Massachusetts AG Busy Defending Her Unconstitutional "Enforcement Notice" on "Copycat" Assault Weapons

Even though Massachusetts Attorney General Maura Healey (shown at podium) knew that her unilateral expansion of an 18-year-old law to ban anything that looked like an "assault weapon" was likely to be challenged, she went ahead with it anyway. On July 20 of last year, she imperiously announced her "enforcement notice" to every gun maker and dealer in the state:

> Here in Massachusetts, 10,000 assault weapons [i.e., semi-automatic rifles that often look like fully-automatic military firearms] were sold just in the last year.... In the week after the Pulse [LGBT] nightclub massacre, sales of [such] weapons jumped as high as 450 percent over the previous week — just in Massachusetts....
>
> They are weapons used to commit mass murder. And they have no business being in civilian hands....
>
> That will end now.

She expected pushback for her illegal actions: "We anticipate our directive may be ... challenged ... but our job is to enforce state laws and to keep people safe."

There is little proof that her unilateral "notice" is having an effect on gun violence in Massachusetts, especially in light of the fact that, according to the FBI, in 2014 (the latest year for which data is available) there were no murders committed using an "assault rifle" or, for that matter, a rifle of any kind, in her state.

But her anticipation that her diktat would be challenged was met, first in August by the Gun Owners Action League (GOAL), an affiliate of the National Rifle Association (NRA), and then, one month later, by four gun shop owners suing her over her overreach.

Looking for more background information on how she arrived at the conclusion that the 18-year-old state law regarding firearms was somehow flawed and would get her personal revision, without going back to the legislature, GOAL filed an extensive public records request. It took Healey's office three months to respond, which it did in the form of a CD containing copies of gun manuals from different gun manufacturers, apparently retrieved online, hoping that that would satisfy GOAL.

It didn't, and GOAL refiled again on January 4.

The initial response was interesting in that it indicated just how defensive her department is about people wanting more information about the notice. Lorraine Tallow, one of Healey's assistants, wrote the following glorious bit of backpedaling to GOAL, contained along with the CD:

> We note that, by its nature, an "Enforcement Notice" is part of an ongoing plan of investigation and enforcement that does not resolve or terminate on the date that the enforcement-related information is made public.

What this appears to say, upon careful re-reading, is that Healey isn't through issuing these "enforcement notices," and that to ask how she is making them or what process she is using to expand existing law without legislative input, is asking questions that can't be answered.

The lawsuit filed by four gun shops, with the legal assistance of the National Shooting Sports Foundation (NSSF), is only going to add to Healey's woes. Filed on September 22, the shops state,

> This is an action for declaratory relief … asking this Court [the United States District Court for the District of Massachusetts] to declare that the July 20, 2016 Enforcement Notice issued by Massachusetts Attorney General Maura Healey to be unconstitutionally vague, invalid and unenforceable.
>
> On July 20, 2016, the Attorney General unexpectedly and without any public notice or input announced that she now intends to enforce a state criminal firearms licensing statute … according to entirely new, but unconstitutionally vague interpretations for what constitutes a banned "assault weapon"….
>
> Retail firearm stores, including the four named plaintiffs, cannot determine the meaning and scope of the Enforcement Notice and whether certain firearms fall within the newly defined term, assault weapon "copy." Because criminal penalties can result from violations of the licensing statute, the unduly vague Enforcement Notice violates due process protections afforded under the Fifth and Fourteenth Amendments to the United States Constitution.

The suits have several positives, as the Massachusetts AG now faces the challenges she "anticipated": They're going to drain resources from her office that could otherwise be expended in harassing law-abiding gun owners, gun dealers, and gun manufacturers. They're going to force her to explain just how she arrived at the conclusion that an 18-year-old criminal statute now needed updating. And she's going to have to explain just how her office is entitled to make such changes without either public input or legislative confirmation.

Finally, she could learn the lesson learned by Virginia State Attorney General Mark Herring when he tried to pull the same stunt: unilaterally changing his state's laws regarding reciprocity for concealed carry permit holders. His unilateral actions were rescinded, the original law was amended to make it more friendly to law-abiding gun owners with permits, and sanctions were applied against him and his office, barring him from issuing such illegal mandates in the future.

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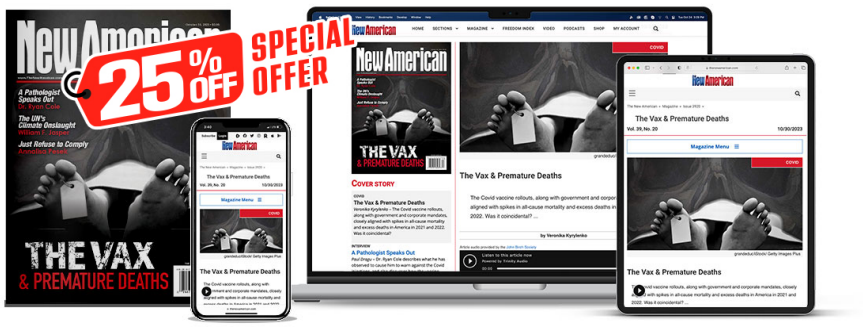

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