to lawsuits filed by the Oregon Firearms Federation and the Firearms Policy Coalition, a federal judge this week declined to issue a TRO against Measure 114, based on reasoning that seems designed to sabotage that wrecking ball.

U.S. District Judge Karin Immergut... seems inclined to think that the magazine limit does not implicate the Second Amendment at all. And if it does, she said in two orders issued the same day that Raschio blocked Measure 114, it does not amount to the sort of constitutional violation that would justify a TRO based on the evidence presented so far. Immergut's reasoning is reminiscent of the highly deferential approach to gun control laws that Bruen was supposed to remedy.

Bruen unambiguously rejected the "two-step" analysis that many courts had applied in upholding gun control laws. The first step asked whether the challenged law affected conduct covered by the Second Amendment, while the second step weighed that imposition against the law's purported public safety benefits. That was "one step too many," the Court said in Bruen: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."

The Firearms Policy Coalition (FPC) argues that Oregon's 10-round cap, which includes exceptions for law enforcement and for previously owned magazines as long as they are kept at home or used only for "recreational activities such as hunting," fails the Bruen test. The "arms" covered by the Second Amendment include magazines, it says, and the "large capacity magazines" targeted by Measure 114 have been around a lot longer than legal attempts to prohibit them.

In her orders denying TROs, she questions whether "the Second Amendment's plain text" covers ownership of the magazines banned by Measure 114. "The Second Amendment covers firearms and items 'necessary to use' those firearms," she writes. Since guns that accept "large capacity magazines" also accept smaller magazines, she suggests, the former may not qualify: "Plaintiffs have not shown, at this stage, that magazines specifically capable of accepting more than ten rounds of ammunition are necessary to the use of firearms for self-defense."

<https://reason.com/2022/12/08/a-federal-judge-suggests-that-oregons-10-round-magazine-limit-does-not-implicate-the-second-amendment/>

### **Oregon's LGBTQ community worries that a new law will keep them from obtaining guns**

Some of Oregon's trans and queer gun supporters are worried that a new state law will prevent them from buying firearms.

The law, Measure 114, grants county sheriffs and police chiefs discretion to determine who qualifies to purchase a firearm under a new permit-to-purchase program.

But Measure 114 lacks criteria clearly defining what disqualifies applicants, details on what makes someone a threat and what data can be used by law enforcement in making that decision. That's a problem for activists who have critiqued law enforcement, particularly in the racial justice protests that took place over the past two years.

<https://www.npr.org/2022/12/15/1140713659/oregons-lgbtq-community-worries-that-a-new-law-will-keep-them-from-obtaining-gun>

### **NJ Gov. Signs Bill Limiting Where Concealed Carriers Can Be Armed for Self-Defense**

The gun control was passed in reaction to SCOTUS's June 23, 2022, Bruen decision, which struck down New York's proper cause requirement for concealed carry permit issuance.

NJ.com reports that the legislation, A4769, creates "sensitive places" in which firearms cannot be carried.

The sensitive places include "schools, courthouses, child care centers, nursing homes, polling places, government buildings, hospitals, bars and restaurants where alcohol is served, airports, parks, beaches, demonstrations, movie theaters, casinos, and other entertainment centers."

Politico notes that A4769 also requires the acquisition of liability insurance for those who carry handguns in public for self-defense.

<https://www.breitbart.com/politics/2022/12/22/nj-gov-signs-bill-limiting-where-concealed-carriers-armed-self-defense/>

### **Texas Withdraws Challenge to Federal Court Decision Allowing Adults Under 21 to Carry Handguns**

In a significant legal pivot, the State of Texas has withdrawn its appeal of a U.S. District Court ruling that struck down state laws prohibiting adults under 21 from carrying handguns, allowing the ruling to stand.

In September, the state appealed the ruling of Judge Mark Pittman, who wrote in *Andrews v. McCraw* that Texas law prohibiting 18 to 20-year-old adults from carrying a weapon outside the home does not conform to the precedent set by the U.S. Supreme Court in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*.

The decision by the State of Texas to let the *Andrews* ruling stand was quickly celebrated as a victory by the Firearms Policy Coalition (FPC), which expanded on how the ruling will impact the constitutional rights of younger adults.

<https://thetexan.news/texas-withdraws-challenge-to-federal-court-decision-allowing-adults-under-21-to-carry-handguns/>

## Texas school district approves policy allowing some employees to be armed

A Texas school district has approved a policy change that would allow certain staff members to carry firearms on campus.

The Keller ISD School Board met Monday night to discuss the state's "Guardian Program," an effort for schools to have an armed defensive approach to an active shooter on campus while waiting for law enforcement to arrive.

The district said the policy change is in direct response to the May 24 Uvalde shooting that left 19 children and two adults dead at Robb Elementary School.

Under the new policy, some employees would become "guardians" voluntarily and would have to meet certain firearm training and other requirements. District leaders could remove the employee's authorization status at a moment's notice.

<https://www.foxnews.com/us/texas-school-district-approves-policy-allowing-some-employees-armed>

