

STATEMENT OF IDAHO STATE RIFLE AND PISTOL ASSOCIATION REGARDING  
THE DECISION OF THE FIFTH CIRCUIT IN U.S. v GREEN

The Fifth Circuit Court of Appeals has issued its decision on the case of United States v. John O. Green, Docket No. 19-10055. John Green is an Idaho State Legislator serving Idaho's Legislative District 2. Rep. Green had been charged in the U.S. District Court of North Texas with a non-violent offense as an alleged co-conspirator in a tax evasion case. The District Court had issued an order that Rep. Green could not possess firearms while awaiting his trial. Rep. Green is a staunch believer in the right to keep and bear arms, so he appealed this order.

In short, the decision of the Fifth Circuit Court of Appeals remands the case back to the U.S. District Court of North Texas because that Court had not adequately evaluated or recognized sufficient evidence to justify stripping Rep. Green of his rights to possess firearms while he was awaiting trial in his criminal case. The Court of Appeals determined that it was an abuse of discretion for the District Court to eliminate Rep. Green's firearm rights without a hearing with appropriate information or evidence.

The Fifth Circuit's decision was a win for Rep. Green to the point of recognizing that the District Court actually did not evaluate any criteria which would justify eliminating his right to possess firearms. The Per Curiam decision recognized the statutory legal standard that a trial court must apply for restrictions in pretrial release, saying as follows:

The district court is required by 18 U.S.C. § 3142(c)(1)(B) to impose the "least restrictive... condition, or combination of conditions" that "will reasonably assure the appearance of the person as required and the safety of any other person and the community."

On remand, that District Court will no doubt be asked if eliminating Rep. Green's fundamental right to keep and bear arms for self-defense while he prepares for trial is among the least restrictive conditions necessary to preserve safety of the community or any persons in it.

The Idaho State Rifle and Pistol Association filed an Amicus Curiae brief in support of Rep. Green's appeal. The primary purpose for our organization's involvement in the appeal has been to assert and preserve the fundamental right to arm oneself as recognized under the Second Amendment to the Constitution. This area of law in firearms rights is still developing with each new court decision. In fact, none of the litigants in this case found any other federal case law on point with the situation in this case. The appeals court specifically declined to address the Constitutional issues in this case, including both due process rights and the right to bear arms.

The result in this appeal is that the matter is sent back to the district court to be decided based upon statutory provisions and whether firearms prohibition before trial is justified in this case. The district court will have to apply aspects of due process to hear the matter and decide whether it can justify firearms restrictions under the weight of the fundamental constitution right to bear arms for self-defense. In this respect, the decision is a win for gun owners.

Still, the Idaho State Rifle and Pistol did not obtain one of our main objectives in bringing this amicus curiae brief in support of the appeal. ISRPA had asserted that the government could only restrict the fundamental right to bear arms upon a court finding on clear and convincing evidence such a restriction is necessary for the safety of a community or persons in it. The "clear and convincing evidence" standard is a higher burden of proof than mere preponderance of the evidence. It will likely be a key issue in future battles over what are commonly referred to as "Red Flag Laws." We have found case law in a collateral area of law which supports use of this standard. Because this Fifth Circuit per curiam decision declined to delve into the Constitutional issues, those questions are left unresolved.

We can characterize the decision in this case as an incremental win. It certainly is not a loss. As the mosaic of case law continues to expand in defining the fundamental right to bear arms, this is one more piece in favor of citizens who lawfully and peaceably live while exercising that right to bear arms for self-defense.

October 23, 2019.

-- Matthew W. Faulks  
General Counsel  
Idaho State Rifle and Pistol Association  
<http://idahosrpa.org>

The Idaho State Rifle and Pistol Association (ISRPA) is an Idaho non-profit corporation. It has been incorporated since 1962. ISRPA is dedicated to promoting sporting uses of firearms. The organization is located in the State of Idaho. ISRPA has the authority to sanction shooting competitions and events for the National Rifle Association (NRA). In that respect, ISRPA is affiliated with the NRA. ISRPA is a separate entity from the NRA with separate leadership, , membership and funds.

ISRPA promotes and engages in education regarding firearms matters. ISRPA promotes and sponsors firearms safety education. ISRPA also provides education and information about firearms law, rules and public policy issues. ISRPA actively coordinates with various gun clubs in the state regarding shooting activities. ISRPA has supported litigation and amicus briefs in prominent cases involving firearms rights and the Second Amendment. ISRPA has provided information and testimony before the Idaho Legislature regarding firearms rights, self defense law, and hunting issues.

Also attached is a sketch artist rendition of the scene from oral arguments before the Fifth Circuit Court of Appeals on September 3, 2019, in New Orleans. Pictured top, left to right, Judge Rhesa H. Barksdale, Chief Judge Carl E. Stewart, Judge Greg J. Costa; center, Michael Minns, Lead Attorney for Appellant; left Seth Kretzer, Attorney for Appellant; Matthew Faulks, Attorney for Amicus Curiae Idaho State Rifle and Pistol Association; far right, Katie Sue Bagley, United States Department of Justice, Tax Division; bottom right, Rep. John O. Green, Appellant.

