

April 7, 2020

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: Notice to Cease and Desist Deprivation of Constitutional Rights

Dear Governor Inslee:

Gun Owners of America (“GOA”) is a nonprofit organization, exempt from federal income taxes under Section 501(c)(4) of the Internal Revenue Code, which represents the interests of over 2 million members and supporters, many thousands of whom reside in Washington state. GOA’s mission is to preserve and defend the Second Amendment rights of gun owners. Our members in Washington have been extremely concerned about your March 23, 2020 “Stay Home Stay Healthy” Proclamation 20-25 (“Proclamation”),¹ which state officials have interpreted to require gun stores within the state to shut down during the pendency of the state’s declared public health emergency.² This letter urges you to adopt a better interpretation of your Proclamation, that would permit Second Amendment related businesses in Washington state to continue to function, for a number of reasons.

Your Proclamation purports to be based on “Chapters 38.08, 38.52 and 43.06 RCW,” and “prohibit[s] all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business....” The only exceptions to that prohibition are for “essential activities” and “employment in essential business services.” “Essential activities” are defined to include “obtaining necessary supplies and services ... necessary to maintain safety ... of the home or residence.” “Essential businesses” are defined by reference to a separate, 14-page “Essential Critical Infrastructure Workers” list, which includes “service providers who provide services that are necessary to maintaining the safety ... of residences.”³

¹ <https://www.governor.wa.gov/sites/default/files/20-25.1%20-%20COVID-19%20-%20Stay%20Home%2C%20Stay%20Healthy%20Extension%20%28tmp%29.pdf>

² Previously, you had issued Proclamation 20-05 on February 29, 2020, declaring a state of emergency, and thereafter issued an additional 19 Proclamations (20.06-20.24). Most recently, you issued Proclamation 20-25.1 on April 2, 2020, extending the state’s shutdown through May 4, 2020.

³ <https://www.governor.wa.gov/sites/default/files/WA%20Essential%20Critical>

While nothing in the Proclamation or “Essential Critical Infrastructure Workers” list explicitly includes or excludes gun stores, shooting ranges, and other Second Amendment businesses from the shutdown order, the media has reported that “the Governor’s office confirmed that gun shops must close down temporarily”⁴ under the Proclamation. Yet the language in the Proclamation regarding “maintaining the safety of residences” would seem to apply to exempt gun stores, in that such businesses provide firearms, ammunition, accessories, teaching, and training necessary for Washington residents to exercise their Second Amendment right of self-defense within their homes. Nevertheless, statements from your office that gun stores must close under the Proclamation represents a credible threat of prosecution if such businesses continue to do so.

To be sure, Washington statutes give the governor broad powers once a state of emergency has been declared. *See* RCW 43.06.220. However, that does not mean that your powers are unlimited, or that you may suspend enumerated constitutional rights in the name of public health. Indeed, by targeting gun stores with your Proclamation, something many believe to be in furtherance of your longstanding anti-gun agenda, you appear to be in violation of RCW 38.52.120, which states that “No organization for emergency management established under the authority of this chapter shall ... be employed directly or indirectly for political purposes.”

In addition to the language in the Proclamation seeming to exempt gun stores, and your apparent violation of RCW 43.06.220, there are other reasons you should consider permitting gun stores to remain open. As you may be aware, four days after your Proclamation, the U.S. Department of Homeland Security issued an “Advisory Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response” from US Department of Homeland Security. This updated [March 28, 2020](#) version of the CISA Memo replaced the originally issued [March 19, 2020](#) CISA Memo, and designates the following category of workers as “critical infrastructure”:

Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.

Unlike the shutdown orders in most other states and localities, your Proclamation does not reference the CISA list, or designate businesses identified in that list as “essential business.” Thus, we would urge you to expand the “essential business” designations in your Proclamation, to bring it into line with the federal government’s list of the “critical infrastructure” workforce in the DHS March 28, 2020 CISA Memorandum.

Additionally, applying the Proclamation to gun stores, as you have done, violates both Article I, § 24 of the Washington Constitution and the Second Amendment of the U.S. Constitution. Indeed, in order to engage in the clearly protected activities of “keeping” and “bearing” firearms, weapons first must be acquired. It is beyond serious debate that the Second

[%20Infrastructure%20Workers%20%28Final%29.pdf](#)

⁴ <https://mynorthwest.com/1785577/rantz-gun-rights-restricted-coronavirus-shutdown-washington/>

Amendment thus protects the corresponding right to purchase firearms, just as the First Amendment protects the right to purchase books, paper, and ink. Multiple courts have held as much. The Seventh Circuit has explained that “[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it effective.” *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011). See also *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (“Thus ‘the right to possess firearms for protection implies a corresponding right’ to obtain the bullets necessary to use them.”). By ordering that Washington state gun stores close their doors during the pendency of this public health emergency, you have illegally deprived your citizens of the ability to acquire firearms (including handguns) and ammunition with which to defend themselves, violating their most basic right to keep an operational handgun in the home for self-defense. See *District of Columbia v. Heller*, 554 U.S. 570 (2008).

Your actions to close down Washington gun stores present a clear and present threat to your residents’ personal and family safety and the protection of others residing in their homes, exposing them to the very real risk of physical harm. Already, countless members of law enforcement nationwide have either tested positive for the COVID-19 virus or have been put into quarantine. What is more, some police and sheriff departments have been announcing that they will not be making arrests for minor crimes in many locations. Under such circumstances, the right — and need — of each individual to protect himself and his family becomes clearly apparent. Other states and cities reportedly have been releasing inmates from various jails and prisons, in an effort to stem the tide of the virus. Finally, news stories have reported increasing worries of civil unrest. For all of these reasons, many people who have never owned firearms and, indeed, never thought they would need them, are now seeking to arm themselves and be able to provide for their own defense. Unfortunately, your Proclamation ensures that they will be entirely unable to do so.

Finally, we note that your action to close down gun stores represents a fringe position nationwide. Indeed, Colorado’s Governor, Jared Polis, has seen fit to include “Firearms Stores” as critical retail services which are to remain open.⁵ Many other traditionally anti-gun states have also specifically declared that firearms stores are essential, including New Jersey⁶ and Illinois.⁷ In fact, only a tiny fraction of anti-gun state officials have sadly decided to use this public health crisis as an excuse to pursue their political agendas by declaring that gun stores must close during the COVID-19 pandemic.⁸

Based on your Proclamation, a person in Washington state can get an abortion,⁹ buy a bottle of vodka, or obtain marijuana, but cannot buy a gun. That dichotomy is as perverse as it is

⁵ <https://www.nraila.org/articles/20200326/colorado-governor-polis-allows-gun-stores-to-remain-open-during-state-lockdown>

⁶ <https://www.nj.com/coronavirus/2020/03/gun-shops-are-now-considered-essential-businesses-in-nj-gov-murphy-says.html>

⁷ https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf

⁸ <https://www.thetrace.org/2020/03/coronavirus-gun-store-closures-state-map/>

⁹ <https://www.politico.com/news/2020/03/24/pandemic-new-front-abortion-wars-147315>

arbitrary and capricious. It is one thing for a state to order closed a tanning salon or pet grooming service for public health reasons. It is quite another to ban entirely the commercial sale of arms and ammunition, which are expressly and unequivocally protected by state and federal constitutional provisions. The Second Amendment's protections do not stop, nor does the need for self-defense abate, during a pandemic. Indeed, the exact opposite is true. The protection of constitutional rights is most important during times of emergency and unrest, because that is precisely when those rights are needed the most and is often when the government is most interested in curtailing them.

Thus, we respectfully request that you reconsider your Proclamation as it applies to gun dealers and other Second Amendment businesses within the state. We urge you to bring Washington state into line with the vast majority of other states that have allowed gun stores to continue operation, and into line with the DHS CISA Memorandum, and federal and state constitutional requirements. We would appreciate your response to this letter, informing us as to whether you intend to modify your position on this issue, or whether GOA will need to take the additional appropriate steps to protect gun stores and gun owners in Washington State. With best regards.

Sincerely,

A handwritten signature in black ink that reads "Erich Pratt". The signature is written in a cursive, flowing style.

Erich Pratt
Senior Vice President
Gun Owners of America

cc: Hon. Bob Ferguson
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