

Regulation of Guns on Public Property

Regulation of firearms on publicly-owned property has become an issue of legal significance in connection with gun shows. Government entities own or lease property for a wide range of public purposes. With respect to property such as fairgrounds, civic centers, and the like, state law generally authorizes additional use of such property provided that the income generated by additional uses is utilized to support the public purpose to which the property is devoted. For example, many counties own large fairgrounds for the public purpose of holding a county agricultural fair. During the time that the property itself is not used for the fair, state law generally authorizes a county to lease the property for other events, as long as the proceeds of the other events are used to defray costs associated with the fair, including the costs of maintaining the property.

In many parts of the country, publicly owned properties have become the venues of choice for gun show operators, who lease the public property, such as county fairgrounds or city civic centers, and then sublease spaces to firearms, ammunition, and other vendors and others who wish to display materials, goods, or engage in similar activities associated with the event. In addition to the commercial activities at gun shows, such as the sale of firearms and ammunition, activities at a gun show may also involve exchange of information and ideas, activities which are traditionally associated with First Amendment protection. The courts distinguish between sales and possession of products, which are conduct and therefore not protected by the First Amendment, from speech, which is protected by the First Amendment. *See Nordyke v. Santa Clara County*, 110 F.3d 707, 711 (9th Cir. 1997) (holding that a lease provision which included a prohibition on the display, offer and sale of firearms violated a gun show operator's commercial speech rights under the First Amendment) ("*Nordyke I*").

However, some conduct may be expressive or "symbolic conduct" and thus entitled to the protection of the First Amendment. In addition, when conduct, such as firearm sales, occurs in a situation where freedom of speech is also being exercised, regulation of that conduct is often challenged on First Amendment grounds.

First Amendment challenges have been raised by gun show operators in a number of cases involving regulation of publicly-owned property. For example, in *Northern Indiana Gun & Outdoor Shows, Inc. v. Hedman*, 104 F. Supp. 2d 1009 (N.D. Ind. 2000), the jury returned a general verdict in favor of a gun show operator who challenged on First Amendment and other grounds a "no gun" policy instituted by operator of Century Center, a municipal facility of the City of South Bend. However, the trial judge refused to issue an injunction against the policy, finding the jury verdict did not mandate a permanent injunction. *Id.* Later, the trial court refused to overturn the jury verdict and granted the plaintiff reasonable attorney fees and costs. *Northern Indiana Gun & Outdoor Shows, Inc. v. Hedman*, 111 F. Supp. 2d 1020 (N.D. Ind. 2000).

In *Nordyke v. King*, 229 F.3d 1266 (9th Cir. 2000), the Ninth Circuit Court of Appeals certified to the California Supreme Court certain state law issues associated with a local ordinance prohibiting gun possession on county-owned property, and stayed First and Second Amendment challenges pending a decision by the California Supreme Court ("*Nordyke II*"). Similarly, in *Great Western Shows, Inc. v. Los Angeles County*, 229 F.3d

1258 (9th Cir. 2000), the Ninth Circuit certified certain state law issues to the California Supreme Court in connection with a gun show operator's challenge to a county ordinance banning gun sales on county-owned property. On April 22, 2002, the California Supreme Court issued decisions rejecting the state law challenges to the ordinances in both cases. *Great Western Shows, Inc. v. Los Angeles County*, 44 P.3d 120 (Cal. 2002); *Nordyke v. King*, 44 P.3d 133 (Cal. 2002).

The Ninth Circuit then rejected the First and Second Amendment challenges to the ordinance in the *Nordyke* case. *Nordyke v. King*, 319 F.3d 1185 (9th Cir. 2003). With respect to the First Amendment challenge, the court held that possession of a firearm at a gun show does not constitute "speech" for purposes of the First Amendment. The court then remanded the case to the trial court for further proceedings.

For more information about the *Nordyke* and *Great Western* cases, see the [California State Preemption](#) section.

(Last updated: February 20, 2004)