

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

January, 2024

Schuyler Co. Legislature Passes Resolution Regarding Gun/Ammo Background Check Fees

The Schuyler County Legislature passed a resolution calling for the state to repeal background check fees on guns and ammunition. The resolution calling for the state to repeal the background check fees on guns and ammo was submitted by the Schuyler County Clerk and drafted by the County Attorney.

"I just feel that it's an unfair burden on pistol permit holders, the stores, [and businesses] as well. It's just not fair to them to have to deal with this additional funding or fees that are being pushed on them," said Schuyler County Clerk, Theresa Philbin, who helps process pistol permits issued in the County.

The resolution is a symbolic show of support for a State Senate Bill which is making its way through Albany. Under the new law which went into effect in September, gun owners have to complete a background check for ammo, and the gun background checks now get routed through the New York State Police and then forwarded to the feds.

Both background checks come with a state surcharge. A background check for a handgun or rifle is \$9 and for ammo, it's \$2.50 per transaction. The background check can take anywhere from minutes, to hours, or even days. Some people have said their purchases have wrongfully been denied.

Philbin said because of the fees and long waits, gun owners are heading to Pennsylvania for their ammo and guns.

"I am very happy that it passed. It is something that I believe is very important to the people of Schuyler County. Schuyler County citizens are in support of the Second Amendment rights, and as our county clerk mentioned, this is affecting local businesses," said Mark Rondinaro, the District Seven Legislator for Schuyler County.

<https://www.weny.com/story/50201771/schuyler-co-legislature-passes-resolution-regarding-gunammo-background-check-fees>

Governor signs bill banning some hunting contests

Governor Kathy Hochul has signed legislation making it illegal for any group to hold a hunting competition or contest for certain animals in the state.

The bill makes it unlawful for any group to hold a contest, competition, tournament, or derby with the objective of taking or hunting wildlife. The bill does not include contests for hunting white-tailed deer, turkey, bear, or fishing contests. It would apply, however, to hunting other animals such as coyotes or rabbits.

The bill is strongly opposed by hunting groups, like the Sullivan County Sportsmen's Federation.

Gary Muthig, a member of the Sullivan County Sportsmen's Federation and delegate to the state Conservation Council says his group hosts an annual coyote hunt, which last year resulted in the harvesting of 124 coyotes from a several county region. Muthig says that the state Department of Conservation (DEC) has designated coyotes as a nuisance animal and hunting competitions help manage the population. He also pointed out that DEC sets harvest limits for animals, which apply to both individual hunters and hunters participating in hunting contests.

The new law is set to take effect on November 1, 2024

<https://midhudsonnews.com/2023/12/23/governor-signs-bill-banning-animal-killing-contests/>

Federal appeals court deals blow to NY concealed carry law

Gun rights activists cheered (December 8) after a federal appeals court struck down parts of New York's expansive concealed carry law.

The U.S. Court of Appeals for the Second Circuit blocked three provisions of New York's "Concealed Carry Improvement Act" (CCIA), a law Democrats passed last year in response to a Supreme Court ruling that declared the state's previous concealed carry permitting requirements unconstitutional. In doing so, the appeals court allowed other parts of the law to go into effect.

In a 261-page ruling, the three-judge panel struck down a requirement that gun owners disclose their social media accounts for review when applying for a concealed carry permit. The court also blocked restrictions on carrying firearms on private property that is accessible to the public, as well as a restriction on concealed carry in houses of worship.

However, controversial parts of the law remain intact, including a requirement that applicants demonstrate good moral character and disclose household and family members on a permit application. New York will also be allowed to enforce bans on concealed carry in so-called "sensitive places," including theaters, bars, public parks and other spaces.

The circuit court judges acknowledged their ruling won't be the final word on New York's gun control law as the case winds its way through lower courts.

<https://www.foxnews.com/politics/gun-rights-group-applauds-federal-appeals-court-deals-blow-ny-concealed-carry-law>

Second Amendment Foundation Sues Cortland NY Housing Authority Over 2A Violations

The Second Amendment Foundation has filed a federal lawsuit against the Cortland, N.Y. Housing Authority, alleging Second Amendment violations by prohibiting tenants from possessing firearms on CHA premises.

Joining SAF are three private citizens—all CHA residents—Doug Merrin, Elmer Irwin and Robert Hunter. They are represented by attorney Edward A. Paltzik at Bochner Law in New York City.

Defendants are the housing authority and CHA Executive Director Ella M. Dilorio in her official capacity.

The complaint was filed in U.S. District Court for the Northern District of New York.

SAF is seeking a temporary restraining order followed by a preliminary and permanent injunction, and a judgment by the court that this firearms ban is unconstitutional under the Second and Fourteenth amendments. The lawsuit is also seeking compensatory and/or punitive damages.

<https://saf.org/saf-sues-cortland-housing-authority-over-2a-violations/>

Second Circuit sends fight against NY concealed carry training back to starting gate

A Second Circuit panel ruled a lower court should have determined whether a civil rights lawyer who claims New York's 18-hour training requirement to obtain a concealed carry license violates the Second Amendment even has standing to bring the case.

Jonathan Corbett, who applied for a license before a law that created new training requirements was passed, had told the Second Circuit panel the state's 18-hour training requirement is unnecessary and extensive.

Corbett sought a preliminary injunction to exempt him from the state's new training requirement while his concealed-carry application was pending. The lower court denied his request and Corbett appealed.

In its decision, the Second Circuit found the lower court erred by not first determining whether Corbett has standing to challenge the CCIA's training requirement.

Once the lower court makes a decision regarding Corbett's standing, any party to the appeal may restore jurisdiction to the Second Circuit within 30 days by letter.

<https://www.courthousenews.com/second-circuit-sends-fight-against-ny-concealed-carry-training-back-to-starting-gate/>

NY lawmakers pressing for study of so-called 'smart' handgun technology

When New York lawmakers return to Albany ... for the 2024 session, gun safety will once again be on the agenda.

One bill asks the state's Division of Criminal Justice Services to study the possibility of equipping guns with technology to block unauthorized users from pulling the trigger.

If found viable, then firearm dealers in New York would have to offer at least one model of a so-called "smart" or personalized handgun, which only the legal owner or other authorized users would be able to shoot. Manufacturers would be required to equip them with technology that makes them "reasonably resistant" to firing by an unauthorized user, and the mechanism would have to be installed in a way that couldn't be removed.

Even if New York lawmakers approve the new “smart gun” measure, firearm dealers will only be required to sell the weapons if the DCJS determines that they’re technologically viable. The agency is already a year behind for a similar study on technology called microstamping, which would allow guns to mark every bullet shell with a unique code when fired, making it easier for law enforcement to trace them to a gun when investigating a shooting.

Jacob Rieper, former legislative director for the New York State Rifle & Pistol Association, said he doesn’t expect either law to take effect. The technologies may sound good to lawmakers on paper, but they won’t actually work, he said. Rieper said gun companies have tested various technologies over the past 50 years, without success. He also said adding extra parts to guns makes them less reliable — a tradeoff he doesn’t think most gun companies would be willing to stomach.

<https://gothamist.com/news/ny-lawmakers-pressing-for-study-of-so-called-smart-handgun-technology>

NRA and ACLU Teaming up on the First Amendment in *NRA v. Vullo*

The ACLU will be representing the NRA in this important First Amendment case, and that the ACLU's Legal Director David Cole—an experienced Supreme Court advocate—is (the Times notes) planning on arguing.

The issue in the case is whether New York financial regulatory authorities coerced banks and insurance companies to cut off ties with the NRA and thus violated the First Amendment. As the petition argued, “The Second Circuit's opinion below [rejecting the First Amendment claim] gives state officials free rein to financially blacklist their political opponents—from gun-rights groups to abortion-rights groups to environmentalist groups and beyond.”

Cole's presence at the lectern and the ACLU's presence on the briefs will help convey the core message to all the Justices: The case is about everyone's free speech rights, not just the NRA's.

<https://reason.com/volokh/2023/12/09/nra-and-aclu-teaming-up-on-the-first-amendment-in-nra-v-vullo/>

NY AG Files Brief to Restrict “Large-Capacity” Gun Magazines in California

New York Attorney General Letitia James and a coalition of 19 attorneys general filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in support of a California law that restricts large-capacity gun magazines. The case, *Duncan v. Bonta*, concerns the constitutionality of a California law that allows for the possession and sale of firearms magazines that accept up to ten rounds of ammunition but prohibits larger capacity magazines. Joining Attorney General James in filing this amicus brief are the attorneys general of Arizona, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Oregon, New Jersey, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia.

<https://www.fingerlakesdailynews.com/regional-state-congressional/ny-ag-files-brief-to-restrict-large-capacity-gun-magazines>

Prosecutors Agree He Shot a Man in Self-Defense. They're Still Trying To Put Him in Prison.

A New York City man is facing several years in prison after killing someone who'd broken into his apartment.

But perhaps most interesting is that, at his arraignment last month, prosecutors did not dispute that LaShawn Craig acted in self-defense when he fatally shot Timothy Jones. Instead, they hit Craig with several charges related to the criminal possession of a weapon, because he did not have a license for the handgun he used to protect himself.

On November 17, Craig, who has no criminal history, was standing outside his building talking to a neighbor when he heard his home alarm go off. After returning to his residence, he found Jones—wearing a mask and gloves—who, after Craig ordered him to leave, reached into his pocket. (It was later determined that he had a Taser.) Craig then fired several shots, after which he called 911.

Law enforcement reportedly labeled the shooting a "justified homicide." While obviously a tragic situation, that's clearly the correct decision. Which also makes the government's choice to prosecute him for criminal possession of a weapon, a violent felony, all the more preposterous. Put differently, Craig should spend years in prison, law enforcement says, not because he used his weapon improperly, but because he used it without first jumping through the barriers—which are both time consuming and financially burdensome—required to register a gun with the government.

<https://reason.com/2023/12/08/prosecutors-agree-he-shot-a-man-in-self-defense-theyre-still-trying-to-put-him-in-prison/>

Assemblyman encourages firearms protest

Assemblyman David DiPietro is calling on people to protest what his office describes as “Albany’s Second Amendment overreach.”

DiPietro, R-East Aurora, is asking them to participate in the “Shot Heard Around the State” at noon on Jan. 13. He encourages people to use a siren, honk a horn or join their local gun club to safely fire a shot at noon.

https://www.thedailynewsonline.com/news/assemblyman-encourages-firearms-protest/article_b13efd46-8f92-11ee-9899-57b1b4b7408c.html

NYC Bodega Owners Arm Themselves amid Surging Crime

Bodega owners in New York City are arming themselves for self-defense and store defense as crime continues to surge in the City.

The New York Post pointed to the National Supermarket Association, which indicated upwards of 25 percent of NYC bodega owners are armed as compared with roughly ten percent prior to coronavirus shutdowns.

Moreover, “the United Bodegas of America and the Bodega and Small Business Group said they’ve helped at least 230 store owners apply for their gun licenses, connecting them with concealed-carry classes required by the state to obtain a permit.”

On January 22, 2023, FOX 5 reported that bodega owners in the Bronx observed that crime was so bad they were “chaining up merchandise” to prevent it from being stolen.

The United Bodega Association’s Fernando Mateo explained that part of the problem is that criminals are confident they will not get punished.

He said, “NYPD is doing their job, they come when you call them and make arrests, but that person will usually get a desk appearance and nothing will happen because District Attorneys and judges are not willing to prosecute.”

<https://www.breitbart.com/2nd-amendment/2023/12/02/nyc-bodega-owners-arm-themselves-surg-ing-crime/>

Rep. Andrew Clyde, 107 Cosponsors Introduce Bill to Block ATF’s Universal Background Check Rule

Rep. Andrew Clyde (R-GA) introduced legislation Wednesday to block funding for the Bureau of Alcohol, Tobacco, Firearms, and Explosives’ (ATF) proposed universal background check rule.

The legislation has 107 cosponsors.

On August 31, 2023... the ATF announced a proposed rule, 2022R-17, redefining what it means to be gun dealer, thereby broadening the number of gun sales that must be performed via a background check.

ATF director Steven Dettelbach said the proposed rule “[clarifies] the circumstances in which a person is ‘engaged in the business’ of dealing in firearms.” By so doing, it puts private gun sales under the same point-of-sale requirements that exist for retail gun sales, and those requirements include an FBI-run National Instant Criminal Background Check System (NICS) check.

The legislation introduced today to defund the ATF’s efforts is titled the Stopping Unconstitutional Background Checks Act.

The Act states: “No Federal funds may be used to finalize, implement, or enforce the rule proposed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, entitled ‘Definition of “Engaged in the Business” as a Dealer in Firearms,’ in the notice of proposed rulemaking 2022R–17, signed by the Attorney General on August 30, 2023, or any substantially similar rule.”

<https://www.breitbart.com/2nd-amendment/2023/12/13/exclusive-rep-andrew-clyde-107-cosponsors-introduce-bill-block-atfs-universal-background-check-rule/>

Harris Announces New WH Gun Control Initiative

Vice President Kamala Harris has announced a new initiative that could restrict American's Second Amendment rights.

Harris hosted state legislators at the White House on December 13. There, she unveiled the Biden administrations so-called Safer States Initiative.

As part of the initiative, the White House is calling for states to require safe storage of firearms for gun owners. Additionally, it calls to strengthen background checks among other goals.

During the event, Harris also claimed gun violence is a crisis.

The initiative aims to ban assault weapons, high-capacity magazines and enact firearm-specific liability laws.

<https://www.oann.com/newsroom/harris-announces-new-wh-gun-control-initiative/>

Sen. Susan Collins Pushing Gun Control for U.S. Troops

Sen. Susan Collins (R-Maine) is putting together legislation to require the U.S. military to adhere to state-level red and yellow flag laws for troops.

A red flag law allows family, friends, and others, to seek a court order to have guns removed from someone they view as a danger to himself or others. A yellow flag law is more narrow, allowing law enforcement to seek the court order for firearm removal.

Maine has a yellow flag law, but although police were alerted that the Maine shooter could "snap and commit a mass shooting" in September, according to CNN, no yellow flag action was pursued.

Moreover, police in New York took Card to a West Point hospital for an evaluation in mid-July 2023.

Card had caught the attention of military officials after "acting erratically in mid-July" while taking part in training at West Point, the Associated Press reported. Police in New York were called and Card was taken to West Point's Keller Army Community Hospital.

New York has a red flag law and the involvement of police in the West Point incident raised questions as to why the law did not come into play.

<https://www.breitbart.com/2nd-amendment/2023/12/24/sen-susan-collins-pushing-gun-control-for-u-s-troops/>

Catholic nuns sue Smith & Wesson to halt sales of AR-15 assault rifles

A group of Catholic nuns sued the board of Smith & Wesson to try to force the gunmaker to abandon the manufacture, marketing and sales of assault-style rifles that have been used in US mass shootings.

The nuns, in a lawsuit filed in state court in Nevada, allege that Smith & Wesson's directors and senior management exposed the company to significant liability by intentionally violating federal, state and local laws and failing to respond to lawsuits over mass shootings.

The group of nuns filed the lawsuit in their role as Smith & Wesson shareholders, in what is known as a derivative lawsuit. Such lawsuits seek to hold corporate boards liable for breaches of their duties to shareholders, although courts generally find boards are protected from lawsuits for good-faith decisions.

If successful, the lawsuit would hold the company's directors liable for any costs associated with the allegedly illegal marketing of assault rifles and any damages would be paid to Smith & Wesson, not the plaintiffs.

The lawsuit is the first derivative case against a board over assault rifles, according to Jeffrey Norton, an attorney for the nuns.

The nuns alleged that the directors of Smith & Wesson have ignored growing legal risks from making assault-style rifles.

For many years, gunmakers enjoyed broad immunity for liability from mass shootings due to a 2005 US law known as the Protection of Lawful Commerce in Arms Act. But last year, rival gunmaker Remington agreed to pay \$73 million to settle claims by families of the victims of the 2012 shooting at the Sandy Hook Elementary School in Connecticut, which has encouraged others to sue over mass shootings.

https://nypost.com/2023/12/05/business/catholic-nuns-sue-smith-amp-wesson-to-halt-sales-of-ar-15-assault-rifles/?utm_source=twitter&utm_campaign=nypost&utm_medium=social

How Magazine Bans Thwart Self-Defense

Almost always, law enforcement officers are second responders. Because officers cannot be everywhere, and because criminals choose the time and place for their surprise attacks, crime victims are their own first responders. If a victim has the opportunity to call 911, the call is in effect a request to send armed men and women who will bring the arms sufficient to defeat the attacking criminals. While waiting for minutes for armed rescuers to arrive, the victims should have sufficient arms to repel the attackers.

Just as any gun is better than no gun, a small magazine is better than nothing. But in general, the best magazines for defeating violent attackers are the magazines chosen by prudent professionals with extensive collective experience in lawful defense. . . .

Neither citizens nor law enforcement officers frequently fire more than 15 shots in self-defense. Indeed, the vast majority of Colorado law enforcement officers never fire one defensive shot in their careers. This does not mean that officers should not carry firearms. A firearm, like a fire extinguisher, is a tool for rare emergencies, and in emergencies, essential to survival.

The largest national survey of defensive gun use found that 51.2% of incidents involved multiple attackers.

Most defensive shots are misses. A New York Police Department study of 1998–2006 found an average hit rate "18 percent for gunfights," and 30 percent "in situations in which fire was not returned."

Another study examined target range shooting at realistic-size targets at various distances; the hit rate for police recruits who had completed academy firearms training was 49 percent, whereas the rates for untrained, "naive" recruits with little if any prior firearms experience was 39 percent.

Unlike in the movies, many attackers do not desist after being hit once. In general, only hits to the central nervous system or an airway instantly incapacitate.

If a citizen or an officer sees one assailant, she does not know if a second assailant is unseen nearby. As officers are taught, "If you see one, there's two. If you see two, there's three." When a defender knows that she has a greater reserve, she is more likely to fire sufficient shots, because she knows she will have sufficient ammunition to deal with a possible second or third attacker.

Conversely, when a defender has fewer available shots, she must make a calculation before each shot to determine whether she can successfully make a threat-ending shot now or whether it is worth the risk to wait a few moments in hopes of a better opportunity. The defender's critical moments of hesitation could cost her life. By constricting reserve capacity, the magazine ban increases the risk of injury for victims and reduces it for attackers. That is the opposite of the Second Amendment.

Reserve capacity is even more important for citizens than for law enforcement officers. It may be impossible for a citizen under attack to extract a cell phone and dial 911. Usually, the only magazine the citizen will have is the one in her firearm. In contrast, officers generally wear small always-ready radios, to immediately summon assistance. Unlike the typical citizen, the typical officer will have several back-up magazines ready on a belt. Officers can sometimes call for back-up before taking on a situation, but the citizen never has the option, because the criminals decide the time and place for attack. Persons with mobility disabilities are impacted even more severely because they cannot retreat or take cover to change a magazine.

<https://reason.com/volokh/2023/12/20/how-magazine-bans-thwart-self-defense/>