

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

December, 2023

Schuyler County Legislature to vote on resolution supporting repeal of state fee for background checks on certain firearm and ammunition purchases

WHEREAS, on July 1, 2022, Governor Kathy Hochul signed into law Bill S51001, referred to as the “Concealed Carry Improvement Act” (CCIA) which amended the Penal Law, the General Business Law, the Executive Law, the Civil Practice Law and Rules, and the State Finance Law, in relation to licensing and other provisions relating to firearms, and

WHEREAS, said Act included regulations that allow the State to have oversight over background checks for firearms and ammunition purchases, and

WHEREAS, said Act amended State Executive Law to add a new Section 228, authorizing the New York State Police to run National Instant Criminal background (NICS) checks and serve as a State point of contact rather than utilizing the current NICS Background Check System, and

WHEREAS, said Act also created a new bureau within the State Police financed by new “background check fees” upon purchasers to cover the costs associated with performing state background checks, and

WHEREAS, these provisions of the so-called CCIA have resulted in onerous background check fees upon citizens equal to \$2.50 for every ammunition purchase and \$9.00 for every firearm purchase with the potential for increases without legislative approval, and

WHEREAS, the CCIA infringes on the inalienable right to keep and bear arms guaranteed by the Second Amendment, and

WHEREAS, Senate Bill S07645 and Assembly Bill A08185 would repeal Subdivision 5 of Section 228 of the Executive Law of S51001 relating to the background check fees for firearms and ammunition as included in the CCIA.

NOW, THEREFORE, BE IT RESOLVED, that the Schuyler County Legislature hereby endorses Senate Bill S07645 and Assembly Bill A08185 to repeal certain provisions of the Executive Law establishing a fee for background checks on certain firearm and ammunition purchases and amends state finance law, in relation to the source of funds for the background check fund, and

BE IT FURTHER RESOLVED, that the Clerk of the Legislature shall forward copies of this Resolution to New York State Governor Kathy Hochul, Senator Thomas F. O’Mara, Assemblyman Philip A. Palmesano, Inter-County Association of Western New York, the New York State Association of Counties, and all others deemed necessary and proper.

<https://www.schuylercounty.us/266/Legislature>

NY Gun Liability Law May Have Chilling Effect on Firearm Firms

New York's law allowing the state to sue gun makers and sellers for gun violence may have a potentially chilling effect on the firearms industry, a Second Circuit judge said Friday.

Judge Dennis Jacobs said manufacturers might be hesitant to make parts specifically for guns if they think they also could be held liable for gun-related crimes. Out-of-state gun makers also could get tangled up in a web of regulations if they can't comply with the manufacturing requirements under New York law, which could have an "inhibiting effect" on commerce.

"So basically companies making innocuous products could be held liable for making parts used in guns," Jacobs said at oral arguments in Manhattan.

Fifteen members of the gun industry, including the National Shooting Sports Foundation, Smith & Wesson Inc., SIG Sauer Inc., and Glock Inc., argue New York's law attempts to regulate out-of-state commerce and treat it differently from in-state commerce, essentially favoring manufacturers in New York that make parts used in guns.

<https://news.bloomberglaw.com/litigation/ny-gun-liability-law-may-have-chilling-effect-on-firearm-firms>

New York's top court upholds state gun laws – for now

Last week, the state Court of Appeals ruled on six cases concerning the illegal possession of firearms. In each case, plaintiffs tried to argue that New York's gun licensure system had nullified by *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court case from last year that struck down some of the state's previous gun laws. The Court of Appeals largely avoided the question of what the Bruen decision meant for the state's current gun laws, leaving advocates on both sides of the gun control debate unsure of where the state's gun regulation will go from here.

State Attorney General Letitia James took credit for defending New York's gun laws against the Second Amendment challenges. Her office successfully argued that the Court of Appeals should not even consider the Second Amendment arguments since the plaintiffs had not made them when the case was heard by lower courts. But convincing the court not to consider the Second Amendment claims in these particular cases is not the same as convincing the court that the Second Amendment claims are wrong, and both gun rights advocates and judges on the court expect that they will have to consider in future cases whether New York's gun regulations conflict with the Supreme Court's Bruen decision.

State Senate Minority Whip Patrick Gallivan, a Republican from Elma, told City & State that many gun rights advocates believe the state's regulations are still arbitrary and unconstitutional. "Somebody's got to render an opinion on whether you have good merit (and) moral character or not. It's not an arbitrary decision whether or not you're a convicted felon," he said.

Gallivan said that the Court of Appeals' most recent decisions in gun law cases will not preclude more legal challenges to New York's gun laws from being filed. "I would say I think one thing that's

certain is we'll continue to see lawsuits," he said. "We know that the Supreme Court ruled in the Bruen decision and then New York state – I don't want to necessarily be harsh to the governor – but New York state changed their laws in response to the growing decision, essentially openly challenging the Supreme Court. I did not support those changes, but putting all that aside, I think because of that, it was controversial and we'll continue to see court cases."

Tom King, president of the New York Rifle & Pistol Association, said that gun rights advocates definitely planned to file more lawsuits, especially given their past success in the Supreme Court.

<https://www.cityandstateny.com/politics/2023/11/new-yorks-top-court-upholds-state-gun-laws-now/392358/>

Stalwart liberal on New York's top court says she would strike down gun law

New York State Court of Appeals Judge Jenny Rivera, one of the top court's two most liberal jurists, says she would strike down a state law that makes it easier to convict people who possess loaded firearms without a permit, following the U.S. Supreme Court's landmark Second Amendment decision last year.

In a dissenting opinion from one of several gun cases decided last Tuesday, Rivera said it was time to invalidate the law at issue — which says the mere possession of an unlicensed firearm implies an intent to use that firearm illegally.

This implication, enshrined in law, is used to prosecute certain gun crimes, some of which have a so-called "intent" requirement.

The Supreme Court's 2022 decision in *New York State Rifle & Pistol Association v. Bruen* found that a central part of New York's licensing process, requiring a special need to obtain a concealed-carry permit, violated the Second Amendment. Because of this, Rivera reasoned, New York can no longer presume that everyone who possesses an unlicensed firearm intends to use it illegally.

Though she was the sole judge to call, explicitly, for the demise of a key gun law on constitutional grounds, Rivera's dissent may be a harbinger for things to come as courts across the country re-evaluate the legality of all manner of gun restrictions in the wake of *Bruen*.

Already, federal judges have called into question various aspects of New York's gun laws, including restrictions on concealed-carry in houses of worship and the requirement that applicants possess a good moral character.

Tuesday's opinion from Rivera suggests a similar level of skepticism from within New York's top bench.

<https://www.lohud.com/story/news/crime/2023/11/28/liberal-judge-on-nys-top-court-says-key-gun-law-is-unconstitutional/71672846007/>

Brooklyn DA Drops Gun Charge Against City Council Member, Citing ‘Inoperable’ Weapon

Southern Brooklyn Councilmember Inna Vernikov is going to be cleared of an illegal gun charge, the Brooklyn District Attorney’s Office told THE CITY on Friday — despite social media photos from last month that appeared to show the Republican with a gun on her waist at a counter-protest against pro-Palestinian college students.

A New York law, passed last year, prohibits the possession of firearms at “sensitive locations” including protests — even for licensed gun holders like Vernikov. But state case law holds that for prosecutors to prove a possession charge, the firearm must be operable.

NYPD officers monitoring the rally did not arrest Vernikov or seize the weapon at the time. Instead, police took possession of the gun when she voluntarily turned herself in and handed over the weapon the following morning. When the NYPD inspected the firearm a few weeks later, they found it was missing a key part — the recoil spring assembly — making the gun inoperable, according to a law enforcement source.

As a result, the prosecutors had to drop the charge, a spokesperson for the Brooklyn District Attorney’s Office said. It was the first time the charge had ever been brought forth under the new state law in Kings County.

<https://www.thecity.nyc/2023/11/17/gun-charge-dropped-council-member-vernikov-inoperable-weapon/>

Senate Democrats introducing bill regulating mechanisms of rapid-firing weapons

Sens. Angus King (I-Maine) and Martin Heinrich (D-N.M.) introduced a bill Thursday to regulate firearms by outlawing weapons with a magazine capacity over 10 rounds, among other measures aimed at increasing gun control.

The Gas-Operated Semi-Automatic Firearms Exclusion Act (GOSAFE) comes a month after a gunman killed 18 people in a mass shooting in Lewiston, Maine, not far from where King lives.

The bill is cosponsored by Sens. Mark Kelly (D-Ariz.) and Michael Bennet (D-Colo.).

Specifically, the GOSAFE Act targets firearms mechanisms, instead of implementing restrictions based on how firearms look. It places a ban on magazines larger than 10 rounds, bans modifications like bump stocks and bans the manufacture of ghost gun kits — build-at-home firearms without serial numbers.

It would also create a voluntary gun buy-back program to remove violating firearms from circulation.

Previous legislation to ban bump stocks and ghost guns has been struck down by federal courts, but face appeals.

A Trump-era ban on bump stocks was struck down by a federal appeals court in January. The case is expected to be decided by the Supreme Court. A Biden administration rule banning ghost guns was thrown out by an appeals court this month.

<https://thehill.com/homenews/senate/4335307-senate-democrats-bill-regulating-rapid-firing-weapons/>

NRA slams Democrat-led bill that would restrict magazine capacity: 'Blatantly violates' US Constitution

The National Rifle Association (NRA) on Thursday slammed a Democrat-led bill that would restrict magazine capacity and outlaw firearms with a magazine capacity of more than 10 rounds.

"This legislation blatantly violates the U.S. Constitution and U.S. Supreme Court rulings by banning the very types of firearms and magazines most often utilized by Americans for defending themselves and their families," Randy Kozuch, executive director of the NRA's Institute for Legislative Action, told Fox News Digital in a statement.

The Firearms Policy Coalition, a nonprofit advocacy group for Second Amendment rights — also opposes the bill. The group said Thursday the bill "is one of the most aggressive rights violations yet."

"Many common-use firearms will be banned. Self-built firearms will be banned. Many self-modifications will be banned. Standard capacity magazines will be banned," the post read.

The bill comes as Democrats have been vying to pass harsher gun control laws across the country.

<https://www.foxnews.com/politics/nra-slams-democrat-led-bill-would-restrict-magazine-capacity-blatantly-violates-us-constitution>

ATF issues guidance letter to FFLs on Solvent Traps and Silencers.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recently examined devices commonly marketed as "solvent traps" and has determined that some of them are "firearm silencers" as defined in the Gun Control Act (GCA) and as defined in the National Firearms Act (NFA).

"Solvent traps" are marketed as devices that attach to firearm barrels to catch excess solvent used when cleaning firearms. ATF has not classified any device as a "solvent trap," because that term does not exist in the relevant Federal statutes or implementing regulations.

However, ATF has classified numerous devices as "firearm silencers," even though they are marketed as "solvent traps."

The test for whether an item is a silencer is not the label a manufacturer or retailer applies. Rather, it is the way the statute written by Congress applies to the item.

Both the GCA and NFA regulate “firearm silencers.” The term “firearm muffler or firearm silencer” is defined under 18 U.S.C. § 921(a)(25) and 26 U.S.C. § 5845(a)(7) as—any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

Some of the devices commonly marketed as solvent traps have been determined to meet the definition of “firearm silencer” because they have the objective design features and characteristics indicating that the device is “for” reducing the report of a portable firearm. Although solvent traps are generally marketed as having an intended use other than as a silencer, e.g., filtering firearm cleaning solvent, that is not determinative under the statute. ATF must consider a device’s objective design features, including the uses of which a part is capable, as part of the inquiry into whether the device is a silencer.

<https://gtdaily.com/articles/atf-issues-guidance-letter-to-ffls-on-solvent-traps-and-silencers/>

Supreme Court appears likely to uphold gun ban for people accused of domestic violence

Supreme Court justices on November 7 appeared receptive to arguments in support of preserving a federal law that bans individuals under domestic violence restraining orders from possessing firearms.

The 1994 law was struck down by the New Orleans-based 5th US Circuit Court of Appeals earlier this year after the panel of judges ruled that it failed a test set by the Supreme Court’s landmark 2022 ruling in *New York State Rifle & Pistol Association, Inc. v. Bruen*, which requires gun laws to be “consistent with the nation’s historical tradition of firearm regulation.”

Solicitor General Elizabeth Prelogar, who argued on behalf of the Biden administration, told the court that the law – intended to protect victims of domestic abuse – is in line with the country’s longstanding practice of restricting dangerous people, such as “loyalists, rebels, minors, individuals with mental illness, felons and drug addicts” from accessing firearms.

<https://nypost.com/2023/11/07/news/supreme-court-appears-likely-to-uphold-gun-ban-for-people-accused-of-domestic-violence/>

He Lost His Gun Rights Because of a Misdemeanor DUI Conviction. That Was Unconstitutional, a Judge Says.

The federal ban on gun possession by people with certain kinds of criminal records is often described as applying to “felons,” but that shorthand is misleading. The provision, 18 USC 922(g)(1), actually covers anyone convicted of “a crime punishable by imprisonment for a term exceeding one year.” That is why Pennsylvania resident Edward A. Williams lost his right to own a gun after he was convicted of driving under the influence, a misdemeanor, in 2005. Had Williams defied Section 922(g)(1) by possessing a firearm, he would have been committing a federal felony punishable by up to 15 years in prison.

That consequence violated Williams' Second Amendment rights, a federal judge ruled on Tuesday. U.S. District Judge John Milton Younge's decision in Williams v. Garland tracks the logic of a June ruling by the U.S. Court of Appeals for the 3rd Circuit, which includes Pennsylvania. The latter case, Range v. Attorney General, involved a Pennsylvania man who likewise was convicted of a nonviolent misdemeanor: food stamp fraud. Both cases illustrate the breadth of this "prohibited person" category, which includes many Americans with no history of violence.

https://reason.com/2023/11/15/he-lost-his-gun-rights-because-of-a-misdemeanor-dui-conviction-that-was-unconstitutional-a-judge-says/?itm_source=parsely-api

The 4th Circuit Says Maryland's Handgun Licensing Law Is Unconstitutional

Maryland is one of 14 states that require background checks for all firearm purchases, whether or not the seller is a federally licensed dealer. Since 2013, Maryland has imposed an additional requirement on handgun buyers: They must first obtain a "handgun qualification license," which entails completing at least four hours of firearm training and undergoing a seemingly redundant "investigation" aimed at screening out people who are legally disqualified from owning guns. According to the U.S. Court of Appeals for the 4th Circuit, that process, which can take up to 30 days, violates the Second Amendment.

In a decision published on (November 21) , a divided 4th Circuit panel concluded that Maryland's handgun ownership licensing system is not "consistent with this Nation's historical tradition of firearm regulation"—the constitutional test that the U.S. Supreme Court established last year in New York State Rifle & Pistol Association v. Bruen. Writing for the majority in Maryland Shall Issue v. Moore, 4th Circuit Judge Julius Richardson notes that Bruen "effected a sea change in Second Amendment law," making a variety of gun control laws newly vulnerable to constitutional challenges. Maryland's handgun licensing law is the latest example.

The state argued that the law fits a tradition of disarming "dangerous" individuals, such as people with felony records, illegal drug users, and people convicted of domestic violence misdemeanors. "Maryland simply assumes that those federal prohibitions are justified by a historical 'dangerousness' exception," Richardson writes. And because "the challenged law is ostensibly designed to prevent those same groups of people from acquiring handguns," the state argued, "it also falls within the same 'dangerousness' exception."

But even if the goal is the same, Richardson says, the "mechanism" embodied in the licensing law is "entirely different." Maryland did not merely prohibit people from owning guns based on criteria that supposedly indicate they pose a threat to public safety. "Instead," Richardson writes, "it prohibits all people from acquiring handguns until they can prove that they are not dangerous. So Maryland's law burdens all people—even if only temporarily—rather than just a class of people whom the state has already deemed presumptively dangerous."

Even assuming that punishing "prohibited persons" for possessing firearms is consistent with the Second Amendment, Richardson says, that policy is not "relevantly similar" to "making every person seek the government's permission before they can even acquire arms." The latter policy

"preemptively disarm[s] every person until they can each prove that they are not dangerous," which "burdens a far broader swath of people."

The state also cited early laws that required periodic training of militia members. But as Richardson notes, "these Founding-era laws placed no restrictions on acquiring or owning firearms." Since they "did not burden a Second Amendment right at all," he says, "they cannot be 'relevantly similar' to Maryland's law."

<https://reason.com/2023/11/22/the-4th-circuit-says-marylands-handgun-licensing-law-is-unconstitutional/>

The 7th Circuit holds that AR-15s aren't protected by the Second Amendment

The three-judge panel in *Barnett v. Raoul* (Case No. 23-13530)... came up with some astounding logic:

The Supreme Court in *District of Columbia v. Heller*, which protects an individual's right to keep and bear arms irrespective of active involvement in a formal militia, said that the Second Amendment is not a completely unlimited right.

The *Heller* decision said that the arms meant to be protected under the Second Amendment were those that were not dedicated solely to military use but were of the type that ordinary citizens would ordinarily have. To that end, the court held that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes...."

In the military, there is a weapon known as the M16. M16s, because they are military weapons, can be calibrated to function as fully automatic weapons (they keep firing as long as you keep your finger on the trigger) or fired in three-round burst modes per single trigger pull.

Bump stocks can turn the AR-15 into a fully automatic weapon.

Both M16s and AR-15s use the same ammo and "deliver the same kinetic energy."

Therefore, the court held that the AR-15 is essentially an M16, making it a weapon of war that can be denied to ordinary civilians.

https://www.americanthinker.com/blog/2023/11/the_7th_circuit_holds_that_ar15s_arent_protected_by_the_second_amendment.html

RemArms Ilion Operation to Close March 2024

In a memo to employees, RemArms, LLC stated that the operation in Ilion will close entirely.

"I am writing to inform you that RemArms, LLC has decided to close its entire operation at 14 Hoefler Avenue, NY 13357," the memo obtained by NEWSChannel 2 stated.

"The Company expects that operations at the Ilion Facility will conclude on or about March 4, 2024," the memo stated.

Around 250-300 employees work at the facility.

State Senator Mark Walczyk released the following statement:

"Albany Democrats and their failed policies are directly responsible for the closure of this facility and the unemployment of roughly 250-300 New Yorkers. Governors Cuomo and Hochul signed laws such as S7196 -2021, the Gun Industry Liability Law, and the costly effects of the gas ban, that have pushed another good business out of New York State. I've opposed these shameful policies from the beginning and it's disheartening to see the Mohawk Valley suffer the consequences of the least friendly business climate in the nation. My heart goes out to the families affected by this closure as the announcement hits just before the holidays. My office remains ready to assist those impacted in any way."

https://www.wktv.com/news/top-stories/remarms-ilion-operation-to-close-march-2024/article_55edb272-8fbd-11ee-9b84-1b80825a8ee7.html