



**MOUNTAIN STATES LEGAL
FOUNDATION**
FREE COUNTRY. FREE PEOPLE.

2596 South Lewis Way | Lakewood, CO 80227 | Tel: 303.292.2021

June 29, 2023

Mayor Paloma Aguirre & City Council
Imperial Beach Civic Center
825 Imperial Beach Blvd
Imperial Beach, California 91932

Re: Moratorium on Granting Business Licenses to Firearms Retailers in Imperial Beach

Dear Mayor Aguirre & City Council,

We work at Mountain States Legal Foundation, a non-profit litigation law firm that protects and defends the U.S. Constitution. Specifically, our Center to Keep and Bear Arms has a mission of securing the right of all Americans to be able to defend themselves, their families, and their property, as they see fit. As Second Amendment attorneys, we at Mountain States Legal Foundation are deeply concerned about the moratorium on retail firearms sales that your city council recently approved.

The moratorium issued by your city council just a few days ago prevents firearms retailers from obtaining a business license for at least the next 45 days. This “moratorium” on the sale of firearms is really a moratorium on the Second Amendment. To permissibly impose gun control regulation, the city bears the burden of establishing consistency with our nation’s historical tradition of regulating firearms. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022). Put simply, your city could never meet this burden, because the blanket moratorium on retail firearms sales passed by your city council is not consistent with this nation’s historical tradition and is therefore unconstitutional.

Outright banning, or even indiscriminately delaying, the ability of firearms retailers to establish themselves within Imperial Beach does not comport with any historical tradition. The Supreme Court already dealt with outright bans on certain types of firearms when they addressed the District of Columbia handgun ban in *Heller* and reaffirmed the unconstitutionality of the ban in *Bruen. Id.* At 2128. Specifically, the Court stated that the ban was “historically unprecedented. . . observing that

[“]few laws in the history of our Nation have come close to [that] severe restriction.[”
Id. (Citing *D.C. v. Heller*, 554 U.S. 627, 629 (2008)).

Apart from its unconstitutionality, your city’s moratorium is also reckless, because it does not make anyone safer. Law-abiding citizens are generally the ones who would purchase firearms in a lawful manner, from a legal gun shop. Criminals, on the other hand, buy firearms through unlawful channels of commerce. With crime skyrocketing in your state, your desire to leave your law-abiding citizens disarmed against rampant criminality is baffling. Your actions unnecessarily put the lives of your citizens and their families at risk.

By analogy, there would be no scenario in which a moratorium on First Amendment free speech rights would be permitted. The right to free speech is known to be a closely held, and staunchly defended, right of all Americans. After *Bruen*, courts interpret the Second Amendment and the right to bear arms as first-class rights, on par with free speech. As Justice Thomas wrote in *Bruen*, the right to bear arms *is not* a “second-class right, subject to an entirely different body of rules than the Bill of Rights guarantees.” *Id.* At 2156 (quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010) (emphasis added)).

This moratorium is a violation of the Second Amendment and opens the city of Imperial Beach, and you in your personal capacity as mayor, to lawsuits. Indeed, attorney fees are often awarded in such lawsuits, pursuant to 42 U.S.C. § 1988. If the moratorium on retail gun sales is not lifted, we reserve all rights to take legal action against the city, you personally, and to seek attorney fees.

Sincerely,

Brian Abbas

Director, Center to Keep and Bear Arms

Andrew Freeze

Legal Fellow

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