



Sunnyvale

Local Firearms Regulations

Presented By:
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Background:

District of Columbia v. Heller (2008)

- The meaning of the 2nd Amendment was debated for over 200 years after its adoption in 1791.
 - ◆ Does it protect an individual right to keep and bear arms?
 - ◆ Or only the arming of a “well-regulated militia”?
- In *Heller* (2008), a split U.S. Supreme Court (5-4) adopted the individual rights view.
 - ◆ Overturned a Washington D.C. law handgun ban, citing a historical right of self-defense in the home.
 - ◆ Majority: Scalia, Thomas, Roberts, Alito, Kennedy
Dissent: Stevens, Breyer, Souter, Ginsburg

New Case:

NY State Rifle & Pistol Assn. v. Bruen (2022)

- U.S. Supreme Court opinion decided June 23, 2022.
- Overturned NY's "proper cause" requirement for carry concealed weapons (CCW) permits.
 - ◆ Proper/good cause = person has special need for self-protection distinguishable from general public.
- Majority (6-3) opinion by Justice Thomas, joined by Roberts, Alito, Gorsuch, Kavanaugh, and Barrett.
 - ◆ Concurring opinions by Alito, Kavanaugh, and Barrett.
 - ◆ Dissenting opinion written by Justice Breyer, joined by Sotomayor and Kagan.

Majority Opinion in *NYSRPA v. Bruen*

- The individual right to keep and bear arms for self-defense is infringed by a state law that limits CCW permits to persons who show “proper cause.”
- Courts uses a strict historical interpretation based on evidence of how the right to bear arms was understood during the American colonial period.
 - ◆ Focuses solely on the original colonies, rejecting evidence of firearms restrictions in the 19th century especially in Western states and post-Civil War.
 - ◆ Rejects “means-end” balancing tests that weigh 2nd Amendment rights vs. interests in public safety.

NYSRPA v. Bruen: What's Left?

- Court only rejected proper/good cause for CCWs, not other qualifications (e.g., moral character).
- Says that firearms can still be prohibited in “sensitive places” such as “schools, government buildings, legislative assemblies, and courthouses.”
- Kavanaugh’s concurring opinion (explanatory but not binding on other courts) would allow:
 - ◆ Restrictions for felons and the mentally ill.
 - ◆ Prohibition of firearms in sensitive places such as schools and government buildings.
 - ◆ Regulation of licensed firearms dealers.

NYSRPA v. Bruen: Sensitive Places

- No precise definition of a “sensitive place”, but...
- Thomas’s majority opinion says courts may draw “analogies” to “longstanding” laws prohibiting firearms in sensitive places such as schools and government buildings.
 - ◆ Emphasizes that “sensitive places” are not “simply all places of public congregation” or places that are “crowded” such as the streets of Manhattan.
 - ◆ Courts will have to define through litigation.
 - What other types of places qualify as “sensitive”?
 - Will public safety be a factor in this analysis?

NSYRPA v. Bruen: Private Property

- The 2nd Amendment only applies to the U.S. Govt., and to state/local governments via the 14th Amendment.
- Does not prevent private entities/individuals from prohibiting firearms on their own property.
- To what extent can police can enforce rules established by a private business or property owner?
 - ◆ Making an arrest is a government action and can result in liability for constitutional violations.
 - ◆ Under Calif. Penal Code 602.1(d) police cannot arrest a person for trespass at a business open to the public if the person is engaged in conduct protected by the U.S. Constitution.
 - ◆ Issue for future litigation.

***NYSRPA v. Bruen*: Ripple Effects**

- Remanded *Duncan v. Bonta* (9th Cir. 2021), which upheld upheld Calif.'s ban on large capacity magazines.
 - ◆ The 9th Circuit must reconsider the case using a historical analysis instead of balancing 2nd A. rights vs. public safety.
 - ◆ The outcome could invalidate Sunnyvale Measure C.
- Implicitly overruled *Peruta v. San Diego* (9th Cir. 2019) which upheld good cause for CCW permits.
 - ◆ Pending legislation (SB 918) would revise state law on CCW permits, including disqualifications and moral character.
- May impact outcome in *Miller v. Bonta*, a challenge to Calif.'s assault weapons ban, currently pending in 9th Cir.
 - ◆ Could overturn Calif. ban on assault weapons.

***Jones v. Bonta* (9th Cir. 2022)**

- Recent decision by 3-justice panel of the 9th Circuit held that restricting sale of semiautomatic centerfire rifles to adults under age 21 violates the 2nd A.
 - ◆ Same reasoning would invalidate Sunnyvale's ordinance.
 - ◆ Held that young adults (ages 18-20) have right to possess firearms for self-defense. Banning purchase of semiautomatic centerfire rifles severely burdened the 2nd Amendment rights of these young adults.
 - ◆ Upheld requirement that adults under age 21 have a hunting license in order to purchase a long gun.
- *Petition for en banc review by the entire 9th Circuit (29 justices) is currently pending.*

California Court Cases: Preemption

- Local legislation is preempted if it duplicates, contradicts, or enters an area “fully occupied” by state law.
- A local ordinance cannot:
 - ◆ Criminalize exactly the same conduct as state law.
 - ◆ Forbid something that state law expressly requires, or require something that state law expressly forbids.
 - ◆ Regulate conduct that is so fully and completely covered by state law as to clearly indicate that it has become exclusively a matter of state concern.

California Firearms Laws

- Recognizes a right to own/possess firearms in one's own home or business (Penal Code Sections 25605, 26035, and 26055).
- Regulates many aspects of firearms purchase, sale, transfer, ownership, possession, and use.
 - ◆ Firearms registration, eligibility/background checks, dealer licensing
 - ◆ Prohibited persons (convicted of violent crimes, restraining orders imposed on, convicted of domestic violence, involuntary psychiatric admissions)
 - ◆ Use/possession of firearms by minors
 - ◆ Safe storage of firearms
 - ◆ Prohibited locations (e.g., schools, courtrooms, public buildings)
 - ◆ Carrying concealed weapons, open carry, transport
 - ◆ Assault weapons ban (2nd Amendment case pending in 9th Circuit)

Preemption of Local Firearms Regulations

- *Fiscal v. San Francisco* (2008) 158 Cal.App.4th 895
 - ◆ San Francisco voters approved an initiative banning almost all residents from possessing handguns within the city.
 - ◆ Held: the ban was preempted by state law.
 - The court held that the State has “fully occupied the field” with respect to regulation of firearms licensing and registration.
 - Preemption extends to the possession of firearms on private property such as in residents’ homes and businesses, as this is expressly allowed by the Penal Code.

Certain Local Regulation Allowed

- Calif. Supreme Court: state has preempted “discrete areas” but not the entire field of gun control.
- California courts have upheld some local regulations:
 - ◆ Zoning restrictions regulation location of gun stores; local dealer permits (*Suter v. Lafayette* (1997) 57 Cal.App.4th 1109)
 - ◆ Prohibiting gun shows on county property (*Great Western Shows v. King* (2002) 27 Cal.4th 853)
 - ◆ Prohibiting firearms in county parks (*Calguns v. San Mateo County* (2013) 218 Cal.App.4th 661)

New State Law: SB 1327 – Attorneys' Fees

- Signed by the Governor on July 22, 2022
- Adds Section 1021.11 to the Calif. Code of Civil Procedure.
- Allows state/local agencies to recover attorneys' fees from parties who bring unsuccessfully lawsuits to challenge firearms legislation.
 - Successful plaintiffs can recover attorneys' fees in 2nd Amendment cases under federal law designed to reward parties who vindicate constitutional rights.
 - Attorneys who won the *Heller* case received \$1.1M award against Washington D.C.

New Law: SB 1327 – Preemption Challenges

- As previously discussed, courts can find that the Legislature implicitly intended to preempt local ordinances by “occupying the field” of regulation.
- SB 1326 provides that state firearms laws shall not be construed to preempt local restrictions that are at least as stringent as the state law, unless the statute expressly provides that local regulation is preempted.
 - This will help cities defend their local gun restrictions.
 - Not clear, however, if it applies retroactively to existing statutes or if it is intended to overrule established case law (e.g., *Fiscal*, which held that the state has “occupied the field” of gun licensing and registration).

Pending Bill: SB 918

- Legislative response to *Bruen* decision.
- Currently on 3rd reading in the Assembly. Likely to pass given Democratic majority in the Legislature.
- Defines long list of sensitive places where firearms (including CCWs) are prohibited, such as government buildings, courts, schools, libraries, parks, medical facilities, public transit, bars, casinos, sports arenas, etc.
- Would prohibit firearms in churches and commercial establishments open to the public unless there is a sign posted that allows CCWs.
- Also amends existing Calif. law related to CCW permits (will be discussed later in this presentation).

Proposals that Initiated This Study Session

1. Universal background checks for gun buyers in Sunnyvale
2. Prohibit sale/gift/loan of firearms to Sunnyvale residents under age 21
3. Ban possession of assault weapons in Sunnyvale
4. Prohibit firearms (including CCW) in:
 - ◆ Sensitive places as defined
 - ◆ Businesses and workplaces unless owner or proprietor posts a sign saying guns are allowed on the premises.

Universal Background Checks

- In Calif., only licensed firearms dealers can engage in retail sales of firearms. Includes 10-day waiting period and DOJ firearms eligibility (background) check.
- Also applies to private party sales/transfers, which must take place through a licensed dealer.
 - ◆ Transfer between close family members is exempt.
 - ◆ Sunnyvale could require familial transfers to go through a licensed firearms dealer.
 - ◆ May result in a preemption challenge, but possible defense under SB 1327.
 - ◆ Wouldn't prevent firearms transfers from taking place outside city limits.

California Gun Laws Affecting Minors

- Under 18
 - ◆ Unlawful for anyone to transfer a firearm to a minor under age 18 (including private party transactions).
 - ◆ Exceptions for loans by parents/guardians or with parent/guardian permission.
- Age 18-21
 - ◆ Unlawful for anyone to sell/transfer a handgun to person under 21 (including private party transactions)
 - ◆ Unlawful for licensed firearms dealers to sell/transfer any firearm to a person under 21 with some exceptions:
 - Age 18+ police/military (not handguns)
 - Age 18+ with valid hunting license (not handguns or semiautomatic centerfire rifles)

Prohibit Sale/Gift/Loan to Sunnyvale Residents Under Age 21

- Potential local ordinance:
 - ◆ Eliminate exceptions for loans by parents/guardians.
 - ◆ Require all interfamilial transfers to go through a licensed firearms dealer.
- Likely 2nd Amendment or preemption challenge.
 - ◆ Law prohibiting adults under 21 from purchasing centerfire rifles declared unconst. in *Jones v. Bonta* (petition for review en banc is pending)
- Wouldn't prevent firearms transfers from taking place outside city limits.

Ban Assault Weapons In Sunnyvale

- Assault rifles (as defined by state law) including AR-15 style rifles are already illegal in California
 - ♦ The pending legal challenge in 9th Circuit, *Miller v. Bonta*, could declare the state ban unconstitutional.
- Individuals who registered an assault rifle before Jan. 23, 2001, are exempt.
 - ♦ Approx. 145,000 legally registered in Calif.
 - ♦ Owners can possess but not sell or transfer.
- A local ordinance would almost certainly result in an immediate 2nd Amendment lawsuit.

Define Sensitive Places

- “Sensitive place” restrictions are allowed by *Bruen*, if not overly broad (not just crowded places).
- Appropriate area for local regulation, but may be duplicative of new state legislation.
- Private property owners, workplaces, and businesses already have a right to prohibit firearms.
- Potential issues with requiring “opt in” signage:
 - ◆ Ignorance of the law can be a defense to prosecution if a city ordinance criminalizes conduct that is typically legal.
 - ◆ Lawsuit recently filed in New York Dist. Court challenging an “opt in” signage requirement. (*Paladino v. Bruen*)

CCW Permits

- Penal Code Section 26150 and 26155 requires person seeking a CCW to apply to county sheriff or police chief.
- Statutory requirements:
 - ◆ Good cause
 - Now unconstitutional under *NYRPSA v. Bruen*
 - ◆ Good moral character
 - ◆ Firearms training class
 - ◆ County/city residency or employment
- Cannot be a “prohibited person” (e.g., violent crimes, restraining orders, mental health involuntary holds)

SB 918 – Proposed changes to state CCW law

- Delete good cause requirement
- Further refine analysis of “moral character”.
 - ◆ In-person interview, background investigation, and character witnesses.
 - ◆ Long list of disqualifying criminal convictions, restraining orders, incarcerations, active abuse of controlled substances, history of loss/theft of firearms, etc.
 - ◆ Psychological assessment if there is “compelling” evidence of a public safety concern.

COUNCIL FEEDBACK

Staff requests feedback on the City Council's desire to pursue the following potential ordinances:

1. Under age 21 restrictions?
2. Definitions of sensitive places?
3. CCW permit requirements?
4. Other gun safety measures?