

April 18, 2016; Gun Use in CNMI Under Scrutiny

Last week, I wrote about District Court Judge Ramona V. Manglona's March 28th ruling in the *Radich v. Deleon Guerrero* case that the Commonwealth of the Northern Marianas is required to allow CNMI residents to arm themselves with handguns. Until that decision, CNMI gun laws prohibited most handgun ownership. Manglona held that because the CNMI Covenant with the United States specifically incorporates the 2nd Amendment to the U.S. Constitution, and because the U.S. Supreme Court has held that handgun ownership is protected under the 2nd Amendment, the CNMI must also allow residents to own handguns.

Many CNMI residents, including what appears to be an overwhelming majority of the Commonwealth's politicians, found the ruling to be a bitter pill to swallow. In uncharacteristic speed, only a week after Manglona's ruling the CNMI legislature unanimously passed Senate Bill No. 19-94, the Special Act for Firearms Enforcement (SAFE). The Bill drastically overhauls the CNMI's prior gun laws. Governor Ralph Torres signed the bill into law on April 11th.

The 57-page law is already under attack by the powerful gun lobby. *Gun Watch*, an online Stateside pro-gun newsletter, labels SAFE as "one of the most restrictive gun laws in the U.S." This claim is readily admitted by Vice Speaker Joseph Deleon Guerrero who said that "I think the bill now as amended does make it pretty restrictive. . . . It doesn't mean that when you own a gun you can use it. It states under what circumstances you can use that weapon in self-defense. It will also make it harder to own a gun and impose more restrictions on how it can be used."

The official "Findings and Purpose" of the law, as set out in the text's first few pages, clearly highlights the Legislature's strong dislike for and concern over, the Federal Court's mandate to broaden gun ownership rights. The authors write: "The Legislature finds that providing safety and the protection of human life to be the highest duty of government.... The Legislature finds that the culture of the Commonwealth of the Northern Mariana Islands is peaceful. The Legislature further finds that the history of the Commonwealth demonstrates that offensive firearms have never been needed by the community, and the use of offensive firearms during World War II only brought suffering on an almost unimaginable scale to the people of the Northern Mariana Islands. Finally, the Legislature finds that the vast majority of the inhabitants of the Commonwealth strongly oppose the legalization of handguns because they rightly fear that the large-scale introduction of handguns will undermine our peaceful community.... the Legislature reluctantly accepts that it must legalize the ownership and possession of firearms to the extent required by the Second Amendment...."

The specifics of the new law follow the Findings and Purpose. Although I certainly don't claim to have legal expertise in firearm regulations, as I reviewed the

law certain provisions popped out and make me question whether they will withstand a legal challenge.

For instance, the following firearms are now specifically banned in the CNMI: sawed-off shotguns, silencers, machine guns, short-barreled rifles, assault weapon and any rifle other than a .22 caliber rimfire, .22 caliber center fire and .223 caliber center fire; or a shotgun other than a .410 gauge. The latter restriction to only these few designated caliber rifles seems rather problematic. There certainly must be other rifles commonly used in hunting that would not offend the general intent to prohibit especially dangerous weapons. These specific designations may subject the law to a legal attack on the grounds that these limitations are arbitrary.

Another area of possible concern is the cost for importing handguns. At least for the first year, a \$1,000 excise tax will be placed on each pistol. The stated rationale behind this provision is to give the Governor time to commission and fund a study “to determine the true costs to the Commonwealth . . . of the introduction of additional types of firearms required by the recent District Court ruling into our society.” Once this amount is determined, these costs will be passed on to “people and companies that seek to import or otherwise introduce these additional firearms into the Commonwealth...”

Gun sellers will undoubtedly pass on the \$1,000 excise tax to gun buyers. This tax will be interpreted as a deliberate attempt by the Legislature to make handgun ownership so expensive that few residents will be able to afford to buy one. You can expect to hear loud objections to this expense.

Space prevents me from discussing my other concerns with the law. Although I personally sympathize with the CNMI Legislature’s desire to restrict gun ownership to the narrowest requirements of the 2nd Amendment, I hope that legislators will carefully scrutinize the new law, identify vulnerable provisions, and quickly introduce appropriate amendments. These efforts will protect the integrity of the law and save the CNMI from unnecessary legal expenses.