

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

## **December 2020**

### **New York State Bar Association Recommends New Laws to Reduce Mass Shootings**

The New York State Bar Association (NYSBA) has adopted a comprehensive report with recommendations for legislative reforms proposed by the Task Force on Mass Shootings and Assault Weapons....Recommendations call for a nationwide adoption of red flag laws and bans on the possession, sale and manufacture of assault-style weapons, as well as an extension of the time period for background checks to at least 30 days....

(The proposal defines) assault weapons as “high-powered semi-automatic firearms that are capable of autoloading a new cartridge into the chamber after the gun is discharged,”

<https://tinyurl.com/y6s2t4wj>

### **NY State Bar Association: ‘More Gun Laws!’ Despite Contrary Evidence**

A sober examination would show the state’s gun control laws are failing. Violent crime spiked by 76 percent even as Democratic Mayor Bill de Blasio slashed \$1 billion in police funds in a city and state with among the strictest gun laws already. In the rest of the country, crime is falling. The FBI report shows crime continues to decline even as gun ownership grows to record highs.

<https://www.ammoland.com/2020/11/ny-state-bar-association-more-gun-laws-despite-contrary-evidence/#axzz6e3thBdt5>

### **Gun Rights Waiver Bill Introduced**

Several Assembly Democrats have introduced legislation that would give state residents the right to into a registry waiving their right to purchase guns....It would amend the state Executive Law and give the New York State Police the responsibility to develop and maintain the registry.

If approved, anyone would be able to file a voluntary waiver of their right to purchase a gun. The State Police would then request photo identification to verify the person’s identity before accepting the form. Waivers would include an alternate individual to be contacted if the waiver is revoked.

No sooner than 21 days after filing a waiver, an individual would be able to file a revocation of their waiver.

Waivers would not be able to be required as a condition of employment or for benefits or services.

The bill is based on a Wall Street Journal op-ed by Frederick Vars and Ian Ayres titled "Suicide Accounts for Most Gun Deaths. A Libertarian Approach Could Help."

<https://www.post-journal.com/news/page-one/2020/11/gun-rights-waiver-bill-introduced/>

### **NRA pays \$2.5M after NY probe into 'dangerous' insurance**

The National Rifle Association is banned from marketing insurance in New York for five years and will pay \$2.5 million to settle an investigation into "dangerous" policies promoted to gun owners as a way to cover costs in self-defense shootings, state financial regulators said Wednesday.

The New York State Department of Financial Services announced the consent order with the powerful gun advocacy group after a three-year investigation. State regulators said the NRA violated insurance laws and regulations by acting as an insurance producer without a license by taking part in efforts to solicit and market insurance products, including the NRA's Carry Guard program.

Carry Guard insurance was launched in 2017 and was promoted to gun-owners as needed coverage to help cover civil and criminal legal costs in the case they shot someone in self-defense.

The NRA is banned from marketing insurance in New York or receiving compensation in connection with any newly issued New York insurance policies for five years, even if the NRA obtains a license, under the order.

"The DFS inquiry, which began with a roar, ends with a whimper," William A. Brewer III, counsel to the NRA, said in an email. "The consent order contains no admissions by the NRA, and no NRA member money will fund this settlement."

<https://www.startribune.com/nra-pays-2-5m-after-ny-probe-into-dangerous-insurance/573115951/>

### **NY AG's suit seeking the NRA's dissolution slowed by counter challenges.**

In 20 filings filed late last week, National Rifle Association chief Wayne LaPierre and general counsel John Frazer challenged the validity of Attorney General Letitia James's suit on multiple grounds, from violating technical filing requirements to claiming that the hearings should be held in Albany, not Manhattan.

The actions are likely to significantly slow what's likely to be an already lengthy litigation.

<https://www.thetrace.org/rounds/daily-bulletin-ny-ag-s-suit-seeking-the-nras-dissolution-slowed-by-counter-challenges/>

## **Biden could change these key policies on ‘Day One’ in the White House**

While he pursues gun-control legislation, Biden has promised to use his powers “to ban the importation of assault weapons.”

[https://www.metro.us/factbox-biden-could-change/?fbclid=IwAR1obfh09279394bI6mQKJEw7YmiP\\_U7L3tBJF8hSgBKsO9-nhZKfY-bxt8](https://www.metro.us/factbox-biden-could-change/?fbclid=IwAR1obfh09279394bI6mQKJEw7YmiP_U7L3tBJF8hSgBKsO9-nhZKfY-bxt8)

## **Joe Biden’s Tax Agenda Could Cost Gun Owners \$34 Billion**

Biden’s proposals include a \$200 tax for each AR-15 that is already owned, and that tax would also apply to other firearms Democrats label “assault weapons.”

Biden also wants to tax gun owners \$200 for every “high capacity” magazine they own.

Americans own an estimated 434 million firearms. Nearly 20 million of those firearms are Modern Sporting Rifles, firearms that the Democrats categorizes as “assault weapons.”

Under Biden’s plan, the tax for the nearly 20 million Modern Sporting Rifles alone could be \$4 billion.

Americans own more than 71 million pistol magazines capable of holding more than ten rounds and “79.2 million rifle magazines capable of holding 30 or more rounds.”

Taking that as a rounded figure of 150 million magazines, the tax on those could be \$30 billion.

Add the \$4 billion in rifle taxes and the \$30 billion in magazine taxes, and American gun owners could owe \$34 billion.

<https://www.breitbart.com/politics/2020/11/23/joe-bidens-tax-agenda-could-cost-gun-owners-34-billion/>

## **Joe Biden Gun Control Proposal Could Bankrupt Firearms Industry**

Former Vice President Joe Biden’s plan to do away with the Protection of Lawful Commerce in Arms Act (PLCAA) could bankrupt the entire firearms industry.

President George W. Bush signed the PLCAA into law in 2005 as a way of protecting firearms manufacturers from frivolous lawsuits....The PLCAA shields gun manufacturers from lawsuits in situations where the guns in question were legally made and legally sold. Biden wants those protections eliminated.

Missouri self-defense lawyer and firearms trainer Kevin Jamison ....made clear that firearms manufacturers would enter a financial tailspin if Biden has his way. Jamison said, “The guys pushing these lawsuits, they don’t care if they win. They care if they can force these companies to hemorrhage money. They are in the business of putting gun companies out of business.”

Jamison added, “If they destroy enough companies or force them to adopt their rules of procedure then there will be no place to buy guns and that’s what they’re looking for. They want to make it as expensive to own a gun as humanly possible — and as difficult. If they get even part of their wish list, they won.”

<https://www.breitbart.com/2nd-amendment/2020/11/29/joe-biden-gun-control-proposal-could-bankrupt-firearms-industry/>

### **Who Are Contenders for Biden’s Cabinet? Health and Human Services Department**

Vivek Murthy: One of Mr. Biden’s top advisers on the coronavirus, Dr. Murthy is a former surgeon general and an outspoken advocate of more stringent gun control.

<https://www.nytimes.com/2020/11/11/us/politics/biden-cabinet.html>

### **Jo Jorgensen Heading Toward Second-Best Result in Libertarian Party History**

The Libertarian presidential nominee is at 1.14 percent, has 1.58 million votes, and is ahead of all third-party candidates in every state. She's also beating the Trump-Biden spread in Michigan, Wisconsin, and Nevada.

<https://reason.com/2020/11/04/jo-jorgensen-heading-toward-second-best-result-in-libertarian-party-history/>

### **Does Joe Biden owe his win to Libertarian candidate Jo Jorgensen?**

In this historic 2020 presidential election, there is a strong case for former Vice President Joe Biden to attribute his victory to Jo Jorgensen, a professor of psychology at Clemson University and the presidential nominee of the Libertarian Party. Her vote total substantially exceeded Biden and President Trump's margin in Arizona, Pennsylvania, Wisconsin, and Georgia.

Libertarian Party candidates typically draw far more votes from conservative Republicans than liberal Democrats. And this year, especially, the major planks on her campaign web site were far more likely to win votes that otherwise would have gone to Trump rather than Biden.

Consider Arizona. While votes are not fully counted and reported as of this writing, Biden is around 20,000 votes ahead of Trump. Jorgensen won around 50,000 votes.

Similar numbers apply to Pennsylvania and Wisconsin, where the Libertarian Party received nearly double the vote difference between the Democrat and the Republican.

Meanwhile, Georgia is such a very close outcome that Jorgensen’s 35,000 votes (and counting) are very likely to have given Trump plenty more votes than he would need to defeat Biden there.

If these calculations are correct, Biden would not have reached 270 Electoral votes had Jorgensen not run. And Trump most likely would have been reelected.

<https://thehill.com/opinion/campaign/525321-does-joe-biden-owe-his-win-to-jo-jorgensen>

### **Cabela's ruling a warning shot against gun rights...**

At the same time that gun sales have skyrocketed as more Americans reach for a firearm to protect themselves from threats real and perceived, warning shots abound that should have gun rights advocates on edge.

The latest is the court ruling allowing a lawsuit against the Cabela's store in Cheektowaga to proceed after it sold ammunition to then- 19-year-old Jake Klocek, who used it in a handgun to accidentally kill 19-year-old Anthony King, a friend he'd invited over while housesitting for an Elma couple.

The suit by the victim's family contends that Cabela's – a defendant along with Klocek and the Elma couple – “knew or should have known its failure to use reasonable care” in selling the ammunition to someone like Klocek would result in serious injury or death.

But that claim hinges on the fact that Klocek, under 21 at the time, could not legally buy handgun ammunition.

However, he could legally buy long gun ammunition. And as Cabela's attorneys point out, the ammunition in question – .45 ACP – can be used in both handguns and rifles.

Nevertheless, the fact that both a State Supreme Court justice and an appellate court allowed the case to proceed is likely to ripple through the retail firearms industry. If the case makes it to trial and King's parents win, it's easy to envision it precipitating more of the types of marketplace constrictions that anti-gun politicians can only dream about.

[https://buffalonews.com/news/local/crime-and-courts/column-cabelas-ruling-a-warning-shot-against-gun-rights-myopia/article\\_ee3ab2e8-1edf-11eb-ab07-a35cbb1280b0.html](https://buffalonews.com/news/local/crime-and-courts/column-cabelas-ruling-a-warning-shot-against-gun-rights-myopia/article_ee3ab2e8-1edf-11eb-ab07-a35cbb1280b0.html)

### **Alito Rightly Slams Five Democratic Senators for 'Bullying' the Supreme Court**

In an eyebrow-raising 2019 brief, five Democratic senators warned that the Supreme Court might have to be "restructured" if it failed to reach the conclusion they preferred in a Second Amendment case. Justice Samuel Alito recalled that episode during his Federalist Society speech last night, saying the senators had engaged in blatant "bullying" by issuing "a crude threat" aimed at undermining judicial independence.

Alito is right. The case involved New York City's uniquely onerous restrictions on the transportation of firearms, and the senators—Sheldon Whitehouse (D-R.I.), Mazie Hirono (D-Hawaii), Richard Blumenthal (D-Conn.), Dick Durbin (D-Ill.), and Kirsten Gillibrand (D-N.Y.)—wanted the justices to decide (as they ultimately did) that mid-litigation revisions to those rules made the case moot. But instead of simply presenting legal arguments in favor of that outcome, Whitehouse et al. launched an attack on the Court's integrity, accusing

the justices of perverting the law to protect "interests important to the big funders, corporate influencers, and political base of the Republican Party." The evidence they presented consisted of cases in which the Court had reached conclusions they did not like.

The senators' brief "was an affront to the Constitution and the rule of law," Alito said. "The Supreme Court was created by the Constitution, not by Congress. Under the Constitution, we exercise the judicial power of the United States. Congress has no right to interfere with that work any more than we have the right to legislate. Our obligation is to decide cases based on the law, period. And it is therefore wrong for anybody, including members of Congress, to try to influence our decisions by anything other than legal argumentation. That sort of thing has often happened in countries governed by power, not law."

Senate Minority Leader Chuck Schumer (D-N.Y.) did not join that bullying brief. But during a pro-choice rally in March, Schumer turned toward the Supreme Court building and declared: "I want to tell you, Gorsuch, I want to tell you, Kavanaugh, you have released the whirlwind, and you will pay the price! You won't know what hit you if you go forward with these awful decisions."

<https://reason.com/2020/11/13/alito-rightly-slams-five-democratic-senators-for-bullying-the-supreme-court/>

## **While You Were Focused on The Kraken, the Senate Continued Confirming Trump Federal Judges**

Mitch McConnell long ago promised to leave no federal court vacancy unfilled by the end of Trump's first term. Depending on what happens in the next three weeks, this may be Trump's only term and McConnell has continued moving judicial nominations through to confirmation....

As of today, the 227 Article III (lifetime appointment) judges have been nominated by Trump and confirmed by the Senate, including three Supreme Court Judges and 53 Court of Appeals judges. The total will be over 250 by year end. That represents almost one-third if the authorized Article III judgeships. That represents a powerful pushback to the leftist activist tilt the judiciary has taken on, but is not the massive restructuring that a second Trump term would accomplish.

[https://legalinsurrection.com/2020/11/while-you-were-focused-on-the-kraken-the-senate-continued-confirming-trump-federal-judges/?fbclid=IwAR1SK1Zz0rzILR7gkDtJhB4-iScK-YCaAkTH4\\_R7A6BJWYE0k\\_N8vLLG0Xo](https://legalinsurrection.com/2020/11/while-you-were-focused-on-the-kraken-the-senate-continued-confirming-trump-federal-judges/?fbclid=IwAR1SK1Zz0rzILR7gkDtJhB4-iScK-YCaAkTH4_R7A6BJWYE0k_N8vLLG0Xo)

## **Justice Barrett's Vote Could Tilt the Supreme Court on Gun Rights**

A Second Amendment case decided last week by the federal appeals court in Philadelphia is a promising candidate for Supreme Court review, not least because it presents an issue on which Justice Barrett has already taken a stand.

It concerns Lisa M. Folajtar, who would like to buy a gun. But she is a felon, having pleaded guilty to tax evasion, which means under federal law she may not possess firearms.

She sued, arguing that the law violated her Second Amendment rights. A divided three-judge panel of appeals court rejected her challenge, saying that committing a serious crime has consequences. It can lead to losing the right to vote, to serve on a jury — or to have a gun....In dissent, Judge Stephanos Bibas, a former law professor appointed to the court by President Trump ... wrote that the framers of the Constitution would not have allowed lawmakers to bar felons convicted of nonviolent crimes from owning guns.

“Lisa Folajtar asks us to treat her as an equal member of society,” he wrote. “Though her tax-fraud conviction affects some of her privileges, it does not change her right to keep and bear arms.”

Judge Bibas wrote that his analysis had drawn heavily from a dissent last year in a similar case concerning a man convicted of mail fraud. That dissent was written by Justice Barrett when she was a judge on the federal appeals court in Chicago. The law forbidding people with felony convictions from owning guns, she wrote, should not apply when the crimes in question were nonviolent.

“History does not support the proposition that felons lose their Second Amendment rights solely because of their status as felons,” she wrote. “But it does support the proposition that the state can take the right to bear arms away from a category of people that it deems dangerous.”

Voting and jury service are different, she wrote, because those are “rights that depend on civic virtue.”

<https://www.nytimes.com/2020/11/30/us/supreme-court-barrett-gun-rights.html>

### **‘It’s going to be earth-shattering’: What Amy Coney Barrett means for California Gun Laws**

“It’s going to be earth shattering,” Sam Parades, the executive director of the Gun Owners of California, said of Amy Coney Barrett’s confirmation to the United States Supreme Court. “A whole sea change. Everything will be challenged. Waiting periods, handgun restrictions, magazine restrictions, the so-called assault weapons ban. Open carry will become standard.”

Parades believes Barrett’s addition to the Supreme Court creates a firmly pro-Second-Amendment bloc on the Supreme Court, which will now be more likely to take up gun control cases.

This year’s New York State Rifle & Pistol Association Inc. v. City of New York almost became the first major Second Amendment case in over 10 years, but the court decided by a 6-3 margin not to rule on the merits following a procedural hagggle. Chief Justice John Roberts and Associate Justice Brett Kavanaugh sided with the court’s four left-leaning justices in punting the case back to the lower courts, but Kavanaugh has signaled a

willingness to hear a new Second Amendment case and extend the scope of the right of an individual to keep and bear arms.

All of which makes Barrett replacing Ginsburg a potential game-changer.

<http://peninsulapress.com/2020/11/05/its-going-to-be-earth-shattering-what-amy-coney-barrett-means-for-california-gun-laws/>

### **Barrett confirmation sparks flood of Supreme Court-bound challenges from pro-gun groups**

The high court generally has declined to take up major gun cases in recent years, but activists are banking that the recent addition of Justice Amy Coney Barrett will help force the court under Chief Justice John G. Roberts Jr. to weigh in sooner or later.

Alan Gottlieb, the founder of the Second Amendment Foundation, said his group immediately started lining up plaintiffs and crafting a flow chart of cases they wanted to file after President Trump nominated Justice Barrett to fill the vacancy left by the late Justice Ruth Bader Ginsburg.

Mr. Gottlieb's group teamed up with Firearms Policy Coalition and other pro-gun groups to challenge laws in states such as Maryland, California, New Jersey, Louisiana and New York. All the suits were launched after Justice Barrett's nomination in October.

He said the groups are trying to get as many cases as possible filed before Inauguration Day so they can then turn their focus to combating potential gun-related executive orders from presumed President-elect Joseph R. Biden.

<https://www.washingtontimes.com/news/2020/nov/26/gun-groups-see-supreme-court-amy-coney-barrett-mor/>

### **Dem. Jon Ossoff: Ban Sales of Semi-Automatic Rifles, 'High Cap' Mags**

Senate candidate Jon Ossoff (D-GA) is campaigning on a ban on the sale of semi-automatic rifles and "high capacity" magazines.

On his campaign website Ossoff says, "I support a ban on the sale of semi-automatic rifles ("assault weapons") and high-capacity magazines to the general public."

A ban on semi-automatic rifles, which he referred to as "assault weapons," would be a ban on AR-15s, AK-47s, and variants of both platforms, together with numerous other commonly-owned semi-automatic rifles, which happen to be some of the most popular firearms in America.

[https://www.breitbart.com/politics/2020/11/10/democrat-jon-ossoff-ban-sale-semi-automatic-rifles-high-cap-magazines/amp/?\\_\\_twitter\\_impression=true&fbclid=IwAR2w8Y-TmzPLie21RUac7UoqIuLjeJX8anGmf84oYfxsMzTvIb7RxM\\_sbkk](https://www.breitbart.com/politics/2020/11/10/democrat-jon-ossoff-ban-sale-semi-automatic-rifles-high-cap-magazines/amp/?__twitter_impression=true&fbclid=IwAR2w8Y-TmzPLie21RUac7UoqIuLjeJX8anGmf84oYfxsMzTvIb7RxM_sbkk)



## **Virginia Uses Coronavirus Emergency Power to Shut Down Gun Show**

Mark Herring, the attorney general of Virginia...found a judge who let him shut down The Nation's Gun Show, which his office called "a massive potentially 25,000-person indoor gun show" that "would most certainly become a superspreader event and could infect hundreds if not thousands of Virginians with COVID." Knowing that it would be financially untenable for them to continue, Herring demanded the event be open to only 250 people when it has a capacity for 25,000.

Herring's contentions are all risible. There is no evidence that the 50,000-square-foot facility that was to house the event — one that requires masks and social distancing and operates at 50 percent capacity — will become a superspreader event. If it were so, Herring would be fighting to shut down every Walmart and Target in Virginia...

And, in case the Constitution weren't clear enough, Virginia law says that a state emergency does not empower the government to interfere with "sale, or transfer of firearms." It's a shame that the gun show acquiesced, because there is no pandemic exception to the Constitution.

[https://www.nationalreview.com/corner/virginia-uses-coronavirus-emergency-power-to-shut-down-gun-show/?utm\\_source=recirc-desktop&utm\\_medium=homepage&utm\\_campaign=right-rail&utm\\_content=corner&utm\\_term=third](https://www.nationalreview.com/corner/virginia-uses-coronavirus-emergency-power-to-shut-down-gun-show/?utm_source=recirc-desktop&utm_medium=homepage&utm_campaign=right-rail&utm_content=corner&utm_term=third)

## **Businesses, Residents Left to Fend for Themselves as Anti-Cop Fervor Drives Retirement Surge**

Police forces in big cities across the country have similarly reported "unheard of" numbers of officers retiring or otherwise leaving their forces since the streets erupted in violence after Floyd's killing in late May.

Some of the 2020 retirements are structural, tied to a mid-'90s hiring boom and pension quirks. But police union heads and criminal-justice experts say the summer's civil unrest, combined with anti-cop rhetoric from far-left city leaders and a lack of support from progressive rogue prosecutors, has hastened police-officer departures.

<https://www.nationalreview.com/news/businesses-residents-left-to-fend-for-themselves-as-anti-cop-fervor-drives-retirement-surge/>

## **Support for Stricter U.S. Gun Laws at Lowest Level Since 2016**

The largest gap in support for more stringent gun laws is for partisans. The current 22% of Republicans favoring stricter laws for gun sales is the lowest for the group over the past 20 years and represents a 14-point drop since 2019. Meanwhile, the percentages of Democrats and independents calling for more gun control are near the highest recorded by Gallup

since 2000. The 63-point gap between Republicans and Democrats is the highest on record over the past two decades.

Americans' support for a ban on the possession of handguns, at 25%, is near the lowest on record in Gallup's 40-year trend. The latest reading, which is down 18 points from its 1991 high, is a slight decline from last year's 29%. Currently, 74% of U.S. adults say such a ban should not be put in place.

<https://news.gallup.com/poll/325004/support-stricter-gun-laws-lowest-level-2016.aspx>

## **Concealed Carry Data Reveals the Truly Democratic Nature of the Second Amendment**

As with all of our civil rights, the truly democratic nature of the Second Amendment is that it applies to *all* Americans. Recent concealed-carry trends across the nation show that Americans of all demographics do, in fact, exercise their right to keep and bear arms.

According to data recently published on John Lott's Crime Prevention Research Center, the number of concealed carry handgun permits has surged by 34% since 2016, with the current number of permits at nearly 19.5 million.

In 2020 alone, Lott found that women comprised 26.4% of concealed-carry permit holders in the 14 states that tabulate data by gender. "Seven states had data from 2012 to 2019/2020, and permit numbers grew 101.2% faster for women than for men."

Interestingly, "Three states that have detailed race and gender data for at least a decade show remarkably larger increases in permits for minorities compared to whites. In Texas, black females saw a 3.9 times greater percentage increase in permits than white males from 2002 to 2019. Oklahoma data from 2002 to 2019 indicated that the increase of licenses approved for Asians and American Indians was more than twice the rate for whites. North Carolina had black permits increase twice as fast as whites from 1996 till 2016."

These numbers are part of longer-term trends.

"From 2015 to 2019/2020, in the four states that provide data by race over that time period, the number of black people with permits increased almost 55.6% faster than the number of whites with permits. Asians appear to be the group that has experienced the largest increase in permitted concealed carry, growing 62.9% faster than whites."

[https://www.americas1stfreedom.org/articles/2020/11/25/concealed-carry-data-reveals-the-truly-democratic-nature-of-the-second-amendment/?utm\\_source=newsletter&utm\\_medium=insider&utm\\_campaign=1220](https://www.americas1stfreedom.org/articles/2020/11/25/concealed-carry-data-reveals-the-truly-democratic-nature-of-the-second-amendment/?utm_source=newsletter&utm_medium=insider&utm_campaign=1220)