

**MICHEL & ASSOCIATES, PC's RECENT ACCOMPLISHMENTS ON BEHALF OF  
NRA / CRPA FOUNDATION – UPDATED OCTOBER 2013**

**NOTABLE ACTIVE/RECENT LITIGATION:**

**Parker v. State of California** - Lawsuit successfully striking down main portions of California's AB 962, which would have banned mail order ammunition purchases and required registration and thumb-printing for in-store purchases. Plaintiffs defended against the State's appeal of the 2011 decision to the California Court of Appeal, resulting in a 41-page published opinion affirming the victory. This lawsuit was also the basis for the governor's veto of subsequent legislation similar to AB 962.

**Fiscal v. San Francisco** – Lawsuit successfully striking down San Francisco's citywide ban on handgun possession as preempted by California law, resulting in an appellate court opinion bolstering the preemption doctrine for use against future anti-gun ordinances and a payment of \$380,000 to the NRA to reimburse it for its attorneys' fees.

**Doe v. San Francisco Housing Authority** - Lawsuit successfully prompting repeal of San Francisco's ban on possessing firearms in public housing. The ban was rescinded and the NRA negotiated a formal settlement agreement to prevent adoption of similar restrictions in the future. This case has recently been used to help NRA lawyers in Washington D.C. and Delaware, where similar bans existed.

**Jackson v. City of San Francisco** – Lawsuit challenges San Francisco ordinances requiring handguns to be locked up while in the home, banning the discharge of firearms (lawsuit already forced amendment authorizing lawful defensive discharges), and prohibiting sales of common self-defense ammunition. Plaintiffs received a favorable published opinion in opposing the City's challenge to their standing, paving the way for other plaintiffs to bring Second Amendment challenges in the Ninth Circuit. Plaintiffs have fully briefed and argued the appeal of the district court's denial of their motion for preliminary injunction, and they are awaiting a decision from the Ninth Circuit Court of Appeals.

**Peruta v. County of San Diego** – Lawsuit challenges San Diego County's strict requirements for obtaining a CCW. Though the trial court did not grant Plaintiffs the relief they sought, the court's opinion was the first to recognize post-*Heller* that the Second Amendment right "to bear arms" secures a right to carry arms in public for self-defense; not a complete victory, but positive progress in Second Amendment jurisprudence. Plaintiffs have fully briefed and argued their appeal, and they are currently awaiting a decision from the Ninth Circuit Court of Appeals.

**McKay v. Sheriff Hutchens** – Lawsuit challenging Orange County's strict requirements for obtaining a CCW, filed after the California legislature banned the "unloaded open carry" of firearms. This case is a follow-up to the *Peruta* and *Richards* cases which relied (partially) on the plaintiffs' ability to openly carry an unloaded firearm. Plaintiffs have fully briefed and argued their appeal, and they are currently awaiting a decision from the Ninth Circuit Court of Appeals.

**Assenza v. City of Los Angeles** – Successfully enforced an 18-year-old consent decree against the LAPD and Chief Beck to ensure that all members of the public were properly receiving the requisite CCW application and CCW policy when sought at station houses. The consent decree also requires each LAPD station to conspicuously post a sign explaining where the application and policy can be found.

**Davis v. City of Los Angeles** – Lawsuit challenging Police Chief Beck's failure to adhere to an 18-year-old consent decree in processing CCW applications and determining what constitutes good cause to issue CCWs to LA residents. Successfully forced LAPD to disclose documents concerning its past abuses.

**Bauer v. Harris** - Lawsuit challenges the California Department of Justice's misuse of DROS fee revenues collected from lawful firearm purchasers at the time of sale as violating the Second Amendment.

**Gentry v. Harris** - Lawsuit challenges the Penal Code provision authorizing the California Department of Justice to misuse DROS fee revenues collected from lawful firearm purchasers as an invalid tax. The suit seeks to stop DOJ from continuing to require that law-abiding gun owners foot the bill for its general law enforcement projects.

**CBD v. BLM** – Successfully intervened on behalf of hunters in an Arizona lawsuit brought by radical environmental groups to prohibit the use of lead ammunition for hunting in the Arizona Strip, a classic hunting area. The lawsuit was successfully defeated and officially dismissed by the court in April.

**CBD v. USFS** – NRA, joined by Safari Club International, filed a motion to intervene in a lawsuit brought by radical environmental groups that allege the United States Forest Service is violating the Resource Conservation and Recovery Act (RCRA) by allowing hunters to use lead-based ammunition in the Kaibab National Forest in northern Arizona. That motion is currently pending decision by the court.

**CBD v. EPA** - NRA and Safari Club International jointly intervened in matter opposing radical environmental group's efforts to ban lead ammunition nationwide under TSCA. The NRA's and SCI's motion to have the case dismissed is currently pending.

**Pizzo v. Newsom** – Obtained amicus status and defeated ill-conceived and poorly prepared claims threatening to undermine efforts in *Jackson v. San Francisco*. In dismissing those claims on standing (and avoiding a damaging merits ruling), the Court followed the favorable “standing analysis” secured by NRA attorneys in *Jackson* and disregarded the watered-down standing argument pushed for by the City.

**Mehl v. Blanas** – Filed amicus brief and participated in oral argument in Ninth Circuit review of this ill-conceived and poorly prepared case challenging CCW laws and policies to explain defects in case and that better cases existed for deciding the CCW issues, in an attempt to avoid bad case law that would impact other CCW cases. Such efforts may have been the reason the Court disposed of the case in an unpublished decision that avoided reaching the substantive legal questions, leaving those questions to be decided in cases like *Peruta* or *McKay*.

**Nichols v. Harris** – Filed amicus brief in Ninth Circuit Court of Appeals, which successfully convinced the Court to temporarily stay a lawsuit filed by a well-intentioned non-attorney that threatened the future of the right to bear arms for all Californians. The stay allows other cases involving the right to bear arms to be decided first and provides experienced litigators a better opportunity to evaluate this case and, if appropriate, to assist the plaintiff in ultimately prevailing.

**Richards v. Prieto** – Filed amicus brief in Ninth Circuit Court of Appeals supporting Second Amendment Foundation and other appellants who sued Yolo County, challenging CCW issuance laws and policies.

**Calguns Foundation v. San Mateo County** – Filed amicus brief with California Court of Appeal in a case challenging a local ban on the possession of firearms in county parks as being preempted. The CRPA Foundation's brief sought to bolster the plaintiffs' argument, but also to fully inform the court of other preemption arguments not addressed by the parties. Unfortunately, the Court of Appeal ruled against the plaintiffs. CRPA Foundation recently submitted a letter to the California Supreme Court supporting plaintiffs' petition for review and requesting depublishing of the opinion. Those requests are pending.

**Nordyke v. Alameda County** – Filed amicus brief in Ninth Circuit Court of Appeals supporting gun show promoters who challenged an ordinance prohibiting possession of firearms and ammunition on county-owned property, thereby ending their gun show.

**Maikhio v. California** - Assisted attorney, Stephen Halbrook, in drafting and submitting an amicus brief in support of petition for writ of certiorari to the United States Supreme Court to address whether the same Fourth Amendment standard of reasonable suspicion of a violation of law that applies to law enforcement officers who stop vehicles on public roads applies to game wardens who stop hunters' and anglers' vehicles on public roads.

**Millender v. County of Los Angeles** – Co-authored with attorney, Stephen Halbrook, an amicus brief in the United States Supreme Court and Ninth Circuit in support of challenge to officers’ ability to write broad search warrants and to seize firearms unrelated to the alleged crime.

**People v. Nguyen** – Filed request for depublication with California Supreme Court of a potentially very dangerous appellate court decision for firearm owners, since it upheld criminal penalties for possession of mere firearm parts.

**People v. Delacy** – Co-authored petition for writ of certiorari to the United States Supreme Court in a case used as vehicle to address courts’ varying interpretations of *Heller*’s “presumptively lawful” language and whether discriminatory classifications that affect the fundamental right to keep and bear arms are subject merely to rational basis scrutiny.

**San Francisco/Sunnyvale Standard Capacity Magazine Bans Lawsuits** – Lawsuits are currently being prepared to challenge recently passed bans on the possession of standard-capacity magazine in various California cities. These lawsuits are part of a coordinated nation litigation campaign to confirm Second Amendment protections for standard-capacity magazines over ten rounds.

Litigation against the state and other cities is pending. And amicus briefs in other important cases are expected. Additionally, the NRA and it’s California counsel, Michel and Associates, P.C. are heavily involved in litigation in other states that will be used as precedent in future California cases.

## **REGULATORY MATTERS:**

### **California Fish and Game Commission -**

**(A) Lead Ammunition:** Gathered thousands of records from agencies involved in the condor recovery program, and worked with scientists to debunk pseudo-science being used to support the theory of condor lead poisoning and death from the alleged ingestion of lead ammunition. Convinced the Commission to again reconsider the validity of the pseudo-science before considering any further limitations on the use of lead ammunition and the expansion of the “Condor Zone” lead ammunition ban. Also convinced the Commission to form a lead working committee to investigate the real source of lead in the environment that is causing elevated blood-lead levels in California condors and other wildlife. Based upon the information that we provided, the Commission further admonished the environmental organizations pushing for the lead ammunition ban expansion against lobbying the California Legislature to achieve their anti-lead agenda.

Though generally less noted among issues currently litigated in the firearm rights context, these lead ammunition efforts are crucial to preserving Second Amendment rights; specifically, the availability of ammunition. The attacks on lead ammo are constantly being monitored and responded to.

**(B) Carrying Firearms:** Submitted letters demanding repeal of regulations prohibiting the possession of firearms in certain places and situations, and currently continue negotiations with Commission to achieve such.

**Firearm Regulations** – Litigating Definition of “Assault Weapons,” “Zip Guns,” 80% Firearms, etc. - via criminal cases and legal memoranda with agencies, influencing how certain firearm laws are applied and enforced.

**OAL Petition re DOJ “Assault Weapons” Regulations** – Submitted regulatory comment letter in support of the successful Petition filed with the Office of Administrative Law (OAL) by Franklin Armory. The OAL issued a ruling declaring the DOJ’s policy of limiting the issuance of “assault weapons” permits to individual employees of corporations an illegal underground regulation. The ruling paves the way for firearms-related businesses to have permits issued in the company’s name, as was intended by California law.

**Microstamping** – Submitted rounds of comment letters opposing Cal-DOJ ’s proposed regulations implementing

law requiring new handgun models sold in California to be equipped with a “microstamping” mechanism.

**ATF Study re Shotgun Importability** – Submitted a comment letter to ATF correcting and clarifying some of the California firearm laws addressed in a draft ATF Study that could result in banning the importation of self-defense shotguns, so as to avoid such laws forming the basis of ATF’s decision to ban such shotguns.

**DTSC re Ammunition** – Submitted comment letter to OAL about proposed regulations from the Department of Toxic Substances Control to raise questions about the controversial Green Chemistry Initiative’s potential negative impact on lead ammunition usage by hunters and target shooters.

**Penal Code Renumbering** – Assisted with renumbering of California Penal Code sections concerning firearms and other weapons intending to avoid unintended substantive changes to the renumbered sections that would be adverse to firearm owners.

**California Law Revision Commission** – (1) Monitor the Commission’s proposed revisions to firearm-related laws to make sure they do not negatively impact law-abiding firearm owners. (2) Submitted a formal request for the Commission, which will be considered soon, to clarify a Penal Code provision that has been misused by municipalities to treat peoples’ lawfully possessed “large capacity magazines” as “nuisances.”

**DROS Program Regulations** – Submitted a letter opposing DOJ’s proposed regulations to the DROS Program that would negatively impact both firearm dealers and purchasers, including a provision that would require a purchaser to pay multiple DROS fees unnecessarily and one that would allocate all surplus funds to general law enforcement.

**Miscellaneous** – Monitor and communicate with California DOJ over various firearm related matters that sometimes cannot be disclosed.

## **NRA / CRPA LOCAL ORDINANCE PROJECT ACCOMPLISHMENTS & ACTIVITIES:**

**Azusa** – Successfully opposed an ordinance that would have placed onerous and unnecessary zoning and operation restrictions on licensed firearm dealers.

**Berkeley** – Served City with pre-litigation letter which resulted in the repeal of an ordinance prohibiting possession of semiautomatic-rifles.

**Capitola** – Successfully opposed a package of gun control ordinances that would have placed draconian restrictions on licensed firearm dealers, prohibited gun shows, and drastically limited the rights of lawful gun owners to possess firearm within the City’s limit.

**Claremont** – Assisted coordination of grass-roots CRPA - NRA member opposition to a proposed resolution supporting a federal “assault weapon” ban.

**Desert Hot Springs** - Successfully opposed an ordinance that would have banned possession of firearms on almost all public property.

**El Dorado County** – Assisted NRA member in successfully opposing a homeowners’ association’s proposal to amend its rules to ban the discharge of firearms and air-guns on all properties in the community.

**Emeryville, Fairfield, & Long Beach** – Successfully opposed ordinances seeking ammunition-transfer registration.

**Fresno** – Assisted with the drafting of a successful City Council resolution supporting a shall-issue policy with regard to issuance of CCWs within the city.

**Glendale** – Opposed proposed ordinance banning firearms and ammunition on all city property, targeting the Glendale Gun Show. Submitted pre-litigation demand letters outlining legal arguments against ordinance and attended city council meetings.

**Lemoore** – Provided input to city council in drafting a pro Second Amendment resolution.

**Los Angeles** – (1) Preparing arguments to oppose proposed ordinance requiring electronic transmission of ammunition sales-registration records to LAPD; (2) Preparing arguments to oppose proposed ordinance banning sale and possession of BB guns of certain colors; (3) Submitted letters opposing proposed ordinance banning possession of magazines of more than 10 rounds; (4) Submitted letter opposing proposed expansion of gun-purchaser warning-letter program, including increasing the fee on firearm dealers to fund the program, due to its spreading misinformation and intimidating firearm purchasers. Resulted in the program being discontinued for about a year and, although it was reinstituted, the fee increase was defeated.

**Oakley** – Successfully opposed ordinance that would have prohibited gunsmiths from operating in residential areas.

**Pleasant Hill** - (1) Submitted opposition letter that prompted the pulling of an ill-conceived ordinance that would have created restrictive zoning regulations for firearm dealers. The letter also led to termination of the secretive ad hoc committee behind the ordinance; (2) Submitted several letters in opposition to barrage of local restrictions on firearms and ammunition retailers and worked with local members to oppose passage.

**Redwood City** – Submitted letter on behalf of gun-owning boat owners demanding the City repeal of a provision in its lease for docking boats in a city-owned marina that prohibits possession of firearms. Currently in communication with city attorney to negotiate its repeal.

**Richmond** – Forced the City to repeal its ordinance banning possession of “large-capacity magazines” by sending the city a draft legal complaint challenging the ordinance on preemption grounds and threatening to file if it didn’t.

**San Diego** – Submitted a letter opposing fee increase for licensed firearm dealers, resulting in the elimination of the illegal fee the City was charging dealers for employee background checks.

**San Francisco** – (1) Submitted letters opposing ordinances considered by the city that would ban the possession of hollow-point ammunition, and prepared lawsuit which forced SF to admit in writing that it’s ordinance does not ban hollow-point ammunition, and that it applies to virtually nothing; (2) Flooded the record with materials proving hollow-point ammunition is in common use for lawful purposes in response to the City’s attempt to adopt “findings” justifying its ban on the sale of hollow-point ammunition challenged in the *Jackson* case; and (3) Submitted opposition to package of proposed ordinances, including a ban on possession of 10+ round magazines and requirement that all ammunition sales be registered.

**San Jose** – Successfully opposed an ordinance that would have required owners of so-called “assault weapons” to register and store such firearms with the police department, and to provide the department with a reasonable explanation of “need” before their firearms could be released to them.

**San Mateo County** – Served a pre-litigation letter that prompted the sponsor of several LCAV Model Ordinances to pull consideration of those anti-gun owner ordinances, including a dealer regulation scheme that would make it practically impossible to sell guns in that county.

**Santa Clara** – Successfully opposed an ordinance that would have prohibited all firearms in Santa Clara City parks, even for CCWs.

**South San Francisco** - Successfully defeated proposed ordinance that would have prohibited the sale of hollow-point ammunition and required registration of all ammunition sales. Worked behind the scenes with the City

Attorney to inform him of ongoing NRA CA lawsuits over registration of ammunition sales and a ban on hollow-point ammunition sales, which prompted the City Attorney to recommend that the council pull consideration of the ordinance.

**Sunnyvale** – (1) Submitted letter opposing inclusion of an extensive gun control package as a ballot measure and assisted contingent of residents opposed to the ballot measure; (2) Submitted letter opposing package of gun control ordinances that would have placed draconian zoning and other restrictions on licensed firearm dealers. The City prepared a detailed report on the subject, apparently due to the pressure it was receiving from those opposed to the ordinance, which concluded that firearm shops are not a danger to their surroundings.

**Sutter County** – Significantly limited the scope of a no-discharge ordinance and proposed expansion thereof for a popular hunting area by raising written objections to the Board of Supervisors, who then amended those provisions.

**Twentynine Palms** - Submitted letter opposing proposed amendment to the City's code that would have restricted target shooting on private land. The City followed our suggestions and adopted San Bernardino County's less-restrictive regulations.

**Miscellaneous** – The Project is also working behind the scenes successfully opposing (or attempting to oppose) local firearm regulations, the details of which often cannot be exposed.

#### **RANGE ASSISTANCE EFFORTS:**

**Angeles National Forest** - Consulted with Burro Canyon Shooting Park concerning attempts by the forest supervisor to restrict their activities.

**Ojai** - Helped Ojai Valley Gun Club respond to Ventura County's attempts to enforce county land-use laws on this concessionaire operating on Forest Service land.

**Los Padres National Forest** - Consulted with Winchester Canyon Gun Club about the renewal of their operating permits from the U.S. Forest Service.

**San Diego** - Worked with a consortium of shooting ranges in San Diego County since early 2009 to oppose certain proposed revisions to the San Diego County Code that would impose drastic new limitations on target shooting in the unincorporated portions of San Diego County.

**Bremerton, WA** - Drafting an amicus curiae brief for the NRA in an appeal contesting the closure of an outdoor shooting range for alleged noise and safety nuisances, and for violating local land-use ordinances.

**Sequim, WA** – Conferring with the owners of Sunnyside Dryke Shooting Range concerning lead-remediation law and cleanup options.

Other examples of range protection efforts are ongoing statewide and often times cannot be disclosed.

#### **OTHER EFFORTS:**

**Monitoring Government Agencies & Anti-Gun Groups** - Submitting hundreds of Public Records Act requests to DOJ, ATF, and other agencies regulating firearms to keep tabs on activities, and monitoring groups like LCAV and the Brady Campaign to expose their modus operandi.

**DOJ's APPS Program** – Monitoring Cal-DOJ's program dedicated to pursuing people with firearm restrictions, exposing the program's unfairness and dangers to lawful gun owners, and providing written materials explaining how to protect oneself from becoming a victim of the program.

**MAIG Opposition** – Monitor activities of MAIG by submitting Public Records Act requests to local governments for their correspondence with the anti-gun group, talking with public officials, and following press releases. Send letters to California mayors who are members of MAIG explaining the group's true motives and encouraging to leave.

**Gun Owner Defense** – Assist countless NRA / CRPA members with firearm-related legal issues, and produce literature explaining California's gun laws. Most notably, handled appeal of Gary Tudesko's expulsion from high school for leaving unloaded shotguns in his truck parked off-campus after early morning duck hunting. Gary was reinstated. The case received national news coverage.

**Member Communications** – Provide media-alerts, commentary, and analysis on various current events impacting the firearm-owning community on a regular basis.

**Seminars / Clinics /Debates** – Have attorneys attend and participate in firearm-related educational functions throughout the state to increase knowledge of members and to increase membership.

**Legal Memoranda** - Produce various legal memoranda for public education (most of which can be found at [www.calgunlaws.com](http://www.calgunlaws.com)), including such topics as: legality of firearms /accessories, clarifying ambiguous definitions for firearms /accessories, LEOSA compliance, FFL compliance, CCW compliance, and countless other topics.