



Securing the Civil Rights of California Gun Owners

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VIA EMAIL AND FAX

RE: Opposition to AB-1934 - Saldaña

Chairman Mark Leno and Members of the Senate Public Safety Committee:

I write to you to voice our opposition to AB-1934.

The Calguns Foundation, Inc. is a 501(c)(3) organization founded to protect and defend the civil rights of California's law abiding gun owners. We are widely recognized for clarifying the definition of "assault weapon" in California by promulgating the Assault Weapons Identification Flow Chart which is being adopted by law enforcement agencies throughout California, and successfully defending various gun owners *improperly* charged with firearms crimes. Recently, our amicus brief in *McDonald v. Chicago* (United States Supreme Court Docket No. 08-1521 seeking to apply the Second Amendment of the US Constitution to the States through the Fourteenth Amendment) was cited by the *McDonald* petitioners in their reply brief.

Our litigation efforts have so far forced changes the District of Columbia's adoption of California's Handgun Roster. With the assistance of Alan Gura (lead counsel in *D.C. v. Heller* (2008) 128 S. Ct. 2783, and *McDonald v. Chicago*), we are currently litigating the constitutionality of the handgun carry licensing policies of the Sheriffs of Sacramento and Yolo County in *Sykes et. al. v. McGinness et. al.* which is a companion case to *Palmer v. D.C.* challenging the lack of a right to carry a firearm in D.C. Additionally we are challenging the constitutionality of California's Handgun Roster in *Peña et. al. v Cid*, which is a companion case to *Hanson v. D.C.* that was rendered moot when D.C. vastly liberalized its Handgun Roster.

Now is a particularly poor time for the California to be passing new restrictions on the civil rights of firearms owners. Currently pending before the Supreme Court is *McDonald v. Chicago*, which is the follow up case to *D.C. v Heller* that challenges Chicago's virtually identical handgun ban and the City's re-registration requirement. A decision is widely expected in the **next seven days**. Almost everyone (including The Brady Campaign to Prevent Gun Violence who filed an amicus for neither party in *McDonald* and California's Attorney General Jerry Brown who filed an amicus at the cert stage)

expects the Supreme Court to rule that the Second Amendment binds the states to respect the right to keep and bear arms.

In *D.C. v. Heller*, the Supreme Court ruled out rational basis scrutiny for laws impacting the right to keep and bear arms leaving only intermediate or strict scrutiny as methods of reviewing laws impacting the civil rights of gun owners. For this overarching reason, **California should at least wait until the decision is announced in *McDonald v. Chicago* before acting in this fast moving area of constitutional law.**

Further, AB-1934 violates firearms owners' First Amendment rights to speak through symbolic speech and their right to petition the government for redress of grievances.

1. Symbolic speech is no less protected than any other speech at a public gathering or protest.

The bill's author has made clear that she considers these protests against the public interest. Speaking in a widely reprinted AP news story by Samantha Young on April 18, 2010 entitled "Calif. lawmaker takes aim at guns carried publicly," Assemblymember Lori Saldaña stated that she sees her bill as an attempt to ban "mak[ing] a public statement." Quoting the article:

"What I'm concerned about is people who have no training can carry a gun for no other purpose than to make a public statement," said the bill's author Democratic Assemblywoman Lori Saldana of San Diego.

Just as prohibiting flag burning in protest is a violation of the First Amendment under *United States v. O'Brien* (88 S. Ct. 1673 (1968)), the attempt to ban the carry of unloaded firearms by peaceful citizens protesting the abridgement of their right to bear arms as guaranteed under the Federal Constitution is an unconstitutional legislative act. It is quite clear that legislators, police officers, and the public understand a particularized message from public events where gun owners exercise their ability to open carry unloaded firearms. Assemblyman Tom Ammiano clearly understands a message where he says in the same AP article:

"Whether a gun is loaded or not, it's still an act of intimidation and bullying,"

"Intimidating" speech that isn't incitement to violence or fighting words is constitutionally protected speech.

That "unloaded open carry" in California specifically sparked a nation wide debate culminating in Starbucks choosing to continue to allow the carrying of firearms in their stores pursuant to state and local law is more evidence that unloaded open carry is at the center of a national debate in support of the right to bear arms. Seeking to prohibit the possession of the most effective symbol for protesting the lack of "shall issue" carry

licensing here in California is certainly viewpoint discrimination that attacks the viewpoint that firearms should be no more surprising in public than automobiles. It also begs the First Amendment question of why Mrs. Saldaña, Mr. Ammiano, and others do not feel intimidated or bullied by, e.g. a California Highway Patrolman open carrying a loaded firearm in the same locations. It appears that only law-abiding citizens protesting their lack of an ability to exercise a fundamental enumerated constitutional right intimidate the bill's supporters.

2. AB-1934 attempts to limit the right to petition the government.

It also appears that this bill was motivated by public open carry events that occurred near Assemblymember Saldaña's district office in San Diego and on the grounds of the State Capital. **This legislation is an attempt to punish such petitioning for the redress of grievances**, which supports the strong inference that the bill has very little to do with public safety (has a criminal ever been arrested for openly carrying an unloaded firearm in a belt holster in California?) and everything to do with silencing a protest movement.

Due to AB-1934's serious constitutional problems it should not be passed.

Gene Hoffman
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Sincerely yours,

A handwritten signature in black ink, appearing to be 'GH' followed by a stylized flourish.

Gene Hoffman, Jr.
Chairman
The Calguns Foundation

cc: Mr. Alan Gura, Counsel
Mr. Don Kilmer, Counsel
Mr. Jason Davis, Counsel
Mrs. Lori Saldaña