



U.S. Department of Justice

Laura E. Duffy
United States Attorney
Southern District of California

Caroline P. Han (619) 557-5220
Assistant United States Attorney Fax (619) 557-5551

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

February 7, 2012

Molly Dwyer, Clerk
U.S. Court of Appeals, Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: United States v. Chovan, C.A. No. 11-50107
Argument: February 15, 2012 (Pasadena)
Before: Pregerson, Hawkins, Bea

Dear Ms. Dwyer:

Under Fed. R. App. P. 28(j), the Government notices United States v. Staten, – F.3d –, 2011 WL 6016976 (4th Cir. Dec. 5, 2011).

In our brief, the Government cited United States v. Chester for the proposition that when a court applies intermediate scrutiny, a reasonable fit must be shown to exist between the challenged statute and a substantial government objective. 628 F.3d 673, 483 (4th Cir. 2011). However, the Chester panel did not actually apply the intermediate scrutiny analysis to 18 U.S.C. § 922(g)(9), instead remanding for further proceedings in district court. In Staten, the Fourth Circuit did conduct this analysis, finding that “reducing domestic gun violence” is a substantial government objective. 2011 WL 6016976, at *5. Staten also found that by citing to social science reports, the Government had carried its burden of “establishing a reasonable fit” between that objective and § 922(g)(9). Id. at *11.

On the issue of the documented recidivism of spousal abusers in particular, the Staten defendant criticized the Government’s statistics because they varied. Chovan makes the same argument. [Appellant Reply Br. 20.] However, rejecting this attack, Staten noted the reports were all available on the Internet; the panel had been able to review the reports themselves; and the reports were credible. Staten further noted the First, Fifth, and Seventh Circuits’ reliance on the same data to find that recidivism among domestic violence misdemeanants is high, *regardless* which statistics are used. Id. at *9. Finally, Staten also addressed the adequacy of the required fit between the substantial government objective and the statute, finding that:

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We recognize that the net cast by § 922(g)(9) may be somewhat over-inclusive given that every domestic violence misdemeanor would not necessarily misuse a firearm against a spouse, former spouse, or other person with whom such person had a domestic relationship However, this observation merely suggests that the fit is not perfect. Intermediate scrutiny does not require a perfect fit; rather only a reasonable one. In accord with the unanimous view of our sister circuits who have addressed the issue, we have no trouble concluding the fit here, is at least, reasonable.

Id. at *11 (collecting cases).

For the same reasons, we urge the Ninth Circuit to join its sister circuits by finding that § 922(g)(9) satisfies intermediate scrutiny.

Sincerely yours,
LAURA E. DUFFY
United States Attorney

s/ Caroline P. Han
CAROLINE P. HAN
Assistant U.S. Attorney

9th Circuit Case Number(s)

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