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June 29, 2022

VIA U.S. MAIL
David Robinson, Sheriff-Coroner-Public Administrator
Kings County Sheriff's Office
1444 W. Lacey Blvd.
Hanford, CA 93230

Re: ERRORS IN THE ATTORNEY GENERAL'S JUNE 24, 2022 LEGAL ALERT

To All CCW Permit Issuing Authorities:

Our firm represents the California Rifle & Pistol Association (CRPA), founded in 1875. CRPA has been working to uphold the right of Californians to keep and bear arms ever since.

We wrote to you several days ago following the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen* to explain how this decision may affect your policy on the issuance of concealed weapon permits (CCW), particularly, the "good cause" requirement. Since our letter went out, on June 24th Attorney General Bonta sent out a Legal Alert notifying issuing authorities the requiring "good cause" is now unconstitutional and advising that the requirement of "good cause" should be dropped from the CCW application process.

In the alert the Attorney General suggests that local officials could apply a heightened "good moral character" requirement to the application process. The Attorney General's advice suggests applying the good moral character requirement in ways that would be unconstitutional under the Supreme Court's ruling.

ELIMINATING THE "GOOD CAUSE" REQUIREMENT

CRPA was pleased with the first portions of the Legal Alert, where the Attorney General unequivocally states that California's "good cause" requirement[1] is no longer valid. As he correctly notes, "the Court's decision renders California's 'good cause' standard to secure a permit to carry a concealed weapon in most public places unconstitutional."

This is in line with the Supreme Court's decision, which ruled that New York's "proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens

[1] (Pen. Code, § 26150, subd. (a)(2))

with ordinary self-defense needs from exercising their right to keep and bear arms." *N.Y. State Rifle & Pistol Association v. Bruen, Superintendent of N.Y. State Police*, No. 20-843, 2022 U.S. LEXIS 3055, at *90 (June 23, 2022) ("*Bruen*"). In accordance with the Supreme Court's ruling, all issuing authorities should immediately stop enforcing any "good cause" policies that require applicants to establish anything beyond a desire to bear arms for self-defense.

In our previous letter to you we demanded that authorities accept a general desire for lawful self-defense as sufficient "good cause." This would also make the practice constitutional, but simply dropping the good cause requirement entirely as the Attorney General suggests is a simpler approach.

As required by Penal Code section 26160, CCW issuing authorities must publish their good cause policy for the public. We suggest that whatever good cause policy you currently have posted be revised as follows:

> "Per the Supreme Court's ruling in *New York State Rifle & Pistol Association v. Bruen*, requiring an applicant to establish 'good cause' to get a carry permit is unconstitutional. To comply with the that ruling, we will no longer enforce this requirement or require applicants to demonstrate good cause to qualify for a license to carry a firearm."

GOOD MORAL CHARACTER

In the latter portions of the Legal Alert, the Attorney General erroneously advises local officials that they can apply the "good moral character" requirement in ways that are contrary to the Second Amendment and the Supreme Court's ruling.

CRPA does not dispute that permit issuance may be limited to "law-abiding, responsible citizens." *Bruen*, 2022 U.S. LEXIS 3055, at *89. And local officials can still make reasonable efforts to ensure that people issued carry permits are such citizens, so long as such efforts are based on objective criteria. However, the examples raised in the Legal Alert go too far.

For example, the Attorney General cites what he claims is Sacramento's policy of an *arrest* in the last five years being enough justification to deny a CCW permit, "regardless of the disposition" of that arrest. By that measure, even a *mistaken* arrest could be grounds for an individual having the right to bear arms denied to them for five years.[2] That is not legally acceptable.

The Attorney General then refers to a list of arbitrary and impossible-to-measure factors that he (apparently erroneously) claims are used by the Riverside County Sheriff's Department[3], including "honesty, trustworthiness, diligence, reliability, respect for the law, integrity, candor, discretion", and more. While a few of the listed factors may be fine if there is actual evidence for

[2] This is not to say that Sacramento was actually enforcing their policy that way in practice.

[3] We could not locate where this supposed policy is printed, and so cannot confidently state the Attorney General is even correct that this is Riverside's policy. The Riverside County Sheriff has been contacted, and will be addressing this himself.

them, it's not clear how a local official could objectively measure, as one example, how "reliable" someone is without such a review falling into arbitrary determinations.[4]

Additionally, "respect for the law" could easily devolve into police departments denying permits to anyone who has been critical of them in the past, especially given that the legal alert also informs local officials that they may mine through applicants' social media posts. Such viewpoint-based discrimination would violate the First Amendment as well as the Second.

Perhaps the most troubling factor the Attorney General lists is "fiscal stability." The right to bear arms is not reserved to the "fiscally stable," whatever that means. Poorer citizens have just as much a right to bear arms as any other law-abiding citizen.

While the Attorney General appears to believe that issuing authorities can shift their discretionary denials from "good cause" to "good moral character", the Supreme Court has already closed off that route. All of the subjective morality factors the Attorney General listed are not only plainly unreasonable, they are also plainly unconstitutional.

In explaining why the 43 states that have shall-issue regimes are acceptable, the Court stated:

> Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, "law-abiding, responsible citizens." Ibid. And they likewise appear to contain **only "narrow, objective, and definite standards**" guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U. S. 147, 151 (1969), **rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion**," *Cantwell v. Connecticut*, 310 U. S. 296, 305 (1940)—features that typify proper-cause standards like New York's. That said, **because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes** where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.
>
> *Bruen*, 2022 U.S. LEXIS 3055, at n.9. (emphasis added.)

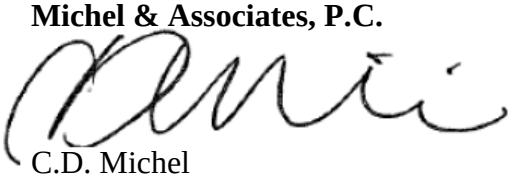
"Narrow, objective, and definite standards" are thus what the Court considers acceptable. A county sheriff or other local official deciding whether someone is "reliable" or "diligent", or mining through social media posts to find opinions they do not agree with, is not objective in the least.

We trust that all local officials will not rely on the Attorney General's mischaracterization of the Riverside Sheriff's Department policy, and his ignoring of the *Bruen* ruling, and will follow only objective standards in their permit issuance from now on.

[4] Again, this is not to say the Riverside Sheriff's Department has actually been enforcing these criteria (if indeed these criteria are even Riverside's policy) in a subjective or malicious way. CRPA simply believes such criteria are unacceptable because they *could* easily be abused.

CRPA will be on the lookout for arbitrary applications of the "good moral character" requirement to make certain it is not applied in unconstitutional ways. But at the same time, CRPA is here to help local officials craft appropriate, constitutional, and wise permit issuance policies. To that end, please do not hesitate to reach out to our office if you have any questions, concerns, or would like further guidance.

Sincerely,
Michel & Associates, P.C.



C.D. Michel