



Second Amendment Foundation Asks SCOTUS to Review California Gun Show Ban

The Second Amendment Foundation (SAF), along with several other pro-Second Amendment groups and individuals, [filed a “writ of certiorari”](#) or “request to review” of California’s gun show ban last week.

At issue are the legal contortions the notoriously liberal and anti-gun Ninth Circuit Court of Appeals had to resort to in order to declare California’s bans constitutional: It was confronted with previous precedents declaring that “offers for sale” of firearms at gun shows at public venues such as the Del Mar Fairgrounds in San Diego were protected under the First Amendment.



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So, the court conducted a “workaround” — the “offer” was protected, but “acceptance” of that “offer” was not.

From the request:

To sidestep that precedent and its rationale, the [three-judge] panel took the unprecedented step of declaring that any speech constituting an “acceptance” in contract formation is categorically unprotected by [the First Amendment]....

The apparent willingness to defy the Second Amendment decisions of this court and the unprecedented creation of a new category of unprotected speech are grounds for granting this petition.

Unsound Reasoning

The Ninth Circuit plowed new ground in linguistic fantasyland:

The Challenged Statutes [that ban gun shows on any public property owned by the state of California, including the Del Mar Fairgrounds] simply prohibit “contract[ing] for ... the sale of any firearm or ammunition” on state property.

On its face, that language solely regulates the moment at which a binding contract is formally consummated. The statutes therefore do not prohibit offers to sell firearms [on those public properties] – an offer alone does not form a contract, which is only “completed when the offer is made and accepted” [quoting from a previous case].

As acceptance is what determines when a contract becomes binding, the Challenged Statutes prohibit accepting an offer to sell firearms or ammunition on state property.

The Challenged Statutes’ limited scope simplifies our inquiry, as acceptance of an offer is



Written by [Bob Adelman](#) on December 3, 2024

not entitled to First Amendment protection...

As acceptance of an offer is simply the act that formally consummates such a transaction, it is likewise nonexpressive conduct.

Review Needed

The SAF's request makes it clear what the high court must do. It must answer "whether the distinction between pure speech and commercial [speech] is obsolete."

It concludes:

The courts that are in error below [the Ninth Circuit and its lower courts] did not even feign a pretextual adherence to a correctly stated rule of law.

They laid waste to the First Amendment by sanctioning the censorship of communications necessary for commerce in lawful products. By judicial fiat, an "acceptance" made during contract formation became unprotected speech in the Ninth Circuit.

SAF Executive Director Adam Kraut declared that "California's laws and policies are being used to prevent gun owners, who are honest and peaceable citizens, from congregating and conducting lawful commerce on public property."

He continued,

If the state is allowed to continue [with these unconstitutional bans], neither the First nor the Second Amendments are safe from California's legal chokehold.

We are hopeful the [Supreme] Court will grant certiorari.

The Supreme Court will review its lengthening list of such requests on Friday, December 13, and announce those it will consider in its next term the following Monday.



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