

LITIGATION REPORT

CALIFORNIANS LOOK TO UPCOMING SCOTUS DECISION TO UPHOLD CARRY RIGHTS

BY ALEX FRANK

Within the last few years many states have supplemented their public carry licensing regimes by instituting what was called “constitutional carry,” but is now typically referred to as “permit-less carry.” No one expects California to become the next permit-less carry state. But awareness that the Supreme Court is poised to reshape the standard for public carry rights in particular, and Second Amendment rights, generally, with its forthcoming decision in *NYSPPA v. Bruen* has got many Californian firearm owners wondering how the ruling will impact their rights.

No one can predict exactly what SCOTUS will do, but we can make some reasonably safe predictions.

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The critical one is that the court is very likely to hold that the Second Amendment protects an individual's right to possess a firearm outside of the home for self-defense. This would essentially be the corollary to the Supreme Court's *Heller* decision, which found that the Second Amendment protects an individual right to possess a firearm inside the home for self-defense.

What this will mean, in terms of

practical legal impact, is that jurisdictions will no longer have unlimited (and ripe-for-corruption) discretion that allows them to limit what constitutes “good cause” for getting a permit. Many California jurisdictions have historically refused to recognize a general need to carry for self-defense as “good cause.” That seems likely to change so that permit issuers in all jurisdictions will now be forced to fall in line with more

gun-friendly “shall issue” jurisdictions. Given how populated some of those counties are, like Los Angeles County, the impact could be huge!

That is big news and could really change things for Californians who live in Los Angeles County and certain northern California jurisdictions around the Bay Area. Folks who live in Orange County, San Bernardino, and other more conservative counties likely won't see much of an impact because these jurisdictions are already friendly to the right to carry and generally respect their citizen's 2A rights.

Another fair prediction is that even if the Supreme Court effectively establishes an individual's right to

carry outside the home, jurisdictions that are hostile to firearms rights will pass laws that make it difficult to do so. They might increase fees, require psychological exams, dictate what kind of firearms are permissible, mandate expensive training requirements, limit areas where a permit is good, and impose other kinds of red tape and bureaucratic obstructions. That will likely cause significant litigation over the contours of the right to public carry. And CRPA is gearing up for just that!

The forthcoming ruling will also likely reset the standard for all other Second Amendment questions in a more friendly direction. This could be wonderful timing, given that on Feb-

ruary 28, 2022, the CRPA-supported plaintiffs in *Duncan v. Bonta* filed their petition for writ of certiorari to the United States Supreme Court. Some observers expect the Supreme Court to issue their ruling in *NYSRPA*, and then “GVR” (grant, vacate, and remand) the *Duncan* matter. That means that the Supreme Court would grant the petition, vacate the 9th circuit's en banc ruling that reversed the previous wins in the case, and remand to the lower court for further proceedings consistent with its *NYSRPA* ruling.

It's an exciting time for 2A advocates as CRPA leads the countdown to hope to hear what SCOTUS says in June. **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.

ISSUE	CASE NAME	CASE STATUS	WHAT'S NEXT
CHALLENGE TO CALIFORNIA'S AMMUNITION SALES RESTRICTIONS	<i>Rhode v. Becerra</i>	<p>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 United States Constitution, as well as a violation of the Firearm Owner's Protection Act.</p> <p>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 Ninth Circuit later that day for a stay, which it granted, reinstating the status quo pending appeal of preliminary injunction.</p>	<p>This matter would likely have seen oral argument before the 9th Circuit sometime in the summer or early fall of 2021. However, due to the 9th Circuit's decision to rehear the <i>Duncan v. Becerra</i> matter en banc, this appeal was stayed on March 19, 2021 pending <i>Duncan's</i> resolution.</p> <p>On November 30, 2021, the 9th Circuit <i>en banc</i> panel reversed the <i>Duncan</i> wins. The <i>Duncan</i> plaintiffs petitioned the United States Supreme Court for certiorari on February 28, 2022.</p>

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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 Circuit 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 Circuit stayed the case on July 30, 2019 pending the outcome of <i>Young v. Hawaii</i> . <i>Young</i> is currently at the Supreme Court, with a pending certiorari petition (filed May 11, 2021).
CHALLENGE TO UNDER 21 FIREARM PROHIBITION.	<i>Jones v. Bonta</i>	The 9th Circuit held oral argument on May 12, 2021.	The 9th Circuit will likely release an opinion before the summer of 2022.
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. 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 was heard on October 8, 2020, in Pasadena. The matter is now submitted, and resolution is pending.	This case would likely have proceeded to oral argument in late 2021, but was stayed pending the resolution of the <i>en banc</i> hearing in <i>Duncan v. Becerra</i> . On November 30, 2021, the 9th Circuit <i>en banc</i> panel reversed the <i>Duncan</i> wins. The <i>Duncan</i> plaintiffs petitioned the United States Supreme Court for certiorari on February 28, 2022.
DOES HAWAII'S PERMIT SCHEME FOR GENERAL OPEN CARRY PROHIBITION VIOLATE THE SECOND AMENDMENT?	<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 of 2020. Shortly after that outcome, the Ninth 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. On March 24, 2021, the <i>en banc</i> panel issued its ruling upholding the dismissal.	Mr. Young filed a petition for certiorari in the United States Supreme Court in May of 2021. The court has distributed it for conference but has not taken any definitive action for a while.
DOES CALIFORNIA'S FIREARM RIGHTS RESTORATION REGIME VIOLATE THE SECOND AMENDMENT?	<i>Linton v. Bonta</i>	On March 5, 2021, the Court administratively terminated the pending motion for summary judgment and stayed the case due to the 9th Circuit's announcement that <i>Duncan v. Becerra</i> would be reheard <i>en banc</i> .	The case will remain inactive pending the result of the <i>Duncan</i> re-hearing and Supreme Court Certiorari petition.

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CHALLENGE TO CALIFORNIA'S BAN ON STANDARD-CAPACITY MAGAZINES	<i>Duncan v. Becerra</i>	<p>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 ten 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 Ninth circuit upheld the issuance of the injunction.</p> <p>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.</p>	<p>On August 14, 2020 the 9th Circuit affirmed plaintiffs' win. On August 28, 2020, the state filed a petition for en banc review. On February 25, 2021, the 9th Circuit agreed to an en banc rehearing of the case, which occurred on June 22, 2021.</p> <p>On November 30, 2021, the en banc panel issued an opinion reversing the three judge panel and upholding California's magazine capacity restrictions.</p> <p>The <i>Duncan</i> plaintiffs petitioned the United States Supreme Court for certiorari on February 28, 2022.</p>
CHALLENGES DOJ'S USE OF DROS SURPLUS TO FUND APPS AS AN ILLEGAL TAX.	<p><i>Gentry v. Becerra</i></p> <p>(Formerly <i>Gentry v. Harris</i>)</p>	<p>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.</p> <p>Trial was held in January of 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.</p>	<p>The California Court of Appeals affirmed judgment in the State's favor on March 26, 2021. Plaintiffs are pursuing an attorneys fee award in trial court for the claims that were successful.</p>
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>	<p>The court granted Defendants' motion to dismiss on September 22, 2020. Plaintiffs appealed on November 19, 2020, and filed their brief in the 9th Circuit Court of Appeals on March 4, 2021.</p>	<p>The Ninth Circuit issued an opinion on January 20, 2022, reversing the district court's dismissal of the plaintiffs' action.</p>
DOES THE CITY OF MORGAN HILL'S 48-HOUR LOSS/ THEFT REPORTING ORDINANCE FAIL DUE TO PROPOSITION 63 PREEMPTION?	<i>Kirk v. City of Morgan Hill</i>	<p>The trial court granted Morgan Hill's motion for summary judgment and denied Plaintiffs' motion for summary judgment on July 30, 2020.</p>	<p>Plaintiffs filed their opening brief in the California Court of Appeal on August 25, 2021. The city filed its briefing on November 23, 2021.</p>

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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>	<p>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.</p> <p>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."</p>	<p>Plaintiffs have appealed both their partial motion to dismiss loss and loss of their request for a preliminary injunction.</p> <p>Plaintiffs filed their opening brief on August 11, 2021.</p> <p>On March 8, 2022, the 9th Circuit ordered the case be held in abeyance pending the issuance of the mandate in <i>McDougall v. County of Ventura</i>.</p>
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>Martinez v. Villanueva</i>	<p>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.</p> <p>On October 20, 2020, the court granted defendants' motion for judgment on the pleadings and dismissed the case with prejudice.</p>	<p>Plaintiffs appealed on November 19, 2020 and filed their opening brief on March 4, 2021. Defendants filed their answering brief on May 5, 2021.</p> <p>The court heard oral argument on October 18, 2021.</p> <p>On March 14, the 9th Circuit stayed the case pending the outcome of <i>McDougall v. County of Ventura</i>.</p>
DOES HAWAII'S CONCEALED CARRY PERMIT REGIME VIOLATE THE 2ND AMENDMENT?	<i>Livingston v. Ballard</i>	<p>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>.</p>	<p>This case will remain stayed pending the resolution of <i>Young</i>.</p>
CHALLENGE TO A CALIFORNIA ASSAULT WEAPONS STATUTE THAT PROHIBITS USING A LARGE CAPACITY MAGAZINE IN A RIFLE CONFIGURED WITH A "FIXED MAGAZINE"	<i>Miller v. Bonta</i>	<p>On June 4, 2021, Judge Benitez issued a decision and judgment declaring the statutes that constitute California's assault weapons prohibition unconstitutional. However, he simultaneously stayed his order for 30 days to allow the state to appeal. The state has appealed and obtained an indefinite stay of Judge Benitez's ruling pending resolution of the appeal.</p>	<p>The case will very likely remain stayed for a while as the appeal progresses.</p>
DOES CALIFORNIA'S UNSAFE HANDGUN ACT (I.E. THE ROSTER) VIOLATE THE SECOND AMENDMENT?	<i>Renna v. Bonta</i>	<p>The State's motion to dismiss was granted in part and denied in part on April 23, 2021. The court's ruling means that the plaintiffs' challenge to the roster itself is dead, but the other aspects of the challenge remain alive.</p>	<p>Parties continue to litigate the matter in the district court.</p>

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CHALLENGE TO WASHINGTON STATE'S UNDER 21 BAN	<i>Mitchell v. Atkins</i>	Briefing is underway in the 9th Circuit as of middle of 2021.	The court has not yet set an oral argument date.
DID CALIFORNIA'S MANAGEMENT OF THE ONLINE SYSTEM FOR "ASSAULT WEAPON" REGISTRATION VIOLATE THE RIGHTS OF POTENTIAL REGISTRANTS?	<i>Sharp v. Bonta</i>	Plaintiffs reached a stipulated settlement and consent decree with the State on March 29, 2021. The State will allow a limited class of persons another chance to register "bullet-button" assault weapons, pursuant to the consent decree.	The new registration period will commence on January 13, 2022, at 9:00 AM and close April 12, 2022.
DOES A CALIFORNIA LAW THAT ALLOWS FIREARM PURCHASER INFORMATION TO BE DISCLOSED TO THIRD PARTIES VIOLATE PRIVACY LAWS AND THE SECOND AMENDMENT?	<i>Brandeis v. Bonta</i>	State court challenge to the same laws being challenged in the <i>Doe v. Bonta</i> matter. Filed January 28, 2022.	Plaintiffs filed for a preliminary injunction on March 3, 2022.
DOES A CALIFORNIA LAW THAT ALLOWS FIREARM PURCHASER INFORMATION TO BE DISCLOSED TO THIRD PARTIES VIOLATE PRIVACY LAWS AND THE SECOND AMENDMENT?	<i>Doe v. Bonta</i>	The federal court in San Diego denied Plaintiffs' request for a temporary injunction on January 20, 2022.	The case will proceed through litigation.

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
DOES NEW YORK STATE'S PUBLIC CARRY LICENSING FRAMEWORK VIOLATE THE SECOND AMENDMENT?	<i>New York State Rifle & Pistol Association v. Bruen (formerly Corlett)</i>	The Supreme Court granted certiorari on April 26, 2021, framing the issue as "whether the State's denial of petitioners' applications for concealed-carry licenses for self-defense violated the Second Amendment."	The court heard oral argument on November 3, 2021. Expect an opinion in summer of 2022.
DID THE ATF EXCEED ITS AUTHORITY TO ORDER A BAN ON "BUMP" STOCKS?	<i>Aposhian v. Garland</i>	Petition for certiorari filed August 2, 2021.	The petition has been distributed for conference and rescheduled multiple times.

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DOES A SEATTLE ORDINANCE THAT PROHIBITS THE PUBLIC CARRY OF SPECIFIC TYPES OF KNIVES VIOLATE THE SECOND AMENDMENT?	<i>Zaitzeff v. Seattle</i>	Petition for certiorari filed December 16, 2021.	Distributed for conference as of February 18, 2022.
DOES NEW JERSEY'S BAN ON MAGAZINES OVER 10 ROUNDS VIOLATE THE SECOND AMENDMENT?	<i>Association of New Jersey Rifle & Pistol Clubs v. Grewal</i>	Petition for certiorari filed April 26, 2021.	The petition was distributed for conference last on September 27, 2021, with no activity since then.
DOES MARYLAND'S ASSAULT WEAPONS BAN VIOLATE THE SECOND AMENDMENT?	<i>Bianchi v. Frosh</i>	Petition for certiorari filed December 16, 2021.	Response to certiorari petition due in March of 2022.
THIS CASE CHALLENGES THE LAW THAT BARS INDIVIDUALS UNDER 21 YEARS OF AGE FROM BUYING HANDGUNS.	<i>Marshall v. BATFE</i>	Petition for certiorari filed February 17, 2022.	The case will likely sit on the docket until something happens with <i>NYSRPA v. Bruen</i> .
CHALLENGE TO A MASSACHUSETTS LAW THAT BARS NON-VIOLENT MISDEMEANOR CONVICTS FROM PURCHASING HANDGUNS.	<i>Morin v. Lyver</i>	Certiorari petition filed December 13, 2022.	Response is due in March. The case will likely sit on the docket until something happens with <i>NYSRPA v. Bruen</i> .
THIS CASE INVOLVES THE SCOPE OF THE LAW ENFORCEMENT OFFICER'S SAFETY ACT.	<i>Rodrigues v. County of Hawaii</i>	Certiorari petition filed December 13, 2021.	Distributed for conference set for April 1, 2022.
ANOTHER BUMP STOCK BAN CASE.	<i>Gun Owners of America v. Garland</i>	Certiorari petition filed March 2, 2022.	Response to the petition is due April 7, 2022.



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