

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

February, 2024

Biden gun rule being drafted to effectively ban private sales: ATF whistleblowers

A watchdog group is demanding documents from the Biden administration after whistleblowers alleged that a regulation is under development that would effectively ban private gun sales.

The group, Empower Oversight, said Wednesday that two sources have claimed that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is preparing to propose a rule requiring background checks for most or all gun sales.

Empower Oversight “has learned through whistleblowers within ATF that at the direction of the White House, ATF has drafted a 1,300-page document to justify a rule effectively banning the private sale of firearms,”

“The whistleblowers say the rule is being drafted by Senior Policy Counsel Eric Epstein, who worked as the Phoenix Field Office’s Division Counsel during Operation Wide Receiver (a precursor of Operation Fast and Furious).”

Leavitt added: “Such a sweeping rule with the effect of banning private sales would clearly violate the Second Amendment to the United States Constitution, which declares that ‘the right of the people to keep and bear Arms, shall not be infringed.’”

Empower Oversight sent a Freedom of Information Act request Wednesday to the Justice Department and ATF seeking additional information, including communications with the White House and any Epstein emails involving the alleged plan.

Although the precise wording of the pending proposal wasn’t released, the whistleblower concern stems from the fact that some sellers might be unable to easily access NICS or unaware of the need to do so, putting themselves in legal jeopardy.

The ATF already has interpreted a 2022 bipartisan gun law enacted after a mass shooting at a Texas elementary school as expanding who must register as a federally licensed dealer to include people who repetitively sell guns “to predominantly earn a profit.”

Previously, the registration only applied to sellers who had “the principal objective of livelihood and profit.”

It’s unclear what carveouts — such as for family gun transfers — may be included in the alleged pending ATF regulation, which would have to undergo a public notice and comment period.

<https://nypost.com/2024/01/31/news/biden-gun-rule-drafted-to-all-but-bar-private-sales-whistleblowers/>

Gun control in the State of the State

From Governor Hochul's State of the State:

Governor Hochul will direct the Office of Gun Violence Prevention to implement a comprehensive set of strategies aimed at preventing gun violence:

- Provide technical assistance to community-based organizations and hospitals to align their hospital violence intervention programs with the recently signed Medicaid Reimbursement for Violence Prevention Programs, which allows low-income New Yorkers impacted by community violence to receive violence prevention services from qualified specialists;
- Continue building public awareness to change the narrative on gun violence to discourage perpetuating stereotypes based on race and class that further proliferating racial injustice and health inequity;
- Building upon Governor Hochul's expansion of the Red Flag Law in June 2022 that allowed health care providers to file an Extreme Risk Protection Order petition to prevent individuals who show signs of being a threat to themselves or others from accessing any kind of firearm, New York will offer training and awareness for these health care providers;
- Convene a New York State Health Systems for Gun Violence Prevention Taskforce to focus on data infrastructure, firearm injury risk assessment screening, and hospital violence intervention;
- Continue to invest in community-led youth programs in historically under-resourced communities that experience the highest rates of gun violence.
- Create a syndromic surveillance system for firearm related injuries and a dashboard for the public.

<http://www.gunpoliticsny.com/?p=27926>

NYS Threatens to Sue Other States for Selling Ammo to NY Residents

A new bill has been introduced in the general assembly called Bill 8443, a.k.a. "New York State Attorney General, Firearms Enforcement Act."

This Bill is created for the purpose of going after and prosecuting, firearm and ammunition dealers in other States should they sell firearms or ammunition to New York State Residents.

The bill specifically states that ... New York State will, "investigate and prosecute. Any individual seller of firearms or retail firearms dealer should they knowingly sell ammunition to a resident of the state of New York or to an individual who purchases ammunition on behalf of a New York State resident without contacting the New York State police for authorization pursuant to section 228 of this chapter and any other law, rule or regulation."

“Seek and obtain injunctive relief to prevent any individual seller of firearms or retail firearms dealer from knowingly selling ammunition to a resident of the state of New York or to an individual who purchases ammunition on behalf of a New York State resident without contacting the New York State police for authorization pursuant to section 228 of this chapter and any other law, rule or regulation.”

<https://www.news2a.com/national/nys-threatens-to-sue-other-states-for-selling-ammo-to-ny-residents/>

Horseheads church wins major battle in lawsuit against NYS over gun law restrictions

A Horseheads church has won a major court battle in its fight to overturn portions of a 2022 state law that prohibits firearms in houses of worship, among other restrictions.

The Concealed Carry Improvement Act was passed by the state legislature and signed by Gov. Kathy Hochul in 2022.

Among the provisions of the new law is establishment of areas considered "sensitive," where concealed weapons can't be carried, even by licensed individuals. The legislation immediately spawned several lawsuits that challenged its constitutionality.

The legal challenges included a suit filed by His Tabernacle Family Church in Horseheads and its founding pastor, Micheal Spencer.

In response, a U.S. District Court judge a year ago imposed an injunction prohibiting the state from enforcing the gun-free zone rule for churches while the lawsuits play out, and the state appealed that ruling in January 2023.

The Second Circuit Court of Appeals in December affirmed the earlier ruling and left the injunctions in place.

The new law creates a list of "sensitive places" including churches, hospitals and other public gathering places where concealed weapons are banned outright, but allows many businesses and other property owners to determine for themselves if they want to allow firearms or not.

In court documents, Spencer indicated he feels a “moral and religious duty to take reasonable measures to protect the safety of those who enter the church,” adding prior to the new ban, he regularly carried a concealed handgun on church property and encouraged other properly licensed security volunteers and congregation members to carry firearms as well.

Allowing concealed carry would protect worshippers "from the kind of violence that other houses of worship across the country have suffered," Spencer wrote in court filings.

Because the new law applies differently to places of worship than to most other privately-owned businesses and properties, the appellate court ruled it is neither neutral nor generally applicable, and therefore unconstitutional.

"At this stage, the state has not demonstrated that allowing church leaders to regulate their congregants' firearms is more dangerous than allowing other property owners to do the same," the court opinion stated. "It's hard to see how the law advances the interests of religious

organizations, as a whole, by denying them agency to choose for themselves whether to permit firearms."

<https://www.pressconnects.com/story/news/local/2024/01/04/federal-court-upholds-injunction-in-horseheads-church-new-york-gun-lawsuit/71971318007/>

Judge allows challenge to NY assault weapons ban to proceed

A federal judge is allowing a challenge to New York's assault weapons ban to proceed after he denied a motion to dismiss the lawsuit (January 4).

Two people supported by gun rights advocacy groups sued New York officials in December 2022 over the state's ban on assault weapons, saying the law was "infringing the right of law-abiding, peaceable citizens to keep and bear commonly possessed firearms for defense of self and family and for other lawful purposes." U.S. District Judge Kenneth Karas sided with the individuals bringing the lawsuit in a ruling released Thursday, denying state officials' motion to dismiss the case.

Attorneys for New York officials filed a motion in the Southern District of New York to dismiss the complaint in May, arguing that the court does not have the jurisdiction to address the plaintiffs' claims. The state officials' legal team said the individuals "fail to establish that any injury-in-fact is traceable to the assault weapons ban" because they do not say they hold a license required to buy a semiautomatic rifle.

Karas dismissed the defendants' arguments in the ruling.

<https://thehill.com/regulation/court-battles/4389387-judge-allows-challenge-to-ny-assault-weapons-ban-to-proceed/>

NY gun owners take fight over ban on firearms in subway and Times Square to 2nd Circuit

A group of New Yorkers who claim their rights to openly carry firearms on the New York City subway are protected by the Second Amendment faced a skeptical Second Circuit panel Tuesday morning.

The trio of gun owners from Westchester and Orange counties sued New York City in 2021 because their state-issued concealed carry handgun licenses are invalid in New York City due to the city's regulations under the Concealed Carry Improvement Act.

On appeal the gun owners claim the regulations are "inconsistent with the text, history, and tradition of firearm regulation," and they seek reversal of the lower court's denial of a motion for preliminary injunction of firearm bans on public transportation such as the MTA, subway, and train cars and in Times Square.

One plaintiff-appellant, William Sappe, says he wants to carry a firearm for self-protection in the gun-free Times Square because his business involves transporting "substantial amounts of cash, diamonds, and jewelry for high-end jewelers" in Midtown Manhattan's Diamond District.

<https://www.courtsenews.com/ny-gun-owners-take-fight-over-ban-on-firearms-in-subway-and-times-square-to-2nd-circuit/>

Can You Legally Order Gun Ammunition Online In New York State?

It is a violation of New York's SAFE Act for out-of-state vendors to sell the bullets directly to New York residents via the Internet. Under New York's SAFE Act, all ammunition sales must be conducted in person between a licensed weapons dealer or registered seller and a customer. Sellers must also keep a record of each ammo sale in the state. Records must include the age, occupation, and residence of any person buying ammo. Sellers who violate the law could be fined up to \$5,000 for each violation.

<https://wblk.com/new-york-state-buy-gun-ammunition-online/>

Federal judge rules ban on firearms in post offices unconstitutional

A federal judge in Florida ruled a U.S. law that prohibits people from having firearms in post offices to be unconstitutional, the latest court decision declaring gun restrictions violate the Constitution.

U.S. District Judge Kathryn Kimball Mizelle, a Trump appointee, cited the 2022 Supreme Court ruling "New York State Rifle & Pistol Association v. Bruen" that expanded gun rights. The 2022 ruling recognized the individual's right to bear a handgun in public for self-defense.

"A blanket restriction on firearms possession in post offices is incongruent with the American tradition of firearms regulation," Mizelle wrote.

<https://thehill.com/regulation/court-battles/4407341-federal-judge-rules-ban-on-firearms-in-post-offices-unconstitutional/>

Full 4th Circuit will hear case involving prohibition of guns with no serial numbers

The entire 4th US Circuit Court of Appeals will hear a case in the coming months dealing with government bans on guns with no serial numbers. North Carolina Attorney General Josh Stein signed a 2022 brief supporting the federal government in the case.

In *United States v. Randy Price*, a federal judge in West Virginia ruled in October 2022 against a federal law banning guns with no serial numbers. US District Judge Joseph Goodwin labeled the law unconstitutional. He based the decision on the US Supreme Court's June 2022 decision in *New York State Rifle and Pistol Association v. Bruen*.

<https://www.carolinajournal.com/full-4th-circuit-will-hear-case-involving-prohibition-of-guns-with-no-serial-numbers/>

Appeals Court Revives Mexico's Lawsuit Against Gunmakers

A federal appeals panel in Boston ruled on Monday that a \$10 billion lawsuit filed by Mexico against U.S. gun manufacturers whose weapons are used by drug cartels can proceed, reversing a lower court that had dismissed the case.

The decision, which is likely to be appealed, is one of the most significant setbacks for gunmakers since passage of a federal law nearly two decades ago that has provided immunity from lawsuits brought by the families of people killed and injured by their weapons.

Mexico, in an attempt to challenge the reach of that law, sued six manufacturers in 2021, including Smith & Wesson, Glock and Ruger. It contended that the companies should be held liable for the trafficking of a half-million guns across the border a year, some of which were used in murders.

In September 2022, a Federal District Court judge threw out the suit, ruling that the law prohibits legal action brought by foreign governments.

But Judge William J. Kayatta Jr., an Obama appointee who serves on the U.S. Court of Appeals for the First Circuit, writing for a unanimous majority, revived the lawsuit. The ruling said that plaintiffs had made a “plausible” argument that their case was “statutorily exempt” from the immunity shield.

In its appeal, lawyers for Mexico, assisted by U.S. gun control groups, claimed that the companies “aided and abetted the knowingly unlawful downstream trafficking” of their guns into Mexico.

<https://www.nytimes.com/2024/01/22/us/politics/appeals-court-mexico-lawsuit-gunmakers.html>

GOP colleagues file amicus brief urging Supreme Court to lift bump stock ban

Sen. Cynthia Lummis (R-WY) and eight of her GOP colleagues filed an amicus curiae brief with the Supreme Court on January 26 in support of gun owners fighting the federal government’s ban on bump stocks.

The high court is weighing whether to uphold a federal appeals court ban on bump stocks, which are devices that enable semi-automatic weapons to fire multiple rounds quickly. The ban was imposed in 2019 under then-President Donald Trump. He ordered the Bureau of Alcohol, Tobacco, Firearms and Explosives to review the devices in response to the 2017 Las Vegas mass shooting.

In 2018, the ATF ordered those who possessed bump stocks to either destroy them or turn them into a local ATF office by March 2019. The bureau reclassified bump stocks at the time as “machine guns” under the National Firearms Act, which is the subject of the Supreme Court challenge.

The court will be tasked with deciding in *Garland v. Cargill* if the ATF exceeded its authority with the 2018 reclassification and ban.

Lummis’s brief asserts that the ATF ban is “not only an egregious violation of the people of Wyoming’s right to bear arms but also represents a dangerous new frontier of federal bureaucrats interpreting federal law in expansive new ways Congress clearly did not intend, including by weaponizing the Chevron doctrine to create new federal crimes out of thin air.”

<https://www.washingtonexaminer.com/news/2819583/lummis-scotus-amicus-brief-atf-bump-stock-ban/>

California law banning firearms in public places blocked once again as judge says it violates 2nd Amendment

A new California law that bans people from carrying firearms in most public places was once again blocked from taking effect Saturday as a court case challenging it continues.

January 6's decision keeps in place a Dec. 20 ruling by U.S. District Judge Cormac Carney blocking the law. Carney said that it violates the Second Amendment and that gun rights groups would likely prevail in proving it unconstitutional.

<https://nypost.com/2024/01/07/news/california-law-banning-firearms-in-public-places-blocked-once-again/>

Judge permanently blocks California ammo background check law

A federal judge in San Diego permanently blocked California from enforcing a law requiring background checks every time a gun owner wishes to buy ammunition.

Filed in 2018, the case took aim at intertwined state laws.

Proposition 63, passed by voters in 2016, required gun owners to pay \$50 and undergo a criminal background check to receive a 4-year permit to buy ammunition. But before the proposition passed, the Legislature prospectively amended it to require gun owners to submit a background check every time they wanted to buy ammunition and barred gun owners from purchasing ammo from out-of-state vendors.

"The ammunition background checks laws have no historical pedigree and operate in such a way that they violate the Second Amendment right of citizens to keep and bear arms," U.S. District Judge Roger Benitez, a George W. Bush appointee, wrote in his order granting a permanent injunction.

Benitez added the Legislature's plan was an expensive and unnecessary roadblock forced upon guns owners a million times each year to buy ammunition. He compared the scheme to having to pass a credit check every time a car owner needs to fill the gas tank or recharge their electric car — but one that also put gun owners' safety and security at risk.

"Suppose a plaintiff described the wrong like this: having been threatened by lawless rioting two blocks from home and with more threatened violence anticipated, plaintiff desires to buy ammunition for his firearm today so as to be able to defend himself and his household tonight, but is unable to do so because the background check system erroneously reports that he is not an authorized purchaser. The government would then say that the wrong, as described, is not covered by the plain text of the Second Amendment. But all a plaintiff needs to allege is that by preventing him from buying ammunition, the government's background check system infringed his right to bear arms for self-defense. That is what is done here," Benitez wrote.

<https://www.courthousenews.com/judge-permanently-blocks-california-ammo-background-check-law/>

Gun rights groups file federal lawsuit against Colorado ghost gun ban

Gun rights advocates say they have filed a federal lawsuit, challenging a new Colorado law banning unserialized guns, which are also known as ghost guns.

Taylor Rhodes, executive director of Rocky Mountain Gun Owners, which filed the lawsuit on behalf of three of its members, said the law is an "outright assault on the constitutional rights" of peaceable Coloradans. The National Association for Gun Rights is also named as a plaintiff.

"A criminal who doesn't want to go through a background check, in my opinion, isn't just going to throw up their hands and say, 'Welp, I guess I can't commit that crime now,'" said Sen. Tim Smallwood, R-Douglas County.

Rhodes said a recent U.S. Supreme Court decision in *New York State Rifle & Pistol Association v. Bruen* makes Colorado's law less likely to stand up to scrutiny.

"In the *Bruen* decision, the Supreme Court made it clear that any law infringing on the right to bear arms must align with the historical understanding of the Second Amendment. Senate Bill 23-279 clearly does not meet this standard. If homemade — unserialized — guns weren't legal at the time of our nation's founding, we would all have a British accent," Rhodes said.

<https://www.denver7.com/news/local-news/gun-rights-groups-file-federal-lawsuit-against-colorado-ghost-gun-ban>

Oregon judge enters final order striking down voter-approved gun control law

An Oregon judge has entered the final order striking down a gun control law that was narrowly approved by voters in 2022.

Harney County Circuit Court Judge Robert Raschio signed the general judgment on Monday. The judgment finalizes the opinion Raschio issued in November finding the law violated the right to bear arms under the Oregon Constitution.

The law, one of the toughest in the nation, was among the first gun restrictions to be passed after a major U.S. Supreme Court ruling last year changed the guidance judges are expected to follow when considering Second Amendment cases.

The law requires people to undergo a criminal background check and complete a gun safety training course to obtain a permit to buy a firearm. It also bans high-capacity magazines.

<https://nydailyrecord.com/2024/01/10/oregon-judge-enters-final-order-striking-down-voter-approved-gun-control-law/>

Did loosening gun control cause a nationwide drop in homicides?

According to a recent study, the homicide rate in the United States plummeted in 2023. The drop was so drastic in fact, the study's author was quoted saying that this is likely one of the fastest declines in homicides ever recorded.

It's possible that the removal of gun control may have played a critical role in this decline.

With the increase in concealed carry permits, criminals no longer could have confidence that their victims would be unarmed. This may likely have contributed to the drop in homicides nationwide.

In addition, more states like Nebraska and Alabama adopted constitutional carry laws in 2023, while Florida passed a law allowing permitless carry. This all happened while the homicide rate nationwide drastically decreased.

In contrast, in areas with very strict gun control, like Washington, D.C., we've seen a different trend: the homicide rate went up by 36%. Perhaps it's time for these places to rethink their laws and give citizens a better chance to defend themselves against criminals.

<https://www.gunowners.org/did-loosening-gun-control-cause-a-nationwide-drop-in-homicides/>

Ohio Just Disproved a Gun-Control Talking Point

David Yost, the Ohio Attorney General, commissioned a study with Bowling Green State University to examine gun crime in Ohio's eight largest cities the year before constitutional carry was enacted — June 13, 2022 — and the year afterward. The conclusion: Eliminating concealed-carry licenses had no impact on gun crimes, and in six of the eight cities, gun crimes actually declined.

In Parma, gun crimes dropped by a whopping 22 percent after constitutional carry; Akron and Toledo both saw declines of 18 percent; and Columbus logged a 12 percent reduction. Canton and Cleveland had single-digit percentage decreases. Cincinnati and Dayton both had single-digit percentage increases.

Over the entire eight-city sample, gun crime dropped by 8 percent. Shot Spotter technology, which detects the sound of a gunshot in a city, produced data that was consistent with the reported crimes where it was available.

<https://www.nationalreview.com/2024/01/ohio-just-disproved-a-gun-control-talking-point/>

Washington, DC, Records Highest Number of Murders Since 1997 Despite Stringent Gun Control

Washington, DC, recorded in 2023 the highest annual number of homicides the city has witnessed since 1997 despite stringent gun control.

D.C. saw a murder rate of 40 per 100,000 residents, making it “deadlier than 55 of the country's 60 most populous cities, behind only New Orleans, Cleveland, Baltimore and Memphis.”

Over 90 percent of the homicides committed from January 1, 2023, through December 27, 2023, were firearm-related, although D.C. has some of the most stringent gun controls in the country. Those controls include limits of the number of guns a law-abiding citizen can purchase, firearm registration requirements, universal background checks, a red flag law, a “high capacity” magazine ban, and more.

<https://www.breitbart.com/2nd-amendment/2024/01/02/washington-dc-records-highest-number-murders-since-1997-despite-stringent-gun-control/>

The Truth About Mass Shootings

The vast majority of the numbers involve rival drug gang members.

Since 1998, there have never been more than eight mass shootings in a public place not involving another crime in a year.

California has the strictest gun control laws in the country, but its per capita annual rate of mass public shootings is much higher than in the rest of the country.

only seven percent of mass shootings were clearly motivated by racism.

https://www.realclearpolicy.com/articles/2024/01/13/the_truth_about_mass_shootings_1004759.html

In these chaotic times, a brief AR-15 primer

The Seventh Circuit has recently ruled AR-15 pattern rifles are not protected by the Second Amendment. The lawless ruling ignores the Heller and Bruen decisions.

Leading the list of long guns sold, the ubiquitous AR-15 is the most popular sporting rifle in America. Circa 2023, Americans own more than 23 million.

To set the record straight a brief AR-15 primer:

- *“AR” does not stand for “assault rifle,” and certainly not for “assault weapon.” Eugene Stoner, the AR’s inventor, worked at Armalite, thus, “Armalite Rifle.”
- *Virtually all AR-pattern rifles are semiautomatics, unlike the military M4. It’s all but impossible to own a machinegun in AR form
- *ARs do not fire a “high-powered” cartridge. The .223/5.56 NATO cartridge is intermediate power, useful in hunting animals the size of coyotes. No “high-powered” cartridges work.
- *ARs have been on gun store shelves since the early 1960s.
- *Magazine capacity is irrelevant. Magazines in any magazine-fed firearm may be changed within a few seconds. A standard AR magazine, or greater than 10-round pistol magazine, may be the difference between life and death.
- *Police agencies are increasingly replacing shotguns with ARs. They’re accurate to 300 yards and beyond, yet their light-weight bullets tend not to over-penetrate.
- *Collapsible stocks only “collapse” by about 3.5 inches.
- *Their rugged, light weight, construction is designed for field use, which makes them excellent hunting rifles as well as suitable for every other lawful purpose.
- *They are virtually never used in crime, according to the FBI Uniform Crime Report.
- *In Heller and Bruen, the Supreme Court made clear the Second Amendment is not a second-class right. It affirms an unalienable, natural, individual right to keep and bear arms in common use for self-defense and every other lawful purpose, which includes semiautomatic handguns, rifles and shotguns. The AR-15 is the most common and popular contemporary semiautomatic rifle.

https://www.americanthinker.com/blog/2023/12/in_these_chaotic_times_a_brief_ar15_primer.html