

CLIENT NEWS BRIEF

Ninth Circuit Shoots Down Challenge to Law Prohibiting Concealed-Carry Permit Holders from Possessing Firearms on School Property

In *Gallinger v. Becerra*, the Ninth Circuit Court of Appeals rejected a challenge to a 2015 change to California's Gun-Free School Zone Act that removed an exemption allowing concealed-carry permit holders to carry firearms on school grounds, but maintained the same exemption for retired peace officers.

The Ninth Circuit held that lawmakers had a rational basis for approving this change, effected by Senate Bill (SB) 707, and also that the partial elimination of the exemption did not violate the Equal Protection Clause of the Fourteenth Amendment.

Background

A collection of public interest groups and individuals challenged SB 707 on two bases: that SB 707's treatment of concealed-carry permit holders is analogous to a similar ban in the Assault Weapons Control Act (AWCA) struck down in *Silveira v. Lockyer*, and that SB 707 violates the Equal Protection Clause because it favors a politically powerful group and disfavors a politically unpopular one. The Ninth Circuit found both arguments unpersuasive.

The plaintiffs, citing *Silveira*, argued that distinctions between concealed carry holders and retired peace officers do not serve a valid legislative purpose. However, the Ninth Circuit distinguished its holding in *Silveira*, in which the court determined that the AWCA's retired-officer exemption was "wholly unconnected to any legitimate state interest." The court reasoned that it did not serve a valid purpose to exempt retired officers from AWCA's ban affecting one specific type of firearm—assault weapons—but found that SB 707's ban on all guns on school grounds did serve a legitimate policy interest. The Ninth Circuit determined that SB 707's retired-officer exemption serves a valid public purpose, deferring to the Legislature's reasoning that allowing retired peace officers to carry weapons on school grounds both provided for the officer's safety and also the public's safety. The court additionally determined that the legislative history of SB 707, which detailed the Legislature's concerns about gun-rights organizations advising gun owners to bring firearms onto school campuses in the wake of several school shootings, provided sufficient rationale for ending the concealed-carry exemption.

The Ninth Circuit was similarly unpersuaded by the plaintiffs' argument that SB 707 violated the Equal Protection Clause by disfavoring a politically unpopular group, concealed-carry owners, and favoring a politically powerful group, retired peace officers. The court held that there was no evidence of explicit legislative intent to harm concealed-carry holders. Evidence demonstrating that retention of the retired-officer exemption was the product of political lobbying also did not show impermissible discrimination: Favoring retired officers did not show a parallel intent to harm concealed-carry holders.

Takeaways

The court's application of current events to legal aspects surrounding gun

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control is notable. In the *Gallinger* decision, the Ninth Circuit cited numerous school shootings to support both the Legislature's purpose in banning concealed-carry holders—to reduce the number of guns on campus—and also, the Legislature's intent to provide for safety by allowing retired officers to carry firearms on school campuses or in school zones. Going forward, school administrators and personnel responsible for school safety can rely upon the Gun-Free School Zone Act to prohibit firearms on school grounds, regardless of whether someone possesses a permit to carry a concealed weapon.

More broadly, *Gallinger* shows a significant level of judicial deference to the Legislature's findings of public purpose related to school safety. Such safety policies and gun control legislation often inspire tension with an individual's rights under the Second Amendment and the public's right to access to government facilities. Recognizing a newfound emphasis on school safety, the court in *Gallinger* showed deference to the rationale advanced for both ending the concealed-carry exemption and upholding the retired-officer exemption.

For more information about this decision and its impact on school districts, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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