



NRA

September 21, 2009

The Honorable Arnold Schwarzenegger
State Capitol Building
Sacramento, California 95814

Dear Governor Schwarzenegger:

On behalf of the hundreds of thousands of National Rifle Association (NRA) members living in the State of California, I am respectfully requesting that you veto Senate Bill 585 (SB 585) and Assembly Bill 962 (AB 962). The considerable burdens this legislation would impose on the civil rights of California's citizens are wholly unjustified by the speculative, unproven approach to crime control embodied in these measures.

As you know, SB 585 would enact a three-year phase-out of gun shows within Agricultural District 1-A, which is currently home to the Cow Palace convention center. Such shows have been conducted peacefully and legitimately on this site for years and have no proven connection to violent crime rates. The absurd media stereotype of gun shows as unregulated "arms bazaars" is completely unjustified, as California imposes particularly stringent requirements on these events. To cite just a few examples, every purchaser at a California gun show must undergo state and national background checks, loaded firearms are prohibited on site, minors must be accompanied by a legal guardian, producers must record and make available to law enforcement officials identifying information of all vendors and their employees, and all persons in possession of firearms at such shows must carry government-issued identification and display it upon request to security personnel or peace officers.¹ All other state and federal regulations applicable to the sales of firearms and ammunition also, of course, continue to apply at these events. Indeed, nowhere is the sale of firearms and ammunition more heavily regulated and scrutinized in California than at the very sort of guns shows that SB 585 seeks to abolish. Any assertion that such shows pose an unacceptable risk to the public implies the same conclusion about all legal sales of firearms in California.²

¹ See Cal. Penal Code §§ 12071, 1207(d), 12082. Note that these restrictions are cited merely to make the point that gun shows are subject to especially heavy regulation in California and not to imply the NRA's approval of them.

² The constitutionality of AB 585 is also highly debatable. The justification for the bill seems to be based on the Supreme Court's recent statements about "presumptively lawful regulatory measures" for firearms, which include "longstanding . . . laws forbidding the *carrying* of firearms in sensitive places such as school and government buildings, or laws imposing conditions or qualifications on the commercial sale of arms." *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816-17 (2008) (emphasis supplied). These statements, however, cannot justify this measure. First, this oft-quoted language is legally inert *obiter dicta*, since those issues were not before the *Heller* Court, and the opinion's comments about them were not necessary to the resolution of the case. Yet even if the dicta in *Heller* are to be considered legally persuasive, they still would not apply to this ban. How a convention center that hosts events designed to attract as wide a cross-section of the general public as possible can be analogized to such "sensitive" government places as, for example, an elementary school or a courtroom is far from clear. Even if the analogy were valid, the proposed ban could hardly be considered "longstanding," as its very purpose is to change *current* law on the possession of firearms in these places. *Heller* also only mentions "carrying" arms in "sensitive" places, which in context

AB 962 is likewise an unwarranted and unjustified infringement on protected rights. While ill-conceived from a policy standpoint, the bill also suffers from drafting flaws that make its scope and coverage unacceptably vague. The heart of AB 962 is its requirement of point-of-sale record-keeping, similar to that currently required for the sale of firearms by a California licensed dealer, for any transfer of handgun ammunition by a "handgun ammunition vendor" (with certain specified exceptions). These records, moreover, would have to be available for inspection at the request of law enforcement officers conducting official business.

Yet what purpose or legitimate use these records would serve is far from clear. Tracing a firearm recovered at a crime scene back to the original retail purchaser might in some cases serve a legitimate law enforcement purpose, since firearms are usually considered valuable, and people who have them tend to keep relatively close track of them. Ammunition, however, is far more expendable and fungible than firearms. Rounds are dropped, picked up, transferred, lost, found, traded, etc. in ways that firearms are not, often without the owner's knowledge or awareness. Unlike firearms, moreover, a single round of ammunition cannot reliably be traced back to an initial retail purchaser. Even if it could be, a shooter who expends dozens, if not hundreds, of rounds during each trip to the range is obviously not going to be able to account for every cartridge that came into his or her possession. Add to this the fact that California law provides no mechanism for alerting officials as to who actually is selling ammunition (and who therefore would be keeping ammunition sales records), and the measure becomes not just ill-conceived but incoherent. Meanwhile, it would require purchasers of a legal, constitutionally-protected product to subject themselves to government scrutiny and would perpetually categorize such persons as criminal suspects.

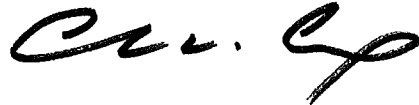
Another problem with the bill are the vague standards that govern who is to be considered a regulated "handgun ammunition vendor." On its face, the bill would apply to "any person" who "is engaged in the retail sale of *any* handgun ammunition" (emphasis supplied). "Retail sale" is not defined, but is used elsewhere in California law simply to refer to the sale of a product to an end user (as opposed to one who intends to resell the product).³ An exemption to the record-keeping requirements in an earlier draft of the bill that would have applied to the transfer of small amounts of ammunition or transfers between immediate family members or registered domestic partners, moreover, was stricken from the final version. The bill thus remains unacceptably vague as to whether its provisions are meant to apply to occasional, informal sales between private parties or even to transfers between family members. Of course, the idea that a person who sells a box of .38 caliber cartridges to a friend would thereby be required to thumbprint the friend and keep a record of the sale in perpetuity for inspection on demand by a law enforcement officer is absurd, especially as the officials would have no way to know where or by whom the records are kept. Such a requirement could only demonstrate irrational hostility towards innocent, legal, and constitutionally-protected conduct.

obviously means wearing a loaded, readily-accessible firearm on one's person. Such carrying is already prohibited at California gun shows. Finally, to prohibit the possession of firearms for one reason does not necessarily justify prohibiting them for all reasons. A courtroom during a criminal trial is undeniably a "sensitive" place, but even there firearms are allowed in as evidentiary exhibits with proper supervision and safeguards. AB 585, far from serving a legitimate government purpose, would do nothing more than suppress the lawful sale of constitutionally-protected firearms and ammunition.

³ See, e.g., Cal. Vehicle Code § 520.

In conclusion, these two bills would unjustifiably burden California's law-abiding gun owners in a misguided attempt to reach the behavior of criminals whose acquisition of firearms and ammunition knows no respect for the law. The NRA sincerely hopes that you will act on the substance of these bills and not the uninformed perception their proponents hope to create. We therefore respectfully request that you veto this ill-considered legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "C. W. Cox", with a stylized flourish at the end.

Chris W. Cox
Executive Director