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Attorney General Rob Bonta
California Department of Justice
1300 "I" Street
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Re: June 14, 2022 Legal Alert (OAG-2022-02) from the Office of the Attorney General of California concerning the U.S. Supreme Court's Decision in *New York State Rifle & Pistol Association v. Bruen*, No. 20-843.

Dear Attorney General Bonta:

Your Legal Alert to local officials regarding the Supreme Court's ruling in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, --- S. Ct. ----, No. 20-843, 2022 WL 2251305 (June 23, 2022) is a direct assault on both the First and Second Amendment rights of law-abiding Californians.

As the Supreme Court notes in *Bruen,* California is one of six states with "'may issue' licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license." Slip op. p. 5. The Court's ruling strikes down New York's law requiring permit applicants to demonstrate "proper cause" beyond a basic desire for self-defense.

Your Legal Alert purports to direct local officials to comply with *Bruen*, under which California's "proper cause" requirement to obtain a public-carry permit is no longer valid. However, in it you go on to claim that "*Bruen* recognizes that States may ensure that those carrying firearms in their jurisdiction are 'law-abiding, responsible citizens.'"

Based on that supposed loophole, your directive lays out recommendations for local officials that can only be described as instructions for a witch hunt against anyone who wishes to exercise their Second Amendment rights to carry in public.

Specifically, you claim that this so-called mandate to ensure "good moral character" means that local officials have a "duty" to "protect the communities that they know best by ensuring that licenses are only issued to individuals who – by virtue of their character and temperament – can be trusted to abide by the law and otherwise ensure the safety of themselves and others. The investigation into whether an applicant satisfied the 'good moral character' requirement should go beyond the determination of whether any 'firearms prohibiting categories' apply, such as a mental health prohibition or prior felony conviction… 'Good moral character' is a distinct question that requires an independent determination."

However, the very same footnote in *Bruen* that is cited to provide supposed justification for this arbitrary discretion goes on to say:

> "[Shall-issue regimes] likewise appear to contain only **'narrow, objective, and definite standards' guiding licensing officials, rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion,'**—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." (emphasis added)

Bruen, slip op. p. 30 n.9.

Your Legal Alert also quotes Justice Kavanaugh's concurring opinion, in which he notes that "States may 'require a licenses applicant to undergo a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements.'"

Id. slip op. p. 2 (Kavanaugh, J., concurring)

However, Justice Kavanaugh's very next sentence goes on to condemn the exact arbitrary-discretion scheme you claim he supports:

> "Unlike New York's may-issue regime, those shall-issue regimes **do not grant open-ended discretion to licensing officials** and do not require a showing of some special need apart from self-defense." (emphasis added)

Id.

As Justice Kavanaugh noted:

> "As the Court explains, New York's outlier may-issue regime **is constitutionally problematic because it grants open-ended discretion**

> to licensing officials and authorizes licenses only for those applicants who can show some special need apart from self-defense. **Those features of New York's regime—the unchanneled discretion for licensing officials** and the special-need requirement—**in effect deny the right to carry handguns** for self-defense to many 'ordinary, law-abiding citizens.'" (emphasis added)

Id.

The discretionary "investigation" and judgment of "good moral character" you are encouraging local California officials to carry out prior to granting public-carry permits is nowhere countenanced in *Bruen,* and directly violates both the letter and the spirit of the ruling because "[t]he constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" Slip op. p. 62 (quoting *McDonald v. Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion).

Worse, your Legal Alert then suggests blocking the public-carry permits of Californians if they have engaged in constitutionally protected speech.

Aside from a whole host of non-relevant characteristics such as "fiscal stability" that you suggest be reviewed before determining whether to issue a public-carry permit, your Legal Alert suggests that an applicant's social media be free "of hatred and racism"—terms not otherwise defined. In today's climate, it is difficult to see this recommendation as anything other than a blank check to apply a "woke" litmus test at their own discretion. The very type of "unchanneled discretion" held unconstitutional in *Bruen*.

This constitutes a clear attack on both the First and Second Amendment rights of Californians, as it threatens to punish constitutionally protected speech with a denial of the constitutionally protected right to bear arms for self-defense in public.

The very suggestion of such a thing in your Legal Alert is likely to create a chilling effect on speech and cause law-abiding citizens to self-censor for fear of being denied their Second Amendment rights.

Instead of complying with the spirit of the *Bruen* ruling, and recognizing that Californians' Second Amendment rights must not rest on the arbitrary discretion of local officials, you have given local officials carte blanche to engage in a boundless personal character inquiry bordering on harassment against anyone who dares apply for a public-carry permit.

The National Association for Gun Rights will be monitoring this situation closely to see how the Supreme Court's ruling in *New York State Rifle and Pistol*

Association v. Bruen is enforced in the State of California. Further, the National Association for Gun Rights is ready to explore all legal options to aid any citizen whose First Amendment rights are violated in order to continue infringing on their Second Amendment rights.

We strongly encourage you to reconsider the direction you have given to local California officials in your June 24, 2022 Legal Alert.

Regards,

David A. Warrington

Counsel for National Association for Gun Rights and the National Foundation for Gun Rights