

Kamala Harris, other 2020 Democrats promise new gun controls. How far can they go?

Emily Cadei

May 21, 2019

California Sen. Kamala Harris and other Democrats running for president have promised aggressive action to stem the nation's epidemic of gun violence if they win the White House in 2020.

But when it comes to restricting gun access, experts say executive action is unlikely to make a significant dent in the problem, and any steps the president takes unilaterally are likely to be embroiled in legal challenges.

The reality is it's Congress — not the president — that holds most of the power on gun policy.

The executive branch has “limited discretion” on guns, University of California, Los Angeles Law Professor Adam Winkler told McClatchy.

Former Democratic President Barack Obama “looked at all these things and had a list of 20 executive actions. Even with 20 executive actions, it didn't add up to much,” said Winkler, an expert in constitutional law. “The real takeaway of these campaign promises is how gun control has surged ... as a way to energize Democratic voters.”

While Democrats even a decade ago mostly avoided talking about guns, fearing it could alienate swing voters, the party's 2020 presidential candidates are making a different calculation. Most in the primary field have unveiled proposals to tighten restrictions on guns or made promises to do so on the campaign trail. The latest: former Texas Rep. Beto O'Rourke, who penned an op-ed in the Houston Chronicle over the weekend laying out his four-point plan to stop gun violence.

The candidates tend to downplay how much they would rely on Congress to achieve their goals.

For example, much of New Jersey Sen. Cory Booker's expansive 2020 gun agenda — including the centerpiece, a universal federal gun licensing system — would require Congress to pass new legislation. South Bend, Indiana Mayor Pete Buttigieg also recently endorsed the idea.

Banning the sale of so-called assault weapons also would require a new law. Harris, Booker, O'Rourke and Buttigieg have all promised to pursue that goal, as have many other 2020 candidates.

Betting that Republicans in Congress will block any gun action, Harris' campaign has zeroed in on gray areas in existing gun laws that her advisers believe permit the president to tighten restrictions.

“If Congress is not going to act, and we have no indication that they will, we’re going to use absolutely everything in our authority to do as much as we can to fight back,” said Harris campaign spokeswoman Kirsten Allen.

BANNING AR-15 IMPORTS

Over the past month, the California senator has announced five different actions on guns she would take in 2021 if Congress fails to act within the first 100 days of her presidency.

Most recently, Harris pledged to prohibit the importation of AR-15-style assault weapons. The Gun Control Act of 1968 gives the executive branch broad authority to bar gun imports that are “not suitable for or readily adaptable to sporting purposes,” experts agree.

Different administrations have had very different interpretations of what falls under that category, said David Kopel, a policy analyst with the Cato Institute, a center-right think tank in Washington, D.C.

But legal experts said Harris would have a difficult time following through on another pledge — to take gun manufacturers and dealers to court for negligence, among other violations.

The Harris campaign notes that while a 2005 liability law, the Protection of Commerce in Arms Act, protects gun sellers from a broad array of individual lawsuits, those protections don’t apply when the plaintiff is the federal government. Harris promised her administration would enforce not just federal laws, but state and local guns laws, as well.

UCLA’s Winkler said there are some exceptions to the 2005 law, which the administration could use to go after some gun makers and sellers who make defective products or violate other existing laws. But overall, “The protections are pretty extensive.”

“Very few efforts to hold gun manufacturers liable ... have been successful,” he said.

BACKGROUND CHECKS

As president, Harris would also run into problems enforcing another a near-universal background check requirement she promised last month. The first-term senator has proposed categorizing anyone who sells five or more guns per year as a “gun dealer” for federal licensing purposes, thus triggering a background check on all their gun sales.

“I don’t see how she can possibly do that,” said Kopel of the Cato Institute. Key language in the Gun Control Act of 1968 defines a gun dealer as someone engaged in repetitive transactions for the purpose of profit. A collector could sell more than five guns in a year but argue that it’s not for the purpose of profit, he pointed out.

Harris would “certainly run into a legal challenge” said Kopel. “And if the court was fair, you’d have to rule against her.”

Lindsay Nichols, federal policy director for Giffords Law Center, supports more stringent federal gun policies. But Nichols doubted the federal government could meaningfully alter the existing background checks system without new legislation. “We’ve seen this over and over again, criminals will take advantage of any loophole that exists in the law,” she said.

Despite the limits on presidential power, however, Nichols said having a president who is focused on tightening gun laws would represent a notable shift. “Just treating gun violence, gun safety as a priority that requires action at the highest level, that is something, certainly, the current administration is not doing,” Nichols said.

She pointed out that a Democratic administration could take some steps without Congress’ approval, like shift resources towards programs for gun violence prevention and for those affected by gun violence — things that Booker detailed in his gun agenda.

The president could also beef up the Department of Justice’s Bureau of Alcohol, Tobacco and Firearms (ATF) and encourage it to better coordinate with other federal agencies as well as state and local governments. “The ATF has been has been doing a lot of the A and the T but not much of the F,” Harris joked at a CNN town hall in April. “We need to fix that.”

Just enforcing existing laws “requires coordination across different members of the cabinet, different agencies, different departments and also coordination between federal and state and local governments,” said Nichols. “Those are things that are not happening right now.”