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July 15, 2014

Mark A. Dubois, President  
Connecticut Bar Association  
30 Bank St., PO Box 350  
New Britain, CT 06050-0350

**Re: The Connecticut Bar Association's Proposal To Join In A Brief Anticipated To Be Filed By The Brady Center To Prevent Gun Violence Or, Alternatively, To "Take A Position" In *Shew v. Malloy***

Dear Mr. Dubois:

The Connecticut Bar Association's Human Rights and Responsibility Section proposes that the CBA join as an amicus curiae in a brief to be filed by "advocates interested in preventing gun violence, led by the Brady Center [to Prevent Gun Violence]" in the *Shew v. Malloy* case pending before the United States Court of Appeals for the Second Circuit.<sup>1</sup>

The first tenet of constructing a fallacious argument is the creation of a fictitious controversy. In this case, as in the majority of gun cases, the fictitious controversy created is between individuals who support the prevention of gun violence and those who do not.<sup>2</sup> Whether the lawyers and judge in the CBA's Human Rights and Responsibility Section believe it or are exploiting it for public consumption, the adoption of this characterization should embarrass every CBA member capable of considering issues on their merit, logically, without reduction to ten-second sound bites condescendingly intended for a susceptible audience.

*Preliminarily*, a threshold question ignored by the CBA's leadership in published comments to The Connecticut Law Tribune is whether the CBA ethically should support one party over another in an appeal from a judicial decision written by one of its members, The Honorable Alfred V. Covello.<sup>3</sup> Already, in predicting that the Connecticut gun law will stand on

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<sup>1</sup> J. Stapleton, "CBA Considers Amicus in Second Amendment Case," Conn. L. Trib. (July 9, 2014) at <http://www.ctlawtribune.com/home/id=1202662677589/CBA-Considers-Amicus-in-Second-Amendment-Case%3Fmcode=1202617073650&curindex=3>.

<sup>2</sup> It is unclear whether the term "gun violence" in the article refers to the use of firearms against innocent victims or whether it includes the use of firearms under all circumstances, including in defense of one's home, family, and children, by law enforcement, and by the military. For purposes of this letter, it is assumed that the term "gun violence" connotes violence against children and other innocent victims.

<sup>3</sup> See United States District Court, District of Connecticut, website Biography of The Honorable Alfred V. Covello at <http://www.ctd.uscourts.gov/biography-senior-judge-alfred-v-covello>.

its merits, you commented on Judge Covello's decision as "well reasoned and followed the law" without acknowledging the association between the CBA and the judge. While you characterize as threshold the issue of whether the CBA should "get involved in matters that are social or political" or define itself as "a professional organization only concerned with matters affecting the practice of law," absent is a consideration of the consequence for a judge as well as the case when a voluntary association in which Judge Covello lists himself as a member files a brief, on the entire membership's behalf, supporting the side in whose favor the judge ruled. This scenario, which conjures the true threshold question, points to the only answer for the CBA: Forgo filing or joining as an amicus curiae in briefs that create conflicts for CBA members and jeopardize cases.

*Substantively*, the CBA holds itself as the "preeminent organization for lawyers and the legal profession in Connecticut...dedicated to promoting public service and advancing the principles of law and justice."<sup>4</sup> In a July 10, 2014, email from CBA House of Delegates representative Attorney Thomas A. Gugliotti of Updike, Kelly & Spellacy, P.C., the CBA solicits commentary from its membership on the following:

1. Should the CBA take a position on the question [pending on appeal], as an Association;
2. If you answer #1 in the affirmative, should the CBA:
  - a. File an amicus brief in support of upholding the new Connecticut statutes regarding gun regulations; or
  - b. Take a position in opposition to the new Connecticut statutes regarding gun regulations.

The second question, which presents the option to "take a position" in opposing the "new Connecticut statutes" as opposed to the option of filing an amicus curiae brief to support upholding the "new Connecticut statutes," obfuscates the reality that the deadline has passed for filing amicus curiae briefs in support of the *Shew* plaintiffs.<sup>5</sup> The intellectual dishonesty of the mismatched options where it is not overtly stated that the option remains to file an amicus curiae brief in support of the State but not in support of the plaintiffs highlights the obvious: The CBA has no intention of implementing any course other than joining as an amicus curiae in a brief to be filed by "advocates interested in preventing gun violence, led by the Brady Center [to Prevent Gun Violence]."

With few exceptions, legal arguments have two or more sides subject to able advocacy by competent counsel on behalf of rational clients. The arguments now before the Second Circuit in *Shew* and previously before Judge Covello are no different. The CBA presents the State as the side supporting the prevention of gun violence. The State includes the Governor, the Commissioner of the Department of Emergency Services and Public Protection, the Chief State's Attorney, and the State's Attorneys in each of Connecticut's thirteen judicial districts. Based on

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<sup>4</sup> See Connecticut Bar Association website link at <https://www.ctbar.org/About%20the%20CBA/History.aspx>. I am a former, but not current, CBA member and am a Life Fellow of the James W. Cooper Fellows Program of The Connecticut Bar Foundation. The CBF is an associated entity of the CBA.

<sup>5</sup> The filing of amicus curiae briefs is governed by Rule 29 of the Federal Rules of Appellate Procedure which provides in pertinent part that "[a]n amicus curiae must file its brief...no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. P. 29(e). The deadline for filing an amicus curiae brief in support of the *Shew* plaintiffs-appellants was May 22, 2014.

the CBA's characterization of the State's position, the striking question is who could possibly support the other side?

In the appeal before the Second Circuit from the summary judgment granted the State by Judge Covello in the district court, I represent amici curiae International Law Enforcement Education and Trainers Association (ILEETA), Law Enforcement Legal Defense Fund (LELDF), Law Enforcement Action Network (LEAN), Retired Connecticut State Police Lt. Col. Matthew F. Tyszka, Esq., Retired State Police Sgt. Douglas Hall, Esq., Retired State Police Sgt. Darren Edwards, Retired State Police Sgt. William A. Marchand, Retired State Police Detective James Bleidner, Retired State Police Firearms Examiner Detective Marshall Robinson, Shelton Police Department Officer David Murad, and Waterford Police Department Officer John Bunce on a brief filed in support of the plaintiffs June Shew, Stephanie Cypher, Peter Owens, Brian McClain, Hiller Sports, LLC, MD Shooting Sports, LLC, Connecticut Citizens Defense League, Coalition of Connecticut Sportsmen, Rabbi Mitchell Rocklin, and Stephen Holly.

Not one of the organizational or individual clients I represent in the *Shew* appeal opposes the prevention of gun violence. In fact each of the individual amici curiae is experienced with firearms and has served or continues to serve honorably to protect Connecticut's citizens. The argument is not "pro-gun violence vs. anti-gun violence." The argument is how Connecticut reconciles the constitution of Connecticut, article first, § 15, and the second amendment to the United States constitution with an all-too human weakness for grasping at something-anything at all-to fix a problem in the absence of evidence that the answers hastily agreed upon by the majority provide any relief and in truth may aggravate the problem the answers were intended to solve. Our nation's history is rife with examples of a rush to panic and deny individual rights where a threat is ascertained and politicians see opportunity to use tragedy-in this case murdered children-to avoid hard choices and remain popular with voters who view the issues through the same black-and-white filter used by the CBA section that characterizes opposition to the *Shew* plaintiffs as equivalent to a stand against gun violence. The organizations and individuals who have challenged provisions in Nos. 13-3 and 13-220 of the 2013 Public Acts question, *from a thoughtful, practical perspective*, the relevance and efficacy of the laws and, *from a principled perspective*, the impact of the laws on constitutional rights through cogent argument.<sup>6</sup>

Attorneys General from twenty-three states,<sup>7</sup> joined in a timely-filed amici curiae brief to support the position taken by the *Shew* plaintiffs,<sup>8</sup> agree that the Connecticut statutes are

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<sup>6</sup> As argued by plaintiffs on appeal in *Shew*: The Connecticut statutes are unconstitutional for the following reasons (and others):

1. They ban popular firearms and magazines which are indisputably commonly kept for lawful purposes by responsible, law-abiding citizens. Such a ban was expressly struck down by the United States Supreme Court in its seminal *Heller* decision.
2. They burden what the Supreme Court has recognized as the "core right" protected by the Second Amendment: the right of armed self-defense in the home. Artificial limitations on firearm selection and magazine capacity substantially diminish the opportunity to successfully survive a violent encounter in one's own home.
3. They create a vile presumption that tens, if not hundreds, of thousands of perfectly responsible, law-abiding citizens of the United States generally, and Connecticut specifically, are not to be trusted, relegating them to treatment traditionally reserved for proven criminals, namely restrictive regulation and registration.

<sup>7</sup> See List of Attorneys General joined as Amici Curiae in brief filed in support of *Shew* plaintiffs and links to their Biographies at Appendix A.

<sup>8</sup> See Brief of Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming as Amici Curiae in Support of Plaintiffs-Appellants in *Shew v. Malloy*, Docket 14-319-cv (2<sup>nd</sup> Cir.), Document 53 (May 22, 2014) at 2 ("Studies show that the federal 'assault weapons' ban

unconstitutional. Fifty-four members of the Connecticut General Assembly, elected by their constituencies, voted in opposition to the new Connecticut gun laws.<sup>9</sup> In taking these positions, not one of these 77 government officials advocated gun violence or opposed its prevention.<sup>10</sup>

I have practiced firearms law in Connecticut since 2007. Among other encounters, I have been informed in chambers by a judge in the presence of a prosecutor that civilians should not possess firearms in the United States; I have been on the losing side in case after case where the courts find that it is acceptable in Connecticut to first seize property (firearms) then obtain a warrant to seize those same firearms from a law enforcement evidence room; I have been told at a side-bar during a court proceeding in the presence of a prosecutor that no matter what evidence I presented, the firearms were not going to be returned; I have been asked why a client owns "so many guns" and informed they must be destroyed, not sold, despite their value in the hundreds of thousands of dollars as heirlooms and their historical significance; and I have been lectured in open court that individuals who support the Second Amendment should be ashamed. I have been told by the federal district court and the Second Circuit that the constitution of Connecticut, article first, § 15, and the second and fourteenth amendments to the United States constitution allow the State of Connecticut to deprive citizens of a constitutional property interest in their handgun permits without any post-deprivation hearing or relief for 26 months (and perhaps more, the wait period increases daily since the Second Circuit told the State of Connecticut not to be concerned). The State of Connecticut is more concerned with ensuring that individuals who drive under the influence of drugs and alcohol have a timely opportunity for hearing to get back behind the wheel than providing a hearing to permit holders who are revoked not because they committed a crime or any offense serious enough to disqualify them from holding a permit (because then no hearing is necessary, they are disqualified under the law) but because a government official found them not "suitable." Due process is only due when the majority and popular opinion support the right implicated, apparently so in the State of Connecticut.<sup>11</sup>

I have received no response from United States Senators Richard Blumenthal and Christopher Murphy to complaints that the state police had a practice for years, until it was challenged,<sup>12</sup> of demanding that individual firearms owners upon threat of felony arrest divest

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had no measurable effect on gun violence, and police officers oppose such bans. Furthermore, criminals will continue to obtain weapons with the banned safety features, placing law-abiding citizens at risk. And those features increase accuracy, enabling citizens to mount a more effective defense and increase public safety.").

<sup>9</sup> See List of Members of the Connecticut General Assembly on record as voting in opposition to the new Connecticut gun laws and links to their Biographies at Appendix B.

<sup>10</sup> According to Attorney Monte E. Frank of Cohen & Wolf, P.C.: The CBA has a "proud tradition of standing up for civil and human rights, and protecting human rights of its citizens." See footnote 1. As opposed to 23 Attorneys General, 54 state legislators, law enforcement amici curiae, amicus curiae Pink Pistols, see footnote 13, and the *Shew* plaintiffs whom, the CBA implies, are attacking civil and human rights and endangering the rights of Connecticut citizens such that the CBA's protection is required?

<sup>11</sup> See *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1178-79 (9<sup>th</sup> Cir. 2013) ("We are well aware that, in the judgment of many governments, the safest sort of firearm-carrying regime is one which restricts the privilege to law enforcement with only narrow exceptions. Nonetheless, 'the enshrinement of constitutional rights necessarily takes certain policy choices off the table.... Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court [or ours] to pronounce the Second Amendment extinct.' Nor may we relegate the bearing of arms to a 'second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that we have held to be incorporated into the Due Process Clause.'"), quoting *McDonald v. City of Chicago, IL.*, 561 U.S. 742, 130 S.Ct. 3020, 3044, 177 L.Ed.2d 894 (2010).

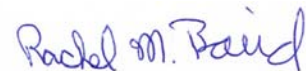
<sup>12</sup> For additional information on this issue, see link at <http://rachelbairdlaw.com/NewsArticle/Details/10>.

themselves of their property when there was in fact no basis for arrest; I have been compared to Bonnie Parker and Annie Oakley in front of a client on trial and informed that I belong in Wyoming when, just for the record, my experience with firearms is limited to firing an M-16 during basic training while enlisted in the military when I was seventeen years old, training for two days at the state police range when I was a prosecutor in the 1990's, and the course required to obtain a state handgun permit in 2011. I am perhaps particularly sensitive then to any proposal from an association which includes judges among its membership that purports to corner the market on sympathy and concern for murdered children by casting those I represent as in some manner not interested in preventing gun violence.

Constitutional rights have been adopted as a counterweight to the capriciousness, fluidity, and tyranny of public opinion. They serve as a critical check and balance against a "majority rules" society where the politically weak are discriminated against and the supposedly distasteful are abused. Ignoring or marginalizing these rights, or any particular right, only diminishes our shared liberty. Handicapping or rationing the right to self defense in the home simply leads to victimization by criminals, and governmental overreach.<sup>13</sup>

If the CBA is truly concerned about its "proud tradition of standing up for civil and human rights, and protecting human rights of its citizens" then I would be pleased to provide additional information about the issues on page 4 and others similarly offensive to a respect for due process and an understanding of right and wrong. As regards whether or not the CBA joins as an amicus curiae, the answer was provided in the third paragraph to this letter, an answer I would provide to a client clearly too emotional about an issue to think rationally: Forgo filing or joining as an amicus curiae in briefs that create conflicts for CBA members and jeopardize cases.

Sincerely,



Rachel M. Baird, Attorney

Appendix A - List of Attorneys General Joined as Amici Curiae in Support of Plaintiffs-Appellants in *Shew v. Malloy*

Appendix B - List of Connecticut State Legislators on Record in Opposition to Nos. 13-3 and 13-220 of the 2013 Public Acts

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<sup>13</sup> See Brief of Pink Pistols as Amicus Curiae in Support of Plaintiffs-Appellants in *Shew v. Malloy*, Docket 14-319-cv (2<sup>nd</sup> Cir.), Document 71 (May 23, 2014) at 1 ("Pink Pistols is a shooting society that honors diversity and is open to all. It advocates the responsible and lawful use of firearms for self-defense, whether by sexual minorities (a group that FBI statistics identify as particularly subject to violence based on discriminatory animus) or by other Americans, all of whom have a Second Amendment right to armed self-defense. Pink Pistols has chapters across the United States and continues to experience rapid growth; the newest chapter is in Salt Lake City, Utah.").

## APPENDIX A

Alabama Attorney General Luther Strange  
(<http://www.ago.state.al.us/Page-Biography>)

Alaska Attorney General Michael C. Geraghty  
(<http://www.law.state.ak.us/department/ag.html>)

Arizona Attorney General Thomas C. Horne  
(<https://www.azag.gov/profile/tom-horne>)

Arkansas Attorney General Dustin McDaniel  
(<http://arkansasag.gov/meet-dustin/bio/>)

Florida Attorney General Pamela Jo Bondi  
([http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/1515ce372e59d1e885256cc60071b1c\\_4!OpenDocument](http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/1515ce372e59d1e885256cc60071b1c_4!OpenDocument))

Georgia Attorney General Samuel S. Olens  
(<http://law.ga.gov/biography-attorney-general>)

Idaho Attorney General Lawrence G. Wasden  
(<http://www.ag.idaho.gov/aboutUs/biography.html>)

Kansas Attorney General Derek Schmidt  
(<http://ag.ks.gov/about-the-office/ag-derek-schmidt>)

Kentucky Attorney General Jack Conway  
(<http://ag.ky.gov/bio/Pages/default.aspx>)

Louisiana Attorney General James D. “Buddy” Caldwell  
(<http://www.ag.state.la.us/Article.aspx?articleID=1&catID=0>)

Michigan Attorney General Bill Schuette  
(<http://www.michigan.gov/ag/0,4534,7-164-19441-248720--,00.html>)

Missouri Attorney General Chris Koster  
([http://ago.mo.gov/koster\\_bio.htm](http://ago.mo.gov/koster_bio.htm))

Montana Attorney General Timothy C. Fox  
(<https://doj.mt.gov/our-attorney-general/>)

Nebraska Attorney General Jon Bruning  
([http://www.ago.ne.gov/about/jon\\_bruning](http://www.ago.ne.gov/about/jon_bruning))

New Mexico Attorney General Gary K. King  
([http://www.nmag.gov/the\\_office/executive-office/biography-of-gary-king](http://www.nmag.gov/the_office/executive-office/biography-of-gary-king))

North Dakota Attorney General Wayne Stenehjem  
(<http://www.ag.nd.gov/About/Wayne.htm>)

Oklahoma Attorney General E. Scott Pruitt  
(<http://www.ok.gov/oag/>)

South Carolina Attorney General Alan Wilson  
(<http://www.scag.gov/about-us/full-biography/>)

South Dakota Attorney General Marty J. Jackley  
(<http://atg.sd.gov/TheOffice/AttorneyGeneralBiography.aspx>)

Texas Attorney General Greg Abbott  
([https://www.texasattorneygeneral.gov/agency/agga\\_bio.shtml](https://www.texasattorneygeneral.gov/agency/agga_bio.shtml))

Utah Attorney General Sean Reyes  
(<http://attorneygeneral.utah.gov/our-office/chief-deputy-bios/>)

West Virginia Attorney General Patrick Morrissey  
(<http://www.wvago.gov/morrissey.cfm>)

Wyoming Attorney General Peter K. Michael  
(<http://attorneygeneral.wyo.gov/ag-biography>)

## **APPENDIX B**

Senator Clark Chapin (<http://ctsenaterepublicans.com/home-chapin/>)  
Senator Anthony Guglielmo (<http://ctsenaterepublicans.com/home-guglielmo/>)  
Senator Robert Kane (<http://ctsenaterepublicans.com/home-kane/>)  
Senator John Kissel (<http://ctsenaterepublicans.com/home-kissel/>)  
Senator Art Linares (<http://ctsenaterepublicans.com/home-linares/>)  
Senator Joe Markley (<http://ctsenaterepublicans.com/home-markley/>)  
Senator Andrew Maynard (<http://www.senatedems.ct.gov/Maynard.php>)  
Senator Catherine Osten (<http://www.senatedems.ct.gov/Osten.php>)  
Senator Jason Welch (<http://ctsenaterepublicans.com/home-welch/>)  
Senator Kevin Witkos (<http://ctsenaterepublicans.com/home-witkos/>)  
Representative Tim Ackert (<http://cthousegop.com/tim-ackert/>)  
Representative Al Adinolfi (<http://cthousegop.com/al-adinolfi/>)  
Representative Mike Alberts (<http://cthousegop.com/mike-alberts/>)  
Representative Emil Altobello (<http://www.housedems.ct.gov/Altobello/>)  
Representative Penny Bacchiochi (<http://cthousegop.com/penny-bacchiochi/>)  
Representative Whit Betts (<http://cthousegop.com/whit-betts/>)  
Representative Timothy Bowles (<http://www.housedems.ct.gov/Bowles/>)  
Representative Cecilia Buck-Taylor (<http://cthousegop.com/cecilia-buck-taylor/>)  
Representative Vincent Candelora (<http://cthousegop.com/vin-candelora/>)  
Representative Dan Carter (<http://cthousegop.com/dan-carter/>)  
Representative Jay Case (<http://cthousegop.com/jay-case/>)  
Representative Theresa Conroy (<http://www.housedems.ct.gov/Conroy/>)  
Representative Anthony D'Amelio (<http://cthousegop.com/anthony-damelio/>)  
Representative Christopher Davis (<http://cthousegop.com/christopher-davis/>)  
Representative Louis Esposito (<http://www.housedems.ct.gov/Esposito/>)  
Representative Janice Giegler (<http://cthousegop.com/janice-giegler/>)  
Representative Marilyn Giuliano (<http://cthousegop.com/marilyn-giuliano/>)  
Representative Laura Hoydick (<http://cthousegop.com/laura-hoydick/>)  
Representative Ed Jutila (<http://www.housedems.ct.gov/Jutila/>)  
Representative David Labriola (<http://cthousegop.com/david-labriola/>)  
Representative Timothy LeGeyst (<http://cthousegop.com/tim-legeyst/>)  
Representative Douglas McCrory (<http://www.housedems.ct.gov/McCrory/>)  
Representative Steven Mikutel (<http://www.housedems.ct.gov/Mikutel/>)  
Representative Lawrence Miller (<http://cthousegop.com/larry-miller/>)  
Representative Craig Miner (<http://cthousegop.com/craig-miner/>)  
Representative Michael Molgano (<http://cthousegop.com/mike-molgano/>)  
Representative Frank Nicastro (<http://www.housedems.ct.gov/Nicastro/>)  
Representative Selim Noujaim (<http://cthousegop.com/selim-noujaim/>)  
Representative Linda Orange (<http://www.housedems.ct.gov/Orange/>)  
Representative Jason Perillo (<http://cthousegop.com/jason-perillo/>)  
Representative John Piscopo (<http://cthousegop.com/john-piscopo/>)  
Representative Rosa Rebimbas (<http://cthousegop.com/rosa-rebimbas/>)  
Representative Daniel Rovero (<http://www.housedems.ct.gov/Rovero/>)  
Representative David Rutigliano (<http://cthousegop.com/dave-rutigliano/>)  
Representative Kevin Ryan (<http://www.housedems.ct.gov/Ryan/>)  
Representative Robert Sampson (<http://cthousegop.com/rob-sampson/>)  
Representative Pamela Sawyer (<http://cthousegop.com/pamela-sawyer/>)

Representative Peggy Sayers (<http://www.housedems.ct.gov/Sayers/>)  
Representative David Scribner (<http://cthousegop.com/david-scribner/>)  
Representative Bill Simanski (<http://cthousegop.com/bill-simanski/>)  
Representative Sean Williams (<http://cthousegop.com/sean-williams/>)  
Representative Melissa Ziobron (<http://cthousegop.com/melissa-ziobron/>)  
Representative David Zoni (<http://www.housedems.ct.gov/Zoni/>)  
Representative Lezlye Zupkus (<http://cthousegop.com/lezlye-zupkus/>)