

Comparing AR-15 to a Swiss Army knife, federal judge overturns California's assault weapons ban

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Last Friday, Judge Roger T. Benitez of the US District Court for the Southern District of California overturned the state's 32-year ban on assault rifles, such as the AR-15, calling it "unconstitutional" and a violation of Californians' "right to bear arms." The 1989 Roberto-Roos Assault Weapons Control Act has been the target of gun rights advocates for much of its existence, and its overturning has been hailed by the National Rifle Association (NRA) as a "historic victory of individual liberty" and a much-needed defense of constitutional rights. Neither claim can hold up to any scrutiny.

The injunction is a reactionary ruling handed down by a George W. Bush appointee, who seems to otherwise be quite comfortable with the dismantling of democratic, constitutionally guaranteed rights. It reflects the populist rhetoric of the right-wing, fascistic elements within and around the Republican Party to the extent that it manages to incorporate a blatant lie about the deadly effects of the COVID-19 vaccine in a judicial pronouncement about assault weapons. Judge Benitez callously proclaimed, "More people have died from the Covid vaccine than mass shootings in California."

That being said, the reactions from the Democratic Party leaders ring extremely hollow. California Governor Gavin Newsom called the ruling a "direct threat to public safety and the lives of innocent Californians" and promised that his administration would "not back down from this fight." Presenting gun safety laws as the main crucible of social struggle has been part of the Democratic Party's repertoire for several decades. However, the notion that reforms of that sort will end the horrific phenomenon of mass shootings or cure the ills of American society is fundamentally misleading and only serves to obscure the fact that it is the capitalist system that poses the greatest threat to the very lives of the American people.

Judge Benitez's 94-page ruling begins by claiming: "Like the Swiss Army knife, the popular AR-15 rifle is a perfect combination of home defense weapon and homeland defense equipment." The insensitivity and inhumanity underlying this comparison boggles the mind, particularly given the use of

assault rifles in the surge of mass shootings around the country.

Fred Guttenberg, a gun safety activist whose daughter was killed in the Marjory Stoneman Douglas High School shooting in 2018, told CNN: "My daughter is in a cemetery because a Swiss Army Knife was not used, because it was an AR-15. ... If a Swiss Army Knife were used, my daughter and most of those other kids and adults would be alive today."

Tina Meins, whose father was killed in a mass shooting in San Bernardino in 2015, was equally disgusted, calling out the equivalence between an assault weapon and a Swiss Army knife an "obtuse comparison" and an "insult to common sense."

Dismissing the phenomenon of mass shootings, the ruling insists that the focus needs to be on the nature of the weapons that were being unfairly targeted. As Benitez put it, "this case is not about extraordinary weapons lying at the outer limits of Second Amendment protection. ... The banned assault weapons are not bazookas, howitzers, or machine guns. Those arms are dangerous and solely useful for military purposes. ... Firearms deemed as 'assault weapons' are fairly ordinary, popular, modern rifles."

If assault rifles have acquired a reputation, so to speak, Benitez assures us it is nothing but media propaganda: "One is to be forgiven if one is persuaded by news media and others that the nation is awash with murderous AR-15 assault rifles. The facts, however, do not support this hyperbole, and facts matter."

Here, then, are the facts. A week before Judge Benitez's ruling, a heavily armed, disgruntled California public transit employee shot and killed nine people in San Jose. A law enforcement search of the shooter's home, which was set ablaze shortly before the attack, turned up 12 guns, around 22,000 rounds of ammunition and suspected Molotov cocktails. This shooting came on the heels of a series of mass killings in Florida, Indiana, Colorado and Georgia in recent months.

On a broader level, if one looks at killings across the country, according to the FBI, the handgun was the most commonly used weapon in murders and accounted for 6,368 victims in 2019. Knives or cutting instruments accounted for 1,476

murders; rifles accounted for 364 murder victims; and “firearms, type not stated,” accounted for 3,281 victims.

However, when it comes to mass shootings, it is the AR-15-style rifle that has been the weapon of choice. In recent decades, such weapons have been used in murderous rampages across the country, including in a movie theater in Aurora, Colorado; a synagogue in Pittsburgh; a musical festival in Las Vegas; a church in Texas; a nightclub in Orlando; a high school in Parkland, Florida; and the Sandy Hook Elementary School in Connecticut.

As the *New York Times* reported, this past year has seen a record increase in gun sales and a surge in gun ownership in the US, with the number of weekly federal background checks surpassing one million. In California, more than one million pistols, rifles and shotguns were sold in the last year, with more than a third being purchased by first-time buyers. For the record, there are already over 185,569 assault rifles legally registered in California.

Therefore, to claim, as Benitez’s ruling seems to do, that the ban on assault rifles is getting in the way of people acquiring firearms is patently ridiculous. The ruling, however, goes beyond those claims to frame itself as a defense of constitutional rights. In Benitez’s words, the case is about “what should be a muscular constitutional right and whether a state can force a gun policy choice that impinges on that right with a 30-year-old failed experiment.” This, the judge claimed, “should be an easy question and answer. ... Government is not free to impose its own new policy choices on American citizens where constitutional rights are concerned.”

From a historical and political standpoint, the question of the Second Amendment is an important and complex one. But its resurgence in American politics, in the guise of the fulcrum around which a campaign to protect constitutional rights needs to be organized, is nothing but a reactionary sham.

As the WSWS noted in its commentary on the Supreme Court’s majority opinion in the landmark *District of Columbia v. Heller* case more than a decade ago, the declaration that “the Second Amendment to the US Constitution provides an individual right to gun ownership, has nothing to do with an actual defense of democratic rights. It is an exercise in specious legal reasoning and historical falsification, carried out for definite, and thoroughly reactionary, political purposes.” The same can be said of Judge Benitez’s ruling, which is unsurprising given his political pedigree.

Benitez, a graduate of San Diego State University and Thomas Jefferson School of Law, was appointed to the Federal bench by George W. Bush in 2003. At that time, his supporters made much of his story as an immigrant from Cuba, who had fled the country as a 10 year old when his family was targeted by Fidel Castro for being “US sympathizers.”

However, all the trumpeting of Benitez living the “American Dream” did not quite work initially. As the *New York Times* noted, the American Bar Association (ABA) gave him a rare

“not-qualified rating,” holding up his confirmation for 10 months. In Senate hearings, ABA officials called him “arrogant, pompous, condescending, impatient, short-tempered, rude, insulting, bullying, unnecessarily mean and altogether lacking in people skills.” Despite this, Benitez was eventually confirmed and has in recent years been associated with several rulings that find favor with the gun lobby.

In 2017, Benitez ruled against California’s nearly two-decade-old ban on the sale and purchase of magazines holding more than 10 bullets. In that ruling, he claimed that “the problem of mass shootings is very small.” Last year, Benitez blocked a 2019 California law requiring background checks for anyone buying ammunition, snidely claiming that “the Second Amendment gets even less respect than Rodney Dangerfield.” The fact that all these rulings can be traced to a single judge is not a coincidence and is made possible by an obscure rule that allows “related cases” to be channeled to one judge with expertise on the legal issues rather than randomly assigned.

For now, the California ban on assault weapons remains in place since Judge Benitez has issued a 30-day stay on his injunction. The case is headed for a three-judge panel in the Ninth Circuit Court of Appeals and is potentially on its way to the Supreme Court. Before that happens, the US Supreme Court is also due to hear a challenge backed by the gun lobby to a New York law that restricts the carrying of firearms outside the home. It will be the first major case involving the Second Amendment heard by the nation’s highest court in more than a decade, since Justice Antonin Scalia wrote the majority opinion supporting the individual’s right to gun ownership.

These rulings and upcoming cases are important, as an illustration of the intensification of the right-wing drift of the ruling class and its institutions. However, the response to this drift cannot rest on the Democratic Party’s calls for greater gun control or safety measures. The notion that somehow a more robust set of laws regulating gun sales or usage will address the root causes of the horrifying epidemic of mass shootings in the United States is an illusion that the working class cannot afford.

As the WSWS noted in response to the Sandy Hook massacre, this blatant misdirection is promoted by an American ruling class that “has lost the capacity for self-examination. It knows that any serious analysis of the roots of this and other tragedies points back to itself and the society it dominates.”



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