IMLA

Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

MAR APR 2023
VOL.64 NO.02

THE SUM OF THE PARTS: MUNICIPALITIES TAKE AIM AT GHOST GUNS

GUN CONTROL ACT OF 1968 • POLYMER80 V. SISOLAK BACKGROUND CHECKS • MAYOR AND CITY COUNCIL OF BALTIMORE V. POLYMER80 LLC LIMITATIONS ON MAGAZINE SIZE • SECOND AMENDMENT • UNDETECTABLE FIREARMS ACT OF 1988 • ASSAULT WEAPONS BANS • PROTECTION OF LAWFUL COMMERCE IN ARMS ACT • CITY OF CINCINNATI V. BERETTA USA, INC. • STRICT SCRUTINY PEOPLE OF CALIFORNIA V. POLYMER80 LLC • RED FLAG LAWS • FEDERAL FIREARMS ACT OF 1938 HELLER V. DISTRICT OF COLUMBIA • ATF FINAL RULE • CONDITIONS ON CONCEALED OR OPEN CARRY • MCDONALD V. CITY OF CHICAGO • STATE PREEMPTION • NEW YORK PISTOL AND RIFLE ASSOCIATION V. BRUEN • GUN SHOW LOOPHOLE STAND YOUR GROUND LAWS

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The Sum of the Parts: Municipalities Take Aim at Ghost Guns

ERICH EISELT, *IMLA Assistant General Counsel and Director of Legal Advocacy*



INTRODUCTION

Local government lawyers are acutely aware of the Second Amendment battles being waged in courts across the nation. The spectrum of argument is broad: limits, if any, on possession outside the home after *Bruen*; restrictions on purchase; red flag laws; conditions on open and/or concealed carry; restrictions on magazine size; bans on assault weapons and devices that add machine gun-like capabilities; preemption of local gun laws; and more—the proper balancing of individual prerogatives versus communal safety continues to be fiercely contested. But within that debate, one element has generally been constant: the object of the litigation is a firearm.

Enter an innovation designed to skirt that issue altogether—the "ghost gun." Appearing on America's streets at an alarming pace, ghost guns avoid regulation and defy traditional policing mechanisms. Until recently, federal efforts to quell this growing threat have lagged, leaving state and local governments to take the lead.

1. Lethality, Piece by Piece-What is a "Ghost Gun?"

As their nickname implies, "ghost guns" are somewhat invisible incarnations of their namesake articles. Two primary characteristics allow them to remain in the shadowy outskirts of law enforcement: first, they are not offered fully assembled, and second, they do not bear serial numbers.

Components only: The moniker of the leading ghost gun manufacturer, Nevada-based "Polymer80," leaves little to the imagination. Its most popular offerings are kits containing unassembled polymer parts, often comprising the lower 80% of a firearm—the frame. Avoiding regulatory scrutiny, the polymer pieces do not yet comprise a functional weapon, requiring supplementary parts, machining, and assembly by the purchaser. The kits include instructions on how to mill, drill and assemble the components into a working firearm, by affixing additional metal constituents (the barrel, trigger, and firing mechanism, also offered by Polymer80) to the frame. On the company's website, shoppers can purchase unfinished lower receivers for rifles or unfinished handgun frames, along with other materials necessary to complete the assembly of a fully functional weapon, including the now-infamous AR-15, a .308 semi-automatic rifle, and seven or more types of handguns.[1] As will be discussed below, this piece-by-piece sales methodology has largely enabled Polymer80's products to avoid oversight by the federal agency charged with gun regulation—the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Polymer80 has openly promoted this extraterritoriality, portraying itself as an oasis of patriotic freedom against ever-encroaching government overreach with company swag like its "AFT" ("Assemble For Thyself") line of tees and patches.[2]

One purveyor of Polymer80 products, 3CR Tactical, provides this description of the kit and components:

> *What is a Polymer 80 Percent Build Kit?*
> A polymer 80% build kit provides everything you need to complete a Glock-style pistol from the comfort of your own home workshop.
>
> However, there are a few things you must consider when choosing a Polymer80 build kit, such as what parts you need and what size frame you want.
> You'll also need to decide if you want a complete kit with all the parts needed to build your Glock-style sidearm, or just a frame kit.

Are Polymer80 Kits Still Legal?
Yes, Polymer80 kits are still legal in the United States as of October 2022. There has been some confusion on this topic due to the fact that some states have banned "ghost guns," which are unfinished firearms that can be easily assembled at home.

However, Polymer80 kits are not considered ghost guns because they require some machining and finishing work before they can be assembled into a functioning firearm.[3]

No serial numbers: The second and even more problematic feature of ghost guns is their absence of serial numbers. For more than 50 years, all guns manufactured in the United States, and those imported from abroad, are legally required to bear serial numbers.[4] Typically located on the back of the frame, the numbers provide data about where a gun was manufactured and link the firearm to a registered owner. But until recently, the government has held that unfinished frames (for handguns) or receivers (for long guns) do not qualify as firearms because they cannot fire a projectile. Again, Polymer80 and others in the ghost gun industry have exploited this regulatory void, selling thousands of soon-to-be-weapons which bear no serial numbers.

Overlap with law enforcement: Ironically, although increasingly used by criminals, mostly-polymer guns also confer an important benefit for legitimate consumers: they are significantly lighter than all-metal weapons. That feature is an advantage to those who must carry firearms all day, such as law enforcement and security personnel, many of whom are avid users of polymer weapons. Unsurprisingly, this explains why the top ten pistols sold on guns.com in 2020—all of which were polymer based—included the Glock 17 and Glock 19 models used by many police departments.[5] It also explains why virtually all regulations prohibiting ghost guns make a clear exception for sales to law enforcement and members of the military (all of whose polymer guns will obviously be imprinted with serial numbers before use).

Sidebar--3D guns: It should be understood that firearms manufactured on 3D printers–true "3D guns"-- are not the leading antagonists in the ghost gun crisis. Made almost entirely of plastic, and virtually invisible to magnetometers, 3D guns are "ghost guns" in that they do not bear serial numbers. But 3D guns diverge from the general population of ghost guns in some respects: first, anecdotal evidence is that law enforcement has been finding few 3D guns in the hands of criminals because they have not proved sturdy enough to handle the stress of repeated firings. Second, true 3D guns have long been prohibited under the United States Undetectable Firearms Act of 1988 (Undetectable Firearms Act) which makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive (1) any firearm which is less detectable by walk-through metal detection than a "Security Exemplar" (which contains a minimum of 3.7 oz (105 g) of steel), or (2) any firearm with major components that do not generate an accurate image when viewed by standard airport imaging technology.[6]

While the Undetectable Firearms Act addresses "firearms," it does not prevent the proliferation of self-manufactured 3D gun components, whether polymer or otherwise. The name "Defense Distributed" may sound familiar to some; it attempted for more than a decade to upload 3D firearm design files to the web for public use. Defense Distributed describes itself as "the first private defense contractor in service of the general public," and asserts that "Since 2012's Wiki Weapon project, DD has defined the state of the art in small scale, digital, personal gunsmithing technology."[7] The company's initial uploading efforts were quickly stopped by the Obama Administration. At that time, 3D gun components were deemed by the Department of State (DOS) to be included within "defense articles" under the International Traffic in Arms Regulations (ITAR), meaning the codes constituted a national defense asset and could not be disseminated. In 2016, Defense Distributed brought suit, asserting a First Amendment right to place 3D firearm design files on the web. The Trump Administration DOS subsequently moved to settle that litigation, de-designating 3D components from ITAR.[8] While a collective of Attorneys General from 22 states and the District of Columbia temporarily enjoined the de-designation via an order from the federal court for the Western District of Washington,[9] in late 2021 a panel of the Ninth Circuit vacated the district court's order.[10] Within days, Defense Distributed had uploaded to the web numerous program codes for 3D gun component production, offered for use by the public, at no charge.[11] The codes remain on the web today, accessible by anyone, creating another source of ghost components.

A page on a site linked to the Defense Distributed website expressly promotes the opportunity to use the code on CNC (computer numerical control) machines to create serial-free guns:

> **No Prior CNC Experience Required**
> With simple tools and point and click software, GG3 is the perfect platform to learn and program a CNC, regardless of application. No prior CNC skill is required to interact with community gunsmithing files. GG3 is the most popular way of finishing unserialized rifles and pistols in the comfort and privacy of home.[12]

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2. The Federal Framework-Missing the Mark

As suggested above, federal efforts to combat ghost guns have been largely ineffective, a victim of diminishing Congressional appetite to curb firearms generally. That hesitancy has not always existed. Two far-reaching gun control measures were signed into law by President Roosevelt in the 1930's to combat organized crime, each obtaining the approval of the National Rifle Association (NRA).[13] The NRA also endorsed a 1967 California law reversing open carry signed by Governor Reagan after armed Black Panthers began patrolling Oakland neighborhoods.[14]

But that ironic gesture would arguably be the high-water mark of NRA support for gun control, as evidenced the following year. When the Gun Control Act of 1968 (Gun Control Act)[15] was signed into law by Lyndon Johnson following a succession of devastating assassinations (John F. Kennedy, Robert Kennedy, and Martin Luther King, Jr.), the NRA exerted its growing influence to limit the measure. Although the Gun Control Act's mission was "to support Federal, State, and local law enforcement officials in their fight against crime and violence," the NRA blocked the law's major provisions, which included a national gun registry and a requirement for licenses by all gun owners.[16] In 1986, the NRA succeeded in rolling back even more of the Gun Control Act.[17] And after a sweeping anti-crime measure was signed in 1994 which included a ten-year prohibition on the manufacture, ownership or transfer of 19 semiautomatic weapons including the AR-15, and limited magazine capacity to ten bullets, the NRA's "Stop the Gun Ban" campaign helped ensure that the assault weapons ban would not be renewed when the measure was considered for reinstatement a decade later.[18]

A Short counteroffensive: With Congress and many statehouses unable to rally the majorities needed to overcome NRA-spawned indifference, a few local governments took action to stall the infestation of firearms swarming their streets. Cincinnati confronted the gun industry directly. In 2002, it notched a triumphal but brief victory, successfully arguing at the Ohio Supreme court that indiscriminate promotion and sale of weapons by Beretta and other gun makers and dealers was causing a flow of lethality to the city, creating a compensable public nuisance under Ohio law.[19] But that win was ephemeral. When Chicago took a similar tack, the NRA and industry forces rapidly coalesced, obtaining a decisive holding by the Illinois Supreme Court that the city could not apply Illinois public nuisance principles to hold gun makers and sellers liable for the flood of weapons into the municipality.[20]

Closing the door-PLCAA: The next major piece of Congressional legislation regarding firearms would reflect a 180-degree reversal of sentiment from prior federal measures. On the heels of the litigation by Cincinnati, Chicago and others, lawmakers bought into the NRA's Second Amendment urgings that they insulate the gun industry from challenge. The Protection of Lawful Commerce in Arms Act (PLCAA) passed by a wide Congressional margin in 2005. Captioned as "an act to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others,"[21] PLCAA has effectively muted would-be claimants, municipal and otherwise. With the exception of a relatively recent and exceedingly rare settlement by the industry in favor of Sandy Hook plaintiffs,[22] virtually no plaintiff has succeeded in circumventing the law's expansive immunities. True, some efforts have been floated in Congress to rebuff the weapons makers and dealers: in July 2021, for example, two bills reached a vote on the House floor: the *Equal Access to Justice for Victims of Gun Violence Act,*[23] and the *Assault Weapons Ban of 2021*.[24] Neither advanced.

3. Back to Ghost Guns-Too Little, Too Late

Paralleling its inability to rein in firearms generally, the federal response to ghost guns has largely been an exercise in futility. As referenced earlier, ATF regulations historically classed gun components—even if they could be assembled into a working weapon—as outside its definition of "firearm," meaning that they did not fall within the ambit of laws mandating the placement of serial numbers on guns.[25]

One small federal step: A growing chorus of concern about ghost guns eventually generated federal action. Last year, the Biden administration ATF announced new rules (Final Rule) that placed kits used to build homemade "ghost guns" in the same legal category as traditional firearms. The Final Rule prohibits the sale of gun components – the frames and receivers - without a serial number and requires that purchasers submit to background checks.[26] The measure was unsuccessfully challenged by a group of attorneys general, and by the NRA and other gun groups.[27] In the 120-day period between announcement of Final Rule and its effective date, ghost gun sales soared as retailers rushed to clear their inventories of the soon-to-be-illegal components.[28]

The loopholes persist: While well-intentioned, the Final Rule arguably suffers from a continuing federal myopia, as evidenced by the reactions to the measure by the State of California and one eminent gun control group-the Gifford Foundation.[29] They had initially sued the government due to

a lack of action on ghost guns, only to stay their proceedings as the Final Rule was announced. But upon closer review of the text, they again returned to court, citing material shortcomings and seeking injunctive relief:

> In April 2022, the administration issued new rulemaking that seemed intended to combat the proliferation of ghost guns. But ATF's new rule, which took effect in August 2022, is contrary to the text of the GCA in one critical aspect.. . . Though the Final Rule takes important steps to eliminate ghost gun-making "kits"—meaning where 80 percent receivers or frames are sold together with other essential firearm parts, such as the magazine to store ammunition, and the jigs to assemble the firearm—the Rule still permits the selling of unserialized "80 percent" receivers and frames as standalone items without any background checks or serialization. For example, Juggernaut Tactical sells both 80 percent lower receivers and jigs and tool kits on their website. These items are sold completely unregulated—as long as a buyer purchases each in a separate transaction.[30]

4. State and Local Governments Take Up Arms

As with other aspects of gun regulation, the inadequacy of federal action on ghost guns has spurred states and local governments to fill the vacuum. The following will illustrate some encouraging results, but will also reveal that hurdles lie ahead.

No in Nevada: Does the Second Amendment guarantee an individual right to manufacture firearms? The ferocity of pro-gun activists is evident in a recent decision in Nevada. There, gun control advocates passed AB 286, which was approved on straight party line votes in the state's Senate and Assembly. AB 286 prohibits a person from

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"possessing, purchasing, transporting or receiving any unfinished frame or receiver of a firearm, or assembling any firearm not imprinted with a serial number."[31] Violations are a gross misdemeanor; however, repeat offenses can constitute a felony. The law does provide for various commonsense exceptions, including for a licensed firearms importer or manufacturer, or a member of law enforcement agency or where the unfinished frame or receiver already bears a serial number. The measure was signed into law by Nevada governor Steve Sisolak in June 2022; however, three days later the Firearms Policy Coalition (FPC) joined Nevada manufacturer Polymer80 to file suit. They assert that, in order for law-abiding individuals to exercise their Second Amendment rights, they must have the ability to possess firearms—including those they assemble themselves.

Federal district court Judge Miranda Du held that AB 286 did not violate the Second Amendment because individual gun owners can still purchase and use fully finished firearms – as well as assembly kits, provided they come with a serial number: therefore, the law "does not severely burden Second Amendment protected conduct, but merely regulates it."[32] Judge Du also rejected the assertion that AB 286 was a "taking" barred by the Fifth Amendment, holding that the law "does not deny all economically beneficial or productive use of unserialized firearms" because it only affects the sale or production of those products inside state lines.[33]

The decision resulted in a stampede to sell ghost gun parts before AB 286 took effect.[34]

FPC and Polymer80 launched a more productive attack in state court. In December 2021, Judge John Schlegelmilch of Nevada's Third Judicial District struck down the measure as unconstitutionally vague. He found, for example, that the phrase "intended to be used" was unclear: "by whom was it intended to be used as a gun--the manufacturer, the retailer, the purchaser?" Judge Schlegelmilch objected that "It would put an ordinary Nevada citizen at risk of discriminatory enforcement by anybody who just decides 'yeah, that looks like a gun.'" The legislature had not provided sufficient definitional guidance:

> Unlike the federal regulatory process to determine whether a frame or lower receiver is considered a firearm under the Gun Control Act, Nevada has established no authority at all to determine when an 'unfinished frame or receiver' actually comes into existence. . . . The most any court can glean from the definition is that it is something less than a firearm and more than a block of raw material."[35]

DC wins *Heller*, round two? Washington DC fared better. In February 2020, the city's Mayor, Muriel Bowser, sent to City Council proposed legislation entitled "Ghost Guns Prohibition Emergency/Temporary Amendment Act of 2020." The proposed bill amended DC code to include definitions of a ghost gun – meaning a gun that is undetectable, untraceable, or both. The measure was responding to a growing crisis: in 2017, the Metropolitan Police Department had recovered three ghost guns; by 2018 the number was 25; in 2019, 116; in 2020 306, and 327 through the first nine months of 2021.[36]

The bill rapidly passed in City Council, prohibiting the sale or transfer of an "unfinished frame or receiver," defined as "a frame or receiver of a firearm, rifle or shotgun which is not yet a component part of a firearm, but which may without the expenditure of substantial time and effort be readily made into an operable frame or receiver through milling, drilling, or other means."[37]

The DC law caught the attention of a longtime adversary of gun control in the District—Dick Heller, better known for the milestone Supreme Court decision bearing his name.[38] (Heller and other gun rights activists have won a number of more recent victories over the District, including overturning a ban on weapons with a capacity of 12 or more rounds, a ban on carrying a weapon outside the home, a ban on possession of ammunition without gun registration, and a ban on non-residents possessing a gun in the city.)[39]

Heller challenged the new ghost gun law, as well as DC's longtime ban on manufacturing weapons.[40] D.C. Attorney General Karl Racine declined to answer questions about the lawsuit, but said his office "will continue to do everything in our power to combat gun violence and improve public safety, including defending the District's common-sense gun laws in court. We are proud the District has strong laws on the books to protect residents from gun violence."

Heller's lawsuit acknowledged that the District has "a legitimate governmental concern" in prohibiting untraceable firearms. But he sought to enjoin the law on various grounds including unconstitutional vagueness. He also challenged a D.C. law that has been on the books since 1976: "No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District." Heller's attorney wrote, "We know of no other jurisdiction in the United States that has purported to ban the manufacture of firearms." In an affidavit, Heller said that "for some time I have desired to build my own firearm," which he was willing to register and serialize. So he ordered a kit to make a Glock-style 9mm handgun from a North Carolina purveyor, and had it shipped to one of the District's two federal firearm licensees cleared by ATF to sell guns. The licensee consulted the D.C. police and was told to send the kit back, which it did. Thus, Heller was damaged "by being deprived of his parts kit."

Heller also argued that the new DC ghost-gun law was incompatible with the Undetectable Firearms Act, which as described above requires that, after removing the weapon's handle and magazine, it still must have 3.7 ounces of detectable metal. The DC law, said Heller, required the 3.7 ounces of metal *after* removing the gun's barrel, trigger and slide, leaving only

the polymer frame, which by definition isn't made of metal. "The District has apparently unwittingly made ... existing polymer frame handguns illegal." Heller did not succeed, and dismissed his case with prejudice in May 2022.

More significantly, in August 2022, DC won a major victory in its consumer fraud lawsuit against Polymer80, permanently enjoining the company from selling gun components in DC and requiring Polymer80 to pay $4,038,000 as a civil penalty for 1,198 days of deceptively advertising that its unserialized firearms were legal in the city.[41] That victory yielded immediate results: The Polymer80 website rapidly noted, "On August 10, 2022, the Superior Court for the District of Columbia ruled that Polymer80 handgun frames, lower receivers, Buy, Build, Shoot kits and any comparable products are illegal to purchase and possess in the District of Columbia under District of Columbia law."[42] The ghost gun maker followed that announcement with a now-removed alert about possible illegality elsewhere and shifted responsibility for compliance to the purchaser:

> Please be advised that different states, localities, and jurisdictions have different laws regarding the types of products sold by Polymer80, and such products may be unlawful in certain places. By using this website, or using or purchasing a Polymer80 product, you affirm that you have verified that you may possess, purchase, and use Polymer80 products under all applicable federal, state, and local laws.[43]

Ghosts in Los Angeles: "In September 2020, in Compton, a man with a felony conviction, armed with a weapon bearing no serial number, ambushed and repeatedly shot in the face and head two Los Angeles County Sheriff Deputies sitting in their patrol car."[44] So begins the complaint filed by Los Angeles City Attorney Mike Feuer against Polymer80 in 2019.[39] The action seeks injunctive relief, civil penalties, and abatement for public nuisance and violations of California's unfair competition law.[45] Los Angeles explains why Polymer80 is in its sights:

> The People bring this lawsuit against Polymer80 because Polymer80 is by far the largest seller and manufacturer of ghost gun kits and components. Of approximately 1,475 ghost guns seized in 2019 and entered into the ATF's database of ballistic images, over 86% (1,278) of these weapons were assembled from Polymer80 components. This holds true in Los Angeles, where an increasing percentage of firearms recovered by the LAPD in criminal investigations are ghost guns, and where of those ghost guns, Polymer80 is the most common component manufacturer.[46]

Trial in the Los Angeles case is set to begin in April 2023 in Superior Court, Los Angeles County.

Baltimore takes aim. In May 2022, the Mayor and City Council of Baltimore sued Polymer80 and Hanover Armory LLC, a gun distributor.[47] As the City's complaint complaint puts it, "by manufacturing and selling ghost guns, these defendants have predictably, if not intentionally, caused violence destruction and death in Baltimore City." Baltimore describes the means by which Polymer80 attempts to avoid applicable laws and undermines law enforcement: "With minimal work and without a background check or interaction with a federal firearms licensee (FFL), any buyer can assemble a fully functioning, untraceable firearm that lacks a serial number."[48]

As with Los Angeles, Baltimore's statistics paint a grim picture: the Baltimore Police Department retrieved 9 ghost guns in 2018, 29 such weapons in 2019, and 126 in 2020. In 2021, 324 ghost guns were recovered, constituting more than one seventh of the total. And by April 2022, the number had risen to 131 ghost guns, more than double the pace of the prior year.

As Baltimore describes, Polymer80's business model enables a robust secondary criminal firearms market: assemblers purchase Polymer80 products and sell fully functioning firearms. In June 2021, for example, the Baltimore Police Department uncovered a facility that built dozens of Polymer80 guns, confiscating 40 pistol frames, jigs, a drill press, and other tools used for assembly. The Baltimore complaint also details various of the illicit marketing techniques used by Polymer 80. As recently as June 2020, Polymer 80's home page included the question "Is it legal?" and responded unequivocally, yes!" (In fact, a Maryland resident cannot manufacture or sell handguns not approved by the state's Handgun Roster Board).

Baltimore points to a sleight of hand that Polymer80 employed widely: the company referenced an "ATF determination letter" implying that the ATF concluded that Polymer 80's weapons were not firearms. That representation was unequivocally false, given that the ATF determination in question related only to a small number of unfinished lower frames and receivers, and not to any assembled Polymer 80 product.

Baltimore asserts three causes of action: First, public nuisance, in that the defendants flooded Baltimore with untraceable and easily trafficked lethal weapons, requiring abatement for a host of costs imposed on the city. Second, negligence, given that the defendants had a duty to take reasonable measures to prevent injury to the public, failed in that duty, and are proximately liable for the resulting mayhem. Third, violation of the Maryland Consumer Protection Act (MCPA), which prohibits "unfair abusive, or misleading statements."[49] The MCPA also prohibits "knowing concealment, suppression or omission of any material fact with the intent that a consumer rely on the same."[50] In addition to damages and costs of litigation, Baltimore seeks an injunction against further illegal activity by the defendants.

The city continues to press its claims.

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On December 20, 2022, it defeated the defendant's motion to dismiss. Baltimore obtained an order finding that the City had "more than adequately pled facts supporting its claims" and denying the defendants' motion to dismiss.

Baltimore's ghost gun litigation has paralleled an awakening at the state legislature. Maryland Code Public Safety Section 5-703 has prohibited the sale or transfer of unfinished frames or receivers since June 1, 2022:

> Sale or transfer of unfinished frame or receiver to be imprinted with serial number: (a)(1) A person may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver unless it is . . . has been, imprinted with a serial number by a federally licensed firearms manufacturer or federally licensed firearms importer in compliance with all federal laws . . . .[51]

The law goes further, prohibiting even the possession of an unserialized firearm beginning March 1, 2023:

> (2) On or after March 1, 2023, a person may not possess a firearm unless:
> (i) the firearm is required by federal law to be, and has been, imprinted . . . with a serial number in compliance with all federal laws . . . or
> (ii) the firearm:
> 1. has been imprinted . . . with:
> A. the zip code of the current owner or person that made, completed, or initially assembled the firearm;
> B. the initials of the current owner or person that made, completed, or initially assembled the firearm; and
> C. a number that does not match a number used by the current owner on another firearm . . . and
> 2. has been registered with the Secretary.[52]

Signs of Progress

The concerted federal, state, and local efforts are finally evidencing results. The Biden Final Rule, despite being challenged by State of California and Gifford Foundation, did change the behavior of Polymer80. A blog on the company's website reported that Ploymer80 would comply with the "unconstitutional regulations:"

> Last week ATF final rule 2021R-05F, Definition of "Frame or Receiver" and Identification of Firearms, went into effect. Polymer80, Inc., the company that designs and develops innovative firearms and after-market accessories that provide ways for customers to participate in the build process while expressing their right to bear arms, is a direct target of this new rule. Polymer80 wholeheartedly disagrees with the ATF final rule, however, in an effort to maintain a legal business, will comply with the unconstitutional regulations.
>
> In accordance with the new ATF final rule, Polymer80 will no longer offer their popular 80% kits in the same configuration in which customers have grown accustom. Instead, Polymer80 has released three new options for consumers interested in building their own legal firearm:
>
> • OPTION 1 is an unserialized 80% frame with rear rail, locking block rail system and pins. No jig or tools are included with this product.
>
> • OPTION 2 is a serialized frame that does include a jig, tooling, rear rail and locking block rail system. This option is the same as the prior 80% kit offered by Polymer80, but with a serialized frame.
>
> • OPTION 3 is the "Build Back Better" kit, which includes everything listed in option 2 plus a slide assembly. This kit contains everything you need to build a complete, serialized firearm.
>
> Option 1, the unserialized 80% blank, is currently available for purchase at http://www.polymer80.com/"www.polymer80.com. Please note that shipment is not available to all states.
> For those interested in assembling without drilling, Polymer80 will continue to offer their AFT "Assemble for Thyself" kit, which includes all the necessary components to build a complete firearm, no drilling required.
> Polymer80 will also continue to offer their line of complete pistols, including the popular PFC9 compact pistol and PFS9 full-size pistol, as well as parts and accessories.[52]

During the writing of this article in January and February 2023, the Polymer80 website also appears to have changed dramatically. While the company still features "AFT" swag, promotes the Second Amendment, and encourages building firearms at home, the first page viewed by a visitor to the site is now an image of "Serialized Pistols" in various hues.[52]

Conclusion

The current headwinds against gun control measures in America, no matter how well-intentioned and seemingly respectful of Second Amendment rights, are not helpful in the campaign to outlaw ghost guns. But incremental progress is being made as regulations begin to eliminate loopholes previously exploited by the ghost gun industry. In the interim, local governments can play a major role in holding accountable the entities who have profited by sending thousands of unserialized firearms onto America's streets. ML

Notes

1. https://www.Polymer80.com; the company describes its mission as follows: "Polymer80, Inc. designs and develops innovative firearms and after-market accessories that provide ways for our customer to participate in the build process,

while expressing their right to bear arms. This provides a fun learning experience and a greater sense of pride in their completed firearm, strengthening our brand loyalty. We summarize this with our motto of 'Engage Your Freedom.'"

2. Apparel & Swag (https://www.polymer80.com/apparel (last accessed Feb. 27, 2023).)

3. Polymer80 Build Kits | 3CR https://3crtactical.com/product-category/polymer80/polymer80-build-kits/ {last accessed Feb. 27, 2023).

4. Originally introduced in 1963 following the assassination of President Kennedy, the Gun Control Act (Pub. L. 90-618) was ultimately passed in 1968.

5. Police Sidearms: The Handguns of America's 10 Largest Departments; https://www.tactical-life.com/handguns/largest-departments-police-sidearms/ (last accessed Feb. 27; https://www.guns.com/news/2019/09/06/most-popular-duty-guns-for-law-enforcement, 2023) (last accessed Feb. 27, 2023).

6. Undetectable Firearms Act of 1988, 18 U.S.C. § 922 (p)).)

7. Defense Distributed (https://defdist.org).

8. On May 24, 2018, DOS proposed a rule removing all "non-automatic and semi-automatic firearms to caliber .50 . . . and all of the parts, components, accessories, and attachments specifically designed for those articles" from the Munitions List under ITAR.

9. Washington v. United States Dep't of State, 443 F. Supp. 3d 1245 (W.D. Wash. 2020).

10. Washington v. United States Dep't of State, no. 20-39351 (9th Cir. Apr. 27, 2021).

11. Dan Zimmerman, *Defense Distributed Releases All 3D Gun Files to the Public Following Ninth Circuit Decision,* The Truth About Guns, Apr. 29, 2021, https://www.thetruthaboutguns.com/defense-distributed-releases-all-3d-gun-files-to-the-public-following-ninth-circuit-decision/ (last accessed Feb. 25, 2023).

12. https://ghostgunner.net (last accessed Feb. 27, 2023).

13. The National Firearms Act of 1934 (Pub. L. 73-474) focused particularly on firearms and devices used by Prohibition-era gangs, including machine guns, sawed-off shotguns and silencers, requiring registration, notice of transfer, and payment of a $200 excise tax on those weapons. The Federal Firearms Act of 1938 (Pub. L. 75-785) imposed a federal license requirement on gun manufacturers, importers, and retailers and prohibited gun sales to certain categories of "prohibited persons."

14. Mulford Act, CA. Penal Code §§ 25850 and 171(c).

15. Gun Control Act of 1968, Pub. L. 90-618 (1968).

16. *Id*.

17. Firearms Owners Protection Act, Pub. L. 99-308 (1986).

18. Ann Gerhart and Chris Antara, How the NRA transformed from marksmen to lobbyists, Washington Post, May 29, 2018 https://www.washingtonpost.com/graphics/2018/national/gun-control-1968/#:~:text=The%20National%20Rifle%20Association%2C%20founded%20in% (last accessed Feb. 2, 2023).

19. City of Cincinnati v. Beretta U.S.A. Corp., 95 Ohio St.3d 416, 768 N.E.2d 1136 (Ohio 2002).

20. City of Chicago v. Beretta U.S.A. Corp, 13 Ill.2d 351, 821 N.E.2d 1099 (Ill. 2005). Among other holdings, the Illinois Supreme Court found that gun manufacturers and distributors did not owe a duty to the public at large, and there was insufficient causal nexus between retailers' sale of weapons in neighboring communities and gunfire on Chicago street, and the claim was barred by the municipal cost recovery rule. (IMLA joined the National League of Cities and others in an amicus brief in support of the City).

21. Pub. L. No. 109-92, 119 Stat. 2095 (2005), codified at 15 U.S.C. §§ 7901 through 7903 (2012).

22. Jenny Jarvie, Richard Winton, and Molly Hennessy-Fiske, *Sandy Hook $73-million settlement with Remington is not just about money,* Los Angeles Times, Feb. 15, 2022. The settlement was novel not only for its financial component—it required Remington to disclose thousands of pages of internal AR-15 marketing documents.

23. H.R. 2814 would have repealed PLCAA.

24. H.R. 1808 would have reintroduced a ban on assault weapons.

25. Are "80%" or "unfinished" receivers illegal? | Bureau of Alcohol, Tobacco, Firearms and Explosives (https://www.atf.gov/firearms/qa/are-"80"-or-"unfinished"-receivers-illegal). (Generally, no—until updated Final Rule passed in April 2022).

26. Definition of "Frame or Receiver" and Identification of Firearms | Bureau of Alcohol, Tobacco, Firearms and Explosives (https://www.federalregister.gov/documents/2021/05/21/2021-10058/definition-of-frame-or-receiver-and-identification-of-firearms)

27. Stephan Sykes, '*Ghost gun' regulations go into effect after judges reject challenges,* cnbc.com, Aug, 24, 2022 (https://www.cnbc.com/2022/08/24/federal-ghost-gun-regulations-go-into-effect-after-judges-reject-challenges.html)

28. Stephan Sykes, *What are 'ghost guns'? A federal crackdown is coming on untraceable firearms, and dealers are rushing to sell them*, cnbc.com, Aug. 19, 2022 (https://www.cnbc.com/2022/08/19/ what-are-ghost-guns-dealers-rush-to-sell-untraceable-firearms-as-crackdown-nears)

29. State of California v. Bureau of Alcohol, Tobacco, Firearms, and

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Tribunal breached its duty of procedural fairness when it approved the City's Secondary Plan and Zoning Provisions that were to be applied to several pieces of land owned by NEC.

HELD: Leave to appeal denied.

DISCUSSION: Referencing *Westhaver Boutique Residences Inc. v. Toronto,* 2020 ONSC 3949, the motion judge provided that it was at its discretion to give reasons on motions for leave to appeal, and that discretion should be exercised sparingly. The motion judge was compelled to do so in this matter.

Section 24(1) of the *Ontario Land Tribunal Act, 2021,* S.O. 2021, c. 4 Sched. 6 permits appeal of an order or decision of the Tribunal to the Divisional Court, but only if: first, the proposed appeal raises one or more questions of law; second, there is a reason to doubt the correctness of the Tribunal decision with respect to the question of law; and third, the question of law is of sufficient general or public importance. The motion judge provided that the failure to satisfy any of these results in a proper refusal, *CAMPP Windsor Essex Residents Association v. Windsor (City),* 2020 ONSC 4612. The motion judge held that the NEC's proposed appeal failed the test for leave to appeal as the issues raised were only issues of importance to the NEC and present no legal issues of broader importance. Furthermore, the motion judge held that the NEC failed on its attempt to characterize the procedural issues as issues that have greater importance to the overall conduct of proceedings before administrative tribunals. Rather, the means by which the NEC proceeded before the Tribunal was unreasonable, resulting in many of the procedural fairness issues raised by the NEC to fall squarely within the Tribunal's authority and discretion of procedural matters before it. The motion judge held that the motion for leave to appeal was dismissed. ML

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Explosives, no. 3:20-cv-06761 (N.D. Ca. Oct. 20, 2022).
30. *Id.*
31. https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7778/Overview
32. Palmer v. Sisolak, no. 3:21-cv-00268 (D. Nev. Aug. 16, 2021).
33. *Id.*
34. Riley Snyder, *Federal judge rejects effort to block 'ghost gun' ban filed by pro-firearms group,* The Nevada Independent, Jul. 26, 2022 (https://thenevadaindependent.com/article/federal-judge-rejects-effort-to-block-ghost-gun-ban-filed-by-pro-firearms-group).
35. Polymer80 v. Sisolak 21-cv-00690 (3d Jud. Dist. Lyon Cty. Nev., Dec. 10, 2021) at p.16.
36. Tom Jackman, *District sues Polymer80, manufacturer of 'ghost guns,' alleging illegal sales, false ads,* The Washington Post, June 24, 2020 (https://www.washingtonpost.com/crime-law/2020/06/24/district-sues-polymer80-manufacturer-ghost-guns-alleging-illegal-sales-false-ads/).
37. D.C. Law 23-125. Ghost Guns Prohibition Temporary Amendment Act of 2020 (https://code.dccouncil.gov/us/dc/council/laws/23-125).
38. Heller v. District of Columbia, no. 21-02376 (D. D.C. Sept. 8, 2021); Tom Jackman, *Dick Heller challenges DC ghost gun law after winning landmark Second Amendment case,* The Washington Post, Oct. 9, 2021.
39. In 2021, the District was ordered to pay damages to six people who were arrested under gun laws that were later found unconstitutional. Spenser Hsu, *U.S. judge: Nation's capital liable for wrongful arrests under struck-down gun ban,* The Washington Post, Sept. 29, 2021.
40. *Heller, supra* note 38.
41. District of Columbia v. Polymer80, Inc., no. 2020 cv 00278, (Sup. Ct. D.C., Aug. 10, 2022).
42. https://www.polymer80.com/-BK45-BLK#:~:text=On%20August%2010%2C%202022%2C%20the%20Superior%20Court%20for,District%20of%20Columbia%20under%20District%20of%20Columbia%20law.(last accessed Feb. 25, 2023).
43. *Id.*
44. People of California v. Polymer80, 21-cv-06257 (Sup. Ct. Los Angeles Cty., Feb. 17, 2021).
45. Cal. Bus. & Prof. Code §§ 17200 et seq.
46. People of California, *supra* note 44.
47. Mayor and City Council of Baltimore v. Polymer80 LLC, no. 24-C-22-002482 (Cir. Ct. Balt. City).
48. *Id.*
49. Md. Code Ann. Comm. Law
50. *Id.*
51. Md. Pub. Safety Code § 507.
52. *Id.*
53. https://www.polymer80.com/blog.
54. https://www.polymer80.com (last accessed Feb. 27, 2023).

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