NewsBlaze

Federal Judge Upholds Nonexistent Gun Ban

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A Federal judge in California upheld a ban on persons who have a license to carry a concealable weapon (CCW) from carrying a handgun within 1,000 feet of a K-12 public or private school.

The problem is there is no such ban. California's Gun-Free School Zone Act of 1995 provides several exemptions to its ban on carrying a firearm within 1,000 feet of a K-12 public or private school and one of those exemptions is for those people who have a license to carry a concealable weapon.

I had not paid too much attention to this particular case given that it was yet another concealed carry lawsuit and because it was a concealed carry lawsuit in which the CalGuns Foundation is a plaintiff.

Truth be told, I had not bothered to read the decision of the district court until after I read an Amicus brief filed by the CATO Institute, a left-wing libertarian group which refused to help me in my lawsuit which seeks to overturn California's Open Carry bans, Nichols v. Brown.

The first paragraph of the CATO Institute Amicus brief states:

"[N]o concealed carry license holder can carry his or her weapon within 1000 feet of a school … "

This prompted me to read the Federal district court judge's decision and sure enough, it said:

"Plaintiffs challenge the constitutional validity of amendments to the Gun Free School Zone Act of 1995 (the "Act") passed in 2015 as Senate Bill 707, 2014-15 Reg. Sess. (Cal. 2015) ("SB 707"). (Dkt. No. 1 (hereinafter, "Compl.") ¶ 1.) The Act prohibits the possession of a firearm within a school zone, which includes any area on the grounds of, or within 1,000 feet of, a public or private school."

Senate Bill 707 *"SB 707"* removed the automatic exemption CCW holders had when carrying a concealable weapon *in schools and on school grounds*. It did not remove the exemption that CCW holders have while carrying a concealable weapon (i.e., handgun) in the 1,000 foot gun-free school zone that extends from the grounds of a K-12 public or private school.

Also, the firearms prohibition in the California Gun-Free School Zone Act of 1995 (PC 626.9) is limited to *concealable firearms*:

PC 626.9(c)(2) states:

*"**This section does not prohibit or limit the otherwise lawful transportation of any other firearm**, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law."* (emphasis added)

Under California law, rifles and shotguns and any other firearm which is not concealable is exempted from the 1,000 foot prohibited zone as is the lawful possession of any firearm *"Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful."* PC 626.9(c)(1).

When one is within the 1,000 foot *"gun-free"* school zone and not in or on one of the exempted places within the zone then handguns must be unloaded and in a fully enclosed, locked container. This applies to even antique handguns and handguns which are incapable of being fired.

This lawsuit, *Garcia v. Becerra* (formerly Harris), was filed one year ago. The Amicus brief filed by the CATO Institute was filed on April 10, 2017, nearly one year to the day this case was first filed.

One would think this was plenty of time for at least one of the lawyers whose fingerprints are all over this case to have noticed that the judge upheld a ban which does not exist? Not to mention Federal Judge Beverly Reid O'Connell who issued the decision and Magistrate Judge Alexander F. MacKinnon who was also assigned to the case, both of whom are lawyers as well.

As this is a Federal case, judges are prohibited from issuing *"Advisory Opinions"* which is what Judge O'Connell did when she held that the nonexistent prohibition on CCW holders carrying firearms (handguns) within 1,000 feet of a K-12 public or public school is constitutional.

The question now is whether or not any of the three 9th circuit court judges assigned to hear the appeal of this case will bother to read the statute at issue in this case and remember that they, as Federal judges, are prohibited on issuing advisory opinions?

Apparently, none of the lawyers in this case bothered to read the law or, if they did, none of them understood what it says, including the two lawyers from the Cato Institute who filed the Amicus brief.

This makes it a good thing the CATO Institute turned me down. With lawyers like that …

The briefs and the decision of Federal Judge O'Connell can be found at my website by clicking here.