

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SUSAN ROSS; DOMENIC BASILE;
CONNECTICUT CITIZENS DEFENSE
LEAGUE, INC.; and SECOND
AMENDMENT FOUNDATION, INC.,

Plaintiffs,

v.

STAVROS MELLEKAS in his official
capacity as the Colonel of the Connecticut
State Police; JAMES C. ROVELLA in his
official capacity as the Commissioner of the
Department of Emergency Services and
Public Protection; and RICHARD J.
COLANGELO, JR. in his official capacity as
the Chief State's Attorney for the State of
Connecticut,

Defendants.

No.

COMPLAINT

Plaintiffs SUSAN ROSS, DOMENIC BASILE, CONNECTICUT CITIZENS DEFENSE LEAGUE, INC. and SECOND AMENDMENT FOUNDATION, INC., as and for their Complaint against Defendants STAVROS MELLEKAS, JAMES C. ROVELLA and RICHARD J. COLANGELO, JR., state as follows:

1. This 42 U.S.C. § 1983 action challenges § 53-202x(f) of the Connecticut General Statutes, which prohibits people from loading more than 10 rounds of ammunition into lawfully owned firearms ammunition magazines that are capable of holding more. This imposes an unconstitutional burden on the right of the people to keep and bear arms. Plaintiffs seek declaratory and injunctive relief and attorney's fees and costs.

JURISDICTION & VENUE

2. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343.

3. The Court has personal jurisdiction over the Defendants because each acted, acts and threatens to act under the color of the laws of the State of Connecticut and each did so, does so and threatens to do so within the geographic confines of the State and District of Connecticut.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1)-(2).

PARTIES

5. Plaintiff SUSAN ROSS is a natural person residing in Moodus (Middlesex County), Connecticut.

6. Plaintiff DOMENIC BASILE is a natural person residing in Oakville (Litchfield County), Connecticut.

7. Plaintiff CONNECTICUT CITIZENS DEFENSE LEAGUE, INC. (“CCDL”) is a nonstock, nonprofit corporation organized under the laws of the State of Connecticut with its primary office in Southbury (New Haven County), Connecticut.

8. Plaintiff SECOND AMENDMENT FOUNDATION, INC. (“SAF”) is a nonprofit corporation organized under the laws of the State of Washington with its primary office in Bellevue (King County), Washington.

9. Defendant STAVROS MELLEKAS is sued in his official capacity as the Colonel of the Connecticut State Police, whose office is in Middletown (Middlesex County), Connecticut.

10. Defendant JAMES C. ROVELLA is sued in his official capacity as the Commissioner of the Department of Emergency Services and Public Protection, whose office is in Middletown (Middlesex County), Connecticut.

11. Defendant RICHARD J. COLANGELO, JR. is sued in his official capacity as the Chief State's Attorney for the State of Connecticut, whose office is in Rocky Hill (Hartford County), Connecticut.

PERTINENT CONSTITUTIONAL PROVISIONS

12. The Second Amendment to the United States Constitution provides:

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.

13. The Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

14. The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

15. The Second Amendment "is fully applicable to the States." *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *see also id.* at 805 (Thomas, J., concurring).

16. The "core lawful purpose" of the right to keep and bear arms is "self-defense." *Heller*, 554 U.S. at 571, 630; *accord McDonald*, 561 U.S. at 767-68.

17. "[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582; *accord Caetano v. Massachusetts*, 577 U.S. ___, 136 S. Ct. 1027, 1027 (2016).

PERTINENT STATUTES

18. Since 2013, Connecticut law has generally prohibited individuals from possessing firearms ammunition magazines capable of holding more than ten (10) rounds of ammunition:

(a) As used in this section and section 53-202x:

(1) “Large capacity magazine” means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable;

...

* * *

(c) Except as provided in this section and section 53-202x: (1) Any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained prior to April 5, 2013, shall commit an infraction and be fined not more than ninety dollars for a first offense and shall be guilty of a class D felony for any subsequent offense, and (2) any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained on or after April 5, 2013, shall be guilty of a class D felony. . . .

Conn. Gen. Stat. § 53-202w.

19. When it enacted the 10-round limit, the General Assembly required owners of magazines that had become prohibited to “declare possession” of their magazines to the Department of Emergency Services and Public Protection:

(a)(1) Except as provided in subdivision (2) of this subsection, any person who lawfully possesses a large capacity magazine prior to January 1, 2014, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection to declare possession of such magazine. Such application shall be made on such form or in such manner as the Commissioner of Emergency Services and Public Protection prescribes. . . .

Conn. Gen. Stat. § 53-202x.

20. Connecticut law allows individuals who declared their magazines to continue possessing them, but prohibits them from loading more than 10 rounds of ammunition into those magazines unless they are at home or at a shooting range:

(f) Any person who declared possession of a large capacity magazine under this section may possess the large capacity magazine only under the following conditions:

(1) At that person's residence;

(2) At that person's place of business or other property owned by that person, provided such large capacity magazine contains not more than ten bullets;

(3) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

(4) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range;

(5) While on the premises of a licensed shooting club;

(6) While transporting the large capacity magazine between any of the places set forth in this subsection, or to any licensed gun dealer, provided (A) such large capacity magazine contains not more than ten bullets, and (B) the large capacity magazine is transported in the manner required for an assault weapon under subdivision (2) of subsection (a) of section 53-202f; or

(7) Pursuant to a valid permit to carry a pistol or revolver, provided such large capacity magazine (A) is within a pistol or revolver that was lawfully possessed by the person prior to April 5, 2013, (B) does not extend more than one inch below the bottom of the pistol grip, and (C) contains not more than ten bullets.

(g) Any person who violates the provisions of subsection (f) of this section shall be guilty of a class C misdemeanor.

Conn. Gen. Stat. § 53-202x.

STANDING

21. Plaintiff Susan Ross is the lawful owner of a Glock model 17 handgun and magazines for that handgun, each of which holds 17 rounds of ammunition as originally

manufactured. Plaintiff Ross declared her possession of the ammunition magazines in accordance with Conn. Gen. Stat. § 53-202x.

22. Plaintiff Ross has a valid Permit to Carry Pistols and Revolvers issued pursuant to Conn. Gen. Stat. § 29-28(b). She owns and carries her handgun, including its ammunition magazines, for the purpose of protecting herself and her family.

23. Plaintiff Ross would carry her handgun with fully loaded magazines (holding 17 rounds of ammunition) but for the risk and threat that Connecticut officials, including the Defendants herein, would charge her with violating Conn. Gen. Stat. § 53-202x(f) and/or take other adverse action against her, such as revoking her Permit to Carry Pistols and Revolvers under Conn. Gen. Stat. § 29-32(b).

24. Plaintiff Domenic Basile is the lawful owner of both a Glock model 19 handgun and a Caracal model C handgun, as well as magazines for those handguns, which hold 15 rounds of ammunition as originally manufactured. Plaintiff Basile declared his possession of the ammunition magazines in accordance with Conn. Gen. Stat. § 53-202x.

25. Plaintiff Basile has a valid Permit to Carry Pistols and Revolvers issued pursuant to Conn. Gen. Stat. § 29-28(b). He owns and carries his handguns, including their ammunition magazines, for the purpose of protecting himself.

26. Plaintiff Basile would carry his handguns with fully loaded magazines (holding 15 rounds of ammunition) but for the risk and threat that Connecticut officials, including the Defendants herein, would charge him with violating Conn. Gen. Stat. § 53-202x(f) and/or take other adverse action against him, such as revoking his Permit to Carry Pistols and Revolvers under Conn. Gen. Stat. § 29-32(b).

27. Plaintiff Connecticut Citizens Defense League, Inc. (“CCDL”) is a non-partisan, grassroots organization with approximately 36,000 members. CCDL is devoted to advocating the rights affirmed by the Constitutions of the United States of America and the State of Connecticut and is especially dedicated to protecting the unalienable right of all citizens to keep and bear arms, for the defense of both self and State, through public education and legislative action. CCDL welcomes anyone who believes that the defense of constitutional rights is critical to the longevity of freedom and to the success of this nation, and in particular that the rights to self-defense and to keep and bear the arms to actualize that defense are fundamental and undeniable. CCDL brings this suit on its own behalf and on behalf of its members. Plaintiffs Susan Ross and Domenic Basile are members of CCDL.

28. Plaintiff Second Amendment Foundation, Inc. (“SAF”) has over 650,000 members and supporters nationwide, including in the State of Connecticut. The purposes of SAF include promoting both the exercise of the right to keep and bear arms and education, research, publishing, and legal action focusing on the constitutional right to privately own and possess firearms. SAF also promotes research and education on the consequences of abridging the right to keep and bear arms and on the historical grounding and importance of the right to keep and bear arms as one of the core civil rights of United States citizens. Plaintiff Susan Ross is a member of SAF.

29. Both CCDL and SAF have members who live in Connecticut and who declared magazines capable of holding more than 10 rounds of ammunition pursuant to Conn. Gen. Stat. § 53-202x(a). Members have contacted both CCDL and SAF to ask questions and request assistance with respect to the magazine loading limit set forth at Conn. Gen. Stat. § 53-202x(f). Furthermore, members of both CCDL and SAF may face criminal charges or other adverse

action in the future on account of the allegation that they violated Conn. Gen. Stat. § 53-202x(f), and in that event, CCDL and SAF may be called upon to provide assistance or support. All of these actions deplete the time, energy and money of CCDL and SAF and their representatives and prevent CCDL and SAF from pursuing other organizational objectives.

**DEFENDANTS' ENFORCEMENT
OF THE CHALLENGED STATUTE**

30. Defendant James C. Rovella, as Commissioner of the Department of Emergency Services and Public Protection, is the “administrative head and commanding officer of the State Police Division.” Conn. Gen. Stat. § 29-1b(a). As Commissioner, Defendant Rovella “ha[s] general jurisdiction of the affairs of the Division of State Police within the Department of Emergency Services and Public Protection[.]” *Id.* § 29-2. The Division of State Police has the statutory obligation to “assist in or assume the investigation, detection and prosecution of any criminal matter or alleged violation of law.” *Id.* § 29-7. In addition, the Department of Emergency Services and Public Protection administers the program for declaring “large capacity magazines” and has authority to “adopt regulations” concerning the same. *Id.* § 53-202x(c). Finally, Defendant Rovella has authority under Conn. Gen. Stat. § 29-32(b) to revoke Permits to Carry Pistols and Revolvers “for cause,” which on information and belief can include carrying an ammunition magazine holding more than 10 rounds of ammunition in violation of Conn. Gen. Stat. § 53-202x(f).

31. Defendant Rovella has enforced Conn. Gen. Stat. § 53-202x(f), continues to enforce this challenged law and threatens to enforce the challenged law against the Plaintiffs. Aside from threatening to take action against the Plaintiffs in his role as the head of the Division of State Police, Defendant Rovella also threatens to take action against the Plaintiffs in his role

as Commissioner of the Department of Emergency Services and Public Protection with the power to revoke Permits to Carry Pistols and Revolvers.

32. Defendant Stavros Mellekas, as Colonel of the Connecticut State Police, is the deputy commissioner who has been delegated the “commanding officer’s jurisdiction of the affairs of the Division of State Police” by Defendant Rovella. *See* Conn. Gen. Stat. § 29-1b(a). The Division of State Police has the statutory obligation to “assist in or assume the investigation, detection and prosecution of any criminal matter or alleged violation of law.” *Id.* § 29-7.

33. Defendant Mellekas has enforced Conn. Gen. Stat. § 53-202x(f), continues to enforce this challenged law and threatens to enforce the challenged law against the Plaintiffs.

34. Defendant Richard J. Colangelo, Jr., as Chief State’s Attorney for the State of Connecticut, is the “chief of the Division of Criminal Justice.” Conn. Gen. Stat. § 51-275. The Division of Criminal Justice is “in charge of the investigation and prosecution of all criminal matters in the Superior Court,” *id.* § 51-276, and has the statutory obligation to “take all steps necessary and proper to prosecute all crimes and offenses against the laws of the state,” *id.* § 51-277(b). Defendant Colangelo, as the Chief State’s Attorney, has the statutory obligation to “administer, direct, supervise, coordinate and control the operations, activities and programs of the division as it shall apply to the Superior Court.” *Id.* § 51-278(a).

35. Defendant Colangelo has enforced Conn. Gen. Stat. § 53-202x(f), continues to enforce this challenged law and threatens to enforce the challenged law against the Plaintiffs.

**CAUSE OF ACTION FOR
DEPRIVATION OF CIVIL RIGHTS
42 U.S.C. § 1983**

36. Ammunition magazines holding more than 10 rounds of ammunition, including the 15- and 17-round magazines that Plaintiffs Susan Ross and Domenic Basile own, are in

common use for lawful purposes, including self-defense. Firearms loaded with more than 10 rounds of ammunition are therefore not dangerous and unusual weapons.

37. A person has a greater ability to protect his or her life (or the lives of his or her family members) with an ammunition magazine that holds a greater number of rounds of ammunition. A person with 15 rounds of ammunition available will be better able to defend himself or herself from a criminal gang, or from a drug-crazed criminal who continues attacking even after being shot, than a person who has only 10 rounds of ammunition available before they must reload their gun. A person with a disability or who has been injured by a violent attacker may be unable to reload his or her firearm, and thus, the statutory 10-round magazine loading limit can severely compromise such a person's ability to defend himself or herself.

38. Whatever governmental interests might justify the restriction of ammunition magazines to a 10-round capacity, these interests do not justify restricting lawful gun owners from loading more than 10 rounds into their otherwise lawful magazines.

39. Defendants' ongoing threat to enforce Conn. Gen. Stat. 53-202x(f) against the Plaintiffs and/or the Plaintiffs' members causes the Plaintiffs and/or the Plaintiffs' members to refrain from loading their magazines to full capacity and thereby limits those individuals' ability to keep and bear arms for their protection, thus causing injury and damage that is actionable under 42 U.S.C. § 1983.

PRAYER

WHEREFORE, Plaintiffs pray for the following relief:

- i. declaratory judgment that Conn. Gen. Stat. § 53-202x(f) violates the Second and Fourteenth Amendments;
- ii. a preliminary and/or permanent injunction restraining Defendants and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of the injunction, from enforcing Conn. Gen. Stat. § 53-202x(f);

- iii. such other and further relief, including injunctive relief, against all Defendants, as may be necessary to effectuate the Court's judgment, or as the Court otherwise deems just and equitable; and
- iv. attorney's fees and costs pursuant to 42 U.S.C. § 1988.

Dated: March 10, 2020

/s/ David D. Jensen
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