**MEMORANDUM**

**TO:** Assemblymember Petrie-Norris

**FROM:** Center for Public Interest Law

**DATE:** June 28, 2021

**RE:** **AB 1057 Equal Protection Analysis**

As requested, this memorandum provides a brief analysis of the potential for a constitutional challenge to AB 1057. Specifically, it analyzes whether the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution would require that this bill, which includes "precursor parts" within the definition of "firearm" in Gun Violence Restraining Orders (GVROs) and Domestic Violence Restraining Orders (DVROs), impose the same effective date as existing Penal Code § 30405, which prevents felons and persons convicted of violent crimes from acquiring precursor parts as of July 1, 2022.

As set forth below, we do not believe the Equal Protection argument prevents a viable threat to AB 1057 because the bill does not implicate a protected class of individuals that would trigger a heightened judicial scrutiny of the proposed statute.

## I. Equal Protections Overview

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the law." This means that the laws of a state must treat an individual in the same manner as other people in similar conditions and circumstances. Case law over time has determined that a state *can* discriminate against individuals as long as the discrimination satisfies a specific "equal protection analysis." When considering equal protection challenges to state laws, courts apply three varying levels of scrutiny, depending on the characteristics of the individual bringing the claim:

Strict Scrutiny

Courts apply strict scrutiny when the individual is part of a "suspect" or "protected" class. Suspect classes for equal protection purposes include classification based on race, religion, alienage, national origin and ancestry. *See Burlington N. R.R. v. Ford*, 504 U.S. 648, 651 (1992) (holding classification based on religion is suspect classification); *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (holding classification based on alienage is suspect classification); *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (holding classification based on race is suspect classification); *Oyama v. California*, 332 U.S. 633, 644-46 (1948) (holding classification based on national origin

is suspect classification); *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943) (holding classification based on ancestry is suspect classification).

Intermediate Scrutiny

Courts apply "intermediate scrutiny" when the individual is part of a quasi-suspect class such as gender and illegitimacy. *See Mississippi University of Women v. Hogan*, 458 U.S. 718, 724 (1982) (holding classifications based on gender calls for heightened standard of review); *Trimble v. Gordon*, 430 U.S. 762, 767 (1977) (holding illegitimacy is quasi-suspect classification).

Rational Basis Scrutiny

If an individual does not fall into a suspect class or a quasi-suspect class, courts apply "rational basis" scrutiny to all other discriminatory statutes such as age, disability, felons, and wealth. A state law is presumed valid if the law does not involve a suspect class. The state law meets the rational basis scrutiny requirement under the Equal Protection Clause "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320 (1993). This is the lowest level of scrutiny.

## II. Equal Protection Application to AB 1057

The equal protection concerns about AB 1057 appear to be based on the potential disparity between its proposed effective date (which would be January 1, 2022) and Penal Code § 30405, which does not go into effect until July 1, 2022. Thus, individuals under a GVRO or DVRO would be precluded from owning or obtaining precursor parts six months sooner than felons or persons convicted of violent crimes.

Applying the constitutional framework set forth above, since individuals subject to a GVRO or DVRO are not members of a suspect or quasi-suspect class as to the application of this law, any challenge would be analyzed by the court under rational basis scrutiny. If such a challenge was made, the state would only need to prove a rational connection between the means and goal of the law. The inclusion of "precursor parts" definition under "firearms" for GVRO and DVRO is directly connected to preventing individuals known to be an immediate threat to themselves and others from building their own firearm when a protective order is given. The court should easily find a rational connection between AB 1057's means and goals.

Further, it is unlikely that a person under a GVRO or DVRO would bring an equal protection argument since there is no discriminatory harm that would show differential treatment between them compared to a felon or a person convicted of a violent crime.