

Fresno federal judge: State's 10-day wait to buy firearms unconstitutional for some | Local News

By John
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Guns on display in a case at Herb Bauer Sporting Goods in Fresno. ERIC PAUL ZAMORA — Fresno Bee file photo

A federal judge in Fresno on Monday ruled the state's 10-day waiting period for buying firearms is unconstitutional for those who've previously purchased weapons and cleared background checks.

U.S. District Court Judge Anthony W. Ishii issued the ruling after a March bench trial, as well as deposition testimony and numerous briefings that concluded at the end of June. Last December, he had denied a request by state Attorney General Kamala Harris to throw out the lawsuit. Harris, along with the California Department of Justice, were defendants in the suit.

"As an individual plaintiff I was ecstatic," said Madera County resident Brandon Combs. "It was years and an awful lot of work."

But as executive director of The Calguns Foundation, Combs said the decision is a step in what he sees as a restoration of gun rights that are part of the Constitution. Next up: almost certainly, another federal lawsuit, this one targeting the state's limit on handgun purchases to one every 30 days.

"Under state law, you can only buy one handgun a month," Combs said. "We think that is simply unconstitutional."

Ultimately, a challenge to the state's entire waiting-period law could come at some point in the future, he said,

depending on what happens in the state Legislature.

A spokesman for Harris' office said the ruling is currently under review and no decision had been made on an appeal.

Ishii's decision comes more than two and a half years after the lawsuit was initially brought by gun owners Combs, Jeff Silvester and Michael Poeschl, as well as The Calguns Foundation and The Second Amendment Foundation. Two of the plaintiffs are local: Besides Combs, Silvester lives in Kings County. Poeschl lives in Orange County.

"Basically, the waiting period doesn't make any sense when someone has already been cleared, has a concealed carry permit and already owns a gun," Miko Tempski, general counsel for the Second Amendment Foundation, said in a statement. The foundation is based in Bellevue, Wash.

Ishii's 56-page ruling specifically states that "it is expressing no opinion on the constitutionality of the 10-day waiting period in general or as applied to first-time California firearms purchasers."

The suit contended that the state's 10-day waiting period violates the U.S. Constitution's 2nd and 14th amendments by requiring firearms buyers "who lawfully already have at least one firearm registered in their name" to continually go through the waiting period.

Combs, for instance, has already gone through the background check and has a gun license with the state, and officials statewide would know instantaneously if he committed a crime or did anything else that would disqualify him as a gun owner, he said.

The suit says California has had a waiting period for firearms purchases since 1923 -- but that it has been inconsistent, varying in time from one day to as many as 15 days.

It says that "ten days to allow the Department of Justice to investigate prospective purchasers and to allow repeat purchasers to 'cool off' is an infringement on the purchaser's fundamental right to keep and bear arms in their home."

Ishii did not address the 14th Amendment claim in his decision. The amendment includes the Equal Protection Clause, which requires states to treat all citizens equally.

"Because of the Court's resolution of the Second Amendment issue, the Court need not reach the Fourteenth Amendment challenges," his ruling said.

The initial lawsuit had also said the waiting-period law for those who've previously purchased weapons and cleared background checks violated the Constitution's equal protection clause by including multiple exemptions.

It listed 18 exemptions to the waiting-period law and pointed out that California has opted out of a federal computerized background check system that can "instantly determine" whether a gun buyer is eligible to buy firearms.

Combs isn't sure if Harris will appeal Ishii's ruling.

"I think that the odds are 50-50 that (Harris) does not appeal and lets the Legislature figure out what they want to do," he said.

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