

The lawless court strikes again

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California has again been the setting for an abysmal display of contempt for constitutional government and individual freedom, and the culprit is a familiar one. It's the San Francisco-based Ninth Circuit Court of Appeals, which upheld California's so-called "assault weapons" ban in the *Silveira v. Lockyer* case. The court found the Bill of Rights' Second Amendment protects the people's right not to own firearms, but to maintain a state militia.

This may come as a surprise to most Americans. Polls show about 75 percent of the population think the Second Amendment means just what it says - that the right to keep and bear arms is possessed by people, not states. This was the settled meaning of the Second Amendment until 20th-century "progressives" began to erode the entire notion of individual rights.

But California is not like most of America. While most other states have relaxed their restrictions on responsible gun owners, California has tightened the screws.

Some of California's legal attacks on gun owners have been gratuitously nasty. For example, the "assault weapon" ban at issue in *Silveira* outlawed a youth Olympic shooting team's competition guns. The bill's author, Sen. Don Perata, advised the young athletes to get out of California.

Still, times have been tough for Second Amendment revisionists. A year ago, the Fifth Circuit Court ruled just the opposite of the Ninth - that the Second Amendment does indeed affirm an individual right to own firearms. Then Attorney General John Ashcroft formally endorsed the interpretation.

But the Ninth Circuit wasn't going to let inconvenient facts get in its way. Its opinion ignored the voluminous and well-documented writings of the framers of the Constitution and numerous scholars since their time. That record establishes beyond any doubt that the Second Amendment was intended to protect the right of individual Americans to own firearms.

As 19th-century constitutional scholar William Rawle put it, "No clause in the Constitution could by any rule of construction be conceived to give to Congress a power to disarm the people. Such a flagitious [i.e., shameful] attempt could only be made under some general pretense by a state legislature." Rawle's prediction was dead-on.

Alas, California's Legislature promises to grow even more flagitious with the help of the Ninth Circuit. Gun owners can expect more state laws turning them into criminals for exercising what most Americans think is a natural right.

Meanwhile, Californians also will have to live with the Ninth Circuit's outrageous extremism on other fronts. Its recent proclamation that the words "under God" render the Pledge of Allegiance unconstitutional brought such a storm of protest that the court stayed its own order. As it has for years, the court continues to obstruct California death-penalty sentences, drawing rebuke from the Supreme Court and prolonging the suffering of victims' families.

The Ninth Circuit's hubris is well-known - it is reversed far more often than any of the other 12 federal appellate courts. It comes as no surprise that the court's Judge Stephen Reinhardt, author of the *Silveira* decision, was reversed by the Supreme Court 11 times in one term.

In a telling footnote to his gun opinion, Judge Reinhardt effuses about "granting to the national government the power necessary to operate effectively and to promote the social compact that underlies American democracy." Judge Reinhardt doesn't seem to know that under the social compact theory, as understood by the American founders, no individual could ever relinquish the fundamental right to self-defense. But then he never has been concerned with what the authors of the Constitution actually said. This activist judge sees his role as effecting

"progress" toward his vision of a perfectly engineered society.

Formerly he aspired to rewrite California laws. Now Reinhardt has grown more ambitious: He has rewritten the Constitution.