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# NEW RULES FOR CONCEALED CARRY

by Desmond Mantle '23

One of the summer's most notable headlines was the Supreme Court's decision in *New York State Rifle and Pistol Association v. Bruen*. The *Bruen* plaintiffs challenged a New York law that required applicants for a license to have and carry a concealed pistol or revolver to prove that "proper cause exists" for doing so. Applicants could satisfy the "proper cause" requirement only by showing a "special need for self-protection distinguishable from that of the general community." The Court, in a 6-3 decision, held that New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense.

In reaching its decision the Court rejected the framework that the Courts of Appeals have developed (and lower courts use widely) to analyze Second Amendment challenges. That framework had two parts. First, the court examined the challenged law to determine if it burdened the Second Amendment's original scope. If so, then the court would evaluate the challenger's interest in

exercising his Second Amendment right against the government's interest in regulating it. The Supreme Court in *Bruen* expressly rejected that two-part approach "as having one step too many." Instead, courts must "assess whether modern firearms and regulations are consistent with the Second Amendment's text and historical understanding."

The Court then proceeded to analyze the New York law under this standard, noting first that the plain text of the Second Amendment protects the plaintiffs' proposed conduct, that is, to carry handguns publicly for self-defense. The respondents, Kevin P. Bruen, in his official capacity of Superintendent of the New York State Police and others, had the burden of showing that New York's proper-cause requirement is consistent with the historical tradition of firearm regulation in this country. After an extensive review of the Anglo-American history of public carry, the Court concluded that the respondents did not meet their burden to identify an American tradition justifying New York's proper-cause requirement.

Legal observers have noted the potential ramifications of the Court’s rejection of the two-part test for review for challenges to firearms regulations. Writing in *Scotusblog.com*, Joseph Greenlee points out that the two-part test has been in use for 12 years and has resulted in upholding nearly every regulation challenged. *Bruen* makes clear that courts are not to engage in any interest-balancing inquiry. The more straightforward test made explicit in *Bruen* may result in more successful challenges to gun control laws.

Another interesting angle of *Bruen* is that various friends of the court pointed out that the impact of the “proper cause” denials in New York fell disproportionately on the Black population. One group filing an amicus brief was a coalition of public defenders and Black legal aid attorneys who argued that New York’s restrictive laws “have branded our clients as ‘criminals’ and ‘violent felons’ for life. They have done all of this only because our clients exercised a constitutional right.” Another amicus, the National African American Gun Association, posed a rhetorical question: “Would Rev. King have been able to get a carry license under New York’s discretionary ‘proper cause’ law?” Following *Bruen*, the Legal Aid Society wrote that it “may be an affirmative step toward ending arbitrary licensing standards that have inhibited lawful Black and Brown gun ownership in New York.”

Like New York, California is one of six states that required applicants for concealed carry permits to show a good cause for issuance of the license. The statutes authorized local law enforcement officials – sheriffs and chiefs of police – to issue licenses to carry a concealed pistol, revolver, or other firearm upon fulfilling four requirements (in addition to passing a background check):

- “ (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 [firearms safety] course of training...”

Source: California Department of Justice, Office of the Attorney General, Legal Alert, August 17, 2022

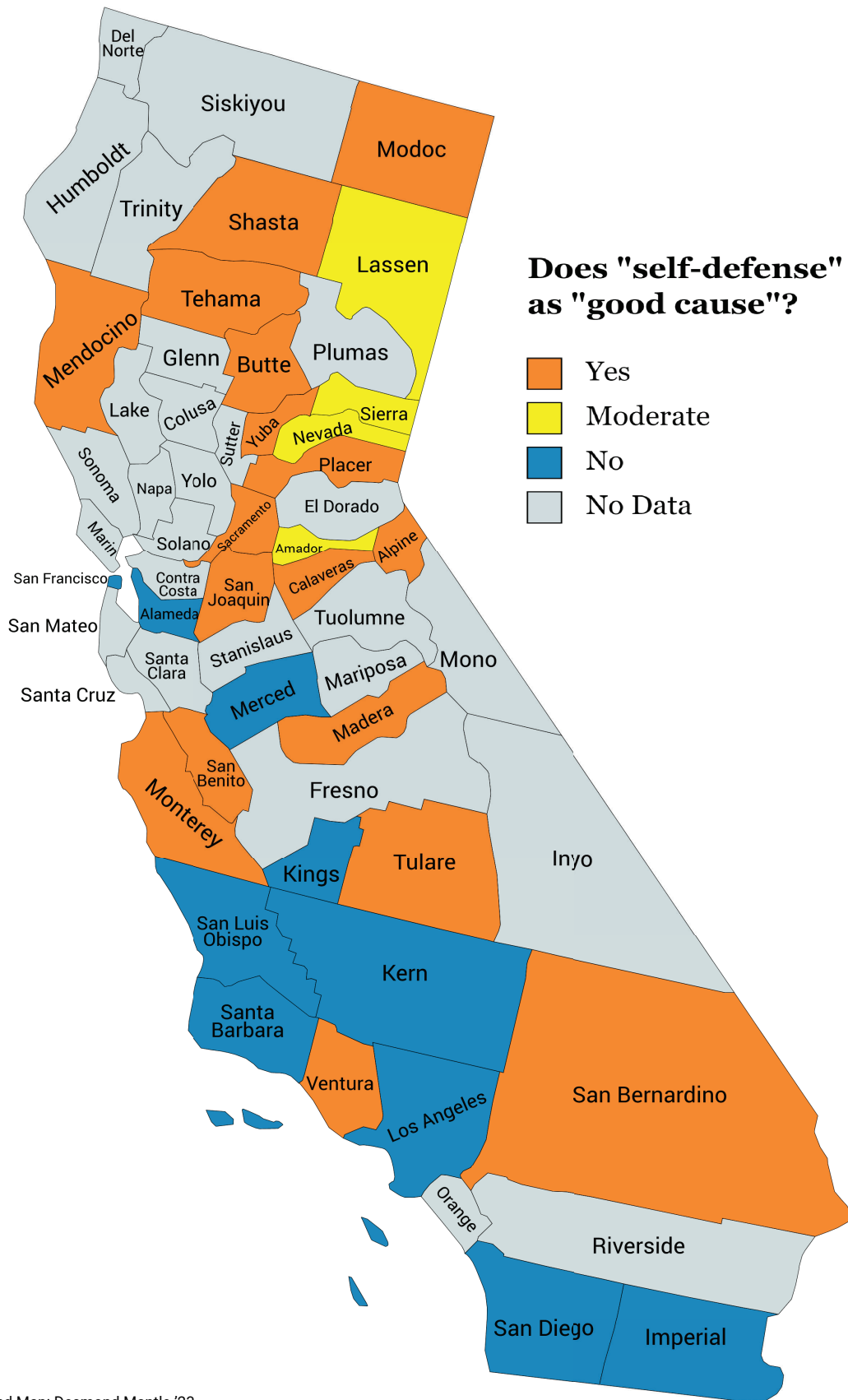
Like the New York law struck down in *Bruen*, California statutes gave the government officials who issue permits the discretion to determine for each applicant if good cause exists. That is, the official had discretion to decide whether the applicant really needed the permit. This is precisely the issue that the Supreme Court struck down in *Bruen*. The California Attorney General noted that “[t]he Court also highlighted other states with ‘analogues’ to the ‘proper cause’ requirement, including California, and made clear that California’s similar ‘good cause’ requirement is unconstitutional.” The AG emphasized that California’s public-carry licensing regime remains constitutional because *Bruen* only impacts the “good cause” requirement. The other elements remain in force.

**The exercise of other constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense is no different. New York’s proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms in public.**

*New York State Rifle & Pistol Assn., Inc. v. Bruen*

Guidance from the California Attorney General also tries to make clear that under *Bruen*, “good moral character” and “good cause” are not one and the same. “As to California’s ‘good moral character’ requirement in particular, licensing authorities have developed objective and definite standards to avoid such unfettered discretion.” However, because such a determination rests with an individual officer just as the “good cause” standard did, it may be subject to further litigation

Until the *Bruen* decision, California sheriffs, and occasionally city police departments, were responsible for determining if applicants for concealed carry licenses had “good cause.” Some sheriffs became well known for *de facto* “shall-issue” policies under which applicants could simply list “self-defense” or “personal protection” as



Data and Map: Desmond Mantle '23



their "good cause" and expect to be issued a permit.

This author researched in 2020-21 how California's 58 counties interpreted the good cause standard, by asking if a simple statement of "self-defense" was sufficient to constitute good cause. Twenty-eight counties responded, with 14 accepting a simple statement of self-defense as good cause, 10 saying such a statement would not be sufficient, and four articulating an intermediate standard. Counties varied widely in their permissiveness even within jurisdictions requiring more than a simple statement of "self-defense" to fulfill the "good cause" requirement. California's coastal counties demonstrated this variation. For example, the sheriff of Sonoma County issued permits to, on average, 73% of applicants in 2019 and 2020. The combined City and County of San Francisco, on the other hand, denied the sole application it received in 2019 and issued a permit to only one of the six applicants it had in 2020.

*Bruen* has rendered California's good cause requirement unconstitutional; it can no longer be used as a discretionary hurdle in the application for a concealed carry permit. Interest in obtaining permits has skyrocketed since *Bruen*. The *Los Angeles Times* reported on June 30, 2022, that the Los Angeles County Sheriff had issued 3,145 permits to date; in mid-2020 there were 155 active permits. The *San Francisco Examiner* reported that the San Francisco Sheriff's Department received 45 concealed carry permit applications in the weeks following the *Bruen* decision. The department typically gets just two applications each year.

Citing this massive influx, the Los Angeles Sheriff's Department, formerly the sole issuing agency in the county, has elected to devolve issuance responsibilities to cities with independent police departments and only issue to residents of unincorporated areas and contract cities in which LASD provides policing services. Cities with their own police departments have been slow to respond. The Los Angeles Police Department has posted information about obtaining a permit, the City of Pasadena's new issuance policy goes into effect on November 1, and the Claremont Police Department's web page refers only to its 2016 agreement with LASD for the sheriff's issuance services.

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## SUPREME COURT OF THE UNITED STATES

No. 20-843

NEW YORK STATE RIFLE & PISTOL ASSOCIATION,  
INC., ET AL., PETITIONERS *v.* KEVIN P. BRUEN, IN  
HIS OFFICIAL CAPACITY AS SUPERINTENDENT  
OF NEW YORK STATE POLICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June 23, 2022]

JUSTICE THOMAS delivered the opinion of the Court.

In *District of Columbia v. Heller*, 554 U. S. 570 (2008), and *McDonald v. Chicago*, 561 U. S. 742 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

ance process to cities. The sheriff's webpage notes the *Bruen* decision and states that the department has removed mention of "good cause" from its forms, though the county had been known before the decision for issuing permits more liberally than its western neighbor. The Riverside County Sheriff's Department has simply crossed off the good cause element from the list of license requirements on its website.

In response to *Bruen* and the large increase in applications for concealed carry permits that followed, the California legislature tried to pass a bill that would have placed new requirements on concealed carry applicants. The bill was drafted by Attorney General Rob Bonta and introduced by Senator Anthony Portantino (D-Glendale). Among other things, it would have required applicants to receive a psychological assessment, take at least 16 hours of safety training and provide three letters of ref-

erence attesting to the applicant's moral fitness. The bill also had an expansive list of statutory gun-free zones. CalMatters reported that the California State Sheriffs' Association opposed the bill, citing the extra administrative costs they would incur, noting the possibility that their offices could be open to legal liability, and "bemoaning the fact that the policy would turn much of the state into a gun-free zone."

The bill's supporters added an urgency clause onto the bill so that it would take effect as soon as it was signed into law by the governor, rather than on January 1. Including the urgency clause meant that the bill needed a two-thirds majority to pass. It failed in the Assembly by one vote, with three Democrats and the lone Independent joining all the Republicans to vote against it. ♦

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