COVID-19 Emergency Restrictions on Firearms

Samuel A. Kuhn

Introduction

The fight over gun rights and the Second Amendment has been on prominent display during the U.S. response to the novel coronavirus. In all 50 states, governors have used emergency authority to impose unprecedented, temporary bans on a wide array of industries and activities deemed either "non-essential" or "non-life-sustaining" in the name of public health, placing restrictions on even constitutionally protected activities like religious and public assembly. However, the governors of only six states — Massachusetts, Michigan, New Mexico, New York, Pennsylvania, and Washington, and public health officials in four California counties — closed or significantly restricted the operation of federal firearms licensees (FFLs) and other gun stores. In each state but Washington, where federal firearm licensees (FFLs) openly flouted Governor Jay Inslee's executive order, the temporary closure was immediately challenged in court by gun rights groups.

Meanwhile, across the country, gun sales have skyrocketed during the pandemic as organizations like the National Rifle Association stoked fears of disorder and draconian restrictions which were mostly never implemented.[1] Nationwide, Americans bought more guns in March 2020 — between two and 2.5 million,[2] an increase of as much as 85% compared to the previous March — than at any time in U.S. history other than January 2013, after the Sandy Hook mass shooting and President Obama's reelection prompted concern that gun control was imminent.[3] Paradoxically, in states where FFLs were ordered closed, data from the National Instant Criminal Background Check System indicates that more guns were bought while the sheltering and closure orders were in effect in April 2020 than in the prior year.[4] The number of firearm sales also increased more than 80% year-over-year in April and May 2020.[5] An unprecedented proportion of firearms purchased in this period were handguns[6] bought by first-time, and therefore often less experienced, gun buyers,[7] a particularly volatile combination given the dramatic economic decline and quarantine tensions that experts believe have combined to produce increases in intimate partner violence,[8] suicides,[9] accidents involving children,[10] and other forms of violence.[11]

This paper seeks to understand the extent and limitations of emergency gubernatorial powers to impose restrictions on firearms and related paraphernalia and services, reviews COVID-19 firearms restrictions and resulting legal challenges, and considers the unintended hazards that litigating these orders is likely to have on unsettled Second Amendment jurisprudence.

Foundations of Emergency Police Power

Governors enjoy expansive police powers to regulate their states in the name of "public health, safety and morals."[14] The "police power," a term coined by the Supreme Court in 1827, derives from the Founders' commitments to maintaining a significant sphere of state sovereignty,[12] and is generally viewed as an unenumerated Tenth Amendment power of the states.[13] The Supreme Court recognized "[t]he safety and the health of the people" as "in the first instance, for that [state] to guard and protect" in the 1905 vaccine-related case *Jacobson v. Commonwealth of Massachusetts*.[16]

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The Journal of Law, Medicine & Ethics, 48 S2 (2020): 119-125. © 2020 The Author(s)
DOI: 10.1177/1073110520979410

Police powers are generally granted by state constitutions,[17] whereas state statutes often grant or clarify the extent of additional emergency authority.[18] Most states allow their governors to temporarily suspend statutes and regulations during an emergency. A plurality only permit their governors to issue emergency regulations and urgency statutes.[19] Every governor may declare states of emergency in the event of disaster, including pandemics; such declarations generally allow them to invoke broad powers, including commandeering private property[20] and restricting state residents' movements.[21]

In all states, governors may impose emergency restrictions on constitutional rights that may not be justified in non-emergency times. This authority is primarily found through a combination of federal constitutional interpretation of state police powers and state statutes providing for broad emergency power, and has been applied during COVID to place restrictions on a variety of activities protected under state and federal constitutions.

Evaluating Challenges to Emergency Powers During COVID-19: Differing Approaches

Courts and commentators disagree over how much deference to give emergency orders that burden constitutional rights. On one hand, the highly deferential *Jacobson* standard provides robust cover for such restrictions — so robust that critics refer to it as the "suspension principle," meaning that it effectively suspends judicial review. Others caution against resorting to the *Jacobson* standard on doctrinal and normative grounds, arguing that "ordinary" scrutiny is sufficiently flexible to effectively weigh the magnitude of an emergency without compromising the constitutional check — especially crucial in emergencies — of judicial review.

Steven Vladeck and Lindsay Wiley argue compellingly against applying the suspension principle to coronavirus restrictions. Specifically, they argue that (1) the suspension principle is premised on a crisis being finite, whereas a crisis like COVID-19 has precipitated indefinite and/or recurring restrictions imposed on civil liberties; (2) proponents of the principle are overly concerned that judicial review will be too harsh on government emergency responses, when in fact COVID-19 decisions in diverse jurisdictions have upheld a variety of restrictions without reference to *Jacobson*; and, (3) that *Jacobson* effectively removes the courts — the institution best situated to check governmental infringement upon civil liberties during a crisis — from the role our constitution requires of them.[22]

Indeed, numerous constitutional challenges to COVID-19 restrictions have been rejected by courts by applying ordinary scrutiny instead of citing *Jacobson*. For example, the Pennsylvania Supreme Court rejected multiple federal constitutional claims against Governor Tom Wolf's Executive Order closing "non-life sustaining businesses" in *Friends of DeVito v. Wolf*, without using heightened *Jacobson* deference.[23] In *DeVito*, the court applied "ordinary scrutiny" to dismiss plaintiffs' four separate claims that the order, which closed their state House of Representatives campaign offices, violated the U.S. and Pennsylvania constitutions. For example, the court applied the *Mathews v. Eldridge*[24] three-part due process balancing test to determine whether the state provided sufficient pre-deprivation notice and post-deprivation opportunities to challenge its closure order. Pre-deprivation notice was held to be impossible given the abrupt, looming disaster of pandemic.[25]

Even so, the *Jacobson* standard seems to predominate in opinions considering the lawfulness of COVID-related restrictions. Chief Justice Roberts did invoke *Jacobson* in his majority concurrence *South Bay Pentecostal Church v. Newsom*, 2020 WL 2813056 (2020) where his was the fifth vote to deny an application for injunctive relief seeking to overturn California Governor Gavin Newsom's restrictions on congregating in places of worship during the pandemic.[26] Chief Justice Roberts wrote that when state officials "undertake [ ] to act in areas fraught with medical and scientific uncertainties," their latitude "must be especially broad."[27] Such actions, he continued, should not be subject to second-guessing by an "unelected federal judiciary," which lacks the background, competence, and expertise to assess public health and is not accountable to the people.[28] The majority in *South Bay* found that the restrictions on the Free Exercise Clause were permissible because they do not specifically target religious institutions, treating secular gatherings of similar size similarly and permitting only dissimilar institutions and activities to persist.

This purportedly more deferential standard has not amounted to a rubber stamp for all COVID restrictions, however. Other emergency restrictions ordered by governors, such as governors' suspension of "nonessential" medical procedures including abortions, have met mixed fortunes even though courts applied *Jacobson* deference rather than ordinary scrutiny. Some courts followed similar analyses as applied in *South Bay* and came to analogous results. For example, contrary to the district court's ruling that a *de facto* abortion ban would cause irreparable harm, the Fifth Circuit held that Texas Governor Ken Paxton's emergency powers did in fact allow the restriction.[29] The Fifth Circuit found that all constitutional rights, including the right to abortion, can face restriction when

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needed to combat a public health emergency, unless the Supreme Court had expressly ruled otherwise.[30] An Arkansas district court facing similar facts and procedural history applied the same standard, finding that the restriction had some "real or substantial relation" to the public health crisis and was not "beyond all question, a plain, palpable invasion of rights secured by the fundamental law."[31]

On the other hand, the Sixth and Tenth Circuits found that restrictions placed on abortion under governors' enhanced emergency police powers did cause irreparable harm and violated the Fourteenth Amendment right to abortion.[32] The Sixth Circuit noted that although *Jacobson* does alter their analysis of burdens placed on abortion in the *Roe*/*Casey* framework, the pandemic has not "demoted *Roe* and *Casey* to second-class rights, enforceable against only the most extreme and outlandish violations."[33]

Firearms Restrictions and Litigation During COVID-19

Seven states mandated complete or partial closures of gun stores, ammunition stores, and/or firing ranges pursuant to orders that left them off lists of either "essential" or "life-sustaining" businesses. An eighth, Connecticut, allowed state officials to suspend fingerprinting services necessary for residents to obtain a handgun. However, as of this writing, relatively few opinions have been handed down regarding challenges to firearms restrictions from the pandemic period because most of the claims underlying the filed firearms complaints were either not enforced, became moot, or are pending.[34] In two states, restrictions were either not enforced or rolled back when challenged. In Washington, the first state to impose COVID restrictions, Governor Jay Inslee followed the initial guidance from the Department of Homeland Security regarding essential and non-essential businesses to deem FFLs non-essential and order them closed.[35] No challenge to Governor Inslee's order was filed — perhaps because FFLs openly defied the order, which in turn was never enforced. In each state, the closures were subject to time limits. In some states, proprietors of businesses ordered to close could appeal to a state body — for example, the New York State Economic Development Corporation — to reopen or otherwise clarify the terms of their closure order.

Only five of the eight cases filed challenging the restrictions resulted in decisions on the merits, and only three of these — *Altman, et al., v. County of Santa Clara, et al.*, 2020 WL 2850291 (N.D.CA., June 2, 2020), *Connecticut Citizens Defense League, Inc. et al., v. Lamont*, 2020 WL 3055983 (D. Conn. June 8, 2020), and *Lynchburg Range & Training, LLC v. Northam*, 2020 WL 2073703 (Cir. Ct., City of Lynchburg Apr. 27, 2020) — included a majority opinion. The Northern District of California and the Supreme Court of Pennsylvania both upheld their states' restrictions without requiring any changes, while the District of Massachusetts granted a partial preliminary injunction against the governor's executive order that left in place significant restrictions, including requiring that all purchases be made by appointment only, capping the number of allowable appointments at four per hour, and imposing stringent social distancing and public health measures on firearms dealers.[36] In New Mexico[37] and Michigan,[38] applications for temporary restraining orders and for preliminary injunctions were determined to be moot after the respective governors of those states loosened their stay-at-home orders. New York's determination that FFLs remain closed except to sell firearms and ammunition to law enforcement has remained in force as litigation is pending. In Connecticut, a preliminary injunction ended the Governor's order suspending fingerprinting services.[39]

The Second Amendment claims included allegations that rights to acquire and practice with firearms and ammunition were violated by gun store and firing range closures. Plaintiffs also argued that the Second Amendment encompasses a right to transfer firearms privately that was violated when closures made it impossible for residents otherwise eligible to transfer firearms to submit to the state-required federal background check process because it must be facilitated in person by licensed dealers. Further, plaintiffs in New Mexico argued that the Second Amendment encompasses a right to "practicing safety and proficiency with firearms" that was violated by gun range closures.[40]

Governors' Broad Emergency Powers to Regulate the Second Amendment: Jacobson and Heller

Despite this relatively slender record, it appears that governors' broad emergency powers may receive significant deference even when they restrict the exercise of the Second Amendment in response to the emergency posed by COVID-19. Courts agree that restrictions must be justified by reference to their impact on the public health crisis presented by the disease, without reference to the specific nature of the business, beyond determining if it is essential or non-essential. If gun stores are deemed non-essential, they are required to close — as are all other non-essential businesses.

Per *Jacobson*, during an emergency, a "statute purporting to have been enacted to protect the public health, the public morals, or the public safety" must

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yield to a fundamental, constitutionally protected right when the statute (1) "has no real or substantial relation" to those public ends, and (2) when it is "beyond all question, a plain, palpable invasion of rights secured by the fundamental law."[43]

As to whether there exists any "real or substantial relation" between closing FFLs and the public health end sought, there is ample evidence that restricting the movements and interaction of citizens is a blunt but effective tool to slow COVID-19's spread. Some degree of restriction of commerce and/or movement has been enacted in all 50 states to mitigate the risk of transmission and save lives, prevent the health care system from becoming overwhelmed, and conserve scarce personal protective equipment (PPE).[44] In *Altman*, plaintiffs did not contest the stay-at-home order or the relationship between closing FFLs and these clearly legitimate public health goals — meaning that the case turned exclusively on the second *Jacobson* prong regarding a "plain, palpable invasion" of the Second Amendment.[45] However, *Connecticut Citizens Defense League* indicates that where restrictions placed on constitutionally protected behavior (like acquiring firearms, which had been effectively precluded by the fingerprinting ban) are more onerous than those on unprotected activities (like haircutting, which was available by appointment), courts will invalidate the more onerous restrictions.

As to the second inquiry, whether the restrictions create a "plain, palpable invasion" of Second Amendment rights may turn on *Heller* and related Second Amendment jurisprudence. *Heller*'s direct holding was that the core Second Amendment right is "the right to possess a handgun in the home for the purpose of self defense."[46] Most circuit courts have adopted the two-pronged test endorsed in *Heller* for evaluating Second Amendment claims since *Heller*: (1) determine whether the law in question burdens conduct falling within the scope of the Second Amendment, and (2) if so, determine the level of scrutiny required for the law by reference to the severity of the burden.[47] Circuits have extended the right of possession to acquisition,[48] though not without permitting waiting periods.[49] They have also found that range training may be protected by the Second Amendment.

The argument can be made, however, that COVID-related restrictions — especially, emergency orders that restrict access to guns but are not targeted at guns alone, and also restrict many other goods, so-called "incidental burdens" — need not implicate the Second Amendment at all.[42] If closure orders are neutral and generally applicable, it is unclear why gun stores should receive more deference than other constitutionally protected activities, from religious and political assembly to state constitutions' education guarantees, subject to the same restrictions.

If courts do find that a Second Amendment analysis is appropriate, the Supreme Court has left lower courts with relatively little guidance as to the extent of Second Amendment rights and the scrutiny that should be applied to restrictions. Therefore, state governments imposing executive orders pertaining to firearms and the lower federal courts that review them are each likely to have significant interpretive flexibility — which suggests a greater likelihood that courts will make new law regarding Second Amendment protections, and that there will be disagreements among them. Executive orders requiring gun stores to close altogether, even temporarily, do burden protected conduct. The same is almost certainly true for gun ranges, especially in jurisdictions where gun training and education is required for lawful gun ownership. Acquisition rights are also burdened where access is precluded to federal background checks and to licensed dealers who must be present for in-person firearm transfers among lawful owners.

Other "middle ground" restrictions, like those implemented in Massachusetts (FFL appointments and limits on the number of customers allowed in FFLs at one time) and Michigan (curbside pickup for online delivery) may be considered sufficiently accommodating as to avoid burdening any Second Amendment rights.[50] Similarly, the categorical ban on firearm access imposed by the total suspension of fingerprinting services in Connecticut also may not have been terminated if the burden imposed on the right was found to be commensurate to restricted access and precautions required for other services in the state.

Some judges have seized on the Supreme Court's acknowledgment in *Heller* that "longstanding" laws regulating firearms impose less of a burden on the Second Amendment right simply by virtue of their longevity and presumed acceptance by the public.[51] Longstanding state laws and constitutional provisions that provide sweeping gubernatorial emergency powers, as well as *Jacobson's* early-20th-century pedigree, could reduce the burden sufficiently at the first step of the analysis to remove it from *Heller* scrutiny altogether.[52] Alternatively, its "longstanding" nature will likely not apply if the restriction is narrowly conceived as the necessarily temporary emergency order itself.

Most circuit courts apply intermediate scrutiny to laws that burden Second Amendment rights.[53] Although some judges have held that stricter scrutiny may be appropriate where the emergency restrictions are triggered more regularly (for example, by cyclical, semi-predictable emergencies like hurricanes), less scrutiny is required for rarer emergencies.[54] Interme-

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diate scrutiny requires (1) the government interest to be significant, substantial, or important; and (2) that the government's means for achieving that interest are substantially related to it.[55] Under intermediate scrutiny, some circuits do not require firearms regulations to be narrowly tailored to the least restrictive alternatives.

The *Jacobson* standard does not, of course, preclude the possibility that restrictions will be determined constitutionally invalid.[56] In some jurisdictions, softening restrictions to allow in-store purchasing helped moot some claims that might have been decided against the state. But invalidating emergency orders as insufficiently related to the public health ends poses a variety of ambiguous line-drawing exercises. For example, one could imagine a challenge to such seemingly arbitrary qualifications as the four FFL appointments per hour required by the Massachusetts court. Further, could Walmart and other stores that carry essential goods in addition to firearms be required by courts rather than elected officials to close their firearm sections, or may essential stores sell non-essential firearms during an emergency? Might wily storeowners begin selling toilet paper so as to position themselves as "essential businesses" for the next emergency, and will courts seek to differentiate between "real" essential businesses and FFLs moonlighting as convenience stores? Unconfronted questions like these, on the margins, abound.

Further, we understand COVID-19 to be a particularly rare emergency requiring particularly drastic quarantine and isolation measures. It is reasonable to consider it distinguishable from devastating but regular natural disasters, for which emergency measures may require heightened scrutiny.[57] Still, it is fair to wonder how dislocating and rare a disaster has to be in order to produce *Jacobson* deference. More immediately, will courts apply *Jacobson* if governors re-tighten restriction on gun sellers and firing ranges in response to periodic resurgences of the virus?

It is also possible that the fights over FFL restrictions during COVID could have much longer-lasting implications for the Second Amendment and the right to bear arms. Pro-gun litigants have challenged not only restrictions on the core, well-established right to possess arms, but also restrictions that they argue violate attendant rights. It is possible that courts could find that these attendant rights are in fact extensions of the core Second Amendment right — holdings that would endure after the emergency has passed. These include claims to rights to an in-person gun transfer, to selling guns, to fingerprinting services, to an instant federal background check, to "maintaining proficiency" in gun use by allowing access to the range, and to ammunition. Any of these questions with long-term national implications for gun rights could be settled as a result of litigation over a COVID-related restrictions, raising the stakes of such restrictions.

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Connecticut Citizens Defense League, Inc. et al., v. Lamont, 2020 WL 3055983 (D. Conn. June 8, 2020) is illustrative. As part of his response to COVID-19, Governor Ned Lamont suspended a law prohibiting officials from refusing to collect fingerprints of those seeking to apply for a handgun, and a state agency and

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some number of police departments did so. A federal district judge granted a preliminary injunction, ruling that after three months the Governor's previously-justifiable order no longer bore "a substantial relation to protecting public health consistent with respecting plaintiffs' constitutional rights."

At the same time, *Connecticut Citizens* also indicates that governors may succeed when they carefully tailor and update their restrictions as conditions change. The court unambiguously upheld both judicial deference to the state's right to impose extraordinary restrictions in response to COVID-19 and states' power to establish long, costly, and narrowly-drawn handgun ownership procedures, and recognized that such restrictions may have been justified at the beginning of the pandemic. Crucially, it referenced alternative arrangements that Connecticut had already adopted for other activities, including scheduled appointments and other safety measures. Had such measures been adopted for fingerprinting as other state and private services became more available in response to declining infection rates, it seems likely that they would have been upheld.

The state court decision in *Lynchburg Range v. Northam* offers another example of how courts may use the occasion of adjudicating the extent of a governor's emergency powers under state law to signal support for expanding Second Amendment protections to new firearm-related activities and the most aggressive standard of judicial review. There, the court relied on Virginia's Emergency Services and Disaster Law, prohibiting the Governor from limiting the rights of Virginians to keep "a well regulated militia…*trained to arms*" to find that that the phrase "well-regulated" implies a trained militia. The court further found that a list describing the right to bear arms includes training even if it is not expressly mentioned it also held that the Supreme Court has implied that training is necessarily attendant to the right to bear arms. Significantly, the court applied strict scrutiny to the regulation, the much harder standard for it to survive, and an outlier approach among courts.

Conclusion

The deep uncertainty as to the impact of the COVID-19 crisis on American life extends to the Second Amendment, where restrictions implemented to prevent disease transmission may expand, narrow, or otherwise clarify firearm-related rights with consequences that will last long after the pandemic ends.

Author's Note

This article was drafted in June 2020, which means that further developments in COVID-19 emergency restrictions, including litigation and policymaking, are not contemplated here.

Editor's Note

Additional materials for this article can be found in the Online Appendix.

Note

The author does not have any conflicts of interest to disclose.

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APPENDIX
COVID-19 Restrictions on Firearms

Table 1

Second Amendment Litigation Filed During COVID-19

State: Case	Executive Order – Restrictions Applied	Claims	Dispositions
California, *Altman, et al., v. County of Santa Clara, et al.,* 2020 WL 2850291 (N.D.CA., June 2, 2020)	4 county public health departments close all businesses except those deemed "essential." Shooting ranges, firearm and ammunition retailers not exempted.	2A and 14A: 1) right to acquire or practice with firearms violated by closures; 2) right to conduct training and education violated by closure 5A and 14A:"arbitrary and capricious, overbroad, [and unconstitutionally vague"	Only Alameda County still did not allow in-store retail at time of decision, so case was moot for the other 3 counties. Court ruled that Alameda County order was justified: 1) real & substantial relation to protecting public health; 2) reasonably fits; 3) facially neutral, untargeted; 4) limited in time
Connecticut, *Connecticut Citizens Defense League, Inc. et al., v. Lamont*, 2020 WL 3055983 (D. Conn. June 8, 2020)	Gubernatorial executive order allowing officials required to provide fingerprinting services necessary to firearm acquisition the discretion to indefinitely suspend such services.	2A: right to acquire firearms violated by order allowing fingerprinting to be suspended. 14A: Due process claim that fingerprinting services were suspended without sufficient process; equal protection claim; privileges and immunities claim	District Judge Meyer granted plaintiffs' preliminary injunction on grounds that they were irreparably harmed when they were excluded from the state's only process for lawful firearm acquisition. Despite acknowledging deference due in an emergency per *Jacobson* and *South Bay*, the court ruled that the state had failed to demonstrate a "substantial fit" between ongoing suspension of all fingerprinting and protecting the public — especially since other establishments had been allowed to open with significant restrictions.
Massachusetts: *McCarthy et al. v. Baker,* 2020 WL 2297278 (D.MA. May 7, 2020)	EO altering COVID-19 Order No. 21 removing gun retailers, shooting ranges, and other elements of firearms industry from essential business list; manufacturers, importers, distributors still allowed to operate	2A: deprivation of right to self-defense by closure of gun stores and ranges 42 U.S.C. § 1983: deprivation of property interests in plaintiffs' federal firearms licenses and business licenses 14A: due process violation — procedural due process Art. XVII, Mass. Dec. of Rights: state right to bear arms	State ordered to allow FFLs to sell guns, ammunition, other goods by appointment only, maximum 4 appointments per hour, 9am to 9pm, with proper social distancing and enhanced sanitation measures

https://doi.org/10.1177/1073110520979410 Published online by Cambridge University Press

APPENDIX
COVID-19 Restrictions on Firearms (continued)

Table 1

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Michigan: *Beemer et al. v. Whitmer,* No. 1:20-cv-00323, (W.D.MI, April 27, 2020).	EO 2020-42 ordering closure of nonessential businesses, following initial CISA guidance that did not include gun sellers, ammunition retailers, and firing ranges.	2A and analogous state constitutional provision: deprivation of 2A right to keep and bear arms, including carrying gun in case of confrontation, acquiring ammunition, and training at firing ranges — all of which are necessary, or else the 2A will be toothless 14A: equal protection claim that the challenged measures deprive plaintiffs of fundamental rights and lack rational basis 14A: procedural due process claim that fundamental rights were deprived without due process	EO 2020-59 modified original restrictions to allow curbside gun pickup, the sale of guns in-store from stores that sell necessary supplies as well as guns in their normal course of business subject to mitigation measures required by Secs. 11 & 12 of order. Thus, TRO/PI moot. Plaintiffs amended complaint; plaintiff's response brief to defendant's motion to dismiss is pending.
New Mexico: Complaint, *Aragon et.al v. Grisham* et.al, 1:20-cv-00325 (D.N.M, April 10, 2020)	EO ordering closure of all businesses "except for those deemed essential"[1]	2A: deprivation of right to "keep" or "bear" arms, including ammunition and access to "proficiency in their use" by training at shooting ranges 2A: deprivation of right to transfer firearms by depriving New Mexicans of federal instant background check required to do so	Motion for preliminary injunction and temporary restraining order filed (4/16/20); TRO motion withdrawn (5/18/20); Found moot (5/19/20).
New York: Complaint, *Dark Storm Industries, LLC v. Gov. Cuomo,* 1:20CV00360-LEK-ATB (N.D.N.Y, March 30, 2020)	EO 202.6[2] and subsequent determination that gun store "designated as essential solely with respect to work directly related to police and/or national defense matters" Applies to firearms and ammunition	2A: deprive New Yorkers of ability to purchase arms for self-defense Art. IV, § 2: Privileges & Immunities "Substantive due process right" to purchase arms for self-defense in this time of crisis and uncertainty"	Complaint filed; Answer due from NYS EDC by May 7, 2020, still not provided as of June 4, 2020.
Pennsylvania: *Mullins et al. v. Wolf*, No. 63 MM 2020 (Sup. Ct. PA., March 22, 2020)	"All businesses that are not life sustaining"	35 Pa. CS § 7301(c): Gov. Wolf exceeds the emergency authority conferred by emergency statute, even if COVID-19 qualifies as a disaster under its provisions 2A & analogous state claim: 5A & analogous state claim; 14A & analogous state claim: due process claims; unconstitutionally vague	Supreme Court of PA rejected petitioners' application for extraordinary relief: no majority opinion filed; Wecht, J. dissenting: between closure of physical FFLs and requirement that transfers must occur in person unless transferee is exempt, the state has effectively violated the 2A and PA Const. Art. 1, Section 21 and placed a burden on gun sellers and buyers not placed on other industries in which transfers can occur fully remotely.

[1] New Mex. Exec. Order No. 2020-004 (March 23, 2020), https://cv.nmhealth.org/wp-content/uploads/2020/03/COVID-19-DOH-Order-fv.pdf.
[2] N.Y. Exec. Order No. 202.6 (March 18, 2020), https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

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Virginia: *Lynchburg Range & Training v. Northam*, No. CL20-333 (Cir. Ct., City of Lynchburg April 27, 2020)	E.O. 53: ordering "[c]losure of all public access to recreational and entertainment businesses, effective 11:59 p.m., Tuesday, March 24, 2020 until 11:59 p.m., Thursday, April 23, 2020" including "shooting ranges"	Originally challenged in state court, removed by defendants to federal court, voluntarily dismissed by plaintiffs, then re-filed in state court without the U.S. Constitutional claim. Defendants removed again, and Western District of Virginia federal court granted defendants' motion to remand to state court. E.O. 53 is "ultra vires" and beyond the scope of executive authority under the Virginia Constitution and Emergency Services and Disaster law Art. I, § 13 of Va. Constitution: state constitutional right to bear arms Art. I, § 7 of Va. Constitution: Anti-Suspension Provision	Governor, State Police, and law enforcement enjoined from enforcing prohibition on public access to Lynchburg Range & Training as long as the gun range operates in a manner consistent with E.O. 53, Paragraph 7 (requiring open businesses to operate "to the fullest extent possible in a manner consistent with social distancing and sanitizing guidance from federal and state authorities"

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