

Fiscal Impact of proposed 2nd Amendment restrictions.

Summary of Fiscal Impact reasoning:

Proposed 2nd Amendment restrictions are not consistent with recent US Supreme Court findings that the right to bear arms is an individual right that is amenable to only limited restriction.

Such limited restrictions (per Heller) include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms”.

Such limited restrictions (per Heller) do NOT include banning “the sorts of weapons” *that are* “in common use at the time.”

As semi-automatic rifles or modern sporting rifles are among the most popular firearms in common use today, banning them would not withstand constitutional challenge. Opponents of any ban would prevail in a final court challenge. The State of Connecticut would have squandered years of effort and taxpayer resources to pursue this. Finally, Connecticut taxpayers could be liable for reimbursement of attorney’s fees to the NRA and others who challenged such a misguided ban.

Discussion:

The General Assembly is investigating means to prevent the recurrence of tragedies similar to what occurred in Sandy Hook on 12/14/12. The three primary directions of this investigation are

1. School security,
2. Mental Health, and
3. Gun control.

School security requires adequate funding for necessary infrastructure, training, planning, staffing and overcoming the irrational fear of having trustworthy law-abiding armed trained staff in schools.

Addressing Mental Health issues requires that we as a society consider mental health to be a real health issue, one whose treatment spectrum extends from chronic through treated and cured. A level of research and care commensurate with that given to diseases of the body will be necessary.

In the context of this post-Sandy Hook discussion we need to decide the ramifications to the patient for accessing mental health care and how it impacts public safety while maintaining some modicum of privacy for the patient. We need to answer the question, “to what degree can the government infringe on the privacy of those seeking mental health care”? In crafting a response you must recognize that privacy is a penumbral right, not an enumerated right spelled out in our Bill of Rights.

Lastly, would proposed changes in gun laws help prevent future events similar to what occurred in Sandy Hook on 12/14/12? And are such changes consistent with enumerated rights spelled out in the 2nd amendment and its Connecticut counterpart

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The Constitution of the United States, Amendment 2. Adopted 1791

Every citizen has a right to bear arms in defense of himself and the state.

Constitution of the State of Connecticut, Article First, Section 15. Adopted 1965

Both documents guarantee every citizen the right to bear arms. The General Assembly therefore is forbidden from preventing citizens from owning arms. But are Connecticut citizens allowed to possess any arms that they want? The above text is silent on that issue.

In 1993 Connecticut adopted a ban of certain semi-automatic rifles or modern sporting rifles in legislation commonly referred to as the CT Assault Weapons Ban (CTAWB for short). With limited exceptions it banned the possession, transfer or manufacture of certain rifles by either model name or a list of features. This law was challenged and upheld in 1995 by the state Supreme Court.

In 2008 the Supreme Court of the United States (SCOTUS) in *District of Columbia et al, v. Heller*, stated

...[W]e have explained, that the sorts of weapons protected were those “in common use at the time.”

We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many amici who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, (citations removed). But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of ...guns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

So, in addition to clarifying that Americans have an individual right to bear arms under the 2nd amendment, SCOTUS notes that weapons in common use at the time are protected. SCOTUS further addressed concerns of gun violence noting that the

enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of [guns] held and used for self-defense in the home.

In 2010 the Supreme Court of the United States in *McDonald et al, v. Chicago et al.*, stated

The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the States.

The right to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored so long as the States legislated in an evenhanded manner.

[T]he Fourteenth Amendment's Due Process Clause incorporates the Second Amendment right recognized in *Heller*.

The *McDonald* decision extends the 2nd Amendment as interpreted by the *Heller* decision to the states. For practical purposes it means that the General Assembly cannot ban a class of weapons that are in common use by its citizens and have the law withstand constitutional scrutiny.

The AR-15 is the civilian version of the military's M-16 and M-4. In surveys, about 50 percent of buyers say they own AR-15s for target practice; 30 percent for hunting and the rest for personal protection. Despite often being called a fringe gun by critics, the AR-15 is the most popular gun sold in the US today, according to gun dealers. Roughly 220,000 were sold in 2010, after peaking at more than 300,000 immediately following Obama's election.

The landscape for gun bans has changed since the adoption of the CTAWB in 1993. SCOTUS has twice upheld the 2nd amendment as an individual right and that right is now enforceable to the states under the 14th amendment. As a country our fellow citizens have been embracing guns and the shooting sports like never before. The demographic base of gun ownership has been growing. The uptick may have begun in 2008 but it accelerated with the 2009 *Heller* decision that legitimized individual gun ownership in the eyes of many.

In my opinion, enacting laws to ban a class of rifles or the accessories (magazines)

that are necessary for their satisfactory functioning is a fool's errand because:

1. They will not impact criminals who by their nature are not inclined to obey the law.
2. They will not impact the mentally ill or the downright evil who are determined to achieve their hideous goals.
3. They will criminalize ownership of a class of rifles and accessories that that are in common use by growing numbers of citizens for various legal purposes.
4. They will not achieve the goal of preventing the recurrence of tragedies similar to the one in Sandy Hook on 12/14/12.

Any law enacted by General assembly to ban certain semi-automatic rifles or modern sporting rifles and their accessories (magazines) will be challenged and overturned in the federal courts. Such bans are not consistent with recent 2nd Amendment jurisprudence and they will be overturned.

The cost of this folly will be the missed opportunity to fashion a workable plan to address the root causes of the demented attack in Sandy Hook in an expeditious manner. The State of Connecticut would have squandered years of effort and taxpayer resources to pursue this. Finally, Connecticut taxpayers could be liable for reimbursement of attorney's fees to the NRA and others who challenged such a misguided ban.

Three or more year's delay for an appellate judgment to direct the states energies into workable solutions is not satisfactory to me as a taxpayer. I'll wager that it will not be satisfactory to you either.

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