

THE LITIGATOR

THE SECOND AMENDMENT

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MOUNTAIN STATES LEGAL
— FOUNDATION —

AN INTERVIEW WITH JENNIFER VANDERSTOK

In our most recent case for the Center to Keep and Bear Arms, *VanDerStok v. Garland*, Mountain States is taking the ATF head-on. The agency's radical change in redefining "firearm" is an unprecedented departure from practice, and in its departure, the ATF unconstitutionally assumes the power to make laws in the place of Congress. That is a big deal.

What matters the most is how the law impacts the American People, our supporters, and our brave clients—such as Jennifer VanDerStok, the namesake of the case and the recipient of our Medal of Courage award. We were fortunate (and grateful!) she took the time to sit down to answer a few of my questions.

Stanton J. Skerjanec: Jennifer, thank you so much for chatting with us. You were a police officer for almost eight years when you left the force to become a teacher in Texas. Did you carry a firearm in the classroom? If so, why?

Jennifer VanDerStok: I taught in Georgia initially, but it wasn't until we moved to Texas that my particular school district adopted a volunteer carry program. All volunteers went through a solid training program, and carrying was completely confidential. Even though they didn't know which staff were armed, my students told me that it made them feel more secure, knowing they would be defended against an attack. How could I not be glad to give them some peace of mind? Kids should be worried about learning, not survival; let the adults handle the safety concerns.

Jennifer
Vanderstock



SJS: In this case against the ATF, there are a lot of people who ask, why do you even want to manufacture your own gun? You seem to have no problem getting a serialized gun, and you already have extensive knowledge of firearms. Why bother? Why is this such a big deal to you?

JV: Because I, like all Americans, should have the option to do so. I'm a law-abiding citizen. Believe me, with careers in law enforcement and education, I've been background-checked, fingerprinted, and psych eval-ed several times over. So why am I unreliable? Why does the government need to know what I do at the tool bench in my garage? Why do I need to justify myself to a government that, quite frankly, has shown itself to be unreliable when dealing with firearms?

Does anyone remember the Fast and Furious debacle? That wasn't American citizens gunrunning—that was our government. If anything, maybe citizens should start asking certain federal agencies to prove their own trustworthiness with firearms rather than the other way around.

SJS: There are only so many folks who have the knowledge, skills, and equipment to make their own guns. Most people are probably unaware of the historic practice of self-manufacture. Gun owner or not, self-manufacturer or not—why do you think this should matter for every American?

JV: There are scenarios—however unlikely—that may force you to be your own gunsmith. As the saying goes, "It's better to have it and not need it than need it and not have it."

SJS: What was the turning point that made you want to be a named plaintiff in such controversial litigation?

JV: I've been alarmed at the steady chipping away of many of our civil liberties by government (and corporate) overreach in the last few years. Unless we're vigilant, people who seem to be very much in love with power will continue to erode our constitutional rights. The opportunity to take a swing at some of those folks in court is a huge honor. I just want to encourage others to stand up in any legal way they can against government encroachment to ensure that we continue to enjoy the liberties we were given as our birthright. Even when things look discouraging, don't quit. Keep fighting for our Republic—your grandkids will thank you.

Stanton J. Skerjanec, Communications Manager

UPDATE ON SECOND AMENDMENT CURRENT CASES

MSLF's Center to Keep and Bear Arms is vigilant in protecting the right of all Americans to obtain and own the weapons of their choice to defend themselves and their loved ones.

In the Center's newest case, *VanDerStok v. ATF*, we challenge the ATF's new sweeping Final Rule redefining what constitutes a "firearm" under federal law. Under the Final Rule, many items that have never historically been regulated as firearms—such as readily converted frames and receivers, and weapons parts kits—have been brought into the regulatory purview of the ATF. We aim to have the Final Rule struck down as an unconstitutional overreach of the executive agency.

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The CKBA is representing: two individuals, Jennifer VanDerStok and Michael Andren, who wish to purchase these newly regulated items without government oversight; Tactical Machining, a producer and retailer whose business could be decimated under the Final Rule; and Firearms Policy Coalition, a membership organization for gun owners and enthusiasts across the country.

So far, Judge Reed O'Connor in the Northern District of Texas has granted a limited preliminary injunction, which prevents the ATF from enforcing the Final Rule against Jennifer, Michael, Tactical Machining, and Tactical Machining's customers. While there are similar cases against the Final Rule pending on other jurisdictions, we are so far the only case in the country to be granted an injunction!



Ellie Sullivan, a nurse and longtime Washington resident

In another case, *Sullivan v. Ferguson*, we're challenging the State of Washington's so-called "large capacity" magazine ban, which bans the sale, import, distribution, and manufacture of firearms magazines that can hold more than ten rounds of ammunition. Of course, there is nothing in the Second Amendment to support this limit. It is because of our clients like Ellie Sullivan that we took on this case. Ellie is a nurse and longtime Washington resident who has concerns for her safety amid surging violent crime, and it is her right to obtain the tools she deems appropriate to defend herself, without being subject to arbitrary limitations enacted by anti-gun legislators.

Finally, we are seeking intervention in two cases, *California v. ATF* and *Syracuse v. ATF*. In those cases, gun control activists sued the ATF seeking to substitute the federal government's definition of "firearm" with their own. Our clients originally sought to intervene in support of the government—but since then, the ATF has enacted its new Final Rule redefining "firearm," essentially switching sides and giving the gun control activists what they asked for. Our intervention is all the more crucial to protect the rights of our clients and the American people.

Erin M. Erhardt, Attorney



SUPREME COURT UPHOLDS SELF-DEFENSE WITH BRUEN RULING

Self-defense is *not* a government-granted privilege for the few. It's our natural, constitutionally protected right, in public and private. This right cannot be relegated to second-class status and hemmed in by arbitrary judicial distinctions, but must be treated as equal to other Bill of Rights guarantees. If conditions are placed on the right to bear arms, these laws must accord with the Constitution's original and authentic meaning, determined by text and history.

Such were the conclusions of the Supreme Court in *New York State Rifle & Pistol Association v. Bruen*, which was decided at the end of the 2021–2022 term as the first major gun rights ruling in over a decade. Together with *D.C. v. Heller* (2008) and *McDonald v. Chicago* (2010), *Bruen* is among the most important gun rights cases in American history.

MSLF's Center to Keep and Bear Arms participated in the *Bruen* case with an *amicus* brief, presenting the Court with a historically-grounded argument that the New York law at issue “ignores the Second Amendment’s text and does not follow any analogous historical or traditional regulation of the right and is thus unconstitutional”—a conclusion with which the Court ultimately agreed.

The *Bruen* case centered on New York's extremely restrictive permitting scheme, which functioned for decades as a de facto ban on public carry. Ordinary residents of the state could not bear firearms for self-defense outside the home, as state authorities insisted this was a privilege reserved for those who could show a “special need.”

This permitting scheme was directly challenged and finally overturned in the *Bruen* case. But the impact of the Court's ruling goes far beyond New York and its unconstitutional permitting system. In a major corrective change to the legal landscape, *Bruen* clears away underlying misconceptions about the Second Amendment, used for years to uphold gun control laws in the nation's lower courts.

Although the *Heller* decision stated that the Second Amendment protects “the individual right to possess and carry weapons in case of confrontation,” many lower courts subsequently made a sharp distinction between gun rights in the home and those outside.

Writing for the Court in *Bruen*, Justice Thomas corrected this widespread error: “Nothing in the Second Amendment’s text draws a home/public distinction with respect to the right to keep and bear arms.” Likewise, history—as a guide to original meaning—also does not support a dramatic difference between public and private self-defense.

Consequently, the government cannot limit public carry to those who demonstrate a “special need,” just as it cannot do this for the other Bill of Rights guarantees.

“It is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion... And it is not how the Second Amendment works when it comes to public carry for self-defense.” — NYSRPA v. Bruen



“We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need,” the Court stated in *Bruen*. “That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant’s right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.”

Nor can the government nullify that right by declaring vast areas—like the whole of Manhattan—as “sensitive places” where guns are forbidden.

More broadly, the Court determined that a judicial doctrine underlying New York’s permitting scheme—the so-called “two-step” framework, based on a distinction between “core” and “non-core” gun rights—is also wrong.



Before being ruled out in *Bruen*, this two-step inquiry was at the center of countless lower court decisions upholding gun control laws in the years since *Heller* and *McDonald*. But this “core vs. non-core” approach has no foundation in the original and authentic meaning of the Second Amendment.

Self-defense is not a government-granted privilege for the few. It’s our natural, constitutionally protected right, in public and private. This right cannot be relegated to second-class status and hemmed in by arbitrary judicial distinctions, but must be treated as equal to other Bill of Rights guarantees.

Bruen made it clear that judges must apply the original meaning, not a fabricated modern test, in deciding Second Amendment cases.

We reiterate that the standard for applying the Second Amendment is as follows,” the Court writes. “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”

“The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’”

Benjamin Mann, CKBA Paralegal



HISTORIC MSLF 2A CASES

Students for Concealed Carry on Campus, LLC v. Regents of the University of Colorado:

In 2009, MSLF brought a case in Colorado state court, challenging the University of Colorado's concealed carry policy that "prohibits the carrying of handguns on campus by all persons but certified law enforcement personnel"—in violation of the Colorado Concealed Carry Act ("CCA"). The Colorado Supreme Court ruled in favor of the students, holding that "CCA's comprehensive statewide purpose, broad language, and narrow exclusions" were proof that the Act was meant to "divest the [University of Colorado] of its authority to regulate concealed handgun possession on campus." Despite the fact that this case was merely a matter of statutory interpretation, and the court did not reach the constitutional claims, it was still a victory for the people of Colorado.

Brady Campaign to Prevent Gun Violence v. Salazar:

In the District of Columbia in 2009, MSLF intervened as defendants in a case where gun control advocates sued the Department of the Interior ("DOI") for not conducting an environmental analysis before allowing visitors of national parks to carry firearms. This new regulation came after 25 years of prohibiting "possession of firearms in national parks unless they were packed, cased, or stored in a manner that [would] prevent their ready use." Naturally, gun control advocates sprang into action and sued. The court concluded that the DOI was "required to provide a reasoned explanation for the [regulation] that addressed all foreseeable environmental impacts." However, during litigation, Congress enacted a law that prohibited the Secretary of the Interior from promulgating any regulation that "prohibits an individual from possessing a firearm" in national parks. The court allowed the DOI to forgo the environmental analysis in light of the newly enacted law. Even though the gun control advocates were initially validated by the court—that the DOI needed to conduct this analysis before changing its regulation—gun rights advocates prevailed since citizens could carry guns in national parks after the enactment of Congress's new law.



Baker v. Biaggi:

In Nevada in 2010, MSLF argued on behalf of a gun owner and advocate, Al Baker, and won. Mr. Baker challenged a provision of the Nevada Administrative Code that prohibited the possession and discharge of a firearm in Nevada State Parks. Mr. Baker was a certified pistol instructor, concealed firearms instructor, and outdoorsman who simply wanted to keep a firearm in his tent for self-defense while camping, and local authorities prohibited him from doing so. "The Nevada Administrative Code contain[ed] no self-defense exception for possession or discharge of a firearm within Nevada State Parks." After over a year and a half of litigation, the state eventually amended its code to not encroach on the Second Amendment rights of its citizens, thus securing a win for both the citizens of Nevada and MSLF.

Morris v. U.S. Army Corps of Engineers:

In Idaho in 2014, MSLF argued successfully on behalf of gun owners. The Army Corps tried to regulate firearms on recreation sites surrounding dams, disallowing recreationalists from having a firearm on their person or in their tent for self-defense. The court struck down the regulation, applying *District of Columbia v. Heller*. First, the court noted that the "Second Amendment protects the right to carry a firearm for self-defense purposes." The fact that hunters had more leeway than recreationalists to carry a firearm violated the Second Amendment. Second, in *Heller*, the Supreme Court identified the "right of a law-abiding individual to possess a handgun in his home for self-defense," and the court in Idaho stated, "the same analysis applies to a tent" in a recreation site. MSLF successfully vindicated the rights of gun owners while simultaneously keeping government agencies in check.

Kaitlyn Schiraldi, Attorney

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Since 1977 MSLF has held true to its mission and vision and our networks have grown and grown! We are grateful for the partnerships we've created in the fight for Liberty. Friendships made in the trenches are often the strongest. Thus, MSLF is proud to announce our newest partner, Pope Valley Winery, and the creation of the 1776 Wine Club.

Why Pope Valley Winery

- As third-generation rural farmers, land use and property rights are extremely important to Pope Valley.
- Safeguarding Pope Valleys' agricultural heritage and way of life to hand down to the next generation, as it was to us, is something we chose to support & fight for.
- In partnering, Pope Valley is able to support and fight for these rights for ourselves & others.



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Beyond *Bruen*: Four more victories for gun rights at the Supreme Court in 2022

Soon after the historic Second Amendment decision in *NYSRPA v. Bruen*, the Supreme Court took action in four other gun rights cases based on the new *Bruen* ruling, vacating lower court decisions and ordering these four cases to be reconsidered in light of *Bruen*. MSLF's Center to Keep and Bear Arms participated as an *amicus*, filing briefs with the Supreme Court in three of these cases:

- *Association of New Jersey Rifle & Pistol Clubs v. Bruck* (previously *ANJRPC v. Grewal*) is a challenge to New Jersey's ban on standard capacity magazines—which are commonly owned by peaceable Americans in a vast majority of states, while being vilified as “weapons of war” by anti-gun activists and the Biden Administration.
- *Young v. Hawaii* concerns public carry in a manner similar to *Bruen*, with Hawaii imposing an open carry permit scheme so restrictive that it constitutes a de facto ban on the practice. CKBA supported George Young, an Army veteran and security guard, in his long-running challenge to the carry ban.

- *Bianchi v. Frosh* involves Maryland's ban on so-called “assault weapons”—a public relations term used to demonize commonly owned and constitutionally protected firearms. CKBA joined the Professors of Second Amendment Law, arguing against a lower court's twisting of Supreme Court precedent in the *Bianchi* case.

Also vacated and remanded by the Supreme Court is *Duncan v. Bonta*, a case about California's prohibition on the standard-capacity devices often unfairly demonized as “high-capacity magazines.” CKBA is currently litigating the same issue raised by the *Duncan* case, within the jurisdiction of the same circuit court, with our challenge to the State of Washington's ban on so-called “high-capacity” magazines in *Sullivan v. Ferguson*.

Lower courts are now reconsidering these four cases by the standard in *Bruen*: the Second Amendment's original meaning, as determined by the constitutional text and relevant history.

Benjamin Mann, CKBA Paralegal