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California Civil Liberties Advocacy
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Tuesday, June 11, 2019

Submitted Electronically

Assemblymember Phil Ting
State Capitol
Room 6026
Sacramento, CA 95814

RE: **AB 61 (Ting) — OPPOSE**

Dear Assemblymember Ting:

I am writing on behalf of the California Civil Liberties Advocacy (CCLA) to express strong opposition to AB 61. While the CCLA takes the position in *Heller* that states are generally free to regulate firearms for public safety purposes, AB 61 will not improve public safety. AB 61 is a civil rights violation waiting to be adjudicated by the courts. The amendments have utterly failed to address our concerns.

First of all, there is the issue of “swatting,” which is a form of retaliation in which someone makes a false report to the authorities in order to induce a SWAT team to respond to another person’s address.ⁱ In a dispute that arose between online video gamers, a man who was not related to the dispute was killed when one of the players, attempting to “swat” the other, gave police the wrong address.ⁱ A similar incident happened to Parkland survivor and gun control activist David Hogg in 2018; thankfully, Mr. Hogg was not home and the incident ended without injury.ⁱⁱ If AB 61 is signed into law, we fear that California may be inadvertently legalizing the practice, so long as the complainant first files the proper documentation with the court.

The next issue is the ease with which restraining orders are generally granted. The standard of proof is lower than in criminal casesⁱⁱⁱ, and judges are likely to “err on the side of caution,” when determining whether or not to grant the order.^{iv} In laypersons’ parlance, *they’re too easy to get*. For instance, in December 2005, New Mexico resident Colleen Nestler petitioned for a restraining order against the former Late Show host David Letterman, “accusing him of mental cruelty and blaming him for her bankruptcy and sleep deprivation . . . with coded messages that he sent through the TV.”^v Incredibly, Judge Daniel Sanchez approved the order.^v In California, there is no fee to file a petition for a gun violence restraining order and the sheriff will serve the order for free and take away guns, ammunition, and magazines.^{vi} This also raises Fourth Amendment concerns since law enforcement officers will be able to search the restrained person’s home while enforcing the order.

AB 61 is being packaged and sold as a mechanism to prevent school shootings. But the language of the bill specifically provides for “[a]n employer of the subject of the petition,” “[] coworker,” in addition to “an employee or teacher” of a school. The bill was amended to require

“Indifference to personal liberty is but the precursor of the state’s hostility to it.”

— Justice Kennedy, U.S. Supreme Court

coworkers to have had “substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.” So now we’re going to make employers arbitrators who must either grant or deny preliminary approval to file the petition. What if the employer has had non-substantial or infrequent interactions with the subject of the petition? How does requiring a coworker to seek the employer’s approval to file the petition solve anything? The simple answer is that it doesn’t. And how will this rule be enforced? Will there be a standardized form or affidavit for employers to sign, and which the coworker may present to the court? Will the employer be required to testify? Furthermore, if a coworker wishes to “swat” out of retribution, vengeance, or as a prank, then what difference does having regular interactions for one year make? It does not make any difference. The best of friends, spouses, and business partners regularly have falling outs and sever ties, and commonly misuse the legal system to exact revenge or malice.

As stated at the outset of this letter, AB 61 is a civil rights violation waiting to be struck down. It opens thousands of legal gun owners, who are in compliance with the law, to a loss of fundamental liberty as the language is overbroad. It would not be fair to subject legal gun owners to the whims of laypersons who may have an axe to grind; to subject them to a search and seizure, invasion of privacy, or having to hire an attorney and pay exorbitant legal fees to fight the restraining order or attempt to clean up their record after the fact. There is also the issue of possibly being injured or killed if the officers mistakenly shoot the restrained person. The current standard of allowing immediate family members and law enforcement officers to file such petitions is sound.

For all of the reasons listed above, the CCLA strongly **opposes** AB 61.

Very truly yours,



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Cc: Senate Public Safety Committee (*Faxed to 916-445-4688*)
Senator Nancy Skinner (Chair)
Senator John Moorlach (Vice Chair)
Senator Steven Bradford
Senator Hannah-Beth Jackson
Senator Holly Mitchell
Senator Mike Morrell
Senator Scott Wiener

ⁱ Associated Press, California Man Sentenced to 20 Years in Fatal ‘swatting’, 209 Los Angeles Times, Mar. 19, 2019 at (2019), <https://www.latimes.com/nation/la-na-tyler-barriss-swatting-sentencing-20190329-story.html> (last visited June 11, 2019).

ⁱⁱ Victor, D. & Hagg, M., 'Swatting' Prank Sends Police to Home of David Hogg, Parkland Survivor, 2018 N.Y. Times, June 5, 2018 at (2018), <https://www.nytimes.com/2018/06/05/us/david-hogg-swatting.html> (last visited June 11, 2019).

ⁱⁱⁱ Cal. Pen. Code §§ 18175(c)(2), 18185(b), 18190(b), 18190(d), & 18190(e).

^{iv} Heleniak, D.N., Esq., Erring on the Side of Hidden Harm: The Granting of Domestic Violence Restraining Orders, 1 Partner Abuse (2010).

^v Watson, B., The High Price of Restraining Orders, 2010 AOL.com, May 30, 2010 at (2010), <https://www.aol.com/2010/03/30/the-high-price-of-restraining-orders/> (last visited June 11, 2019).

^{vi} Cal. Courts, Gun Violence Restraining Orders (Judicial Council of Cal. 2019), <https://www.courts.ca.gov/33961.htm> (last visited June 11, 2019).