

# LITIGATION REPORT

## STAY FOCUSED ON WHAT 2021 MAY BRING

BY ALEX FRANK

**T**he Georgia Senate runoff elections are now decided, and the threat of federal-level gun control is greater than it has been in a very long time. Democrats now control the White House, as they have an 11-seat majority in the House of Representatives and have exactly half of the seats in the Senate. Because the vice president casts a vote in the event of a dead-even split in the Senate, that means Kamala Harris could be the ultimate decider on a lot of anti-gun laws.

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It's a discouraging situation, but there are some moderate Democrats in the Senate who keen observers

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predict might not support highly restrictive, federal-level gun control legislation. Those two hopefuls are Joe Manchin (WV) and Kyrsten Sinema (AZ). Of course, the notion that the fate of the gun rights of

millions of people can be trusted in the hands of two Democrat Senators is one that we should all take with a grain of salt. But, as we learned with California's former Democrat Governor Jerry Brown vetoing some gun control bills, sometimes moderate Democrats really do understand that gun-control laws miss the mark.

Under the circumstances, gun rights supporters must go on the offensive and support the cause with their time, dollars or however else they can contribute. As we've seen in these incredibly close elections, every person's efforts and vote make a difference.

Although gun rights now face the biggest threat they have seen in a generation, we are fortunate that former President Donald Trump was able to appoint over 200 federal judges and three Supreme Court Justices during his term. In the inevitable legal challenges to gun-control laws that will follow if Congress enacts them, these judges will likely be inclined to view them through the proper legal framework that was established in the *Heller* case ruling in 2008 that has since been largely ignored. Once a 2A case gets back to the Supreme Court, as there is now a stronger chance than ever before, the strong pro-2A voting block consisting of Justices Alito, Gorsuch,

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Thomas, Kavanaugh and Barrett seems poised to issue a strong ruling that could truly breathe life back into the Second Amendment. This is what we have been working toward and hoping to see for a very long time.

However, there is an alarming threat to this scenario. During the campaign, a phrase not uttered since the Great Depression came roaring back into the spotlight: "packing the Court." During the Great Depression, FDR floated the idea of adding justices to the Supreme Court so that they would uphold the New Deal-era policies his administration wanted. Most people don't understand that FDR expanded the reach and powers

of the federal executive branch in ways that were very controversial for their time, and the Supreme Court rightly found some of them unconstitutional. FDR ended up backing off the idea under significant push back from establishment elites in law, journalism and the intellectual sphere.

But when journalists asked Joe Biden about the rumors that "Court packing" was receiving serious consideration in his camp, he flat out said the American people do not need to know whether he is or is not considering it. The full Court press that the leftist media and intellectual juggernaut has invested to legitimize

this repulsive idea has been nothing short of Orwellian. This is not good.

While the Constitution does allow Congress to determine the number of justices who sit on the Supreme Court, the notion that a president whose party has also captured Congress would attempt to nullify the Supreme Court's independence through addition of more justices loyal to him, and not to the Constitution, is infuriating. Especially so if the vote that it takes to do it in the Senate is his vice president's vote. The number of justices on the Supreme Court has stood at nine since 1869. To upset that balance over 150 years later, amidst the extraordinary turmoil, absence of social cohesion and distrust of government at this very moment in American history seems like the kind of miscalculation that could push the nation toward something that makes the drama of 2020 look like a picnic. If this sounds grave, that's because it is. We are in uncharted territory right now.

While we should absolutely stay laser-focused on what 2021 may bring us on the federal level, don't forget that groundbreaking and historical CRPA wins in the *Duncan v. Becerra* and *Rhode v. Becerra* matters continue progressing through the federal district and appellate courts. The *Duncan* case may be headed for a rehearing before an 11-judge *en banc* panel. At the time this is published, we do not know. *Rhode* remains in both the trial court and the appellate court, with developments likely to occur in 2021. Both of these cases could be headed to the United States Supreme Court.

If you support the Second Amendment, now is the time for you to put your money where your mouth is and help the fight that we are in for in 2021. **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 before summer of 2021.
<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.
<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. The 9th Circuit will hopefully issue a ruling on that request in early 2021.
<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.

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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.	The court will eventually rule on the pending motions. As of November 2020, the court was holding evidentiary hearings. Judge Benitez has set the case for a bench trial on January 21, 2021. The court granted defendants' motion to dismiss on September 22, 2020. Plaintiffs appealed on November 19, 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. Plaintiffs appealed on November 19, 2020.
<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." Plaintiffs are expected to file an amended complaint in January 2021.

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<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. Plaintiffs appealed the loss of their preliminary injunction to the 9th Circuit on November 6, 2020.
<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. Judge Benitez has set the case for a bench trial on January 21, 2021.
<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 denied the petition for certiorari on December 14, 2020.
<b>DOES CALIFORNIA'S UNSAFE HANDGUN ACT (I.E., THE ROSTER) VIOLATE THE SECOND AMENDMENT?</b>	<i>Renna v. Becerra</i>	Plaintiffs are expected to file an amended complaint in January of 2021.	It is unclear, but plaintiffs will likely seek an injunction or summary judgment ruling sometime in 2021.

## 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.

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
<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>THIS IS A 4TH AMENDMENT CASE WITH A SECOND AMENDMENT INTERSECTION</b>	<i>Caniglia v. Strom</i>	The Supreme Court granted the certiorari petition on November 20, 2020. CRPA has filed an amicus brief to bring the Second Amendment implications of the case into sharper focus.	The Court will set briefing deadlines for some time in 2021.
<b>DOES A LIFETIME FIREARMS PROHIBITION BASED ON A NON-VIOLENT MISDEMEANOR CONVICTION (DUI) VIOLATE THE SECOND AMENDMENT?</b>	<i>Holloway v. Barr (Rosen)</i>	The petitioners filed their certiorari petition on December 3, 2020.	A certiorari petition will remain pending on the court's docket until the court does what it wants to do with it.
<b>WHETHER THE STATE MUST PROVE THAT PERSONS KNOW THAT THEY ARE PROHIBITED PERSONS DUE TO FELONY STATUS TO SUSTAIN A CONVICTION FOR VIOLATING 18 U.S.C. 922(g), WHICH PROHIBITS FELONS FROM POSSESSING FIREARMS</b>	<i>U.S. v. Gary &amp; Greer v. U.S.</i>	The Supreme Court granted certiorari in these cases on February 8, 2020.	The Court will set a briefing and oral argument schedule for some time in 2021.



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<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>Kirk 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.
<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 9th Circuit <i>en banc</i> panel reheard the case 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 sometime in early 2021.

## FEATURED CASE

# CRPA JOINS NEW 2A LAW CENTER & GOC

## IN SUPREME COURT FIGHT TO STOP WARRANTLESS GUN SEIZURES

The United States Supreme Court will soon hear oral arguments in the case of *Caniglia v. Strom*, a lawsuit challenging the actions of the City of Cranston, Rhode Island, resulting in the seizure of firearms from a law-abiding citizen under the seldom-used Fourth Amendment "community caretaking" exception. Normally reserved for the seizure of property at the scene of a vehicular accident where, if left unchecked, items such as a firearm may pose a risk of being stolen or handled by unauthorized persons, the City of Cranston seeks to expand this limited exception to also apply to a person's own home. To do so, as the Plaintiff's attorney puts bluntly, would create a loophole to the Fourth Amendment "wide enough to drive a truck through." CRPA, joining the newly formed Second Amendment Law Center and Gun Owners of California, has filed an amicus brief on behalf of its members in support of this important legal challenge.

CRPA's amicus brief raises three

main arguments. First, the application of warrantless "community caretaking" seizures plainly implicates Second and Fourth Amendment rights. Second, the text, history and tradition of the Fourth Amendment preclude the vast expansion of the "community caretaking" exception as the City is now attempting to do. Third, applying the "community caretaking" exception in a manner proposed by the City will result in it being used as a pretext to conduct warrantless searches for firearms in a person's home.

Briefing on the matter is expected to be completed by March 24 of this year, with oral arguments to be scheduled shortly thereafter. Thanks in part to the tremendous efforts of President Donald Trump, newly confirmed Justice Amy Coney Barret will be joining other Justices of the Supreme Court in hearing the case. Be sure to subscribe to CRPA email alerts to stay up-to-date on this important litigation.

CRPA's amicus efforts such as this would not be possible without the support of its members and individual contributors. You can help with CRPA's amicus and other litigation efforts by donating to the CRPA Foundation ([crpa.org](http://crpa.org)). **CRPA**

### SECOND AMENDMENT LAW CENTER

The Second Amendment Law Center (2ALC) is a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code and headquartered in Henderson, Nevada. 2ALC is dedicated to promoting and defending the individual rights to keep and bear arms for hunting, sport, self-defense and other lawful purposes envisioned by the Founding Fathers. The purpose of 2ALC is to defend these rights in state and federal courts across the United States. 2ALC also seeks to educate the public about the social utility of private firearms ownership and to provide accurate and truthful historical, criminological and technical information about firearms to policy makers, judges, attorneys, police and the public.