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United States Supreme Court Asked to Review Ninth Circuit Decision on California's Waiting Period Gun Control Laws

WASHINGTON, D.C. (September 1, 2017) – Today, two individuals and two Second Amendment civil rights advocacy groups filed a petition for certiorari in the case of *Silvester, et al. v. California Attorney General Xavier Becerra* asking the United States Supreme Court to review and overturn a wrongly-decided Ninth Circuit decision about the State of California's 10-day waiting period laws, noted The Calguns Foundation, one of the petitioners.

A copy of the petition to the Supreme Court and other relevant case documents can be viewed or downloaded at <https://www.calgunsfoundation.org/silvester>.

In 2014, Federal District Court Judge Anthony W. Ishii—nominated to the bench by then-President Clinton—held that the waiting period laws were unconstitutional as applied to three categories of gun purchasers after undertaking significant discovery, depositions, and a three-day bench trial.

But in 2016, the United States Court of Appeals for the Ninth Circuit bizarrely ruled that even a person legally carrying a concealed handgun as he buys another gun at retail, and who passes a further background check, needs to be “cooled off” for another 10 days before exercising his Second Amendment rights and taking possession of a constitutionally-protected firearm.

“I passed a rigorous state and federal background check and have a license to carry a handgun in public throughout the State of California,” explained individual plaintiff Jeffrey Silvester, an insurance broker in Hanford, California. “The DOJ knows that I am a law-abiding person, and I’m even in their Rap Back system. What possible reason does the State have in denying me my Second Amendment right to take possession of a firearm after I pass yet another background check?”

The petition, authored by Supreme Court and appellate attorney Erik S. Jaffe of Washington, D.C., noted that it “is no secret that various lower courts, and the Ninth Circuit especially, are engaged in systematic resistance to” the Court’s landmark *Heller* and *McDonald* decisions. In doing so, the petitioners argue, the Ninth Circuit ignored important legal rules that govern how infringements on constitutional rights are to be scrutinized and that govern review of a trial court determinations of the facts in a case. Petitioners maintain that the Ninth Circuit’s decision represents one of the clearest example yet of open circumvention of Second Amendment rights, when even the results of a trial cannot survive the hostile appellate review often applied in Second Amendment cases.

The petition notes that the lax legal standard applied by the Ninth Circuit in this case conflicts with the more protective legal standard applied by the Supreme Court, “poses a threat not merely to Second Amendment rights, but to First and Fourteenth Amendment rights as well, and that review should be granted “to correct that conflict” and enforce the proper standard of constitutional scrutiny of laws that burden Second Amendment rights.

Brandon Combs, an individual plaintiff in the case as well as the executive director of organizational plaintiff The Calguns Foundation, believes that fundamental, individual Second Amendment rights are being treated like second-class rights.

“In its decision to ignore the trial court’s Findings of Fact and Conclusions of Law as well as longstanding principles of appellate review,” said Combs, “the Ninth Circuit has made it crystal clear that it has no intention of following the Supreme Court’s precedents no matter how unconstitutional, arbitrary, or irrational the law. This case and the Ninth Circuit’s treatment of fundamental rights are beyond ripe for review.”

“We are hopeful that the Supreme Court will use the extensive record here to further develop its Second Amendment precedent and place the right to keep and bear arms on an equal footing with First Amendment rights, such as freedom of speech.”

Silvester, Combs, and The Calguns Foundation are joined in the petition by Second Amendment Foundation of Bellevue, WA, which also partially funded the case.

The Calguns Foundation (www.calgunsfoundation.org) is a 501(c)3 non-profit organization that serves its members, supporters, and the public through educational, cultural, and judicial efforts to advance Second Amendment and related civil rights.

The Second Amendment Foundation (www.saf.org) is the nation’s oldest and largest tax-exempt education, research, publishing and legal action group focusing on the Constitutional right and heritage to privately own and possess firearms. Founded in 1974, The Foundation has grown to more than 650,000 members and supporters and conducts many programs designed to better inform the public about the consequences of gun control.

Attorney Erik S. Jaffe (www.esjpc.com) is a 1990 graduate of the Columbia University School of Law and was a law clerk to Judge Douglas H. Ginsburg of the United States Court of Appeals for the District of Columbia Circuit from 1990 to 1991. Following that clerkship he spent five years in litigation practice with the Washington, D.C. law firm of Williams & Connolly. In the summer of 1996 he left Williams & Connolly to clerk for Supreme Court Justice Clarence Thomas. At the end of that clerkship he started his own practice, and has been a sole practitioner since 1997. Mr. Jaffe has been involved in over 100 Supreme Court matters, including filing 30 cert. petitions, representing half-a-dozen parties on the merits, and filing over 60 amicus briefs at both the cert. and merits stages.

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