

SECOND AMENDMENT COURTWATCH

Tracking Second Amendment & Gun Policy Litigation

HANDGUN REGULATIONS & LICENSING

CERT GRANTED: *NYSRPA v. Cuomo* (S. Ct. No. 18-280 ([docket](#)), 2d Cir. No. 15-638)

❖ **Challenge to New York City rules for transporting handguns licensed for premises.**

- Case status: Petitioner's brief is due May 7 and respondent's brief August 5.
- Lower court outcome: The 2d Cir. and district court rejected the challenge.

CERT STAGE: *Mance v. Barr* (S. Ct. 18-663 ([docket](#)); 5th Cir. No. 15-10311)

❖ **Challenge to federal laws restricting out-of-state handgun purchases.**

- Case status: Cert petition fully briefed and has been distributed for 4/12 conference.
- Lower court outcome: 5th Cir. rejected challenge and denied en banc review 8-7.

CERT STAGE: *Peña v. Horan* (S. Ct. No. 18-843 ([docket](#)); 9th Cir. No. 15-15449)

❖ **Challenge to California Unsafe Handgun Act (design safety req's + microstamping).**

- Case status: Cert petition fully briefed and has been distributed for 4/12 conference.
- Lower court outcome: 9th Cir. upheld the requirements w/ dissent on microstamping.

People v. Vivian Brown (Ill. S. Ct. No. 124100)

❖ **Challenge to Illinois FOID firearm licensing law, brought by criminal defendant.**

- Case status: Ill. Supreme Court to hear appeal; Illinois' opening brief due 4/26/19.
- Lower court outcome: Trial court held FOID law violated 2nd Amendment as applied to defendant who "possessed a gun, in her house, for the purpose of self-defense." Also held it is impossible to comply with requirement to have FOID card on person.

Libertarian Party v. Cuomo (2d Cir. No. 18-386)

❖ **Challenge to New York pistol licensing and concealed carry licensing laws.**

- Case status: Case was argued 2/20/19 before KeARSE, Jacobs, Walker.
- Lower court outcome: District court rejected the challenge.

Maryland Shall Issue v. Hogan (D. Md. No. 16-cv-03311)

- ❖ **Challenge to Maryland Handgun Qualification Law (license-to-possess).**
 - Case status: The court granted defense motion for summary judgment on 4/4/19, concluding plaintiffs lacked standing to pursue 2nd Amendment and other claims.

GUNS IN PUBLIC

CERT STAGE: *Rogers v. Grewal* (S. Ct. No. 18-824 ([docket](#)); 3d Cir. No. 18-2366)

- ❖ **Challenge to New Jersey concealed carry licensing law (relitigating *Drake*).**
 - Case status: Cert petition filed 12/20/18; after extension, NJ response due 4/19.
 - Lower court outcome: 3d Cir. aff'd ruling upholding the law in a summary order.

CERT STAGE: *Gould v. Morgan* (S. Ct. No. 18-1272 ([docket](#)); 1st Cir. No. 17-2202)

- ❖ **Challenge to local policies implementing Massachusetts concealed carry laws.**
 - Case status: Plaintiffs filed a cert petition on 4/1/19; response due 5/6/19.
 - Lower court outcome: The district court and 1st Cir. upheld the challenged policies.

EN BANC CASE: *Young v. Hawaii* (9th Cir. No. 12-17808) (en banc)

- ❖ **Challenge to Hawaii open carry law and county of Hawaii's implementation of law.**
 - Case status: 9th Cir. granted county and state's petition for rehearing *en banc*, then stayed proceedings pending the Supreme Court's decision in *NYSRPA*.
 - Lower court outcome: District court upheld law; vacated panel decision reversed.

Culp v. Madigan (7th Cir. 17-2998)

- ❖ **Challenge to Illinois restrictions on carry permit applications from non-residents.**
 - Case status: Divided 7th Cir. panel (2-1) rejected challenge on 4/12/19.
 - Lower court outcome: Dismissed case; went back to 7th Cir. (which aff'd at PI stage)

Flanagan v. Becerra (9th Cir. No. 18-55717) & *Nichols v. Brown* (9th Cir. No. 14-55873)

- ❖ **Challenges to California open carry law.**
 - Case status: *Flanagan* fully briefed; *Nichols* stayed pending resolution of *Young*.
 - Lower court outcomes: Both challenges rejected below.
 - **New open carry challenge just filed:** *Baird v. Becerra* (E.D. Cal. 19-at-00254)

Malpasso v. Pallozzi (4th Cir. No. 18-2377)

- ❖ **Challenge to Maryland concealed carry licensing law (relitigating *Woollard*).**
 - Case status: Fully briefed at 4th Circuit; oral argument not scheduled yet.
 - Lower court outcome: District court dismissed case in 2-page order.

NYSRPA v. Beach (2d Cir. 19-156)

❖ **Challenges to New York concealed carry licensing law (relitigating *Kachalsky*).**

- Case status: Expedited schedule: appellant brief due 3/20 and appellees' due 4/24.
- Lower court outcome: District court dismissed case in brief order.

Livingston v. Ballard (D. Haw. No. 19-cv-157)

❖ **Challenge to Hawaii's open/concealed carry permitting laws.**

- Case status: Just filed on 3/29/19.

MILITARY-STYLE WEAPONS, BUMP STOCKS & MAGAZINES

MAY BE CERT STAGE: *Ass'n of New Jersey Rifle & Pistol v. Grewal* (3d Cir. No. 18-3170)

❖ **2nd Amendment and Takings Clause challenge to New Jersey LCM possession ban.**

- Case status: The 3d Cir. affirmed the district court's denial of a PI and denied plaintiffs-appellants *en banc* petition on 1/9/19 (Hardiman would have granted it).

MAY BE CERT STAGE: *Guedes v. ATF* (Supreme Court 18A1019; D.C. Cir. No. 19-5042)

❖ **Takings Clause, APA, and other challenges to ATF federal rule banning bump stocks.**

- Case status: Cert petition expected after D.C. Cir. upheld rule and Supreme Court denied motions to stay that ruling (Thomas + Gorsuch would have granted stay).
- Other challenges to bump stock rule include *Gun Owners of America v. Barr* (6th Cir. No. 19-1298) (district court denied PI; 6th Cir. denied motion to stay effective date of rule pending appeal), and *Aphosian v. Barr* (10th Cir. No. 19-4036) (district court denied PI; motion for injunction pending appeal is being briefed at 10th Cir).

Worman v. Healey (1st Cir. No. 18-1545)

❖ **2nd Amendment, due process challenge to MA assault weapon and LCM ban.**

- Case status: Oral argument held on 1/9/19 before Selya, Barron, and Souter.
- Lower court outcome: The district court upheld the laws, following *Kolbe* (4th Cir.).

Maryland Shall Issue v. Hogan (4th Cir. No. 18-2474)

❖ **Takings Clause, due process + statutory challenge to Maryland trigger activator ban.**

- Case status: 4th Cir. opening brief due 2/12; response due 4/15 (after extension).
- Lower court outcome: District court granted state's motion to dismiss.

Duncan v. Becerra (9th Cir. No. 19-55376, S.D. Cal. No. 17-01017)

❖ **2nd Amendment, Takings Clause challenge to California LCM ban.**

- Case status: The district court granted a permanent injunction and found CA LCM regulations unconstitutional in their entirety; a week later he stayed part of this ruling but possession ban remains enjoined. CA's 9th Circuit opening brief due 7/22/19.
- Other outcomes: The district court previously issued a PI, which 9th Cir. affirmed 2-1.

Rupp v. Becerra (C.D. Cal. No. 17-cv-00746)

❖ **2nd Amendment, due process, and Takings Clause challenge to California assault weapon restrictions and registration requirements.**

- Case status: The district court previously denied plaintiffs' motion for a PI, aimed at a narrow part of the law, and dismissed the due process and Takings Clause claims. Summary judgment motions on the remaining 2nd Amendment claim filed 3/25/19.

LAWS DISARMING DANGEROUS PEOPLE, MINORS

MAY BE CERT STAGE: *Medina v. Whitaker* (D.C. Cir. No. 17-5248)

❖ **As-applied challenge to § 922(g)(1) brought by nonviolent felon.**

- Case status: Cert petition is expected.
- Lower court outcome: D.C. Cir. affirmed district court's rejection of as-applied challenge, then denied en banc rehearing on 4/2/19.

Kanter v. Barr (7th Cir. No. 18-1478)

❖ **As-applied challenge to § 922(g)(1) brought by nonviolent felon.**

- Case status: 7th Cir. rejected challenge on 3/15/19 over Judge Barrett dissent.
- Lower court outcome: District court rejected as-applied challenge.

Hatfield v. Whitaker (7th Cir. No. 18-2385)

❖ **As-applied challenge to § 922(g)(1) brought by nonviolent felon.**

- Case status: Oral argument scheduled for 4/12/19 at 9:30am (panel revealed 4/12).
- Lower court outcome: District court sustained the as-applied challenge.

Linton v. Becerra (N.D. Cal. No. 18-cv-07653, filed Dec. 20, 2018)

❖ **Challenge to policies making out-of-state felonies prohibiting even if rights restored.**

- Case status: California's motion to dismiss fully briefed; set for hearing 5/2/2019.

❖ **Numerous as-applied challenges to § 922(g)(1) are being or have been litigated in the Third Circuit, where *Binderup* (en banc) is the law. See, e.g.:**

Accepted As-Applied Challenges

- *Holloway v. US Attorney General* (3d Cir. No. 18-3595): US appeal from M.D. Pa. decision granting summary judgment in favor of § 922(g)(1) as-applied challenger.
- *Miller v. AG* (E.D. Pa. No. 17-cv-2627): on 2/4/19, district court granted summary judgment in favor of § 922(g)(1) challenger; US seems not to be appealing.

Rejected As-Applied Challenges

- *King v. AG* (3d Cir. No. 18-02571): plaintiff's appeal from decision rejecting challenge.
- *Baumiller v. AG* (W.D. Pa. No. 17-cv-1381): on 3/7/19 court rejected as-applied challenge by plaintiff w/ misdemeanor theft conviction; he has 60 days to appeal.
- *Laudenslager v. AG* (M.D. Pa. No. 17-cv-00330): same posture, decided 2/13.

❖ **Recently-filed minimum age challenges pending in district courts:**

- *Mitchell v. State of Washington* (W.D. Wash. No. 18-cv-05931, filed Nov. 15, 2018): challenge to Washington minimum age for assault rifles.
- *Hirschfield v. Bureau of Alcohol, Tobacco & Firearms* (W.D. Va. No. 18-cv-00103, filed Oct. 26, 2018): challenge to federal handgun minimum age law.
- *NRA v. Bondi*, (N.D. Fla. No. 18-cv-00137, filed Mar. 9, 2018): challenge to FL minimum age law; stayed pending interlocutory appeal on use of pseudonyms.

COMMERCE CLAUSE / SECOND AMENDMENT CHALLENGES

Defense Distributed v. Grewal (D. N.J. No. 19-cv-04753)

❖ **Dormant commerce clause and numerous other challenges to New Jersey AG's efforts to prevent dissemination of code for 3D printed firearms.**

- Case status: Stayed pending resolution of case same plaintiffs brought in Texas.

Mitchell v. State of Washington (W.D. Wash. No. 18-cv-05931)

❖ **Commerce clause challenge to WA law allegedly prohibiting sale of assault weapons to out-of-state residents (and 2nd Amendment challenge to other parts of law).**

- Case status: State defendant answered complaint; other defendants moved to dismiss on jurisdictional grounds (motions pending).

Rhode v. Becerra (S.D. Cal. No. 18-cv-00802) (Benitez, J. - same judge assigned to LCM case)

❖ **Commerce clause and other challenges to CA ammunition background checks law.**

- Case status: District court denied motion to dismiss commerce clause and preemption challenges; summary judgment motions due 10/11/19.

AFFIRMATIVE LITIGATION

MAY BE CERT STAGE: *Soto v. Bushmaster Firearms Int'l, LLC* (Conn. S. Ct. No. 19833)

❖ **Lawsuit against manufacturers of assault rifle used at Sandy Hook.**

- Case status: On 3/14, the CT Supreme Court reversed the suit's dismissal and reinstated plaintiffs' unfair trade practices (CUTPA) claim, interpreting federal law (PLCAA). Defendants filed a narrow motion for reconsideration which is pending.

OTHER

❖ Other pending challenges brought by organizational plaintiffs or individuals include:

- *Shults v. Sheldon* (C.D. Ill. No. 16-cv-2214): challenge to IL agency rule prohibiting **guns in foster homes**; dismissed on standing grounds on 4/1 with no appeal yet.
- *Roberts v. Connors* (D. Haw. No. 19-cv-00165, filed Apr. 2, 2019): Equal Protection challenge to HI's **citizenship requirement for carry permit** applicants.

- *Roe v. US* (E.D. Cal. No. 19-at-00154, filed Feb. 25, 2019): 2nd Amendment and other challenges to **§ 922(g)(4) and CA laws on mental health holds**.
- *Attaway v. Corsi* (W.D. Mo. No. 19-cv-32, filed Jan. 15, 2019): 2nd Amendment and MO constitutional challenge to MO **gun restrictions for foster parents**.
- *Miller v. Walker* (C.D. Ill. No. 18-cv-03085, filed Apr. 16, 2018): 2nd Amendment challenge to IL agency regulations restricting guns in home **daycare facilities**.
- *Johnson v. Lyon* (W.D. Mich. No. 17-cv-00124, filed Jul. 27, 2017): 2nd Amendment challenge to Michigan agency rules for **gun storage by foster / adoptive parents**.

ABOUT GIFFORDS LAW CENTER

For nearly 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.