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AMERICA'S 1st Freedom

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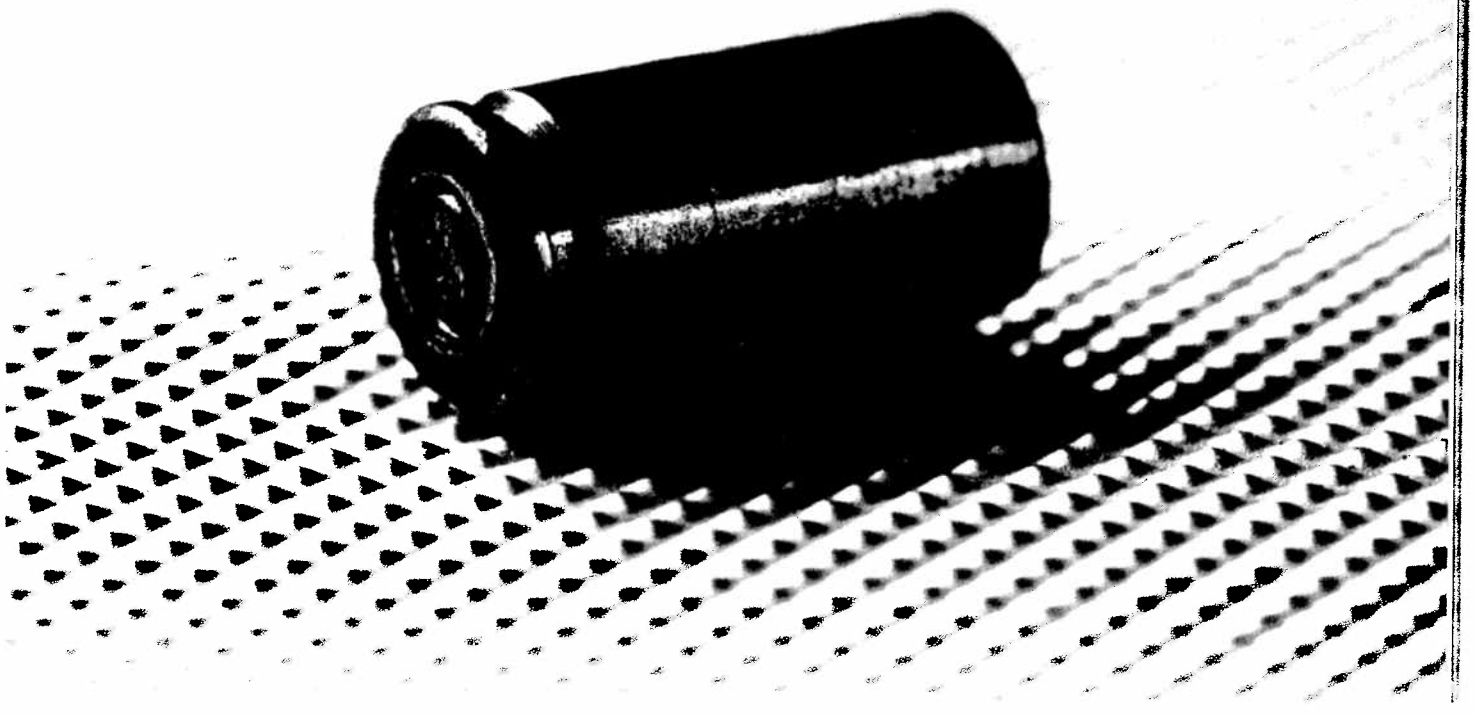
DRACONIAN AMMUNITION RESTRICTIONS!

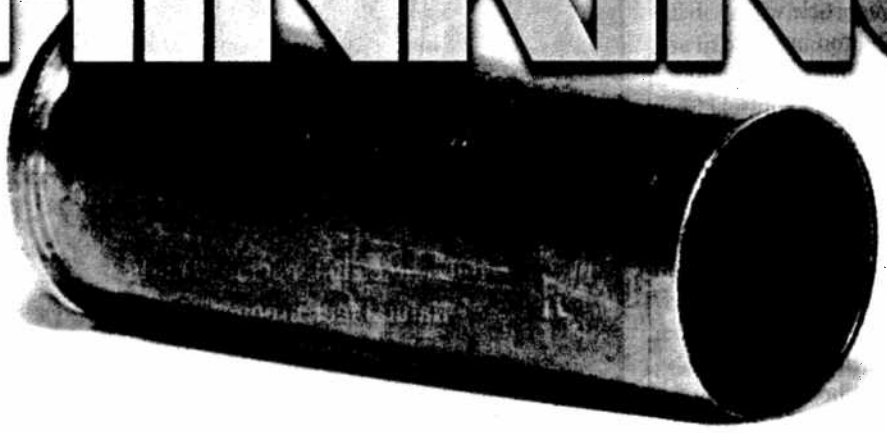
Why California Lawmakers Have An EMPTY CASE



CONFUSION REIGNS IN CALIFORNIA!

California adopts a muddled slew of restrictions on "handgun" ammo, prompting some companies to stop selling ammunition altogether in the Golden State.

EMPTY THINKING



by C.D. MICHEL *and* CHRISTOPHER ZEALAND

AMERICAN GUN OWNERS have become accustomed to politicians and anti-gun organizations trying to make it more difficult for them to purchase firearms. But the more recent trend of trying to curtail our Right to Keep and Bear Arms by banning the ammunition shot with those firearms is not on many gun owners' radar—yet.

We've said it before, but as goes California, often goes the rest of the nation. And California is currently the hotbed for a number of schemes to ban ammunition.

On Oct. 11, 2009, Gov. Arnold Schwarzenegger signed California Assembly Bill 962 into law. While the thinking behind A.B. 962 is by no means clear, the alleged motive is to deter individuals prohibited from possessing firearms or ammunition from buying ammunition. But one dubious result of the confusing law has been to hurt law-abiding ammunition buyers by forcing several popular mail-order ammunition supply companies, including Cheaper Than Dirt, MidwayUSA and Natchez, to stop selling any ammunition in the state.

The new law regulates the "retail" sale of "handgun ammunition," similar to what the federal Gun Control Act of 1968 did for the retail sale of firearms. A.B. 962 limits retail handgun ammunition sales to face-to-face transactions and requires handgun ammunition "vendors" to keep point-of-sale records of handgun ammunition transactions, including the thumbprints of purchasers, available for inspection at the request of law enforcement authorities.

The law applies to all "vendors" of covered ammunition, which include "any person ... engaged in the retail sale of any handgun ammunition." This definition is broad enough even to apply to informal sales between family members, friends and acquaintances.

Commercial sellers of ammunition

are not currently required to be licensed as such under California or federal law, meaning that authorities would not necessarily know who is selling ammunition and, consequently, where the relevant records are kept—unless there are still more laws passed.

For now, the state law applies only to "handgun ammunition," which is circularly defined as "ammunition principally for use in [handguns], notwithstanding that the ammunition may also be used in some rifles." The "principally for use" standard, however, is of no help in the case of ammunition that is commonly used in both handguns and long guns, such as .22 rimfire and 9 mm. It also does not specify whether the test is meant to apply to the caliber generally, or to the intended use of a particular buyer. And the standard shifts and the definition fluctuates with changing market preferences. Currently, NRA is funding a lawsuit (*Sheriff Clay Parker v. State of California*)—brought by the Tehama County sheriff and others—challenging this definition of handgun ammunition as unconstitutionally vague.

Faced with frustrating limits on the success and expansion of its firearm regulation agenda, the gun-ban lobby, led by the San Francisco lawyers group Legal Community Against Violence (LCAV)—which has become the gun-ban lobby's *de facto* law firm—has been trying for years to dramatically step up ammunition regulations in California and, ultimately, nationwide. The big firm lawyers who work *pro bono* for LCAV see ammunition regulation as potentially legally distinguishable from firearm laws, and perhaps even as a way to sneak around the Supreme Court's recent Second Amendment cases. A.B. 962 was their biggest accomplishment so far.

As word of A.B. 962's passage spread, NRA's grassroots response was tremendous. An NRA-sponsored bill to repeal the law was introduced and multiple lawsuits were filed. In addition to the *Parker* case, NRA is helping to fund a challenge to the law on federal preemption grounds (*Owner-Operator Independent Drivers Association et al. v. California*).

Absent court intervention, the most onerous provisions of A.B. 962 kick in on Feb. 1, 2012. But the ammunition banners aren't finished there. If they have their way, the new state laws will be complemented by a package of local ordinances that will make getting ammunition much more difficult, and much more expensive, for everyone involved in the process.

The process leading up to passage of A.B. 962 was an interesting one indeed, since other ammunition regulations in the state had already proven completely ineffective.

Pasadena's Failed Experiment

IN 1997, THE city of Pasadena reviewed its three-year-old ammunition sales registration ordinance and found that it didn't work. The record-keeping requirements were onerous for ammunition sellers, police weren't using the records and the ordinance did not deter black-market sales.

Since adoption of the ordinance, gun violence had actually gone up. The police department confirmed that the ammunition sales registration ordinance was just a distraction. The records never helped police solve a single crime, so Pasadena repealed the ordinance.

The Los Angeles Experience

UNDAUNTED BY THE failed Pasadena experiment, the city of Los Angeles adopted a similar ammunition sales registration ordinance in 2001. It has likewise accomplished nothing except diverting scarce police resources.

During debate on A.B. 962, proponents of the measure pointed to a 2006 study that examined records kept under the Los Angeles ordinance and found that prohibited possessors acquired some 10,050 rounds of ammunition from licensed firearm dealers in Los Angeles during the two-month study period. ("The Criminal Purchase of Firearm Ammunition," G.E. Tita, A.A. Braga, G. Ridgeway and G.L. Pierce, *Injury Prevention*, October 2006.) The study, however, provides a curious basis for determining that a similar law should be adopted statewide. It demonstrates that a significant number of prohibited possessors ignored whatever risks of exposure might be posed by the ordinance and continued to purchase ammunition anyway.

One obvious reason for this was that local authorities did not have the resources to cross-check the paper records kept by the ammunition vendors with lists of known prohibited persons. Indeed, the study found evidence of illegal activity only by funding an extraordinary effort that drew on the resources of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) and appears to have far exceeded anything that was even remotely possible under the Los Angeles Police Department's day-to-day operations budget.

A.B. 962 LIMITS RETAIL HANDGUN AMMUNITION SALES TO FACE-TO-FACE TRANSACTIONS AND REQUIRES HANDGUN AMMUNITION "VENDORS" TO KEEP POINT-OF-SALE RECORDS OF HANDGUN AMMUNITION TRANSACTIONS ...

Even with the study's funding and the cooperation of federal authorities, the authors still acknowledged that lack of resources forced them to exclude three of the only 13 ammunition vendors selling to the general public in the study's area of coverage. Based on their sample, however, the authors identified no significant deterrent or interdiction effect:

"While the Los Angeles ammunition ordinance requires transactions to be recorded, there is no instant check and before 2004 the

logs were only referenced when police were following up on specific crimes. As a result, prohibited possessors were able to purchase ammunition with little risk of detection. ...

"Though some ineligible buyers may be deterred by these requirements and make purchases at dealers beyond the city limits, the lack of enforcement of existing laws means that prohibited persons still complete the required elements of the transaction and walk out of the store with ammunition."

The researchers' prescription to remedy these defects was, of course, more gun control. In particular, they recommended instant background checks for ammunition purchasers, routine crosschecking of ammunition purchasers against lists of prohibited possessors and broadening of the law's jurisdictional scope. Then the authors acknowledged that even a statewide effort would be undermined by out-of-state and black market purchases, but speculated that the resultant increase in ammunition prices might lead violent criminals to "economize" on firearm usage.

Notably, the study made no claims that any of the illegally purchased ammunition was actually used in a crime or that its own findings produced actionable law enforcement intelligence. And for good reason. Significantly, the study does not conclude, nor claim to prove, that violent felons or other dangerous criminals typically purchase ammunition from firearm retailers. Rather, the study examines the purchase of ammunition by "prohibited purchasers"—not the purchase of ammunition by felons, nor even necessarily "criminals."

What the study actually did uncover is the state of confusion that exists, especially in California, concerning when a person is prohibited from possessing firearms or ammunition. Due to the complexity of firearm laws, many people who are prohibited from possessing guns or ammunition are simply unaware of their prohibited status. The law is so confusing, in fact, that NRA promoted legislation to create a mechanism for people to inquire about their status, and to take steps to clear their record and restore their right to possess a gun or ammunition. That legislation created the Personal Firearms Eligibility Check program.

So the vast majority of the prohibited purchasers detected in the study were not people with felony convictions. Instead, the few prohibited persons detected by the study became ineligible to possess firearms for one of the roughly 30 other reasons (besides a felony conviction) that a person may be prohibited from purchasing ammunition.

Further, even some of those persons prohibited by felony convictions cannot be categorized as violent criminals. Many felony convictions are for non-violent offenses that could be charged as either a felony or a misdemeanor. Often, a plea bargain is reached or sentence imposed that results in a person being put on probation for a felony conviction with the understanding that the conviction can be reduced to a misdemeanor, and gun rights restored, if probation is successfully completed.

Unfortunately, criminal defense attorneys are often remiss in going to court again to formalize the reduction to a misdemeanor once probation is completed. So many of the "felons" prohibited from possessing ammunition were actually people misled into thinking their gun rights were restored automatically once they successfully completed the terms of their probation.

DUE TO THE COMPLEXITY OF FIREARM LAWS, MANY PEOPLE WHO ARE PROHIBITED FROM POSSESSING GUNS OR AMMUNITION ARE SIMPLY UNAWARE OF THEIR PROHIBITED STATUS.

Meanwhile In Sacramento

WHEN EVEN THE Los Angeles study failed to generate enough enthusiasm in the state capital, the city of Sacramento decided to push the issue in order to gain more traction for a statewide law. Sacramento passed its own ordinance, added an additional requirement that the ammunition registration logs be kept electronically and sent to police automatically, and threw all the police resources it could muster at enforcing it.

The city managed to catch a few gang members with search warrants based on prohibited persons buying ammunition. But the cost of the effort was tremendous, and tremendously inefficient considering how many additional officers Sacramento could have put on the street with the money. And the effort had a disturbing side effect—Sacramento police are scaring some lawful ammunition buyers who registered their ammunition purchases by stopping by their houses and leaving an ominous police business card that reads, "Will be in touch."

San Francisco And Bad Ammo

LAST AUGUST, *The* (San Francisco) *Examiner* reported that Supervisor Michela Alioto-Pier was working with the city attorney's office to craft legislation to create an ammunition users registry. When the article prompted an uproar and threats of lawsuits, she backed down, saying she had been misquoted. But considering the city of San Francisco has never met a gun ban it didn't like, the article was completely plausible.

San Francisco and some other local jurisdictions have even adopted outright bans on various types of ammunition. In 2007, San Francisco adopted a ban on all ammunition that "serves no sporting purpose"—such as frangible and other types of ammunition designed for self-defense. In 2009, Los Angeles enacted a ban on the sale of all ammunition for "large caliber firearms," despite the fact that many of these firearms are specifically authorized for sale by the state.

NRA is currently supporting litigation (*Jackson v. San Francisco*) challenging San Francisco's non-sporting ammunition ban. NRA is also about to challenge Los Angeles' large-caliber ammunition ban (*Turner's Outdoorsman v. Los Angeles*) because that ordinance is clearly preempted by state law. That preemption doctrine was recently fortified in a court decision striking down Proposition H, San Francisco's latest effort at a complete handgun ban. That case (*Fiscal v. San Francisco*) was primarily funded by NRA, and was also critical in disabusing Alioto-Pier of her notion that an ammunition users registry was legal.

The Push For More

Needless to say, if the combined efforts of the LAPD and the United States Department of Justice weren't enough to monitor the 10 or so gun dealers still left in Los Angeles, California authorities will have no chance of routinely monitoring ammunition sales statewide based on vendors' paper sales records under A.B. 962. That is why the ammunition banners are pushing computerized record keeping and automatic transmission of that information to police—in other words, a backdoor gun registry.

A.B. 962 simply provides its own pretext to argue for further gun control. And that is exactly what LCAV plans.

The organization is actively pushing more ordinances at the local level. A number of California cities, including Berkeley, Los Angeles, Richmond, Sacramento and San Francisco, now require sellers of ammunition to obtain a license. Moreover, more than a dozen local jurisdictions in California have now adopted ordinances requiring sellers to maintain records of ammunition sales—including long gun ammunition, which is not covered by A.B. 962. NRA's efforts have stopped a lot of these proposals, but the fight is ongoing.

LCAV's latest model laws include requiring anyone selling firearms or ammunition be required to obtain a local law enforcement permit; requiring every employee with access to or control over firearms or ammunition to undergo a background check; setting security standards for ammunition vendors' business premises, including alarm systems and surveillance cameras; requirements for the locked storage of firearms and all ammunition both when the store is open and closed for business; requiring firearm dealers to submit a report to law enforcement every six months detailing their inventory; and requiring ammunition vendors to carry liability insurance with limits of at least $1 million per incident.

The model laws also require banning ammunition vendors from operating in residential neighborhoods or near other sensitive areas, such as schools, daycare centers or parks; require ammunition vendors to obtain a land use permit to ensure that the location of the business complies with the jurisdiction's general plan and that the business operations will not be "detrimental to the public health and safety" of those nearby; and require sellers of long gun ammunition to maintain records of sales and make them available to police.

Of course, even if California were to find a way to implement and fund these measures, the likely result would simply be to divert ammunition sales to the black market or to out-of-state vendors who do not regulate ammunition sales. This, in turn, is likely to lead to calls for federal ammunition regulation to level the playing field. This, despite the fact that Congress has already determined that point-of-sale recordkeeping for ammunition transfers has "no substantial law enforcement value" and in 1986 repealed the then-existing federal requirement for doing so.

IT SEEMS CALIFORNIA, IN ITS DRIVE TO TAKE AWAY THE RIGHTS OF LAW-ABIDING GUN OWNERS, JUST CAN'T LEARN FROM OTHERS' MISTAKES.

It seems California, in its drive to take away the rights of law-abiding gun owners, just can't learn from others' mistakes. Likewise, gun owners in California and across the country can't sit idly by and watch city and state ammunition bans work their way across the country, curtailing all Americans' Second Amendment freedoms in the process.

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NOT JUST CALIFORNIA

While many ammunition bans and proposals have so far focused on California, Americans shouldn't think that ammunition-related legislation is solely the worry of residents of the Golden State.

In fact, restrictive ammunition legislation—ranging from outright sales bans and seller registration to microstamping and ammunition encoding/serialization schemes—has been attempted in nine different states: **California, Connecticut, New York, New Jersey, Maryland, Alabama, Georgia, Missouri and South Carolina.**

And that doesn't even take into account the ongoing push by environmentalists to place a widespread ban on lead ammunition for hunting. NRA just headed off a proposed nationwide lead ammunition ban late last year.

While no ammunition restrictions have ever been proven to curtail violent crime, such proposals seem to be the "flavor of the day" for gun-ban groups that have hit a brick wall in trying to ban firearms and are looking for other ways to defeat the freedoms protected by the Second Amendment.