LEGISLATIVE ALERT

Wednesday, April 11, 2018

Regarding: **Senate Bill 1100 ("SB 1100")**
Position: **STRONGLY OPPOSE**

On behalf of our members, supporters, and all law-abiding Californians, the Firearms Policy Coalition (FPC) respectfully submits our **strong opposition** to Senator Anthony Portantino's Senate Bill 1100. Once more, FPC and its members and supporters are compelled to speak out and raise awareness in their continuing efforts to stem the ever-increasing tide of legislative hostility toward the exercise of the fundamental rights enshrined in the United States Constitution. This time, it's SB 1100, as yet another attempt to legislatively oppress these rights, by raising age limits on existing firearm restrictions and further extending these and other already burdensome restrictions from handguns to *all* firearms. To be clear, FPC opposes all laws that impose an age-based, discriminatory limitation of fundamental, individual rights against law-abiding, legal adults who have reached the age of majority.

Current federal statutes expressly hold that 18 to 20-year-olds are part and parcel of the American militia. "The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States [ ]." 10 U.S.C. § 246(a). And this truth reaches back to the Founding era: "That and by whom each and every free able-bodied [ ] male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five . . . shall [ ] provide himself with a good musket or firelock..." (Second Militia Act of 1792.) Notably, the "individual mandate" in the Second Militia Act *required* that members of the unorganized militia – including adults between the ages of 18 and 21 – own and keep firearms and their accoutrements.

And the unorganized militia was – and still is – expected to be able to muster with bearable arms of the type in common use for lawful purposes. "[W]hen called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *U.S. v. Miller*, 307 U.S. 174 at 179, 59 S.Ct. 816. And "[i]n the colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *State v. Kessler*, 289 Ore. 359, 368, 614 P.2d 94, 98 (1980) (citing G. Neumann, Swords and Blades of the American Revolution 6-15, 252-254 (1973)). As *Heller* elucidated, the term "bearable arms" necessarily "includes any '[w]eapo[n] of offence' or 'thing that a man wears for his defence, or takes into his hands,' that is "carr[ied] ... for the purpose of offensive or defensive action." *Dist. of Colombia v. Heller*, 554 U.S. 570 at 581, 584, 128 S.Ct. 2783 (internal quotation marks omitted).

Under the current iteration of state law, those *adults* between 18 and 20 years of age have most of the same basic rights as their 21-year-old counterparts. SB 1100 would cut them out of that equation, raising the age limits to 21 years of age concerning the rights to the sale, supply, delivery, possession, and control of handguns – indeed as to any and all *firearms* should this bill become law – for those within the 18 to 21 age group. (Pen. Code, §§ 27510, 29182, subd. (b)(2).) While we always, and rightfully, contend that the highest level of judicial scrutiny (i.e., "strict scrutiny") applies to any government-imposed restrictions on the fundamental rights guaranteed by the Second Amendment, even when applying the less stringent form of "intermediate scrutiny," the controlling jurisprudence demands that "'(1) the government's stated objective . . . be significant,

substantial, or important; and (2) there . . . be a 'reasonable fit' between the challenged regulation and the asserted objective."' (*Bauer v. Becerra* (9th Cir. 2017) 858 F.3d 1216, 1223, quoting *Silvester v. Harris* (9th Cir. 2016) 843 F.3d 816, 821-22.) There has been no showing of *any* legitimate objective – much less a "significant, substantial, or important" one – for this age classification and thus, necessarily, there can be no claim that the law satisfies the *additional* "reasonable fit" requirement.

The same is for the proposed dramatic extension of these laws from regulating simply handguns to regulating every type of firearm. (§§ 27510, 27535, 27540, 27590, 29182.) With no stated justification, need, or objective, for this sweeping expansion of the restrictions, and none being reasonably conceivable, this also appears to be simply yet another attempt to curtail the scope of Second Amendment protections in pandering to the gun control lobby. Similarly, we must ask why the already-onerous 30-day period between purchases and the 10-day waiting period before delivery should be made even more burdensome for ordinary, law-abiding citizens intending to simply lawfully exercise their Second Amendment rights. (§§ 27535, 27540.) But again, there is no answer from the government – just a proclamation that the citizens shall conform to its myopic and hostile view of rights the State dislikes. And that is the core problem behind all this hostile legislative: the government must remain accountable to and respect *all* constitutional protections, not just those that suit the interests and aims of certain legislators or lobby interests.

We ask: What other constitutional right could be banned until age 21: Free speech? Protest? Assembly? Due Process? Speedy trials? Worship? Equal Protection? The answer, of course, is none. Any such ban would be fiercely and quickly rejected. Moreover, as illustrated by our nation's history with, e.g., prohibition and abortion, people *will* seek access to products and services with or without the government's approval. Instituting an age-based ban here will force adults under the age of 21 to access their rights through the dangerous and unregulated underground marketplace – and make no mistake, there will be a black market created by this bill should it be passed.

This awful and unconstitutional age discrimination bill must be summarily rejected.

For these and other reasons, FPC requests your "NO" vote on SB 1100.

Please contact us at policy@fpchq.org or (916) 378-5785 if you have any questions or would like discuss this further.