

Pro-Gun Forces To Appeal Federal Court Ruling

Barely 24 hours after a federal judge upheld Connecticut gun control laws passed in the wake of the Newtown school massacre, the lawyer who challenged the constitutionality of the measures on behalf of gun owners notified the U.S. Circuit Court of Appeals for the Second Circuit of his clients' intent to keep fighting.

Attorney Brian Stapleton, who practices in both Stamford and White Plains, N.Y., represents the plaintiffs, which include the Connecticut Citizen's Defense League and Coalition of Connecticut Sportsmen. Their lawsuit names Gov. Dannel Malloy and other state officials and specifically objects, among other things, to the state's decision to add more than 100 firearms to the state's assault weapons ban and restrict the sale of large-capacity ammunition magazines.

Stapleton said that while U.S. District Judge Alfred Covello ruled against the Second Amendment advocates challenging the law, the judge's 47-page opinion also offers fodder for an appeal.

Covello began his written decision, released Jan. 30, by stressing that his role was to interpret the law, not to make policy judgments. "Whether regulating firearms is wise or warranted is not a judicial question; it is a political one," he wrote.

The judge's legal analysis relied heavily on the U.S. Supreme Court's 2008 decision in *District of Columbia v. Heller*, in which the justices, in a 5-4 vote, concluded that the Second Amendment protects private ownership of firearms that are "in common use."

In the Connecticut case, the plaintiffs argued that assault weapons are commonly used for hunting, shooting competitions and by individuals protecting their homes and themselves. The state disputed the claim of widespread usage. Covello actually sided with the plaintiffs on the question, but he nevertheless concluded the state was justified in banning assault weapons and large-capacity magazines because it had a legitimate interest in reducing violence.

"While the act burdens the plaintiffs' Second Amendment rights, it is substantially related to the important governmental interest of public safety and crime control," Covello wrote.

He added that the Second Amendment rights of gun owners are protected by the wide array of non-assault weapons that can be used for protection and hunting. He further noted that while some of the language used in the legislation was "not written with the utmost clarity," those passages were not "unconstitutionally vague."

Stapleton said he took special note that the ruling acknowledges the plaintiffs' Second Amendment rights "before it guts them." He added that Covello's acknowledgment that firearms and magazines are "in common use" and have a lawful purpose bolsters the argument of his clients.

The legislature approved a sweeping gun and weapon control measure last spring, just months after a young gunman shot and killed his mother and 26 students and educators at Sandy Hook Elementary School. The legislation prompted three lawsuits in all.

On Dec. 3, U.S. District Judge Janet Hall rejected the arguments of the Newtown-based National Shooting Sports Federation, which had argued that the gun control law should be voided because the legislature deviated from its normal practices in passing the measure. The foundation complained that the General Assembly failed to hold public hearings on the bill or discuss it in open meetings of legislative committees.

Still pending in New London Superior Court is a lawsuit brought on behalf of a group called the Disabled Americans for Firearms, which claims the new restrictions on assault weapon are discriminatory. Scott Camassar, an attorney with the Law Firm of Stephen M. Reck in North Stonington, has argued that military-style rifles, such as the AR-15, provide an "ease of handling, low recoil, adjustable features and customizability" that make them particularly suited to disabled persons who want to lawfully use a firearm.

But it was the federal lawsuit filed by Stapleton that had perhaps the highest profile. Among those filing amicus briefs was the National Rifle Association.

Stapleton had claimed the new law is overly broad and violates the Second Amendment. In late August, Stapleton took the unusual step of filing a motion for summary judgment, even before the case was fully briefed. The reason, he said, was that Covello asked the plaintiffs to submit a motion in support of their cause of action.

At the same time, the state also filed a cross-motion for summary judgment, and it was that motion that Covello granted.

The decision was reached on the day that an oral argument on the summary judgment motions had initially been scheduled. That hearing was reportedly cancelled by the judge without explanation two weeks ago.

"We are disappointed with Judge Covello's decision," Stapleton told the Law Tribune. "This is a long way from over. Stapleton said his goal was to have the case heard by the Second Circuit before the end of the year.

Two Connecticut political leaders praised the decision.

"The common-sense measures we enacted last session will make our state safer, and I am grateful for the court's seal of approval," said Gov. Dannel Malloy. "Let's not forget that this has happened before. In prior instances when Connecticut has passed related firearms laws, there have been similar challenges and they have all been unsuccessful."

Attorney General George Jepsen says the state will continue to defend the law, which he called "entirely appropriate, sensible and lawful."

But another Connecticut lawyer who has represented gun owners in Second Amendment cases said there is a contradiction built into Covello's ruling.

"The court found that police need these [assault] weapons to counteract dangerous criminals, when it is civilians who are the target of criminals and the police arrive later," said Torrington attorney Rachel Baird. "But by admitting that there are dangerous criminals that must be met by the force of police officers with assault weapons, where does that leave civilians when police are not around?"•