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## If There's A Constitutional Right To Own Firearms, Is There Also A Right To Sell Them?

George Leef

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The opponents of liberty are relentless and we see that relentlessness on full display when it comes to the Second Amendment. Those who don't think that individuals should be free to keep and bear arms keep looking for ways to deprive as many Americans as possible of that right.

Among their lines of attack is to drive away businesses that sell firearms. A new case involving such an effort comes to us from, naturally, California. An Alameda County zoning ordinance has been written in such a way that there is for all intents and purposes, no place in the entire county (the Oakland area) where it would be legal for an entrepreneur to open a shop to sell guns and ammunition.

That is what John Teixeira found out when he attempted to open "Valley Guns and Ammo" in 2010. Therefore, he filed suit against the county in federal district court, but Judge Susan Illston ruled in favor of the use of zoning to ban gun shops, holding that the ordinance did not put any burden on anyone's Second Amendment rights.

Teixeira then appealed to the Ninth Circuit. Surprisingly, the three-judge panel that heard the case sided with him, vacating the district court's decision, and remanding the case for further consideration – that consideration to include the impact of exclusionary zoning on the Second Amendment rights of individuals. Writing the court's opinion, Judge O'Scannlain said that when it comes to Second Amendment claims, courts cannot "simply accept government assertions at face value." Judge Illston should have "required at least some evidentiary showing that gun stores increase crime around their locations."

But in the Ninth Circuit, a victory for freedom is likely to be short-lived. Any such decision is apt to be appealed to the court *en banc* and the whole circuit is so stacked with "progressives" that decisions going in favor of the Second Amendment (or other constitutionally protected rights) will probably be reversed. That is exactly what happened to Teixeira.

Sitting *en banc*, the Ninth Circuit reversed the panel and affirmed the district court's dismissal of Teixeira's case. The upshot of its ruling is that cities and counties are free to use zoning to keep people from selling firearms. That will not, of course, do anything to prevent crime with guns, but it will make it marginally harder for Americans who want to acquire guns and ammunition for legitimate purposes to do so.

Writing about the ruling [here](#), Cato Institute legal scholars Ilya Shapiro and Matthew Larosiere observe, “The Ninth Circuit went up to bat for the county, manufacturing their own justifications and failing to have the county carry its evidentiary burden.”

Teixeira has petitioned the Supreme Court to review his case. In [this amicus brief](#), Cato Institute, the Millennial Policy Center, and the Independence Institute seek to persuade the Supreme Court to take it.

The brief goes deeply into the history of ownership and commerce relating to firearms, back to the colonial era. To support its stance, the Ninth Circuit relied on laws from that time that put restrictions on sales of guns and gunpowder to Indians, but the brief argues that such laws were exceptions to “the general right of firearms commerce.” Early Americans and certainly the Founders understood that, with but a few precise limitations, the people were to be as free to buy and sell arms and ammunition as they were to buy and sell anything else.

The brief then points out the feebleness of the *en banc* majority’s attempted reliance on our early history. “While every colony maintained a militia,” it states, “*there was not a single founding-era law* restricting arms sales to militiamen. Nor to women, or anyone else considered to have the full scope of civil rights.”

Read the brief in full for a fascinating history lesson and a devastating argument against the notion that the government has the authority to ban commerce in arms and ammunition.

It’s illogical to believe that the Constitution’s drafters would have written in explicit protection for the right to keep and bear arms but have been indifferent to attacks against the freedom to sell them. But logic doesn’t matter to those who want to disarm Americans. If the Supreme Court doesn’t take *Teixeira* (or worse yet, affirms it), we can expect more laws like the Alameda County ordinance.