



Written by [Bob Adelman](#) on June 30, 2017

California Judge Blocks Implementation of Magazine Ban

U.S. District Judge Roger Benitez [issued a temporary injunction](#) against implementation of a California law passed last year that would have turned most of the state's six million gun owners into criminals overnight. Previous law banned high-capacity magazines (containing more than 10 rounds) but grandfathered in those owners who already possessed them. The new law repeals that exemption and punishes mere possession of the offending magazines with fines and possible jail time, starting on Saturday, July 1.



Said Benitez:

If this injunction [is not issued] hundreds of thousands, if not millions, of otherwise law-abiding citizens will have an untenable choice: become an outlaw, or dispossess one's self of lawfully acquired property. That is a choice they should not have to make....

The State of California's desire to criminalize simple possession of a firearm magazine able to hold more than 10 rounds is precisely the type of policy choice that the Constitution takes off the table.

What he's referring to, of course, is the language contained in the Bill of Rights of the Constitution, specifically that of the Second Amendment: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." By making possession of magazines containing more than a certain number of rounds illegal, that is, according to the judge, an infringement.

He is also referring to the Fifth Amendment: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." As noted by Christopher Lapinski, operations manager of Last Stand Tactical in Sacramento: "Why would [gun owners legally possessing a soon-to-be outlawed magazines] get rid of them? You have your Fourth [sic: Fifth] Amendment, which is the right to due process. You can't just take something away from somebody that they own without violating the Fourth [sic: Fifth] Amendment."

There are practical considerations as well. With more than six million gun owners in the state, owning hundreds of thousands if not millions of the now suddenly offending magazines, who is likely to turn them in? And if they don't, who would go door-to-door (the state already knows who the legal gun owners are; the criminals? not so much) to collect them?

For instance, as of late last year, the City of Sunnyvale, population 150,000, had a grand total of six — six! — gun owners turn in their soon-to-be-outlawed magazines in anticipation of the new law. Adam Winkler, professor at the UCLA School of Law, said: "We see no compliance from gun owners. As best as we can tell, no gun owners are giving up their high-capacity magazines or selling them out of state." So who's going to enforce the law (absent Judge Benitez's injunction)? Shasta County Sheriff Tom



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Bosenko made it clear that, at least in Redding, “We’re not going to be knocking on anybody’s door looking for them. [Anti-gun politicians] are essentially making law-abiding citizens into criminals with this new law.”

There’s also the matter of just how effective the new law might be in reining in gun violence. Much has been said by liberal anti-gunners about mass shootings that involved criminals using firearms with magazines that exceeded 10 rounds: Orlando nightclub, Columbine High School, Sandy Hook, and San Bernardino. Missing from that litany however is any mention of the Santa Barbara shooting (Isla Vista killings) committed by a deranged Elliot Rodger in May of 2014 who used only 10-round magazines in killing seven and wounding 14 before being brought down. Or more recently, the Fresno terrorist Kori Ali Muhammad, who used a revolver (which doesn’t use magazines) to kill four before being stopped and arrested. As AWR Hawkins wrote at the time:

California has universal background checks, which means no one can legally buy a gun without doing so via a background check under the auspices of a Federal Firearms License (FFL). California also requires all firearms to be registered with the state, and has gun confiscation laws, Gun Violence Restraining Orders, a 10-day waiting period on gun purchases, an “assault weapons” ban, a “high capacity” magazine ban, and so much more. Yet not one of these laws prevented Muhammad’s attack....

In addition, Muhammad was a felon, which means he faced a 100 percent gun ban, yet he had a gun on Tuesday [April 18, 2017]. Moreover, Tuesday’s attack was not the first time Muhammad had possessed a gun as a felon: the *[Los Angeles] Times* noted that he “was indicted by a federal grand jury in February 2005 for possession of cocaine with intent to distribute, possession of a firearm for drug trafficking and possession of a firearm by a convicted felon, after a Fresno police officer searched his car and found two large bags of cocaine, a loaded handgun and two rifles.”

In sum, California’s latest attempt to rein in crime fails on a number of counts: It’s unconstitutional, it’s impractical, it’s unlikely to be followed by gun owners, and it’s impossible to enforce by law enforcement. It won’t deter criminal activity or access to firearms, and might actually lead to a higher rate of gun violence by those criminals, knowing that their intended victims are less able to defend themselves.

The present injunction gives temporary relief only. California anti-gun politicians have not yet failed to ignore facts, logic, or legality in their rush to abrogate precious rights possessed by its citizens while leaving criminals alone to wreak their havoc. Their ideology is simple: guns are bad, bad, bad, and therefore so are the magazines that feed them.

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