

NATIONAL RIFLE ASSOCIATION OF AMERICA

**INSTITUTE FOR LEGISLATIVE ACTION**

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030



**NRA**

September 24, 2013

The Honorable Edmund G. Brown  
Governor of California  
State Capitol Building, Suite 1173  
Sacramento, California 95814

**Re: Senate Bill 475 (Leno) - Firearms Sales at the Cow Palace**  
**Position: OPPOSED - Veto Requested**

Dear Governor Brown:

On behalf of the hundreds of thousands of members in California of the National Rifle Association ("NRA"), we express our **opposition to Senate Bill 475** ("SB 475") and to respectfully urge you to **veto this bill**.

SB 475 would unnecessarily burden firearm retailers, hunters and shooters in California's Bay area by effectively giving local officials unbridled discretion to prohibit all gun shows at the properties known as the "Cow Palace." SB 475 requires express approval by two separate Boards of Supervisors that, for all intents and purposes, will never allow another gun show to take place.

SB 475 is touted by its proponents as a response to criminal activity that is alleged to have occurred at Cow Palace gun shows. The record to date, however, directly contravenes this purported justification. Moreover, SB 475 effectively suppresses constitutionally-protected activity, in direct conflict with both the First and Second Amendments. Finally, SB 475 improperly authorizes certain local governments to prohibit gun shows, concerns that prompted a veto of previous state legislation aimed at ending gun shows at the Cow Palace.

#### **Cow Palace Gun Shows Do Not Pose a Threat to Public Safety**

Gun shows have been taking place at the Cow Palace for many years and, contrary to the claims made by SB 475's supporters, criminal activity surrounding these gun shows are unfounded. Ultimately, SB 475 appears to be a stepping stone in the gun ban lobby's efforts to

ban gun shows on government property rather than an effort to further any legitimate public safety interest.

In order to determine the truth about the extent of crimes that allegedly took place at the Cow Palace, our lawyers submitted numerous requests for records relating to these alleged crimes pursuant to the California Public Records Act. The responses received, however, do not provide evidence of any crimes occurring at the Cow Palace other than simple vehicular traffic violations. In fact, the only documents that refer to any firearm-related crimes at all are communications among SB 475's proponents that claim a "confidential informant" witnessed such crimes. But there is no documentation or evidence in the record to support the informant's claims. Out of all of the multiple agencies that were served with Public Records Act requests, *not one* of these agencies provided documentation of any communications, arrest records, evidence of prosecutions or any other writings that support the unsubstantiated claims made by SB 475's proponents.

In short, SB 475 will not help combat the crime problem at Cow Palace gun shows because there isn't one. In light of the lack of documented evidence supporting this bill, we oppose SB 475 because it will instead operate to hinder the general public's ability to obtain affordable firearms and related merchandise, which are often offered at substantial discounts at large exhibitions where multiple vendors can compete for customers' business in a single location.

### **SB 475 Suppresses Expressive Activities and Conflicts with the Second Amendment**

From a legal perspective, SB 475 raises serious constitutional concerns. These issues were heavily litigated over the past twelve years, and SB 475 is likely to result in similar litigation.

In *Nordyke v. King*, the Ninth Circuit ultimately considered challenges under both the First and Second Amendments to a law that effectively prohibited gun shows via its restriction on firearms possession on county property. (*Nordyke v. King*, 681 F.3d 1041 (2012).)

Notably, the *Nordyke* court dismissed the Plaintiffs' Second Amendment challenge to the County's ordinance – but only after the government agreed to amend its ordinance to *allow gun shows* to be held with firearms tethered to vendor tables. (*Nordyke*, 681 F.3d 1041). SB 475 raises similar concerns under the Second Amendment, as it gives local officials unfettered discretion to ban gun shows at the major event venue in the area.

Earlier in the *Nordyke* litigation, the Ninth Circuit concluded that the plaintiffs in that case did not have a viable First Amendment claim because the ordinance was "unrelated to the suppression of free expression." (*Nordyke v. King*, 644 F.3d 776, 793 (2011), citing *Texas v. Johnson*, 491 U.S. 397, 407 (1989)). The restriction itself did not target gun shows, and instead aimed to reduce violent crime by prohibiting the possession of firearms generally.

By contrast, SB 475 *directly targets gun shows*. The possession of firearms would not be restricted or subject to special approval by local officials in any other contexts. SB 475 is patently intended to allow local officials to terminate the Cow Palace gun show – *because it is a gun show*. Thus, SB 475 and county policies prohibiting gun show operations will be subjected to strict judicial scrutiny and, ultimately, invalidation by the courts absent a compelling government interest that is accomplished via the least restrictive means available. (See, e.g., *Cinevision Corp v. City of Burbank*, 745 F.2d 560 (9th Cir. 1984) [The government’s refusal to allow certain music on city owned property, where the city opened up that property to a variety of expressive activities failed strict scrutiny, because the city “transformed publicly owned property into a public forum for expressive activity it cannot, absent a compelling governmental interest, open the forum to some and close it to others solely in order to suppress the content of protected expression.”].)

Here, there is no evidence of any need to suppress gun show operations, and in no event is there justifiable reason to prohibit firearms at the Cow Palace in the context of gun shows, but not in others. Nor is a policy that authorizes an outright termination of gun shows by the government the least restrictive means to accomplish any purported public safety objectives. Because there is no compelling reason to prohibit firearms at the Cow Palace during gun shows, or even any evidence of criminal activity at all, SB 475 and the subsequent local curtailment of gun show operations that it authorizes violate the First Amendment.

#### **SB 475 Raises Concerns that Prompted a Veto of Similar Legislation in 2009**

This bill would set confusing precedent at the state level by statutorily authorizing certain local governments, to prohibit gun shows, a legal and regulated activity, but not other local jurisdictions. Finally, SB 475 would result in decreased state and local tax revenues by restricting events at the Cow Palace. For similar reasons, the author’s prior incarnation of this bill, Senate Bill 585, received a gubernatorial veto in 2009. (See Veto Message, Senate Bill 585 (2009) attached hereto as Exhibit “A.”)

Ultimately, SB 475 is an unnecessary and untimely burden on business, competition and the individual rights of law-abiding Californians.

For the foregoing reasons, the NRA respectfully requests your **veto of Senate Bill 475**.

Sincerely,



Charles H. Cunningham  
Director of State and Local Affairs

**SB 475 VETO REQUEST LETTER  
EXHIBIT A**

BILL NUMBER: SB 585  
VETOED DATE: 10/12/2009

To the Members of the California State Senate:

I am returning Senate Bill 585 without my signature.

This bill would prohibit the sale of firearms and ammunition at the Cow Palace. This bill would set a confusing precedent at the state level by statutorily prohibiting one District Agricultural Association (DAA) from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, this bill would result in decreased state and local tax revenues by restricting events at the Cow Palace.

For these reasons, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger