

LITIGATION REPORT

WE ARE PREPARED TO FIGHT!

BY ALEX FRANK

This was a big year for gun rights lawsuits, both in California and throughout the nation. Although *New York State Rifle & Pistol Association, Inc. v. City of New York* unfortunately did not conclude the way gun rights supporters hoped it would, they remained optimistic that the Court would take one of the many Second Amendment certiorari petitions still pending. Unfortunately, the Court denied all but one of those petitions on June 15, 2020.

The Court's rejection of these cases is disheartening, but the Second Amendment is not dead, and hope is not lost. While we do not know exactly what behind-the-scenes developments drove this outcome, it seems reasonably clear that Chief Justice John Roberts is the weak link in the pro-2A chain. Justices Thomas, Alito, Gorsuch and Kavanaugh appear poised to grant certiorari and issue a long overdue pro-Second Amendment ruling, but they need a fifth vote to secure a majority voting bloc. Given the current composition of the Court, they do not have it.

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However, there is still a lot going on in the lower courts that deserves attention. The Supreme Court's non-merits resolution of *NYSRPA* impacted some other significant cases within the Ninth Circuit that were stayed because of it. One of those cases, *Young v. State of Hawaii*, is a right-to-carry lawsuit that the Ninth Circuit stayed in February 2019 just prior to an *en banc* rehearing. On April 30, the Ninth Circuit lifted the stay and scheduled oral argument for September. CRPA submitted a friend of the court brief in that case, and although its complicated procedural sideshow issues make it unlikely that SCOTUS would take it, it could have significant impact on the right to carry in the Ninth Circuit.

Another key California case that made headlines recently is *Rhode v. Bec-*

erra, to which CRPA is a party. Thanks to another tour-de-force of incisive analysis and respect for the Constitution from Judge Roger T. Benitez, California was blocked from enforcing its highly restrictive and unconstitutional ammunition background check and importation laws for a brief period. Unfortunately, the Ninth Circuit stepped in to "stay" Judge Benitez's preliminary injunction ruling. The case will proceed on the merits in Judge Benitez's court while the preliminary injunction appeal proceeds at the Ninth Circuit.

As is often said in the gun rights community, governments usually do not hesitate to exploit emergencies to suppress peoples' rights and expand government power. Indeed, COVID-19 has been no exception. Throughout the nation, and especially in California, governments have moved to restrict people from obtaining firearms and ammunition, citing vague public safety rationales and questionable legal justifications. Whatever legitimate purpose may be served by social distancing and other precautionary measures during this public health crisis, it is hard to see what value suppressing the right to self-defense adds to it. This is especially magnified by the nationwide breakdown in civil order that followed the

death of George Floyd at the hands of police in Minneapolis.

While it is unfortunate that the Supreme Court balked at so many ripe opportunities to protect Second Amendment rights, CRPA is actively working to expand and protect Californians' gun rights and tee-up the next case that might go all the way. The Second Amendment—and all civil liberties—are only dead if you give up on them. So don't! CRPA, our lawyers, our members and everyone in between know that no civil liberties fight is EVER

over, and we sure as hell aren't going to stop fighting—ever.

There is plenty of hope for the future of the Second Amendment. The Trump Administration has drastically changed the composition of the Ninth Circuit and added two pro-Second Amendment justices to the Supreme Court. CRPA has several Second Amendment cases in the Ninth Circuit that we have been winning! We know we have at least four solid pro-Second Amendment votes at SCOTUS, and the composition of the Supreme Court

may soon decisively shift in our favor as one particular Justice is facing serious health issues. The Supreme Court WILL take a Second Amendment case and WILL give the Second Amendment the legal teeth that our Founding Fathers intended. Many of California's ridiculous gun bans WILL be struck down. Today's rulings do not change that inevitability—they just delay it. Now is the time to cowboy up and soldier—not give up. Now is when we fight HARDER and more aggressively than ever before to protect our rights. **CRPA**

CALIFORNIA AND 9TH CIRCUIT LITIGATION MATTERS

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 Senate Bill 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 U.S. 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. On April 23, 2020, the Honorable Roger Benitez granted plaintiffs' request for a preliminary injunction. Consequently, the state was instantly legally barred from enforcing the ammunition laws at issue in this case. On April 24, 2020, Judge Benitez then denied the State's request to stay his injunction. However, the State applied to the 9th Cir. later that day for a stay which it granted, reinstating the status quo pending appeal of the case.
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 Cir. on August 27, 2019. Plaintiffs filed their opening appeal brief on January 27, 2020. The state filed its brief May 26, 2020.

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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. Parties have submitted their appeal briefs and are awaiting scheduling of oral argument.
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 appealed its loss to the 9th Circuit. The Court heard oral arguments on April 2, 2020, via videoconference. The three-judge panel seemed receptive to plaintiffs' case, and luckily, two of the three judges have conservative reputations.
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 <i>Peruta</i> . 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> . Now that the stay in <i>Young</i> is lifted, this case will likely remain stayed unless something unusual occurs.
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 of 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 appealed on June 4, 2019, and submitted their appeal brief on February 7, 2020.
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. In September 2019, plaintiffs received \$433,860.20 from the State.
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.

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CHALLENGE TO VENTURA COUNTY'S ACTIONS PREVENTING PEOPLE FROM BUYING GUNS AND AMMUNITION DURING THE COVID-19 SITUATION, AND TO FORCED CLOSURES OF FIREARM AND AMMUNITION RETAILERS AND SHOOTING RANGES UNDER THREAT OF PROSECUTION	<i>McDougall v. County of Ventura</i>	Plaintiffs filed this case and a motion for preliminary injunction on April 14, 2020. Plaintiffs moved for a temporary restraining order on April 24, 2020. The court denied the motion. Plaintiffs filed again, but the court denied again.	Plaintiffs' original motion for preliminary injunction was set to be heard on May 19, 2020, but withdrawn on May 18 due to Ventura County's change of policy allowing gun stores to conduct business.
CHALLENGE TO LOS ANGELES COUNTY'S ACTIONS PREVENTING PEOPLE FROM BUYING GUNS AND AMMUNITION DURING THE COVID-19 SITUATION, AND TO FORCED CLOSURES OF FIREARM AND AMMUNITION RETAILERS AND SHOOTING RANGES UNDER THREAT OF PROSECUTION	<i>Brandy v. Villanueva</i>	Plaintiffs filed their complaint on March 27, 2020, and their request for both a temporary restraining order and preliminary injunction on March 30, 2020. On April 6, 2020, the court denied plaintiffs' temporary restraining order.	The federal court in Los Angeles denied plaintiffs' preliminary injunction motion on April 6, 2020.
CHALLENGE TO SANTA CLARA'S (AND OTHER BAY AREA COUNTIES) ACTIONS PREVENTING PEOPLE FROM BUYING GUNS AND AMMUNITION DURING THE COVID-19 SITUATION, AND TO FORCED CLOSURES OF FIREARM AND AMMUNITION RETAILERS AND SHOOTING RANGES UNDER THREAT OF PROSECUTION	<i>Altman v. County of Santa Clara</i>	Plaintiffs filed their complaint on March 31, 2020, and a motion for temporary restraining order/preliminary injunction on April 10, 2020. The court denied the temporary restraining order and did not rule on the preliminary injunction.	Plaintiffs' preliminary injunction was denied on June 3, 2020. By the time the court ruled on the motion, the only county remaining in the suit was Alameda County because the others permitted firearms stores to open as "essential businesses."

CALIFORNIA AND 9TH CIR. AMICUS OR CONSULTING SUPPORT

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

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
CHALLENGE TO CALIFORNIA'S HANDGUN ROSTER	<i>Pena v. Lindley (Horan)</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
1ST AMENDMENT CHALLENGE TO HANDGUN AD PROHIBITION	<i>Tracy Rifle and Pistol v. Becerra (Formerly 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.

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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>Penas 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.	Petitioners filed their certiorari petition with the Supreme Court on February 21, 2020. As of June 15, 2020, it remains the only Second Amendment case still pending on the Court's certiorari petition docket.

NATIONAL CASES WITH CALIFORNIA INTEREST

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.

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
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> . Plaintiff did not petition the Supreme Court for review. The case is over.
WHETHER THE CITY OF NEW YORK'S BAN ON TRANSPORTING A LAWFULLY OWNED HANDGUN TO A HOME OR SHOOTING RANGE OUTSIDE CITY LIMITS IS CONSISTENT WITH THE SECOND AMENDMENT, COMMERCE CLAUSE AND RIGHT TO TRAVEL	<i>New York State Rifle & Pistol Association, Inc. v. City of New York</i>	As many Supreme Court observers predicted, the Court found the case moot and remanded it for further proceedings to the lower courts on April 27, 2020. While disappointing, the conservative justices indicated they are eager to take up another Second Amendment matter.	At the moment, there is no meaningful activity to report.
WHETHER THE FEDERAL LAW THAT PROHIBITS CONSUMERS FROM ACQUIRING HANDGUNS OUTSIDE THEIR HOME STATE IS CONSISTENT WITH THE SECOND AMENDMENT	<i>Mance v. Barr</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
CHALLENGES MASSACHUSETTS' "MAY ISSUE" PUBLIC CARRY LICENSE FRAMEWORK	<i>Gould v. Lipson</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.

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THESE CASES BOTH CHALLENGE NEW JERSEY'S "MAY ISSUE" PUBLIC CARRY LICENSE FRAMEWORK	<i>Cheeseman v. Polillo & Ciolek v. New Jersey</i>	The Supreme Court denied certiorari in both cases on June 15, 2020.	No further action. The cases are effectively over.
THIS IS A CHALLENGE TO THE TRUMP ADMINISTRATION'S BUMP STOCK BAN ON TECHNICAL ADMINISTRATIVE LAW GROUNDS	<i>Guedes v. ATF</i>	On March 2, 2020, the Supreme Court denied certiorari.	No further action. The case is effectively over.
CHALLENGE TO MASSACHUSETTS' BAN ON THE POSSESSION OF "ASSAULT WEAPONS" AND STANDARD CAPACITY MAGAZINES	<i>Worman v. Healey</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
CHALLENGES NEW JERSEY'S "MAY ISSUE" PUBLIC CARRY LICENSE FRAMEWORK (FEDERAL COURT)	<i>Rogers v. Grewal</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
CHALLENGE TO MARYLAND'S "MAY ISSUE" PUBLIC CARRY REGIME	<i>Malpasso v. Pallozzi</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
CHALLENGES ILLINOIS POLICY OF REFUSING CARRY PERMITS TO MOST NON-RESIDENT APPLICANTS	<i>Culp v. Raoul</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
THIS CASE ASKS A TECHNICAL QUESTION ABOUT THE ROLE OF LEGAL FIREARMS IN THE CONTEXT OF WARRANTLESS SEARCHES. IT IS A 4A CASE WITH POTENTIAL 2A IMPLICATIONS	<i>Baker v. City of Trenton, MI</i>	Certiorari petition denied on February 24, 2020.	No further action. The case is effectively over.
CHALLENGE TO "ASSAULT WEAPONS" AND STANDARD CAPACITY MAGAZINE BAN	<i>Wilson v. Cook County, IL</i>	The Supreme Court denied certiorari on June 15, 2020.	No further action. The case is effectively over.
CHALLENGES 18 U.S.C. § 922(g)(4) WHICH PROHIBITS FIREARM POSSESSION FOR INDIVIDUALS WHO HAVE BEEN INVOLUNTARILY COMMITTED TO A MENTAL INSTITUTION	<i>Beers v. Barr</i>	On May 18, 2020, the Court issued a "GVR," which means it granted the petition, vacated the judgment and remanded with further instructions to dismiss the case as moot.	The case is effectively over.



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