



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY ATTORNEY

File #: 24-476

Board Meeting Date: 6/25/2024

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: John D. Nibbelin, County Attorney
Subject: *Amicus curiae* brief in U.S. Supreme Court case re: ghost gun regulation

RECOMMENDATION:

Recommendation to authorize and direct County Attorney to file, on behalf of the County of San Mateo, an Amicus Curiae brief in the United States Supreme Court in the matter of Garland v. VanDerStock, a case involving the regulation of ghost guns.

BACKGROUND:

A lawsuit currently pending before the U.S. Supreme Court, *VanDerStok v. Garland* (“*VanDerStock*”), challenges rules adopted by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to regulate untraceable “ghost guns.”

A coalition of cities and counties plans to file an “*amicus curiae*” brief in in the *VanDerStock* case. *Amicus curiae* is Latin for “friend of the court.” Amicus briefs are filed by persons who are not a party to the case but seek to provide the court with their opinion, position, and/or information regarding the outcome of the case. In the instant brief, the amici will urge the Supreme Court to find in favor of the ATF, due to the significant public safety threat posed by ghost guns.

San Mateo County has been asked to sign onto the amicus brief, and we have also been asked to provide information in support of the brief, including data regarding ghost guns recovered by law enforcement, ghost gun possession, trafficking, arrests, etc. from 2019 to present. The County Attorney’s Office is working with the Sheriff’s Office to provide the requested data.

DISCUSSION:

Ghost guns are untraceable firearms. They are sold as a kit or in separate pieces and have no serial number. Ghost gun components, or “precursor parts,” can be purchased online, without a background check, and can be assembled into a fully functional firearm. This makes ghost guns particularly attractive to those who are prohibited from legally buying and possessing firearms, or those who want to use a gun for criminal activity. Law enforcement agencies have reported an increase in crimes involving ghost guns in recent years.

In April 2022, the ATF finalized a rule (“Final Rule”) clarifying that ghost gun precursor parts are considered “firearms” under federal law, and that, therefore, the ATF can regulate them under the Gun Control Act of 1968. The Final Rule updated and clarified key regulatory definitions, including “firearm,” “frame,” and “receiver,” to ensure that kits and components that can be assembled into untraceable ghost guns are subject to the same regulations as pre-assembled firearms.

The Final Rule requires ghost gun sellers to follow the same rules and regulations as any other firearm dealers. Under the Final Rule, manufacturers and dealers of ghost gun parts would have to be federally licensed; the precursor parts would have to be marked with serial numbers; and purchasers would have to pass a background check before buying ghost gun parts.

The Final Rule does not ban the possession of ghost guns. People who already own ghost guns can keep them (as long as they are not legally prohibited from owning firearms), but dealers who have ghost gun parts in their inventory would be required to mark them with serial number and otherwise comply with all laws applicable to firearms.

A collection of firearm industry and Second Amendment advocates challenged the Final Rule in the U.S. District Court for the Northern District of Texas. The District Court vacated the Final Rule, finding that it exceeded the ATF’s authority under the Gun Control Act, and enjoined the ATF from enforcing the rule nationwide. The federal government appealed that ruling, and on November 9, 2023, the U.S. Court of Appeals for the Fifth Circuit affirmed the District Court’s decision. The federal government once again appealed, and the U.S. Supreme Court has agreed to hear the case during its 2024-2025 term.

The proposed *amicus* brief, which will be filed by law firm Perkins Coie, will argue that the Final Rule is urgently needed to stop the dangerous proliferation of ghost guns and to protect public safety. The brief will describe, based on specific, real-world examples and numerical trends, the increasing prevalence of ghost guns in our communities and the unique challenges they present to prosecutors and local law enforcement agencies that are tasked with preventing and prosecuting gun crime and protecting public safety. It will also discuss the easy acquisition of ghost guns by high-risk individuals (including persons previously convicted of crimes, domestic abusers, organized crime syndicates, terrorists), the tragic consequences of minors acquiring ghost guns, and the dramatic rise in ghost gun recoveries across the United States. The brief will urge the U.S. Supreme Court to overturn the Fifth Circuit’s decision and uphold the Final Rule.

FISCAL IMPACT:

None