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January 13, 2017

Honorable Tani Cantil-Sakauye, Chief Justice
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-7203

Re: *Parker v. State of California*, Court of Appeal Nos. F062490, F062709
Request for Republication (Cal. Rules of Court, rules 8.1100, 8.1105)

Honorable Chief Justice and Associate Justices:

On behalf of our client, The CRPA Foundation, we respectfully request this Court exercise its authority under California Rules of Court, rules 8.1100 and 8.1105,[1] to republish the previously published Court of Appeal decision in the above-referenced case.[2]

This Court should republish the previously published *Parker v. California* opinion because it easily meets the publication criteria employed by this Court and because it would be consistent with the recently amended publication rules.

I. INTEREST OF THE CRPA FOUNDATION

The CRPA Foundation is a California non-profit entity classified under section 501(c)(3) of the Internal Revenue Code and incorporated under California law, with headquarters in Fullerton, California. Funds granted by The CRPA Foundation benefit a wide variety of constituencies throughout the state, including youth, women, collectors, hunters, target shooters, law enforcement, and those who choose to own a firearm to protect themselves and their families.

In addition to being a plaintiff in the *Parker* case, The CRPA Foundation has an interest in this matter because it is dedicated to protecting the rights of firearm owners in California and ensuring that

[1] All further rule references are to the California Rules of Court unless otherwise indicated.

[2] See *Hilton v. Superior Court* (2015) 191 Cal.Rptr.3d 563 (*People*) (granting request for republication of previously published appellate opinion); *420 Caregivers v. City of Los Angeles* (2013) 162 Cal.Rptr. 1 (hereafter *420 Caregivers*) (granting request for partial republication).

laws restricting the exercise of fundamental rights, including those protected by the Second Amendment, satisfy the maxims of Due Process. The CRPA Foundation firmly believes that, because the Court of Appeal decision in *Parker* provides an extensive analysis and application of the vagueness doctrine, republication will protect firearm owner's rights and prevent unnecessary litigation by guiding the legislature and regulatory agencies in drafting laws with clarity in the future.

II. THE *PARKER* OPINION SHOULD BE REPUBLISHED BECAUSE IT EASILY SATISFIES THE STANDARDS FOR PUBLICATION

Under rule 8.1105(c), an opinion should be published if it meets at least one of the enumerated standards for publication. (Cal. Rules of Court, rule 8.1105(c), factors (1)-(9).)

In *Parker*, the Court of Appeal affirmed the trial court's ruling that three criminal statutes restricting the transfer of "handgun ammunition" were unconstitutionally vague in violation of Due Process. (*Parker v. California* (2013) 221 Cal.App.4th 340 [164 Cal.Rptr.3d 345], opn. depub. when review granted, Feb. 19, 2014, S215265 (hereafter *Parker*).) While those statutes have since been amended, mooting review by this Court, the lower court's comprehensive and legally sound opinion should be certified for republication. For it easily satisfies no fewer than *seven of the nine* rule 8.1105 publication standards. Specifically, it:

- **Applies existing law to a set of facts different from those of other published opinions** (rule 8.1105(c), factor (2)) insofar as it employs the long-standing analytical framework for facial vagueness challenges in the specific factual context of a challenge to criminal laws that threaten to inhibit Second Amendment conduct and lack a scienter requirement (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 364-371);

- Simultaneously **explains an existing rule of law** (rule 8.1105(c), factor (3)) and **makes a significant contribution to the body of legal literature** (rule 8.1105(c), factor (7)) by providing an encyclopedic summary and thorough analysis of pivotal state and federal case law regarding the proper standards for analyzing facial challenges, vagueness challenges, and facial vagueness challenges (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 354-364);

- **Advances a new interpretation of a constitutional provision** (rule 8.1105(c), factor (4)) by making clear that Due Process vagueness challenges to laws restricting Second Amendment conduct are appropriately reviewed under the "generality of cases" standard that courts often apply to laws restricting other constitutional rights (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 364-367);

- **Addresses the apparent conflict** (rule 8.1105(c), factor (5)) that exists among state and federal courts regarding whether the *Salerno* standard of review or the "generality of cases" standard applies to facial challenges outside the First Amendment (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 354-364);

- **Raises at least two issues of continuing public interest** (rule 8.1105(c), factor (6)), including (1) the appropriate test for facial vagueness challenges, a "recurring issue that has evaded resolution" for some time, and (2) whether and to what extent First Amendment principles should be used to resolve Second Amendment questions, an issue that has arisen frequently[3] since the U.S. Supreme Court issued its decision in *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 364-367);

- Further **makes a significant contribution to the body of legal literature** (rule 8.1105(c), factor (7)) by applying the facial vagueness standard that is often applied to laws implicating First Amendment conduct in the Second Amendment context (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 364-371); and

- **Is accompanied by a dissenting opinion** (rule 8.1105(c), factor (9)) that, together with the majority, would make a significant contribution to the development of jurisprudence regarding the interplay of facial challenges, the void-for-vagueness doctrine, and the Second Amendment (*Parker*, *supra*, 164 Cal.Rptr.3d at pp. 373-383).

Because the *Parker* opinion clearly satisfies so many of the rule 8.1105 standards—and in light of this Court's presumption in favor of publication—there can be little doubt that republication is proper here. This Court should exercise its authority under the California Rules of Court and certify the Court of Appeal's decision in *Parker* for republication.

III. REPUBLICATION OF THE *PARKER* OPINION IS APPROPRIATE BECAUSE IT NEVER WOULD HAVE BEEN DEPUBLISHED UNDER THE AMENDED PUBLICATION RULES

In 2016, in response to decades of criticism regarding depublication, including concerns that it "leaves no trace to guide lawyers and judges in the future" (Gerstein, *"Law By Elimination:" Depublication in the California Supreme Court*" (1984) 67 Judicature 298, 297), this Court unanimously adopted amendments to its publication rules, eliminating the automatic depublication rule. As Chief Justice Cantil-Sakauye explained, the intent behind the amendments was to "allow useful Court of Appeal opinions to live on after review by the Supreme Court, to the extent they are not inconsistent with the decision of the Supreme Court." (Conneely, *Supreme Court Eliminates Automatic Depublication* (June 1, 2016) California Courts Newsroom, News Release <http://newsroom.courts.ca.gov/news/supreme-court-eliminates-automatic-depublication> (as of Jan. 13, 2017).)

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[3] See, e.g., *United States v. Marzarella* (3d Cir. 2010) 614 F.3d 85, 89 fn.4 (looking to the First Amendment in interpreting the Second and observing that *Heller* "repeatedly invokes the First Amendment in establishing principles governing the Second Amendment"); see also, *Natl. Rifle Assn. v. BATFE* (5th Cir. 2012) 700 F.3d 185, 197-198; *Ezell v. City of Chicago* (7th Cir. 2011) 651 F.3d 684, 697-699; *United States v. Chester* (4th Cir. 2010) 628 F.3d 673, 682.

The Court of Appeal's opinion in *Parker* was originally published at 221 Cal.App.4th 340. By operation of former rule 8.1105(e)(1)(A), the opinion was automatically depublished when this Court granted review in 2014,[4] and it remains so despite this Court dismissing review on mootness grounds.

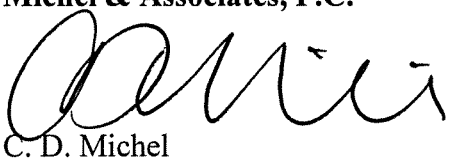
Under amended rule 8.1105, the *Parker* opinion would have remained published. For this Court neither ordered the opinion to be depublished, nor made a final decision upon review. Because the Court of Appeal applied sound law and reasoning to reach its decision, depublication is not appropriate. Rather, this Court should republish the *Parker* opinion because it will allow the Court's detailed discussion and application of the proper analytical framework for facial vagueness challenges "to live on" and guide future lawyers and judges in an area of law desperately needing clarity and certainty.

III. CONCLUSION

The *Parker* opinion's substantial precedential value is a valuable asset to courts, attorneys, legislators, regulatory bodies, and others considering statutory vagueness issues. Indeed, in drafting Respondents' Brief in the *Parker* case, to provide the court with a full understanding of the issues at play, our office spent dozens of hours simply analyzing and synthesizing the vast (and complex) universe of legal authority governing facial challenges and the void-for-vagueness doctrine. The opinion that *Parker* generated will undoubtedly aid future attorneys and courts in that undertaking. The guidance contained in the opinion, if republished, will help reduce the controversial nature of facial vagueness challenges, secure uniformity in decisions, and greatly advance the efficiency of those that repeatedly grapple with such important matters of widespread interest.

For these reasons, The CRPA Foundation respectfully requests the Court republish the Court of Appeal's decision in *Parker v. State of California.* Alternatively, the Court should certify the decision for partial republication, allowing those sections that the Court deems most appropriate for publication to "live on." (See, e.g., *420 Caregivers, supra*, 162 Cal.Rptr. 1.)

Respectfully submitted,
Michel & Associates, P.C.



C. D. Michel

[4] Although the State requested depublication, the Court did not expressly rule on that request.

PROOF OF SERVICE

I, Laura Palmerin, am employed in Long Beach, Los Angeles County, California. I am over the age of eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, CA 90802.

On January 13, 2017, I served the foregoing document(s) described as:

Letter dated January 13, 2017 re: Parker v. State of California, Court of Appeal Nos. F062490, F062709, Request for Republication (Cal. Rules of Court, rules 8.1100, 8.1105)

on the interested parties in this action by placing
[ ] the original
[x] a true and correct copy
thereof enclosed in a sealed envelope(s) addressed as follows:

George Waters
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.
Executed on January 13, 2017, at Long Beach, California

__ (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery by UPS/FED-EX. Under the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for receipt on the same day in the ordinary course of business. Such envelope was sealed and placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for in accordance with ordinary business practices.
Executed on _____, at Long Beach, California.

__ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X (FEDERAL) I declare that I am employed in the office of the member of the bar of this of this court at whose direction the service was made.

Laura Palmerin
LAURA PALMERIN