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INSIGHT · CIVIL RIGHTS

Q3 2022 Legal Review: Dobbs, Bruen, and the Reassertion of State Police Powers

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The Supreme Court's decisions in Dobbs v. Jackson and NYSRPA v. Bruen altered constitutional jurisprudence, sparking dynamic federalism and state sovereign responses.

The third quarter of 2022 experienced an historic realignment in federal constitutional law following the Supreme Court's end-of-term decisions in *Dobbs v. Jackson Women's Health Organization* and *New York State Rifle & Pistol Association, Inc. v. Bruen*. Together, these decisions dismantled decades of balancing-test jurisprudence in favor of strict historical-tradition methodology, triggering extensive state legislative reactions across California.

I. The Bruen 'Text, History, and Tradition' Test

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court abrogated the two-step intermediate scrutiny framework previously applied by the Ninth Circuit and other federal appeals courts. Writing for the majority, Justice Thomas established that when the Second Amendment's plain text covers an individual's conduct, the government must affirmatively prove that its firearms regulation is part of the historical tradition of firearm regulation in the United States.

The ruling invalidated New York's 'proper cause' discretionary concealed carry permitting scheme and immediately cast constitutional doubt on California's similar 'good cause' requirement under Penal Code § 26150. California Attorney General Rob Bonta promptly issued Legal Alert OAG-2022-02, instructing issuing authorities to cease requiring 'good cause' while maintaining thorough background and suitability checks.

II. Dobbs and the Constitutional Federalism Divide

Simultaneously, in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Court overruled *Roe v. Wade* (1973) and *Planned Parenthood of Southeastern Pa. v. Casey* (1992), returning the authority to regulate reproductive healthcare to individual states. The Court held that substantive due process under the Fourteenth Amendment protects only those unenumerated rights that are deeply rooted in the nation's history and tradition.

In response, the California Legislature and Governor Gavin Newsom enacted a comprehensive statutory shield package (including AB 1666 and AB 2091), protecting California healthcare providers and out-of-state patients against foreign state subpoenas, civil judgments, and extradition efforts. California voters subsequently amended the California Constitution (Article I, Section 1.1) to explicitly enshrine reproductive freedom as a state constitutional right.

III. Practical Implications for California Litigators

The third quarter of 2022 demonstrated the growing divergence between federal and state constitutional law:

- **Independent State Constitutional Grounds:** California courts increasingly rely on the California Constitution's independent declaration of rights (Cal. Const. art. I) to provide broader civil rights and privacy protections than the federal floor established by the U.S. Supreme Court.
- **Interstate Conflict of Laws:** Civil litigators face complex full-faith-and-credit and choice-of-law disputes regarding out-of-state judgments and statutory claims that violate California fundamental public policy.
- **Historical Record Evidence:** Constitutional litigators must now develop deep historical evidentiary records, utilizing expert historians and founding-era legislative archives to defend or challenge statutory enactments under the *Bruen* standard.

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