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SUMMARIZING CALIFORNIA'S CARRY LAWS AND CONSTITUTIONAL PRACTICES POST-*BRUEN*

I. California Law Prior to The *Bruen* Decision

California law lists the following requirements for the issuance of licenses to carry concealed weapons:

> *"(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person upon proof of all of the following:*
>
> *(1) The applicant is of good moral character.*
> *(2) Good cause exists for issuance of the license.*
> *(3) The applicant is a resident of the county or a city within the county, or the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.*
> *(4) The applicant has completed a course of training as described in Section 26165."*

Pen. Code, § 26150, subd. (a) (*see also* Pen. Code, § 26155, subd. (a) [referring to the same requirements, but for when a City Police Department handles permit issuance]).

While the Supreme Court's decision allows most of California's statutory requirements to stand *so long as they are not abused*, subsection (a)(2), relating to "good cause" is now no longer valid.

II. The Supreme Court's Decision Eliminates The "Good Cause" Requirement

The Supreme Court ruled in the landmark case of *New York State Rifle & Pistol Association Inc. v. Bruen* that the state of New York's denial of petitioners' applications for concealed-carry licenses for lack of "proper cause" under New York's licensing requirements "violated the Second Amendment."

Like California, the New York law prohibited ordinary law-abiding citizens from carrying a handgun outside the home without a license, and it denied licenses to every citizen who failed to convince the state that he or she has "proper cause" to carry a firearm. That NY law has now been struck down because the "proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2156 (2022) ("*Bruen*").

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In the opinion of the Court, Justice Thomas explained that permit regimes that "do not require applicants to show an atypical need for armed self-defense" are acceptable. *Bruen*, 142 S. Ct. 2111 at n.9.

So the "shall-issue" regimes that exist in 43 states are permissible, but those of New York, California, and several others that require applicants to convince issuing authorities of "good cause" or "proper cause" are not.

Attorney General Bonta has already admitted that California's requirement for "good cause" is no longer allowed under this precedent decision: "California similarly requires applicants for licenses to carry firearms in public to show "good cause," and is likely unconstitutional under *Bruen*."[1] Issuing authorities may not require good cause.

And as discussed below, any subjective requirements, including those previously applied by some issuing authorities regarding California's "good moral character" requirement, are likewise unconstitutional under *Bruen*.

A. Publication Of A "Good Cause" Policy Is Still Required

Penal Code section 26160 requires CCW issuing authorities to publish their good cause policy for the public. CRPA suggests that whatever good cause policy departments 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."

It is not acceptable to leave an expired good cause policy posted.

III. The "Good Moral Character" Requirement Cannot be Used to Re-Insert Subjectivity Into The Application Process

As referenced above, on June 24th Attorney General Bonta sent out a Legal Alert notifying issuing authorities that requiring "good cause" is now unconstitutional and advising that the requirement of "good cause" should be dropped from the CCW application process. Unfortunately, in the alert the Attorney General appeared to suggest local officials could apply a heightened "good moral character" requirement to applicants in ways that would be unconstitutional under the Supreme Court's ruling.

As mentioned above, under California law, applicants issued CCW permits must have "good moral character". Pen. Code, § 26150, subd. (a); *see also* Pen. Code, § 26155, subd. (a) (referring

[1] https://oag.ca.gov/news/press-releases/attorney-general-bonta-affirms-his-support-commonsense-gun-laws-response-supreme

to the same requirements, but for when a City Police Department handles permit issuance). In the past, those jurisdictions that issued CCWs in California prior to *Bruen* appeared to limit the application of this requirement to a person's criminal history. But even then, denials for lack of "good moral character" were relatively rare, and usually reserved for people with extensive criminal history or repeated contacts with law enforcement.

As the Court stated in *Bruen*, shall-issue systems which limit permits to "law-abiding, responsible citizens" are acceptable. *Bruen*, 142 S. Ct. 2111, at n.9. But this does not mean that issuing authorities can apply any subjective or biased standard regarding the "good moral character" requirement. Instead, for an issuing authority's "good moral character" standard to be constitutionally permissible, it must have a narrow, *objective* meaning.

A. Only "Narrow, Objective, and Definite" Standards are Acceptable

Some departments have taken to using the "good moral character" requirement as a new way to exercise unacceptable discretion over permit issuance. In his Legal Alert, the Attorney General laid out several "suggestions" of how issuing authorities could abuse the good moral character requirement. These included things like disqualifying people with any arrest in the last five years (regardless of disposition), as well as evaluating completely subjective measures like "honesty, trustworthiness, diligence, reliability, respect for the law, integrity, candor, discretion, financial stability",[2] and more.

None of that is acceptable. Such a standard would be entirely subjective, and *subjectivity is not allowed*.

All that *Bruen* allows for under an objective "good moral character" standard is that issuing authorities may conduct a background check to confirm that the applicant has nothing that would constitute moral turpitude or a record that would disqualify them from bearing arms.

As the Supreme Court explained:

> 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."

Bruen, 142 S. Ct. 2111, at n.9 (emphasis added).

[2] In his legal alert, the Attorney General claimed the Riverside County Sheriff's Department uses these subjective measures, but CRPA has not been able to find any evidence of this.

Furthermore, a federal court in New York recently explained that

> "the Second Amendment right in question is still one of self-defense, and licensing officials may not arbitrarily abridge it based on vague, subjective criteria. Rather, the purpose of the open-ended discretion is more objectively achieved through the requirement of fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force."

Antonyuk v. Bruen, No. 1:22-CV-0734 (GTS/CFH), 2022 U.S. Dist. LEXIS 157874, at *80-81 (N.D.N.Y. Aug. 31, 2022) ("*Antonyuk*").

IV. Demanding Character References, Employer Notification, Social Media Postings, and Psychological Exams Violates *Bruen* and California Law

A. *Bruen* Standard

As explained above, discretion to "deny licenses based on a perceived lack of need *or suitability*" is impermissible. *Bruen,* 142 S. Ct. at 2123, italics added. Suitability determinations rely exclusively on subjective inquiries. That means that practices like asking for character references, inquiring about the application with the applicant's employer, digging through applicants' social media, and psychological exams are all unacceptably subjective, if not outright arbitrary requirements.

As the federal judge in the *Antonyuk* case explained as to social media searches,

> "…a citizen's Fifth Amendment right would be surrendered if he or she were compelled to disclose self-incriminating statements on a social-media posting in order to exercise his or her Second Amendment right…[the government] has adduced no historical analogues requiring persons to disclose their published political pamphlets (which might be considered to be akin to a social-media posting), or their personal correspondence (which might be akin to a private message, or a message to a restricted group, on social media)."

Antonyuk, 2022 U.S. Dist. LEXIS 157874, at *85-86.[3]

Applicants must already pass a DOJ background check for their permit process, on top of the background check they did when they bought their firearms. There is no constitutional need for extensive moral character inquiries beyond that.

[3] The *Antonyuk* Court only didn't find a violation with New York's character reference requirement because the Plaintiff in that case testified it was not arduous for *him* to get character references. For any individuals for whom such references would be a burden, requiring references is unlikely to pass muster.

B. California Law

State law says that the only information that may be required of applicants is what is stated in BOF form 4012. "An applicant shall not be required to complete any additional application or form for a license, *or to provide any information other than that necessary to complete the standard application form described in subdivision (a)*, except to clarify or interpret information provided by the applicant on the standard application form." Cal. Penal Code § 26175, subd. (g), italics added.

Character references and requiring disclosure to the employer that the applicant seeks a permit (or asking that employer for its opinion of the applicant) are not on the form and may not be required.[4]

In addition to going beyond the scope of what is permissible with the good moral character requirement, asking for character references or notifying employers also violates an applicant's privacy. Applicants may understandably not want people, including their employer, to know they are applying for a carry permit. And even if there were no privacy concerns, issuing authorities cannot simply "outsource" subjectivity on permit issuance to applicants' employers or anyone else. Such individuals may be personally opposed to the right to bear arms and thus have non-objective motivations to undermine the application.

CRPA has also been made aware of some issuing authorities demanding applicants provide pictures of at-home firearm storage to assure compliance with California's negligent storage laws. Setting aside the fact that at-home storage of a firearm has no bearing on a CCW holder carrying a firearm *outside* their home, this is another example of an impermissible requirement. What's more, such a requirement fails to understand that California's restriction does not mandate a particular form of at-home storage, making such a requirement meaningless.[5]

V. CCW Permit Applications Must Be Accepted.

Any department that isn't even *accepting* applications is violating a constitutional right. "The Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Bruen*, 142 S. Ct. at 2122. Despite the clarity of the Supreme Court's ruling, too many people have informed us that when they contact their local sheriff's or police departments to ask how they can apply for a CCW permit, they are either ignored or told the department isn't accepting applications. In some situations, applications are accepted, but never processed, which is equally impermissible.

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[4] Psychological testing is permitted on form 4012 but is likely unconstitutional under *Bruen* as a forbidden subjective "suitability" determination.

[5] Instead, California law prohibits the storage of a firearm in a manner where the person "knows or reasonably should know" a child or prohibited person can gain access to the firearm. How a person stores their firearm to prevent such access is left up to the individual. Nor does the requirement even apply to persons who live without children or prohibited persons and who do not allow access to their home by children or prohibited persons.

CRPA understands that establishing a CCW permit processing system is a burden, particularly for departments that violated the right to carry for decades by only giving CCW permits to the rich, famous, and well-connected. But the *government* is the one insisting on permits for the exercise of a constitutional right, not the applicants. Given that the government insists on CCW permits instead of embracing constitutional carry as 25 other states have, it cannot complain that processing applications is too burdensome.

VI. Future Plans to Implement Permit Application Software Cannot Be Used to Deny Permits Now.

CRPA understands that some departments are in the process of adopting the "Permitium" software that many counties are already using, and that may be the reason for current delays. CRPA fully supports any software that makes applying for a carry permit a more seamless process for applicants. However, in the meantime, departments must still accept the standard Bureau of Firearms form 4012[6] by mail or in person. Under Penal Code section 26175, the Attorney General must prescribe a statewide standard application form for a CCW license, and "an applicant shall not be required to complete any additional application or form for a license." Cal. Penal Code § 26175, subd. (g). Permitium is acceptable to the extent it merely serves as a more convenient way to complete the required DOJ application. But the form must still be accepted too, as per state law.

VII. Excessive Application Processing Times and Charging Excessive Application Fees Violate Both *Bruen* and State Law.

The Supreme Court explained that "lengthy wait times in processing license applications" are "abusive". *Bruen*, 142 S. Ct. 2111, at n.9. Moreover, California law states that permit decisions must be made within 90 days of the initial application, or 30 days after receipt of the applicant's background check from the Department of Justice, whichever is later. Cal. Penal Code § 26205.[7]

Despite this, many people have informed CRPA that their applications have been in process for well beyond 90 days, and shamefully, some have been waiting for *over a year*.

Such delay would never be acceptable for other constitutional rights, and so it isn't acceptable with the right to bear arms. The Second Amendment right to bear arms is no longer to be treated as a "disfavored" right. *Peruta v. California*, 137 S.Ct. 1995, 1999 (2017) (Thomas J., dissenting from denial of certiorari.). Departments are required to speedily issue CCW permits both under *Bruen* as well as under state law.

The Supreme Court similarly explained that excessive application fees are likewise unconstitutional. *Bruen*, 142 S. Ct. 2111, at n.9. Issuing authorities are only permitted to charge a

[6] A copy can be found here: https://lasd.org/wp-content/uploads/2022/08/CCW_BOF_4012_ Rev_08.2022.pdf

[7] This has been perhaps one of the most ignored laws on the books. Applicants were terrified that if they cited to it, issuing authorities would just deny their application. Following *Bruen*, it may not be ignored any longer.

fee "in an amount equal to the reasonable costs for processing" new applications.[8] By necessity, this requires the issuing authority to first determine what its processing costs are. And only the first 20 percent of this fee may be collected upon the submission of the application.[9] The remaining fee can only be collected upon issuance of the license. Which means that if the application is denied for any reason, the remaining 80 percent of the fee cannot be charged to the applicant.

VIII. While Sheriff's Departments May Require Applicants to Apply with the Police Department for Their City of Residence First, They Must Accept Applications From People Already Denied by a City Police Department.

In California, only the sheriff of a county or the chief or other head of a municipal police department of a city or city and county may issue a CCW. To be issued a CCW by a sheriff, the applicant must be a resident of the county, or have a principal place of employment or business withing the county and spend a substantial period of time in that place of employment or business.[10] But to be issued a CCW by a chief or other head of a municipal police department, the applicant must be a resident of that city.[11]

California law allows for sheriffs and the chief or other head of a municipal police department to enter into agreements with each other to process CCW applications.[12] But if an applicant is denied by a municipal police department, the sheriff of the county would arguably still be obligated to process a subsequent CCW application from the applicant. This is because the applicant would be applying as a resident of the county, and/or potentially as having a principal place of employment or business in the county.

In sum, while it is permissible for a Sheriff to first require applicants to apply with their local municipal police department, a Sheriff must still ultimately accept applications from anyone who is a resident or has a principal place of business in their county.

IX. A Training Class and Shooting Qualification Is Permissible But Cannot Exceed 16 Hours Total for First-Time Applicants.

Per Penal Code section 26165, a training course that is at least 8 hours in length (but not more than 16) is required. For renewal applicants, the minimum length drops to 4 hours.

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[8] P.C. § 26190(b)(1). As applied to renewal applications, licensing authorities may only charge a fee up to $25 to process a renewal. P.C. § 26190(c). Although the fees may be increased at a rate not to exceed any increase in the California Consumer Price Index, initial application fees must still be equal to the processing costs, and in no event can a renewal fee exceed $25.

[9] P.C. § 26190(b)(2).

[10] P.C. § 26150(a)(3).

[11] P.C. § 26155(a)(3).

[12] P.C. §§ 26150(c), 26155(c).

The course shall include instruction on firearm safety, firearm handling, shooting technique, and laws regarding the permissible use of a firearm, and also must include live-fire shooting exercises on a firing range and shall include a demonstration by the applicant of safe handling of, and shooting proficiency with, each firearm that the applicant is applying to be licensed to carry.

X. CCWs and Public Record Requests

To a limited extent, information contained in CCW applications are considered public records under California law. *CBS, Inc. v. Block* (1986) 42 Cal. 3d 646, 652. *But the names and personal information of a CCW holder are not*. Cal. Gov. Code § 6254, subd. (u)(1).

This means that if an issuing authority receives a public records request for CCW applications it has processed, it must disclose that information but only after redacting the names, street addresses, and any other personal information of the applicant.

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