

SENIOR PARTNER
C. D. MICHEL*

PARTNERS
ANNA M. BARVIR
MATTHEW D. CUBEIRO
JOSHUA ROBERT DALE**
W. LEE SMITH

* ALSO ADMITTED IN TEXAS AND THE
DISTRICT OF COLUMBIA
** ALSO ADMITTED IN NEVADA



ASSOCIATES
TIFFANY D. CHEUVRONT
ALEXANDER A. FRANK
KONSTADINOS T. MOROS

OF COUNSEL
SEAN A. BRADY
JASON A. DAVIS
JOSEPH DI MONDA
SCOTT M. FRANKLIN
MICHAEL W. PRICE

WRITER'S DIRECT CONTACT:
562-216-4444
CMICHEL@MICHELLAWYERS.COM

July 25, 2023

VIA U.S. CERTIFIED MAIL

Hon. Attorney General Bonta
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

**Re: Ongoing Issues with CCW Permit Processing Times and Expense
in Some Counties and Request for Specific Actions**

Hon. Attorney General Bonta:

Our firm represents the California Rifle & Pistol Association (CRPA), which was founded in 1875 and has been working to uphold the right of Californians to keep and bear arms ever since. We write today concerning problems people have faced in attempting to exercise their right to carry, as confirmed by the Supreme Court in *New York State Rifle & Pistol Association Inc. v. Bruen*. These include both exorbitant fees and lengthy wait times in certain counties.

Lengthy Wait Times

With *Bruen*, the Supreme Court confirmed that while shall-issue permitting systems are acceptable, “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.” *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, n.9 (2022) (emphasis added).

At least with respect to lengthy wait times, California law addresses this issue: 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.

Most counties do a satisfactory job of timely processing permit applications without charging excessive fees. That’s because many issuing authorities, such as the Riverside County Sheriff’s Department, were already issuing to all law-abiding applicants on almost a shall-issue basis even before the *Bruen*¹ decision came down. But problems persist in some jurisdictions, for

¹ Because California permit-issuance is done at the county level, most counties in the state were effectively “shall issue” despite the unconstitutional “good cause” requirement that

the most part in the counties that were previously “may-issue” in theory but essentially “no-issue” in practice. Some issued permits to only “VIPs”, such as Santa Clara County Sheriff. Others, like the Los Angeles County Sheriff’s Department, issued to some regular citizens, but certainly not all who applied. Still others, like San Francisco, issued to no one at all in recent years.

While *Bruen* forbids issuing authorities from completely denying law-abiding applicants a permit to carry in public, many counties are obstructing the right to carry by taking *over a year* to process new applicants. This includes the Los Angeles County Sheriff’s Department, the Alameda County Sheriff’s Department, and many others.

CRPA understands that it takes time to get new administrative systems in place, which is why in the year since *Bruen* CRPA has not yet filed a lawsuit on these issues. Instead, our client has chosen to try to work with the offending counties to give them time to get systems in place and processing times down. A few departments have made progress, such as Santa Clara County Sheriff’s Department and more recently, the San Francisco Police Department.

But most issuing authorities have seen their wait time situation get worse instead of better. They have not devoted additional resources to processing the influx of permit applications timely. When a constitutional right is at stake, more urgency and compliance is required.

Some departments blame the California Department of Justice (DOJ) for the delays because background check requests are taking several months to process. To the extent DOJ is contributing to the delays in permit processing, that needs to be resolved promptly.

Excessive Application Processing Fees

Many issuing authorities have implemented exorbitant fees intended to discourage people from applying. An applicant who applies with the Long Beach Police Department, for example, will have to pay a \$99.15 submission fee, a \$396.59 issuance fee, a \$93 DOJ LiveScan fee, and \$150 for a psychological evaluation (a requirement which itself is questionable under *Bruen*), on top of whatever the training course costs them, typically somewhere between \$200 and \$400. The total cost of a permit can thus easily exceed \$1000.

Ironically, the local officials who allow these excessive fees to be charged are sympathetic to the challenges faced by people of low income. But they are fine with limiting the right to carry to people able to afford an extra \$1000+ expense.² They would never dream of

was previously allowed to be enforced. For instance, the Tehama County Sheriff’s Department states on its Concealed Weapons Permits website that “Sheriff-Coroner Dave Kain supports the right of law-abiding citizens to keep and bear arms. In this regard, all qualified residents of Tehama County are eligible to apply for a permit to carry concealed weapons.” An identical statement existed on the website well before the *Bruen* ruling. See < <https://web.archive.org/web/20210918103718/https://tehamaso.org/administration/licenses-permits/concealed-weapons/>> (archived snapshot as of September 18, 2021).

² When the City Council of Long Beach adopted these exorbitant fees, one councilwoman stated that “If someone wants a gun they should be able to pay for it at a much higher cost.” <<https://www.youtube.com/watch?v=j3d2nU6L704>> (at 5:01:45). Another two council members

limiting any other constitutional right this way. The Second Amendment is not, and should not be treated as a “disfavored right”. See *Peruta v. California*, 137 S.Ct. 1995, 1999 (2017) (Thomas J., dissenting from denial of certiorari.).

Worse yet, some cities in California are not just violating *Bruen*, but also California law. After the Los Angeles County Sheriff’s Department began refusing to process county residents who lived within a non-contract city, CRPA received a number of complaints about the City of La Verne’s exorbitant CCW fees of over \$1000 and sent them a letter regarding that issue.³ After our letter, media coverage,⁴ and resident complaints, La Verne lowered its fees, but only slightly, to \$936.⁵

In exploring why La Verne’s fees are so high, we discovered the MyCCW service (<https://www.myccw.us>), which also services a handful of other cities (“MyCCW Cities”) in LA County.⁶ All of the MyCCW Cities have fees much higher than what the LA County Sheriff charges for CCW permits, or even what other cities in the county charge. Glendora, for example, is right next door to La Verne, and its fees total \$243 plus the cost of the training course, much less than La Verne.⁷ As another example, LAPD charges \$268, plus the cost of training and livescan.⁸

In total, most applicants in LA County and throughout California will pay around \$400-\$500 for their initial permits when all expenses are added in, with some perhaps reaching \$600. That’s an intolerable cost, particularly compared to what residents of other states pay,⁹ but the MyCCW Cities take it to another level, with the total expense usually exceeding \$900. In La Verne, this consists of a \$398 “processing” fee which seems to go directly to MyCCW for its services, \$100 for “administrative” charges, \$93 for the standard DOJ fee, \$20 for fingerprinting, \$150 for the psychological exam, and \$175 for a training course.

called the right to carry a “privilege”. We contacted the City Attorney’s office, but the City has refused to reduce its fees.

³ <https://drive.google.com/file/d/16Kyyj6oQoQQCNIM2kdk5nYQPANLPdTNE/view>

⁴ <https://thereload.com/california-city-charges-more-than-1000-for-gun-carry-permits/>

⁵ <https://www.myccw.us/department?La-Verne-Police-Department>

⁶ And some in Riverside County, though we are less concerned about those because applicants can just apply with the Riverside Sheriff’s Department. In LA County, because the Sheriff has refused to process applications for non-contract cities, the individual city police departments are the only way to get a CCW for the residents of those cities. They are forced to pay whatever their city charges.

⁷ <https://glendorapdca.permitium.com/ccw/start>

⁸ <https://www.lapdonline.org/office-of-the-chief-of-police/office-of-special-operations/detective-bureau/detective-services-group/ccw-carry-concealed-weapon-license/>

⁹ In Arizona, where permits are optional given it is a constitutional carry state, the application fee is \$60, plus the cost of fingerprinting that must be submitted with the application. Similarly, Texas charges \$40 for its application fee. Florida charges \$55 for its fee and \$42 for fingerprinting. Utah charges \$53.25 for Utah residents, and \$63.25 for non-residents. Minnesota lets county Sheriffs determine the fee, but it may not exceed \$100. Nevada charges \$100.25. Further, these are all first-time application fees, renewals cost less. Finally, they are typically good for five years, and don’t need renewal fees every two years as in California.

The cities using MyCCW to outsource their administrative functions, and then pass along what should be internal administrative licensing costs to applicants appear to be violating California law in several ways:

1. While the licensing authority of a city may charge an additional fee beyond the standard DOJ charges equal to its reasonable costs for processing, that amount must be transmitted to the city's treasury, not to the profit margin of a private company. Cal. Penal Code § 26190(b).
2. MyCCW charges \$348 for processing renewals. That is in direct violation of California law, which caps renewal charges at \$25. Cal. Penal Code § 26190(b) ("The licensing authority may charge an additional fee, not to exceed twenty-five dollars (\$25), for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury.")
3. It's not clear that it's even legal to use a third-party processor to outsource a law enforcement function, regardless of what they charge. For several reasons, including applicant privacy and the sensitive information revealed by applicants, the Sheriff and Police Departments are supposed to process permits, as exemplified by the only exception listed on handling processing internally being that cities may contract with the County Sheriff to process permits. Cal. Penal Code § 26155(c).

CRPA contacted La Verne, Santa Monica, and MyCCW regarding these issues months ago, but has not received a response regarding the legality of using MyCCW. To be clear, California law aside, CRPA doesn't object to the idea of issuing authorities outsourcing work to vendors like MyCCW if it speeds up processing and lightens their own workload. But they cannot pass these expenses for hiring a private company to do a government job on to applicants.

In general, throughout California the fees and wait times associated with the right to carry vary dramatically based on where an applicant lives. When this impacts constitutional rights, that isn't acceptable. While issuing authorities contend that they are just passing along actual expenses to applicants, that is questionable when so many other police and Sheriff's departments do it for much cheaper (to say nothing of many other states which charge nothing, or only small amounts). Regardless, the Supreme Court made clear that the relevant analysis is not what the expense to the issuing authority is, but rather whether the fees "*deny ordinary citizens their right to public carry.*" *Bruen*, 142 S. Ct. 2111, n.9 (italics added).

The State of California made the decision to require a license to carry a firearm. Having created an application system regulating a constitutional right, it is the government's obligation to fund most of it. Specifically, the Supreme Court has allowed shall-issue regimes which implement *only* "narrow, objective, and definite standards". *Bruen*, 142 S. Ct. at 2138, n. 9. Examples provided by the Supreme Court include a background check and a firearms safety course. *Id.* So if an issuing authority goes beyond requiring the DOJ background check and

safety training and requires additional things like psychological exams, interviews, and extended investigation of applicants, it must bear those extra costs and not pass them on to applicants.¹⁰

These principles have been applied to other constitutional rights. In the First Amendment context, “[a]lthough a permit fee may be allowed for the limited purpose of covering administrative costs, such administrative costs are normally minor and unlikely to inhibit anyone from exercising his or her First Amendment rights...The imposition of police costs, however, will frequently create a substantial financial burden.” *Invisible Empire Knights of Ku Klux Klan v. City of W. Haven*, 600 F. Supp. 1427, 1434 (D. Conn. 1985) (citing *U. S. Lab. Party v. Codd*, 527 F.2d 118, 119 (2d Cir. 1975)). And in the context of free and fair elections, imposing high fees for candidates to access the ballot is unconstitutional because “[b]y requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the [State] has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice.” *Bullock v. Carter*, 405 U.S. 134, 149 (1972).

In sum, “[a] licensing fee to be used in defraying administrative costs is permissible...but only to the extent that the fees are necessary.” *Fernandes v. Limmer*, 663 F.2d 619, 633 (5th Cir. 1981) (citing *Cox v. New Hampshire*, 312 U.S. 569, 575-76 (1941)).

CRPA understands it may take some time for backed-up police and sheriff’s departments to process permit applications quickly. But that doesn’t mean it is constitutional. Taking over a year to process applicants a year after *Bruen* was issued is just not acceptable. Likewise, we will seek to make sure California issuing authorities do not exceed the fees charged in nearly every other state, which are significantly lower than applicants are facing in many jurisdictions.

Conclusion

Accordingly, we hereby request that, having been put on notice by this letter of the unconstitutional restraints being put on CCW applicants by some issuing authorities, your office investigate and take the following actions:

1. Notify all issuing authorities that they must comply with both *Bruen* and California law by bringing down wait times to 90 days (or 120 days if SB2 passes). If they are unable to do so, more resources must be allocated to be able to process applications in a timely fashion.

¹⁰ Indeed, many ordinary Californians cannot afford to spend so much on the right to carry. Such fees will clearly dissuade many ordinary Californians from exercising their right to carry altogether. Or they may carry without a permit in protest. Some Supreme Court precedent may protect them in that situation. In the free speech context, an individual “faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license.” *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 151 (1969). Similarly, if someone simply cannot afford a CCW permit, or has been waiting for one for an unreasonably long time, their only avenue to exercise their right to carry is to ignore California law.

2. Notify all issuing authorities that they may not charge more than the actual cost of processing applications. If they opt for extra investigation, psychological exams, outsourcing to MyCCW, etc., they must pay those added costs. Applicants can only be required to cover the cost of their DOJ background check and the training course, as well as the standard application fee.
3. Eliminate the delays in processing background checks by the DOJ.
4. Publish something along the lines of the legal guidance that your office put out on July 17, 2023 informing local governments attempting to skirt state housing mandates of the law and their obligations under the law.¹¹ A similar notice is appropriate here.

Please do not hesitate to contact us to discuss these issues and potential solutions. We'll look forward to your response within 21 days of your receipt of this letter.

Sincerely,
Michel & Associates, P.C.



C.D. Michel
Attorney at Law

Cc: California Department of Justice
Bureau of Firearms
Attn.: Allison Mendoza
P.O. Box 820200
Sacramento, CA 94203-0200
firearms.bureau@doj.ca.gov

California Department of Justice
Attn: Head of Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

¹¹ <https://rb.gy/n59cw>