

Second Circuit Decides Major Gun Control Case

Author : Jeff Welty

Categories : [Uncategorized](#)

Tagged as : [assault rifles](#), [assault weapon ban](#), [assault weapons](#), [firearms](#), [gun control](#), [gun rights](#), [guns](#), [second amendment](#), [second circuit](#)

Date : October 20, 2015

The Second Circuit just decided a case regarding gun control legislation in Connecticut and New York. It's important in its own right, and because it concerns two issues that the Supreme Court could soon take up: bans on assault weapons and on high-capacity magazines.

Background. Both states had assault weapon bans in place before the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut. Those bans were modeled on the federal assault weapon ban that was enacted in 1994 and allowed to expire in 2004. (I'll note here that some people object to the use of the terms "assault weapons" and "assault rifles," viewing them as politicized terms that focus mainly on the appearance of certain weapons rather than their function. I'm going to use the terms anyhow since the legislatures and the court did so.)

Laws after Sandy Hook. In 2012, Adam Lanza killed 20 children and six adults at Sandy Hook before shooting himself. He used an assault rifle and carried 30-round magazines.

In response to the incident, New York passed new laws, defining assault weapons more broadly to include any semiautomatic rifle with at least one of a list of military-style features such as pistol grips or telescoping stocks (previously, only guns with two such features qualified); prohibiting magazines with a capacity larger than ten rounds; and prohibiting, under most circumstances, gun users from loading more than seven rounds into a magazine. (Initially, legislators had wanted to ban magazines larger than seven rounds, but because magazines with a capacity smaller than ten rounds are not widely available, they adopted the loading limit as a compromise.)

Connecticut also expanded its definition of assault weapons, moving from a two-factor test to a one-factor test and listing 183 specific models that were prohibited. Like New York, it prohibited magazines with a capacity larger than 10 rounds, but unlike New York, it did not adopt a loading limit.

District court proceedings. A "combination of advocacy groups, business and gun owners" sued in each state, alleging that the laws violated the Second Amendment and that parts of the measures were unconstitutionally vague. A federal district court in Connecticut upheld that state's laws, and a federal district court in New York mostly upheld that state's measures.

Second Circuit ruling. The Second Circuit ruled "that the core challenged prohibitions of assault weapons and large?capacity magazines do not violate the Second Amendment," nor are the laws in question unduly vague. However, it struck down the seven-round load limit, as discussed further below. The case is [New York State Rifle and Pistol Association, Inc. v. Cuomo](#).

First, the court ruled that the measures did implicate the Second Amendment. The firearms and magazines at issue are in common use, as millions of Americans own weapons defined as assault weapons under the laws. And the court assumed, without deciding, that most such weapons and magazines are used by law-abiding gun owners for lawful purposes.

Then, the court determined that the measures would be reviewed under intermediate scrutiny, because they burden gun rights significantly but do not strike at their core. It found that the laws in question “impose a substantial burden on Second Amendment rights” because they are complete prohibitions of certain types of weapons, and because the bans extend even into the home, and therefore they require “the application of some form of heightened scrutiny.” However, strict scrutiny is not required because many firearms and magazines remain available, meaning that the impact of the challenged laws is not “severe.”

Applying intermediate scrutiny, the court ruled as follows:

- *Assault weapons.* As to assault weapons, the court found that “[w]hen used, these weapons tend to result in more numerous wounds, more serious wounds, and more victims [than other firearms]. These weapons are disproportionately used in crime, and particularly in criminal mass shootings like the attack in Newtown. They are also disproportionately used to kill law enforcement officers.” Therefore, the court found, laws targeting assault weapons are sufficiently tailored to survive review.
- *High-capacity magazines.* Likewise, the court found that “[l]arge-capacity magazines are disproportionately used in mass shootings, like the one in Newtown, in which the shooter used multiple large-capacity magazines to fire 154 rounds in less than five minutes.” Therefore, laws addressing high-capacity magazines satisfy intermediate scrutiny.
- *Loading limit.* By contrast, the court struck down New York’s seven-round loading limit. Since ten-round magazines remain legal and readily available, a loading limit would do nothing to impact criminals’ ability to fire ten rounds without reloading.

The court also rejected the plaintiffs’ vagueness challenges.

Context: other courts have upheld similar laws. Several federal circuits have upheld assault weapon bans and prohibitions on high-capacity magazines. *See, e.g., Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (applying intermediate scrutiny and upholding an assault weapon ban because it “promote[s] the Government’s interest in crime control in the densely populated urban area that is the District of Columbia” and a ban on magazines larger than ten rounds because they “pose a danger to innocent people and particularly to police officers”); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015) (similar, and stating that “assault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in aggregate” than other weapons and are “the weapons of choice in mass shootings”). *Cf. Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (ruling that the federal assault weapon ban did not violate equal protection).

Will the Supreme Court weigh in? Maybe. The Court is currently considering a petition for a writ of certiorari in the *Friedman* case, as noted [here](#). It’s a hot-button issue and it has percolated through several lower courts, but there’s no circuit split so the Court could decide to leave it alone. From a political standpoint, gun control advocates may have moved away from a focus on assault weapons and towards expanding background checks, based on a belief that the former are of limited effect. Pro Publica discusses the strategy [here](#).

Impact in North Carolina? Not much. We don’t have an assault weapons ban or a limit on magazine capacity, and the legislature has been moving mostly in the direction of increasing gun rights, not constraining them. Of course, Congress could enact either measure at any time, but the likelihood of that in the run-up to a presidential election seems slight.