



Via Electronic Mail

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Speaker of the House Javier Martínez

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President Pro Tempore Mimi Stewart

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House Judiciary Chair Christine Chandler

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Senate Judiciary Chairman Joseph Cervantes

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CC: Members of the House and Senate Judiciary committees

Re: Proposed Legislation's Unconstitutional Violation of Second Amendment Rights

Dear Mr. Speaker, Madam President, and members of the House and Senate Judiciary Committees,

It has come to my attention that the New Mexico Legislature is considering legislation that would ban so-called "assault weapons" and standard-capacity magazines. These bills include HB 101, HB 50, and SB 171, all of which would unconstitutionally infringe on the right to keep and bear arms as protected by the Second Amendment.

The Supreme Court ruled in *D.C. v. Heller* that the Second Amendment protects the right of law-abiding citizens to own weapons in common use by law-abiding citizens for self-defense, and in *Staples v. United States* the Court recognized that semi-automatic weapons (such as those banned by your proposed legislation) "traditionally have been widely accepted as lawful possessions," and they are indeed owned by millions of law-abiding Americans for the purposes of self-defense.

Last year, the Supreme Court ruled in *NYSRPA v. Bruen* that a government wishing to infringe on rights protected by the Second Amendment must prove that its regulations are consistent with the text, history, and tradition of the Second Amendment. To be clear, this burden is on the government to prove in order for the law to withstand Constitutional scrutiny. And as these gun and magazine bans are categorically opposed to the text, history, and tradition of the Second Amendment, these policies must fail any legal challenge where the Supreme Court's precedent is faithfully applied.

Our legal foundation, the National Foundation for Gun Rights, is currently engaged in litigation aimed at overturning state and local laws banning these weapons and magazines, and we are prepared to add New Mexico to that list.

Should any of you wish to read the nature of the legal arguments you will be facing, here is a list of these ongoing lawsuits over semi-automatic weapon and magazine bans:

- *RMGO v. Superior*, U.S. District Court, District of Colorado (22-cv-2680)
- *Gates v. Polis*, U.S. District Court, District of Colorado (22-cv-01866)
- *Capen v. Healey*, U.S. District Court, District of Massachusetts (1:22-cv-11431)
- *NAGR v. Lamont*, U.S. District Court, District of Connecticut (3:22-cv-01118)
- *NAGR v. Highland Park*, U.S. District Court, District of Illinois (1:22-cv-04774)
- *NAGR v. Naperville IL*, U.S. District Court, District of Illinois (1:22-cv-04775)
- *NAGR v. Lopez*, U.S. District Court, District of Hawaii (1:22-cv-00404)

I would, in particular, draw your attention to the first Temporary Restraining Order we were granted by Judge Raymond P. Moore (appointed by President Barack Obama) in our initial lawsuit against Superior, CO's just-enacted gun ban. In it, Judge Moore states:

"In its simplest terms, the Second and Fourteenth Amendments prohibit governments from preventing 'law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.' ...

"The Court is sympathetic to the Town's stated reasoning. However, the Court is unaware of historical precedent that would permit a governmental entity to entirely ban a type of weapon that is commonly used by law-abiding citizens for lawful purposes, whether in an individual's home or in public....Based on the information before it, [t]he Court concludes that there is a strong likelihood that Plaintiffs will be successful on the merits as to this provision."

This Temporary Restraining Order and another granted shortly afterward resulted in a stay of enforcement for four separate jurisdictions throughout the litigation – the functional equivalent of a preliminary injunction, voluntarily entered into by all parties. And while our other lawsuits are still in early stages, we anticipate the courts agreeing with Judge Moore's stated reasoning and recognizing that there is no justification that can be offered to make gun bans consistent with the Second Amendment.

I urge you to read and consider carefully the concerns stated above and to refrain from passing this legislation. Should any bill banning the sale, acquisition, or possession of so-called "assault weapons" or standard-capacity magazines be signed into law, the National Foundation for Gun Rights is prepared to file a lawsuit against the State of New Mexico in order to protect the constitutional rights of her citizens.

Regards,



Dudley Brown
President
National Foundation for Gun Rights