

# SECOND AMENDMENT COURTWATCH

## *Tracking Second Amendment & Gun Policy Litigation*

### HANDGUN REGULATIONS & LICENSING

**CERT GRANTED:** *NYSRPA v. City of New York* (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: Fully briefed as of 9/4. The case was distributed for the 10/1 conference.
- 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 was distributed at 4/12 conference; no updates on docket.
- 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 was distributed at 4/12 conference; no updates on docket.
- Lower court outcome: 9th Cir. upheld the requirements w/ dissent on microstamping.

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

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

- Case status: Fully briefed as of 7/30.
- 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 argued 2/20/19 before Kearse, Jacobs, Walker.

- Lower court outcome: District court rejected the challenge.

*Maryland Shall Issue v. Hogan* (4th Cir. No. 19-1469)

❖ **Challenge to Maryland Handgun Qualification Law (license-to-possess).**

- Case status: Fully briefed as of 8/27.
- Lower court outcome: The court granted defense motion for summary judgment on 4/4/19, concluding plaintiffs lacked standing to pursue 2nd Amendment, other claims.

*Guns Save Life, Inc. v. Raoul* (Sangamon Cnty. Cir. Ct. No. 2019 CH 000180)

❖ **NRA-backed challenge to Illinois FOID firearm licensing law.**

- Case status: court denied plaintiff's motion for TRO and preliminary injunction on 5/24/19, and plaintiffs filed an interlocutory appeal of this denial on 5/29/19.

## 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 fully briefed; distributed for 5/23 conference.
- 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: Cert petition briefs distributed for conference on June 6, 2019.
- Lower court outcome: The district court and 1st Cir. upheld the challenged policies.

**MAY BE CERT STAGE:** *Malpasso v. Pallozzi* (4th Cir. No. 18-2377)

❖ **Challenge to Maryland concealed carry licensing law (relitigating *Woollard*).**

- Case status: Cert petition deadline extended to 9/26.
- Lower court outcome: In 4/29 unpublished opinion, 4th Cir. affirmed district court's dismissal of case.

**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.

**CERT STAGE:** *Culp v. Raoul* (formerly *Culp v. Madigan*) (7th Cir. 17-2998)

❖ **Challenge to Illinois restrictions on carry permit applications from non-residents.**

- Case status: Cert petition deadline extended to 10/10.
- Lower court outcome: 7th Cir. panel rejected challenge on 4/12; en banc petition denied 5/13.

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

❖ **Challenges to California open carry law.**

- Case status: Both cases stayed pending resolution of *Young*.
- Lower court outcomes: Both challenges rejected below.

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

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

- Case status: Stayed pending resolution of *NYSRPA*.
- Lower court outcome: District court granted defense motion to dismiss.

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

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

- Case status: Plaintiffs filed a PI motion on 4/11. On 6/10, the Ninth Circuit granted defendants' motion to stay proceedings pending the Ninth Circuit's decision in *Young*.

## MILITARY-STYLE WEAPONS, BUMP STOCKS & MAGAZINES

**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 filed on 8/29.
- Lower court outcome: DC Cir. upheld the rule on 4/1 and Supreme Court denied motions to stay that ruling (Thomas + Gorsuch would've granted stay).
- Other challenges to bump stock rule include *Gun Owners of America v. Barr* (6th Cir. No. 19-1298) and *Aphosian v. Barr* (10th Cir. No. 19-4036).

**CERT STAGE:** *Worman v. Healey* (1st Cir. No. 18-1545)

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

- Case status: Cert petition deadline extended to 9/23.
- Lower court outcome: The district court upheld the laws, following *Kolbe* (4th Cir.). Panel affirmed dismissal on 4/26, applying intermediate scrutiny.

**MAYBE CERT STAGE:** *Wilson et al. v. Cook County* (7th Cir. No. 18-2686)

❖ **Challenge to Cook County assault weapons ban**

- Case status: 7th Cir. affirmed dismissal of case on 8/29.
- Lower court outcome: District court dismissed case, relying on *Friedman* (7th 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. appeal fully briefed as of 5/3.
- Lower court outcome: District court granted defense 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: Appellees' response due 9/16.
- Lower court outcome: District court granted permanent injunction, finding LCM regs unconstitutional in entirety; a week later he stayed part of ruling but possession ban remains enjoined. District court previously issued a PI, which 9th Cir. affirmed 2-1.

*Rupp v. Becerra* (9th Cir. No. 19-56004, C.D. Cal. No. 17-cv-00746)

❖ **2nd Amendment, other challenges to CA assault weapon restrictions and registration.**

- Case status: Appellants' opening brief due 12/5.
- Lower court outcome: 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 remaining 2nd Amendment claim fully briefed.

*Ass'n of New Jersey Rifle & Pistol v. Grewal* (D. N.J. No. 18-cv-10507)

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

- Case status: On 7/29, the district court granted New Jersey's summary judgment motion and denied ANJRPC's motion to stay pending SCOTUS resolution of *NYSRPA*.
- Previously: 3d Cir. (No. 18-3170) affirmed the district court's denial of a PI and denied *en banc* petition on 1/9/19 (Judge Hardiman would have granted it).

## LAWS DISARMING DANGEROUS PEOPLE, MINORS

**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 filed 9/4 ([docket](#)).
- Lower court outcome: D.C. Cir. affirmed district court's rejection of as-applied challenge, then denied *en banc* rehearing on 4/2/19.

*Caniglia v. Strom* (1st Cir. No. 19-1764, D.R.I. No. 15-525-JJM-LDA)

❖ **Second Amendment challenge to city's confiscation of plaintiff's gun when he threatened suicide.**

- Case status: Appeal filed on 8/1.
- Lower court outcome: Court granted summary judgment for defendant on June 4, 2019.

**MAYBE CERT STAGE:** *Kanter v. Barr* (7th Cir. No. 18-1478)

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

- Case status: Challenger did not file *en banc* petition on 5/29/19, which was the deadline to do so.
- Lower court outcome: 7th Cir. affirmed district court order rejecting as-applied challenge.

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

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

- Case status: On June 6, 2019, the Seventh Circuit rejected the as-applied challenge to § 922(g)(1) and reversed summary judgment for plaintiff.
- 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 terminated without prejudice so the parties may pursue summary judgment. Plaintiffs' opening SJ brief due 6/22/2020.

❖ **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. Fully briefed; oral argument calendared for 10/1.

Rejected As-Applied Challenges

- *King v. AG* (3d Cir. No. 18-02571): On 7/25, the 3rd Cir. affirmed district court order rejecting as-applied challenge.

❖ **Minimum age challenges pending in district courts:**

- *Hirschfeld v. Bureau of Alcohol, Tobacco & Firearms* (W.D. Va. No. 18-cv-00103, filed Oct. 26, 2018): Fully briefed; oral argument calendared for 9/21.
- *NRA v. Swearingen*, (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

*NYSRPA v. City of New York* (S. Ct. No. 18-280 ([docket](#)))

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

- Fully briefed as of 9/4.

*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. Atkins* (W.D. Wash. No. 19-cv-05106)

- ❖ **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: court denied in part and granted in part defendants' motion to dismiss. Summary judgment motion due 3/10/2020.

*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: Plaintiffs' PI motion fully briefed as of 8/12. District court denied motion to dismiss commerce clause and preemption challenges; summary judgment motions currently due 10/11/19.

## AFFIRMATIVE LITIGATION

**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: Cert petition filed 8/1/19 ([docket](#)); response due 10/4.
  - Lower court outcome: On 3/14, the CT Supreme Court reversed and reinstated plaintiffs' unfair trade practices (CUTPA) claim, interpreting federal law (PLCAA).

## OTHER

- ❖ Other pending challenges brought by organizational plaintiffs or individuals include:
  - *Roe v. US* (E.D. Cal. No. 19-at-154, 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**.

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## 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.