

SENIOR COUNSEL  
C. D. Michel\*

SPECIAL COUNSEL  
Joshua R. Dale  
W. Lee Smith

ASSOCIATES  
Anna M. Barvir  
Sean A. Brady  
Scott M. Franklin  
Thomas E. Maciejewski  
Clint B. Monfort  
Tamara M. Rider  
Joseph A. Silvano, III  
Los Angeles, CA

\*Also admitted in Texas  
\*Also admitted in District of  
Columbia



180 East Ocean Boulevard • Suite 200  
Long Beach • California • 90802  
562-216-4444 • www.michel lawyers.com

OF COUNSEL  
Don B. Kates  
Battleground, WA

Ruth P. Haring  
Matthew M. Horeczko  
Los Angeles, CA

Glenn S. McRoberts  
San Diego, CA

AFFILIATE COUNSEL  
John F. Machtinger  
Jeffrey M. Cohon  
Los Angeles, CA

David T. Hardy  
Tucson, AZ

## **CALIFORNIA NRA LEGAL AFFAIRS REPORT**

### **I. LITIGATION**

#### **A. Active Cases**

***Parker v. State of California*** - Lawsuit successfully struck 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 in full. The case also set groundbreaking precedent on due process vagueness challenges confirming that gun laws must provide heightened levels of clarity in order to withstand vagueness challenges. The case was also the basis for the Governor's veto of legislation similar to AB 962 proposed while litigation was pending. The state will likely petition for review the California Supreme Court by the December 16, 2013 deadline.

***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 the sale 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. The case is under submission and awaiting a decision from the Ninth Circuit Court of Appeals.

***Peruta v. County of San Diego*** – Lawsuit challenges the San Diego Sheriff'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. The case is under submission, and awaiting a decision from the Ninth Circuit Court of Appeals.

***McKay v. Sheriff Hutchens*** – Lawsuit challenging the Orange County Sheriff'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 in which the lower courts relied (partially) on the plaintiffs' ability to openly carry an unloaded firearm in holding their rights were not violated. Plaintiffs have fully briefed and argued their appeal. The case is under submission and they currently awaiting a decision from the Ninth Circuit Court of Appeals.

***San Francisco Veterans Police Officers' Association v. S.F.*** - Lawsuit seeking to confirm

Second Amendment protections for standard-capacity magazines capable of holding more than ten rounds by challenging San Francisco's ban on the possession of these magazines. A similar lawsuit is also being prepared against the City of Sunnyvale. These lawsuits are part of a coordinated national litigation campaign to confirm Second Amendment protections for standard-capacity magazines.

***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 as now enforced also requires each LAPD station to conspicuously post a sign explaining where the CCW application and policy can be found. Plaintiffs will be moving to enforce against the current LAPD Chief the portions of the consent decree relating to issuance of CCW licenses to qualified residents. Plaintiffs will also be moving for an order clarifying the mandatory nature of issuance when applicants meet certain criteria agreed to by the parties when crafting the consent decree.

***Davis v. City of Los Angeles*** – Lawsuit challenging Police Chief Beck's failure to adhere to the 18-year-old *Assenza* case 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. Other aspects of the lawsuit relating to enforcement of the consent decree by residents who were not parties to the original lawsuit is currently on appeal. Appellants are seeking a landmark ruling from the Court of Appeal that intended third party beneficiaries of the consent decree – i.e., other LA residents – will have standing in the future to enforce the consent decree against the LAPD in writ of mandate-type lawsuits where the consent decree is treated by the courts as having the same force and effect as a law.

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

***CBD v. USFS*** – NRA, joined by Safari Club International, filed a motion to intervene in a federal lawsuit brought by anti-gun environmental groups that alleged the United States Forest Service had violated the Resource Conservation and Recovery Act (RCRA) by allowing hunters to use lead-based ammunition in the Kaibab National Forest in northern Arizona. The case was dismissed relatively quickly, on procedural grounds, making the NRA's intervention motion moot. An appeal was filed by CBD, however, so the motion to intervene will be "renewed" if the matter is ever remanded to the trial court.

Though a lawsuit based on the application of RCRA to hunters' spent ammunition seems unlikely to be successful—the plaintiff would have to show the government or hunters are "contributing to . . . disposal of solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment"—just one such ruling could have a devastating impact on the hunting community. Thus, CBD's activities on RCRA issues are being closely monitored.

***CBD (Trumpeter Swan Society) v. EPA*** - NRA and Safari Club International jointly intervened in this case to oppose anti-hunting environmental group's efforts to ban lead ammunition nationwide under the Toxic Substances Control Act (TSCA), which is administered by the EPA. The case was dismissed on procedural grounds: CBD had previously brought a similar lawsuit, which it lost, and then it basically re-filed the case under another group's name (the Trumpeter Swan Society). That ruling is currently on appeal.

**Miscellaneous Cases Interpreting Firearm Regulations** – Litigating definition of “assault weapons,” “zip guns,” “80% firearms,” etc. - via criminal cases and filing legal memoranda with prosecutorial agencies to influence how certain firearm laws are applied and enforced.

## **B. Closed Cases Still of Interest**

***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 possession 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.

***CBD v. BLM*** – NRA successfully intervened on behalf of hunters in an Arizona lawsuit brought by anti-hunting environmental groups, led by the Center for Biological Diversity (CBD). The lawsuit sought to prohibit the use of lead ammunition in the Arizona Strip, a classic hunting area. CBD argued, among other things, that the Bureau of Land Management violated the National Environmental Policy Act by adopting certain land management plans without adequately considering the alleged environmental impact of hunters' use of lead-based ammunition. In response to summary judgment briefs filed by the NRA and the Bureau, the court dismissed the lawsuit, holding that CBD's claims were without merit. The Plaintiffs did not appeal the dismissal, meaning this case is now final and persuasive precedent.

## **C. Amicus Cases**

***Pizzo v. Newsom*** – Filed amicus brief convincing court to dismiss ill-conceived and poorly prepared copycat claims that threatened to undermine efforts in *Jackson v. San Francisco* on standing grounds (avoiding a damaging merits ruling). While finding no standing, the Court nevertheless adopted 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. Explained procedural defects in the case and argued that better cases existed for deciding the CCW issues. This dangerous and closely watched case could have created bad case law that would have impacted other CCW cases. Perhaps due to these efforts, the Court disposed of the case in an unpublished decision that avoided reaching the substantive legal questions, leaving those important questions to be decided in cases like *Peruta* or *McKay*.

***Nichols v. Harris*** – Filed an amicus brief in Ninth Circuit Court of Appeals that convinced the Court to temporarily stay this ill-conceived lawsuit filed by a well-intentioned but incompetent non-attorney. The case 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 NRA litigators a better opportunity to evaluate this case and, if appropriate, to assist the plaintiff to ultimately prevail.

***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 on state preemption grounds. The amicus brief sought to bolster the plaintiffs’ argument, but also to fully inform the court of other preemption arguments unfortunately not raised by the plaintiffs. And when the Court of Appeal ruled against the plaintiffs, submitted a letter to the California Supreme Court supporting plaintiffs’ petition for review and requesting depublishation of the opinion. Those requests were denied. The Calguns Foundation decision stands and could limit the future usefulness of the preemption doctrine in California.

***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 amicus brief with attorney Stephen Halbrook in the United States Supreme Court and Ninth Circuit in support of challenge to law enforcement officers’ power to write broad search warrants and to seize firearms unrelated to the alleged crime.

***People v. Nguyen*** – Filed request for depublishation 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. The request was denied.

***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.

## **D. Cases in Other States**

Involved in litigation in other states as amici or advisors that will be used as precedent in future California cases. Suits that may make sense in the future in California may not be wise to litigate now.

## **E. Potential Future California Cases**

Planned litigation against the state and other cities is pending, including but not limited to lawsuits challenging: (1) Los Angeles's ban on the sale of "ultra compact handguns," (2) Sunnyvale's ban on magazines over ten rounds, and (3) California's "assault weapon" ban. Also amicus briefs in other important cases throughout the country are expected.

## **II. REGULATORY MATTERS:**

### **A. ATF Federal Regulatory Matters with California Interest**

**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.

### **B. California Department of Justice Regulatory Actions**

**DOJ's Armed Prohibited Persons System Program (APPS)** – 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 to public explaining how to protect oneself from becoming a victim of the program.

**Office of Administrative Law 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 weapon" permits to individual employees of corporations an illegal underground regulation. The ruling paved the way for firearms-related businesses to have permits issued in the company's name, as was intended by California law (DOJ unfortunately sought and obtained a legislative change in the 2013 session).

**Microstamping Mandate** – 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.

**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.

**C. California Department of Fish & Wildlife / California Fish & Game Commission Matters**  
**Re 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 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.

**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.

**D. California Department of Toxic Substances Control (DTSC) Regulatory Actions**

**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.

**E. California Law Revision Commission –**

Monitor the Commission’s proposed revisions to firearm-related laws to make sure they do not negatively impact law-abiding firearm owners. 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. 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.”

### **III. LOCAL ORDINANCES**

**Azusa** – Successfully opposed an ordinance that would have placed onerous and unnecessary zoning and operation restrictions on licensed firearm dealers by way of a [demand letter](#).

**Berkeley** – Served the city with [pre-litigation letter](#), resulting 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 city limits via a [demand letter](#).

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

**Desert Hot Springs** – Successfully opposed the adoption of an ordinance that would have banned possession of firearms on almost all public property via a demand letter and lobbying.

**El Dorado County** – Assisted NRA members 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 via demand letters.

**Fresno** – Assisted with the drafting of a successful 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. Ordinance passed despite these efforts and litigation is being considered.

**Lemoore** – Assisted city in drafting a resolution supporting the Second Amendment.

**Los Angeles** – (1) Submitted [two letters](#) opposing proposed ordinance declaring magazines capable of holding more than 10 rounds “nuisances” and allowing for their confiscation; (2) Tracked proposed ordinance requiring the electronic transmission of ammunition sales records to LAPD and assisted local FFLs in opposing the measure; (3) Tracking and preparing arguments in opposition to proposal to ban the sale and possession of BB guns of certain colors; (4) Submitted letter opposing expansion of gun-purchaser warning-letter program, including increasing the fee on firearm dealers to fund the program. Resulted in the program being discontinued for about a year and, although it was reinstated, the fee increase was defeated.

**Los Gatos** – Submitted [letter](#) opposing the adoption of draconian restrictions on licensed firearm dealers.

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

**Pleasant Hill** – Successfully prompted the city to pull consideration of an ill-conceived ordinance that would have created restrictive zoning regulations for firearm dealers. The [opposition letter](#) also led to termination of the secretive ad hoc committee behind the ordinance. When a similar measure was proposed years later, submitted [several letters](#) in opposition and coordinated efforts with local members to vigorously oppose its passage. Ordinance passed despite these efforts and litigation is being coordinated with NSSF.

**Redwood City** – Submitted letter on behalf of gun-owning boat owners demanding the city repeal 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 a [demand letter](#) and draft legal complaint challenging the ordinance on preemption grounds and promising to file if the law remained in effect.

**San Diego** – Submitted a [letter](#) opposing proposed fee increase for licensed firearm dealers, resulting in the elimination of an illegal fee the city was charging dealers to conduct employee background checks.

**San Francisco** – Submitted letters opposing ordinances banning the [possession of hollow-point ammunition](#) and requiring the [registration of ammunition purchases of more than 500 rounds](#). Efforts resulted in a [SFPD concession](#) that hollow-point ammunition ban did not actually ban hollow points, and that it applies to virtually nothing. Also submitted [opposition letter](#) to sweeping gun control package, including a ban on the possession of magazines capable of holding more than 10 rounds, which is now being challenged in federal court.

**San Jose** – Successfully opposed, via [demand letter](#), 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 a reasonable explanation of “need” before their firearms could be released.

**San Marcos** – With the assistance of local FFLs, successfully opposed proposal that would have unreasonably increased the cost of business for firearms and ammunition retailers.

**San Mateo County** – Served a [pre-litigation demand 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 the county.

**Santa Clara** – Successfully opposed an ordinance that would have prohibited all firearms in Santa Clara City parks, even for CCW holders, by way of a [demand letter](#).

**South San Francisco** – Submitted [opposition](#) to proposal to prohibit the sale of hollow-point ammunition and to require registration of all ammunition sales. Also worked directly with the city attorney, prompting him to recommend the city pull consideration of the ordinance, which it did.



**Sunnyvale** – Successfully opposed package of gun control ordinances that would have placed draconian restrictions on licensed firearm dealers. The city prepared a [detailed report](#) on the subject, which concluded that firearm shops are not a danger to their surroundings. Also [submitted letter](#) opposing inclusion of an extensive gun control package as a ballot measure and coordinated efforts with local residents to oppose the measure after it qualified for the ballot. While it passed, litigation challenging its ban on possession of magazines holding more than ten rounds is imminent.

**Sutter County** – Opposed the proposed expansion of a “no-discharge” ordinance affecting a popular hunting area via correspondence to the Board of Supervisors that resulted in the ordinance being more limited in scope than it was before the proposed expansion.

**Twentynine Palms** – Submitted letter opposing proposal to restrict target shooting on private land. The city followed the letters’ 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.

#### **IV. 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.

## **V. 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.

**MAIG Opposition** – Monitor activities of Mayors Against Illegal Guns by submitting Public Records Act requests to local governments for their correspondence with the radical 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 them to leave the group.

**Tudesko Expulsion** - 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.

**NRA T-Shirt Case** - Represented high school student Haley Bullwinkle after school officials forced her to remove an NRA t-shirt, which resulted in a formal apology from the school and no disciplinary record for Haley. The story was covered quite heavily in local media.

**Gun Owner Defense** – Assist countless NRA / CRPA members with firearm-related legal issues, and produce literature explaining California's complex and deceiving gun laws.

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

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

