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Gun-Shop Owners Run Into a Regulatory Silencer

A sign in a store window saying you sell handguns? Not allowed in California.



PHOTO: ISTOCKPHOTO/GETTY IMAGES

By **ADAM O'NEAL**

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In September 2014, an inspector with the California Bureau of Firearms made a surprise visit to Tracy Rifle and Pistol, a gun store in Northern California. He spent the next few days confirming that the business was in compliance with state regulations. After completing his audit, the inspector met with owner Michael Baryla to discuss his findings. The businessman had become accustomed to the inspections, which take place about once a year. Then came something unusual.

Mr. Baryla was directed to remove three vinyl decals on the outside of his shop, because they depicted handguns. (A rifle decal could stay, however.) The agent explained that if Mr. Baryla continued to advertise handguns to the passing public, he could lose his

license to sell firearms. Mr. Baryla complied.

The state agent was enforcing part of an influential but little-known law passed in 1923, one of California's earliest gun-control bills. The statute includes a ban on advertising handguns on the premises of gun stores.

"It looks like that might have been one of their enforcement keys, something that they got told to look for," Mr. Baryla says in an interview. He has stayed in business by learning to navigate California's network of onerous gun laws, but this new twist was too much. Not long after the inspection, Mr. Baryla joined other gun-store owners in challenging the law as an infringement of free speech.

The 1923 bill was enacted decades before the Supreme Court ruled that the First Amendment protects commercial speech, including advertising. As such, the plaintiffs in *Tracy Rifle and Pistol v. Harris* see their case as a natural response to an outdated law.

The complaint for declaratory and injunctive relief argues that "the First Amendment protects the dissemination of truthful, nonmisleading commercial information about lawful products." It adds, "Like all retailers, firearms dealers have a particular interest in on-site advertising that communicates to passersby the products and services they offer."

Last July a district court declined to allow the owners to advertise handguns while their case makes its way through the legal system. The Ninth Circuit Court of Appeals affirmed the ruling in February.

A California Justice Department spokesperson declined to comment, citing a policy of not speaking about litigation in progress. But the state has already laid out its case. California Deputy Attorney General Nelson Richards argued last month that the ban is a narrow, 90-year-old limit that reduces crime. He added that on-premise ads particularly encourage dangerous, impulse purchases of handguns (though California's 10-day waiting period would seem to neutralize the problem).

Asked for proof that impulsive purchases were more dangerous, Mr. Richards told the judges: "There's no evidence in the record on that particular point. It is an inference." He said that the law simply tries to address the "undisputed problem" of handgun violence.

The plaintiffs argue that the legislation's intent is beside the point. "Is it constitutional for the State of California to ban on-premise handgun advertisements? And the answer

is: I'm pretty sure, it's not," says law professor and blogger Eugene Volokh, who is representing the plaintiffs. "There's pretty solid First Amendment case law protecting the right to advertise in this context. And that's both from U.S. Supreme Court and the Ninth Circuit."

The trial is set for early 2017. With the losing side expected to appeal, the case could drag on for years.

Brandon Combs of the Calguns Foundation, which is supporting *Tracy Rifle and Pistol v. Harris*, says the case isn't the only lawsuit challenging different parts of the 1923 law. "If you go back and look at the contemporaneous newspaper articles and editorials, it was pretty blatant that it was racially motivated," he says, noting that the legislation was partly designed to deprive Chinese and Latino immigrants of the right to own a firearm.

Gun-rights activists have their hands full in California. The 10-day waiting period, which is part of the 1923 law, is being challenged. And there are myriad other regulations: "assault weapons" restrictions, bans on .50-caliber rifles, transfer and registration requirements and more. Second Amendment supporters in California find themselves fighting decades-old laws while playing Whac-A-Mole with new ones.

Mr. Baryla says he is confident of winning *Tracy Rifle and Pistol v. Harris* but will keep the handgun decals out of his store window until the law is ruled unconstitutional. Another plaintiff in the case, Ten Percent Firearms owner Wesley Morris, is adopting another tactic to let customers to know about his merchandise.

"I've got a billboard within eyesight of my gun shop. And shortly, it will have a big, huge sign that says 'We Sell Handguns,' with a Glock on it," Mr. Morris says. "That billboard within eyesight of my gun shop is legal, but if I had that same sign in front of my gun shop, it would not be."

Mr. O'Neal is an assistant editorial features editor at the Journal.

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