14-15531

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK AARON HAYNIE; BRENDAN JOHN RICHARDS; CALGUNS FOUNDATION, INC.; SECOND AMENDMENT FOUNDATION, INC.,

Plaintiffs-Appellants,

v.

KAMALA HARRIS, Attorney General of California (in her official capacity) and CALIFORNIA DEPARTMENT OF JUSTICE,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 3:10-cv-01255-SI
The Honorable Susan Illston, Judge

APPELLEES' BRIEF IN RESPONSE TO APPELLANTS' OPENING BRIEF

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INTRODUCTION

Plaintiffs' Third Amended Consolidated Complaint (ACC) sought declaratory and injunctive relief to declare California's Assault Weapons Control Act (Cal. Penal Code §§ 12275, et seq., hereafter "AWCA") unconstitutionally vague. Specifically, Plaintiffs sought an order "suspending the enforcement of [AWCA] until such time as the Defendants take steps to clarify the definition of Assault Weapon . . . ." Excerpt of Record (ER) 43, ACC, ¶ 113. The ACC alleges that the "California Department of Justice has the power and resources to clarify the law," but has failed to do so. ER 43, ACC, ¶ 112. These allegations failed to present a case or controversy which may be adjudicated in federal court. Plaintiffs lack standing, present unripe claims, and fail to allege facts demonstrating an unconstitutionally vague law. The Amended Consolidated Complaint was properly dismissed due to these defects.

In seeking to overturn the AWCA and its implementing regulations, Plaintiffs alleged that enforcement of these measures has "result[ed] in wrongful arrests and seizures of lawfully possessed/owned arms." ER 20, ACC, ¶ 9. The gravamen of this claim is that because law enforcement personnel made errors in interpreting the AWCA, errors that allegedly led to

the erroneous arrests of Plaintiffs Haynie and Richards, the AWCA must be fatally flawed.

But the allegations of the ACC show that Plaintiffs do not allege facts sufficient to present a case or controversy ripe for adjudication. Instead, the allegations in the ACC affirmatively demonstrate that one of the Plaintiffs no longer owns guns, eliminating the possibility that a present controversy exists as to him, and the allegations as to the other Plaintiff's present gun ownership are inconclusive. Absent allegations that the Plaintiffs have some present stake in the interpretation of California's assault weapons laws, the ACC did not present ripe claims for adjudication and was properly dismissed.

Further, beyond the standing and ripeness objections, Plaintiffs' claims are based entirely on the idiosyncratic facts of individual arrests, and fail to state any basis to challenge AWCA's facial validity. All penal statutes are subject to some interpretation, and arrests that turn out to be mistaken are not uncommon. The fact that a handful of mistakes have been made by officers in interpreting the AWCA at the time of arrest does not establish that the AWCA fails to meet constitutional requirements for adequate notice to the public and to law enforcement, particularly when the terms of the AWCA were ultimately used to exonerate those mistakenly arrested. An

examination of the AWCA establishes that it contains sufficient detail to survive the vagueness challenge mounted below.

JURISDICTIONAL STATEMENT

(a) District Court Jurisdiction: The District Court had jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343(a), 2201 and 2202. The cause of action was based on the Second and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Venue of the action was proper in the district pursuant to 28 U.S.C. § 1391(b)(2).

(b) Appellate Jurisdiction: This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

(c) Timeliness of Appeal: Appellants' appeal is timely pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A). The Clerk's Judgment was entered in this action on March 4, 2014. Appellants' Notice of Appeal was filed on March 20, 2014.

(d) Appeal From Final Judgment: This case is an appeal of a final judgment entered on March 4, 2014.

STATEMENT OF ISSUES

Did the District Court properly dismiss the Third Amended Complaint for failure to demonstrate standing or a ripe dispute where there were

insufficient allegations that Plaintiffs continued to possess firearms or were subject to arrest?

Did the District Court properly conclude that the allegations of the Third Amended Complaint failed to satisfy the standards required for injunctive relief where Plaintiffs did not allege a credible threat of future injury or an imminent threat of irreparable harm?

STATEMENT OF THE CASE

On March 24, 2010, Plaintiffs Haynie, Calguns Foundation, Inc., and the Second Amendment Foundation, Inc. filed a complaint seeking injunctive and declaratory relief against California Attorney General Kamala D. Harris and the California Department of Justice (collectively DOJ). *See* ER 147. The suit also named and sought damages from the City of Pleasanton Police Department, but the city settled and was dismissed as a defendant. ER 5-6, 147. The initial complaint alleged that Plaintiff Haynie had been improperly arrested for possession of an assault weapon. ER 5. It also alleged that DOJ had issued inadequate advice about the meaning of' AWCA. ER 6.

A First Amended Complaint was filed adding Plaintiff Richards and defendant City of Rohnert Park Police department. ER 148. The First Amended Complaint also alleged false arrest and that DOJ had issued

inadequate advice about the meaning of the AWCA. The gravamen of the First Amended Complaint was that although the AWCA did not apply to weapons that had a "bullet button" installed on them, because such weapons did not have detachable magazines within the meaning of the AWCA, some law enforcement officials did not understand this distinction, and unlawfully arrested individuals who possessed lawful weapons. In the First Amended Complaint, Plaintiffs sought "an order compelling the defendant California Department of Justice to issue appropriate memorandums and/or bulletins to the State's District Attorneys and law enforcement agencies to prevent wrongful arrests." ER 134.

DOJ moved to dismiss, and on October 22, 2011 the First Amended Complaint was dismissed with leave to amend. ER 131-144. The District Court found that Plaintiffs had failed to show a likelihood of substantial and immediate irreparable injury sufficient to demonstrate a case or controversy. ER 142. In the order dismissing the First Amended Complaint, and permitting Plaintiffs to file a further amended complaint, the District Court noted that "Plaintiffs seeking equitable relief must also show 'irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again—a "likelihood of substantial and immediate irreparable injury."'" ER 139

(quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).) The District Court concluded that the First Amended Complaint had not met the requirements of *Lyons*: "Under the *Lyons* standard, to show a real and immediate threat and demonstrate a case or controversy, Haynie and Richards would have to allege either that all law enforcement officers in California always arrest any citizen they come into contact with who is lawfully in possession of a weapon with a bullet button, or that the DOJ has ordered or authorized California law enforcement officials to act in such a manner." ER 141. The District Court expressly warned Plaintiffs to allege facts "demonstrating that they have standing" if they wished to pursue their dismissed injunctive and declaratory relief claims. ER 144. The District Court also dismissed Plaintiffs' declaratory relief claims as unripe for similar reasons. ER 143-144. The District Court indicated that if Plaintiffs "wish to pursue the dismissed claims for injunctive and declaratory relief, they should plead facts demonstrating that they have standing to do so in the consolidated amended complaint." ER 144.

Following dismissal of the First Amended Complaint, a Second Amended Consolidated Complaint combining allegations related to both Plaintiff Haynie and Plaintiff Richards was filed on November 4, 2011. ER 50. It added an additional cause of action related to a second arrest

suffered by Plaintiff Richards. ER 7. Plaintiffs and DOJ did not actively litigate the issues presented in the Second Amended Complaint, to see if local law enforcement first could be removed from the case by motion practice or settlement. The local law enforcement defendants brought a partially successful motion to dismiss (*see Richards v. Harris*, 2012 WL 3074869 (N.D.Cal. 2012), and thereafter these defendants were dismissed from the case pursuant to a settlement. ER 154.

The Third Amended Consolidated Complaint (ACC) was filed December 20, 2013. ER 18-130, 155. It named only DOJ as a defendant, and no longer included local law enforcement officials. ER 18-19. DOJ brought a motion to dismiss, and on March 4, 2014 the District Court entered an order dismissing the ACC without leave to amend. ER 4-17. As with the dismissal of the First Amended Complaint, the District Court found that "Plaintiffs fail to make the necessary showing of 'imminent threat of irreparable harm' because they fail to demonstrate they will suffer continuing, adverse effects in the absence of an injunction." ER 11. Judgment was entered in favor of Defendants on March 4, 2014. ER 3. A Notice of Appeal was timely filed on March 20, 2014. ER 1-2.

THE CHALLENGED STATUTES

The AWCA is codified in California Penal Code section 30500, et seq. The California Legislature passed the AWCA after finding that "the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state." Cal. Penal Code § 30505. California law defines assault weapons in Penal Code sections 30510 and 30515. Subdivisions (a) through (c) of section 30510 lists specified models of rifles, pistols and shotguns that are defined as assault weapons.[1]

---

[1] Specifically, section 30510 defines "assault weapon" as meaning "the following designated semiautomatic firearms:"

> (a) All of the following specified rifles:
>
> (1) All AK series including, but not limited to, the models identified as follows: (A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S. (B) Norinco 56, 56S, 84S, and 86S. (C) Poly Technologies AKS and AK47. (D) MAADI AK47 and ARM. (2) UZI and Galil. (3) Beretta AR-70. (4) CETME Sporter. (5) Colt AR-15 series. (6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C. (7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter. (8) MAS 223. (9) HK-91, HK-93, HK-94, and HK-PSG-1. (10) The following MAC types:
>
> (A) RPB Industries Inc. sM10 and sM11. (B) SWD Incorporated M11. (11) SKS with detachable magazine. (12) SIG AMT, PE-57, SG 550, and SG 551. (13) Springfield Armory BM59 and SAR-48. (14)

(continued…)

Subdivisions (d) through (f) of section 30510 indicate that certain lists of weapons identified by judicial decisions, as well as by Department of Justice regulations, are also assault weapons.

In addition to the lists in section 30510, a further definition of assault weapons is found in section 30515, "assault weapon further defined." Section 30515 provides:

> (a) Notwithstanding Section 30510, "assault weapon" also means any of the following:
>
> (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(…continued)

> Sterling MK-6. (15) Steyer AUG. (16) Valmet M62S, M71S, and M78S. (17) Armalite AR-180. (18) Bushmaster Assault Rifle. (19) Calico M-900. (20) J&R ENG M-68. (21) Weaver Arms Nighthawk.
>
> (b) All of the following specified pistols:
>
> (1) UZI. (2) Encom MP-9 and MP-45. (3) The following MAC types: (A) RPB Industries Inc. sM10 and sM11. (B) SWD Incorporated M-11. (C) Advance Armament Inc. M-11. (D) Military Armament Corp. Ingram M-11. (4) Intratec TEC-9. (5) Sites Spectre. (6) Sterling MK-7. (7) Calico M-950. (8) Bushmaster Pistol.
>
> (c) All of the following specified shotguns: (1) Franchi SPAS 12 and LAW 12. (2) Striker 12. (3) The Streetsweeper type S/S Inc. SS/12.

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer's hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

> (A) A folding or telescoping stock.
>
> (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
>
> (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
>
> (8) Any shotgun with a revolving cylinder.

Cal. Penal Code § 30515.

STATEMENT OF FACTS

Plaintiff Haynie was arrested in Alameda County on February 7, 2009 for allegedly violating the AWCA, when Pleasanton Police thought that his AR-15 style weapon had features that qualified it as a weapon banned by the statute. ER 24, ¶ 22; ER 25, ¶ 26. However, the rifle possessed by Haynie was equipped with a "bullet button," a device which required the use of a tool to remove the magazine, making the weapon a firearm without a "detachable magazine," thereby taking the weapon out of the statutory definition of an assault weapon. ER 25, ¶ 25. Therefore, charges were never filed, and Pleasanton stipulated to Plaintiff Haynie's factual innocence and agreed to pay for Haynie's bail bond costs. ER 25-26, ¶¶ 28-32. Haynie no longer owns any firearms, having sold them after his arrest. ER 26, ¶ 33.

Plaintiff Richards was arrested twice. The first arrest occurred on May 20, 2010, when police were investigating a disturbance at a Motel 6 in

Rohnert Park, and two firearms were found in the trunk of Richards' car. ER 28, ¶¶ 43, 48. The police believed that the firearms were assault weapons within the scope of the AWCA, and Richards was arrested. ER 29, ¶ 50-51. Following the arrest, a criminalist employed by the California Department of Justice examined the rifles and stated that he believed that they did not have features which made them illegal under the AWCA. ER 29-30, ¶ 54. Thereafter, all charges against Richards were dismissed. ER 30, ¶ 56.

Richards' second arrest occurred on August 14, 2011, when police found a Springfield Armory M1A rifle in the trunk of Richards' car. ER 32-33, ¶ 66. Police believed that the rifle was illegal under the AWCA because it had a "flash suppressor" on it, and therefore arrested Richards. ER 33, ¶ 67. Thereafter, a criminalist employed by the California Department of Justice examined the rifle and expressed the opinion that it did not have an illegal flash suppressor, but instead had a permissible "muzzle brake" and was thus not illegal under the AWCA. ER 33, ¶ 69. Subsequently, all charges against Richards were dismissed. ER 34, ¶ 72.

SUMMARY OF ARGUMENT

Plaintiffs are seeking extraordinary relief: an injunction directing the Attorney General of California to issue a bulletin or regulation interpreting

California criminal statutes. Federal judicial intervention in state criminal justice matters is severely constrained by United States Supreme Court precedent due to weighty issues related to federalism and judicial restraint. Plaintiffs' prior complaint in this case was dismissed for failure to meet these standards, but leave to amend was offered. The Third Amended Consolidated Complaint failed to allege facts sufficient to show the standing needed, and was properly dismissed by the District Court.

Plaintiffs' allegations are focused on mistakes made by individual officers in the field at the arrest stage, not on the statutes themselves. The relevant statutes are not vague or ambiguous, and in fact have unambiguous and objective standards. Indeed, it was application of those standards that cleared both individual Plaintiffs from criminal liability.

The suggestion that First Amendment principles should be imported into this case should be rejected. While it is true that some Second Amendment cases have used analogies to First Amendment jurisprudence, the wholesale importation of that jurisprudence is not warranted, particularly here, where the statute at issue is demonstrably sound.

STANDARD OF REVIEW

This Court reviews de novo a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See, e.g.*, *Crist*

v. Leippe, 138 F.3d 801, 803 (9th Cir.1998). It applies the same de novo standard to a dismissal for failure to state claim under Federal Rule of Civil Procedure 12(b)(6). *See, e.g.*, *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir.1998). Standing and ripeness are questions of law, which are also reviewed de novo. *See*, *e.g.*, *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1124 (9th Cir.1996)

LEGAL STANDARDS

I. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1)

Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court's jurisdiction over the subject matter of the complaint. The party invoking the jurisdiction of the federal court bears the burden of establishing that the court has the requisite subject matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted). "In resolving a Rule 12(b)(1) factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1236 (9th Cir. 2008) (citation omitted). A complaint will be dismissed if, examining the complaint as a whole, it appears lacking in federal jurisdiction either "facially" or "factually." *Thornhill Publ'g Co.,*

Inc. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979). When the complaint is challenged for lack of subject matter jurisdiction on its face, all material allegations in the complaint must be taken as true and construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). But in considering a Rule 12(b)(1) motion which mounts a factual attack on jurisdiction, "no presumption of truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen v. First Fed. Savings & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).

II. FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. The question is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer evidence in support of the claim. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Davis v. Scherer*, 468 U.S. 183 (1984). A district court's dismissal of a complaint may be based "on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.

1990). In considering the motion, the Court must assume that the plaintiff's allegations are true and must draw all reasonable inferences in the plaintiff's favor. *See Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987).

ARGUMENT

I. THE COMPLAINT WAS PROPERLY DISMISSED FOR LACK OF STANDING

Article III of the United States Constitution confines the jurisdiction of federal courts "to the resolution of cases and controversies." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State*, 454 U.S. 464, 471 (1982) (internal quotation marks omitted). To establish a "case or controversy," the "irreducible constitutional minimum" that a plaintiff must show contains the following three elements: (1) a concrete "injury in fact"; (2) a causal connection between the injury and defendant's conduct; (3) and a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). These constitutional requirements are "rigorous." *Valley Forge*, 454 U.S. at 475. The ripeness doctrine "is peculiarly a question of timing," *Reg'l Rail Reorg. Act Cases*, 419 U.S. 102, 140 (1974), designed "to separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action."

Portman v. County of Santa Clara, 995 F.2d 898, 902 (9th Cir.1993) (internal quotation marks omitted). "[T]hrough avoidance of premature adjudication," the ripeness doctrine prevents courts from becoming entangled in "abstract disagreements." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Ripeness has both constitutional and prudential components. *Portman*, 995 F.2d at 902. The constitutional component of ripeness overlaps with the "injury in fact" analysis for Article III standing. *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138-39 (9th Cir. 2000) (en banc); *see also United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). But whether framed as an issue of standing or ripeness, the inquiry is largely the same: are the issues presented "definite and concrete, not hypothetical or abstract." *Thomas*, 220 F.3d at 1139 (internal quotation marks omitted).

A. The Individual Plaintiffs Did Not Establish Standing to Seek Injunctive Relief

Plaintiffs needed to establish that they had standing to bring the claim for injunctive and equitable relief sought in the complaint in order for the District Court to have subject matter jurisdiction. "It goes without saying

that those who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *Lyons*, 461 U.S. at 101 (citing *Flast v. Cohen*, 392 U.S. 83, 94-101 (1968)); *Jenkins v. McKeithen*, 395 U.S. 411, 421-425 (1969). Indeed, Article III requires a federal court to assure itself as a threshold matter that the constitutional standing requirements are satisfied before proceeding to the merits. *United States v. Hays*, 515 U.S. 737, 742 (1995). "Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). The party asserting jurisdiction bears the burden of establishing subject matter jurisdiction on a Rule 12(b)(1) motion to dismiss. *Kokkonen*, 511 U.S. at 377.

There are two distinct components to the standing inquiry when a plaintiff requests prospective equitable relief. First, in order to satisfy the constitutional requirements for standing, the plaintiff must demonstrate a credible threat of future injury which is sufficiently concrete and particularized to meet the "case or controversy" requirement of Article III. *See Lujan*, 504 U.S. at 560-61; *Lyons*, 461 U.S. at 101-104. And second, to establish an entitlement to injunctive relief, the plaintiff must allege not only

a likelihood of future injury, but also show an imminent threat of irreparable harm. The party invoking federal jurisdiction bears the burden of establishing both of these elements. *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1353 (9th Cir. 1994). In this case, neither of the requirements was satisfied.

1. Haynie and Richards did not allege a credible threat of future injury

The imminent threat showing is a separate jurisdictional requirement, arising independently from Article III, which is grounded in the traditional limitations on the court's power to grant injunctive relief. "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Lyons*, 461 U.S. at 100 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-496 (1974); *see also Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1042 (9th Cir. 1999) (the court may not exercise jurisdiction over a suit for equitable relief unless the plaintiff demonstrates a likelihood of imminent and irreparable injury, a necessary prerequisite for such relief).

The seminal case applying these elements to the question of whether standing exists to seek injunctive relief based on allegations of prior instances of improper law enforcement conduct is *City of Los Angeles v.*

Lyons, 461 U.S. 95. In *Lyons*, "[t]he complaint alleged that on October 6, 1976, at 2 a.m., Lyons was stopped by the defendant officers for a traffic or vehicle code violation and that although Lyons offered no resistance or threat whatsoever, the officers, without provocation or justification, seized Lyons and applied a 'chokehold' [also known as a 'control hold']." *Id*. at 97. Lyons then filed an excessive force action against the arresting officers and the City of Los Angeles, seeking damages as well as "a preliminary and permanent injunction against the City barring the use of the control holds." *Id*. at 98. The issue before the United States Supreme Court was whether Lyons had standing to seek such injunctive relief against the City.

First, the Court reaffirmed its past holdings in *O'Shea v. Littleton*, ("[past] exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects"), and in *Rizzo v. Goode*, 423 U.S. 362 (1976) (plaintiffs alleging widespread illegal and unconstitutional police conduct aimed at minority citizens did not have standing because "past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy"). *Lyons*, 461 U.S. at 103-05.

Based on these prior holdings, the Court concluded:

> In order to establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either (1) that all police officers in Los Angeles always choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation, or for questioning, or (2) that the City ordered or authorized police officers to act in such manner.

Lyons, 461 U.S. at 105-06.

Ultimately, the Court concluded that it was error to not dismiss Lyons' claim and reversed accordingly, concluding that Lyons did not have standing to bring a claim for injunctive relief "[a]bsent a sufficient likelihood that he will again be wronged in a similar way." *Lyons*, 461 U.S. at 111. The Court found that Lyons had failed to credibly allege that "he faced a realistic threat from the future application" of the police practice he challenged when five months elapsed between the occurrence and the filing of the complaint and yet there were no further allegations of contact between the plaintiff and the police. *Id*. at 106, 108.

Here, the ACC alleges that Plaintiff Haynie has not had contact with law enforcement regarding the AWCA since his arrest in 2009, and that he no longer even owns a firearm subject to the AWCA. *See* ER 24, ¶ 22; ER 26-27, ¶¶ 33-34. It alleges that Plaintiff Richards has not had contact with law enforcement regarding the AWCA since his second arrest in 2011,

and may no longer own relevant firearms. *See* ER 30, ¶ 55; ER 32, ¶ 65. As in *Lyons*, where the individual alleging that he had been choked by police five months earlier did "nothing to establish a real and immediate threat that he would again" be stopped for a traffic violation or any other offense and subjected to the same treatment, Plaintiffs' allegations do not establish a real and immediate threat that they will again have an encounter with law enforcement officers who will wrongfully arrest them for lawful possession of guns with a bullet button or muzzle brake. Just as it was "no more than speculation" for Lyons to claim he would have a similar encounter with police in the future, it is no more than speculation for Plaintiffs Haynie and Richards to claim that they will have future encounters with law enforcement officers similar to their previous experiences. *See Lyons*, 461 U.S. at 108. These speculative claims manifestly do not show a likelihood of substantial and immediate irreparable injury. *See id.* at 111. Because Plaintiffs Haynie and Richards do not demonstrate that they are "realistically threatened by a repetition" of their experiences, *Lyons*, 461 U.S. at 109, the District Court correctly found that they do not meet the requirements for standing to seek an order compelling DOJ to issue a directive that would supposedly prevent wrongful arrests.

2. Haynie and Richards have not demonstrated an imminent threat of irreparable harm

A second fatal defect in the ACC is the failure to demonstrate an imminent threat of irreparable harm. Applying *Lyons*, in *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037 at 1044, this Court found that a single allegation of misconduct by law enforcement is not sufficient to satisfy the second prong for standing, irreparable injury. Here, Plaintiff Haynie relies on a single incident from February of 2009 involving the Pleasanton police officers, and Plaintiff Richards points to two arrests in Sonoma County. *See* ER 24, ¶ 22; ER 30, ¶ 55. Plaintiffs failed to credibly allege the likelihood of future harm. The ACC was properly dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

Plaintiffs' suggestion that *Lyons* "should not be applied in First or Second Amendment cases" (AOB at p. 23) must be rejected. First, *Lyons* itself was a First Amendment case. *See Lyons*, 461 U.S. at 98 ("Lyons alleged the threatened impairment of rights protected by the First, Fourth, Eighth and Fourteenth Amendments."). Second, *Lyons* has been applied in countless First Amendment cases since it was decided. *See*, e.g., *Ibrahim v. Department of Homeland Sec.*, 669 F.3d 983, 992 (9th Cir. 2012) (applying *Lyons* to First Amendment case). Moreover, Lyons is routinely applied in

Second Amendment cases. *See Dearth v. Holder*, 641 F.3d 499, 501-502 (D.C. Cir. 2011) (applying *Lyons* to Second Amendment case). *Lyons* was properly applied here to dispose of Plaintiffs' complaint on grounds of lack of standing.

B. The Institutional Plaintiffs Did Not Establish Standing to Seek Injunctive Relief

Contrary to their contention (AOB at p. 28) both institutional plaintiffs (the Calguns Foundation and the Second Amendment Foundation) also lack standing. Associations have standing to sue on behalf of their members "only if (a) their members would otherwise have standing to sue in their own right; (b) the interests that the organizations seek to protect are germane to their purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1130-31 (9th Cir. 1996).

Because associations have standing to sue on behalf of their members "only if . . . their members would otherwise have standing to sue in their own right" and because Richards and Haynie (and presumably any other individual members) failed to establish standing to sue for injunctive relief, the Calguns Foundation and the Second Amendment Foundation similarly

do not have standing to seek injunctive relief against defendants in this Court. *See San Diego Cnty. Gun Rights Comm.*, 98 F.3d at 1130-31.

An association has direct standing only if "it [shows] a drain on its resources from both a diversion of its resources and frustration of its mission." *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (citing *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002)). However, "standing must be established independent of the lawsuit filed by the plaintiff." *Walker v. City of Lakewood*, 272 F.3d 1114, 1124 n.3 (9th Cir. 2001). An association "cannot manufacture [an] injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010).

Here, the Calguns Foundation's allegations that it paid for the defense of several members, including Haynie and Richards, does not establish associational standing. *See Combs*, 285 F.3d at 903 ("an organization cannot, of course, manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit") (internal quotation marks omitted).

C. The ACC Did Not Allege Facts Sufficient to Establish Ripeness

In addition, Plaintiffs' claims for declaratory and injunctive relief were not ripe for adjudication. Neither of the two individual Plaintiffs expressly alleged that they presently possess a weapon that they believe will subject them to prosecution under the AWCA. Indeed, the ACC expressly pleads that one of the plaintiffs (Haynie) no longer owns guns, and that his "reasonable fear" of suffering a wrongful arrest under the AWCA will only occur "*if* he reacquires a firearm." ER 26-27, ¶¶ 33-34 (emphasis added). In describing the second individual plaintiff (Richards) the ACC uses the past tense to describe his firearms (ER 30, ¶ 55 (Richards' seized firearms "were" semiautomatic guns)) and does not aver that he presently owns a weapon at all. And the institutional plaintiffs offered no allegations of their own to establish ripeness. Accordingly, the vagueness attack on the AWCA was premature.

"A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations omitted). Here, the ACC contains an express contingency as to Plaintiff Haynie, admitting that he has sold his guns, and alleging that his fear of

prosecution under the AWCA will occur only "if" he obtains a weapon in the future. ACC ¶ 33-34. Likewise, the allegations in the ACC regarding the weapons ownership of Plaintiff Richards implicitly concede that his claim is also contingent; the past-tense is used to describe his gun ownership, and no allegation that he presently owns weapons potentially subject to the AWCA can be found.

It is "wholly conjectural that another occasion might arise" when Plaintiffs Haynie and Richards "might be prosecuted" under the AWCA and the bare assertion that Plaintiffs might acquire weapons in the future "is hardly a substitute for evidence that this is a prospect of 'immediacy and reality.'" *Golden v. Zwickler*, 394 U.S. 103, 109 (1969). To the extent that the ACC presented claims that would be contingent upon Plaintiffs acquiring weapons in the future, the ACC failed to present ripe claims which could be adjudicated, and was properly dismissed.

D. Ripeness Cannot Be "Assumed" in this Case

Plaintiffs argue that "the better Article III analysis for discretionary standing considerations is to assume ripeness when the case[] raises only prudential concerns." AOB at p. 25. Plaintiffs suggest that because they have alleged a "harm" to "the future exercise of a fundamental right," it would be appropriate to "assume ripeness" here. AOB at p. 25 (citing

Thomas v. Anchorage Equal Rights Com'n, 220 F.3d 1134, 1142 (9th Cir. 2000) (en banc) and *McClung v. City of Sumner*, 548 F.3d 1219, 1224 (9th Cir. 2008)). Furthermore, Plaintiffs assert that a "complaint that alleges a history of prosecutions relating to a protected right, along with a fear of wrongful prosecutions is sufficient to overcome a ripeness challenge." (AOB at p. 27.) But Plaintiffs' claims are unripe for more than prudential concerns and they have failed to satisfy the case or controversy requirement of Article III.

Three factors were identified by this Court for assessing whether a threat of prosecution satisfies that case or controversy requirement: "In evaluating the genuineness of a claimed threat of prosecution, we look to whether the Plaintiffs have articulated a 'concrete plan' to violate the law in question, whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and the history of past prosecution or enforcement under the challenged statute." *Thomas v. Anchorage Equal Rights Com'n*, 220 F.3d at p. 1139. All three factors cut against Plaintiffs here.

First, Plaintiffs have no plan to violate the AWCA. Indeed, the entire gravamen of their complaint is that the weapons that they once possessed are compliant with California law, and that the conclusion of the arresting

officers to the contrary was made in error. *See* ACC at ER 25, ¶ 25 (Plaintiff Haynie's "rifle was not an Assault Weapons because it could not be identified under Penal Code § 30510 et seq. with the characteristics of an assault weapon"); *see also* ACC at ER 29, ¶ 54 ("none of [Plaintiff Richards'] firearms were Assault Weapons as defined by the California Penal Code or any of its regulations"). Thus, Plaintiffs have not shown any plan to violate California law.

Second, prosecuting authorities have not warned Plaintiffs of any plan to initiate proceedings against Plaintiffs. Indeed, as Plaintiffs concede, DOJ has issued an "Assault Weapons Identifications Guide" which describes banned assault weapons, and also identifies that the rifles of the type once possessed by Plaintiffs as not being within the scope of the AWCA based on the lack of a detachable magazine. AOB at p. 15. And the ACC avers that DOJ criminalists *assisted* Plaintiffs in having the charges dropped following their arrests. *See*, *e.g.*, ACC at ER 29, ¶ 54 (dismissal was based on an August 16, 2010, report prepared by Senior Criminalist John Yount of the California Department of Justice Bureau of Forensic Services). Accordingly, far from threatening to prosecute Plaintiffs, prosecuting authorities have taken the position that Plaintiffs have not violated the AWCA, and assisted them in addressing claims to the contrary.

Finally, the history of prosecutions under the AWCA alleged in the ACC demonstrates that Plaintiffs have no legitimate fear of being prosecuted for the conduct described in the ACC, even if Plaintiffs did currently possess weapons. The ACC indicates that although there were mistakes made in the field in assessing whether their weapons were within the scope of the AWCA, charges were dropped (or never filed) after the weapons were examined. *See* ACC at ER 25, ¶ 28 ("The Alameda County District Attorney's office declined to file an information against [Plaintiff Haynie] and the matter was formally dropped from the Alameda County Superior Court Criminal Docket on March 27, 2009."); *see* ACC at ER 29, ¶ 53 ("On September 9, 2010, prior to a scheduled Preliminary Hearing, the Sonoma County District Attorney's Office dismissed all charges against Plaintiff [Richards]."") *see* ACC at ER 33-34 ¶ 72 ["On or about September 19, 2011, the charges against [Plaintiff Richards] were dismissed."") Thus, the allegations of the ACC demonstrate that the history of prosecutions for the conduct identified by Plaintiffs is marked by findings in favor of Plaintiffs, not against them. This factor also weighs against any finding of a ripe dispute.

II. PLAINTIFFS FAILED TO ALLEGE FACTS SUFFICIENT TO JUSTIFY INJUNCTIVE RELIEF AGAINST A STATE OFFICIAL

The California Constitution provides that the Attorney General "shall be the chief law officer of the State" of California. Cal. Const. art. V, § 13. Special attention must be paid to issues of comity and federalism when injunctive relief is sought in federal court against a state government official such as the Attorney General. "In exercising their equitable powers federal courts must recognize 'the special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'" *Lyons*, 461 U.S. at 112 (quoting *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951)). Thus, "recognition of the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the states' criminal laws in the absence of irreparable injury which is both great and immediate." *Id*. (citing *O'Shea*, 414 U.S. at 499). In this case, there has been an inadequate allegation of irreparable injury to support granting the relief sought against the Attorney General. Plaintiffs' complaint was subject to dismissal under Rule 12(b)(6) because Plaintiffs have failed to state a facially "plausible" claim under a cognizable legal theory. *Shroyer v. New Cingular Wireless Services, Inc.* 622 F.3d 1035, 1041 (9th Cir. 2010).

"In general, injunctive relief is 'to be used sparingly, and only in a clear and plain case,'" especially when the court is enjoining the conduct of a state agency. *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (quoting *Rizzo*, 423 U.S. at 378). The rigorous preconditions to such injunctions reflect both federalism and separation of powers principles. An injunction directed to a state agency ordered by a federal court affects the balance between the state and federal governments. *See*, *e.g.*, *Hodgers-Durgin*, 199 F.3d at 1042, 1044 ("federalism concerns may compel greater caution . . . in considering a request for injunctive relief" against a state entity).

Here, Plaintiffs failed to show that the action or inaction of the California Department of Justice or the California Attorney General was the proximate cause of the arrest of either Plaintiff. Plaintiffs concede, as they must, that both California regulations and the Assault Weapons Identification Guide issued by the California Department of Justice accurately recite state law, and demonstrate that Haynie's gun was a "fixed magazine" weapon not banned by the AWCA. AOB at pp. 14-15. Accordingly, Haynie's arrest was clearly improper under relevant California law and regulations and contrary to the DOJ's guide. ER 25. The same is true of Richards' arrests, according to the allegations of the ACC. ER 29, 33. Plaintiffs have not explained how issuing a new bulletin would be more

effective than the existing guide and regulations. While Plaintiffs contend that if the Department of Justice issued a bulletin it would "[e]nsure statewide compliance with the law" (ER 36), they supply no rationale for believing this to be true. Based on the facts alleged in the ACC, the weapons possessed by Plaintiffs Haynie and Richards were legal, and their arrests were improper under the terms of the statute, as well as the publication of regulations and a guide which explained the legality of these guns. Plaintiffs have made no showing that a third publication of this information would have prevented the arrest of either Haynie, Richards, or anyone else. Accordingly, Plaintiffs have not alleged that the Defendants were the proximate cause of Haynie's arrest, or any of the claimed injuries alleged herein.

For the same reasons that they have not shown proximate cause, Plaintiffs have not shown that the relief they seek would prevent future wrongful arrests. At most, a bulletin regarding the bullet button would be another form of communication between the California Department of Justice and local law enforcement about the AWCA. But law enforcement officers are human, and are capable of making mistakes, even when the state of the law has been accurately described to them for use in the field. As pled, Plaintiffs' arrests appear to be human error by officers in the field, and

there is no showing that a new bulletin about assault weapons would reduce such errors to zero or eliminate the "fear" alleged by Plaintiffs.

The Supreme Court cautions against federal injunctive incursions into a state's law enforcement agencies, and commands that such actions not be taken unless great and immediate irreparable injury can be pleaded and proved. On the inadequate allegations offered in the ACC, the District Court properly declined Plaintiffs' requested interference with the California Attorney General and Department of Justice.

III. THE AWCA IS NOT UNCONSTITUTIONALLY VAGUE

In general, "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. DeGeorge* (1951) 341 U.S. 223, 231-32. "[P]erfect clarity and precise guidance have never been required" of a penal statute. *Holder v. Humanitarian Law Project*, __ U.S. __, 130 S. Ct. 2705, 2720 (2010).

The statutes at issue contain lists of banned models and descriptions of the characteristics or features on models not listed that would bring those weapons within the scope of the AWCA. *See* Cal. Penal Code §§ 30510, 30515. These lists provide ample notice to citizens and law enforcement regarding what types of weapons are covered by the AWCA. See *Chaker v. Preciad*, 2010 WL 2491421 (C.D. Cal. 2010) (rejecting vagueness challenge to AWCA).

A. Plaintiffs' Focus on Arrests Demonstrates the Fatal Flaw in their Argument

Plaintiffs focus on *arrests* under the AWCA, not criminal prosecutions. *See*, e.g., ER 20, ¶ 9 ("result in wrongful arrests . . ."); ER 27, ¶ 34 ("a reasonable fear that he would face future additional arrests . . ."); ER 34, ¶ 75 ("threatened by a repetition of wrongful arrests"); ER 42, ¶ 107 ("state of confusion caused by current vague and ambiguous statutes/regulations continues to result in wrongful arrests"). But wrongful arrests do not support a claim that the statute and its implementing regulations are unconstitutionally vague. An arrest in the field occurs when an officer believes that probable cause exists that a statute has been violated. Such a probable cause finding is not the same thing as a legal determination that the

technical aspects of the statute have been met. As the California Court of Appeal observed:

> We reject petitioner's contention that, "[b]ecause police officers [ ] charged with enforcing [former] section 12370 [ ] would not be capable of determining whether an item meets the definition of 'body armor,' [former] section 12370 allows arbitrary and discriminatory enforcement." To arrest a person for violating former section 12370(a), a police officer need not "determine" whether the person's protective vest qualifies as "body armor" within the meaning of the statute. An arrest is authorized if the officer has probable cause to believe that the person has been convicted of a violent felony and is in possession of prohibited body armor. (§ 836, subd. (a)(3).) The requisite probable cause exists when, as here, a person convicted of a violent felony is in possession of what "is popularly called a 'bulletproof vest'." (Title 11, § 942, subd. (e).)

In re Perdue, 221 Cal. App. 4th 1070, 1080 (2013).

The Second Circuit case of *Dickerson v. Napolitano*, 604 F.3d 732, 745, n.15 (2d Cir. 2010) made this point explicitly: "The constitutionally-protected right that must be implicated to support a facial challenge must be the right infringed by *the statute* that was applied to the plaintiffs, not the right infringed by *the arrest* for a violation of that statute." *Id.* (original emphasis). Plaintiffs fail to explain how an arrest based upon a misinterpretation of a statute makes the statute itself unconstitutional.

B. Alleged Police Misinterpretation of the AWCA Does Not Establish Vagueness

Plaintiffs allege that there are problems with identifying which weapons are regulated by the AWCA, and rely on exhibits to the ACC purportedly describing these problems. AOB at p. 22 (citing ACC Exhibits O and P, ER 124-130). Plaintiffs argue not only that "police cannot distinguish between contraband and protected arms" (AOB at p. 22) but maintain that "police *admit* that they [cannot] distinguish between legal and illegal weapons." AOB at p. 23 (emphasis added). No such admissions can be found in the complaint or its exhibits. Both of the exhibits referenced by Plaintiffs merely provide opinions about difficulties officers "in the field" face when interpreting the AWCA. *See* ACC Exhibit O, ER 124, ¶ 4 (stating "opinion" that "peace officers in the field" face challenges in establishing whether a weapon features a "flash suppressor"); ACC Exhibit P, ER 129, ¶ 6 (stating opinion that "it is difficult for officers in the field to determine if a firearm that looks like an assault weapon is in fact an assault weapon").

Plaintiffs' contend that one police declaration attached to the ACC "call[s] out the California Department of Justice's failure to promulgate clear guidelines as the cause of his officer's failure to properly identify a

weapon regulated by the Assault Weapon Act [sic]." AOB at p. 32. Plaintiffs' claim cannot withstand scrutiny. The declaration says nothing about a failure to promulgate clear guidelines. It notes the "lack of clear judicial authority available as guidance" on the AWCA. ER 129. It concludes, "I also believe that it would be helpful for our officers and for the general public if the State of California or some judicial authority were able to clarify more specifically the criteria it considers to be relevant in determining whether a particular weapon is an assault weapon, particularly as it applies to bullet buttons, pistol grips and flash hiders." ER 130. The suggestion that further assistance would be "helpful" is a far cry from saying that the absence of an additional DOJ bulletin caused Plaintiff Richards' arrest.

The mere fact that "a police officer may have some difficulty applying [a statute] on the margins does not nearly establish" unconstitutional vagueness. *First Vagabonds Church of God v. City of Orlando*, 610 F.3d 1274, 1286 (11th Cir. 2010), *reinstated following rehearing en banc*, 638 F.3d 756, 763 (11th Cir. 2011). A statute's "constitutionality does not hang on whether every police officer would understand the ordinance in the same way in every conceivable factual circumstance. Absolute clarity is too much to expect from the drafters of laws, and perfect knowledge of the fullest

reach of the laws is too much to expect of even the most reasonable police officers." *Ibid*. Accordingly, that some officers misinterpreted the AWCA is not a sufficient allegation that the AWCA is itself unconstitutionally vague.

With respect to the contention that the AWCA was vague "as-applied" to Plaintiffs Haynie and Richards, the allegations of the ACC fail. The undisputed facts of this case show that following the arrests of Plaintiffs it was *an application of the AWCA* to the facts of their arrests which led to charges being dropped or never filed. *See* ACC at ER 25, ¶ 28; ER 26, ¶ 32; ER 29, ¶ 54; ER 30-31, ¶ 56; ER 33, ¶ 69; and ER 33-34, ¶ 72. Thus, there is no question that the statute contains sufficient detail to provide notice to citizens and law enforcement about what is prohibited. The facts alleged by Plaintiffs do not demonstrate any defect in the statute; they demonstrate that the statute is ultimately quite clear and effective. "As-applied" to Plaintiffs Haynie and Richards following their arrests, the AWCA resulted in charges being dropped or never filed at all. Accordingly, their vagueness claims fail.[2]

[2] Since the law is not vague as applied to Plaintiffs, they cannot succeed on a facial vagueness challenge. *See*, *e.g.*, *United States v. Dang*, 488 F.3d 1135, 1141 (9th Cir. 2007) ("[I]f the statute is constitutional as (continued…)

Plaintiffs' claim that "Second Amendment claims should be adjudicated in the same manner as First Amendment Claims," citing *U.S. v. Chovan*, 735 F.3d 1127 (9th Cir. 2013), is equally misplaced. *See* AOB at p. 18. Plaintiffs argue that the "District Court erred by granting Defendants' motion to dismiss because it failed to apply heightened scrutiny to government conduct that has a chilling effect on a fundamental right." AOB at p. 18. Plaintiffs then provide a lengthy block-quote from a First Amendment case involving a vagueness challenge to Federal Communications Commission guidelines. AOB at pp. 19-21(citing *F.C.C. v. Fox Television Stations, Inc.*, __ U.S. __, 132 S. Ct 2307 (2012)). Drawing a strained analogy to the "government conduct" criticized in that case, Plaintiffs contend that the "government conduct" at issue here is "whether California is appropriately regulating" assault weapons. AOB at pp. 21-22. But the comparison is at too high a level of generality, and in any event Plaintiffs' argument for equivalency between the First and Second Amendments is based on the false premise that "police cannot distinguish between contraband and protected arms" under the AWCA. *See* AOB at

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(…continued)
applied to the individual asserting the challenge, the statute is facially valid.").

p. 22. As demonstrated above, the AWCA provides ample guidance for police, courts, and the general public, for determining which weapons fall within the ambit of the AWCA. Individual mistakes by a few officers in the field do not establish otherwise.

CONCLUSION

For the reasons stated, the judgment of the District Court dismissing Plaintiffs' complaint should be affirmed.

Dated: October 8, 2014 Respectfully submitted,

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14-15531

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK AARON HAYNIE; BRENDAN JOHN RICHARDS; CALGUNS FOUNDATION, INC.; SECOND AMENDMENT FOUNDATION, INC.,

Plaintiffs-Appellants,

v.

KAMALA HARRIS, Attorney General of California (in her official capacity) and CALIFORNIA DEPARTMENT OF JUSTICE,

Defendants-Appellees.

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: October 8, 2014

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR 14-15531

I certify that: (check (x) appropriate option(s))

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[ ] Monospaced, has 10.5 or fewer characters per inch and contains __ words or __ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

☐ 4. **Amicus Briefs**.

☐ Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

or is

☐ Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,

or is

☐ Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

October 8, 2014
Dated

s/ Ross C. Moody
Ross C. Moody
Deputy Attorney General

CERTIFICATE OF SERVICE

Case Name: **Haynie, et al. v. Harris, et, al.** No. **14-15531**

I hereby certify that on October 8, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEES' BRIEF IN RESPONSE TO APPELLANTS' OPENING BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 8, 2014, at San Francisco, California.

J.. Wong	s/ J. Wong
Declarant	Signature

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