

Atty. David R. Duringer, JD, LL.M (Tax)  
Protective Law Corporation  
895 Napa Ave Ste B-4  
Morro Bay, CA 93442  
(805) 225-5105 / info@LawNews.TV



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Former Chief Jody Cox  
c/o Chief Amy Watkins  
Morro Bay Police Department  
850 Morro Bay Blvd  
Morro Bay, CA 93442

cc: city council, city staff, many/several community members

Re: CCW denial; offer of settlement for claim of deprivation of civil rights under 42 USC 1983

Dear Chief Cox:

Approximately **January 15, 2023**, I received your letter dated December 20, 2022, denying my application for CCW. Though dated December 20, 2022, your postage meter indicated January 6, 2023, as the mailing date, and the letter was postmarked January 10, 2023, as it ran through the Santa Clarita post office. I would have responded to you promptly if I had received the letter in December, however I was too busy in the first quarter of this year to give this matter the attention necessary.

In short, your denial of my CCW app deprives me of my civil rights, and I demand that you reopen the application.

Regarding the **reference letters**, your application instructions mention reference letters but there is absolutely no mention in your application instructions regarding how recent the reference letters must be, or to whom they must be addressed. Despite Bruen's holding, which prohibited using non-objective criteria for CCW issuance, I decided to include copies of letters submitted to Chief Peters in Grover Beach. I had just obtained additional reference letters from these same people only a few months prior for my application to a new state bar (my third), and did not want to bother them with supplying new letters again especially with Bruen holding that this type of requirement is unconstitutional. Outright denial of the app for failure to supply more recent reference letters, even assuming such a requirement were valid under Bruen, is an **unreasonable abuse of discretion and a violation of procedural due process**. No proper interview was conducted prior to the **decision**, and no appeal process was mentioned. You should have at least allowed me time to provide more recent reference letters. I would have done so, and remain willing to do so, despite my certainty that such a requirement is unlawful under Bruen. (Not a hill to die on.)

Though your letter states that I "did not complete the required elements of the application process", you proceed to deny my app anyway, ostensibly for lack of **good moral character**, proof of which you state is required for exercise of my right to bear arms. Your letter does not expressly state that I lack good moral character, but it is apparent from your assessment of the forum incident and our later meeting that you **judged** me as lacking good moral character and that this exercise of **judgment on your part** led to your denial of my right to bear arms.

(I was born about three weeks before this City was incorporated yet I have **ZERO criminal history** and no recent speeding tickets, so on Equal Protection grounds I would be very interested in comparing my moral character with yours and also that of your officers and any recipients of a CCW from you. Perhaps I will have that opportunity.)

I need to correct several **misstatements of fact** in your letter regarding these meetings which supposedly condemned me **in your judgment**:

- **First, regarding the forum**, you state that my “actions created a fearful reaction from many subjects in the audience which can be heard during the recorded meeting”. This is very misleading and not true at all. While my actions may have been momentarily startling to a few, it is patently false and defamatory to say that many “subjects” in the audience reacted with fear. **Only a couple of unreasonable people gasped audibly** and the recording (see below for link) is evidence that it was not “many” as you state. There was no pandemonium. There was no panic. No one got up and ran for their lives. No one got up at all. And after the event I remained at the table for questions and no one told me they were in fear. That statement of yours is highly defamatory in creating a false impression that I caused mass fear. I also take issue with the last sentence of that paragraph in which you state that you “received several complaints from community members regarding your actions, many deemed as unsafe and inappropriate.” Are you saying that “many” of my actions were deemed as unsafe and inappropriate? Or did you mean to say “which many” deemed as unsafe and inappropriate? If the latter, why did you receive only “several” complaints, instead of “many” complaints? During our later meeting in your office, I recall you mentioning you had “several” complaints, and I recall specifically asking you how many exactly, and you merely repeated “several” in response. Not a dozen, or half dozen, or five or four or three. **I am informed and believe that you had only two complaints, and that those two individuals were Linda Winters and Timothy Crowley**, the same two individuals who spoke against me heatedly at the **City Council meeting YOU suggested I attend, that very evening** on the day you and I met. Winters is a longtime mobile home tenant activist, vehemently opposed to my stance against rent control. Crowley is a professionally trained actor, also opposed to conservatives. Both gave great performances at the meeting. Crowley even greeted me, “It’s the star of the show!” as we entered the building together—**so who produced this “show”?** You did state during our meeting that **city staff was all abuzz** about how to deal with the forum incident. Look up “**Monell liability**” of municipalities in 42 USC 1983 actions. Yes, I would say there is Monell liability here. Crowley even mentioned in his speech that I **should not have a CCW**. Was that in the City’s script? How could two individuals (you and Crowley) jump to the same illogical conclusion that lawful display of a red gun, for the purpose of training and as political speech, is somehow conclusive evidence that a person cannot responsibly carry a loaded firearm? You could poll a hundred people and not get a single person to come up with that conclusion, and yet both of you came up with identical conclusions devoid of logical reasoning.
- **Second, regarding misstatements in your paragraph describing that meeting in your office**, you start off describing that meeting as scheduled by you to address concerns that you and members of the community supposedly had about the forum incident. Yet I was the one who initiated scheduling of the meeting, as a law enforcement friendly city council candidate endorsed by the local Republican Party, to discuss local law enforcement issues as a candidate, as we were invited to do during candidate training. **Rather than respecting the time I carved out as a busy candidate for public office, you engaged in no such discussion with me and instead turned the meeting into an**

**interrogation on the forum incident. You also state falsely that I failed to recognize the seriousness of the incident.** This is absolutely not true, as I specifically remember telling you that if I had known a couple of unreasonable people would gasp audibly the way they did, I would have tried to figure out a different way of getting my message across. **Your statement that “most people” did not immediately recognize “the weapon” as a training gun is also demonstrably false and highly defamatory,** as the video shows there was no panic other than a couple gasps by unreasonable attendees who may have been half-asleep when I announced, as I pulled out the red gun, that it was a hunk of plastic, all in the context of describing my training program for yard signs. “Most people” do not expect a firearm to be red, and this was a plastic “red gun” actually designed for use in public settings. Yes, peace officers should be prepared to respond to any color because, as you state, guns can be any color. But that is irrelevant to how the public responds to color. The whole rationale of the statute allowing display of red guns (imitation firearms) in public, even in public forums as is the case here, is that real firearms are usually not red. In fact, I have never seen a real firearm that is red. Someone could make one red in various ways, though I can’t imagine why they would do that. And of course there was no brandishing or intent to cause fear. I was reading from a written speech about my training requirement for getting a yard sign, and how this training could be done on your porch or driveway with this red gun, a hunk of plastic, etc. All very quick, never pointed at anyone, and the red gun was laid down on the table very quickly, well within any reaction time should some poorly trained CCW misinterpret my actions as a threat. Of course, anyone that bad at threat assessment is not likely to be quick at all. But even a quick person would not get hand on gun before it was on the table, given minimal reaction time. **You state that many police officers have been forced into shooting situations based on subjects “brandishing or displaying” imitation firearms and that this is a “serious reflection” of my “judgement” (sic) on carrying a firearm in public, and that these actions “were and are viewed as irresponsible actions of a potential CCW carrier which brings negative attention to themselves.”** Yet I was not in any way brandishing, and was **merely displaying** -- NOT a FIREARM but a RED GUN, which is just a hunk of plastic and in fact not a gun of ANY sort, not even an airsoft -- in the manner expressly allowed per code, for purposes of training and as political speech. (The Seventh Circuit held that firearm training itself is protected under the Second Amendment.) **If your officers shoot people for merely displaying red guns or garden hose nozzles, that is a “serious reflection” of their training, not my judgment.**

You can see **videos of me at the forum** (including a short excerpt showing draw of the red gun), and also video **excerpts of my accusers** at the city council meeting, along with my commentary, in my blog post here:

<https://lawnews.tv/high-tech-lynching-of-dave-duringer-in-morro-bay/>

**In twenty years of licensed concealed carry, I have never, not once, unlawfully exposed a firearm.** How is one instance of perfectly lawful display of a red gun for training and political speech at all relevant to show that I cannot responsibly carry a loaded firearm for self-defense, when in fact I have done so almost every day over the last twenty years?

There is no logic in your **judgment.** It is **unreasonable, arbitrary and capricious.**

Not only have I carried responsibly for twenty years, but I have taught others to carry responsibly for almost that long. I have been an **NRA instructor for twenty years.** I have been a **licensed Utah Concealed Firearm Instructor since 2008,** and for a couple years was an **approved CCW trainer for the**

**Orange County Sheriff** before moving up to the Central Coast. I am well acquainted with carry laws, and other gun laws, as my estate planning practice focuses on the legal needs of gun owners.

**So why did I do it?** You should know if you followed my campaign, but I'll recap: My main reason for running was my opposition to Morro Bay's **Ordinance No. 644, mandating locked storage of firearms**, passed unanimously by all then-sitting councilmen. My campaign was also focused on opposing **COVID fascism including lockdowns and mandates** which were both oppressive and dangerous. In particular, having a daughter in college, I was concerned about **mRNA shot mandates**. Efforts have continued in this state to mandate injection of this experimental gene serum without exemption, even for young children who could not possibly benefit from these shots. This is a great crime that some are calling genocide along with other aspects of COVID fascism that are suspected of causing many deaths, from lockdowns to hospital protocols and treatment bans. Few public officials rose to defend the People against COVID fascism. **Our Second Amendment is designed to protect us** in such circumstances, not through individual violence contrary to just war principles, but through support of our local sheriff which despite legislative restrictions in recent years retains the ability to form voluntary posse. For the People to be of any value to our sheriff in defending against gravely unconstitutional usurpations by state and federal governments, **the People must be trained**. And so my campaign sought to educate the People on the need for firearm training as well as protecting our right to bear arms against other threats such as Ordinance No. 644. Hence, my requirement of participating in a short red gun training on the voter's porch or driveway, in full view of neighbors, in order to obtain a yard sign which would also be a sign encouraging others to undergo that same training.

I had already done this type of door-to-door red gun training two years prior when I ran for Council in Grover Beach. Many signs went up, a social media buzz was created, and at one point I was only ten votes behind the first-place candidate. I sought to do the same training here in Morro Bay, and did manage to get several hundred signs up. A severe case of plantar fasciitis slowed me down in doorknocking; despite the pain, I managed to cover all but a couple precincts. In displaying the red gun at the forum, I was informing voters of what I was using for instruction on their neighbors' porches and driveways. I was also trying to get volunteers to help in providing a basic version of such training to amplify my efforts and get more yard signs up.

My experience as an instructor, and in doorknocking these communities, informs me that **while most gun owners consider themselves trained, very few gun owners have had defensive training for speed**. I developed a short, five-minute red gun drill introducing them to this type of training.

**Without defensive training for speed, gun owners cannot preserve gun culture and our Second Amendment becomes a dead letter.** Hunting is no longer common, so defensive training is the only endeavor with modern potential to maintain widespread, regular, practical use of firearms. Only defensive training can educate voters to properly resist Marxist gun control measures designed to empower criminals (for example, mandatory locked storage, red flag laws, magazine capacity limits, corrupt ccw licensing schemes using subjective issuance criteria, etc.). Only defensive training can educate voters to properly address the legitimate use-of-force concerns faced by peace officers. Only defensive training can make one useful to one's sheriff in a constitutional crisis.

So **defensive training for speed is every bit as important as voting when it comes to preserving law and order**. That is why such training was required to obtain one of my yard signs. **My display of the red**

**gun at the forum meeting was political speech aimed at getting more voters trained and getting more yard signs up.**

Video of my comments at city council urging repeal of Ordinance No. 644:

<https://lawnews.tv/duringer-calls-for-repeal-of-morro-bay-ordinance-644/>

There is a popular saying these days: "One of the benefits of being a conspiracy theorist is, you don't have to worry about myocarditis." **YOU may disagree with me that the clot shots are dangerous, or that gun control threatens our Republic. But you must not arbitrarily and capriciously take a way my right to bear arms, in retaliation for my political speech.** That is what is really going on here, as it does not follow logically from these events that I lack good moral character, and your enforcement of that unconstitutional requirement is itself immoral.

**I very much appreciate the second paragraph of your letter**, despite its many **errors**, and reproduce it here in its entirety:

As Chief of Police for Morro Bay, I am given statutory discretion to issue a license to carry a firearm to residents of Morro Bay. California Penal Code Sections 26150 and 26155 state the applicant must show good moral character to support his/her request. For purposes of my issuing a CCW, good moral character, under Bruen, States can still constitutionally enforce requirements for residents to obtain a public-carry license. **The Court emphasized that licensing schemes that "require applicants to undergo a background check or pass a firearms course" were acceptable, because such requirements were "narrow, objective, and define [sic] standards" designed to ensure that only "law abiding, responsible citizens" could obtain a public-carry license.**

**The reason I appreciate your second paragraph is that it shows you are aware of the importance to Bruen's ruling of the opinion's sentence containing the words "narrow, objective, and definite standards".** (I'm not sure whether your misspelling of "definite" was intentional along with other inaccuracies and omissions, or simply the result of autocorrect.) **And if you are aware of those words, then surely you must be aware of the remainder of that sentence which you omitted, and which proscribed licensing schemes requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion."** Not that I need to show you are aware of the rest of the sentence. Ignorance of the law is no excuse when it comes to liability for depriving me of my civil rights. **But your knowledge and that of other city officials may help in obtaining punitive damages.**

I note how you **carefully craft** portions of this paragraph to **mislead and distort the Bruen ruling**. For example, you use the term **"licensing schemes"** but Bruen was approving in general fashion only the 43 States' **"shall-issue"** licensing regimes. **California's scheme is in no way a shall-issue regime, even without the "good cause" requirement.** The requirements of **proving good moral character** and **supplying reference letters** are nowhere to be found in shall-issue regimes. I also note how you transpose the words "only that" to "that only" which has the effect of misleading one to believe the Court was blessing a more subjective rigor in gleaning only the most law-abiding and most responsible, when in fact the court proscribed use of any subjective criteria.

Here is what the Court *actually* wrote (minus citations):

To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the **43 States' "shall-issue" licensing regimes**, under which "a general desire for self-defense is sufficient to obtain a [permit]." .... Because these licensing regimes do not require applicants to show an atypical need

for armed self-defense, they do not necessarily prevent “law-abiding, responsible citizens” from exercising their Second Amendment right to public carry. .... Rather, it appears that **these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, “law-abiding, responsible citizens.”** .... **And they 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 permit-ting scheme can be put toward abusive ends, we do not rule out constitu-tional 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.

Again, California’s scheme is not even a shall-issue regime, and your language deceptively tries to gloss over that important point. Also, piggybacking on the Court’s comment above that even shall-issue regimes may be challenged for abuse, note that currently more than half of states (27) allow permitless carry.

I also reproduce here **your third paragraph** (omitting the last sentence listing CCW requirements):

The New York State Rifle & Pistol Association v. Bruen case ruled that the “good cause” requirements set forth in California Penal Code sections 26150(a)(2) and 26155(a)(2) were unconstitutional and unenforceable under Bruen. The Office of Attorney General of California also concluded and advised local officials to “continue to apply and enforce all other aspects of California law with respect to public-carry licenses and the carrying of firearms in public.” As such, the statutes under the California Penal Code related to the issuance of licenses remain.

Not quite. **Bruen** specifically ruled that New York’s “proper cause” requirement (analogous to California’s “good cause” requirement) was unconstitutional, but also **more broadly ruled that any licensing regime must, in order to avoid denying ordinary citizens their right to public carry, 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.**

You are mistaken in relying on as “advice” the California AG’s erroneous “Legal Alert” dated June 24, 2022, which while admitting the “good cause” requirement is unconstitutional, nevertheless offered “guidance” for ramping up use of other subjective criteria to deny CCW. Far from being legal advice, the **letter actually advised you to seek advice from your own legal counsel!** Note the following CYA language in the letter:

Law enforcement **agencies that issue licenses** to carry firearms in public **should consult with their own counsel, carefully review the decision in Bruen**, take the following **guidance** into account, and continue protecting public safety **while complying with** state law and the **federal Constitution**.

You are not protecting anyone by ignoring our Constitution, and the **AG’s letter will not protect you. Nor will it provide you with qualified immunity.** It does not have the force of law. It actually warns you to review Bruen carefully, which is the law. You cannot rely on the AG’s letter to weaken the “**clearly established law**” of Bruen which **directly conflicts with the AG’s schizoid letter**. Guess which one wins? Even the letter tells you to read Bruen and consult your own counsel!

Ironically, one of my most popular blog articles is one responding point-by-point to AG Bonta’s letter: <https://lawnews.tv/california-ag-ditches-good-cause-pitches-moral-character-for-ccw-denial-what-is-bonta-smoking/>

I have been a Second Amendment activist for quite awhile. I remember when Florida sheriffs were generally opposed to carry, before they became proponents of carry. I remember Sheriff Hutchens taking away all our permits at once (over 800 of us). Less than a decade later she approved me as a CCW trainer for OCSD and was even given a Second Amendment award by CRPA. I have always been friendly toward law enforcement and maintained my respect for them even during 2A scuffles. Eventually things turned out well.

This situation smells different. The way you conducted our meeting was extremely disrespectful and you have seriously harmed me. I have been carrying a long, long, time, and it has been a way of life for me and my family. The way things are going in this country and particularly in this state, adequate preparation for defense of person and family is more necessary than ever. In my application I did not disclose any specific reasons for carry because you are not entitled to demand that information, but I have ample cause for carry. Your unreasonable, arbitrary, capricious, and unconstitutional exercise of judgment depriving me of my right to bear arms has caused **great emotional distress, accompanied by serious physical harm to health and other damages**. Because of the unique nature of my law practice, which is integrated with the concealed carry training I provide, I have already suffered **significant actual damages to my practice** and these damages will accelerate with time.

If you had merely denied for lack of reference letters I would have supplied them to you, or just applied de novo with our sheriff. However, you went further and apparently **made a determination** that I lack good moral character. **For professional reasons, I simply cannot let that stand** and have **no other choice** but to **file suit to reverse** that determination.

The potential damages are huge, with **actual damages** already in the tens of thousands, easily six figures eventually, perhaps even seven figures with **punitives (based on your denial letter's admission of knowledge** regarding, and your **wilful disregard** of, Bruen's "clearly established law" prohibiting subjective evaluations). **City staff** and the **City itself** will be pulled in with **Monell liability**.

There is a lot I don't know yet about the **apparent conspiracy among staff and others** to deprive me of my civil rights—especially deprivation of my right to bear arms under the **Second** and **Fourteenth** Amendments, and violation of **Equal Protection**, lack of **substantive and procedural due process**, also **political retaliation** in response to exercise of my **First** Amendment rights—but I will find what I need through discovery process or perhaps cut a deal with one of the other conspirators.

**You** and any **city staff** involved are on **notice** that **you should avoid making any transfers of real property or major accounts** as these may be deemed **voidable transfers** or **fraudulent conveyances**.

**At this point**, I am **only asking** that my application be **reopened** and the **apparent determination of lack of good moral character reversed**. If this is not done soon, I will file in **federal court** and pursue maximum damages, including punitives, based on civil violation of 42 USC 1983, possibly adding state claims as well. But **ONLY in federal court**.

I have very little patience with deprivation of my right to bear arms.

But if forced to file a federal suit (again, for professional reasons I will have no choice), you will find that I will have much less reason to settle and will have all the patience necessary to obtain **maximum monetary recovery** and also **maximum discovery of information**, because that is also important. **The**

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**Law is completely, totally on my side, and so are the Facts. The only thing you have going for you is the hope of packing the Supreme Court. Odds are that you will lose, spectacularly.**

**Are you ready to make that bet**, when I am **offering to settle** at **no cost** to you, **no cost** to your comrades, **no cost** to the City of Morro Bay?

I am not the type to hold grudges; everyone makes mistakes, including me. I hope we can resolve this.

But I promise you I will defend my rights with zeal.

If you do not take **immediate** steps to mitigate damages and restore my rights, you will regret depriving me of them.

Atty. David R. Duringer, JD, LL.M

US Supreme Court Bar # 306016

State Bars: CA # 143911 | WA # 26872 | TX # 24130403