

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 16 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD ENOS; et al.,

Plaintiffs - Appellants,

v.

ERIC H. HOLDER, Jr., Attorney General;
et al.,

Defendants - Appellees.

No. 12-15498

D.C. No. 2:10-cv-02911-JAM-
EFB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted October 9, 2014
San Francisco, California

Before: IKUTA, N.R. SMITH, and MURGUIA, Circuit Judges.

Appellants jointly appeal the district court's decision to dismiss their request for injunctive and declaratory relief from the firearm prohibition imposed by 18 U.S.C § 922(g)(9) ("Lautenberg Amendment"). We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

28 U.S.C. § 1291. Reviewing de novo the district court's order granting the motion to dismiss, *see Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005), we affirm.

The Lautenberg Amendment does not violate Appellants' Second Amendment rights. Under *Chovan* (decided after *District of Columbia v. Heller*, 554 U.S. 570 (2008)), the Lautenberg Amendment is constitutional on its face, because the statute is substantially related to the important government purpose of reducing domestic gun violence. *United States v. Chovan*, 735 F.3d 1127, 1139-41 (9th Cir. 2013). Additionally, there is no evidence in this record demonstrating the statute is unconstitutional as applied to the Appellants. Further, when questioned, counsel for Appellants declined to suggest such evidence exists. Therefore, the district court correctly held that amendment of the complaint would be futile. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F. 3d 1048, 1052 (9th Cir. 2003).

At the time each Appellant (except Newman) entered his plea, the Lautenberg Amendment was not federal law. However, as the district court properly determined, each Appellant's plea was made voluntarily, knowingly, and intelligently. *See United States v. Navarro-Botello*, 912 F.2d 318, 320-21 (9th Cir. 1990). The enactment of the Lautenberg Amendment did not change the validity of each Appellant's plea. "[A]bsent misrepresentation or other impermissible

conduct by state agents, [Appellant's] voluntary plea . . . made in the light of the then applicable law” may not be withdrawn later, long after the plea has been accepted, “merely because [Appellant] discovers” that he miscalculated the likely penalties. *Brady v. United States*, 397 U.S. 742, 757 (1970) (internal citation omitted).

The Lautenberg Amendment does not violate the Tenth Amendment. As a federal firearms law, the Lautenberg Amendment is a valid exercise of Congress's commerce power. *See United States v. Jones*, 231 F.3d 508, 515 (9th Cir. 2000). Although California law no longer prevents Appellants from legally possessing firearms, Appellants are also subject to federal law. Appellants have not satisfied any of the Lautenberg Amendment exceptions, and therefore, cannot legally possess firearms under federal law.

The Appellants' civil rights (the right to vote, to sit as a juror, or to hold public office) were never lost under California law. *See United States v. Brailey*, 408 F.3d 609, 611-12 (9th Cir. 2005). Thus, Appellants' rights were not restored within the meaning of 18 U.S.C. § 921(a)(33)(B)(ii). *See Chovan*, 735 F.3d at 1131-33; *Brailey*, 408 F.3d at 611-13. Similarly, the relief provided to Appellants under California Penal Codes § 1203.4 and § 29805 did not satisfy the Lautenberg

Amendment's exception for convictions expunged or set aside. *See Jennings v. Mukasey*, 511 F.3d 894, 898-99 (9th Cir. 2007).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk			
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* Costs per page may not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page.

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("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

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By:

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