



# STATE OF RHODE ISLAND

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Dear Colonels/Chiefs of Police:

As you are likely aware, the Supreme Court recently issued a decision in *New York State Rifle and Pistol Association v. Bruen*, No. 20 – 843 (U.S. June 23, 2022), in which the Court held that New York’s concealed-carry permitting scheme was unconstitutional. I wanted to share with you our Office’s evaluation of the *Bruen* decision and its impact upon your firearm permitting processes. I have attached a brief notice and FAQ document that we have just issued to the public, but the bottom line is that we are of the view that the *Bruen* decision does not impact us here in Rhode Island.

At the same time, I also wanted to take this opportunity to share with you some guidance pertaining to your permitting processes and materials. While the *Bruen* decision explicitly counted Rhode Island among the 43 states with constitutionally sound permitting schemes, you may wish to ensure that your processes are fully compliant with both the United States Supreme Court and Rhode Island case law.

### **A Short Summary of *New York State Rifle & Pistol Assn. v. Bruen***

In *Bruen*, the Supreme Court considered the constitutionality of New York’s licensing scheme which required individuals who applied for an unrestricted license to concealed-carry a pistol or revolver outside their home to satisfy a “proper cause” requirement. Under New York’s law, applicants could only meet that requirement if they could “demonstrate a special need for self-protection distinguishable from that of the general community.” *Bruen*, slip op. at 3. The Supreme Court held that this “special need” requirement violated the Second Amendment because it “prevent[ed] law abiding-citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* slip op. at 63.

Importantly, the Supreme Court in *Bruen* affirmed that states may impose licensing requirements for carrying a handgun for self-defense. *Id.*, slip op. at 4-6 & 6 n.2. The concurring opinion issued by Justice Kavanaugh and Chief Justice Roberts confirms that “the Court’s decision does not affect the existing licensing regimes—known as ‘shall issue’ regimes—that are employed in 43 States.” *Id.* slip op. at 1 (Kavanaugh, J., concurring). Rhode Island is one of those states.

As the concurring opinion also makes clear, the “shall issue” regimes may continue to impose requirements such as fingerprinting, criminal background checks, mental health records checks, proficiency standards and training in firearms, familiarity with use of force laws, among

other requirements to determine the suitability of the applicants. *Id.*, slip op. at 1-2. (Kavanaugh, J., concurring).

Additionally, the *Bruen* decision also makes clear that the Second Amendment right to bear arms in public is subject to “reasonable, well-defined restrictions.” *Id.* slip op. at 62 (citing *District of Columbia v. Heller*, 554 U.S. 570, 581 (2022)). “Those restrictions, for example, limit[] the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms [.]” *Id.* States can continue to prohibit carrying of firearms “in sensitive places such as schools and government buildings,” prohibit felons and the mentally ill from carrying firearms, and prohibit the carrying of “dangerous and unusual weapons,” among other limitations. *See Id.* slip op. at 3 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-627, and n. 26).

### **Rhode Island’s Statutes and Rhode Island Case Law:**

The State of Rhode Island offers two avenues to apply for a permit to carry a concealed pistol or revolver under Rhode Island General Laws §§ 11-47-11 and 11-47-18. Section 11-47-11 governs permits issued by municipal licensing authorities (in Rhode Island, these are typically local police departments) and provides that these licensing authorities “shall issue” a permit if a person satisfies the following three components: (1) an age and residency requirement; (2) a suitability requirement; and (3) a “reason” requirement. *Gadomski v. Tavares*, 113 A.3d 387, 390 (R.I. 2015). Section 11-47-18(a), by contrast, provides that the Attorney General “may” issue a permit, which includes permission to carry a pistol or revolver openly, upon a “proper showing of need.” Both provisions also require applicants for a permit to satisfy certain firearms proficiency standards. R.I. Gen. Laws §§ 11-47-15, 11-47-16.

Rhode Island courts have considered this dual licensing scheme and concluded that, “[b]ecause [Rhode Island law] provides for both discretionary and mandatory licensing to qualified applicants, the constitutional guarantee to keep and bear arms is fulfilled.” *Mosby v. Devine*, 851 A.2d 1031, 1047 (R.I. 2004). Although Section 11-47-11 references a reason for application, “[d]emonstration of a proper showing of need, which is a requirement under § 11-47-18, is not a component of § 11-47-11.” *Gadomski v. Tavares*, 113 A.3d 387, 392 (R.I. 2015). Under § 11-47-11, for example, status as “an avid gun collector” is proper reason for issuance of a concealed carry permit. *Mosby*, 851 A.2d at 1047.

### **The Bruen Decision Explicitly Approved Rhode Island’s Permitting Scheme:**

As previously stated, the *Bruen* majority took the unusual step of dividing all fifty states’ laws into laws it believed to be permissible under the newly articulated standard and laws that would not pass the standard articulated in *Bruen*. As Justice Kavanaugh distinctly stated in his concurrence, joined by Chief Justice Roberts, “the Court’s decision does not affect the existing licensing regimes—known as ‘shall issue’ regimes—that are employed in 43 States.” *Bruen*, slip op. at 1 (Kavanaugh, J., concurring). Rhode Island was specifically placed in the permissible category by the majority:

Finally, Rhode Island has a suitability requirement, *see* R. I. Gen. Laws §11-47-11, but the Rhode Island Supreme Court has flatly denied that the “[d]emonstration of a proper showing of need” is a component of that requirement. *Gadomski v. Tavares*, 113 A. 3d 387, 392 (2015).

*Id.* slip op. at 4-5 n.1.

As recognized by the United States Supreme Court, the availability of municipal licensing authority-issued permits under Rhode Island General Laws § 11-47-11 adequately protects Rhode Islanders' Second Amendment rights to carry a pistol for self-defense in public.

### **Guidance to Municipal Licensing Authorities**

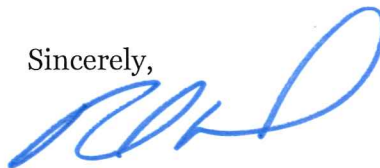
While the *Bruen* decision does not impact your permitting authority under Section 11-47-11, your process must comply with the Rhode Island Supreme Court's decision in *Gadomski* in order to remain constitutional. I have appended the *Gadomski* decision to this letter, but more specifically:

- **You are still required by law to determine whether an applicant for a gun permit is “a suitable person to be licensed” and so can conduct an inquiry to make that determination. That determination includes, but is not limited to, a determination of whether the applicant is prohibited from possessing firearms under state or federal law. There may be additional bases on which the licensing authority may determine that an applicant is “not suitable.” *Gadomski*, 113 A.3d at 390.**
- **You may not require a “proper showing of need” for permit issuance. You may inquire as to the reason for which a person might seek a license, but you may only use that information to assess whether an applicant meets the suitability requirement. You may not use that information to deny a license for lack of a sufficiently good reason to carry a firearm.**
- **Any denial must state the factual basis for the denial, rather than a bare recitation of the legal requirements. *Gadomski*, 113 A.3d at 392. In other words, you must state the reason for the denial and the facts in the record that support the reason.**

Other objective requirements consistent with suitability and any proper reason for carrying a concealed pistol or revolver remain permissible. Please review your application forms and any other written materials to ensure compliance with *Gadomski*.

I hope that you find our brief analysis and guidance helpful as you continue to carry out your authority in this area. Please do not hesitate to reach out if we can answer any further questions.

Sincerely,



Peter F. Neronha  
Attorney General