

COURT REPORT

CASE PROFILE: *DUNCAN V. BECERRA*

UPDATE — A WIN FOR THE RECORD BOOKS

RESTOCKS CALIFORNIA'S NEXT GENERATION WITH 10+ ROUND MAGAZINES

BY CHUCK MICHEL

Recently the NRA, along with other Second Amendment and civil rights organizations, filed amicus briefs in support of the CRPA and other plaintiffs in the *Duncan v. Becerra* case.

The case is a critical test of how far a government can go when infringing on the Second Amendment.

Recall that in 2016, California gun owners faced an unprecedented attack on their Second Amendment rights. Prohibitions against commonly owned semiautomatic firearms and standard capacity magazines were enacted, along with a ban on mail-ordered ammunition and new requirements that ammunition purchasers undergo background checks.

But CRPA, with support of the NRA and its experts and legal team, has fought back against those restrictions. Mere days before the magazine ban was scheduled to take effect, the federal district court Judge Roger Benitez issued a preliminary injunction in CRPA's lawsuit titled *Duncan v. Becerra*, preventing California from enforcing that ban. California's Attorney General appealed that decision. But the Ninth Circuit affirmed Judge Benitez's ruling issuing the prelimi-

nary injunction.

Following that ruling, the ball was back in Judge Benitez's court. While a preliminary injunction had been put in place, he still had to render a decision on the merits of the entire case. And in March 2019, he issued a decision that would [over]see the entire nation's supply of over-10-round-capacity magazines in a matter of days.

Judge Benitez ruled that all of California's restrictions against magazines capable of holding more than 10 rounds were permanently enjoined—including restrictions against the acquisition of such magazines. As Judge Benitez put it, "[c]onstitutional rights stand through time holding fast through the ebb and flow of current controversy," and governments cannot turn "millions of responsible, law-abiding people trying to protect themselves into criminals" for simply exercising their Second Amendment rights.

THE TIDAL WAVE

Things were quiet at first. After all, California gun owners had been subject to a total ban on the acquisition of standard capacity magazines since 1999. But word of the decision quickly spread, ultimately making its way to out-of-state retailers and distributors. When it did, no one could have anticipated what would happen next.

Suddenly, two decades' worth of

pent-up demand provoked an unstoppable tidal wave. Tens of thousands of California gun owners started purchasing standard-capacity magazines from anyone who would sell them. Inventory at retailers, distributors and manufacturers was being sold at rates faster than the industry had ever seen. Those who could, traveled to neighboring states in the hopes of finding any available inventory to bring back with them into California. Many even bought magazines for firearms they did not even own, having previously decided to not purchase the firearm on account of California's magazine limitations. But with the restriction enjoined, those concerns suddenly disappeared.

But the window of opportunity wouldn't last long. Almost immediately after the decision was issued, California's Attorney General sought to stay the injunction pending appeal.

California's Attorney General stated he was seeking to "preserve the status quo" and "prevent a sudden influx" of standard capacity magazines into California. But even he didn't fully comprehend the extent of California's gun owners' demand. CRPA attorneys opposed his request for a stay with Palmetto State Armory providing evidence to counter the Attorney General's arguments. After realizing the extent to which California gun owners were lawfully purchasing standard-capacity magazines, Cali-

fornia's Attorney General took drastic steps to take the case out of the hands of Judge Benitez but not before the judge issued a stay, protecting those who lawfully purchased and ordered magazines while the law was enjoined. That stay took effect at 5:00 p.m. on April 5, 2019.

All said and done, it has been estimated that California gun owners purchased well over a million standard-capacity magazines during the period the injunction was in place, which has become known as "Freedom Week" among many.

APPEAL TO THE NINTH

California has since appealed the *Duncan* decision to the Ninth Circuit. CRPA's brief was filed on September 16, 2019. The following week, the National Rifle Association of America filed its own brief in support of CRPA,

along with nearly every other pro-Second Amendment organization. Several individuals and competitive firearm sporting groups have also joined the fight. So where do we go from here?

The Supreme Court of the United States is poised to hear a case raising a Second Amendment issue. The decision could have a profound impact on the right to keep and bear arms by courts for years to come. Should the Supreme Court uphold the Second Amendment as one not to be treated as a second-class right, many of California's anti-gun laws will face renewed scrutiny—including California's magazine restrictions. And should that ruling be in the mold of Judge Benitez's decision in *Duncan*, it is likely that many of California's anti-gun laws will be short-lived.

Regardless of the *Duncan* lawsuit, the sheer number of magazines

now lawfully possessed by tens of thousands of California gun owners makes it practically impossible to enforce any possession restriction. The California Department of Justice would need to embark on a door-to-door confiscation effort, hoping that gun owners would acquiesce. But as we have seen with the ill-fated APPS program, the DOJ has proven to be incapable of confiscating firearms from persons who are prohibited under state or federal law from owning or possessing them.

California gun owners have a lot to look forward to.

HELP US FIGHT CALIFORNIA'S ILLEGAL AND UNCONSTITUTIONAL ANTI-GUN LAWS

CRPA and NRA will continue to support legal efforts such as *Duncan* and continue their legal efforts in the courts

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and political efforts at every level of government, but we need all of California's 10+ million gun owners to stand with us. We cannot be successful without your help. By donating to the CRPA Foundation and volunteering to help the fight at volunteer@crpa.org, you can help undo all of the "Gunmageddon" laws and begin the process of restoring firearms freedoms as well as the right to choose to own a firearm to defend yourself and your family in California! Be sure to visit the NRA-ILA California-dedicated web page at nraila.org/campaigns/california/stand-and-fight-california and the CRPA web page at crpa.org to subscribe to email alerts and learn more about other ways you can help fight for the right to keep and bear arms in California. [CRPA](http://crpa.org)

CALIFORNIA AND 9TH CIRCUIT LITIGATION MATTERS

REPORT BY ALEX FRANK

This report provides an overview of just some of the efforts being taken to protect the rights of California gun owners. Although litigation plays an extremely important role in the fight for the right to keep and bear arms, there are many other tremendous and equally important endeavors throughout California and across the nation. Protecting the Second Amendment requires an enormous amount of resources and involvement in all levels of California's government, including all 58 counties, all 482 municipalities and all state and local agencies tasked with enforcing the myriad of complex and ever-expanding gun laws. The digital version of this report, complete with links to relevant documents and additional information, can be found on NRA-ILA's California web page at standandfightcalifornia.com and CRPA's web page at crpa.org.

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
CHALLENGE TO CALIFORNIA'S AMMUNITION SALES RESTRICTIONS	<i>Rhode v. Becerra</i>	The case was filed on April 26, 2018, in response to Proposition 63 and SB 1235's restrictions regarding the sale and transfer of ammunition in California. The lawsuit challenges these restrictions as a violation of the Second Amendment, Commerce Clause and Equal Protection Clause of the United States Constitution, as well as a violation of the Firearm Owner's Protection Act.	The State filed a motion to dismiss which the district court denied. The case is now in the discovery phase of litigation. In August, plaintiffs asked the court (Hon. Judge Benitez) to preliminarily enjoin the new ammo laws. Judge Benitez has not yet ruled.
CHALLENGE TO CALIFORNIA'S "ASSAULT WEAPON" RESTRICTIONS	<i>Rupp v. Becerra</i>	The case was filed on April 24, 2017, in response to SB 880 and AB 1135. It challenges California's entire "assault weapon" ban as violating the Second Amendment and due process and takings clauses of the U.S. Constitution. Plaintiffs filed a preliminary injunction motion to prevent the State from requiring individuals to provide the date they acquired their firearms and the name and address of the person from whom they acquired them, as a condition of registration, but that motion was denied on May 9, 2018.	Plaintiffs and the State filed cross-motions for summary judgment in late March 2019. The federal court heard oral argument on May 31, 2019. Plaintiffs also filed multiple motions to disqualify several of the State's expert witnesses. However, on July 22, 2019, the court granted the State's motion for summary judgment, ending the case in the State's favor. Plaintiffs appealed to the 9th Circuit on August 27, 2019. Plaintiffs' appeal brief is currently due December 5, 2019.
CHALLENGE TO CALIFORNIA'S BAN ON STANDARD CAPACITY MAGAZINES	<i>Duncan v. Becerra</i>	The case was filed in response to SB 1446 and Prop 63. It challenges California's ban on the acquisition and possession of magazines over 10 rounds. On June 29, the district court granted plaintiffs' motion for a preliminary injunction, halting enforcement of the newly enacted possession ban while the case is litigated. The State immediately appealed the injunction order. In July 2018, the 9th Cir. upheld the issuance of the injunction.	The federal district court, where Judge Benitez presides, granted plaintiffs' summary judgment motion, which permanently enjoined Penal Code Sec. 32310 on March 29, 2019. This legalized the acquisition of standard-capacity magazines. However, the court entered a stay of the injunction, effective 5:00 p.m. on April 5, 2019. The State has appealed to the 9th Cir.

CHALLENGE TO DOJ'S RECENTLY ENACTED "ASSAULT WEAPON" REGISTRATION REGULATIONS	<i>Villanueva v. Becerra</i>	The case was filed on September 8, 2017, in response to California DOJ adopting regulations concerning newly classified "assault weapons" under SB 880 and AB 1135. It challenges the regulations under California's Administrative Procedure Act because they were enacted without legislative authority and without any input from members of the public.	On May 30, 2018, the court issued an order upholding the regulations as valid. Plaintiffs appealed and filed their opening brief in California's 5th District Court of Appeal in late March 2019. The State filed its appeal brief on August 9, 2019. Plaintiffs' brief is due October 8, 2019.
CHALLENGE TO CA AND LOS ANGELES FIREARM CARRY RESTRICTIONS THAT PROHIBIT BOTH OPEN AND CONCEALED CARRY	<i>Flanagan v. Becerra</i> (Formerly <i>Flanagan v. Harris</i>)	The case was filed on August 17, 2016, as a direct response to Peruta. It seeks to force the court to decide whether it is willing to uphold a complete prohibition on the right of law-abiding citizens to carry a firearm for self-defense. The parties filed cross-motions for summary judgment. In May 2018, the court issued a decision granting defendant's motion for summary judgment.	The 9th Cir. rejected the State's petition to have the case heard initially by an 11-judge <i>en banc</i> panel along with the <i>Young v. Hawaii</i> lawsuit. However, instead of allowing the case to proceed, the 9th Cir. stayed the case on July 30, 2019, pending the outcome of <i>Young v. Hawaii</i> .
CHALLENGES DOJ'S USE OF DROS SURPLUS TO FUND APPS AS AN ILLEGAL TAX	<i>Gentry v. Becerra</i> (Formerly <i>Gentry v. Harris</i>)	Plaintiffs filed an amended complaint alleging that the DROS fee is an invalid tax. On August 9, 2017, the district court issued a ruling granting plaintiffs' request to prohibit DOJ from using DROS fees to fund unrelated law enforcement efforts and requiring DOJ to perform its statutorily required review of the current \$19 fee to determine whether it is "no more than necessary to fund" DOJ's costs for processing DROS transactions.	Trial was held in January 2019. The court recently entered an order that will be incorporated into a forthcoming final judgment upholding the DROS fee as a legitimate regulatory fee. Plaintiffs argue that the court's finding contradicts established law regarding regulatory fees. Plaintiffs started the appeal process by filing a notice of appeal on June 4, 2019.
VAGUENESS CHALLENGE TO (AB 962'S "HANDGUN AMMUNITION" SALES REGISTRATION REQUIREMENT AND MAIL ORDER BAN	<i>Parker v. California</i>	In December 2016, because of Prop 63, the California Supreme Court dismissed its review of a Court of Appeal opinion affirming the trial court's order striking down AB 962. The Court of Appeal's decision is now the final opinion, and plaintiffs are seeking their attorneys' fees against the State.	After the trial court partially granted the plaintiffs' motion for attorneys' fees for work in the trial court, parties negotiated an agreement regarding a total fee award. Parties are now coordinating the execution of that negotiated agreement.
CHALLENGE TO LOS ANGELES' REFUSAL TO DISCLOSE PUBLIC RECORDS REGARDING FIREARMS IN LAW ENFORCEMENT CUSTODY	<i>CRPA v. City of Los Angeles</i>	CRPA filed a lawsuit challenging Los Angeles City's refusal to disclose records related to secretly obtained disposition orders used by LAPD to justify the destruction of firearms in its possession. Rather than litigate, the City agreed to settle the lawsuit and turn over the records to CRPA.	The City agreed to pay \$35,000 to cover CRPA's attorneys' fees as a result of the lawsuit. The case is now closed.

NRA and CRPA also provide consulting advice and prepare amicus curiae or "friend of the court" briefs in firearm- and Second Amendment-related cases.

CALIFORNIA HANDGUN ROSTER	<i>Pena v. Lindley (Horan)</i>	The federal district court upheld the Roster in 2015. Plaintiffs appealed, and oral arguments were held on March 16, 2017. NRA and CRPA filed an amicus brief in the case on July 27, 2015. On August 3, 2018, the 9th Cir. upheld the Roster.	Plaintiffs docketed their petition for writ of certiorari to the U.S. Supreme Court on January 3, 2019. It is now up to the U.S. Supreme Court to determine whether it will take or decline the case.
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ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
1ST AMENDMENT CHALLENGE TO HANDGUN AD PROHIBITION	<i>Tracy Rifle and Pistol v. Becerra</i> (Formerly <i>Tracy Rifle and Pistol v. Harris</i>)	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 Cir. upheld the lower court's order within 2 weeks of oral arguments. However, following the appeal of the preliminary injunction, the district court issued a permanent injunction.	As a result of the permanent injunction, California is now prohibited from enforcing its arbitrary and ineffective handgun ad ban.
STATE COURT CHALLENGE TO CALIFORNIA'S MICRO-STAMPING REQUIREMENTS	<i>NSSF v. California</i>	In December 2016, the California Court of Appeal issued a ruling in favor of NSSF, allowing the lawsuit to proceed in the lower court. But in June 2018, the California Supreme Court reversed, upholding the trial court's judgment in favor of the State. NSSF petitioned the Supreme Court to reconsider its opinion, but that petition was denied in August 2018.	As a result of the California Supreme Court opinion, the case is now closed. Another case challenging the microstamping requirement/roster, <i>Pena v. Lindley (Horan)</i> , may be heard by the Supreme Court.
CHALLENGE TO SAN JOSE'S REFUSAL TO RETURN SEIZED FIREARMS	<i>Rodriguez v. City of San Jose</i>	Following the City of San Jose's refusal to return firearms seized by law enforcement, a lawsuit was filed alleging violations of the Second, Fourth, Fifth and Fourteenth Amendments. In September 2017, a federal district court upheld the City's refusal as constitutional. Plaintiff has appealed, with CRPA filing an important amicus brief on March 6, 2018.	On January 14, 2019, the 9th Cir. heard oral argument. On July 23, 2019, the 9th Cir. affirmed the district court's summary judgment ruling in favor of the City of San Jose. Plaintiff is now seeking to have the case re-heard by an <i>en banc</i> panel.

NRA and CRPA also litigate and assist in critical Second Amendment cases across the country that could set precedent for future challenges to California gun laws.

CHALLENGE TO FEDERAL FIREARM RESTRICTION DUE TO NON-VIOLENT, DECADES-OLD FELONY CONVICTION	<i>Sessions v. Hatfield</i>	Having suffered a lifetime firearm restriction due to a non-violent felony, plaintiff filed suit challenging the restriction as unconstitutional. On April 26, 2018, a federal district court struck down the restriction as unconstitutional as applied to the plaintiff. The government has appealed, with CRPA filing an important amicus brief on October 12, 2018.	The 7th Cir. Court of Appeals issued an opinion on June 6, 2019, reversing the district court's favorable ruling. On August 7, 2019, the 7th Cir. denied plaintiff's petition to re-hear the case <i>en banc</i> .
CHALLENGES WASHINGTON D.C.'S "GOOD REASON" REQUIREMENT FOR THE ISSUANCE OF A CCW PERMIT	<i>Grace v. District of Columbia</i>	On July 25, 2017, the D.C. Circuit declared Washington, D.C.'s "good reason" requirement for the issuance of a CCW was a violation of the Second Amendment. The court also issued a permanent injunction prohibiting D.C. from enforcing the requirement. On September 28, 2017, the D.C. Cir. denied Washington, D.C.'s request for rehearing.	Because the decision was not petitioned to the Supreme Court for review, Washington, D.C. is now effectively a "shall-issue" jurisdiction.



Alex Frank is a civil rights litigator at Michel & Associates, P.C., where he focuses on the Second Amendment and related constitutional issues.

LOCAL ACTION REPORT

NAME CALLING IS THE ONLY GAME THEY GOT

BY TIFFANY D. CHEUVRONT

Recently the San Francisco Board of Supervisors voted unanimously to label the National Rifle Association a “domestic terrorist organization” as part of an effort to demonize those associated with the NRA and ultimately to silence their voices by shaming others into not associating with the NRA.

It's an effort that was first pushed in New York, then in Los Angeles. Others are piling on.

These politicians will go to any length to trample on the First Amendment rights of law-abiding citizens and gun owners who rely on the NRA for a louder voice in the public debate.

This is not the first time that politicians have thrown the Constitution out the window to eradicate the gun culture while hoping that courts will look the other way. In 2018, we saw well-funded and organized assaults on gun shows that were based on shrill emotion and pre-spun false talking points. When Del Mar Fairgrounds voted to ban gun shows, CRPA, with NRA support, sued. The federal court saw through the distortions and lies and handed the plaintiffs an initial win by issuing a preliminary injunction on First Amendment grounds that allows gun shows to continue.

But our win in Del Mar didn't stop the gun-owner-shaming mob. Two more

gun show ban bills worked their way through the state Legislature. Senate Bill 281 (D-Scott Weiner) was meant to stop gun shows at the Cow Palace venue in Daly City. Eventually this bill was dropped because Weiner used his political power to strong arm the Cow Palace Board of Directors into stopping gun shows at the venue if they wanted to keep their positions. Even with the Cow Palace Board admitting that the gun show promoters were in full compliance and had done nothing wrong, they voted to end gun shows at that state venue. We are fighting back.

Back at the Del Mar Fairgrounds, State Assemblyman Todd Gloria, looking to further his campaign to run for Mayor of San Diego, pushed a law to ban gun shows at the Del Mar Fairgrounds as of 2021. With Governor Newsom vowing to sign any legislation that would end gun shows in the state, it was an easy push through the Legislature.

So the gun culture is under assault again, and it is up to supporters of the Second Amendment to stand together with those fighting for your rights in the courts.

In San Diego, the anti-gun agenda was pushed by the Moms-Demand-Action-backed city attorney, also running for office, who worked overtime trying to convince the city council that her proposed mandatory locked storage ordinance would make people safer. This, despite testimony showing the crime in San Diego, the slow response time by the 911 dispatch and the knowledge that just days before the vote a San Diego family successfully fended off a knife-wielding intruder because they had an unlocked

and readily available firearm. Politicians pushing the anti-gun-owner agenda know that the laws they pass don't really make anyone safer. Their goal is to put so many restrictions and costs on law-abiding gun owners that they'll throw up their hands and say, “It's not worth it.” Politicians know that pro-gun-owner resources are limited. They know that the Bloomberg gun ban money machine will continue to offer them free legal assistance when they pass a useless law, so they keep passing them.

Fortunately, supporters of the Second Amendment are unwilling to “compromise” over ill-conceived laws that don't work. With the Trump administration adding more conservative justices to the Ninth Circuit and the U.S. Supreme Court, there is hope that rulings in the future will not be so biased.

The easiest way for the gun-ban-lobby to win is to silence your voice. As gun owners, make sure you are engaged and understand when anti-gun groups make false statements. Participate in the calls to action where members can attend meetings, contact elected officials (recently grassroots members turned the tide in Carson, CA, by showing up when called!) and most importantly, donate. Donations to the CRPA fund important legal battles and can make a difference in continuing an ongoing battle or in filing new lawsuits to fight off additional laws.

They may call you names, but those of us in the battle to protect your rights call you the most valuable asset in that war for our freedoms. **CRPA**