



## **San Diego Federal Judge Issues Preliminary Injunction Against “High Capacity Magazine” Law**

Yesterday, U.S. District Court Judge Roger Benitez issued a 66-page ruling preventing enforcement of a ban on the possession of firearm magazines that hold over ten rounds of ammunition from going into effect this Saturday, July 1, 2017.

For the past 17 years, the ability to buy, sell, transfer, or manufacture so-called “high capacity magazines” has been illegal. When the law was originally passed, California residents who previously and lawfully owned these types of magazines were intentionally “grandfathered in” to the law, so mere possession of these magazines was not illegal.

Fast forward to 2016 -- new laws were passed in California that expanded the original ban on the purchase or sale of high capacity magazines and made possession of these magazines illegal. This law was set to go into effect on Saturday, July 1, 2017. Under the new laws, California residents who lawfully owned high capacity magazines would have to take the magazines out of the state, sell them to federally licensed firearms dealers, or turn them in to law enforcement by June 30, 2017.

Last month, the California Rifle and Pistol Association filed for a preliminary injunction to stop the magazine law from being enforced because it was a violation of the Second Amendment and the taking clause under the U.S. Constitution. The claim on the taking clause stated that the State of California, through its attorney general, was attempting to take the lawfully owned property of California citizens.

In his opinion granting the preliminary injunction, Judge Benitez ordered the State’s Attorney General Xavier Becerra to notify all the California law enforcement agencies that the new magazine laws are not to be enforced until a decision has been made at trial. In his reasoning, Judge Benitez stated “the statute will soon visit irrevocable harm on the Plaintiffs and all those similarly situated, a state-wide preliminary injunction is necessary and justified to maintain the status quo.”

In their opposition, the Attorney General’s office attempted to use various mass shootings that have taken place to justify the State’s confiscation of lawfully owned property, claiming that high capacity magazines were used in some of these shootings and that public safety required the magazine prohibition. This tragic but legally anecdotal evidence also included over 3,000 pages of exhibits, which Judge Benitez noted was outdated and mainly consisted of news articles and surveys of mass shooting incidents. According to Judge Benitez, “[i]n the end, it is a false dichotomy upon which the Attorney General rests his evidentiary case.”



Although issuing the preliminary injunction challenging a firearms-related restriction in California is a rare victory for gun rights groups and California gun owners should be celebrating, it is important to remember that this decision has not struck down the law. The preliminary injunction has only delayed enforcement of the law until trial, in which both sides will argue the merits of the law in order to get a final decision from the court. Only until the federal court rules on the constitutionality of the magazine prohibition, will we know whether or not the magazine prohibition has been defeated. Additionally, it is highly likely, if not absolute, that the State will appeal the final federal court decision to the Ninth Circuit Court of Appeals. That said, in order to grant a preliminary injunction, the federal court has weighed several factors in making its decision. One of these factors is a look at the merits of the case (e.g., both parties' arguments). That means the federal court has looked at the CRPA's case and thinks it is a legitimate one. All good news for California gun owners.

The fight to stop enforcement of this unconstitutional magazine prohibition, as well as the many other unconstitutional newly enacted laws infringing on California gun owners' rights, has only begun. This indeed is a victory, but many more are still needed to restore the Second Amendment in California. Gun owners should celebrate, but stay vigilant.