CCLA
California Civil Liberties Advocacy
CaliforniaCivilLiberties.org

California Civil Liberties Advocacy
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Tuesday, April 5, 2016

Assembly Member Shannon Grove
P.O. Box 942849
Room 4208
Sacramento, CA 94249-0034

RE: Assembly Bill 2229

Dear Assembly Member Grove,

We are writing to inform you that the California Civil Liberties Advocacy is **OPPOSED** to Assembly Bill 2229.

Section 1 of AB 2229 states, in part, that "[i]t is the intent of the Legislature in enacting this act to codify the holding of the United States District Court, Eastern District of California in *Silvester v. Harris* (2014) 41 Supp. 3rd 927 . . ." However, *Silvester* was decided on August 22, 2014 and appealed to the Ninth Circuit by the California Attorney General on September 24, 2014. Oral arguments were recently held on February 9th, 2016. And according to the Ninth Circuit's website, "most cases are decided within 3 months to a year." (*Frequently Asked Questions*, United States Courts for the Ninth Circuit <https://www.ca9.uscourts.gov/content/faq.php> [As of Apr. 4, 2016].) Since AB 2229 does not appear to incorporate an urgency clause, the statute would not go into effect until January 1st, 2017. Therefore, the CCLA contends that until the Ninth Circuit rules, it is entirely premature to codify the District Court's holding. If the holding in *Silvester* is overturned by the Ninth Circuit, then the provisions of AB 2229 would most certainly come into conflict with the ruling.

For example, the CCLA contends that the District Court erred in its holding that wait-period laws are not "longstanding" simply because they were not in existence in 1791 or 1868. (See *Silvester, supra,* at 937.) In *District of Columbia v. Heller* (2008) 554 U.S. 570, the Supreme Court held that certain "longstanding" regulations are "presumptively lawful," such as laws prohibiting felons and mentally ill individuals from possessing firearms — regulations which were brought about in the twentieth century, long after the 1791 and 1868. Writing for the majority, Justice Scalia stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." (*Heller, supra,* at 626-627). Interestingly, felons were first barred from possessing firearms upon the enactment of the 1968 Gun Control Act—nearly two hundred years after the Second Amendment was adopted—(Offices of the United States Attorneys, Criminal Resource Manual

(Jul. 2013) <http://www.justice.gov/usam/criminal-resource-manual-1117-restrictions-possession-firearms-individuals-convicted> [as of Dec. 30, 2015]), while the District Court itself conceded in *Silvester* that "[t]he first mention of a waiting period law was a 1923 model law . . . adopted by nine states, including California." (*Silvester, supra,* at 937.) It is clear that if the United States Supreme Court considers a law that has existed since 1968 to be "longstanding," then certainly a law that was in existence nearly a half-century prior should be considered "longstanding," despite not having been in existence in 1791 or 1868. Based on this and other compelling arguments, the CCLA believes there is a strong possibility that *Silvester* will be reversed by the Ninth Circuit.

At the very least, it is premature to codify a court order that is currently on appeal, with a ruling pending any time from within the next 30 days to the next 10 months. Therefore, the CCLA strongly opposes AB 2229 and urges the author to withdraw the bill until the Ninth Circuit rules.

Respectfully,

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Cc: Assembly Public Safety Committee