
Coates' Canons Blog: *Bateman v. Perdue*: Implications for Gun Restrictions During a State of Emergency

By Norma Houston

Article: <https://canons.sog.unc.edu/bateman-v-perdue-implications-for-gun-restrictions-during-a-state-of-emergency/>

This entry was posted on May 13, 2012 and is filed under Emergency Management, State Of Emergency



UPDATE: An update on this issue is available [here](#).

On March 29, 2012, Senior U.S. District Judge Malcolm Howard ruled on the 2nd Amendment challenges brought against restrictions on dangerous weapons that can be imposed during a declared state of emergency under North Carolina law. The statutes at issue in the case, *Bateman v. Perdue* (No. 5:10-CV-265-H (E.D.N.C. filed Mar. 29, 2012)) make it a Class 1 misdemeanor for a person to “transport or possess off his own premises any dangerous weapon or substance in any area in which a declared state of emergency exists or within the immediate vicinity of which a riot is occurring;” (**G.S. 14-288.7**) and authorize the governor and city and county officials to impose restrictions on the “possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline” during a declared state of emergency. (**G.S. 14-288.12(b)**, **14-288.13(b)**, **14-288.14(a)**, and **G.S. 14-288.15(d)**).

The plaintiffs in the case asserted that gun restrictions imposed under these statutes during declared states of emergency denied them of their 2nd Amendment right to keep and bear arms for lawful purposes, including self-defense. Judge Howard ruled that these statutes were unconstitutional as applied to the plaintiffs, but did not go so far as to strike down the statutes entirely. The state chose not to appeal the decision, so Judge Howard’s ruling is now the final word in North Carolina. So, what does this mean for local governments?

By declaring the statutes unconstitutional only as applied to the plaintiffs, Judge Howard left the door open for restrictions on dangerous weapons – including guns – to be imposed during a state of emergency so long as those restrictions are not inconsistent with core 2nd Amendment rights. State and local governments may face extreme conditions during a disaster when reasonable restrictions on weapons must be imposed to maintain public safety and prevent injury, loss of life, and damage to property, such as looting after a major hurricane or public rioting. However, because of the *Bateman* decision, these restrictions cannot be imposed as broadly as in the past. So, what restrictions on weapons can local governments still impose during a disaster?

In his decision, Judge Howard applied the strict scrutiny level of judicial review, the most stringent analysis used by the courts when considering constitutional challenges to governmental actions, including 2nd Amendment challenges. *District of Columbia v. Heller*, 128 S. Ct. 2783(2008). The strict scrutiny analysis requires the statutes be “narrowly tailored to achieve a compelling government interest.” *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). There is little doubt that the government has a compelling interest in protecting public safety, ensuring order, and general crime prevention. However, in light of the *Bateman* decision, restrictions imposed on weapons to achieve this interest, even during a declared state of emergency, should be narrowly tailored.

While Judge Howard does not outline specific instructions for balancing the government’s compelling interest in protecting public safety with individuals’ core 2nd Amendment rights, aspects of the statutes that Judge Howard found troubling provide guidance for what restrictions might be constitutionally acceptable. In particular, Judge Howard noted that the

statutes:

- Applied equally to all individuals, even law-abiding citizens (as opposed to targeting dangerous individuals or dangerous conduct);
- Were not limited to a certain manner of carrying weapons;
- Were not limited to certain times of the day (such as during curfews);
- Prohibited law-abiding citizens from purchasing and transporting to their homes firearms and ammunition needed for self-defense;
- Did not impose reasonable time, place, and manner restrictions by, for example, imposing a curfew to allow the exercise of 2nd Amendment rights during circumscribed times.

Although Judge Howard found the statutes unconstitutional as applied to the plaintiffs in the case, he did not strike down the statutes entirely. This still leaves local governments with the legal authority to impose restrictions on dangerous weapons during a state of emergency, but these restrictions must be narrowly tailored to achieve the compelling governmental interests of protecting public safety, ensuring order, and general crime prevention. Drawing on Judge Howard's concerns and applicable case law, future restrictions on weapons during a declared state of emergency should:

- Be limited to situations and geographic areas where the restriction is necessary to preserve the public peace in the face of an imminent risk of damage, injury, or loss of life or property; and
- Not prohibit the possession, storage, or use of dangerous weapons in an individual's home or on an individual's property for self-defense or other lawful purposes.

Within these parameters, examples of restrictions on weapons during a state of emergency that presumably would not be inconsistent with Judge Howard's ruling might include:

- Off-premises possession, transportation, and use of dangerous weapons during curfew periods (thus still allowing transportation and use of weapons during the times of the day when the curfew is not in effect).
- Off-premises possession and transportation of dangerous weapons in the immediate vicinity of a riot or within a geographic area severely damaged by a disaster.
- Off-premises possession and transportation of dangerous weapons within a geographic area covered under a state of emergency declaration by individuals not lawfully authorized to be in that area (such as during limited reentry of an evacuated area when only certain authorized individuals are allowed into the restricted area).
- Possession and use of only certain kinds of dangerous weapons (for example, exempting from the restriction lawfully licensed handguns and hunting rifles).

The General Assembly might consider amending the challenged statutes during the upcoming legislative session which reconvenes on May 16th. Absent clarification from the General Assembly (and, even with it), local governments should proceed with caution if they impose restrictions on dangerous weapons during a state of emergency.

For a more detailed analysis of the *Bateman* decision, **click here** to read a summary posted on our **SOG Emergency Management website**. And, feel free to read more about local government emergency authorities in the **emergency management blogs** posted on our **Coates' Canons NC Local Government Law Blog**.

Acknowledgements: The author wishes to thank the following for their expert advice and comments in preparing the analysis of Bateman mentioned above on which this blog post is based: Jeff Welty, UNC School of Government, Mark Davis, General Counsel to the Governor, Will Polk, General Counsel, NC Department of Public Safety, Alec Peters, NC Attorney General's Office, Ben Stanley, Legislative Bill Drafting.

Links

- canons.sog.unc.edu/?attachment_id=6654
- canons.sog.unc.edu/?p=6683
- ia600501.us.archive.org/7/items/gov.uscourts.nced.107258/gov.uscourts.nced.107258.87.0.pdf



-
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-288.7
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-288.12
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-288.13
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-288.14
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-288.15
 - scholar.google.com/scholar_case?q=district+of+columbia+v.+heller&hl=en&as_sdt=2,34&as_vis=1&case=2739870581644084946&scilh=0
 - www.supremecourt.gov/opinions/09pdf/08-205.pdf
 - www.sog.unc.edu/sites/www.sog.unc.edu/files/Bateman%20decision%20summary%20-%20May2012.pdf
 - www.sog.unc.edu/ncem
 - canons.sog.unc.edu/?cat=563
 - canons.sog.unc.edu/