



Written by [Bob Adelman](#) on September 26, 2023

Judge Rules Against California Magazine Ban — Again

It isn't often that a judge gets a second chance to inveigh against an unconstitutional law, but District Court Judge Roger Benitez was given that opportunity last Friday, [and he took it](#).

California's long war against guns, and the Second Amendment has been going on for years. In 2016, California voters were persuaded that limiting magazine capacities to just 10 rounds would somehow ward off mass shootings. Such a ban would force a would-be shooter to "pause" to reload, it was said, perhaps allowing a nearby citizen to take him out before he could resume firing.



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In March 2019, in *Duncan v. Becerra* (now relabeled *Duncan v. Bonta*), Benitez ruled against the ban. In August 2020, a three-judge panel of an appeals court upheld Benitez's ruling, but the state of California demanded a full-court (*en banc*) hearing and the full court (the notorious Ninth Circuit) reversed in June 2021.

A year later, the Supreme Court's ruling in *New York State Rifle and Pistol Association v. Bruen* changed the legal landscape significantly, requiring governments imposing limits on the Second Amendment to show how those limits had historical tradition. In September 2022, the high court took *Duncan v. Bonta* under review and sent it back to Benitez to affirm his original decision.

Benitez was delighted to do so. Last Friday, for the second time, he declared that California's magazine ban, stating that possession of a magazine holding more than 10 rounds was illegal and subjected the owner to sanctions, was unconstitutional.

In his first ruling (March 2019) Benitez pulled no punches, insisting that the state's claim that such a ban would reduce mass shootings was fraudulent:

In one year in California (2017), a population of 39 million people endured 56,609 robberies, 105,391 aggravated assaults, and 95,942 residential burglaries. There were also 423 homicides in victims' residences.

There were no mass shootings in 2017.

It was smooth sailing for Judge Benitez from there: The ban wouldn't have impacted mass shootings, but would have greatly impinged on the rights of individual citizens to be able to protect themselves instead. Wrote Benitez:

The statute hits at the center of the Second Amendment and its burden is severe. When the simple test of *Heller* ["an individual right to possess a firearm ... and to use that arm for ... self-defense within the home"] is applied, a test that persons of common intelligence can understand, the statute fails and is an unconstitutional abridgment.



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It criminalizes the otherwise lawful acquisition and possession of common magazines holding more than 10 rounds — magazines that law-abiding responsible citizens would choose for self-defense at home....

Accordingly, based upon the law and the evidence, upon which there is no genuine issue.... Plaintiffs' motion for summary judgment is granted.

Given a second chance, Judge Benitez wasted no time: "This case is about a California state law that makes it a crime to keep and bear common firearm magazines typically possessed for lawful purposes. Based on the text, history, and tradition of the Second Amendment, this law is [still] unconstitutional."

He was just getting warmed up:

There is not American tradition of limiting ammunition capacity and the 10-round limit has no historical pedigree and is arbitrary and capricious. It is extreme.

He took California's officials enforcing the ban to task for creating out of whole cloth the "suitability" of the ban:

In a stealth return to the interest balancing test rejected by *Heller* and *Bruen*, the State ostensibly justifies its magazine limits by deeming the smaller magazines "well-suited" for its citizens.

Suitability, in turn, is based on concocted statistics about what a hypothetical average person needs to defend against an attacker or attackers in an average self-defense situation.

Based on this hypothetical statistically average case scenario, the State permits its citizen to have a gun, but the State decides the number of rounds in the gun that it finds suitable.

In so doing, the State denies a citizen the federal constitutional right to use common weapons of their own choosing for self-defense.

He then reminds the defendants that there are times when a homeowner might just need more than 10 rounds to fend off an attacker:

There have been, and there will be, times where many more than 10 rounds are needed to stop attackers. Yet, under this statute, the State says "too bad." It says, if you think you need more than 10 chances to defend yourself against criminal attackers, you must carry more magazines....

So, the previously law-abiding California citizen who buys and keeps at her bedside a nationally popular Glock 17 (with its standard 17-round magazine) becomes the criminal, because the State dictates that a gun with a 17-round magazine is not well-suited for home defense.

The judge then reminds those California officials determined to violate the Second Amendment of some salient facts:

Crime happens a lot. One recent estimate holds that guns are needed defensively



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approximately 1,670,000 times a year. Another report, originally commissioned and long cited by the Centers for Disease Control and Prevention estimated that there are between 500,000 and 3,000,000 defensive gun uses in the United States every year.

Woe to the victim who runs out of ammunition before armed attackers do. The police will mark the ground with chalk, count the number of shell casings, and file the report.

Judge Benitez is sure that the state of California will appeal once again, not learning from the previous lesson he taught, and so he laid out just what they must prove:

The State must demonstrate that its extreme ban is consistent with this Nation's historical tradition of firearms regulation. As explained below, there is no national tradition of prohibiting or regulating firearms based on firing capacity or ammunition capacity.

In other words, good luck with that appeal. Judge Benitez gave the state 10 days to come up with a persuasive argument before his ruling becomes final.

Not willing to accede victory, California Governor Gavin Newsom claimed gun-rights groups want to ban all state laws concerning firearms ownership:

It's time to wake up ... we are at the mercy of ideologues like Judge Benitez.

All of our gun safety laws that are proven to save lives are at risk.

It doesn't matter what laws we pass. It doesn't matter what the voters decide. Concealed carry. Banning weapons of war. Reasonable waiting periods. Background checks.

The ideologues are coming for all of them.

No, Governor Newsom, just those that are unconstitutional.



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