

SUPREME COURT OF PENNSYLVANIA

Civil Rights Defense Firm, P.C., Firearms Policy Coalition, Inc., Prince Law Offices, P.C., Trop Gun Shop Ltd., and Roger Mullins v. Governor Tom Wolf

Civil Rights Defense Firm, P.C. v. Governor Tom Wolf, No. 63 MM 2020 (Pa. Mar. 19 2020) · No. No. 63 MM 2020 · Decided March 22, 2020

SUMMARY

Justice Wecht issued a concurring and dissenting statement concerning an emergency application challenging Pennsylvania Governor Tom Wolf's COVID-19 business-closure order. He agreed that the challenge based on attorneys' inability to practice had been mooted by subsequent clarification, but concluded that the order's failure to accommodate licensed firearm dealers effectively prohibited firearm transfers and burdened rights protected by the Second Amendment and the Pennsylvania Constitution. Justices Donohue and Dougherty joined the statement.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Wecht; Justice Donohue; Justice Dougherty
JURISDICTION	Pennsylvania
DECIDED	March 22, 2020
DOCKET	No. 63 MM 2020
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners sought emergency relief challenging the Governor's March 19, 2020 order closing businesses that were not deemed life-sustaining during the COVID-19 pandemic.
PRECEDENTIAL VALUE	Nonbinding separate statement
PARTIES	Civil Rights Defense Firm, P.C., Firearms Policy Coalition, Inc., Prince Law Offices, P.C., Trop Gun Shop Ltd., Roger Mullins v. Governor Tom Wolf

TOPICS

[second amendment](#)[mootness](#)[appellate procedure](#)[constitutional law](#)[administrative procedure act](#)

PRACTICE AREAS

constitutional law

civil rights

appellate procedure

administrative law

firearms law

QUESTIONS PRESENTED

1. Whether the challenge based on attorneys' inability to practice law was moot after the Governor issued a subsequent clarification.
2. Whether the Governor's closure order, as applied to licensed firearm dealers, effectively prohibited retail firearm transfers in a manner that substantially burdened rights protected by the Second Amendment and Article I, Section 21 of the Pennsylvania Constitution.

KEY QUOTATIONS

"Quite simply, if firearm dealers are not able to conduct any business in-person at their licensed premises, then no transfers of firearms can be completed." (2)

"This amounts to an absolute and indefinite prohibition upon the acquisition of firearms by the citizens of this Commonwealth—a result in clear tension with the Second Amendment to the United States Constitution and Article I, Section 21 of the Pennsylvania Constitution." (2)

"Such an accommodation may be effectuated while preserving sensible restrictions designed to slow the spread of COVID-19, but nonetheless provide a legal avenue for the purchase and sale of firearms, thus avoiding an impermissible intrusion upon a fundamental constitutional right." (3)

FACTUAL BACKGROUND

The Governor's March 19, 2020 COVID-19 closure order made no express allowance for continued physical operations by licensed firearm dealers. Federal and Pennsylvania law generally require in-person procedures and completion of firearm transfers at the dealer's licensed premises, including a Pennsylvania background check for retail firearm sales. Justice Wecht reasoned that closing those premises therefore prevented all retail firearm transfers and indefinitely barred citizens from acquiring firearms.

PROCEDURAL HISTORY

The Supreme Court of Pennsylvania considered an application for emergency relief. Justice Wecht agreed with the Court's disposition insofar as the challenge based on attorneys' inability to practice law had been mooted by subsequent clarification, but separately concurred and dissented concerning the effect of the closure order on firearm sales.

DISPOSITION

other

CASES CITED

- District of Columbia v. Heller, 554 U.S. 570 (2008)

- McDonald v. City of Chicago, 561 U.S. 742 (2010)
- Bateman v. Perdue, 881 F. Supp. 2d 709 (E.D.N.C. 2012)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT CIVIL RIGHTS DEFENSE FIRM, P.C.,; No. 63 MM 2020 FIREARMS POLICY COALITION, INC.,; PRINCE LAW OFFICES, P.C., TROP GUN: SHOP LTD., AND ROGER MULLINS,; Petitioners: v.: GOVERNOR TOM WOLF,; Respondent: CONCURRING AND DISSENTING STATEMENT JUSTICE WECHT I am troubled by the uncertainty that has followed the Governor's orders responding to the COVID-19 pandemic, particularly as it concerns the critical work of attorneys, whose legal expertise is necessary for the citizenry to obtain redress of harms, and whose practice is to be regulated by this Court under Article V of the Constitution of this Commonwealth.

See PA. CONST. art. V, § 10(c). Nonetheless, I agree with the Court that the present challenge, to the extent premised upon a deprivation of the ability to practice law, has been effectively mooted by the much-needed clarification subsequently offered by the Governor. I accordingly join that portion of today's order. I write separately because the present Application for Emergency Relief brings to the Court's attention a deprivation of a constitutional right.

The Governor's Order of March 19, 2020, the "Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining" (the "Order"), makes no allowance for any continued operation of licensed firearm dealers.

In light of the regulatory framework attending the sale and transfer of firearms, the inability of licensed firearm dealers to conduct any physical operations amounts to a complete prohibition upon the retail sale of firearms—an activity in which the citizens of this Commonwealth recently have been engaging on a large scale, and one guaranteed by both the United States Constitution and the Constitution of this Commonwealth.

See U.S. CONST. amend. II ("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."); PA. CONST. art. I, § 21 ("The right of the citizens to bear arms in defence of themselves and the State shall not be questioned."). Unlike the vast majority of other items, the sale and transfer of firearms sold at retail cannot be completed merely by way of telecommunication and mailing under existing law.

Under federal firearm laws, a licensed firearm dealer may transfer a firearm to a purchaser who does not appear in person at the licensed premises only when a background check is not required to transfer the firearm, and both the dealer and the purchaser reside in the same state. 18 U.S.C. § 922(c), (t); 27 C.F.R. § 478.96, 478.124; ATF Procedure 2013-2.1 In Pennsylvania, a licensed firearm dealer must perform a background check in conjunction with the retail sale of any firearm.

18 Pa.C.S. § 6111(a)(2). Moreover, the Uniform Firearms Act provides that the “business” of a 1 For ease of reference, the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives has offered guidance on this question, available at <https://www.atf.gov/firearms/qa/may-licensee-transfer-firearm-nonlicensed-individual-who-does-not-appear-person-licensed> [63 MM 2020] - 2 licensed firearm dealer “shall be carried on only upon the premises designated in the license or at a lawful gun show or meet.” Id. § 6113(a)(1).

The effect of this regulatory scheme is that, notwithstanding any payment, the actual transfer of a firearm from a dealer to a purchaser must be completed at the dealer’s place of business. Quite simply, if firearm dealers are not able to conduct any business in-person at their licensed premises, then no transfers of firearms can be completed. This amounts to an absolute and indefinite prohibition upon the acquisition of firearms by the citizens of this Commonwealth—a result in clear tension with the Second Amendment to the United States Constitution and Article I, Section 21 of the Pennsylvania Constitution.

See generally *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding that the Second Amendment guarantees an individual right to keep and bear arms for the purpose of self- defense); *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that Second Amendment right to keep and bear arms is fully applicable to the States under the Fourteenth Amendment); see also *Bateman v. Perdue*, 881 F.Supp.2d 709 (E.D.N.C.

2012) (applying *Heller* to hold unconstitutional a statute authorizing government officials to prohibit the sale of firearms during state of emergency); id. at 714 (noting that statute “effectively prohibit[s] law abiding citizens from purchasing and transporting to their homes firearms and ammunition needed for self-defense” thus “burden[ing] conduct protected by the Second Amendment”).

In my view, it is incumbent upon the Governor to make some manner of allowance for our citizens to continue to exercise this constitutional right. This need not necessarily take the form of a generalized exception to the Order for any and all firearm retailers, [63 MM 2020] - 3 although such retailers have been classified as “essential” elsewhere in our Nation.

2 To the contrary, just as the Governor has permitted restaurants to offer take-out service but restricted dine-in options, the Governor may limit the patronage of firearm retailers to the completion of the portions of a transfer that must be conducted in-person. Such an accommodation may be effectuated while preserving sensible restrictions designed to slow the spread of COVID-19, but nonetheless provide a legal avenue for the purchase and sale of firearms, thus avoiding an impermissible intrusion upon a fundamental constitutional right.

Justice Donohue and Justice Dougherty join this concurring and dissenting statement. 2 See Executive Order of Governor of Illinois, Executive Order in Response to COVID-19 (COVID-19

Executive Order No. 8), at 12(n), available at https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf (defining “Essential Businesses and Operations” to include “firearm and ammunition suppliers and retailers for purposes of safety and security”).

[63 MM 2020] - 4

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/pennsylvania-supreme-court-of-pennsylvania/2020/civil-rights-defense-firm-p-c-firearms-policy-coalition-inc-zf7uu4be>