

Safe Act Ruling Bullets

I. Parties Involved

- a. Main Litigants
 - i. Plaintiffs—NYS Rifle and Pistol Association, several individual gun owners, several gun and ammo manufacturers
 - ii. Defendants—Governor Cuomo, Attorney General Schneiderman, SP Superintendent Joe D’Amico
- b. Amicus Parties
 - i. There were numerous amicus submissions on both sides of the suit. For our part, the Association and several individual Sheriffs were participated in an amicus brief submitted in favor of the position taken by the plaintiffs.

II. Topic Discussed in Decision

- a. The suit only challenged certain provisions of the SAFE Act:
 - i. Definition of Assault weapon
 - 1. It should be noted that the suit did not directly challenge the states authority to regulate a weapon that could be considered an assault weapon. Registration and transfer restrictions of these weapons were not even discussed. There seems to be no debate that, if something is an assault weapon, stringent restrictions can be put upon them. Therefore, the substantive argument in the case was what over what actually qualifies as an assault weapon.
 - ii. Authority of State to ban 10+ round magazines
 - iii. Constitutionality of the 7 round loading limit
 - iv. Vagueness of certain terms/provisions contained in the Act
 - v. Requirement that ammo sales must take place in person violates the Commerce Clause of the US Constitution
 - vi. *NOTE*--SAFE Act provisions related to assault weapon registration, pistol permit recertification, and mental health reporting were not challenged in this suit.

III. Court Ruling

- a. Assault weapons--Court determined that the state’s new definition of assault weapons is “substantially related to furthering and important governmental interest” in public safety. The one-feature test is constitutional and must be enforced. All regulations on transfer and registration of assault weapons are still in effect.
- b. Magazines-The state has the authority to completely ban possession of 10+ round magazines in NYS. The court’s rationale in this area was similar to allowing regulation/redefinition of assault weapons; the state was able to demonstrate that the very availability of these magazines poses a public safety risk warranting and warranting state intervention. These types of magazines must still be destroyed, sold to a dealer or out-of-state buyer, or permanently modified by January 14, 2014.

- c. 7 round limit--The court could find no justification for 7 round limit, and ordered it struck down writing, "Unlike the restrictions on assault weapons and large-capacity magazines, the seven-round limit cannot survive." The court found this to be an arbitrary restriction, in light of the fact that 10 round magazines would still be sold in NYS, and that it could potentially disadvantage a law-abiding person defending their home against an intruder.
- d. Vagueness—Some provisions of the SAFE Act were struck for being vague, and therefore unenforceable:
 - i. Muzzle "break"—This term has no meaning. It is a typo of muzzle "brake", a device which reduces recoil. The judge said the clause, as written, is meaningless and therefore too vague to be enforced. As such, a semiautomatic weapon which has a muzzle brake, and no other feature, now does not qualify as an assault weapon, does not need to be registered, and is not subject to any of the transfer or sales restrictions.
 - ii. Semi-automatic Version of an Automatic Weapon— Another provision that was struck for vagueness was the section referring to and regulating weapons that are a "semiautomatic version of an automatic rifle, shotgun or firearm." The judge found the language "excessively vague as an ordinary person cannot know whether any single semiautomatic pistol is a 'version' of an automatic one." Pg. 45. So again, if such a weapon does not otherwise qualify as an assault weapon, it is not to be considered one.
 - iii. "And-if Clause"— Finally, the last provision that was struck for vagueness was a clause in Penal Law §265.36 which makes it illegal to possess a large capacity ammunition feeding device manufactured prior to Sept. 13, 1994 "and if...such person lawfully possessed such large capacity feeding device before the effective date...that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition." The struck language here has no real effect on the law. Large capacity magazines are still defined as those able to accept more than 10 rounds of ammunition, regardless of when they were made.
- e. In person ammo sales—Finally the court ruled that this is not a violation of the commerce clause as it does not treat NYS ammo dealers any different than out of state ammo dealers. If a business wants to sell bullets in NY, they must have a physical presence and do so face to face.

Final Takeaways from the Case

--This is only a first step in terms of litigation on this issue. Both sides have said they plan to appeal the ruling. The case will be appealed to the U.S. 2nd Circuit Court of Appeals, located in NYC.

--The applicability of this ruling statewide is still a matter of debate. The Sheriffs Association has advised its members not to enforce the struck provisions of the law, but there is no guarantee that other law enforcement officials will not arrest a person for exceeding the 7 round load limit, or any other provision that was struck. Various prosecutors across the state have said that they will continue to prosecute these cases if they are brought to them, while others have said they will not pursue them. All citizens should continue to use their best judgment and monitor what their local law enforcement representative say on the matter.