

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

## March, 2024

### Antigun Albany agenda

New Yorkers Against Gun Violence sent out a solicitation regarding their Albany legislative agenda. It includes the following bills:

- A-4917A/S-4598A, Enacts the “School Anti-Violence Education Act”; creates a school anti-violence education program; establishes a school anti-violence education fund.
- A-6665/S-6537, Decreases the frequency of lock-down drills in schools; directs that such drills shall be implemented with a trauma-informed approach; permits parents to opt their children out of such drills.
- A-7302/S-2364A, Establishes an “Operation SNUG” program within the division of criminal justice services which provides grant awards to reduce, prevent or respond to gun violence.
- A-7517A/S-6980A, Requires the dissemination of written materials regarding child access prevention and the safe storage of firearms to students and/or persons in a parental relationship to such students at the beginning of each semester or quarter of the regular school year beginning on and after July 1, 2024.
- S-8479, Requires issuers of credit and debit cards to use certain merchant category codes for firearm and ammunition dealers. No companion.

<http://www.gunpoliticsny.com/?p=28071>

### Second Circuit’s Partial Upholding of New York’s Gun Carry Law Appealed to SCOTUS

The Plaintiffs in the case have filed a Petition for a Writ of Certiorari with the U.S. Supreme Court, asking them to take the case and overturn, at least in part, the Second Circuit’s decision.

The key part of the Petition is its discussion of the New York law’s requirement that New Yorkers prove that they have “good moral character” before obtaining a concealed carry permit

The Petition also focuses on the Second Circuit’s disregard of the framework established by the Supreme Court’s Bruen case

Finally, the Petition notes that the Second Circuit’s opinion sets up a “circuit split” between the Second Circuit and other U.S. Courts of Appeal, meaning that the courts are interpreting Bruen differently, leading to citizens’ Second Amendment rights being handled differently based on where they live.

<https://legalinsurrection.com/2024/02/second-circuits-partial-upholding-of-new-yorks-gun-carry-law-appealed-to-scotus/>

## **New York Judge Strikes Down Nassau County's Handgun License Requirements as Unconstitutional**

State Supreme Court Justice James McCormack declared Nassau County's handgun license prerequisites—including mandatory drug tests and the surrender of social media account passwords—to be a direct violation of constitutional rights. This ruling not only challenges local ordinances but also sets a significant precedent in the ongoing national dialogue on gun control and individual liberties.

The crux of Justice McCormack's ruling was the clear infringement on the 4th Amendment rights against unlawful searches and seizures intertwined with the process of exercising the 2nd Amendment right to bear arms. The additional requirements imposed by Nassau County, far beyond the state's already stringent laws, were deemed not just burdensome but outright unconstitutional. These included not only the controversial drug tests and demand for social media passwords but also the extensive process for fingerprinting and the imposition of limitations on who could serve as a personal reference for applicants.

<https://bnnbreaking.com/world/us/new-york-judge-strikes-down-nassau-countys-handgun-license-requirements-as-unconstitutional>

## **Gun rights advocates sue over New York's concealed carry law**

Out-of-state gun owners filed a federal lawsuit February 5 in the U.S. District Court in Albany arguing that the state's ban on concealed carry permits for non-New Yorkers violates their Second Amendment rights.

The lawsuit names newly nominated State Police Superintendent Steven G. James and the sheriffs of Rensselaer and Columbia Counties as defendants, in addition to several unknown defendants involved in implementing the concealed carry law.

The plaintiffs have concealed carry licenses in their respective home states and are able to use those permits to carry firearms in many other jurisdictions. They contend that New York is the only state in the nation to not recognize gun permits from other states.

"For nonresidents of New York, the entire state is practically exempted from the Second Amendment," the lawsuit states.

[https://www.timesunion.com/state/article/gun-owners-america-files-lawsuit-new-york-18650908.php?utm\\_campaign=CMS%20Sharing%20Tools%20\(Premium\)&utm\\_source=t.co&utm\\_medium=referral](https://www.timesunion.com/state/article/gun-owners-america-files-lawsuit-new-york-18650908.php?utm_campaign=CMS%20Sharing%20Tools%20(Premium)&utm_source=t.co&utm_medium=referral)

## **New York Senate Democrats Are Destroying Gun Safety By Removing NRA Trainer Certification**

On Monday, February 5, the Senate Codes Committee was set to move on S.138A, which strips NRA certified instructors from state statute. Certifications expire Dec. 31, 2026, and the Department of Criminal Justice Services (DCJS) will then be responsible for creating curricula and promulgating rules and standards for trainer certification. Of course, there is zero evidence that they are willing or even capable of taking on the task.

This bill passed the Senate last year, but it did not clear the Assembly before they ended their 2023 session. They are now bringing this legislation back early in the 2024 session

For decades, the NRA has certified hundreds of thousands of trainers and has been the gold standard for firearms safety programs. There is no rationale for this move to eliminate these trainers, but the motivation is obviously purely political. This ill-conceived bill will impact almost everyone who carries concealed in New York as it will almost certainly throw the entire system into chaos, if not completely shut it down. Arguably every New Yorker is going to be impacted because they are eliminating firearms safety training as we know it.

<https://www.nraila.org/articles/20240204/new-york-senate-democrats-are-destroying-gun-safety-by-removing-nra-trainer-certification>

### **'Ghost Gun' Sellers Must Face New York Lawsuit Seeking to Ban Them**

Nine companies that sell unfinished guns without serial numbers, used to make untraceable "ghost guns," must face a lawsuit by New York's Democratic attorney general seeking to halt their business in the state, a federal judge ruled on February 23.

U.S. District Judge Jesse Furman in Manhattan rejected the companies' argument that their products are not weapons. He pointed to the companies' marketing materials, including boasts that it was "ridiculously easy" to turn their products into guns and that "even a caveman can do this."

The defendants include Arm or Ally, Rainier Arms, 80P Builder, Rock Slide USA, Brownells, 80 Percent Arms, Glockstore, KM Tactical and Primary Arms. Attorney General Letitia James' office and lawyers for the companies did not immediately respond to requests for comment.

A federal appeals court in New Orleans in November found that the unfinished frames and receivers were not firearms, striking down a Biden administration rule intended to crack down on them. Furman on Friday called that court's reasoning "neither binding nor persuasive."

<https://www.insurancejournal.com/news/east/2024/02/26/762151.htm>

### **Jury finds NRA, Wayne LaPierre liable in civil corruption case**

A Manhattan jury found three top executives of the National Rifle Association liable Friday in a lengthy civil trial that focused on alleged corruption and the misspending of millions of dollars.

After a six-week trial and a week of deliberations, a jurors found that Longtime NRA leader Wayne LaPierre "violated his statutory obligation to discharge the duties of his position in good faith." They concluded that he had caused roughly \$5.4 million worth of harm to the nonprofit group's finances — though they also found that LaPierre had already repaid about \$1 million.

The NRA won a legal victory in 2022 when a judge denied James' bid to dissolve the organization, but the case against the NRA was allowed to moved forward.

<https://www.npr.org/2024/02/23/1232229060/nra-wayne-lapierre-corruption-trial-verdict-new-york>

## In today's gun rights cases, historians are in hot demand. Here's why

Historians have found themselves caught in the middle of America's debate over gun control ever since the Supreme Court ruled in 2022 that firearms laws must be consistent with American "tradition."

That decision in *New York State Rifle & Pistol Association v. Bruen* set off a new wave of challenges to state and federal restrictions on guns.

"What's happening now is a fight over what the Second Amendment ultimately means," says Chuck Michel, president and general counsel at the California Rifle & Pistol Association, which is suing the state over newly passed limits on concealed firearms. "This truly is a historic time for Second Amendment jurisprudence."

The results of this kind of research have been collected in the Repository of Historical Gun Laws, maintained by the Duke Center for Firearms Law.

"It's a searchable database that now is up to over 2,000 historical gun laws stretching from the medieval ages in England all the way up to about the 1920s or 1930s, which is when the federal government began to regulate firearms," says Andrew Willinger, the center's executive director. The repository was opened to the public in 2019.

<https://www.npr.org/2024/02/03/1227587116/guns-historians-rights-control-second-amendment-supreme-court>

## Supreme Court to hear arguments on Trump-era 'bump stock' rule

The Supreme Court will hear arguments (February 28) over whether the federal government can ban devices known as "bump stocks" that allow semi-automatic rifles to act more like a machine gun.

The case doesn't directly involve Second Amendment rights to possess firearms. Instead, it hinges on whether bump stocks meet the definition of machine guns, which are banned under a statute Congress last addressed in the 1980s.

the Bureau of Alcohol, Tobacco, Firearms and Explosives put out a rule during the Trump administration that said bump stocks fall under the machine gun ban — so possession of them is a crime.

Michael Cargill surrendered several of the devices and then challenged the ATF rule in Texas federal court. He argues Congress could have passed a statute with a broader definition of machine gun, or banned devices that make a semi-automatic gun fire at a rate closer to a machine gun. "But Congress did none of these things, and neither a court nor an agency may subordinate the enacted statutory language to an actual or imagined congressional purpose," Cargill's brief said.

<https://rollcall.com/2024/02/27/supreme-court-to-hear-arguments-on-trump-era-bump-stock-rule/>

## **Sen. Schumer urges Congress to support renewal of ‘ghost gun’ law**

New York State Senate Majority Leader Chuck Schumer urged Congress to support the reauthorization of the Undetectable Firearms Act, which prohibits “ghost guns,” during a press conference at the Onondaga County District Attorney’s Office.

During the conference, Schumer explained how the act works to protect the community against ghost guns — guns made fully or partially of plastic that metal detectors cannot recognize. He said the act will expire on March 8 if Congress doesn’t pass a bill to reauthorize it.

The act, passed in 1988, is a sunset law that expires every 10 years unless renewed by Congress. The legislation makes it illegal to “manufacture, import, sell, ship, deliver, possess, transfer, or receive” any firearm that metal detectors or X-rays cannot recognize.

The law requires about four ounces of metal in every gun regardless of ammunition to be detectable, Schumer said while holding up a roll of pennies to demonstrate the size and weight of the required amount.

<https://dailyorange.com/2024/02/undetectable-firearms-act/>

## **Biden renews call for gun legislation after deadly shooting at Chiefs’ Super Bowl parade**

The president pushed Congress to act to pass an assault weapons ban and renewed calls for limits on high-capacity magazines, stronger background checks and laws that keep guns out of the hands of people who shouldn’t have them.

The president has consistently called for Congress to ban assault weapons and high-capacity magazines, require safe storage of guns, end gun manufacturers’ immunity from liability and enact universal background checks.

Congress passed a bipartisan gun safety bill that Biden signed into law in June 2022. Additionally, the White House has pushed its limits in terms of executive powers to curb gun violence and, in September, created the first White House Office of Gun Violence Prevention to find additional actions Biden can take to curb gun violence.

Biden’s reelection campaign received early endorsements from four major gun violence prevention groups: Everytown for Gun Safety, Community Justice Action Fund, Giffords and Brady.

<https://thehill.com/homenews/administration/4469629-biden-renews-call-for-gun-legislation-after-chiefs-parade-shooting/>

## **Scott Presler Wins Approval to Register Voters at Gun Shows in MD, VA, PA, and WV in 2024**

Scott Presler has been working in Beaver County, Pennsylvania, since last year. ...at the beginning of 2023, the Republican Party was down 1,777 voters to the Beaver County Democrats.

After several months of voter drives, door knocking, and county events, Scott Presler and Beaver County GOP Chair Roman Kozak, and several volunteers were able to flip the county from blue to red.

On (December 31), Presler announced that he was given permission to register voters at several gun shows in 2024.

“Met w/ the Showmasters Gun Shows owner & she’s going to allow us to do voter registration at EVERY show Showmasters operates in MD, VA, PA, & WV”

<https://www.thegatewaypundit.com/2023/12/scott-presler-continues-do-laps-around-republican-party/>

## **D.C.'s Magazine Ban Argued Again in D.C. Circuit**

The District of Columbia's ban on firearm magazines that hold over ten rounds was the subject of oral argument in the D.C. Circuit on February 13. The case is *Hanson v. District of Columbia*, and the appeal concerns the district court's denial of a preliminary injunction against enforcement of the ban. The circuit panel included Judges Patricia Millett ('13) and Justin Walker ('20), and Senior Judge Douglas Ginsburg ('86).

The argument should have turned on one, and only one, question: are the banned magazines commonly possessed by law-abiding citizens for lawful purposes? As Professor Mark W. Smith has explained, under *District of Columbia v. Heller* (2008) and *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022), that is the only relevant question in an arms ban case.

The bottom line is that once it is evident that an item is a bearable arm, the government has the burden to show that it is not in common use. If it cannot do so, the arm may not be banned. That's the *Heller-Bruen* rule for arms-ban cases.

<https://reason.com/volokh/2024/02/20/second-amendment-roundup-d-c-s-magazine-ban-argued-again-in-d-c-circuit/>

## **Louisiana to Become 28th Constitutional Carry State**

The measure will allow anyone 18 and older who is eligible to own a handgun to carry it concealed in public without a permit. The bill now heads to the desk of Governor Jeff Landry (R.), who has pledged to sign it into law.

Louisiana's legislature passed permitless carry back in 2021, but the bill was vetoed by Governor Bel Edwards, a Democrat. The election of Republican Jeff Landry to the governorship last year all-but guaranteed that Louisiana would become the 28th state to abolish its permitting system.

<https://www.nationalreview.com/corner/louisiana-to-become-28th-constitutional-carry-state/>

## **Lawsuit Makes Omaha Gun Ban Unenforceable**

Nebraska's largest city won't be able to enforce its ban on guns in public places like parks and sidewalks while a lawsuit challenging that restriction moves forward. Douglas County District Judge LeAnne Srb issued a preliminary injunction Friday blocking that ban, but she refused to put Omaha's restrictions on ghost guns and bump stocks on hold. The Liberty Justice Center filed the lawsuit on behalf of the Nebraska Firearms Owners Association arguing that the city restrictions violate a new state law passed last year that allows people to carry concealed guns across the state without a permit and without the need to complete a gun safety course. A similar lawsuit challenging gun restrictions in Lincoln remains pending

<https://www.kios.org/news/2024-02-15/lawsuit-makes-omaha-gun-ban-unenforceable>

## **NRA-Backed Lawsuit Challenging Illinois' Semi-Automatic and Standard-Capacity Magazine Ban Goes to SCOTUS.**

The lawsuit was filed as soon as the bill was signed into law. It got off to a strong start by securing a preliminary injunction that prevented the law from taking effect. But the Chicago-based Seventh Circuit Court of Appeals reversed that, holding that these commonly owned firearms and magazines are not "arms" under the Second Amendment. That decision could not go unchallenged—especially coming just a year after the Supreme Court decided *New York Rifle & Pistol Association, Inc. v. Bruen*.

<https://www.nraila.org/articles/20240212/nra-backed-lawsuit-challenging-illinois-semi-automatic-and-standard-capacity-magazine-ban-goes-to-scotus>

## **Hawaii Supreme Court rebukes U.S. Supreme Court decision that expanded gun rights**

A ruling by Hawaii's high court saying that a man can be prosecuted for carrying a gun in public without a permit cites crime-drama TV series "The Wire" and invokes the "spirit of Aloha" in an apparent rebuke of a U.S. Supreme Court decision that expanded gun rights nationwide.

"The thing about the old days, they the old days," the unanimous Hawaii Supreme Court ruling issued Wednesday said, borrowing a quote from season four, episode three of the HBO series to express that the culture from the founding of the country shouldn't dictate contemporary life.

"The spirit of Aloha clashes with a federally-mandated lifestyle that lets citizens walk around with deadly weapons during day-to-day activities."

<https://www.hawaiipublicradio.org/local-news/2024-02-10/hawaii-supreme-court-rebukes-us-supreme-court-decision-gun-rights>

## **Judge blocks California law targeting suppliers of 'abnormally dangerous' firearms**

A federal judge has blocked enforcement of a California law allowing government officials and individuals to sue manufacturers and sellers of "abnormally dangerous" firearms.

Gun industry officials claimed Wednesday's ruling as a victory in a growing national — and international — debate over who can be held liable for gun-related deaths. In recent years, liberal

states like California — facing strong head winds to other gun control measures in federal courts — have sought new ways to combat mass shootings and other deadly gun violence.

U.S. District Judge Andrew G. Schopler found that the “abnormally dangerous” provisions of the state’s Firearm Industry Responsibility Act, which Gov. Gavin Newsom signed into law in 2022, probably violated constitutional law related to interstate commerce. He granted a preliminary injunction barring the state from enforcing those provisions while litigation proceeds, as requested by the industry group suing the state.

<https://www.latimes.com/california/story/2024-02-22/judge-blocks-california-law-targeting-suppliers-of-abnormally-dangerous-firearms>

### **CA Lawmaker Wants Gun Owners to Register Firearms, Pay Fee Every Year**

- SB 1160 requires every firearm to be registered yearly with a fee paid by the owner.
- Owners of unregistered guns face a \$1,000 fine.
- Bill author state Sen. Anthony Portantino says that annual registration would create a gun database in California.

<https://gvwire.com/2024/02/16/ca-lawmaker-wants-gun-owners-to-register-firearms-pay-fee-every-year/>

### **Canada’s Stringent Gun Control Fails to Stop Firearm Attack on Edmonton City Hall**

The alleged 28-year-old shooter was armed with a long gun when he “entered the building through the parkade, fired shots and threw a Molotov cocktail.” Some councilors were in the building at the time of the attack but were taken to safe locations by police/security.

The attack on Edmonton’s City Hall occurred despite Canada’s stringent gun controls. Those gun controls include a ban on “over 1,500 models of assault-style firearms and certain components of some newly prohibited firearms (the upper receivers of M16, AR-10, AR-15, and M4 patterns of firearms),” which went into effect May 1, 2020, according to the Government of Canada. And Canada had ammunition magazine restrictions long before the “assault-style firearms” ban was adopted.

Licensing is the law of the land in Canada and passage of a firearm safety course is a requirement for acquiring a license to own a gun. A license is also necessary to legally acquire and/or possess a firearm.

Canada requires extensive background checks on those intending to purchase a firearm. Moreover, beginning July 7, 2021, Canada expanded the scope of the background check conducted. At the same time, the prime minister announced requirements on firearm retailers in Canada were increased.

Canada also has a waiting period for gun purchases.

<https://www.breitbart.com/2nd-amendment/2024/01/26/o-canada-stringent-gun-control-fails-stop-firearm-attack-edmonton-city-hall/>

