

# FIREARMS LITIGATION REPORT

## October 2016

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### NRA/CRPA California and Ninth Circuit Litigation Matters

Issue	Case Name	Case Status	What's Next
Challenge to "good cause" requirement for CCWs	<a href="#">Peruta v. San Diego</a>	In June 2015, a divided "en banc" panel of the 9th Circuit Court of Appeals ruled 7-4 in favor of the County, holding that the government's denial of the only means of carrying a firearm under state law does not implicate the Second Amendment. The decision reverses an earlier three-judge panel decision of the 9th circuit and now stands in direct conflict with the Supreme Court's decision in <i>Heller</i> .	On August 15, the Ninth Circuit denied Plaintiffs' Petition for Full Court En Banc Rehearing by all sitting members of the Ninth Circuit. The case may be petitioned for review by the United States Supreme Court.
Challenge to "good cause" requirement for CCWs filed after CA banned Unloaded Open Carry	<a href="#">McKay v. Hutchens</a>	Following <i>Peruta</i> , a three-judge panel of the Ninth Circuit affirmed the district court's ruling upholding the Sheriffs' policy.	The parties are awaiting issuance of the final mandate from the Ninth Circuit.
10+ Round Magazine Possession Ban	<a href="#">Fyock v. Sunnyvale</a>	In 2015, the 9th Circuit upheld the lower court's denial of plaintiffs' request for an order prohibiting enforcement while the case proceeds.	The case was set to resume in the trial court following resolution of <i>Peruta</i> , but the passage of SB 1446 prohibiting the possession of 10+ round magazines statewide now preempts the local ordinance. A new suit may be filed challenging the state law.

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Challenge to DOJ's excessive DROS fees that generated massive surplus.	<a href="#"><u>Bauer v. Harris</u></a>	In March 2015, the district court issued an opinion upholding California's use of DROS fees to fund APPS and other law enforcement activities. Plaintiffs have appealed. The case has been fully briefed and is awaiting oral arguments.	Oral arguments will likely be scheduled in the later half of 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
Challenges DOJ's Use of DROS surplus to fund APPS	<a href="#"><u>Gentry v. Harris</u></a>	An amended complaint alleging that the DROS fee is an invalid property tax was filed with the district court in November 2015. The case is currently in the discovery process.	Unknown.
Vagueness challenge to "handgun ammunition" sales registration requirement and mail order ban	<a href="#"><u>Parker v. California</u></a>	The Court recently ordered supplemental briefing on whether the passage of Senate Bill 1235, which requires registration of ammunition sales and face-to-face transactions, moots the lawsuit.	The case will likely be dismissed soon following the failure of the voter referendum that would have repealed SB 1235. If and when the appeal is dismissed, Plaintiffs will seek recovery of their attorney's fees.
Challenge to CA DOJ's underground regulations regarding the Firearm Safety Certificate Program	<a href="#"><u>Belemjian v. Harris</u></a>	This case forced DOJ to finally begin the process of enacting regulations for the FSC program in February 2015. Plaintiffs appealed the lower court's denial of Plaintiffs' request for attorneys' fees.	Briefing is currently in progress in the California Court of Appeals.
Challenge to firearm prohibition for misdemeanor domestic violence	<a href="#"><u>Baker v. Lynch</u></a>	In July 2013, the district court granted then Attorney General Eric Holder's motion to dismiss the case. This decision has been appealed to the 9th Circuit Court of Appeals and briefing was completed on May 27, 2015.	Oral arguments are scheduled for October 7, 2016. A decision can be expected anywhere from 3-9 months following oral arguments.

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Challenge to improper denial of use permit to operate firearms retail and repair business.	<a href="#"><u>Settegren v. Daly City</u></a>	The case was filed on January 15, 2016. On February 18, 2016, Daly City filed an answer. The case is now in the discovery process.	After discovery is complete, Plaintiffs will file a motion for summary judgment.
Preemption challenge to LA ordinance banning possession of 10+ Round Magazines	<a href="#"><u>Bosenko v. City of Los Angeles</u></a>	This case is currently being litigated in the trial court.	The City is currently in the process of repealing the ordinance preempting state legislation that prohibits the possession of 10+ round magazines. A status conference is scheduled for November 15, 2016 to review the City's actions.
Challenge to CA and Los Angeles Firearm Carry Restrictions that Prohibit Both Open and Concealed Carry	<a href="#"><u>Flanagan v. Harris</u></a>	The case was filed on August 17, 2016 as a direct response to <i>Peruta</i> . The suit seeks to force the court to decide whether or not it is willing to uphold a complete restriction on the right of law-abiding citizens to carry in jurisdictions within California.	Both the City's and the State's responsive pleadings are due in October 2016.
New Litigation Coming Soon:  Challenge to Los Angeles' Ultra-Compact Handgun Ban	<a href="#"><u>N/A</u></a>	Plaintiffs submitted a pre-litigation demand letter to the City on September 21, 2016. The letter informed the City that it will face litigation unless it initiates the repeal process within 30 days.	If the City fails to repeal the ordinance, a lawsuit will be filed in state court seeking to permanently enjoin enforcement of the ordinance because it is preempted by California's Unsafe Handgun Act.

In addition to these cases, NRA and CRPA regularly provide consulting advice and prepare amicus curiae or “friend of the court” briefs in a number of other firearm related cases. NRA and CRPA have supported or will be supporting the following cases.

## California and 9th Circuit Amicus and Consulting Support

Issue	Case Name	Case Status	What’s Next
FFL Zoning Restrictions	<a href="#"><u>Teixeira v. Alameda County</u></a>	The County recently filed a petition for en banc review by an eleven-judge, after a three-judge panel issued a favorable ruling overturning the lower court’s decision that had improperly granted the County’s Motion to Dismiss the case.	A decision from the Ninth Circuit regarding whether the Court will rehear the case en banc could come at anytime.
Sacramento and Yolo County CCW Issuance Policies	<a href="#"><u>Richards v. Prieto</u></a>	The Richards plaintiffs joined the Peruta plaintiffs in petitioning for full court en banc rehearing by all sitting members of the Ninth Circuit Court of Appeals.	On August 15, the Ninth Circuit denied Plaintiffs’ Petition for Full Court En Banc Rehearing by all sitting members of the Ninth Circuit.
Hawaii CCW Scheme	<a href="#"><u>Baker v. Kealoha</u></a>	The court is currently reviewing supplemental briefing from the parties following the en banc decision in <i>Peruta</i> .	A decision from the Court regarding whether to remand the case to the district court could come at any time.
California Handgun Roster	<a href="#"><u>Pena v. Cid</u></a>	The federal district court upheld the Roster in 2015. Plaintiffs appealed, and the case has been fully briefed before the 9th Circuit.	Oral arguments will likely be scheduled in the later half of 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
10-Day Wait as applied to current firearm owners	<a href="#"><u>Silvester v. Harris</u></a>	Oral arguments took place before the 9th Circuit on February 9, 2016.	A decision from the court can be expected anytime in the next 3-9 months.
1st Amendment challenge to handgun advertisement prohibition	<a href="#"><u>Tracy Rifle and Pistol v. Harris</u></a>	In July 2015, the district court denied a request to prohibit enforcement while the case proceeds. That decision was appealed, and in February 2016 the 9th Circuit upheld the lower court’s order within two weeks of oral arguments.	Litigation in this case will now resume in the lower court.

## California and 9th Circuit Amicus and Consulting Support

Issue	Case Name	Case Status	What's Next
FFL zoning ordinance	<a href="#">NSSF v. Pleasant Hill</a>	Plaintiffs recently dismissed the suit and are currently seeking to recover attorneys' fees.	Unknown.
Challenges DOJ regulation barring sale of more than one handgun in 30 days to COE holders	<a href="#">Doe v. Harris</a>	The California trial court upheld DOJ's regulation and the plaintiffs have appealed the decision to the California Court of Appeals.	The case will now be briefed before the California Court of Appeals. Oral arguments will likely take place in late 2017.
Challenge to ban on possession and carriage of firearms on recreational Army Corps' lands.	<a href="#">Nesbitt v. U.S. Army Corps of Engineer</a>	The case has been fully briefed and is awaiting oral arguments before the 9th Circuit Court of Appeals.	Oral arguments are expected to take place in late 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
State Court challenge to California's micro-stamping requirements	<a href="#">NSSF v. CA</a>	The California trial court upheld the microstamping requirements, and the plaintiffs appealed. The case has been fully briefed before the California Court of Appeals.	Oral arguments will likely take place in late 2016 or 2017, and a decision from the appeals court will follow.

NRA and CRPA also provide assistance in a number of critical Second Amendment cases across the country that could set precedent for future challenges to California gun laws. The following are some of the more significant examples of these cases.

## National Amicus Support

Issue	Case Name	Case Status	What's Next
<p>Challenges Maryland's ban on "assault weapons" and 10+ round magazines</p>	<p><a href="#">Kolbe v. Hogan</a></p>	<p>On February 4, 2016, the 4th Circuit overturned the district court's approval of the ban under intermediate scrutiny, and ordered the district court to apply "strict scrutiny." The State appealed and the case was reheard by the full 4th Circuit sitting "en banc" on May 11, 2016.</p>	<p>An audio recording of the recent "en banc" oral arguments is available at: <a href="http://michellawyers.com/kolbe-v-omalley/">http://michellawyers.com/kolbe-v-omalley/</a>.</p> <p>A decision from the 4th Circuit can be expected anywhere in the next 12 months.</p>
<p>Challenges Washington D.C.'s "good reason" requirement for the issuance of a CCW permit</p>	<p><a href="#">Grace v. District of Columbia</a></p>	<p>On May 17, 2016, the Court granted the Plaintiffs' request for an order blocking enforcement of the "good reason" requirement. The government appealed the decision to the D.C. Circuit Court of Appeals and the Court issued a stay of the lower court's order that prohibited D.C. from enforcing its "good reason" requirement.</p>	<p>The case has been fully briefed before the D.C. Circuit Court of Appeals. Oral arguments in the case were held on September 20, 2016, along with <i>Wrenn v. District of Columbia</i>. A decision from the Court of Appeals can be expected anywhere in the next 3-9 months.</p>