

Is the Second Amendment now just a ‘loophole’ that needs to be closed?

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A taste of freedom reigned for one day in California on April 24 this year. Just a taste.

Amid all of the unconstitutional stay-at-home orders, forced business closures, and personal mandates, a federal District Court judge ruled California’s onerous ammunition background check law and the state’s ban on mail-order individual purchases of ammunition from other states were both unconstitutional, writing, “the Second Amendment is not a ‘loophole’ that needs to be closed.”

Roger Benitez, who is a senior judge with the U.S. District Court’s Southern District in San Diego, and my vote to get the next opening on the U.S. Supreme Court, issued a sharply worked rebuke in rejecting the laws on Constitutional grounds in his 120-page decision. At one point he wrote, “Criminals, tyrants and terrorists don’t do background checks.”

Both laws were part of a ballot initiatives passed by voters in 2016 and a similar laws passed by the legislature. The ammunition background check law went into effect July 1 last year, while the ban on out-of-state purchases and mail-order ammunition sales began a year earlier.

“A ballot proposition is precisely what the Bill of Rights was intended to protect us from – a majority trampling upon important individual rights,” wrote Benitez.

“The experiment has been tried. The casualties have been counted. California’s new ammunition background check law misfires and the Second Amendment rights of California citizens have been gravely injured,” wrote Benitez. He went on to call the laws “onerous and convoluted” in setting them aside because they violated not just the Second Amendment, but also the Commerce Clause of the United States Constitution.

Almost immediately on announcement of the decision, ammunition retailers statewide stopped requiring identification and background checks for ammunition purchases, and mail-order companies across the country announced they would again ship ammunition to California customers. Business was brisk on Friday, and many orders from across the country were shipped before the end of business on Friday afternoon.

Of course, the California attorney general, Xavier Becerra, asked the judge to stay his ruling on Friday

until an appeal could be heard before the appellate court, which would have reinstated the restrictions until the legal proceedings ended. But Benitez denied the request. His three-page decision to deny the request said, in part: “Buying ammunition is something that prohibited persons have managed to accomplish for 170 years and these new laws show little likelihood of success of preventing prohibited persons from unlawfully possessing future acquisitions. This Court’s focus is on the 101,047-plus law-abiding, responsible citizens who have been completely blocked by the operation of these laws. Without an injunction, these law-abiding individuals have no legal way to acquire the ammunition which they enjoy the constitutional right of possession,” wrote Benitez.

Alas, the Ninth District Court of Appeals – the bastion of left-wing progressive court actions – stepped in late Friday night and granted the state request for a provisional stay on Benitez’ ruling until the case could be heard before the higher court. The freedom lasted one day.

The move effectively denied what Benitez was trying to protect – Constitutional rights and common sense.

This case has been closely watched across the country. It was brought Olympic shotgun shooter Kim Rhode of El Monte (Rhode v. Bacerra) along with the California Rifle and Pistol Association. Rhode is well-known as one of just two Olympians to win medals in six consecutive Olympics on five different continents, and her involvement brought the case far more media attention than it might otherwise have received. The fact that it was going before Benitez also perked ears.

Benitez, who was born in Havana, Cuba, was appointed to the district court by George W. Bush in 2003, and he made headlines last year striking down California’s ban on high-capacity ammunition magazines. That

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ruling ignited a week-long buying spree before a stay halted sales while the state appealed the ruling.

That case is still being litigated before the Ninth Circuit Court of Appeals, which earlier this month it seemed to be leaning toward upholding Benitez' decision. That gave Constitutional rights enthusiasts hope the Ninth Circuit might be changing its colors in regards to gun rights and that — in the next few years — two important cases from the most liberal of courts could actually end up helping reaffirm the Second Amendment rights.

Even with all the starting and stopping of fundamental rights in California, there story is as much about is a rising star in the courts. Unlike many court decisions, Benitez' ruling is worthy of reading for its almost combative support of the Constitution and the individual's rights against a majority.

In the ammunition case, Benitez wrote that the decision hinged on four primary points:

“First, criminals, tyrants, and terrorists don't do background checks. The background check experiment defies common sense while unduly and severely burdening the Second Amendment rights of every responsible, gun-owning citizen desiring to lawfully buy ammunition.

“Second, the implementing regulations systematically prohibit or deter an untold number of law-abiding California citizen-residents from undergoing the required background checks.

“Third, in the seven months since implementation, the standard background check rejected citizen-residents who are not prohibited persons approximately 16.4 percent of the time.

“Fourth, the ammunition anti-importation laws directly violate the federal dormant Commerce Clause” through their restrictions on interstate sales.

The bulk of the 110-page decision deals with the minutia of the law, discussing how it failed to prevent illegal ammunition purchases while it unduly burdened or completely prevented legal gun owners from purchasing ammunition.

Benitez' decision is full of quotable lines and he also gets in a few humorous and barbed political jabs. At one point he says that the Constitution and — by association — gun owners get less respect than Henny Youngman in California. He discusses how the ammunition background check law is prejudicial against undocumented citizens of this state, a state which calls itself a sanctuary state. (Only citizens are allowed to buy ammunition under the law.) He also makes the decision current by pointing out that in this time of COVID-19, stay-at-home orders, closures of schools, businesses, and government offices, and reduced law enforcement and prosecution,

“maintaining Second Amendment rights are especially important in times like these.

But he was especially strident about protecting individuals against the majority.

“This case is about what should be a muscular constitutional right and whether a state can impinge on that right based upon a popular vote and unconvincing research. It should be an easy question and answer. Government is not free to impose its own pure policy choices on American citizens where Constitutional rights are concerned,” wrote Benitez.

“The Court is mindful that a majority of California voters approved Proposition 63 and that government has a legitimate interest in protecting the public from gun violence, it is equally mindful that the Constitution remains a shield from the tyranny of the majority. As Senator Kennedy said, ‘...the judiciary is — and is often the only — protector of individual rights that are at the heart of our democracy.’

“Law-abiding citizens are imbued with the unalienable right to keep and bear firearms along with the ammunition to make their firearms work. That a majority today may wish it were otherwise, does not change the Constitutional right. It never has.”

Those last two lines are prescient about the direction California is heading. Certainly the state's political leaders and a growing majority of its residents don't respect constitutionally guaranteed rights — not just the Second Amendment. For these people, many of these rights are indeed just loopholes that need to be closed. However, the current lock-down and forced closures over the overblown fears about COVID-19 are making a lot of Californians see the root issue, as Casey Stengel might put it: “It's not so fun when the ox is on the other foot.”

California residents are suddenly realizing that losing rights they don't care about can lead to losing rights they do care about. But that is the leftist, socialist agenda in this state: Control.

Judge Benitez' poignant writing on the ammunition law could just as easily be applied to the illegal and unconstitutional forced closing of businesses and bans on local travel “for the public good.” At least some of the public in California is finally beginning to realize the oft-quoted, “but if it can save just one life” left-wing mantra could be applied to so many things they hold dear. From driving 70 mph on the freeway (25 mph top speeds would save thousands of lives) to banning backyard swimming pools (think of all the children's lives we could save) to banning all tobacco products (no more offensive, foul-smelling, unhealthy cigars, you hipsters). It's not about saving lives, it's about controlling ours.

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