

NORDYKE SUMMARY

Statement of facts

- a. “ It is an undisputed fact” that violent crimes have never occurred at a T&S Gunshow. Nor have there ever been any violations of any federal and/or state firearms laws at these shows.
- b. Proponents of ordinance have repeatedly tried to link the T&S gunshows to a violent crime at the County fair, on the grounds that the criminal once attended a T&S gunshow.
- c. The County passed an ordinance banning the possession of firearms on county property but later allowed another organization (the Scottish Caledonian Games) to possess and display firearms on county property.
- d. The County insists that gun shows “ can take place without guns “.
- e. The County asserts there is no right to appeal this decision under the Second Amendment of the US Constitution as this only applies to the Federal Government, and not the States or local governments.

Nordyke Argument

The court may no longer deny the plea for relief under the Second Amendment due to the recent Supreme Court case (Dist Col v Heller). This decision upheld / vindicated the opinions of Judge Gould and Judge Kleinfeld who had supported the Nordyke position in two previous cases on similar grounds (Nordyke III and Nordyke v King)

Two main issues are raised:

- I. Incorporation (the Second Amendment applies against the states)
- II. The Second Amendment as an individual right

I. While Heller left open the question of whether the applies against the states....

A There are three arguments that support the idea that the Second Amendment applies to the States as well as the Federal government.

1. The Bill of Rights by itself is applicable against the states, ergo it’s component parts are also applicable.
2. The Privileges and Immunities clause incorporates the Second Amendment Against the states.
3. The Due Process Clause incorporates against the states any part of the Bill of Rights which is deemed “ fundamental to the American scheme of justice “

B. Heller undercuts previous 9th Circuit rulings that indicated the Second Amendment does not apply against the states (Fresno Rifle Pistol Club v. Van De Kamp)

C. Heller refutes notion that Second Amendment is not an individual right

D. Heller affirms that the 14th Amendment specifically intended to guarantee the freeman’s right to arms against the state .

E. Heller further affirms that the right to self defense incorporates a right to bear arms to do so.

II. With regard to the issue of the Second Amendment as an individual right....

- A. County ordinance violates the Second Amendment rights of buyers of firearms. This right is implicit in the Second Amendment
- B. Banning firearms is not a compelling interest that outweighs individual Second Amendment rights of which buying and selling firearms is implicit in the Second Amendment
- C. The ordinance violates the right to possess arms recognized in the Second Amendment
- D. The ordinance fails the test of public safety since no laws have been violated nor crimes committed
- E. Etc

County Argument

The County maintains that Heller has no impact on the current ordinance and any re-consideration under the notion of the Second Amendment as an individual right is not supported.

I. The Second Amendment has not been incorporated through the due process clause of the 14th Amendment.

- A. US v Cruikshank (1876) confirmed Second Amendment only restrained the federal government. Further, Heller did not address US v Cruikshank in any way
- B. On grounds that Cruikshank has not be reversed, Fresno Rifle Club v Van De Kamp have not been overturned. Hence the states freedom from Second Amendment interference is affirmed.
- C. The Supreme Court in Heller “ should “ have concluded that the Second Amendment is a constraint only upon the Federal government. And in fact in previous hearings Justice Scalia has so held. The real meaning of Heller is that the Second Amendment affirms the right of self-defense and self-preservation. This does not undermine the State’s immunity from incorporation. States ergo retain the power and right to regulate weapons.
- D. While Heller affirms the right of self defense it leaves it to the States to determine the balance to be struck between the possession of deadly weapons and public order and public safety.
- E. Heller does not affirm an individual right to possess firearms, but rather only the right to self defense.
- F. State Constitutional laws from the founding era do not support the notion of incorporation
- G. State Constitutional law of the modern era is fractured at best when discussing the idea of the right to use a firearm for defense. Only about ½ the states specifically mention firearms in connection with this right.
- H. Current case law demonstrates repeated support for the notion that States have a right to enact ordinances and regulations tailored to local conditions
- I. Even if the Second Amendment were incorporated against the states, the Heller decision actually validates county ordinance. Once again, Heller asserts a right to self defense.... Not the selling or buying of firearms. Nordyke no where asserts the right to self defense is being abridged. The ordinance does not restrict self defense.. .. only buying and selling.