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NRA-CRPA CALIFORNIA LEGAL AFFAIRS REPORT **Updated April 2015**

I. LITIGATION

NRA, CRPA, and their lawyers are heavily involved in a number of important legal battles in California and across the nation that are aimed at protecting, restoring, and expanding the gun rights of Californians. Here is a summary of some of the more significant efforts your contributions to the NRA and CRPA have made possible. The NRA and CRPA graciously thank you for your support!

In most cases that the NRA and CRPA fund and litigate, NRA and CRPA are not actually the named plaintiffs in the case. And in some cases, NRA and CRPA contribute by having their attorneys prepare important *amicus* or “friend of the court” briefs.

If you would like to contribute to these efforts and more, donate to the [NRA Legal Action Project](#) or the [California Rifle & Pistol Association Foundation](#) today!

A. Active / Recent California Litigation Efforts

Peruta v. County of San Diego – This groundbreaking suit challenges San Diego County’s policy that requires residents to demonstrate a special need or “good cause” beyond self-defense to obtain a license to carry a firearm. In February 2014, the Ninth Circuit Court of Appeals ruled in favor of the Plaintiffs, confirming that the Second Amendment secures a right to carry a firearm for self-defense, and concluding that policies denying that right to average, law-abiding citizens, are unconstitutional. San Diego decided not to appeal the decision, but the Attorney General of California asked to intervene in the case and have the case reheard by an eleven-judge *en banc* panel. At least one Ninth Circuit Judge also called for the Ninth Circuit judges to vote on

whether the case should be reheard *en banc* regardless of whether the Attorney General is allowed to join the case. In March 2014, the Ninth Circuit Court of Appeals ordered that the case be reheard *en banc*. Oral arguments are scheduled to take place the week of June 15, 2015.

All filings in the case can be viewed here: [Peruta v. San Diego](#)

McKay v. Sheriff Hutchens – This sister lawsuit to the *Peruta* case challenges Orange County’s strict requirements for obtaining a CCW. It was filed after the California legislature banned the “unloaded open carry” of firearms. This case is a follow-up to the district court decisions in the *Peruta and Richard*’s cases that relied partially on the plaintiffs’ ability to openly carry an unloaded firearm. Plaintiffs have fully briefed and argued their appeal before the Ninth Circuit. The case is currently stayed, awaiting a final mandate from the Court in the *Peruta* matter. For the past year, the suit prompted the Orange County Sheriffs’ Department to change its policies and begin issuing carry permits for self-defense. The Sheriff has since flip-flopped her position based on a misunderstanding of the law, and the NRA and CRPA have responded with a letter to Sheriff advising her of her error.

All filings in the case can be viewed here: [McKay v. Hutchens](#)

Richards v. Prieto – Filed an important amicus brief with the Ninth Circuit challenging Yolo County’s restrictive CCW policies. In March 2014, the Court ruled in favor of Plaintiffs as a result of its decision in *Peruta*. In March 2015, the Ninth Circuit issued an order that the *Richards* case will be reheard by an eleven-judge *en banc* panel along with the *Peruta* case the week of June 15, 2015.

All filings in the case can be viewed here: [Richards v. Prieto](#)

Jackson v. City of San Francisco – This lawsuit challenged three San Francisco ordinances requiring handguns to be locked or disassembled while in the home unless being carried, banning the discharge of firearms (the lawsuit already forced amendments authorizing defensive and other lawful discharges), and prohibiting the purchase of common self-defense (hollow-point) ammunition within city limits. Plaintiffs received a favorable published opinion after opposing the City’s challenge to their standing, paving the way for other plaintiffs to bring Second Amendment challenges in the Ninth Circuit. In March 2014, a three judge panel of the Ninth Circuit affirmed the lower court’s decision denying Plaintiffs’ request for an injunction. Plaintiffs filed a petition for review with the Supreme Court in December 2014, and 26 Attorney Generals filed a critical brief supporting that request early in 2015. The City and County of San Francisco submitted its opposition brief, and

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the NRA submitted its reply brief, in March 2015. The Supreme Court is scheduled to consider the *Jackson* case on during its conference on April 17, so a decision on whether the Court will accept the case can be expected anytime between April 17 and the end of the Court's spring session in June 2015.

All filings in the case can be viewed here: [Jackson v. San Francisco](#)

Fyock v. Sunnyvale – This important case seeks to confirm Second Amendment protections for standard-capacity magazines capable of holding more than ten rounds, by challenging Sunnyvale's ban on the possession of these magazines. A similar lawsuit was also filed against the City and County of San Francisco. These lawsuits are part of a coordinated nationwide litigation campaign to confirm Second Amendment protections for standard-capacity magazines. In 2014, the Plaintiffs filed for preliminary relief from both the Ninth Circuit Court of Appeals to prevent the ordinance from being enforced while the case proceeds, so that the Plaintiffs can continue keeping their magazine in their homes. In March 2015, the Ninth Circuit Court of Appeals issued a ruling confirming that the Second Amendment protects standard-capacity magazines that hold more than ten rounds, but remarkably and incorrectly held that the City's total ban on their possession should not be enjoined while the case proceeds. The NRA's attorneys are currently considering a potential petition for Supreme Court review of this decision, and, regardless, the case continues in the district court.

All filings in the case can be accessed here: [Fyock v. Sunnyvale](#)

Pena v. Lindley – This case seeks to overturn California's ban on common, and constitutionally protected, handguns that are not included on the DOJ's "roster" of handguns approved for sale in the State. In February 2015, a district court judge held that Roster limitations do not violate the Second Amendment. In reaching its decision, the court mistakenly concluded that the Roster doesn't burden the Second Amendment at all because it considered the Roster to be a presumptively lawful condition and qualification on the commercial sale of firearms. The plaintiffs are appealing the misguided ruling to the Ninth Circuit, and the NRA's legal team will support the fight on appeal.

A related legal challenge is also underway in state court. In 2014, the National Shooting Sports Foundation (NSSF) filed a law suit challenging California's microstamping scheme. That suit seeks to invalidate and enjoin enforcement of provisions of state law enacted in 2007, but not made effective until May 2013, requiring that all semiautomatic pistols sold in the state not already on the California approved handgun roster contain unproven and unreliable microstamping technology.

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NRA's lawyers are also monitoring this suit, and may prepare a new suit if necessary to protect the interests of California gun owners.

All filings in the case can be viewed here: <http://michellawyers.com/guncasetracker/penavcid/>

Silvester v. Harris – This suit challenges California's 10-day waiting period for persons who already own a firearm. In 2014, the district court issued a ruling that the waiting period is unconstitutional as applied to these individuals. The State is appealing the decision, and briefing will take place in the Ninth Circuit Court of Appeals in 2015. The NRA's legal team is planning to support the fight on appeal with an important amicus or "friend of the court" brief.

Bauer v. Harris – This Federal 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. In March 2015, the district court ruled against the plaintiffs. The NRA's lawyers are currently preparing an appeal.

All filings in the case can be viewed here: [Bauer v. DOJ](#)

Gentry v. Harris – This is the sister state court case to the NRA-CRPA supported federal court challenge to the DOJ's improper use of excess DROS fees to fund the State's general law enforcement activities. The case is currently being litigated in the trial court.

All filings in the case can be viewed here: [Gentry v. Harris](#)

Enos v. Holder - Filed an amicus brief in the Ninth Circuit Court of Appeals supporting plaintiffs' challenge to the federal government's policy of denying firearm rights restorations after ten years for persons convicted of misdemeanor crimes of domestic violence under California law.

CRPAF v. Regents of the University of California – This lawsuit successfully prompted government compliance with the California Public Records Act. The lawsuit is part of an ongoing comprehensive battle the NRA is fighting over restrictions on the use of lead ammunition. This suit was initiated to force the government

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to turn over documents it was shielding from disclosure that purportedly support the government's claim that lead ammunition found in harvested game is poisoning California condors.

Parker v. State of California – This lawsuit successfully struck down California's "AB 962," which would have banned mail order ammunition purchases and required registration and thumb-printing for all in-store purchases. The plaintiffs successfully defended against the State's appeal of the case to the California Court of Appeals, resulting in a 41-page published opinion affirming the victory in full. The case set groundbreaking precedent for 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 subsequent legislation similar to AB 962. The State recently asked the California Supreme Court to review the decision, and the Court accepted the case. Briefing before the California Supreme Court was completed in December 2014, and oral arguments are expected to take place in 2015.

All filings in the case can be viewed here: [Parker v. California](#)

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

Upcoming Litigation – More lawsuits against the state and California municipalities are pending, including but not limited to lawsuits challenging bans on "ultra compact handguns" and California's "assault weapons" ban. Additional cases are also in the works that cannot be disclosed at this time.

B. Other Litigation Efforts

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NRA, CRPA, and their legal teams are also providing assistance in a number of critical Second Amendment cases across the country that could set valuable precedent for future challenges to California's ill-conceived gun laws. The following are a few examples of the types of cases the NRA is involved in outside of California that could have broader implications for the right to keep and bear arms in the golden state.

Henderson v. United States - Prepared important amicus briefs in the U.S. Supreme Court in support of the petitioner, who sued the government after they refused to allow him to transfer or sell his lawfully owned, non-contraband firearms to an unrelated third party because he had been convicted of a felony. The case was argued in September 2014 and a decision from the Supreme Court is expected by the end of June 2015.

All filings in the case can be viewed here: [Henderson v. United States](#)

Biecker v. Hickenlooper – (10th Circuit, U.S. Court of Appeals) Lawsuit challenging Colorado's recently enacted legislation banning so-called "large-capacity magazines." The case has been briefed before the 10th Circuit Court of Appeals, and oral arguments are expected to take place in 2015.

All filings in the case can be viewed here: [Beicker v. Hickenlooper](#)

Heller v. District of Columbia (Heller III) – This case raises a Second Amendment challenge to the District of Columbia's draconian registration requirements and its prohibitions on "assault weapons" and "large capacity magazines." The lawsuit is currently being briefed before the United States Court of Appeals for the D.C. Circuit. Oral arguments are scheduled for April 20, 2015.

All filings in the case can be viewed here: [Heller v. District of Columbia](#)

Kolbe v. O'Malley – This case raises a Second Amendment challenge to Maryland's recently enacted bans on so-called "assault weapons" and "large capacity magazines." The lawsuit is currently being briefed before the United States Court of Appeals for the Fourth Circuit. Oral arguments are expected to take place in 2015.

All filings in the case can be viewed here: [Kolbe v. O'Malley](#)

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NYSRPA v. Cuomo – (2nd Circuit, U.S. Court of Appeals) Lawsuit challenging New York’s “Safe Act” banning “assault weapons” and “large-capacity magazines.” The case is now fully briefed before the Second Circuit Court of Appeals, and oral arguments took place in December 2014. A decision from the Second Circuit is expected at anytime.

All filings in the case can be viewed here: [NYSRPA v. Cuomo](#)

Shew v. Malloy – (2nd Circuit, U.S. Court of Appeals) Lawsuit challenging Connecticut’s recently enacted legislation banning “assault weapons” and “large-capacity magazines.” The case is now fully briefed before the Second Circuit Court of Appeals, and oral arguments take place in December 2014. A decision from the Court is expected at anytime.

All filings in the case can be viewed here: [Shew v. Malloy](#)

II. REGULATORY MATTERS

A. ATF Federal Regulatory Matters with California Interest

ATF Study Regarding Shotgun Importability – Submitted a comment letter to ATF correcting and clarifying some of the California firearm laws addressed in a draft ATF Study to prevent the improper banning of the importation of certain self-defense shotguns.

Redefinition of “Armor Piercing” Ammunition – Submitted comment letters to proposed ATF rules that would have drastically altered the “sporting purposes” exemption to the federal ban on “armor piercing” ammunition to prohibit many popular cartridges. The comment letter explained how the proposed framework would negatively impact California hunters in light of Assembly Bill 711, which bans lead ammunition for hunting.

B. California Department of Justice Regulatory Actions

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DOJ's Armed Prohibited Persons System Program (APPS) – Monitoring Cal-DOJ's program dedicated to pursuing persons prohibited from owning firearms. NRA and CRPA are working to expose its ineffectiveness and disproportionate lawful gun owners, and are providing written materials for firearm owners that explaining how to protect against becoming a victim of the misguided program.

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 activities.

DOJ Regulations for Firearm Safety Certificate Program – Submitted opposition letters to DOJ's underground and "emergency" regulations in conjunction with litigation challenging DOJ's improper regulations concerning its Firearm Safety Certificate program.

DOJ Positions on LEOSA and LEGR – Preparing "underground" or illegal regulation challenges to overturn DOJ's policies concerning the carrying of handguns by retired federal law enforcement (LEOSA) and the Departments' Law Enforcement Gun Release (LEGR) application.

Miscellaneous – NRA and CRPA are constantly monitoring and communicating with California DOJ over various firearm related matters that often times cannot be disclosed.

C. California Department of Fish & Wildlife / California Fish & Game Commission

Lead Ammunition – Despite gathering thousands of records from agencies involved in the condor recovery program, and working with scientists to debunk faulty-science used to support the theory of condor poisoning and death from the alleged ingestion of lead ammunition, radical environmental groups convinced the California Legislature to ban all lead ammunition for hunting in California. NRA and CRPA are currently exploring legal challenges to AB 711 and will continue to work with the Fish and Game Commission to investigate the real source of lead in the environment that is causing elevated blood-lead levels in California condors and other wildlife.

Although this issue often receives less attention in the firearms community, these lead ammunition efforts are crucial to preserving Second Amendment rights through the availability of ammunition. NRA, CRPA and its lawyers are constantly monitoring and responding to attacks on the use traditional ammunition.

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Predator Management– Lobbying the Fish & Game Commission to adopt policies concerning predators that are consistent with the traditional North American Game Management model in order to preserve game hunting in California and reject the radical “environmentalists” approach of allowing predators to proliferate.

Carrying Firearms – Submitted petition demanding repeal of regulations prohibiting the possession of firearms in certain places and circumstances.

Petitions re Commission Transparency – Submitted two petitions that were accepted by the Fish & Game Commission concerning transparency of Commissioners to identify potential conflicts of interest. One seeks to require Commissioners who receive items of value from non-profit organizations to report as if they were received from a for-profit entity to prevent anti-hunting Commissioners from continuing to shield donations from environmental groups. The second seeks to require all Commissioners to sign onto the Governor’s updated Incompatible Activities Statement, so everyone knows what actions are off limit, keeping them honest.

Regulatory Comment Letter re Petition Process – Submitted comment letter regarding the Fish & Game Commission’s proposed framework for petitioning the Commission for regulatory changes. The letter proposes revisions to simplify the process for petitioners and to provide more accountability from the Commission. Some changes were accepted and officially adopted, while others were rejected.

Assembly Bill 711 (Lead Ammo) Regulations – Submitted comment letter opposing the Fish & Game Commission’s proposed regulations for implementing AB 711, California’s statewide ban on the use of lead ammunition for hunting. The comment letter explained why the Commission should wait to implement any regulations until it is clear that California hunters can comply with the new restrictions in light of the current shortage of non-lead alternatives.

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

DTSC re Lead Ammunition – Ongoing efforts to oppose proposed regulations from the Department of Toxic Substances Control. Opposition efforts include the submission of regulatory comment letters and raising awareness about the controversial Green Chemistry Initiative’s potential negative impact on the use of lead ammunition.

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DTSC Shooting Range Recycling Petition – Submitted formal petition to amend California Hazardous Waste laws to allow outdoor shooting ranges to reuse soil that has been mined to recycle spent ammunition. Current law require ranges to treat residual soil from shooting berms and shotgun fields, after mining for recyclable materials, as potentially a hazardous waste. This requires costly, sampling, profiling, removal, manifesting, transportation and disposal of a vast amounts of soil. The cost to active shooting ranges is a major disincentive to regularly recycling (required by federal law by the EPA pursuant to RCRA), using best management practices, which produces significant revenue to the shooting range from the sale of the recycled materials. Opposition efforts are currently ongoing.

E. California Law Revision Commission

Ongoing monitoring of the Commission’s proposed revisions to firearm-related laws to ensure they do not negatively impact law-abiding firearm owners. Assisted with renumbering of California Penal Code sections concerning firearms and other arms in effort to avoid unintended substantive changes to the renumbered sections that would be adverse to firearm owners. Submitted a formal request to the Commission to clarify Penal Code provisions that have been misused by municipalities to treat lawfully possessed “large-capacity magazines” as “nuisances.”

III. LOCAL ORDINANCES

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.

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) Submitted letter opposing expansion of gun-purchaser warning-letter program, including

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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. Currently tracking and preparing comments on various other proposals, including (1) a ban on certain imitation firearms; (2) divestiture of public funds in certain firearm and ammunition manufacturers; (3) a requirement that all firearm manufacturers and retailers seeking to provide city departments with firearms or ammunition agree to give up certain First and Second Amendment rights in order to do business with the city; (3) ban on the possession of all magazines capable of holding more than 10 rounds; (4) a locked-storage requirement similar to the law challenged in *Jackson v. City and County of San Francisco*.

Los Gatos – Submitted [letter](#) opposing the adoption of draconian restrictions on FFLs.

Mountain View – Submitted [letter](#) opposing the adoption of gun control laws like those adopted by the City of Sunnyvale, warning of the ongoing litigation against Sunnyvale’s “Measure C” and potential legal issues. Continuing to monitor attempts by local activists to push gun control in Mountain View.

Orange County – Submitted [letter](#) to Orange County Sheriff Sandra Hutchens responding to her claims that California law requires her to revert back to her strict CCW issuance policy because the *Peruta* decision is no longer valid. The letter explains why she is incorrect on the law and that she may actually be in violation of the law by changing her policy for those who are nearing the end of the application process, since they relied on her former policy, submitted fee payments, and satisfied training requirements.

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 the 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 oppose its passage. Despite these efforts, and litigation coordinated with NSSF challenging the restrictions is currently ongoing.

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.

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 concession from [SFPD](#) that hollow-point ammunition ban did not actually ban hollow points, and that it applies

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to virtually no ammunition. Also submitted opposition to sweeping gun control package, including a ban on the possession of magazines capable of holding more than 10 rounds, which has been challenged in federal court.

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.

Santa Clara – Successfully opposed an ordinance that would have prohibited all firearms in Santa Clara City parks, even for CCW holders, by way of demand letter.

Ventura – Submitted letter and materials regarding the impact of FFLs on their community to assist city staff in the preparation of a study on FFL zoning ordinances throughout California. Continuing to track city's attempts to create restrictive zoning regulations for firearm dealers.

Watsonville – Submitted letter opposing adoption of ordinance prohibiting all firearms on Watsonville Municipal Airport property, even for CCW holders. Successfully lobbied airport manager and city to adopt language allowing for carry of firearms pursuant to a valid CCW.

Miscellaneous – In addition to these efforts NRA and CRPA frequently work behind the scenes with local government agencies to protect and advance the rights of California firearm owners on a number of undisclosed matters.

IV. RANGE ASSISTANCE EFFORTS

NRA, CRPA, and their lawyers work on an ongoing basis to support shooting ranges on the west coast. Examples of these efforts include the following:

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

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.

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

V. OTHER EFFORTS

“Large-Capacity Magazine” Jury Instructions – Successfully prompted the California Judicial Council to amend its criminal jury instructions concerning “large-capacity magazines” to clarify that prosecutions cannot be obtained by prosecutors under state law for possessing a “large-capacity magazine.”

Santa Barbara “Assault Weapons” Charges – Contacted the Santa Barbara District Attorney’s Office and Department of Justice to prevent wrongful prosecution of an individual for possessing “assault weapon” parts.

Monitoring Government Agencies & Anti-Gun Groups – Continually submit hundreds of Public Records Act requests to the DOJ, ATF, and other agencies regulating firearms to keep tabs on their activities relating to firearms; ongoing monitoring of communications with anti-gun organizations including LCPGV and the Brady Campaign.

MAIG Opposition – Ongoing efforts to track and oppose activities of Mayors Against Illegal Guns by obtaining local government correspondence with the radical anti-gun group, speaking with government officials, monitoring press releases, and submitting letters to California mayors explaining the group’s true motives and encouraging them to withdraw membership.

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 received significant media attention.

Gun Owner Defense – Assist countless NRA and CRPA members with firearm-related legal issues and continually produce written materials for membership explaining California’s gun laws.

Member Communications – Provide media alerts, commentary, and analysis on various current events impacting the California and national firearms community on a regular basis.

Seminars / Clinics / Debates – NRA and CRPA attorneys frequently attend and participate in firearm-related

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educational functions throughout the state to increase knowledge of members and to increase NRA membership.

Legal Memoranda – Produce various legal memoranda for public education covering topics such as the legality of firearms and accessories, ambiguous definitions, LEOSA compliance, FFL compliance, CCW compliance, and many more. Most of the memoranda can be viewed for free at www.calgunlaws.com.

VI. PAST EFFORTS

For a summary of some of the many actions NRA and CRPA have taken on behalf of California gun owners in the past, [click here](#).

Help the NRA and CRPA Help You

To contribute to these efforts and more, donate to the [NRA Legal Action Project](#) or the [California Rifle & Pistol Association Foundation](#) today!

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