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**NOTIFY**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
NO. 2019-0004**

**BAYSTATE FIREARMS AND TRAINING LLC & another<sup>1</sup>**

**vs.**

**MAURA HEALEY<sup>2</sup>**

Notice Sent  
07.30.21 (NS)  
- KJS/C.A.K., D.R.R.  
- DAG/W.W.P.J.K

**MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS  
FOR JUDGMENT ON THE PLEADINGS**

The plaintiffs, Baystate Firearms and Training LLC and Downrange, Inc. (d/b/a Cape Gun Works), filed this action seeking declaratory relief concerning the issuance of an “Enforcement Notice” in July 2016 by the defendant, Maura Healey, Attorney General for the Commonwealth of Massachusetts. The parties have filed cross-motions for judgment on the pleadings. The court held a hearing on the motions on May 12, 2021. For the following reasons, the plaintiffs’ motion for judgment on the pleadings is **DENIED**, and the defendant’s motion for judgment on the pleadings is **ALLOWED**.

**BACKGROUND**

The plaintiffs, Baystate Firearms and Training LLC (“Baystate”) and Cape Gun Works, are licensed gun sellers in the Commonwealth of Massachusetts. Baystate operates a store in Peabody and Cape Gun Works operates a store in Hyannis.

Congress enacted the Gun Control Act, 18 U.S.C. §§ 921-930, in 1968. The Act sought to impose a regulatory scheme on the import, manufacture, and sale of firearms in the United States. In 1994, Congress amended the Gun Control Act, enacting the Public Safety and

<sup>1</sup> Downrange, Inc. d/b/a Cape Gun Works

<sup>2</sup> Attorney General for the Commonwealth of Massachusetts

Recreational Firearms Use Protection Act. The Public Safety and Recreational Firearms Use Protection Act prohibited the manufacture, transfer, or possession of “assault weapons” as defined by the statute for a period of ten years. An amendment incorporated in the statute banned a short list of identified semi-automatic firearms and exact “copies” or “duplicates” of those listed firearms, along with other semi-automatic firearms based on whether they had two or more features, as “assault weapons.”

In Massachusetts, firearms retailers must be licensed under G.L. c. 140, §§ 122-123. In 1998, the Massachusetts Legislature incorporated the assault weapons ban based on the definition of “assault weapon” in 18 U.S.C. § 192(a)(30). General Laws c. 140 was amended to provide that the term “assault weapon” have the same meaning as a semi-automatic weapon defined in 18 U.S.C. § 192(a)(30). In enacting G.L. c. 140, § 121, the Legislature adopted the “features test,” as it appeared in the federal statute, for identifying assault weapons.

On July 20, 2016, the Attorney General issued an “Enforcement Notice.” The Enforcement Notice indicated that it was intended “to provide a framework to gun sellers and others for understanding the definition of ‘Assault weapon’ contained in G.L. c. 140, § 121.” The Enforcement Notice further stated that it “provides guidance on the identification of weapons that are ‘copies’ and ‘duplicates’ of the enumerated Assault weapons that are banned under Massachusetts law.” Specifically, the Enforcement Notice stated that its purpose was “to explain: (i) what [the Attorney General’s Office] will deem to be ‘Copies or Duplicates’ of the Enumerated Weapons in Section 121, and (ii) the distinction between Assault weapons that are ‘Copies or Duplicates’ of Enumerated Weapons and Assault weapons that are defined by the Features test . . . .” The Enforcement Notice then contains guidance on how the Attorney General’s Office will identify “copies or duplicates” of assault weapons.

The Enforcement Notice reads, in pertinent part:

A weapon is a Copy or Duplicate and is therefore a prohibited Assault weapon if it meets one or both of the following tests and is 1) a semiautomatic rifle or handgun that was manufactured or subsequently configured with an ability to accept a detachable magazine, or 2) a semiautomatic shotgun.

1. *Similarity Test:* A weapon is a Copy or Duplicate if its internal functional components are substantially similar in construction and configuration to those of an Enumerated Weapon. Under this test, a weapon is a Copy or Duplicate, for example, if the operating system and firing mechanism of the weapon are based on or otherwise substantially similar to one of the Enumerated Weapons.
2. *Interchangeability Test:* A weapon is a Copy or Duplicate if it has a receiver that is the same as or interchangeable with the receiver of an Enumerated Weapon. A receiver will be treated as the same as or interchangeable with the receiver on an Enumerated Weapon if it includes or accepts two or more operating components that are the same as or interchangeable with those of an Enumerated Weapon. Such operating components may include, but are not limited to: 1) the trigger assembly; 2) the bolt carrier or bolt carrier group; 3) the charging handle; 4) the extractor or extractor assembly; or 5) the magazine port.

The Enforcement Notice then provides how it will be applied to firearms dealers licensed under G.L. c. 140, § 122. It reads, “The Guidance will not be applied to future possession, ownership or transfer of Assault weapons by dealers, provided that the dealer has written evidence that the weapons were transferred to the dealer in the Commonwealth prior to July 20, 2016, and provided further that a transfer made after July 20, 2016, if any, is made to persons or businesses in states where such weapons are legal.” The Enforcement Notice was sent directly to all 350 licensed firearms dealers in the Commonwealth by letter dated July 19, 2016.

Prior to issuance of the Enforcement Notice, both Baystate and Cape Gun Works sold certain semi-automatic rifles from different manufacturers not listed in 18 U.S.C. § 921(a)(30)(A) and which did not have two or more features prohibited by 18 U.S.C. §

921(a)(3)(B). After the Enforcement Notice was issued, Baystate and Cape Gun Works ceased selling those firearms “out of fear of enforcement.”

### **DISCUSSION**

The plaintiffs argue that the Enforcement Notice constitutes a regulation. Therefore, they contend, the Enforcement Notice is subject to the Administrative Procedure Act and could not be promulgated absent several procedural steps outlined by the Act. The defendants argue both that the plaintiffs do not have standing to bring this action and that the Enforcement Notice does not constitute a regulation and, therefore, not subject to the Administrative Procedure Act.

#### **I. Whether the Enforcement Notice constitutes a regulation**

The plaintiffs contend the Notice constitutes a regulation, requiring the defendant to adhere to a number of procedural steps prior to enacting it, which she did not do. “A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right.” G.L. c. 30A, § 2. The Attorney General’s Office is an “agency” under G.L. c. 30A. *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 770 (1980). Therefore, the Attorney General’s Office must follow the procedure set forth in G.L. c. 30A in promulgating regulations.

Pursuant to G.L. c. 30A, § 1, a regulation is “the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it . . . .” “An administrative bulletin, as opposed to a regulation that has benefitted from the full rulemaking process, with opportunity for notice and comment . . . , is

entitled to substantial deference, but it is not a promulgated regulation that carries the force of law.” *1A Auto, Inc. v. Director of the Office of Campaign and Political Fin.*, 480 Mass. 423, 450 n.10 (2018).

The Attorney General’s authority regarding a particular topic does not render her every pronouncement regarding that topic a regulation. See *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 230 (2011). The Enforcement Notice “is simply an explanation regarding how the [Attorney General] intends to enforce the assault weapons ban.” *Reade v. Attorney Gen.*, 2020 WL 6373039, at \*3 (2020) (Rule 23.0 opinion). “The mere existence of the Enforcement Notice . . . does not bring about a change in rights or obligations.” *Worman*, 293 F. Supp. 3d at 260-261. Because the Enforcement Notice constitutes an advisory on how the Attorney General intends to enforce the assault weapons ban and does not bring about a change in rights or obligations for any individual or entity, the Enforcement Notice does not constitute a regulation subject to the Administrative Procedure Act. See *id.*; *Golchin*, 460 Mass. at 230.

## II. Standing<sup>3</sup>

The plaintiffs seek a declaratory judgment. A party may seek a declaratory judgment “in any case in which an actual controversy has arisen.” G.L. c. 231A, § 1. “To obtain declaratory relief in a case involving administrative action, ‘a plaintiff must show that (1) there is an actual controversy; (2) he has standing; (3) necessary parties have been joined; and (4) available administrative remedies have been exhausted.’” *School Comm. of Hudson v. Board of Educ.*, 448 Mass. 565, 579 (2007), quoting *Villages Dev. Co. v. Secretary of the Exec. Office of Envtl. Affairs*, 410 Mass. 100, 106 (1991).

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<sup>3</sup> The determination that the Enforcement Notice is not a regulation is dispositive. However, in the interest of thoroughness, the court discusses the issue of whether the plaintiffs have standing to pursue this action.

“[A] dispute over an official interpretation of a statute constitutes a justiciable controversy for purposes of declaratory relief.” *Santana v. Registrars of Voters of Worcester*, 384 Mass. 487, 493 (1983). However, “[a]n agency action is not ‘final’ or ripe for review if it makes no change in the status quo itself, but rather requires ‘further administrative action other than the possible imposition of sanctions,’ before rights, obligations or duties arise.” *Roosevelt Campobello Int’l Park Comm’n v. EPA*, 684 F.2d 1034, 1040 (1st Cir. 1982). “An action that ‘merely explains how [an] agency will enforce a statute or regulation’ is not generally subject to pre-enforcement judicial review . . . .” *Worman v. Healey*, 293 F. Supp. 3d 251, 260 (D. Mass. 2018), quoting *National Min. Ass’n v. McCarthy*, 758 F.3d 243, 252 (D.C. Cir. 2014). The Enforcement Notice, which explains how the Attorney General’s Office intends to enforce the assault weapons ban, makes no change in the status quo and requires further administrative action before rights, duties, or obligations arise. Therefore, the plaintiffs have failed to demonstrate that an actual controversy exists. See *Roosevelt Campobello Int’l Park Comm’n*, 684 F.2d at 1040; *Worman*, 293 F. Supp. 3d at 260.

“[T]o establish standing to challenge the actions of an administrative agency or official, a plaintiff must allege ‘an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred.’” *New Bedford Educators Ass’n v. Chairman of the Mass. Bd. of Elementary and Secondary Educ.*, 92 Mass. App. Ct. 99, 107 (2017), quoting *Enos v. Secretary of Env’tl. Affairs*, 432 Mass. 132, 135 (2000). “Injuries that are speculative, remote, and indirect are insufficient to confer standing.” *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 323 (1998). Additionally, “the complained of injury must be a direct consequence of the complained of action.” *Id.*

The action the plaintiffs complain of is the Attorney General's issuance of the Enforcement Notice. As a consequence of the Enforcement Notice being issued, the plaintiffs allege that they have stopped selling certain firearms "out of fear of enforcement," which, the plaintiffs contend, constitutes injury sufficient to confer standing upon them. However, the Enforcement Notice made no change in the status quo; it did not render the sale of certain firearms illegal where the sale of those firearms was previously legal. Therefore, that the plaintiffs stopped selling certain firearms because they now realize sale of those firearms is illegal does not constitute injury flowing from the issuance of the Enforcement Notice. The plaintiffs fear future injury because they fear that the Attorney General's Office may seek to enforce the assault weapons ban and prosecute them for the sale of illegal firearms. A future injury is merely speculative. Therefore, it is insufficient to confer standing to seek declaratory relief on the plaintiffs. See *Ginther*, 427 Mass. at 323.

The plaintiffs failed to show an actual controversy or that they have standing to pursue this action. Accordingly, the court lacks subject matter jurisdiction. See *id.* at 322 (standing is issue of subject matter jurisdiction).

**ORDER**

For the foregoing reasons, the plaintiffs' motion for judgment on the pleadings is **DENIED**, and the defendant's motion for judgment on the pleadings is **ALLOWED**.



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Mary K. Ames  
Justice of the Superior Court

Dated: July 15, 2021