

FIREARMS LITIGATION REPORT

February 2017

Prepared by:



NRA/CRPA California and 9th Circuit Litigation Matters

Issue	Case Name	Case Status	What's Next
Challenge to CA and Los Angeles Firearm Carry Restrictions that Prohibit Both Open and Concealed Carry	Flanagan v. Harris	The case was filed on August 17, 2016 as a direct response to <i>Peruta</i> . The suit seeks to force the court to decide whether or not it is willing to uphold a complete prohibition on the right of law-abiding citizens to carry a firearm for self-defense.	A hearing on Defendants' Motions to Dismiss portions of Plaintiffs' claims will be heard in February 2017. The case is currently in the discovery phase and substantive motions are expected to be filed and heard in late 2017.
Challenges to "Gunmageddon," Prop 63, and LA's Ultra-Compact Firearms Ban	N/A	CRPA and NRA attorneys are preparing multiple challenges to the new laws that were passed in 2016 that improperly punish law-abiding gun owners. CRPA and NRA attorneys also submitted a pre-litigation demand letter to the City of Los Angeles demanding that it repeal its ultra-compact firearms in September 21, 2016.	Multiple lawsuits will be filed to challenge the "Gunmageddon" bills and Prop 63 in 2017. The City of Los Angeles is considering whether it will repeal its ultra-compact firearms ordinance, otherwise it will face further litigation in 2017.
Challenge to "good cause" requirement for CCWs	Peruta v. San Diego	In June 2016, a divided "en banc" panel of the 9th Circuit Court of Appeals ruled 7-4 in favor of the County, holding that the government's denial of the only means of carrying a firearm under state law does not implicate the Second Amendment. The decision reverses an earlier three-judge panel decision of the 9th circuit and now stands in direct conflict with the Supreme Court's decision in <i>Heller</i> .	On January 12, NRA and CRPA attorneys submitted a petition for review to the United States Supreme Court. Several amicus briefs in support of the petition will be filed in February 2017.

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<p>Challenge to DOJ's excessive DROS fees that generated a massive surplus.</p>	<p><u>Bauer v. Harris</u></p>	<p>In March 2015, the district court issued an opinion upholding California's use of DROS fees to fund APPS and other law enforcement activities. Plaintiffs have appealed. The case has been fully briefed and is awaiting oral arguments.</p>	<p>Oral arguments are scheduled for the week of April 17-April 21, 2017.</p>
<p>Challenges DOJ's Use of DROS surplus to fund APPS</p>	<p><u>Gentry v. Harris</u></p>	<p>Plaintiffs filed an amended complaint alleging that the DROS fee is an invalid property tax. The case is currently in the discovery process.</p>	<p>The case is expected to go trial in 2017.</p>
<p>Challenge to CA DOJ's underground regulations regarding the Firearm Safety Certificate Program</p>	<p><u>Belemjian v. Harris</u></p>	<p>This case forced DOJ to finally begin the process of enacting regulations for the FSC program in February 2015. Plaintiffs appealed the lower court's denial of Plaintiffs' request for attorneys' fees.</p>	<p>Briefing concerning attorneys fees is currently in progress in the California Court of Appeals</p>
<p>Challenge to improper denial of use permit to operate firearms retail and repair business.</p>	<p><u>Settergren v. Daly City</u></p>	<p>The case is currently in discovery phase and the parties are actively engaged in settlement negotiations.</p>	<p>If the case is not resolved through settlement, discovery followed by substantive motions to resolve the case on the merits.</p>
<p>Vagueness challenge to (AB 962's "handgun ammunition" sales registration requirement and mail order ban</p>	<p><u>Parker v. California</u></p>	<p>In December 2016, as a result of Prop 63, the California Supreme Court dismissed its review of the Court of Appeals' opinion that upheld the trial court's order striking down AB 962. The Court of Appeals decision now stands as the final opinion in the case and Plaintiffs will seek recovery of their attorneys' fees.</p>	<p>Plaintiffs' motion for attorneys' fees will be heard in 2017. Separate litigation is being prepared to challenge the ammunition restrictions in Proposition 63.</p>

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10+ Round Magazine Possession Ban	<u>Fyock v. Sunnyvale</u>	The passage of SB 1446 and Proposition 63 prohibiting the possession of 10+ round magazines statewide now preempts the local ordinance and mooted the case.	<p>The case was dismissed without prejudice in December 2017.</p> <p>Separate litigation is being prepared to challenge the State's 10+ round magazine ban. If that litigation is successful, this case will be refiled against Sunnyvale.</p>
Preemption challenge to LA ordinance banning possession of 10+ round magazines	<u>Bosenko v. City of Los Angeles</u>	The City is currently in the process of repealing the ordinance because it is now preempted by state law.	<p>Once the City repeals its ordinance, the case will be dismissed.</p> <p>Separate litigation is being prepared to challenge the State's 10+ round magazine ban.</p>

In addition to these cases, NRA and CRPA regularly provide consulting advice and prepare amicus curiae or “friend of the court” briefs in a number of other firearm related cases. NRA and CRPA have supported or will be supporting the following cases.

California and 9th Circuit Amicus and Consulting Support

Issue	Case Name	Case Status	What’s Next
FFL Zoning Restrictions	Teixeira v. Alameda County	In December 2016, the 9th Circuit ordered the case to be reheard by an 11-judge “en banc” panel.	NRA and CRPA attorneys filed an amicus brief on January 31, 2017. Oral arguments are scheduled to take place the week of March 20, 2017.
Sacramento and Yolo County CCW Issuance Policies	Richards v. Prieto	The <i>Richards</i> plaintiffs joined the <i>Peruta</i> plaintiffs in petitioning for full court “en banc” rehearing by all sitting members of the 9th Circuit Court of Appeals.	On August 15, the 9th Circuit denied Plaintiffs’ petition for full court “en banc” rehearing by all sitting members of the 9th Circuit. The Richards plaintiffs did not seek Supreme Court review of the case.
Hawaii CCW Scheme	Baker v. Kealoha	The court is currently reviewing supplemental briefing from the parties following the en banc decision in <i>Peruta</i> .	A decision from the Court regarding whether to remand the case to the district court could come at any time.
California Handgun Roster	Pena v. Lindley	The federal district court upheld the Roster in 2015. Plaintiffs appealed, and the case has been fully briefed before the 9th Circuit.	Oral arguments are scheduled for March 16, 2017.
10-Day Wait as applied to current firearm owners	Silvester v. Harris	In December 2016, the 9th Circuit issued its decision upholding the 10-day wait as applied to current gun owners. Chief Judge Sydney Thomas went even further and stated that the restriction is “presumptively lawful” and therefore falls “outside the scope of the Second Amendment.”	Plaintiffs now have the option of either requesting review by an 11-judge “en banc” panel of the 9th Circuit, or submitting a petition for review directly to the United States Supreme Court.

California and 9th Circuit Amicus and Consulting Support

Issue	Case Name	Case Status	What's Next
1st Amendment challenge to handgun ad prohibition	Tracy Rifle and Pistol v. Harris	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 Circuit upheld the lower court's order within two weeks of oral arguments.	Litigation will now resume in the district court.
FFL zoning ordinance	NSSF v. Pleasant Hill	The case has been settled.	The City has agreed to pay NSSF over \$400,000 in legal fees
Challenges DOJ regulation barring sale of more than one handgun in 30 days to COE holders	Doe v. Harris	The California trial court upheld DOJ's regulation and the plaintiffs have appealed the decision to the California Court of Appeals.	The case is currently being brief before the Court of Appeals. Oral arguments will likely be scheduled for late 2017.
Challenge to ban on possession and carriage of firearms on recreational Army Corps' lands.	Nesbitt v. U.S. Army Corps of Engineer	The case has been fully briefed and is awaiting oral arguments before the 9th Circuit Court of Appeals.	Oral arguments are scheduled to take place on March 6, 2017.
State Court challenge to California's micro-stamping requirements	NSSF v. California	On December 1, the California Court of Appeals issued a ruling in favor of NSSF, allowing the lawsuit to proceed in the lower court. Since then, the California Attorney General has petitioned the California Supreme Court for review.	Litigation may now resume in the lower court. Litigation could be further stayed in the lower court if the California Supreme Court grants the State's petition for review.

NRA and CRPA also provide assistance in a number of critical Second Amendment cases across the country that could set precedent for future challenges to California gun laws. The following are some of the more significant examples of these cases.

National Amicus Support

Issue	Case Name	Case Status	What's Next
Challenges Maryland's ban on "assault weapons" and 10+ round magazines	Kolbe v. Hogan	On February 4, 2016, the 4th Circuit overturned the district court's approval of the ban under intermediate scrutiny, and ordered the district court to apply "strict scrutiny." The State appealed and the case was reheard by the full 4th Circuit sitting "en banc" on May 11, 2016.	An audio recording of the recent "en banc" oral arguments is available at: http://michellawyers.com/kolbe-v-omalley/ . A decision from the 4th Circuit could come anytime.
Challenges Washington D.C.'s "good reason" requirement for the issuance of a CCW permit	Grace v. District of Columbia	On May 17, 2016, the Court granted the Plaintiffs' request for an order blocking enforcement of the "good reason" requirement. The government appealed the decision to the D.C. Circuit Court of Appeals and the Court issued a stay of the lower court's order that prohibited D.C. from enforcing its "good reason" requirement.	Oral arguments in the case were held on September 20, 2016, along with <i>Wrenn v. District of Columbia</i> . A decision from the Court of Appeals can be expected anywhere in the next 3-9 months.