



October 4th, 2023

“Privately Manufactured Firearms – a.k.a. “Ghost Guns””

Discussing the myths and realities of privately manufactured firearms.

“Ghost Guns”. Scary names assigned to commonly owned, designed, and lawfully manufactured firearms have become the ‘go to’ for the anti-gun crowd when it comes to misinformation and playing on the fears of the less informed citizen of the Commonwealth. For decades now there has been a very successful effort by anti-gun, anti-Constitution organizations and advocates to create key terms and phrases to vilify firearms in the eyes of the voter who doesn’t understand or have any practical experience with firearms. This includes most members of those organizations and the bread and butter of votes and campaign contributions for those legislators who build entire campaigns on the idea that guns are evil and the humans behind them are as much the victim of their evil nature as those innocent citizens they use them against.

Terms like “assault rifle”, “gun violence”, “gun crime”, and “common sense gun laws” are all examples of selective sensationalizing of one facet of crime whilst ignoring far more prevalent or dangerous issues of similar nature. I could go on for hours about these mythical terms, up to and including the “gun violence epidemic” that some legislators keep speaking of while failing to identify an “alcohol pandemic”, a “knife violence pandemic”, or a “reckless teenage driver pandemic”, all causes of death that outpace so-called “gun violence” in this nation. Lumping privately manufactured firearms in with other firearms that have had their serial numbers removed under the scary term “ghost guns” is yet another tactic to vilify law-abiding firearms owners based upon fears. So, let us talk about “common sense gun RIGHTS”.

To discuss this topic intelligently, we must cover what is and what is not permitted by current law involving firearms being manufactured by citizens. Primarily, we must point out that the federal gun laws regulate the sale and transfer of weapons for law-abiding citizens, not ownership or manufacture. The Bureau of Alcohol, Tobacco, Firearms and Explosives is tasked with regulating firearms dealers, not private manufacture, unless that manufacture is being done for the purpose of selling the product. The U.S. Constitution protects the private manufacture of firearms as an inalienable right, and serial numbers are only required if the produced weapon is going to be sold, not privately held by the manufacturer. Recently, a federal court ruled that possessing a firearm with the serial number removed is not a crime as when the 2nd Amendment was written there were no serial numbers on guns, but in the same case upheld persons not to possess firearms against the same defendant. Clearly identifying which the court sees as protected behavior and which the courts view as the more serious concern.

So, what about the sales and transfers of the 80% kits that are such a hot topic in the media today? Uninformed people have the impression that these kits are a danger just by existing and have no idea what they entail. These kits are frames or receiver cuts where the fire-control cavity (trigger and other components required to initiate the firing process of ammunition) is solid and unmachined. They require some tools, and some basic knowledge of firearms manufacture that a citizen can complete the firearm in a reasonable period for their own personal use. These are not ready to go firearms components you simply unwrap, punch a hole or two in and have a functioning weapon from.

And what about 3D printed firearms? There is limited technology for these brave souls who embark on this journey, and the designs, effort, and results are very mixed. They tend to be

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very basic firearms, and having attended an event in Pittsburgh where many of these were brought in to compete in basic shooting courses, I can tell you that many of these are rudimentary at best and suffer routine failures to function that can frustrate even some of the more skilled designers in the sport.

Whether you choose the 80% kits or a 3D printer, all these weapons are legally required to have metal components. Firearms that do not set off metal detectors are already illegal (Undetectable Firearms Act of 1988)ⁱ, so there is no reason to attack the privately manufactured firearms industry over those concerns as if they are ignoring that law, they're already committing a crime and new laws won't deter them.

The argument that serial numbers should be required on all privately manufactured firearms does not hold water either. While we understand and respect the burden placed upon law enforcement to pursue illegal firearms sales and transfers, it is not the rights of the American citizen that should be infringed upon to help them do their job of investigating these crimes. It is fact that the U.S. government and the Pennsylvania State Police are already in violation of federal law pertaining to illegal weapon registries, and the notion that government could expand that infringement is insufferable by the citizens of this Commonwealth. Federal law 18 USC 926 states that:

"No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation."ⁱⁱ

The simple truth is that most guns are NOT registered. Those that we should consider registered are fully automatic weapons governed by the National Firearms Act, multiple sale reports provided to the ATF about multiple firearms purchases in short order, "suspect guns" (large quantity purchases, firearms found to be improperly recorded by dealers, and guns associated with crimes), traced guns (already recovered in criminal incidents), out of business records from closed dealers, and stolen guns. These records rank in the millions but are a very small portion of the total number of guns privately owned in the United States. Therefore, most guns are untraceable, and should remain so.

Why should they remain so? What purpose would we have in saying such a thing? Serialization leads to universal background checks for sales of firearms, which leads to a national gun registry the government can use to confiscate or persecute any citizen of this nation. For serial numbers to be effective, background checks must be performed on every transfer to record the transfer of the serial number to the new owner. That creates a registry. All three are needed to be effective, and that leads to the enactment of practically any gun control law that anyone wants, up to and including confiscation by force. And for any citizen of this nation that truly believes our government has never overstepped its authority or been dangerous to the citizens, please take time to review the numerous court cases and legal decisions handed down by our judiciary branch putting the executive and legislative branches in check through the years. Numerous anti-gun organizations have had confiscation at various levels in their sights for decades, and anyone who believes that is not the overall goal of most gun control is ignorant of the truth that none of these laws impact the criminal or lead to any significant prevention of crime, or those same organizations would be clamoring for law enforcement and the court systems to further enforce the laws we already have, rather than wasting money trying to push new ones. Someone committing a murder does not care that he or she can be charged with having a firearm with the serial number ground off or we would never see such a thing.

What does tracing a firearm provide to law enforcement anyway? I would argue next to nothing. Once in a while the serial number assists in an investigation if the criminal was dumb enough to use a weapon already known to be theirs. Or if it was used shortly after the theft and officers somehow get lucky with a cooperative witness. But

even then, what does that amount to? The crime has already been committed most of the time if law enforcement has the weapon in hand. And frankly, the gun did not do it. A human is accountable. Does knowing who may have manufactured a privately made firearm mean much to investigators? Can you trace its history enough to be useful in court? Rarely. And only then if the manufacturer provides detail of where the firearm went once it left their possession. 5th Amendment protections protect against self-incrimination and any criminal involved in the process is going to lie to you, anyway, claiming it was either stolen or they did not even realize it was missing. Lost and stolen reporting mandates? Useless considering the 5th Amendment protections already guaranteed and reinforced in *Haynes v. United States*ⁱⁱⁱ. My privately manufactured firearm was gifted, inherited, lost... or I didn't even know it was missing.

The answer to enforcing laws against straw sales and purchases is not serialization of privately manufactured firearms. Any law enforcement officer can tell you the bulk of firearms recovered after use in a crime are stolen, not privately manufactured. They will see more firearms with marking ground off than privately manufactured. Though with the amount of attention the anti-gun groups have brought this tiny little niche of the firearms industry, they are making it a more popular choice for the criminal entrepreneur. Cutting down on these types of crimes requires funding, and task specific units whose purpose is going after firearms transfer offenses by criminal elements. Let law enforcement do their jobs, financially empower them to do so, but not at the price of the American citizen's rights.

There is also a faulty argument by some of the anti-gun or anti-Constitution side that private manufacture of firearms is not a 2nd Amendment or Article I, Section 21 issue. That argument is patently ridiculous. Every citizen of this Commonwealth, or of this nation, has the right to manufacture firearms without the government's approval or knowledge. It was a founding principal of our forefathers when they wrote the 2nd Amendment. Imagine if the 1st Amendment only pertained to speech that was produced by a professional's printing press and not by your own printer or modern ink pen?

In *District of Columbia v. Heller*, the courts established that what they are looking for is whether the arms in question are among the "sorts of weapons" or "of the kind" that are in common use. They determined that how the weapon was obtained is irrelevant and holds no bearing on the legality of its possession. Therefore, privately manufactured firearms fall within the 2nd Amendment's protections, if they are of a "type" of firearm that is common. They may have unique features, or components, but as long they would be classified as a commonly used type of firearm, they are protected. This ensures protections for any modern method of production, including 80% kits or 3D printers. After all, how can you "keep and bear arms" if you are unable to acquire them in the first place? This has been argued and applied by the courts in numerous cases through the years, including but not limited to *Andrews v. State (Tennessee)*^{iv}, *Illinois Association of Firearms Retailers v. City of Chicago*^v, *Drummond v. Robinson Twp.*^{vi}, and even expanding to ammunition via *Teixeira v. County of Alameda*^{vii}. In all these cases, the courts absolutely without any doubt address the 2nd Amendment right to acquire firearms with not a single distinction of approving any specific methods of doing so as long as they are not criminal in nature. There is no preference shown to purchasing as opposed to manufacturing your own, and what's more the Supreme Court of the United States included explicit language regarding the types of weapons the 2nd Amendment protects and establishes that privately manufactured arms, however they came to be constructed, are protected as long as they are of a "kind in common use".

In *New York State Rifle & Pistol Association v. Bruen*, the Supreme Court brought about another test for firearms laws after the two-part framework established by the *Heller* case. They altered the criteria to ask if the text of the 2nd Amendment covers the conduct being considered and is the law consistent with the nation's historical traditions of firearms regulation. Regulations of privately manufactured firearms are extremely recent. Historically, there were no restrictions on the manufacture of firearms for personal use until roughly the past decade. So, any such regulations will be in absolute opposition to the SCOTUS' ruling in the *Bruen* case.

Our nation's history of home-built weapons extends through history to the very beginning of colonization. King James of England granted colonists the right to build arms as needed for use and defense before later stripping that away for fear of insurrection. REAL insurrection. Our founding fathers petitioned anyone who could produce arms to step forward to support the cause of revolution. Most men fighting for the Continental Congress had to

provide their own arms to do so. The birth of repeating arms dates to men like John Cookson (1756) and Joseph Belton (1777) who manufactured these innovative designs in their homes. Countless men and women such as Fredericka Worner, Louisa Wirth, and Wilhelmina Wirth led innovation and development of arms. And private manufacture led to key inventions such as the percussion ignition by Reverend John Forsyth in 1807^{viii}.

Famous designers and generations of knowledge passed down from parent to child creating the likes of John Moses Browning, who built his first firearm at the age of ten and provided food for his family's table with it in 1865^{ix}. John Garand whose home-built projects would lead him to employment at Springfield where he would develop the M1 Garand, the American battle rifle of WWII. And men like George Sullivan and Richard Boutelle, who would start a company called Armalite in Sullivan's garage. After meeting Eugene Stoner at a range and sharing a common interest in homemade rifles, they would together later develop the Armalite Rifle Model 15 or AR-15, the most popular sporting rifle in American history, and the predecessor of the line of weapons that have served the United States military since first adoption by the U.S. Air Force in 1964.

To be fair on the subject, we looked at the numbers provided by anti-gun advocates, "Everytown." We found a study of theirs that shows there have been 139 entries of shootings with privately manufactured firearms (inaccurately described as "ghost guns") or firearms with no serial numbers on their report "Ghost Guns Recoveries and Shootings"^x, which reportedly covers all such shootings from June of 2013 through August of 2023. Only 139 shootings in a period of ten years made their list but this is a crisis in a nation of 330 million citizens. Out of 139 shootings, twenty-one were accidental shootings (eleven of which that were illegally possessed). 128 of these incidents involved crimes committed that were far more serious than any possession laws (i.e., robbery, homicide, attempted homicide, recklessly endangering, endangering the welfare of children, etc..) and would carry far greater punishments.

Despite evil names used by uneducated legislators and intentionally misleading advocates, our nation has a long, honorable history of private manufacture of firearms that is protected by both the U.S. and Pennsylvania Constitutions and federal laws. It has been a critical source of innovation and development for private citizens and our nation's military since before the birth of this nation. Any effort to restrict or control that is unconstitutional, and an attack on our natural or God-given and inalienable right to defend ourselves that predates the ancient societies of Athens and Rome.

In summary, our opposition to the use of the term "ghost guns" or further legislation of privately manufactured firearms is based upon:

- Clear violation of the 2nd Amendment / Article I, Section 21.
- The constant misinformation and misleading of the common citizen by anti-gun legislators who fail to produce facts over fiction.
- Private manufacture of firearms is not only legal but protected from infringement or monitoring by any government agency.
- Efforts to regulate private manufacture will result in a gun registry held by government, which is a violation of federal law.
- The right to self-defense predates all laws of this nation.
- Foundations of law set by the District of Columbia v. Heller decision.
- Numerous court decisions validating the citizen's right to not only keep and bear arms, but not prejudicial against home manufacture in acquiring arms.
- Foundations of law further expanded by both the ruling and the two-step challenge set forth by the New York State Rifle and Pistol Association v. Bruen decision.

- Statistics provided by anti-gun advocates show the criminal element of these firearms is miniscule at best, and often a minor detail in a much greater criminal incident.
- Historical precedence and importance to our nation of private firearms manufacture.

For the reasons above and more, regulation or restriction of the private manufacture of firearms is an overwhelming violation of the Constitution of the Commonwealth of Pennsylvania. This proposed law is an unnecessary infringement of the rights of the citizens of this land and weakens the ability of the law-abiding citizen to defend themselves against the modern violent criminal or overreaching government while doing nothing to hamper those same criminals or tyrannical government in their acts.

“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

If you should have any further questions or need clarification on the legality of the issues raised in this ILLEA White Paper, please feel free to e-mail us at info@foac-illea.org.

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Respectfully,



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Endnotes

ⁱ [STATUTE-102-Pg3816.pdf \(govinfo.gov\)](#)

ⁱⁱ [18 U.S. Code § 926 - Rules and regulations | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

ⁱⁱⁱ <https://supreme.justia.com/cases/federal/us/390/85/>

^{iv} [Andrews v. State | Tennessee Encyclopedia](#)

^v [Ill. Ass'n of Firearms Retailers v. City of Chi., 961 F. Supp. 2d 928 | Casetext Search + Citator](#)

^{vi} [Drummond v. Robinson Township, No. 20-1722 \(3d Cir. 2021\) :: Justia](#)

^{vii} [Teixeira v. County of Alameda, No. 13-17132 \(9th Cir. 2017\) :: Justia](#)

^{viii} [The American Tradition of Self-Made Arms \(stmarytx.edu\)](#)

^{ix} [The Guns of John Moses Browning: The Remarkable Story of the Inventor Whose Firearms Changed the World by Nathan Gorenstein, Paperback | Barnes & Noble® \(barnesandnoble.com\)](#)

^x [Ghost Guns Recoveries and Shootings | Everytown Research & Policy](#)