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GUN CONTROL? WHAT'S *THAT*?

*Ideological quarrels beset gun laws.
And gun law-making. And gun law-enforcing.*



For Police Issues by Julius (Jay) Wachtel. Yes, that's a judge. And not just any jurist. Judge Lawrence VanDyke sits on the august [Ninth Circuit Court of Appeals](#). Based in San Francisco, it's the nation's largest Federal appellate court, with twenty-nine judges covering nine Western states, Guam, Hawaii and the Northern Mariana Islands.

Yes, that's a pistol in his hands. Not just *any* pistol. It's the judge's very own [Sig P-320 Compact](#). And he added a feature of which he's very proud. He talks about it on his very own [YouTube video](#):

...My own self-defense handgun...another P-320...has a red-dot object precisely because it makes the firearm better for its intended purpose; that is, self-defense. It makes it more accurate, more crispy, and shoot more quickly.



Check out this picture. Judge VanDyke is gesturing to a “[red dot sight](#).” Installed in front of the regular rear sight, the red dot version features an aiming screen with a floating red dot that falls precisely on the spot where a gunshot would strike. (No beam gets projected – everything happens within the sight.) Here, the judge uses the gadget to exemplify an accessory that, depending on a gun user's skill and proclivities, can either help or hurt:

Now, in that sense, this red-dot object is just like this magazine [gestures to a high-capacity pistol magazine]. It would make the firearm more dangerous when

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it's misused, but it also makes the firearm work better for its intended purpose when it's used properly...

At the time, Judge VanDyke was part of an *en banc* panel. Eleven of the Circuit's twenty-nine justices had been assigned to review California's appeal of a Federal District Court decision that declared the state's ban on high-capacity ammunition magazines unconstitutional ([Virginia Duncan, et. al. v. Rob Bonta](#), no. 23-55805.) Judge VanDyke, who happened to agree with the ruling, knew that his philosophical leanings inevitably consigned him to the losing team. Still, he took the perhaps unprecedented step of starring in that video to bolster his dissent.

Alas, it failed to impress his colleagues. And also clearly irritated a few. Here's a slice of Judge Susan Graber's reaction:

Judge VanDyke himself appears in the recorded presentation making factual assertions about how guns work and providing physical demonstrations to support his assertions. By doing so, Judge VanDyke casts himself in the role of an expert witness, speaking to the type of "technical" and "specialized" issues that are reserved for witnesses properly "qualified as an expert."

On March 20, 2025, [the panel ruled 7-4](#), with Judge VanDyke in the minority, that California's prohibition of ammunition magazines that can hold more than ten rounds, which had been in effect since 2017, was indeed consistent with the Second Amendment. According to Judge Graber, who wrote the majority opinion, "large-capacity magazines are neither 'arms' nor protected accessories." And even if they were, California's ban comported with the Supreme Court's [Bruen](#) decision, as it "falls within the Nation's tradition of protecting innocent persons by prohibiting especially dangerous uses of weapons *and by regulating components necessary to the firing of a firearm*" (emphasis ours.)

Judge Graber's support of the notion that States can restrict so-called "necessary" gun components really set off Judge VanDyke. After all, if California can prohibit certain magazines, is *anything* off the table?

Under the majority's rationale, any magazine that holds more than one round is not "necessary" for the function of the weapon. So presumably California could also ban magazines holding five rounds. Maybe even two...under that logic, basically every part of a firearm is an "optional component" because each could be replaced with a less effective (aka, less "dangerous") version of that part and the firearm would still "operate" in some sense.

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Worse still, might gun controllers go after his beloved red dot sights? After all, sights *are* “necessary.”

Full stop. Scroll through the opinion. Including arguments pro- and con-, it runs a stunning *one-hundred-forty-seven pages*. (Judge’s clerks must have been really busy!) But relax. We don’t intend to opine on what’s a “necessary” gun component, nor whether it really matters. Instead, let’s use the Court’s [official seniority list](#) to see how the judges’ views aligned politically:

	Justice	Appointed by
Concur	Mary Murguia	Obama
	Sidney Thomas	Clinton
	Susan Graber	Clinton
	Kim Wardlaw	Clinton
	Richard Paez	Clinton
	Marsha Berzon	Clinton
	Andrew Hurwitz	Obama
Dissent	Patrick Bumatay	Trump
	Sandra Ikuta	Bush
	Ryan Nelson	Trump
	Lawrence VanDyke	Trump

Had the Ninth Circuit’s finest set out to craft deeply-considered legal analyses, irrespective of whose ox might be gored? We’d like to think so, but the table literally screams...NOT!

Was all that profound (and ostensibly impartial) opinionating a ruse?

This wasn’t the panel’s first time on the issue. [San Diego U.S. District Judge Roger Benitez](#), a Bush appointee with a reputation as a [fierce pro-gun advocate](#), had twice overturned California’s ban, [in 2019 and 2023](#). His first foray was stayed by a nearly-identical Circuit Court panel. (Its only difference was that [Obama appointee Paul J. Watford](#), who since retired, then held the spot that his replacement, Clinton nominee Kim Wardlaw, now holds.) And yes, the vote had also been 7-4, with “Blues” in the majority.

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	<u>Begin</u>		<u>2020</u>
	3.2	Thomas	3.0
	2.0	Alito	2.2
	1.1	Gorsuch	1.1
	1.0	Barrett	1.0
	0.6	Kavanaugh	0.5
	1.4	Roberts	0.5
	-1.4	Kagan	-1.5
	-1.4	Breyer	-1.9
	-1.7	Sotomayor	-4.0

It's no secret that judicial opinions align with their authors' sociopolitical leanings across all Court levels. Three years ago, in "[Judicial Detachment: Myth or Reality](#)," we used [M-Q scores](#) to assess the ideological preferences of...the Supremes! Over the long term, Justices Thomas and Alito were consistently the "reddest." Their preferences apparently still hold true. In a recent decision ([Bondi v. Vanderstock](#), no. 23-852, decided 3/26/25) the Supreme Court ruled, 7-2, that parts kits used to assemble so-called "ghost guns" are

themselves "firearms," thus subject to all the regulatory provisions of the Gun Control Act.

Who dissented? Justices Thomas and Alito.

Despite *Vanderstock's* split verdict, the decision came as a relief to the anti-gun crowd. As of late, the high court hadn't seemed favorably disposed to gun control. In June, 2022 their highly consequential [Bruen](#) decision found New York State's requirement that CCW applicants show "a special need for self-protection" inconsistent with the "Nation's historical tradition of firearm regulation" and unsupported by the "plain text" of the Second Amendment. Not-so-incidentally, the Court's 9-3 split aligned perfectly with the Justices' M-Q scores. Justice Thomas, the "reddest" member of the Court, delivered the majority opinion, while each dissenter – Justices Kagan, Breyer and Sotomayor – sat at the opposite, "blue" extreme.

Justice Breyer retired. His replacement, Justice Ketanji Brown Jackson, has apparently filled his ideological space as well. According to [a recent academic analysis](#), her votes during the Court's 2023 term consistently aligned with those of Justice Breyer's old "pals," Kagan and Sotomayor.

Gun-related struggles also pervade the Circuits. Consider the run-up to the Supreme Court's parts kits decision. [Texas Federal District Judge Reed O'Connor](#), a Bush appointee, is said to be "a 'go-to' favorite for conservative lawyers." In November 2022 [he ruled in a lawsuit filed by pro-gunners](#) that ATF's classification of gun part kits as "firearms" conflicted with the Second Amendment. And the [reportedly "hard-right"](#) Fifth Circuit Court of Appeals [agreed](#). Often sought out by gun control opponents, the Fifth has ruled against prohibitions on "bump stocks" and on gun possession by drug users and persons under domestic violence restraining orders. [Its most recent thumbs-down](#) was on the Federal laws that prohibit licensed dealers from selling handguns to persons under 21. In the words of Circuit Judge Edith H. Jones, "the text

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of the Second Amendment includes eighteen-to-twenty-year-old individuals among 'the people' whose right to keep and bear arms is protected.”

Shift to the Third Circuit. In 1995 Pennsylvania resident Bryan Range [pled guilty to “making a false statement to obtain food stamps.”](#) He drew probation. Nearly thirty years later Mr. Range sought to buy a gun. However, Federal law ([18 USC 922\[g\]\[1\]](#)) precludes anyone who has been convicted of a crime “punishable by imprisonment for a term exceeding one year” from having guns. It applies to Mr. Range, as he could have drawn up to five years. But his offense was decidedly non-violent. Citing [Bruen](#), on December 23, 2024 the Third Circuit ruled 13-2, en banc, that the Federal prohibition did not extend to such crimes:

Because Range and his proposed conduct are protected by the Second Amendment, we now ask whether the Government can strip him of his right to keep and bear arms. To answer that question, we must determine whether the Government has shown that applying § 922(g)(1) to Range would be “consistent with the Nation’s historical tradition of firearm regulation.” Id. at 24. We hold that the Government has not carried its burden.

How will ordinary folks know whether they’re covered by this exception? That’s what the dissenters want to know. How might Federal gun law enforcement be affected in the Circuit’s territory (Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands)? That’s what *we’d* like to know.

Gun-friendly Attorneys General have also leaped into the fray. Most recently, the [11th. Circuit ruled](#) that Florida law which prohibits persons under 21 from buying long guns – it was enacted after the [Marjorie Stoneman High School massacre](#) – is Constitutional. (Its decision was 8-4; each dissenter is a Trump appointee.) Even so, Florida Attorney General James Uthmeier, a notable “Red,” [warned that his office won’t defend the law](#) should the thus-far-unsuccessful plaintiffs (the NRA) appeal to the Supremes: “Men and women old enough to fight and die for our country should be able to purchase firearms to defend themselves and their families.”

Concerns about the trampling of citizen’s gun rights aren’t only being expressed by *State* lawyers. Attorney General Pamela Bondi just announced that the Department of Justice has instituted a “patterns or practice” investigation [of the Los Angeles County Sheriff’s Department](#). DOJ’s Civil Rights Division will probe whether the LASD has been “depriving ordinary, law-abiding Californians of their Second Amendment rights” by imposing unseemly delays on the issuance of CCW permits. According to DOJ, this

problem seems commonplace in the (very “blue”) Golden State, where cities commonly impose “expensive fees and lengthy wait times” well beyond what’s called for.



Like worries apparently extend to the White House. On February 27, 2025 President Trump issued Presidential Order “[Protecting Second Amendment Rights](#).” It directs DOJ to review Federal laws and rules enacted between 2021-2025 that “may have impinged on the Second Amendment rights of law-abiding citizens.” Among those to be examined are ATF regulations that tightened dealer oversight, banned pistol braces and addressed “ghost guns.” Also in the bull’s-eye is the Federal “[Bipartisan Safer Communities Act](#),” a 2022 law that among (many) other things, did away with loopholes that allowed some gun buyers bypass background checks.

ATF, the nation’s key gun law enforcement agency (and your writer’s past employer) is caught in a maelstrom. As he bemoaned budget cuts under the “blues,” Steven Dettelbach, the beset agency’s last regular Director, [predicted that ATF’s finances could only get worse](#). He resigned in mid-January. Mr. Dettelbach hardly had a choice, as incoming President Trump had referred to him as an “anti-gun fanatic” at an NRA rally. Most recently, the Administration’s announcement of a plan to merge ATF with DEA has drawn great concern. Here’s what the [Giffords](#) gun control group [had to say](#):

Cutting resources from the ATF would quite literally be defunding the police. The agency's mission is to stop violent gun crime and protect public safety. Merging it with another agency would reduce staffing and resources, weakening efforts to stop gun traffickers, straw purchasers, and rogue gun dealers.

Kash Patel, the outsider whom President Trump tapped to temporarily lead the FBI, was also tasked with overseeing ATF. [But he seems “missing in action.”](#) According to the *Washington Post*, his absence “is reflective of the uncertainty hovering over ATF, a relatively small law enforcement entity that has bubbled into a political juggernaut, touted by Democrats as critical to combating gun violence and accused by Republicans of trying to overregulate firearms.”

As for your writer, he’s still drawing his ATF pension. Which he naturally helped fund. As of yet, it’s unaffected.