

**INFORMATION BULLETIN:
COURT ORDERED STAY IN DUNCAN V. BECERRA
“LARGE CAPACITY” MAGAZINE CASE:
WHAT GUN OWNERS NEED TO KNOW MOVING FORWARD
APRIL 8, 2019**

Between the hours of Friday afternoon on March 29, and 5:00 P.M Friday, April 5, hundreds of thousands—if not millions—of magazines capable of holding more than 10 rounds were lawfully purchased by California gun owners. Referred to by many as “Freedom Week,” this was a direct result of a federal district court issuing a decision in the NRA and CRPA supported lawsuit titled Duncan v. Becerra, which permanently enjoined California from enforcing its restrictions against so-called “large-capacity” magazines.

That decision has been stayed pending an appeal by California’s Attorney General. As of 5:00 P.M. Friday, April 5, California’s restrictions against the manufacture, importation, sale, giving, lending, buying, or receiving “large-capacity” magazines are once again in effect. However, the court has clarified that anyone who “manufactured, imported, sold, or bought” such magazines during “Freedom Week” cannot be prosecuted for violating California’s “large-capacity” magazine restrictions. What’s more, the court’s June 2017 injunction prohibiting California from enforcing its restriction against the “possession” of such magazines, remains in effect.

Naturally, many gun owners have questions regarding the recent rulings in Duncan and their effects. To that end, we have prepared the following list of commonly asked questions with answers to assist our members and gun owners moving forward.

I. CAN I STILL PURCHASE MAGAZINES CAPABLE OF HOLDING MORE THAN 10 ROUNDS IN CALIFORNIA?

NO! As of 5:00 P.M. Friday, April 5, the decision granting the Duncan Plaintiff’s motion for summary judgment has been stayed pending appeal by the California Attorney General. As a result, California’s restrictions prohibiting the manufacture, importation, sale, transfer or receipt of any “large-capacity” magazines are once again in effect.

II. CAN I CONTINUE TO POSSESS THE MAGAZINES I LAWFULLY ACQUIRED?

YES! As of the date of this bulletin, California’s restrictions against “possession” have been unenforceable since June 29, 2017, when this same court issued a preliminary injunction preventing it from taking effect while the parties litigated the merits of the case.

III. CAN I USE THE MAGAZINES I LAWFULLY ACQUIRED AT A SHOOTING RANGE?

YES! For the same reasons above, California does not currently prohibit the “possession” of magazines capable of holding more than 10 rounds. Only activities involving the manufacture, importation, sale, transfer or receipt of such magazines are prohibited. The mere “use” of a magazine at a shooting range, for example, is not specifically prohibited. But BEWARE: the use of any “large-capacity” magazine in either a semiautomatic, centerfire rifle with a fixed

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magazine or a semiautomatic pistol with a fixed magazine could classify the firearm as an illegal “assault weapon” under California law.¹

IV. CAN I CARRY THE MAGAZINES I LAWFULLY ACQUIRED WITH A FIREARM PURSUANT TO A CARRY LICENSE?

YES, but your local licensing authority’s policies may still restrict such activity. As noted above, California law does not prohibit the “use” of any “large-capacity” magazine. However, department policies of a local licensing authority may prohibit individuals from carrying such magazines in connection with their CCW permits. Individuals should, therefore, review their CCW license authority’s policies before carrying any “large-capacity” magazine in connection with their CCW permit.

V. I LAWFULLY PURCHASED MAGAZINES DURING “FREEDOM WEEK” BUT THEY HAVE YET TO ARRIVE IN THE MAIL, AM I STILL OK TO RECEIVE THEM?

YES! As noted in the Court’s order granting a stay, anyone who “manufactured, imported, sold, or bought” magazines capable of holding more than 10 rounds during “Freedom Week” cannot be prosecuted for violating California’s “large-capacity” magazine restrictions. Assuming the individual “bought” the magazines but has yet to receive them, the Court’s order prohibits that individual from being prosecuted.

VI. I OWN “LARGE-CAPACITY” MAGAZINES THAT ARE CURRENTLY OUT OF STATE, CAN I STILL BRING THEM BACK INTO CALIFORNIA?

NO! As noted above, California’s restrictions prohibiting the manufacture, importation, sale, transfer or receipt of any “large-capacity” magazine are currently in effect. Attempting to bring back magazines into California, despite already being owned by you, can be construed as “importation” which is currently prohibited.

VII. CAN I TRAVEL WITH THE MAGAZINES I LAWFULLY ACQUIRED OUTSIDE OF CALIFORNIA?

NO! Prior to the enactment of Proposition 63 in 2016, California law allowed individuals to travel with their lawfully acquired magazines capable of holding more than 10 rounds outside of California and then return with them.² But this provision was repealed with the enactment of Proposition 63. As a result, individuals can no longer travel outside of California with their lawfully acquired magazines unless they plan on leaving their magazines out of California.

VIII. WHAT ARE THE PENALTIES FOR VIOLATING CALIFORNIA’S MAGAZINES RESTRICTIONS?

Anyone who “manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazines” can be charged with either a misdemeanor with up to a year imprisonment or felony with up to 3 years imprisonment (known as a “wobbler”).³ This restriction is currently in effect except as applied to those who bought magazines during “Freedom Week” per the Court’s order regarding the stay.

In addition to the above, California law also prohibits the “possession” of any “large-capacity” magazine.⁴ But this restriction never took effect as a result of the Court’s June 2017 order granting a preliminary injunction, which remains in place despite the issuance of the stay.

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Should this provision become enforceable, anyone who possesses a “large-capacity” magazine can be charged with either: 1) a fine up to \$100 per magazine; 2) a misdemeanor with a fine up to \$100 per magazine; 3) imprisonment up to one year; or, 4) both a fine and imprisonment.⁵ Lastly, California law also declares any “large-capacity” magazine to be a “nuisance” subject to confiscation and summary destruction.⁶

IX. HOW DOES THE COURT’S RULING AFFECT CALIFORNIA’S “NUISANCE” PROVISION?

While a law enforcement agency might, in fact, seize “large-capacity” magazines as a “nuisance” under California Penal Code section 32390, it is our attorneys’ view that there is no legal authority for it to do so—at least not for those who lawfully acquired their magazines. As an initial matter, our attorneys believe section 32390 is unenforceable against at least lawfully acquired “large capacity” magazines, regardless of this ruling, as it was never intended to apply to them. In 2010, the Legislature reorganized firearm laws with the intent of making them easier to understand by renumbering, breaking up, and rewording long, complicated statutes. All those alterations were expressly intended to make no substantive legal change to the existing statutes.

The predecessor of section 32390 was an ambiguous provision that, at most, applied only to “large capacity” magazines that were unlawfully made, imported, sold, or acquired, but not merely possessed; this is because that previous statute applied to a whole host of weapons whose possession was illegal, while the “large capacity” magazine statute only applied to acquisition of news ones. The legislative history for the original “large capacity” magazine statute expressly stated that it did not intend to affect lawfully possessed magazines. It would make no sense, nor would it likely pass constitutional muster under the Due Process Clause, to construe section 32390 as applying to the lawful possession of magazines.

In any event, even if our attorneys’ analysis of California Penal Code section 32390 is wrong, the ruling in the Duncan matter makes clear that it is unconstitutional and thus unenforceable. The notion that an item whose possession is protected by the Second Amendment can be seized by government provided there is no criminal penalty is absurd; particularly so if there is no compensation for it, because seizing a “large-capacity” magazine as a nuisance would still be an illegal taking under the ruling. The ruling itself leaves little doubt that it would not tolerate enforcement of section 32390. As stated by the court in the March 29, 2019, decision:

Casting a common sized firearm magazine able to hold more than 10 rounds as a nuisance, as a way around the Second Amendment, is like banning a book as a nuisance, as a way around the First Amendment. It conjures up images from Ray Bradbury’s novel, Fahrenheit 451, of firemen setting books on fire, or in this case policemen setting magazines on fire.

In the coming days, CRPA attorneys will be sending a letter to various law enforcement channels in the State explaining Section 32390’s unenforceability. If you or anyone you know has a “large-capacity” magazine seized by law enforcement on the basis that it is a nuisance under Section 32390, we urge you to contact CRPA attorneys immediately by sending an email to helpdesk@michellawyers.com or by calling (562) 216-4444.

X. WHERE CAN I VIEW THE FILINGS IN THE DUNCAN V. BECERRA LAWSUIT?

All case filings can be viewed online at <http://michellawyers.com/duncan-v-becerra/>.

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- A copy of the Court’s June 2017 order granting a preliminary injunction can be viewed at: http://michellawyers.com/wp-content/uploads/2017/05/Duncan-v.-Becerra_Order-Granting-Preliminary-Injunction.pdf.
- A copy of the Court’s March 29, 2019, order granting summary judgment can be viewed at: <http://michellawyers.com/wp-content/uploads/2019/03/Duncan-2019-03-29-Order-Granting-Plaintiffs-MSJ.pdf>.
- A copy of the Court’s April 4, 2019, order staying the enforcement of the order granting summary judgment can be viewed at: <http://michellawyers.com/wp-content/uploads/2019/04/2019-04-04-Order-Staying-in-Part-Judgment-Pending-Appeal.pdf>.

XI. WHO IS RESPONSIBLE FOR LITIGATING DUNCAN V. BECERRA?

The California Rifle & Pistol Association, with support from the National Rifle Association, filed this lawsuit after hearing the fear and outrage from its members who were being forced by the passage of Proposition 63 and Senate Bill 1446 in 2016 to either surrender their “large-capacity” magazines to the government or become criminals.

- 1 See Cal. Penal Code §§ 30515(a)(2), 30515(a)(5).
- 2 See Cal. Penal Code § 32420 (repealed 2016).
- 3 Cal. Penal Code § 32310(a). For the purposes of this restriction, “manufacturing” includes “both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.” Cal. Penal Code § 32310(b).
- 4 Cal. Penal Code § 32310(c).
- 5 Cal. Penal Code § 32310(c).
- 6 Cal. Penal Code § 32390; See also Cal. Penal Code § 18010(b).