California's "Sensitive Places" Gun Ban Cannot Stand Against Bruen, Court Rules

Wednesday's ruling from the U.S. District Court in California reveals the impact that the Supreme Court's decision last year in *Bruen* (*New York State Rifle & Pistol Association, Inc. v. Bruen*) continues to have in dismantling anti-gun states' attempts to work around that decision.

One of the states determined to undermine, ignore, or otherwise neuter the impact of *Bruen* on its most cherished efforts to obliterate the Second Amendment is California. Following the *Bruen* decision the state's liberals controlling the Legislature passed its anti-*Bruen* effort, SB-2, which declared most of the state off-limits to concealed carry citizens seeking to exercise their Second Amendment rights.

The state, when challenged by a number of plaintiffs in *May v. Bonta* (California's anti-gun Attorney General, Rob Bonta), used an interesting tactic: it expanded greatly the list of "sensitive places" that the high court seemed to approve as qualifying as exceptions to the general rule that every law-abiding citizen has an unfettered right to keep and bear arms outside the home. Those "sensitive places" included schools, government buildings, legislative assemblies, polling places, and courthouses.

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The California Legislature expanded those to include more than 26 additional "sensitive places" and, when challenged, tried to find and prove historical "analogs" to justify them.

They failed miserably, and on Wednesday Judge Cormac Carney issued an injunction against its enforcement.

Judge Carney's evisceration and obliteration of the state's offers of relevant, historically similar, and apt infringements to justify SB-2 was something to behold. It was a textbook dismantling of all the defendant's attempts to neuter and otherwise defy the ruling in *Bruen*.

He began:

> The right to self-defense and to defend one's family is fundamental and inherent to our very

> humanity irrespective of any formal codification.
>
> In their wisdom, the Founders recognized the need for individual citizens to protect themselves and their loved ones from those that would do them harm—and they knew that such a right could not be vindicated without the right to bear arms.
>
> The Second Amendment to the United States Constitution guarantees law-abiding, responsible citizens the right to keep and bear arms for self-defense in case of confrontation.…
>
> The Constitution, by design, recognizes that some rights are so important and sacrosanct that nothing short of a constitutional amendment may take them away. No one—not a federal judge, not a state governor or legislator, not even the President of the United States—is above the Constitution.

He then noted the difficult, time-consuming, and expensive process the state has put in place for a law-abiding citizen to obtain a concealed carry permit. Yet, he wrote,

> Even with those stringent requirements, California will not allow concealed carry permitholders to effectively practice what the Second Amendment promises. SB2's coverage is sweeping, repugnant to the Second Amendment, and openly defiant of the Supreme Court.
>
> The law designates twenty-six categories of places, such as hospitals, public transportation, places that sell liquor for on-site consumption, playgrounds, parks, casinos, stadiums, libraries, amusement parks, zoos, places of worship, and banks, as "sensitive places" where concealed carry permitholders cannot carry their handguns.
>
> SB2 turns nearly every public place in California into a "sensitive place," effectively abolishing the Second Amendment rights of law-abiding and exceptionally qualified citizens to be armed and to defend themselves in public.

He followed the new rule from *Bruen*: that any regulation is presumptively unlawful unless the government (i.e., California in this case) can show that the regulation "is consistent with the Nation's historical tradition of firearm regulation."

Judge Carney took delight in dismantling SB-2 mandates one by one, starting with hospitals and medical services facilities:

> Given the nation's history and tradition of protecting the core right to carry a firearm to those wishing to defend themselves and their families in case of confrontation, it is unsurprising that the government *does not offer a single historical prohibition* on carrying firearms at hospitals or medical offices, much less one limiting carry by a category of people that is particularly responsible and trained and whom the government has background checked. [Emphasis added.]

He expanded:

> California's ban on CCW permitholders [those licensed to carry a concealed weapon]

> carrying firearms in facilities providing medical services is supported neither by any history or tradition of banning firearms in those locations nor by any analogy to "settled" sensitive places.
>
> The government provides no evidence that the proffered analogies prohibiting firearms in places where people gather for "scientific" or "educational" purposes are well-established, representative, or consistent with a tradition of banning firearms in places like hospitals and urgent cares.…
>
> In short, designating medical facilities as "sensitive places" impermissibly "operate[s] to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose" without any persuasive analogue in historical regulation or "settled" sensitive places.

Public transportation:

> The government has presented no evidence that this balance supports preventing people who have been through a thorough background check and training process to obtain a special permit to carry a concealed weapon from exercising their constitutional right to self-defense on public transportation.

Places where liquor is sold for on-site consumption:

> The closest historical analogues the government cites are an 1853 New Mexico law prohibiting carry in balls or fandangos "where Liquors are sold," an 1890 Oklahoma law prohibiting carry "to any place where intoxicating liquors are sold," and an 1870 San Antonio ordinance prohibiting carry at "any barroom [or] drinking saloon."
>
> However, these nineteenth century regulations from territories and localities are insufficient to demonstrate that a prohibition on CCW permitholders carrying firearms in places where liquor is sold for on-site consumption is supported by this nation's history and tradition of firearm regulation.

Public gatherings and special events:

> This regulation is inconsistent with this nation's history and tradition of firearm regulation.
>
> Indeed, "[j]ust before the ratification of the Second Amendment, six out of the thirteen original colonies required their citizens to go armed when attending … public assemblies."

Playgrounds and youth centers:

> Because SB2's prohibition on CCW permitholders carrying firearms at playgrounds and youth centers eviscerates their ability to defend themselves and their children against attack, the burden it creates on the core Second Amendment right is far greater than the burden created by making schools a sensitive place.

Parks and athletic facilities:

> But even assuming [the] relatively few nineteenth-century laws [that California presented] are persuasive historical analogies, there is no evidence that they are well-established, representative, or consistent with a national tradition of prohibiting firearms in all public parks as SB2 does.

Casinos, stadiums and arenas, and amusement parks:

> The Virginia "terror" law and the nineteenth-century New Mexico and New Orleans laws [presented by the state] do not reflect a well-established, representative historical tradition of preventing vetted and trained permitholders from carrying firearms for self-defense in casinos, stadiums, arenas, amusement parks, or similar locations.

Public libraries, zoos, and museums:

> The government fails to show that the laws it cites are well-established, representative, or consistent with a tradition of regulating firearms by preventing people with special permits who have been through background checks and training from carrying firearms to defend themselves and their families in case of confrontation at libraries, zoos, or museums.

Places of worship:

> Even giving little weight to the mandatory carry laws from the Founding era, the government fails to present evidence of a history and tradition of prohibiting trained and vetted permitholders from carrying handguns for self-defense in places of worship where in this day and age they are increasingly likely to meet confrontation.

Financial institutions:

> The government has not cited a single historical regulation in which guns were prohibited in banks.
>
> Historical laws protecting government buildings are not relevantly similar to SB2's prohibition on CCW permitholders carrying firearms for self-defense at banks, which creates a far larger burden on the law-abiding citizen's Second Amendment right to self-defense.

Privately-owned businesses open to the public:

> Although private property owners have a right to forbid concealed carry on their property, "*the state* may not unilaterally exercise that right and, thereby, interfere with the Second Amendment rights of law-abiding citizens who seek to carry for self-defense outside of their own homes." [Emphasis in the original.]

Parking areas:

> The Court agrees that even in relation to places Plaintiffs do not challenge as sensitive, SB2's designation of parking areas as sensitive places is inconsistent with the Second Amendment.…
>
> And SB2's designation of parking areas as sensitive places imposes a much larger burden on law-abiding citizens' right to carry arms for self-defense in public than banning them in the sensitive places themselves.

Following this delightful tour down the road of irrelevance and lack of historical proofs provided by California, Judge Carney ended his decision with this:

> Because Plaintiffs have shown it is likely that the challenged SB2 provisions violate their Second Amendment rights, they have demonstrated that irreparable harm is likely without a preliminary injunction enjoining the government from enforcing those provisions.…
>
> The challenged SB2 provisions unconstitutionally deprive this group of their constitutional right to carry a handgun in public for self-defense.
>
> Therefore, those provisions must be preliminarily enjoined.

To no one's surprise, Bonta and friends plan to appeal, claiming that Judge Carney's careful, surgical dismemberment of SB-2 would, if allowed to stand, "endanger communities by allowing guns in places where families and children gather."