

The Miami Herald

3D guns: Free speech and the First Amendment are in danger, too

August 7, 2018

The debate over 3D-printed guns blew up last week. Many people rightly see this issue as being about the Second Amendment right to bear arms, it's also about the First Amendment and free speech.

The plans for a basic 3D-printed gun have been around for a couple of years, but the federal government prohibited online publication. Texas-based Defense Distributed challenged that policy in court. The case dragged on for a couple of years until the Trump administration recently settled. Online publication could start Aug. 1.

That got people's attention. Americans would quickly fall victim to a rash of plastic gun violence, gun control advocates said. The weapons are untraceable, can pass through a metal detector, don't have a serial number and can be made by felons. Several state attorneys general sued to have the prohibition reinstated and won a temporary injunction.

Everything those advocates say is true. Allowing people to make unregulated 3D-printed plastic guns will create serious challenges and consequences. However, the stifling of free speech can't get lost in the mix.

Anyone who really wants a gun without a background check is far more likely to get it at a gun show or illegally on the streets. Real guns are more effective and cheaper than plastic ones that are good for a handful of shots at best and require a 3D printer that costs thousands of dollars. The government must tread carefully when it limits speech. Indeed, permissible limits are few and deal with imminent threats and clear harms. Child pornography, threatening someone and inciting violent insurrection enjoy no First Amendment protection.

The plans for a gun, in and of themselves, make no threat and cause no harm. The danger lies in what people might do with the plans. But free speech does not end because publication of an idea creates a potential hazard. If it did, too many important ideas would be silenced.

Federal courts have long upheld this notion. For example, the U.S. Fifth Circuit Court of Appeals wrote in an otherwise distasteful case, "The constitutional protection accorded to the freedom of speech and of the press is not based on the naïve belief that speech can do no harm but on the confidence that the benefits society reaps from the free flow and exchange of ideas outweigh the costs society endures by receiving reprehensible or dangerous ideas.

An eclectic group of free-speech supporters sided with Defense Distributed in the case. First Amendment champions the Reporters Committee for Freedom of the Press, the Thomas Jefferson Center for the Protection of Free Expression and the Electronic Frontier Foundation joined libertarian-minded groups the Cato Institute and the Texas Public Policy Foundation filing amicus briefs.

Anyone can find plans for bombs and instructions on how to make drugs online. Such documents circulated even before the Internet. Government does not prohibit that speech, but it does prohibit bombs and drugs. Laws target the act, not the words.

If 3D-printed guns are untraceable “ghost guns,” require a state-issued serial number and a piece of metal, as California does, and a gunsmith license, as New York is considering. Congress and state legislatures are not powerless. They can mitigate, though probably not entirely prevent, the danger of 3D-printed guns without trampling the First Amendment.