

## **Alameda fairgrounds' gun ban upheld Panel's decision may be prelude to top court ruling**

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A federal appeals court upheld Alameda County's ban on possessing guns at the county fairgrounds Tuesday and plunged back into the debate on the constitutional right to bear arms.

"We should recognize that individual citizens have a right to keep and bear arms, subject to reasonable restrictions by the government," said Judge Ronald Gould, one of a three-member panel of the Ninth U.S. Circuit Court of Appeals in San Francisco.

A different panel of the same court reached the opposite conclusion in December, saying the Constitution's Second Amendment preserves only the right of states to organize and maintain militias. Tuesday's panel decision appeared to invite reconsideration of the issue by the full appellate court, a prelude to a possible Supreme Court examination of a controversy it visited last in 1939.

The Second Amendment reads, "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." A long-simmering dispute over its meaning was stirred in 2001 when the Bush administration declared -- contrary to the views of past administrations and most federal courts -- that the amendment protects the right of individual gun ownership, subject to reasonable government regulation.

The debate virtually overshadowed the outcome of Tuesday's case, a challenge by gun show operators to the 1999 Alameda County ordinance prohibiting guns on county property. The ordinance effectively ended gun shows at the county fair in Pleasanton, where 16 people were injured in a Fourth of July shooting and melee in 1998. That incident was unrelated to gun shows but was so horrific it prompted the Board of Supervisors to outlaw gun possession at the fairgrounds.

The state Supreme Court decided part of the case in April, ruling that California cities and counties can pass laws restricting guns on public property even though state law imposes no such limitations.

The court then returned the case to the federal appellate panel to resolve constitutional issues. The panel ruled 3-0 Tuesday that the ban did not

violate gun show operators' rights under either the Second Amendment or the First Amendment, which guarantees free speech.

The act of possessing a gun is not a political statement or speech, said the opinion by Judge Diarmuid O'Scannlain. Although the court ruled in 1997 that gun sales on county property enjoy some First Amendment protection, a county ordinance that makes sales more difficult by banning gun possession does not violate freedom of speech, O'Scannlain said.

As for the Second Amendment, O'Scannlain said the court was bound by a panel's 1996 ruling that the Constitution guarantees only a state's right to maintain an armed militia. That can be overruled only by a larger Ninth Circuit panel, he said in a passage that seemed to invite review by the full court.

O'Scannlain added that December's opinion by another panel -- a lengthy historical discourse that reached the same conclusion as the 1996 ruling -- "was both unpersuasive and, even more importantly, unnecessary." Gould, in a separate opinion, went further and said the earlier panels were flat wrong.

Gould said the Second Amendment embodies "the lesson of history that an armed citizenry can deter external aggression and can help avoid the internal danger that a representative government may degenerate to tyranny." If the amendment applied only to militias, he said, the government could outlaw all private possession of guns.

Chuck Michel, a lawyer for the National Rifle Association, said Gould's opinion "moves us ultimately towards a decision by the U.S. Supreme Court on what the Second Amendment really means."

Alameda County Counsel Richard Winnie said the upholding of the county's ordinance was good news. Even if the court ultimately ruled that individuals had a right to own guns, he said, the fairgrounds ban was the type of "reasonable regulation" that should be upheld.

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