



Monday, December 14, 2015

Lieutenant Governor finalizes language of proposed gun control measure

By L.J. Williamson

Two new gun control measures - one passed, one proposed - seek to advance efforts to keep firearms out of the hands of dangerous people in California.

On Jan. 1 AB 1014 will go into effect, creating a system for obtaining gun violence restraining orders, and wording was finalized last week for a five-pronged gun control measure Lieutenant Governor Gavin Newsom is hoping to land on the presidential election ballot next November.

AB 1014 is aimed at preventing violence before it occurs by providing both relatives and law enforcement the opportunity to prohibit the purchase of firearms by an individual they feel poses a threat to themselves or others.

The restraining order lasts 21 days and is ex parte. After the initial 21-day period, a noticed hearing is held, and if a judge upholds the petition, it can be extended for one year.

"It's very proactive in terms of preventing violence before it happens," said Amanda Wilcox, California legislation and policy chair of the Brady Campaign to Prevent Gun Violence.

Wilcox cited as an example the shooting of U.S. Representative Gabrielle Giffords, whose attacker was able to purchase a new gun despite his family disabling his car and confiscating a gun he previously owned due to concerns over his mental state.

In the 2014 Isla Vista shootings, the perpetrator's parents were concerned enough about their son's mental well-being to call police to his home, but had no tools to prevent him from purchasing firearms.

"Family members are often the first to know," Wilcox said.

The new law allows petitioning for a gun violence restraining order in the case of someone who has made violent threats, is at the risk of suicide or has simply expressed heightened anger. "It may be something situational: they're despondent because their wife left, or they lost their job," Wilcox explained.

Gun control advocates also hope to gain enough signatures for Newsom's new



New York Times

Lieutenant Governor Gavin Newsom is hoping to land a five-pronged gun control measure on the presidential election ballot next November.

Labor/Employment

Uber vows new arbitration deal not attempt to reduce class size, while plaintiffs skeptical

In the latest twist in misclassification case, Uber rolled out a new arbitration contract on Friday.

Litigation

Union takes case against chief trial counsel to Sacramento

Leaders of the State Bar employees union have ramped up their campaign against the reappointment of Chief Trial Counsel Jayne Kim.

Corporate

On The Move

A weekly roundup of lateral attorney moves, law firm office openings and partner promotions from around California.

Environmental

LA City Attorney files criminal charges against Boyle Heights metal plating companies

The enforcement effort alleges unsafe storage and disposal of toxic chemicals and is part of larger statewide effort to help neighborhoods with heavy industry

Judges and Judiciary

Judiciary seeks funds for more judgeships

Just two months after Gov. Jerry Brown nixed a legislative proposal to fund a dozen new judicial positions in California, the state judiciary will once again ask for \$5 million from state government.

Corporate

9th Circuit rules semiconductor company could get treble damages

A semiconductor manufacturer could get \$18 million in damages from a Singapore company that was found guilty of trying to seize control of the electronics maker's foreign operations, the 9th U.S. Circuit Court of Appeals has ruled.

Judges and Judiciary

Then again, maybe not

Imagine this: The Supreme Court has granted review, and the legal community is excited that the court will resolve a important question, but then

initiative to place it on the 2016 presidential election ballot, though the breadth and content of the initiative may be too much for voters to digest.

The proposed initiative's five components - background checks for ammunition purchases, a ban on possession of large capacity magazines, mandatory reporting of lost or stolen firearms, a process for relinquishment of guns for those convicted of a felony or a violent misdemeanor, and a mandate to share state background check data with the National Instant Criminal Background Check System - may be a bit too complicated to explain in a 30-second television commercial, said Erwin Chemerinsky, dean of the University of California Irvine School of Law.

"What concerns me is it's not a simple initiative, and so the advertisement concerning it is not likely to let most voters know what it is, and it's going to get presented by both sides in a way that will be very hard to tell what it's about."

Others echoed Chemerinsky's concerns about the potential difficulties in communicating the initiative's components.

"Research has shown that if there's a lot of money spent on an initiative, it's not necessarily going to be successful at getting that initiative passed, but it can be successful at stopping it," said UCLA School of Law Professor Adam Winkler and author of "Gunfight: The Battle over the Right to Bear Arms in America."

"Money spent in favor of a 'no' vote is usually very powerful in these ballot measures, and I imagine there's going to be a lot of money spent."

The proposals will be controversial, even in a pro-gun control state like California, Winkler said.

"The ban on the possession of high-capacity magazines will require a significant number of gun owners in the state to turn in their magazines," he said. "The magazine ban will inevitably be challenged in court, although so far such laws have been upheld in the courts."

One of several such challenges was *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. March 4, 2015), which upheld the city of Sunnyvale's ban on large capacity magazines, similar to possession bans that exist in San Francisco and Los Angeles.

If the measure can make it to the ballot and win, its other provisions also figure to have a good chance of standing up to legal challenges, experts said.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court invalidated a law regulating guns that it ruled were in violation of the Second Amendment, but also specified that the Second Amendment was not unlimited, reiterating that there may be prohibitions against certain types of weapons, possession by felons and the mentally ill, and carrying weapons in sensitive places.

John Eastman, former Chapman University School of Law dean and the director of the Center for Constitutional Jurisprudence, said he saw no obstacles to the measure's proposed creation of a relinquishment system for felons.

"I don't see any greater difficulty in that than the probation requirement that somebody not be in possession of illegal drugs," Eastman said.

"I think these kind of things will lead the court to adopt a test that is similar to the test we have in restriction on abortions," he said. "That a lot of restrictions will be upheld, unless it creates an undue burden on the exercise of the right itself."

The measure's proposed point of sale background check for ammunition would be the nation's first, said Ari Feilich, staff attorney at the Law Center to Prevent Gun Violence, which co-sponsored Newsom's proposed ballot measure.

Though the background checks would be novel, several other states already require permits to purchase ammunition. Those measures too have stood up under legal scrutiny.

Due to the adoption of stringent gun laws over the last 20 years, California went from having the 15th highest rate of gun deaths in 1993 to its current status of the ninth lowest, Feilich said.

the court doesn't answer the question we all thought it would. By **Brian M. Hoffstadt**

Civil Rights

Surveillance of Muslim communities is already happening

Many political leaders have denounced Donald Trump's recent comments that the government should target American Muslims for surveillance. However, under the "state secrets" doctrine, Trump's plan may flourish under a veil of government secrecy. By **Elizabeth Pipkin**

Perspective

When in doubt, turn over the evidence

At its Oct. 23 public hearing, a State Bar commission voted to recommend adoption of ABA Model Rule 3.8 which sets a standard for the responsibilities of prosecutors with regard to exculpatory evidence. By **Gerald F. Uelmen**

Labor/Employment

PAGA reform provides appropriate balance

In October, Gov. Brown signed AB 1506 to help reduce questionable litigation under the Private Attorneys General Act for certain errors included in an employee's itemized wage statement. By **Chris Micheli**

Transportation

Drone industry needs a clear flight plan

Drones, once thought of as warzone killing machines, are now the stuff of Christmas list, begging the question of what rules they will fly by. By **Matthew F. Miller**

Judicial Profile

Richard F. Walmark

Superior Court Judge
Los Angeles County (Van Nuys)

Government

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The National Rifle Association's Institute For Legislative Action and the California Rifle and Pistol Association did not return calls requesting comment.

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