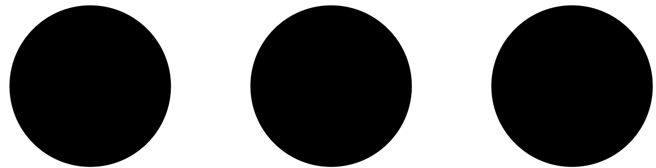
ACLU Sides With NRA in Landmark Gun-rights Case



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In a surprising move, the far-left American Civil Liberties Union (ACLU) filed an amicus brief last week with the liberal 9th Circuit Court of Appeals that mirrored similar briefs filed by the National Rifle Association (NRA) and the Firearms Policy Coalition (FPC).

The lawsuit, *United States v. Duarte*, was brought by the federal government against Steven Duarte, a low-level miscreant who had his firearms permanently confiscated. He was convicted under federal law 922(g)(1), which makes it a felony for anyone previously convicted of a "crime punishable by imprisonment for a term exceeding one year" to ever possess a firearm again. He complained that his right guaranteed by the Second Amendment to "keep and bear" arms was violated, but a lower court disagreed.

Upon appeal, a three-judge panel of the 9th Circuit reversed the lower court's decision, using the precedents of both *Bruen* (*New York State Rifle & Pistol Association, Inc. v. Bruen*) and *Rahimi* (*United States v. Rahimi*) to support their decision. To use the *Bruen* precedent, Duarte had to show that he was an American citizen, entitled to rights guaranteed in the Bill of Rights, and the federal government had to show that there was a historical analogue that supported the federal law. In *Rahimi* the high court ruled that only if a citizen "poses a credible threat to the physical safety of another, that individual may be temporarily disarmed."

Lower Court Overruled

The case is now being heard by the full (*en banc*) 9th Circuit. Pro-Second Amendment groups, such as the NRA and the FPC, are weighing in, using the now-familiar arguments that yes, Duarte is an American citizen and entitled to his rights under the Second Amendment, and no, there is no historical precedent for the federal law under which he was convicted (and for which he is spending the next four years in jail).

The ACLU's brief sounded much like the of briefs filed in the case, but it added this:

> To secure a conviction, the government must simply establish that a person with any predicate [previous] conviction "possessed" a firearm for any reason for any amount of time.
>
> The person's prior conviction can just be for a misdemeanor, and a conviction qualifies even when the person did not actually receive a term of incarceration.
>
> People are convicted under section 922(g)(1) for the most fleeting, innocuous, or merely constructive "possession" of a firearm.
>
> The statute's expansive scope thus sweeps in a vast amount of conduct that could not otherwise justify a lifetime prohibition, on pain of imprisonment, on possessing firearms.

Thousands Disarmed

The federal government has used 922(g)(1) in thousands of cases, succeeding in disarming citizens over the most minor offenses. In a footnote, the ACLU added:

> The implications of the government's position are disturbing to say the least. If the government is right about who constitutes the "political community," it could conceivably strip people with felony convictions of any other protections in the Bill of Rights. [*District of Columbia v.*] *Heller* and *Rahimi* foreclose that limitless logic.

Governments, both federal and state, tend to grow over time in their oppression and infringement of precious rights. The ACLU noted from a previous ruling that "Congress created fifty-seven new crimes every year between 2000 and 2007," adding that "every additional felony that Congress (or a state legislature) creates — no matter how minor or divorced from the threat of violence — can serve as a [reason] for a section 922(g)(1) conviction."

It provided this example: "A Navy veteran who had a single 40-year-old misdemeanor assault conviction arising out of a "fistfight" for which he served "no jail time" was banned for life from possessing a firearm — and subject to a felony conviction and years in prison if he tried."

The group pointed out that more than 10 percent of all federal prosecutions and more than 7,000 of the 64,000 federal convictions last year involved section 922(g)(1).

It added:

> Section 922(g)(1) criminalizes possession by anyone convicted of any such offense — whether tax fraud, shoplifting, or a false statement on a welfare application.
>
> There is no historical support for disarming people for reasons having nothing to do with danger, simply because they were convicted of a crime.
>
> Mr. Duarte's as-applied challenge to the statute should therefore succeed.

Important Implications

The implications of an affirmation of the three-judge panel's initial ruling are immense. Lower courts are split on the issue, which puts pressure on the high court to resolve it. As constitutional lawyer John D. Rogers wrote:

> It sets a significant precedent within the Ninth Circuit's jurisdiction, which includes several

> western states [including Alaska, California, Hawaii, Montana, Nevada, Oregon, and Washington]. This decision could influence other circuits and potentially lead to a Supreme Court review if similar cases arise nationwide….
>
> The decision broadens the scope of the Second Amendment, reinforcing the notion that fundamental rights should not be permanently stripped away for nonviolent offenses.

Alan Gottlieb of the Second Amendment Foundation (SAF) welcomed the ACLU into the fight, calling their friendly brief "a remarkable and refreshing approach" to the issues raised in the case.

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