

*Excerpts from Robert Phillips Legal Update June 12, 2020*

**Second Amendment, Right to Bear Arms; An Update:** For those of you who are concerned about your Second Amendment right to bear arms, several important cases have been in the news lately:

**Nationally:** The U.S. Supreme Court, in *N.Y. State Rifle & Pistol Ass’n v. City of N.Y.* (Apr. 27, 2020) \_\_\_ U.S. \_\_\_ [140 S. Ct. 1525; 206 L.Ed.2<sup>nd</sup> 798], *wiped out*, dismissing as “*moot*” a challenge to a State of New York statute and a City of New York ordinance, both of which prohibited the transporting of firearms outside the City of New York. No doubt seeing enforcement of these laws as a losing cause from a constitutional standpoint, both the State and the City amended their respective statutes to eliminate these restrictions. The U.S. Supreme Court, therefore, ruled that plaintiffs had already “received the outcome they desired from their lawsuit after the State of New York amended its firearm licensing statute when the City of New York amended the rule to allow permitted persons to lawfully transport firearms to a second home or shooting range outside of the city.” So, that’s the end of that issue.

**The Ninth Circuit and California:** Federal Senior District Court Judge Roger T. Benitez ruled on April 23<sup>rd</sup> that California’s background check requirement as a prerequisite to purchasing *ammunition* violated the **Second Amendment**, and was thus unconstitutional.

**Safety for All Act of 2016” (Prop. 63); and P.C. §§**

(See *Rhode v. Becerra* ( S.D. Cal. \_\_\_ F.Supp.3 \_\_\_ [ Apr. 23, 2020) 2020 U.S. Dist. LEXIS 71893]; the so-called “ **30312, 30314, 30352, 30370**, as amended.) Per Justice Benitez: “*The experiment has been tried. The casualties have been counted. California’s new ammunition background check law misfires and the Second Amendment rights of California citizens have been gravely injured.*” However, the Ninth Circuit, apparently not impressed with Justice Benitez’s clever rhetoric, immediately stayed this ruling pending review, putting this decision on hold. Senior Judge Benitez is the same judge that ruled in 2019 that California’s ban on *large capacity magazines* ( **Pen. Code § 32310**) violated the **Second Amendment** (see *Duncan v. Becerra* (S.D. Cal. Mar. 29, 2019) 366 F.Supp.3<sup>rd</sup> 1131.); a ruling that is also on appeal to the Ninth Circuit with an upset Gov. Gavin Newsom and Atty. Gen. Xavier Becerra vigorously seeking a reversal.

*Young v. Hawaii* (2018) 896 F.3<sup>rd</sup> 1044,

**The Ninth Circuit and Hawaii:** Also pending in the Ninth Circuit Court of Appeal is the case *offfirearms openly in public for self-defense*, noting that the word “*bear*” implies such a **Haw. Rev. Stat. § 134-9**) encompasses a right to carry right. A Hawaii statute ( , restricting the right to carry a firearm openly only to those who are then and there “*actively engaged*” in the protection of life and property, was held by the Court to be destructive of the “core right to carry a firearm openly for self-defense,” and was therefore ruled to be unconstitutional. This decision, however,

is on hold pending rehearing by an en banc Ninth Circuit panel (i.e., 11 justices), with oral arguments scheduled to take place during the week of September 21, 2020. The results of this case will necessarily affect California's own "*open carry*" statute (**Penal Code § 25850**), which prohibits the carrying of a *loaded* firearm in the open, arguably impacting one's "core **Second Amendment** right to carry a firearm openly for self-defense." (I.e., you can't defend yourself very effectively with an unloaded gun short of *beating* your assailant to death with it.)

So stay tuned for new decisions on these very important issues; i.e., "*large capacity magazines*," "*ammunition sales*," and "*open carry*."