

EXHIBIT "C"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ORIGINAL

JEFF SILVESTER, MICHAEL POESCHL,)
BRANDON COMBS, THE CALGUNS)
FOUNDATION, INC., a non-profit)
organization, and THE SECOND)
AMENDMENT FOUNDATION, INC., a)
non-profit organization,)
Plaintiffs,)
vs.)
KAMALA HARRIS, Attorney General)
of California (in her official)
capacity), and DOES 1 TO 20,)
Defendants.)

Case No.
1:11-CV-02137

30(b)(6) DEPOSITION OF
THE SECOND AMENDMENT FOUNDATION, INC.
BY AND THROUGH ALAN MERRIL GOTTLIEB
LOS ANGELES, CALIFORNIA
MAY 14, 2013

Atkinson-Baker, Inc.
Court Reporters
(800) 288-3376
www.depo.com

Reported by: Aileen Neitzert, RDR, CRR, CSR No. 5318
File No.: A703C3E

1 under a NICS check?

2 A. Yes, I believe there are differences.

3 Q. What are the differences?

4 A. I believe in California you have a couple other
5 categories that you throw in there as well. Also in
6 the federal one, I left out the fact if you have
7 restraining orders, et cetera, you're in that category
8 too. It's my understanding California adds a few other
9 definitions of what those things are so that they
10 aren't exactly in tune with everything in the federal
11 database.

12 Q. Can you identify what those other things that
13 are checked in California are that are not checked
14 under NICS?

15 A. Off the top of my head, I can't. Also,
16 California exempts some things that are in the NICS
17 database that are not in the California database. It
18 goes both ways.

19 Q. Okay. Does The Second Amendment Foundation
20 take the position that there are things that the
21 California background check looks at that the NICS
22 check does not look at that are inappropriate to be
23 looked at?

24 A. No. We don't really care what you have in your
25 database per se. That's not what we're challenging

1 here. What our concern is is how you use the database.
2 The ten-day waiting period is a problem. The database
3 is not the problem.

4 Q. Does The Second Amendment Foundation believe
5 that California could do background checks with its
6 current system faster than ten days?

7 A. Yes.

8 Q. Does The Second Amendment Foundation contend
9 that California is deliberately having background
10 checks go ten days when they could be done faster?

11 A. Well, by passing law or making it ten days, I
12 think it's deliberate.

13 Q. What information does The Second Amendment
14 Foundation have that suggests that the California
15 background checks could be completed in fewer than ten
16 days?

17 A. The fact that the data is in a database and can
18 be accessed immediately, and the same way the NICS
19 check is done federally, the State of California could
20 do it with their database.

21 Q. Any other reason --

22 A. There is nothing prohibiting it.

23 Q. Any other reasons?

24 A. That they could do it?

25 Q. That they could -- that they would be able

1 to that right is the way -- the Constitution should be
2 followed. And since it can be done by an instant
3 background check, I believe it should be done that way.

4 Q. Why is The Second Amendment Foundation not
5 challenging enforcement of the ten-day waiting period
6 for first-time purchasers?

7 MR. OTTEN: I'm just going to object that that
8 may have -- be an attorney-client-communicated
9 privilege with him as to why they did certain things in
10 this lawsuit and didn't.

11 But if you want to answer it, you can.

12 THE WITNESS: Well, I think I'm going to answer
13 to this extent, because the second time around it's
14 even more ridiculous if you've already -- if you've
15 already gone through it -- the background check, you've
16 gone through the waiting period, and you already have a
17 gun, you're not in the prohibited database, the State
18 already knows about it. There is absolutely no reason
19 to have an additional waiting period for that second
20 gun. It makes absolutely no sense at all.

21 Q. BY MR. EISENBERG: So --

22 A. It's indefensible.

23 Q. Pardon me. Okay. Does The Second Amendment
24 Foundation believe that it's not ridiculous, it is
25 defensible, to make -- for the State of California to

1 make a first-time firearms purchaser go through the
2 ten-day waiting period?

3 A. I think when California passed the ten-day
4 waiting period, we didn't have the instant check
5 systems in place. The instant check system wasn't
6 there at the time. It is now and it's time for
7 California to revise its law, it's my opinion.

8 Q. So there was a point in time when California
9 became able to do instantaneous background checks, yes?

10 A. Well, the federal government became able to
11 with the NICS database check and is the reason why
12 Califor -- there is nothing technically-wise
13 prohibiting California from doing it. And if it can be
14 done to protect the civil rights of firearms owners, it
15 should be done.

16 Q. Right, I understand. I'm trying to pinpoint
17 the date. It sounded to me like you said that there
18 was a -- when the law was passed, the ten-day waiting
19 period may have been necessary but it's not anymore.
20 Is that essentially what you said?

21 A. There is no -- with today's technology, there
22 is no reason for it to have it anymore.

23 Q. So, in other words, there is -- there was a
24 point in time that The Second Amendment Foundation
25 would have said it's reasonable, and then after a