

# LITIGATION REPORT

## LOOKING AHEAD

BY ALEX FRANK

**2020 was a critical year for gun rights litigation.** In California, CRPA litigated and won significant victories for the Second Amendment in *Duncan v. Becerra* and *Rhode v. Becerra*. In the *Duncan* case, the 9th Circuit appeals court actually affirmed CRPA's win in the district court. This made national news. Given the significance of the case, the state quickly asked for an 11-judge *en banc* rehearing of the matter. The court is currently weighing whether to do that. In the *Rhode* case, the CRPA is litigating before the 9th Circuit and in the district court before Judge Roger Benitez. Whatever the outcome is, the *Rhode* case will also likely be presented to an *en banc* panel at

the 9th Circuit.

As exciting and important as these big cases are here in California, the most significant development in gun rights this year is President Donald Trump's successful appointment of Justice Amy Coney Barrett to the United States Supreme Court. Despite a full-blown leftist media meltdown over it, Republican leaders in the Senate were able to secure the majority needed to appoint the Seventh Circuit jurist and formerly celebrated law professor to the High Court. This is a good thing for Second Amendment supporters. Indeed, the very thing that put Justice Barrett on many peoples' radars was a persuasively reasoned dissent in a gun rights case wherein she argued that permanently prohibiting non-violent felons from exercising their Second Amendment rights is

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unconstitutional. Most gun rights litigation observers agree that the conservative, civil libertarian leaning branch of the Court led by Justice Thomas now has the majority it needs to grant *certiorari* and issue a long overdue Second Amendment decision that sets the record straight (or at least straighter) on what's constitutional and what isn't. If so, this could mark a truly decisive watershed in the

decade-long and nationwide legal war over the Second Amendment.

The case that might actually get to the SCOTUS could be a CRPA-supported case. There is a decent chance that *Duncan* or *Rhode* could end up at the Supreme Court within the next 2 years. In fact, one of the reasons Senator Richard Blumenthal gave for his opposition to Justice Barrett's appointment is *Duncan*,

which the anti-gun-owner Senator expressly mentioned and condemned on the floor of the Senate. Blumenthal is afraid that the *Duncan* case has a fair chance at ending up before the Supreme Court. It is hard to understand why a sitting U.S. Senator would oppose upholding the U.S. Constitution, but that's the world we live in today. **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 CRPA's web page at [crpa.org](http://crpa.org).

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
<b>CHALLENGE TO CALIFORNIA'S AMMUNITION SALES RESTRICTIONS</b>	<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.	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 Circuit later that day for a stay, which it granted, reinstating the status quo pending appeal of preliminary injunction. Oral argument before the 9th Circuit will likely be heard in the final quarter of 2020.
<b>CHALLENGE TO CALIFORNIA'S "ASSAULT WEAPON" RESTRICTIONS</b>	<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.	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 filed their opening appeal brief on January 27, 2020. The state filed its brief May 26, 2020. Oral argument is scheduled for October 8, 2020, in Pasadena. The matter is now submitted, and resolution is pending.

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<b>CHALLENGE TO DOJ'S RECENTLY ENACTED "ASSAULT WEAPON" REGISTRATION REGULATIONS</b>	<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 waiting for the court to schedule oral argument.
<b>CHALLENGE TO CALIFORNIA'S BAN ON STANDARD-CAPACITY MAGAZINES</b>	<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 Circuit 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. On August 14, 2020, the 9th Circuit affirmed plaintiffs' win. On August 28, 2020, the state filed a petition for <i>en banc</i> review.
<b>CHALLENGE TO CA AND LOS ANGELES FIREARM CARRY RESTRICTIONS THAT PROHIBIT BOTH OPEN AND CONCEALED CARRY</b>	<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.
<b>CHALLENGES DOJ'S USE OF DROS SURPLUS TO FUND APPS AS AN ILLEGAL TAX</b>	<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 upheld the DROS fee as a legitimate regulatory fee. Plaintiffs argue that the court's finding contradicts established law regarding regulatory fees. As of November 2020, the matter is fully briefed. The court will likely schedule oral argument for spring of 2021.
<b>DOES THE CITY OF MORGAN HILL'S 48-HOUR LOSS/THEFT REPORTING ORDINANCE FAIL DUE TO PROPOSITION 63 PREEMPTION?</b>	<i>CRPA v. City of Morgan Hill</i>	The trial court granted Morgan Hill's motion for summary judgment and denied plaintiffs' motion for summary judgment on July 30, 2020.	Plaintiffs will appeal to the California Court of Appeals.

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<b>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</b>	<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. The defendants' motion to dismiss is set for September 22, 2020.
<b>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</b>	<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. On July 8, 2020, plaintiffs dismissed the City of Los Angeles and Mayor Garcetti from the suit. On October 20, 2020, the court granted defendants' motion for judgment on the pleadings and dismissed the case with prejudice.
<b>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</b>	<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." Defendants' motion to dismiss was set to be heard in August 2020, but the court vacated it.

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<b>DOES HAWAII'S PERMIT SCHEME FOR GENERAL OPEN CARRY PROHIBITION VIOLATE THE SECOND AMENDMENT?</b>	<i>Young v. Hawaii</i>	This case was on track for an <i>en banc</i> hearing but was stayed pending the outcome of <i>NYSRPA v. City of New York</i> , the gun case that the Supreme Court held moot in June 2020. Shortly after that outcome, the 9th Circuit rescheduled the <i>en banc</i> hearing for September 24, 2020.	The <i>en banc</i> rehearing happened on September 24, 2020. Expect a ruling before summer of 2021. Regardless of who wins, the matter will very likely be appealed to the U.S. Supreme Court.
<b>DOES HAWAII'S CONCEALED CARRY PERMIT REGIME VIOLATE THE SECOND AMENDMENT?</b>	<i>Livingston v. Ballard</i>	Hawaii attorney general moved to stay the case pending <i>Young</i> , which the court granted on June 10, 2019. The case is effectively stalled pending further development in <i>Young</i> .	This case will remain stayed pending the resolution of <i>Young</i> .
<b>DOES CALIFORNIA'S FIREARM RIGHTS RESTORATION REGIME VIOLATE THE SECOND AMENDMENT?</b>	<i>Linton v. Becerra</i>	Plaintiffs filed their motion for summary judgment in June 2020. Briefing was complete at the end of September 2020.	The court will set a hearing and rule on plaintiffs' motion for summary judgment.
<b>CHALLENGE TO UNDER 21 FIREARM PROHIBITION</b>	<i>Jones v. Becerra</i>	There have no significant case developments yet. The court denied plaintiffs' motion for preliminary injunction on November 3, 2020.	Parties will continue to adjudicate the case, and there will likely be motions for summary judgment.
<b>CHALLENGE TO A CALIFORNIA ASSAULT WEAPONS STATUTE THAT PROHIBITS USING A LARGE-CAPACITY MAGAZINE IN A RIFLE CONFIGURED WITH A "FIXED MAGAZINE"</b>	<i>Miller v. Becerra</i>	The state's motion to dismiss and plaintiffs' motion for preliminary injunction are still pending before Federal Judge Roger Benitez as of September 2020.	The court will eventually rule on the pending motions. As of November 2020, the court was holding evidentiary hearings.
<b>CHALLENGE TO WASHINGTON STATE'S UNDER 21 BAN</b>	<i>Mitchell v. Atkins</i>	The district court denied plaintiffs' motion for summary judgment and granted the state's motion for summary judgment on August 31, 2020.	Plaintiffs appealed to the 9th Circuit on September 21, 2020.
<b>CHALLENGE TO FEDERAL BAN ON FELON POSSESSION OF FIREARMS</b>	<i>U.S. v. Torres</i>	After losing in the 9th Circuit, plaintiff petitioned for certiorari in the U.S. Supreme Court on August 27, 2020.	The Court will either deny or grant the petition at an undetermined date. It will likely be pending for a while, per Court custom.

## CALIFORNIA AND 9TH CIR. AMICUS OR CONSULTING SUPPORT

CRPA also provides consulting advice and prepares *amicus curiae* or "friend of the court" briefs in firearm- and Second Amendment-related cases.

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<b>CHALLENGE TO SAN JOSE'S REFUSAL TO RETURN SEIZED FIREARMS</b>	<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.	The Supreme Court denied certiorari on October 13, 2020.

## NATIONAL CASES WITH CALIFORNIA INTEREST

CRPA also litigates and assists 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
<b>DOES NEW JERSEY'S RESTRICTION ON LARGE-CAPACITY MAGAZINES VIOLATE THE SECOND AMENDMENT?</b>	<i>Association of New Jersey Rifle &amp; Pistol Clubs, Inc. v. Attorney General of New Jersey</i>	On September 1, 2020, the 3rd Circuit Court of Appeals affirmed the ruling against plaintiffs, holding that large-capacity magazines are not protected under the Second Amendment.	On September 15, 2020, plaintiffs requested an <i>en banc</i> rehearing. The court has not made that determination as of early November 2020.
<b>DOES A NEBRASKA LAW WHICH DEPRIVES PEOPLE OF SECOND AMENDMENT RIGHTS WITHOUT A JURY TRIAL VIOLATE THE SECOND AMENDMENT?</b>	<i>Zoie H. v. Nebraska</i>	In June 2020, plaintiffs petitioned for certiorari in the U.S. Supreme Court.	The Supreme Court denied <i>certiorari</i> on October 5, 2020.



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