

April 7, 2020

Hon. Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Notice to Cease and Desist Deprivation of Constitutional Rights

Dear Governor Cuomo:

[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 New York state. GOA’s mission is to preserve and defend the Second Amendment rights of gun owners. Our members in New York have been extremely concerned about your series of Executive Orders (“PAUSE Orders”)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 PAUSE Orders, that would permit Second Amendment related businesses in New York state to continue to function, for a number of reasons.

Your PAUSE Orders purport to be based on “the authority vested ... by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, rule, or regulation, or parts thereof...” Executive Order 202.8 requires that all employers “reduc[e] the in-person workforce at work locations by 100%,” unless they qualify as an “essential business.” Thereafter, the Empire State Development Corporation issued “Guidance”³ as to what constitutes an essential business, which did not include Second Amendment related businesses such as manufacturers, retailers, or shooting ranges. However, the Guidance includes as essential those businesses that provide “essential services necessary to maintain the safety ... of residences or other essential businesses, including ... security.”

¹ <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO202.6.pdf>

² Previously, you issued Executive Order 202 on March 7, 2020, declaring a state of emergency within New York state. Thereafter, you issued Executive Orders 202.1 through 202.13, most recently extending the state’s shutdown through April 28, 2020.

<https://www.nbcnewyork.com/news/local/our-9-11-moment-new-york-braces-as-nations-top-doctor-warns-saddest-week-ahead/2361336/>

³ <https://esd.ny.gov/guidance-executive-order-2026>

While nothing in the PAUSE Orders or Guidance document list explicitly includes or excludes gun stores, shooting ranges, and other Second Amendment businesses from the shutdown order, your office has interpreted these documents to require the closure of gun stores through the state. While the language regarding “necessary to maintain 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 New York residents to exercise their Second Amendment right of self-defense within their homes, statements from your office that gun stores must close under the PAUSE Orders represents a credible threat of prosecution if such businesses continue to do so.

To be sure, as you note, New York statutes give the governor broad powers once a state of emergency has been declared. 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 PAUSE ORDERS, in obvious furtherance of your longstanding anti-gun agenda, you are using your emergency powers to further illegitimate political purposes.

Additionally, there are other reasons you should consider permitting gun stores and other Second Amendment businesses to remain open under the PAUSE Orders. As you no doubt are aware, 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 now 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 PAUSE Orders does not include this CISA list, or designate businesses identified in the March 28, 2020 CISA list as “essential business.” Thus, we would urge you to expand the “essential business” designations in your PAUSE Orders, 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 PAUSE Orders to gun stores, as you have done, violates both Article II, § 4 of the New York 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 Amendment thus protects the corresponding right to purchase firearms, ammunition, and accessories, 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 New York 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 New York 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 been 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 apparent to all. 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 PAUSE Orders ensure 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.⁴ Many other traditionally anti-gun states have also specifically declared that firearms stores are essential, including New Jersey⁵ and Illinois.⁶ 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.⁷

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 PAUSE Orders as applied to gun dealers and other Second Amendment businesses within New York state. We urge you to bring New York state into line with the vast majority of other states that have allowed gun stores to

⁴ <https://www.nraila.org/articles/20200326/colorado-governor-polis-allows-gun-stores-to-remain-open-during-state-lockdown>

⁵ <https://www.nj.com/coronavirus/2020/03/gun-shops-are-now-considered-essential-businesses-in-nj-gov-murphy-says.html>

⁶ https://www2.illinois.gov/IISNews/21288-Gov._Pritzker_Stay_at_Home_Order.pdf

⁷ <https://www.thetrace.org/2020/03/coronavirus-gun-store-closures-state-map/>

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 New York 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

cc: Attorney General Letitia James
Office of the Attorney General
The Capitol
Albany, NY 12224-0341