



Gun Bill Passes After Testy Debate

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An intensive debate broke out on the floor of the New Jersey Assembly Monday between supporters and opponents of A4769, sponsored by Assemblyman Joseph Daniels (D LD-17), which came as a response to the ruling of *New York State Rifle & Pistol Association, Inc. v. Bruen*. That case struck down state laws which required applicants for a concealed carry handgun permit to demonstrate a justifiable need. A law similar to one passed in New York, A4769 increases the prices of application fees, requires those with concealed carry permits to purchase liability insurance, and restricts the places where a weapon can be carried with an exhaustive list of “sensitive locations” as well as other additional modifications of current state gun laws. The contentious bill drove a sharp wedge between an already polarized left and right division in the Assembly, with Democrats championing the bill as a triumph for public safety, while Republicans derided the bill as a piece of legislation which would not actually protect anyone while further penalizing law-abiding citizens with more onerous expenses and requirements. Republicans, led particularly by Assemblyman Brian Bergen (R LD-25) took issue with the fact that the list of sensitive locations is so extensive that, they say, it renders virtually the entirety of the state outside of the home as a sensitive location.

In previous discussions, Brian and Daniels clashed over the nuance of the law, in which Bergen had once asked if, while legally carrying a handgun and walking a dog, it would be a crime to pick up dog poop on someone’s lawn, technically a violation of the law which forbids carrying a concealed handgun on private property without the property owner’s consent or marked signage indicating as much.

In a subsequent revision of the bill, a consideration of de minimis infractions is written into the language. Bergen pressed Daniels to clarify what would constitute such, but Daniels refused to answer.

Republicans challenged the bill as an unconstitutional obstruction of the Second Amendment, a charge Democrats reject.

Daniels defended his bill at the time of its introduction on the floor, asserting that he and his colleagues had spoken to a number of stakeholders, including law enforcement agencies, on the best way to craft the bill. “I have made many changes to this bill as a result of those conversations,” he said, rejecting notions that holstering a weapon would be considered brandishing, which is a crime, among other points. “It’s been said that this bill is

unconstitutional, and ‘why are we doing it if New York’s similar law has already been subjected to an injunction?’ Because of Bruen, more New Jerseyans will die as a result of gun violence. The question before us now is how many will die? We cannot wait until after the loss of lives to take action to protect residents of New Jersey. As a legislator, I cannot stand for that. This bill is a public safety measure that considers and balances the constitutional rights of gun owners. Yes, New York’s law has been challenged, and that challenge is working its way through the courts. I’m certain that New Jersey’s bill will face similar litigation, but our obligation is to protect our residents. New York’s law was ruled on by one single judge in a different circuit. Now, I do not specialize in constitutional law, but the framework laid out in Bruen is as new to that single judge as it is to you and I. No one can clearly say how the judges in the Third Circuit will interpret Bruen as applied to this law. It would be premature for anyone to say that they could with any degree of certainty. It’s all speculation at this point. What I can say with certainty is that studies have shown that states with lenient right-to-carry laws lead to increased firearm related crimes.”

A host of Republican assemblymembers rose to speak in opposition to the bill, attacking it along practical grounds, constitutional grounds, and ethical grounds. Assemblyman Harold Wirths (R LD-24) was the first to speak. “I think you literally have a solution looking for a problem. You’ve created this. We have the strictest gun laws in the state of New Jersey, we’ve had absolutely some of the safest records. Even after the Supreme Court ruling, if we just simply follow those rules, we have the best gun laws—and some of us would even argue too strict. I should also clarify that the union, it was a little disingenuous,” he said, referring to a remark Daniels had made regarding law enforcement’s approval of the bill. “The PBA Union had taken a position on the part of law enforcement—that they’re happy with that part—they have not taken a position on taking away people’s constitutional rights to bear arms. The real problems are the criminals... But no, we don’t want to target them. We want to target the most law-abiding citizens who are well-trained, go through police background checks, and like I said since day one that I’ve been here, the real goal among many of you, quite frankly, is to take the guns away. You say you’re pro-Second Amendment. You don’t pass bills like this if you’re pro Second Amendment. This is really about a distress or hatred towards firearms, and I think it will be overturned.”

Wirths said that there would be no objections on either side of the aisle to increasing the penalties for gun-related crimes and that the bill itself fails to address the issue of those who actually carry out the crimes. He also asserted that some other states with more relaxed carry laws have low crime rates.

“For those of you who are going to go off to canvas in New Hampshire and Iowa for Governor Murphy—they all carry!” Wirths said. “You go to Texas for the baseball games, they all carry. You go to Disney, they all carry. Go to Philadelphia to watch a game, they all carry. Are you all going to avoid those states? How about New Hampshire, Vermont, Maine? Maine is one of the safest states in the nation. You know what’s required in Maine, New Hampshire, Vermont, and many other states? Just to be a law-abiding citizen. Anyone in this room—I hope we’re all law-abiding citizens—can go to those states and carry a firearm today, without any permit. Do you

feel threatened when you're walking through Vermont and New Hampshire? I don't think so. I think if you look at yourself in the mirror and say, 'Am I scared to go to those states?' The answer would be no. Otherwise, you're really homebodies and you stay right here, which is good, I guess, the state of New Jersey spends all your money. But folks, this is going to do nothing but make the law-abiding citizens less safe."

Calling it a "terrible bill" Wirths said that Democrats were prioritizing criminals over regular New Jersey citizens' wellbeing.

Assemblyman Scharfenberger (R LD-13) said that the bill failed to address illegal guns in the hands of criminals, echoing previous remarks that New Jersey already has among the strictest gun laws in the country. "Creating more will only add insult to injury to the millions of law abiding citizens who either own firearms or intend on purchasing them in the future. They already have to deal with a labyrinth of regulations, piling more on top of them only hurts the honest New Jerseyans. Most importantly, they are a direct attack on our constitutionally guaranteed Second Amendment rights. With close to 28,000 gun laws already on the books across the country, we should be concentrating on the root causes and prevention of violent attacks that is punishing criminals who use illegal firearms, addressing mental health issues, securing schools and other vulnerable targets and aggressively following up on known threats. The biggest threat to our safety here in New Jersey is bail reform and releasing dangerous criminals, not the lack of yet-another gun law targeting law abiding citizens. We gain nothing by punishing these law-abiding legal gun owners."

The constitutionality of the bill was a common point among Republican opposition, and Scharfenberger was no exception, taking a dig at the governor in the process. "These bills are clearly going to be challenged, will be found unconstitutional, and will cost the taxpayers untold dollars in the process. The Constitution may be above the governor's pay grade, but it's certainly not above mine."

From LD-39, Republican Assemblyman Robert Auth said that the bill would make victims of domestic violence less safe and endanger members of the LGBT community by not allowing them to defend themselves with firearms. The remarks came after this weekend saw a shooting at a Colorado Springs nightclub catering to the LGBT community that left five people dead and at least 18 injured. Auth said he had read a Cato Institute article where a gay man, Tom Palmer, was one of the original plaintiffs in the District of Columbia v Heller Supreme Court case. "He had to drop off the amicus brief, the brief that was introduced by Pink Pistols and Gays and Lesbians for Individual Liberty. He had a drop off because he, as a litigator, had been in a confrontation with his partner, and he was accosted by about 20 people. They used things like 'they'll never find your body' as a threat to them. Mr. Palmer pulled out a handgun and the crowd dispersed. He never had to fire the handgun. But everybody left, because while there were 20 people there who were accosting Mr. Palmer and his partner, Mr. Palmer had nine friends with him in a handgun, and everybody decided they'd walk away peacefully. That's what transpired. I really feel that if we're going to take a person's right to defend themselves away from them, we're doing such a disservice to the citizenry of our state. We really need to

contemplate the deleterious effects that will have, and the emboldenment of what criminals will do, knowing that they have the soft underbelly of New Jersey at their hands.”

When Assemblyman Brian Bergen (R LD-25) rose to speak, the exchange began with a tense start from the get-go with a contentious back-and-forth over whether or not Danielsens could hear Bergen through the microphone. Anxious banter underscored what would become a mixture of humor and anger in a three-way discourse between Bergen and Danielsens via Speaker Craig Coughlin.

In what would become a long exchange, Bergen asked, among other questions, whether those who already obtained a permit to carry with a justifiable need would be precluded from carrying as they had before under the new legislation. Danielsens responded by listing the number of places deemed sensitive locations where handguns would not be permitted.

“This becomes law to everyone it applies to,” Danielsens said.

“Thank you, that was very thorough,” Bergen said.

“Thank you, Mr. Bergen, for not only voting yes, but you are a contributing author of this bill.”

“He’s going to be a wise-ass,” Bergen remarked. Seeking to clarify his question, the Speaker said that Danielsens had answered the question and Bergen moved on. “In the state of New Jersey, there are 9.2 million people, 78.4% of them are adults, which is 7.2 million adults in the state of New Jersey. 46% of those people live in non-owner occupied housing, meaning a place of which they do not own the property. That’s 3.3 million people. Does your bill preclude those 3.3 million people from possessing a firearm without the express permission of the owner of the property?”

Danielsens replied, “No.”

When Bergen asked how confident Danielsens was that the bill would be upheld by the Supreme Court, Danielsens refused to answer and told him to “stay on the bill, please.” Speaker Coughlin said that it was speculative and the question was not “on the bill.”

Asked if Danielsens had read the Bruen court decision in its entirety, Danielsens responded to Bergen that whether or not he read the court decision was not part of the bill.

Coughlin told Bergen that it was not a cross-examination.

“There’s some important stuff that happened in the Bruen decision that relates to the bill, so I just want to recap one particular part,” Bergen said. “In the Bruen decision, it said, ‘in keeping with Heller, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct to justify its regulation the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this nation’s historical tradition of firearms regulation.’ You must demonstrate that this bill is consistent with this nation’s historical tradition of firearm regulation. To keep in line with the Bruen decision and to ensure that this will pass constitutional muster, I have a few questions. When the founders wrote the Constitution, did they limit the second amendment for town squares or taverns?”

Danielsen asked what section that referred to in the bill. “We need to stay on the bill.”

“It’s the constitutional part that you left out,” Bergen replied. “They also had public parks and beaches back in those days, did they limit those areas?”

“We are limiting the bill to gun-free zones only. Read the bill,” Danielsen said.

“Benjamin Franklin founded an insurance company in 1752. Did he sell insurance to gun owners, too?”

Speaker Coughlin stopped Bergen, who said he was trying to establish historical precedent. Coughlin said he was trying to score political points, making Bergen move on.

“Assemblyman Danielson,” Bergen continued, “in writing this bill, were there any historical precedents that you found that helped you to make this bill to be in compliance with the Bruen decision?”

“Mr. Bergen, while authoring this bill and doing extensive research, I collaborated with many organizations including members of your caucus, the NRA, the Second Amendment Society, the Attorney General’s office, and an uncountable number of attorneys,” Danielsen said. “I feel very confident that this bill is navigating within the boundaries of constitutional guidelines and decisions. I am 100,000% confident this bill is constitutionally defensible. I also want to thank you for helping me write this Mr. Bergen.”

Bergen said that individuals generally do not want to carry handguns. “It’s not a great thing to do. It’s not fun. People don’t want to do it. The reason why people want these permits isn’t so they can run around like the Wild Wild West, it’s because right now our laws are so ridiculous, that every time you get in the car to go to a range, you think you might accidentally commit a crime. With having a concealed carry permit a lot of times you will alleviate that because you don’t have to worry about all the stupid laws that New Jersey has.”

Other Assemblymembers spoke on behalf of or against the bill along party lines, but when Bergen spoke again, the heat began to ratchet up further.

“The bill is so poorly written,” Bergen said, “the sponsor, who wrote this bill, allegedly, after two committee hearings, had no idea what a third-degree crime was, and a third-degree crime is in this bill. That should be legislative malpractice. How could you put a crime in a bill? You don’t even know what you’re accusing somebody of. But this thing has gone through so fast, and you guys are doing it with such irreverence to reality, the sponsor wouldn’t even answer my question about walking through a Walgreens parking lot. When this is done, when you pass it today and the Senate passes it, people are going to read this bill and have no clue when they can carry and when they can’t, because the bill’s awful. It was written poorly, it was reviewed poorly, and it’s nothing but cowardice from those of you on that side who know this is a bad thing, who refuse to have the intestinal fortitude to stand up and do the right thing.”

Launching another attack, Bergen said that Danielsen had been lying about the bill. “Assemblyman Danielsen, the sponsor, has made several comments here today, sir, on the record in this chamber that are patently false. He tried to make the entire body believe that the

police are in favor of this bill—that is false. He tried to make all of us believe when I questioned him, that people who live in nonowner occupied housing will have the right to bear arms in a place without permission of the owner. He is lying. That is not true, and you know it's not true.”

“You’re out of order,” Coughlin interjected. Bergen continues, saying that the assemblymembers swore an oath to protect the constitution and that the bill “flies in the face of that.” Coughlin again fired back that Bergen was out of order and told him to sit down, passing the floor to others for their remarks. Applause which brewed up was quickly stifled by Coughlin, calling for order.

The final result on the third reading was an expected passage, 43 in favor, 29 against, 7 not voting, 1 abstention.