

COVID-19 Emergency Restrictions on Firearms

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APPENDIX

COVID-19 Restrictions on Firearms

Table I

Second Amendment Litigation Filed During COVID-19

State: Case	Executive Order – Restrictions Applied	Claims	Dispositions
California, <i>Altman, et al., v. County of Santa Clara, et al.</i> , 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.	<u>2A and 14A</u> : 1) right to acquire or practice with firearms violated by closures; 2) right to conduct training and education violated by closure <u>5A and 14A</u> : “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, <i>Connecticut Citizens Defense League, Inc. et al., v. Lamont</i> , 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.	<u>2A</u> : right to acquire firearms violated by order allowing fingerprinting to be suspended. <u>14A</u> : 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 <i>Jacobson</i> and <i>South Bay</i> , 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: <i>McCarthy et al. v. Baker</i> , 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	<u>2A</u> : deprivation of right to self-defense by closure of gun stores and ranges <u>42 U.S.C. § 1983</u> : deprivation of property interests in plaintiffs’ federal firearms licenses and business licenses <u>14A</u> : due process violation — procedural due process <u>Art. XVII, Mass. Dec. of Rights</u> : 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

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Michigan: <i>Beemer et al. v. Whitmer</i> , 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.	<u>2A and analogous state constitutional provision</u> : 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 <u>14A</u> : equal protection claim that the challenged measures deprive plaintiffs of fundamental rights and lack rational basis <u>14A</u> : 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, <i>Aragon et.al v. Grisham et.al</i> , 1:20-cv-00325 (D.N.M., April 10, 2020)	EO ordering closure of all businesses “except for those deemed essential” ¹	<u>2A</u> : deprivation of right to “keep” or “bear” arms, including ammunition and access to “proficiency in their use” by training at shooting ranges <u>2A</u> : 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, <i>Dark Storm Industries, LLC v. Gov. Cuomo</i> , 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	<u>2A</u> : deprive New Yorkers of ability to purchase arms for self-defense <u>Art. IV, § 2: Privileges & Immunities</u> “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: <i>Mullins et al. v. Wolf</i> , No. 63 MM 2020 (Sup. Ct. PA., March 22, 2020)	“All businesses that are not life sustaining”	<u>35 Pa. CS § 7301(c)</u> : Gov. Wolf exceeds the emergency authority conferred by emergency statute, even if COVID-19 qualifies as a disaster under its provisions <u>2A & analogous state claim</u> : <u>5A & analogous state claim</u> : <u>14A & analogous state claim</u> : 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. I, 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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<p>Virginia: <i>Lynchburg Range & Training v. Northam</i>, No. CL20-333 (Cir. Ct., City of Lynchburg April 27, 2020)</p>	<p>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”</p>	<p>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.</p> <p><u>E.O. 53 is “ultra vires” and beyond the scope of executive authority under the Virginia Constitution and Emergency Services and Disaster law</u></p> <p><u>Art. I, § 13 of Va. Constitution: state constitutional right to bear arms</u></p> <p><u>Art. I, § 7 of Va. Constitution: Anti-Suspension Provision</u></p>	<p>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”</p>