

[Products Liability Law Daily Wrap Up, TOP STORY—WEAPONS AND FIREARMS—W.D. Wash.: Washington State AG leads multistate suit to ban proliferation of 3D-printed firearms, \(Jul. 31, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Colleen Kave, J.D.

Yesterday, eight states and the District of Columbia filed a lawsuit in the U.S. District Court for the Western District of Washington to block a Trump Administration action that would allow online access to downloadable, untraceable, and potentially undetectable 3D-printed weapons. According to a [press release](#) issued by Washington State Attorney General Bob Ferguson, a recent settlement agreement between the Trump Administration and Defense Distributed, an organization dedicated to global distribution of open-source, downloadable 3D-printed guns, violates the Administrative Procedure Act and the Tenth Amendment. The [multistate lawsuit](#) seeks a nationwide temporary restraining order to prevent the federal government from lifting export controls on Defense Distributed's downloadable gun files and to bar Defense Distributed from posting the downloadable guns online ([Washington State Office of the Attorney General News Release](#), July 30, 2018).

Defense Distributed's underlying action. In 2015, Defense Distributed filed suit against the federal government after the State Department mandated removal of the organization's 3D-printed weapon instruction manuals from the internet. Among its defenses, the federal government contended that the manuals violated firearm export laws, and export of downloadable, untraceable firearms technology could be used in an assassination, for the manufacture of spare parts by embargoed countries, or to threaten aviation security overseas. The U.S. District Court for the Western District of Texas upheld the government's regulation of Defense Distributed's materials, finding that global access to firearms would undoubtedly increase the possibility of conflict. An appeal of that decision was rejected, and the U.S. Supreme Court declined to hear the case.

In April 2018, the federal government moved to dismiss the lawsuit, arguing that if the dissemination of downloadable guns is not regulated, 3D-printed weapons could be used to threaten U.S. national security, U.S. foreign policy interests, and international peace and stability. However, a few weeks later, Defense Distributed announced that the federal government settled the case on June 29, 2018. The [settlement agreement](#), which was not made public until July 10th, requires the federal government to temporarily waive export restrictions on Defense Distributed's downloadable gun files. This reversal effectively allows for unlimited public distribution of the instruction manuals and gives anyone with access to a 3D printer a direct channel to a weapon. Defense Distributed plans to upload the data files to the internet on August 1st.

Multistate lawsuit. Attorney General Ferguson's lawsuit, joined by Massachusetts, Connecticut, New Jersey, Pennsylvania, Oregon, Maryland, New York, and the District of Columbia, requests [a temporary restraining order](#) to prevent the imminent dissemination of the downloadable gun files. According to the lawsuit, the Trump Administration cannot legally require the government to waive export restrictions on the subject material unless it gets the concurrence of the Department of Defense and provides at least 30 days' notice to Congress. The complaint alleges there is no evidence that either of those steps have occurred and, consequently, the Administration is in violation of the Administrative Procedure Act.

Additionally, the complaint asserts that the Trump Administration's actions are arbitrary and capricious, also in violation of the Administrative Procedure Act. As the Attorney General's press release explains, "There is no indication in the settlement agreement or elsewhere that any analysis, study or determination was made by the government defendants in consultation with other agencies, before the federal government agreed to lift export controls on the downloadable guns. In fact, the agreement states that it 'does not reflect any agreed-upon

purpose other than the desire of the Parties to reach a full and final conclusion of the Action, and to resolve the Action without the time and expense of further litigation."

The complaint also contends that the settlement violates the Tenth Amendment by infringing on states' rights to regulate firearms. The multistate lawsuit names Defense Distributed, the Second Amendment Foundation, and Conn Williamson as "necessary parties."

The Washington State Attorney General's office has filed 32 lawsuits against the Trump Administration, including this action, and is 7-0 in cases that are completed with no more appeals. There are three additional successful outcomes that either have been or could be appealed.

The case is No. [2:18-cv-01115](#).

Companies: Defense Distributed

Attorneys: Jeffrey George Rupert, Attorney General's Office, for State of Washington.

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