CASE ALERT:

New California Case Explains that the Domestic Violence Prevention Act's Firearms Prohibition is Constitutional

Zachary H. v. Teri A. (2022) 96 Cal.App.5th 1136

Case Summary

In *Zachary H.*, the trial court granted a Domestic Violence Restraining Order (DVRO) protecting a son from his mother's abuse. The mother appealed the firearms prohibition imposed by the DVRO.

First, the mother argued that a recent U.S. Supreme Court opinion, *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 142 S.Ct. 2111 (Bruen) meant that the Domestic Violence Prevention Act firearms restriction, Family Code section 6389, is unconstitutional under the 2nd Amendment. In *Bruen*, the Court held that New York's public-carry gun licensing scheme violated the Second Amendment because "it prevent[ed] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." Since the Bruen decision, domestic violence advocates have worried that restrained parties—like the one here—may use the decision as a hook to challenge California Family Code section 6389 to maintain their right to possess firearms. *Zachary H.* resolves such a claim by clarifying that the firearms prohibition does not violate a restrained party's Second Amendment right to possess firearms for self-protection and the *Bruen* decision does not change that outcome. It explains that *Bruen* only extends to "law-abiding citizens," which does not include "individuals subject to domestic violence restraining orders," like the mother in this case.

Second, *Zachary H.* clarifies that subdivision (h) of Section 6389 —which allows restrained people who work in law enforcement to use a firearm while on duty— cannot serve as the basis for a claim that the law violates the equal protection clause of the Fourteenth Amendment because it treats law enforcement different than other people. *Zachary H.* explains that these two groups of individuals are not similarly situated for the purposes of the firearm prohibition: one group is a "narrow class of individuals[] for whom firearms are a necessary part of their employment," and the other group comprises individuals who "generally desire a firearm to protect themselves." So it is ok for the law to treat them differently. The opinion explains that even if these two groups were similarly situated, subdivision (h) would still be permissible under the equal protection clause because treating law enforcement differently than others is rationally related to a legitimate public purpose, which is the government's interest in reducing domestic violence "by prohibiting those who have committed acts of domestic violence from having ready access to a firearm." The exception balances that compelling government interest with the economic interests of a restrained party to continue being employed. The court also notes that the exception "is especially narrow" (employees only get to possess firearms if their employment requires it and they are unable to be reassigned to a position that doesn't require it) and they only are permitted to possess the firearms during work hours and

during travel to and from their employment. The time for when these folx can possess firearms is more limited than allowing individuals guns in their homes at any time for self-protection.

For questions or clarifications, email or call Family Violence Appellate Project at info@fvaplaw.org or (510) 380-6243. See FVAP's case compendium and other free resources for more information. Thank you!