Timothy Mulverhill
16 Coburn Road East
Sherman, CT 06784
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Gun Violence Prevention Working Group

While I am opposed to the proposed legislation aimed at restricting the lawful use of firearms in the state of Connecticut, I would refrain from voicing the usual appeals to common sense and our Second amendment protections in lieu of a brief discussion of the legal issues the legislature may discover upon implementation of these proposals:

Constitutional Issues Post Heller and McDonald

Many ideas which will be advanced in regards to firearms are not taking into account that Benjamin v. Bailey, 662 A.2d 1226, 234 Conn. 455 (1995) no longer applies in a world of post-Heller and McDonald jurisprudence (US Supreme Court).

The 14th amendment to the Federal Constitution has been applied to the Federal Right to Bear Arms in McDonald v. Chicago, 561 US 3025 (2010); thus the lack of 14th amendment analysis in the Benjamin v. Bailey renders it a poor map for legislative action.

Further, even under the text of Benjamin v. Bailey, the State of Connecticut has gone about as far as it can go in regards to restricting firearms:

"*We conclude, therefore, that as long as our citizens have available to them some types of weapons, that are adequate reasonably to vindicate the right to bear arms in self-defense, the state may proscribe the possession of other weapons without infringing on article first, section 15.*"

The current Assault Weapon Ban in Connecticut has heavily restricted what citizens of this state may purchase and possess; to further restrict firearms would be to lead one back to the abrogation of Article First, Section 15 - and thus not only run the legislature afoul of United States Supreme Court decisions (Heller and McDonald) but our own State Supreme Court as well.

Prohibition of a Class of Arms, Post Heller

Heller (pages 628-29) rejected the handgun ban because it constituted a prohibition on an entire class of arms that is overwhelmingly chosen for self-defense by American society today.

A law that bans common rifles would be similarly unconstitutional, as it runs squarely into the issues previously decided by the Supreme Court in 2008, overruling Benjamin v. Bailey, decided in 1995.

Firearm and Ammunition Taxes

In 1819, the United States Supreme Court said in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 4 L.Ed. 579 ,"the power to tax is the power to destroy." - and it was right.

This case is clear - A state cannot have authority under the Federal Constitution to destroy or tax that which established by the Federal Constitution, and under Heller (DC Case)& McDonald (Chicago 2010) it is clear that the Federal Constitution protects the Right to Bear Arms. The tax in McCulloch v. Maryland was 2% and the Supreme Court ruled it unacceptable.

The proposed 50% tax isn't even worth discussing as it cannot be even seriously considered as constitutional.

A sales tax imposed on all goods sold in a state is one thing - using the taxing power of a state to attack what the Supreme Court ruled an individual right under the Heller case, quite another.

Government may not impose a tax directly upon the exercise of a constitutional right itself Murdock v. Pennsylvania, 319 U.S. 105 (1943); Follett v. McCormick, 321 U.S. 573 (1944) (license taxes upon Jehovah's Witnesses selling religious literature invalid).

A tax singling out the press for differential treatment is highly suspect, and creates a heavy burden of justification on the state. This is so, the Court explained in 1983, because such ''a powerful weapon'' to single out a small group carries with it a lessened political constraint than do those measures affecting a broader based constituency, and because ''differential treatment, unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression.'' 34 The state's interest in raising revenue is not sufficient justification for differential treatment of the press. Moreover, the Court refused to adopt a rule permitting analysis of the ''effective burden'' imposed by a differential tax; even if the current effective tax burden could be measured and upheld, the threat of increasing the burden on the press might have ''censorial effects,'' and ''courts as institutions are poorly equipped to evaluate with precision the relative burdens of various methods of taxation.'' 35

[Footnote 34] Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575, 585 (1983) (invalidating a Minnesota use tax on the cost of paper and ink products used in a publication, and exempting the first $100,000 of such costs each calendar year; Star & Tribune paid roughly two-thirds of all revenues the state raised by the tax). The Court seemed less concerned, however, when the affected group within the press was not so small, upholding application of a gross receipts tax to cable television services even though other segments of the communications media were exempted. Leathers v. Medlock, 499 U.S. 439 (1991).

FN 35 also quotes from Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 at 589

As you can see, singling out the necessaries of a constitutionally protected right are not going to be found to be constitutional.

A Newspaper does not exist without ink & paper/ the right to bear arms does not exist without ammunition.

As the right to keep and bear arms is an individual right, its expression is protected - thus, a punitive tax on ammunition as proposed will not be found to be constitutional.

Insurance Requirements

As the Right to Bear Arms has been found to be a fundamental, individual right, it cannot be merely be regulated with mere rational basis tests for laws.

Fundamental rights are protected under either Intermediate Scrutiny or Strict Scrutiny.

As Intermediate Scrutiny is only applicable to Sex-based classifications, Illegitimacy and Sexual orientation - clearly not part of the discussion at this time, we are left with strict scrutiny.

To pass strict scrutiny, the law or policy must satisfy three tests:

1. It must be justified by a compelling governmental interest. While the Courts have never brightly defined how to determine if an interest is compelling, the concept generally refers to something necessary or crucial, as opposed to something merely preferred. Examples include national security, preserving the lives of multiple individuals, *and not violating explicit constitutional protections* - such as the right to bear arms.
2. The law or policy must be narrowly tailored to achieve that goal or interest. If the government action encompasses too much (overbroad) or fails to address essential aspects of the compelling interest, then the rule is not considered narrowly tailored - thus, your proposed laws will fail unless the laws are narrowly tailored to saving lives, not restricting the rights of law abiding citizens.
3. Finally, the law or policy must be the least restrictive means for achieving that interest, that is, there cannot be a less restrictive way to effectively achieve the compelling government interest.

Respectfully, you have not kept this part of the constitutional requirements in mind. The laws proposed are not narrowly tailored to your proposed goal. Indeed, they are a blunt instrument, proposing to criminalize and penalize law abiding citizens who disagree with your proposals...and do not even address the real problem: Dangerous criminals and the mentally ill.

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