

No. 13-56203  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**CHARLES NICHOLS,**

Appellant-Plaintiff,

v.

**EDMUND G. BROWN, Jr., in his official  
capacity as Governor of California,  
KAMALA D. HARRIS, Attorney General,  
in her official capacity as Attorney General  
of California, CITY OF REDONDO  
BEACH, CITY OF REDONDO BEACH  
POLICE DEPARTMENT, CITY OF  
REDONDO BEACH POLICE CHIEF  
JOSEPH LEONARDI, and DOES 1 to 10,**

Respondents-Defendants.

On Appeal from the United States District Court  
for the Central District of California,  
Case No. 2-cv-11-09916-SJO-SS,  
The Honorable S. James Otero, Judge

**SUPPLEMENTAL EXCERPTS OF RECORD,  
VOLUME 2 (SER000038-219)**

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General*

**INDEX OF VOL. 2 OF SUPPL. EXCERPTS OF RECORD**

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Declaration of Jonathan M. Eisenberg in Opposition to Plaintiff Charles Nichols's Motion for Preliminary Injunction [Etc.]	96-2	SER000147-48
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Charles Nichols  Plaintiff(s)  v.  KAMALA HARRIS, et al  Defendant(s).	CASE NUMBER  CV-11-9916 SJO (SS)
	REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY

Charles Nichols  Plaintiff  Defendant  Other  
*Name of Party*


hereby requests that the Court approve the substitution of Michael F. Sisson  
*New Attorney*  
as attorney of record instead of Charles Nichols  
*Present Attorney*

Dated July 11, 2012  
  
*Signature of Party/Authorized Representative of Party*

I have given proper notice pursuant to Local Rule 83-2.9 and further consent to the above substitution.

Dated July 11, 2012  
  
*Signature of Present Attorney*

I am duly admitted to practice in this District pursuant to Local Rule 83-2.

Dated July 11, 2012  
  
*Signature of New Attorney*  
108855  
*State Bar Number*

If party requesting to appear Pro Se:

Dated \_\_\_\_\_  
*Signature of Requesting Party*

**NOTE: COUNSEL AND PARTIES ARE REMINDED TO SUBMIT A COMPLETED ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY (G-01 ORDER) ALONG WITH THIS REQUEST.**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of

REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY


was served via United States Mail, postage prepaid, on this 11<sup>th</sup>, day of July, 2012; on the following:

KAMALA D. HARRIS  
Attorney General of California  
PETER K. SOUTHWORTH  
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JONATHAN M. EISENBERG  
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AND

T. PETER PIERCE  
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Attorneys for Defendants  
CITY OF REDONDO BEACH, JOSEPH  
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Charles Nichols  
Plaintiff, In Pro Per

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Charles Nichols  Plaintiff(s)  v.  KAMALA HARRIS, et al  Defendant(s)	CASE NUMBER  CV 11-9916 SJO (SS)
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The Court hereby orders that the request of:

Charles Nichols  Plaintiff  Defendant  Other  
*Name of Party*

to substitute Michael F. Sisson who is

Retained Counsel  Counsel appointed by the Court (Criminal cases only)  Pro Se

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as attorney of record instead of Charles Nichols  
*Present Attorney*

is hereby  GRANTED  DENIED

Dated \_\_\_\_\_  
U. S. District Judge/U.S. Magistrate Judge

**NOTICE TO COUNSEL: IF YOU CURRENTLY RECEIVE ELECTRONIC SERVICE AND HAVE CHANGED YOUR E-MAIL ADDRESS SINCE YOUR ENROLLMENT, YOU MUST COMPLETE AN ENROLLMENT/UPDATE FORM (G-76) TO ENSURE THAT DOCUMENTS ARE SERVED AT THE PROPER E-MAIL ADDRESS. THIS FORM, AS WELL AS INFORMATION ABOUT THE OPTICAL SCANNING PROGRAM IS AVAILABLE ON THE COURT'S WEBSITE AT WWW.CACD.USCOURTS.GOV.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of

[PROPOSED] ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY

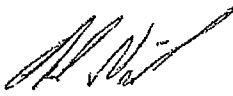
was served via United States Mail, postage prepaid, on this 11<sup>th</sup>, day of July, 2012; on the following:

KAMALA D. HARRIS  
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Attorneys for Defendants  
CITY OF REDONDO BEACH, JOSEPH  
LEONARDI and TODD HEYWOOD

  
\_\_\_\_\_  
Charles Nichols  
Plaintiff, In Pro Per

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Filed 07/13/12 Page 1 of 1 Page ID # 591

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JUL 13 2012  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Charles Nichols  Plaintiff(s)  v.  KAMALA HARRIS, et al  Defendant(s).	CASE NUMBER  CV 11-9916 SJO (SS)
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The Court hereby orders that the request of:

Charles Nichols  Plaintiff  Defendant  Other  
*Name of Party*

to substitute Michael F. Sisson who is

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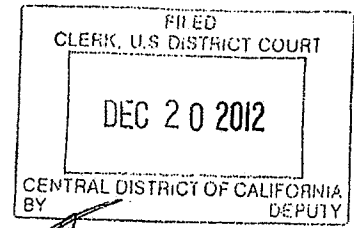
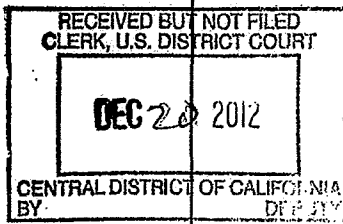
is hereby  GRANTED  DENIED

Dated 7/13/12

[Signature]  
U. S. District Judge/U.S. Magistrate Judge

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In Pro Per



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Charles Nichols	Plaintiff(s)	CASE NUMBER
		CV-11-9916 SJO(SS)
Edmund G Brown Jr et al	Defendant(s)	REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY

Charles Nichols  Plaintiff  Defendant  Other  
*Name of Party*

hereby requests that the Court approve the substitution of Charles Nichols  
*New Attorney*  
as attorney of record instead of Michael F. Sisson  
*Present Attorney*

Dated December 15, 2012  
*Signature of Party/Authorized Representative of Party*

I have given proper notice pursuant to Local Rule 83-2.9 and further consent to the above substitution.

Dated 12-16-12  
*Signature of Present Attorney*

I am duly admitted to practice in this District pursuant to Local Rule 83-2.

Dated \_\_\_\_\_  
*Signature of New Attorney*  
\_\_\_\_\_  
*State Bar Number*

If party requesting to appear Pro Se:

Dated December 15, 2012  
*Signature of Requesting Party*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY** was served via United States Mail, postage prepaid, on this 18, day of December, 2012; on the following:

KAMALA D. HARRIS

Attorney General of California

PETER K. SOUTHWORTH

Supervising Deputy Attorney General

JONATHAN M. EISENBERG

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Attorney for Defendants:

CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE CHIEF

JOSEPH LEONARDI, OFFICER TODD HEYWOOD and DOES 1 to 10

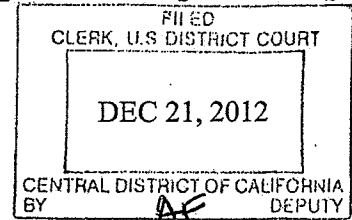
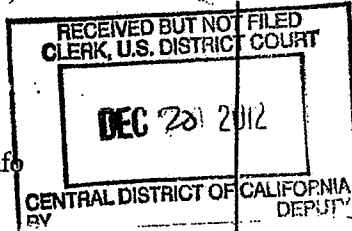


---

Charles Nichols

Plaintiff, In Pro Per

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 In Pro Per



**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

Charles Nichols  Plaintiff(s)  v.  Edmund G Brown Jr et al  Defendant(s)	CASE NUMBER  CV-11-9916 SJO(SS)  ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY
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Redondo Beach, CA 90278 CharlesNichols@Pykrete.info  
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(424) 634-7381    
*Telephone Number* *Fax Number* *State Bar Number*

as attorney of record instead of Michael F. Sisson  
*Present Attorney*

is hereby  GRANTED  DENIED

Dated 12/21/12   
 U. S. District Judge/U.S. Magistrate Judge

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6 In Pro Per

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CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: *CS*

FILED

7  
8 United States District Court  
9 Central District of California

10  
11 Charles Nichols,  
12 PLAINTIFF,  
13 vs.  
14 KAMALA D. HARRIS, Attorney  
15 General, in her official capacity as  
16 Attorney General of California, CITY  
17 OF REDONDO BEACH and DOES 1  
18 to 10,  
19 Defendants.

Case No.:  
CV-11-9916 SJO (SS)  
**SECOND AMENDED COMPLAINT**  
**COMPLAINT FOR**  
**DECLARATORY AND/OR**  
**PROSPECTIVE INJUNCTIVE**  
**RELIEF**  
**COMPLAINT FOR DAMAGES**  
**DEMAND FOR JURY TRIAL**  
42 U.S.C. §§ 1983, 1985, 1986, 1988  
FIRST AMENDMENT  
SECOND AMENDMENT  
FOURTH AMENDMENT  
FOURTEENTH AMENDMENT

20  
21  
22  
23  
24  
25  
26  
27  
28  
Second Amended Complaint

Charles Nichols v. Edmund G Brown Jr et al



1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over this action pursuant to 28  
3 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1985, 1986, 1988.

4  
5 2. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

6  
7 **PARTIES**

8 3. PLAINTIFF CHARLES NICHOLS is a natural person and citizen of the  
9 United States and of the State of California and was at all material times a resident  
10 of Los Angeles County.

11  
12 4. At all relevant times, DEFENDANT KAMALA HARRIS (KAMALA  
13 HARRIS, HARRIS) was, and currently is, the Attorney General of the State of  
14 California and she is obligated to supervise her agency and comply with all  
15 statutory duties under California Law. She is charged with enforcing and  
16 interpreting California Statutes including, but not limited to, California Penal Code  
17 Sections 25850, 26350, 26400, 26150, 26155, 26165, 26175, 26180, 26185, 26190,  
18 26200, 26202, 26205, 26210, and 26215. KAMALA HARRIS has concurrent  
19 prosecutorial jurisdiction with the state's 58 District Attorneys, and she is bound  
20 by a duty to seek substantial justice and avoid the filing of criminal charges in  
21 which she knows (or should know) are not supported by probable cause. HARRIS  
22 also has an independent duty to disclose information beneficial to the accused and  
23 by extension she has a duty to prevent wrongful arrests in the first place when she  
24 has the power to do so. When she deems it advisable or necessary in the public  
25 interest, or when directed to do so by the Governor, she shall assist any district  
26 attorney in the discharge of his duties, and may, where she deems it necessary, take  
27 full charge of any investigation or prosecution of violations of law of which the  
28 superior court has jurisdiction. In this respect she has all the powers of a district

1 attorney, including the power to issue or cause to be issued subpoenas or other  
2 process. See Article 5, Section 13 of the California Constitution and Cal. Gov't  
3 Code §§ 12510, 12511 & 12550. She is being sued solely in her official capacity  
4 and solely for Declarative and/or prospective injunctive relief.

5  
6 5. At all relevant times, DEFENDANT CITY OF REDONDO BEACH  
7 ("CITY") is and was a duly organized public entity, form unknown, existing under  
8 the laws of the State of California. At all relevant times, CITY was the employer  
9 of the police officers, prosecutors and DOE defendants who injured PLAINTIFF.

10  
11 6. PLAINTIFF is uncertain of the exact identity of any additional individual  
12 defendants who participated in the violation of his constitutionally protected rights.  
13 PLAINTIFF therefore names these individuals as DOE Defendants and reserves  
14 the right to amend this complaint when their true names are ascertained.  
15 Furthermore, if/when additional persons and entities are discovered to have  
16 assisted and/or lent support to the wrongful conduct of the DEFENDANTS named  
17 herein, PLAINTIFF reserves the right to amend this complaint to add those persons  
18 and/or entities as Defendants.

19  
20 **BACKGROUND ALLEGATIONS**

21 7. The United States Supreme Court in its landmark decision on the Second  
22 Amendment, *District of Columbia v. Heller*, 128 S. Ct. 2783, 2809 (2008),  
23 broadly confirmed the rights of Americans to keep and bear arms. While the  
24 opinion recognizes some limits to this right (i.e., prohibitions on concealed  
25 weapons in public, prohibitions on dangerous and unusual weapons, limitations on  
26 the possession of firearms by felons and the mentally ill, and laws forbidding  
27 carrying firearms in sensitive locations like schools and public buildings), the right  
28 itself is broad and occupies an important place in our constitutional history. The

1 right to keep and bear arms is implicit in our understanding of ordered liberty and  
2 is deeply rooted in the traditions of our country. The Second Amendment right is  
3 not the only provision in the Bill of Rights that has controversial public safety  
4 implications. The provisions of the Bill of Rights have governed law enforcement  
5 practices, the prosecution of cases including criminal cases and the punishment of  
6 offenders. All of these have disputed public safety implications. Despite this, self-  
7 defense is the central component of the Second Amendment right and is enshrined  
8 in Article I, Section 1 our own State Constitution. The core lawful purpose of self-  
9 defense does not disappear the moment a private citizen steps outside his home.  
10 *Heller* has provided for a number of presumptively lawful regulatory measures  
11 noted above such as prohibitions on the carrying of concealed firearms in public,  
12 but neither the state nor local governments can prohibit private citizens from  
13 carrying firearms openly, except in sensitive places. *Heller* tells us “This [Open  
14 Carry] is the right guaranteed by the Constitution of the United States...”  
15

16 8. This case involves an important constitutional principle, that neither the state  
17 nor local governments may prohibit PLAINTIFF or similarly situated individuals  
18 from openly carrying a fully functional firearm (loaded and unloaded) for the  
19 purpose of self-defense (or for other lawful purposes) in non-sensitive public  
20 places such as public streets, sidewalks, parking lots, open public spaces, his  
21 residential property, within his motor vehicle including any attached camper or  
22 trailer regardless of whether or not the motor vehicle or attached camper or trailer  
23 is used as a primary or temporary residence or no residence at all. Places which  
24 are not sensitive places where the carrying of loaded firearms can be prohibited;  
25 such as in schools and government buildings and where there exists a State or  
26 Federal law which constitutionally prohibits the carrying of a loaded firearm in  
27 those sensitive places are not at issue. PLAINTIFF similarly does not challenge  
28 any state or Federal prohibition on the carrying of weapons concealed or in the

1 licensing of the carrying of a weapon concealed in a public place or any of the  
2 other presumptively lawful prohibitions stated in the *Heller* decision.

3  
4 9. California law has expanded its ban on carrying a firearm in public to such a  
5 great extent that PLAINTIFF, and tens of millions of similarly situated persons in  
6 California, violate the ban by merely stepping outside the door of his home onto  
7 his own residential property. In particular, California courts have construed the  
8 ban on carrying firearms in a public place to include private residential property.  
9 California courts have also construed that a loaded handgun, inside of a chest of  
10 drawers, inside of a trailer towed behind a motor vehicle is a public place even  
11 though the trailer was being used as a primary residence by the defendant. The  
12 California legislature has enacted two recent bans on the open carry of unloaded  
13 firearms in public. Assembly Bill 144 made it a crime to openly carry an unloaded  
14 handgun in a public place and Assembly Bill 1527 made it a crime to openly carry  
15 an unloaded firearm in a public place which is not a handgun (e.g., rifle shotgun) in  
16 an incorporated city or city and county. Neither bill provides for a self-defense  
17 exception. Both bills prohibit transport of an unloaded firearm except for directly  
18 between two places where it is legal to possess a firearm. Prior to the enactment of  
19 these two bills it was possible to openly carry an unloaded firearm in public places  
20 with ammunition at the ready and to load the firearm should one find himself in  
21 "grave, immediate danger," with an exception within 1,000 feet of a K-12 public or  
22 private school, where handguns had to be carried unloaded in a fully enclosed,  
23 locked container unless one had permission from the school (see Penal Code  
24 section 626.9). This prohibition did not apply to the Open Carry of unloaded long  
25 guns. However, the California courts are split on what constitutes a "loaded"  
26 firearm. One appellate court held (correctly) that a firearm is not loaded unless  
27 there is a live round in the firing chamber while another held that an unloaded  
28

1 firearm is "loaded" if it simply has a magazine or clip containing ammunition  
2 attached to the firearm and there is no ammunition in the firing chamber.

3  
4 10. The theoretical ability to secure a license to openly carry a loaded firearm is  
5 meaningless in light of Penal Code sections 26150 and 26155 which prevent  
6 anyone living in a county with 200,000 or more people from securing a license to  
7 openly carry a loaded gun. Virtually everyone in the state of California lives in a  
8 place where state law prohibits the issuance of a license to openly carry a loaded  
9 firearm (i.e., anyone who lives in a county with 200,000 people or more people)  
10 including PLAINTIFF who lives in the County of Los Angeles.

11  
12 11. Aside from the population limitation, an individual seeking a license to carry  
13 a loaded and exposed weapon or a concealed weapon is required to apply for a  
14 license from either the head of a municipal police department or county sheriff.  
15 PLAINTIFF'S city of residence does not have a police chief and the custom and  
16 policy of the Sheriff of Los Angeles County is to not issue permits absent showing  
17 of an extraordinary need which as a practical matter means almost no one can carry  
18 a loaded gun in Los Angeles County.

19  
20 12. Indeed DEFENDANT HARRIS has instructed all issuing authorities in  
21 California not to issue a license to openly carry a handgun to PLAINTIFF and  
22 similarly situated individuals on page 1 of her "STANDARD APPLICATION  
23 FOR LICENSE TO CARRY A CONCEALED WEAPON (CCW)" prepared by  
24 the Attorney General pursuant to California Penal Code section 26175 which also  
25 provides for her to revise the application form. DEFENDANT HARRIS has  
26 refused to either create or revise the application form to accommodate  
27 PLAINTIFF'S and similarly situated individuals Second Amendment right to  
28 openly carry a loaded firearm in public for the purpose of self-defense and other

1 lawful purposes. Given the above, the constitutional right to bear arms as  
2 enshrined in the Second Amendment and as recently interpreted by the Supreme  
3 Court is being violated on a daily basis in California.

4  
5 13. This case involves a second important constitutional principle that neither  
6 the state nor its local governments can deny a license to PLAINTIFF or similarly  
7 situated persons to openly carry a loaded firearm in non-sensitive public places  
8 based on the population of the county in which a person who is not prohibited from  
9 possessing a firearm resides or because he resides in a city or county within the  
10 state in which state law does not provide for the issuance of a license to openly  
11 carry a loaded firearm in non-sensitive public places.

12  
13 **STATE LAWS AND CITY ORDINANCES**

14 14. All of the above paragraphs are re-alleged and incorporated herein by  
15 reference with the same force and effect as if fully set forth herein.

16  
17 15. Section 25850 states in pertinent part:

18 25850. (a) A person is guilty of carrying a loaded firearm when the person  
19 carries a loaded firearm on the person or in a vehicle while in any public place or  
20 on any public street in an incorporated city or in any public place or on any public  
21 street in a prohibited area of unincorporated territory.

22 (b) In order to determine whether or not a firearm is loaded for the purpose of  
23 enforcing this section, peace officers are authorized to examine any firearm carried  
24 by anyone on the person or in a vehicle while in any public place or on any public  
25 street in an incorporated city or prohibited area of an unincorporated territory.

26 Refusal to allow a peace officer to inspect a firearm pursuant to this section  
27 constitutes probable cause for arrest for violation of this section. (Note that  
28

1 California Penal Code **section 25850** does not contain a self-defense exception as  
2 did prior section 12031.)

3  
4 16. California Penal Code **section 26350** states in pertinent part:

5 26350. (a) (1) A person is guilty of openly carrying an unloaded handgun  
6 when that person carries upon his or her person an exposed and unloaded handgun  
7 outside a vehicle while in or on any of the following:

8 (A) A public place or public street in an incorporated city or city and county.

9 (B) A public street in a prohibited area of an unincorporated area of a county or  
10 city and county.

11 (C) A public place in a prohibited area of a county or city and county.

12 (2) A person is guilty of openly carrying an unloaded handgun when that person  
13 carries an exposed and unloaded handgun inside or on a vehicle, whether or not on  
14 his or her person, while in or on any of the following:

15 (A) A public place or public street in an incorporated city or city and county.

16 (B) A public street in a prohibited area of an unincorporated area of a county or  
17 city and county.

18 (C) A public place in a prohibited area of a county or city and county.

19  
20 17. California Penal Code **section 26400** states in pertinent part:

21 26400. (a) A person is guilty of carrying an unloaded firearm that is not a  
22 handgun in an incorporated city or city and county when that person carries upon  
23 his or her person an unloaded firearm that is not a handgun outside a vehicle while  
24 in the incorporated city or city and county.

25  
26 18. California Penal Code **section 26150** states in pertinent part:  
27  
28

1           26150. (a) When a person applies for a license to carry a pistol, revolver, or  
2 other firearm capable of being concealed upon the person, the sheriff of a county  
3 may issue a license to that person upon proof of all of the following:

4           (1) The applicant is of good moral character.

5           (2) Good cause exists for issuance of the license.

6           (3) The applicant is a resident of the county or a city within the  
7 county, or the applicant's principal place of employment or business is in the  
8 county or a city within the county and the applicant spends a substantial period of  
9 time in that place of employment or business.

10          (4) The applicant has completed a course of training as described in Section  
11 26165.

12          (b) The sheriff may issue a license under subdivision (a) in either of the  
13 following formats:

14           (1) A license to carry concealed a pistol, revolver, or other firearm capable of  
15 being concealed upon the person.

16           (2) Where the population of the county is less than 200,000 persons according to  
17 the most recent federal decennial census, a license to carry loaded and exposed in  
18 only that county a pistol, revolver, or other firearm capable of being concealed  
19 upon the person.

20  
21 19. California Penal Code **section 26155** is substantially identical to section  
22 26150 except that "the chief or other head of a municipal police department  
23 of any city or city and county" is substituted for "the sheriff of a county"  
24 and:

25          (c) Nothing in this chapter shall preclude the chief or other head of a municipal  
26 police department of any city from entering an agreement with the sheriff of the  
27 county in which the city is located for the sheriff to process all applications for  
28



1 licenses, renewals of licenses, and amendments to licenses, pursuant to this  
2 chapter.

3  
4 20. California Penal Code **section 26160** states in pertinent part:

5 26160. Each licensing authority shall publish and make available a written  
6 policy summarizing the provisions of Section 26150 and subdivisions (a) and (b)  
7 of Section 26155.

8  
9 21. California Penal Code **section 26165** requires a course of training of up to  
10 24 hours before a license may be issued.

11  
12 22. California Penal Code **section 26175** states in pertinent part:

13 26175. (a) (1) Applications for licenses, applications for amendments to  
14 licenses, amendments to licenses, and licenses under this article shall be uniform  
15 throughout the state, upon forms to be prescribed by the Attorney General.

16 (2) The Attorney General shall convene a committee composed of one  
17 representative of the California State Sheriffs' Association, one representative of  
18 the California Police Chiefs Association, and one representative of the Department  
19 of Justice to review, and as deemed appropriate, revise the standard application  
20 form for licenses. The committee shall meet for this purpose if two of the  
21 committee's members deem that necessary.

22 (c) The standard application form for licenses described in subdivision (a) shall  
23 require information from the applicant, including, but not limited to, the name,  
24 occupation, residence, and business address of the applicant, the applicant's age,  
25 height, weight, color of eyes and hair, and reason for desiring a license to carry the  
26 weapon.

27 (i) Any license issued upon the application shall set forth the licensee's name,  
28 occupation, residence and business address, the licensee's age, height, weight, color

1 of eyes and hair, and the reason for desiring a license to carry the weapon, and  
2 shall, in addition, contain a description of the weapon or weapons authorized to be  
3 carried, giving the name of the manufacturer, the serial number, and the caliber.  
4

5 23. California Penal Code **section 26180** states in pertinent part:

6 26180. (a) Any person who files an application required by Section 26175  
7 knowing that any statement contained therein is false is guilty of a misdemeanor.  
8

9 24. California Penal Code **section 26185** states in pertinent part:

10 26185. (a) (1) The fingerprints of each applicant shall be taken and two  
11 copies on forms prescribed by the Department of Justice shall be forwarded to the  
12 department.

13 (2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190,  
14 the department shall promptly furnish the forwarding licensing authority a report of  
15 all data and information pertaining to any applicant of which there is a record in its  
16 office, including information as to whether the person is prohibited by state or  
17 federal law from possessing, receiving, owning, or purchasing a firearm.

18 (3) No license shall be issued by any licensing authority until after receipt of the  
19 report from the department.

20 (b) Notwithstanding subdivision (a), if the license applicant has previously  
21 applied to the same licensing authority for a license to carry firearms pursuant to  
22 this article and the applicant's fingerprints and fee have been previously forwarded  
23 to the Department of Justice, as provided by this section, the licensing authority  
24 shall note the previous identification numbers and other data that would provide  
25 positive identification in the files of the Department of Justice on the copy of any  
26 subsequent license submitted to the department in conformance with Section  
27 26225 and no additional application form or fingerprints shall be required.  
28

1 (c) If the license applicant has a license issued pursuant to this article and the  
2 applicant's fingerprints have been previously forwarded to the Department of  
3 Justice, as provided in this section, the licensing authority shall note the previous  
4 identification numbers and other data that would provide positive identification in  
5 the files of the Department of Justice on the copy of any subsequent license  
6 submitted to the department in conformance with Section 26225 and no additional  
7 fingerprints shall be required.

8  
9 25. California Penal Code **section 26190** requires fees and provides for  
10 additional testing costing applicant up to \$150 in addition to the required fees.

11  
12 26. California Penal Code **section 26200** states in pertinent part:

13 26200. (a) A license issued pursuant to this article may include any  
14 reasonable restrictions or conditions that the issuing authority deems warranted,  
15 including restrictions as to the time, place, manner, and circumstances under which  
16 the licensee may carry a pistol, revolver, or other firearm capable of being  
17 concealed upon the person.

18  
19 27. California Penal Code **section 26202** states in pertinent part:

20 26202. Upon making the determination of good cause pursuant to Section  
21 26150 or 26155, the licensing authority shall give written notice to the applicant of  
22 the licensing authority's determination. If the licensing authority determines that  
23 good cause exists, the notice shall inform the applicants to proceed with the  
24 training requirements specified in Section 26165. If the licensing authority  
25 determines that good cause does not exist, the notice shall inform the applicant that  
26 the request for a license has been denied and shall state the reason from the  
27 department's published policy, described in Section 26160, as to why the  
28 determination was made.

1 28. California Penal Code **section 26205** states in pertinent part:

2 26205. The licensing authority shall give written notice to the applicant  
3 indicating if the license under this article is approved or denied. The licensing  
4 authority shall give this notice within 90 days of the initial application for a new  
5 license or a license renewal, or 30 days after receipt of the applicant's criminal  
6 background check from the Department of Justice, whichever is later. If the license  
7 is denied, the notice shall state which requirement was not satisfied.

8  
9 29. California Penal Code **section 26210** states in pertinent part:

10 (d) Notwithstanding subdivision (c), if a licensee's place of residence was the  
11 basis for issuance of a license, any license issued pursuant to Section 26150 or  
12 26155 shall expire 90 days after the licensee moves from the county of issuance.

13 (e) If the license is one to carry loaded and exposed a pistol, revolver, or other  
14 firearm capable of being concealed upon the person, the license shall be revoked  
15 immediately upon a change of the licensee's place of residence to another county.

16  
17 30. California Penal Code **section 26215** states in pertinent part:

18 26215. (a) A person issued a license pursuant to this article may apply to the  
19 licensing authority for an amendment to the license to do one or more of the  
20 following:

21 (1) Add or delete authority to carry a particular pistol, revolver, or other firearm  
22 capable of being concealed upon the person.

23 (2) Authorize the licensee to carry concealed a pistol, revolver, or other firearm  
24 capable of being concealed upon the person.

25 (3) If the population of the county is less than 200,000 persons according to the  
26 most recent federal decennial census, authorize the licensee to carry loaded and  
27 exposed in only that county a pistol, revolver, or other firearm capable of being  
28 concealed upon the person.

1 (4) Change any restrictions or conditions on the license, including restrictions as  
2 to the time, place, manner, and circumstances under which the person may carry a  
3 pistol, revolver, or other firearm capable of being concealed upon the person.  
4

5 31. California Penal Code **section 26220** states in pertinent part:

6 26220. (a) Except as otherwise provided in this section and in subdivision  
7 (c) of Section 26210, a license issued pursuant to Section 26150 or 26155 is valid  
8 for any period of time not to exceed two years from the date of the license.

9 (b) If the licensee's place of employment or business was the basis for issuance of  
10 a license pursuant to Section 26150, the license is valid for any period of time not  
11 to exceed 90 days from the date of the license. The license shall be valid only in  
12 the county in which the license was originally issued. The licensee shall give a  
13 copy of this license to the licensing authority of the city, county, or city and county  
14 in which the licensee resides. The licensing authority that originally issued the  
15 license shall inform the licensee verbally and in writing in at least 16-point type of  
16 this obligation to give a copy of the license to the licensing authority of the city,  
17 county, or city and county of residence. Any application to renew or extend the  
18 validity of, or reissue, the license may be granted only upon the concurrence of the  
19 licensing authority that originally issued the license and the licensing authority of  
20 the city, county, or city and county in which the licensee resides.

21 (c) A license issued pursuant to Section 26150 or 26155 is valid for any period of  
22 time not to exceed three years from the date of the license if the license is issued to  
23 any of the following individuals:

24 (1) A judge of a California court of record.

25 (2) A full-time court commissioner of a California court of record.

26 (3) A judge of a federal court.

27 (4) A magistrate of a federal court.

28 (d) A license issued pursuant to Section 26150 or 26155 is valid

1 for any period of time not to exceed four years from the date of the license if the  
2 license is issued to a custodial officer who is an employee of the sheriff as  
3 provided in Section 831.5, except that the license shall be invalid upon the  
4 conclusion of the person's employment pursuant to Section 831.5 if the four-year  
5 period has not otherwise expired or any other condition imposed pursuant to this  
6 article does not limit the validity of the license to a shorter time period.

7 (e) A license issued pursuant to Section 26170 to a peace officer appointed  
8 pursuant to Section 830.6 is valid for any period of time not to exceed four years  
9 from the date of the license, except that the license shall be invalid upon the  
10 conclusion of the person's appointment pursuant to Section 830.6 if the four-year  
11 period has not otherwise expired or any other condition imposed pursuant to this  
12 article does not limit the validity of the license to a shorter time period.

13  
14 32. California Penal Code **section 17030** states in full:

15 17030. As used in this part, "prohibited area" means any place where it is  
16 unlawful to discharge a weapon.

17  
18 33. Defendant CITY OF REDONDO BEACH broadly defines "Park" to include  
19 all "open space." The Redondo Beach City ordinances state in pertinent part:

20 **4-35.01 Definitions.**

21 "Park" shall mean any publicly owned or leased property established, designated,  
22 maintained, or otherwise provided by the City for recreational use or enjoyment,  
23 including, but not limited to, any public areas located within or directly adjacent to  
24 such property such as picnic areas, playgrounds, sports fields, athletic fields, sports  
25 courts, trails, walkways, pathways, gardens, parking lots, parkettes, aquatic centers,  
26 skateboard parks, community centers, senior centers, land designated by the City  
27 as parkland or open space, landscaped or planted areas, and other buildings or  
28

1 structures. **The term “park” shall not include the beach as defined in Section 5-**  
2 **8.01(a)(1) of this Code.”** Emphasis added.

3  
4 **4-35.06** Vehicles in parks.

5 No person shall drive any motorized vehicle within any portion of any park,  
6 excluding park parking lots. This section shall not apply to service vehicles used to  
7 maintain or operate the park, or to police or emergency vehicles. (§ 1, Ord. 3051  
8 c.s., eff. June 18, 2010)

9  
10 **4-35.20** Weapons and explosives in parks.

11 (a) It shall be unlawful for any person to use, carry, fire or discharge any firearm,  
12 air gun, paint gun, BB gun, slingshot, archery device of any kind, or any other  
13 form of weapon across, in or into a park. This subsection shall not apply to law  
14 enforcement officers.

15  
16 34. Redondo Beach municipal ordinance **5-8.01(a)(1)** states:

17 “Beach” means the public beach or shoreline area bordering the Pacific Ocean,  
18 owned, managed or controlled by the State of California, County of Los Angeles or  
19 the City of Redondo Beach or that is open to the general public and located within  
20 the City of Redondo Beach. For the purposes of this section, the beach shall  
21 include all indoor and outdoor areas of the land in the City that extends 1,000 feet  
22 seaward from the low mean tide line and landward to the following described lines:  
23 to the top of the seaward face of the coastal bluffs west of the Esplanade from the  
24 City’s southerly border to the southerly edge of the first residential private property  
25 on the west side of the Esplanade and to the westerly edge of the private properties  
26 on the west side of the Esplanade from Avenue A to Ainsworth Court at George  
27 Freeth Way; to the westerly edge of the public sidewalk from Ainsworth Court to  
28 the extended line of the southerly edge of the Redondo Beach Pier; to the westerly

1 foundation under the Pier from the southerly edge of the Pier to the southerly edge  
2 of the Harbor entrance break wall; from the westerly edge of the road, parking lot  
3 or buildings bordering the sandy area from the northerly edge of the Galveston  
4 Wall to the City's northern border.

5  
6 **FACTS**

7 35. All of the above paragraphs are re-alleged and incorporated herein by  
8 reference with the same force and effect as if fully set forth herein.

9  
10 36. California law and local City Of Redondo Beach ordinances prohibit  
11 PLAINTIFF and similarly situated individuals from openly carrying a firearm in  
12 non-sensitive public places which is a violation of the United States Constitution  
13 and the fundamental right to openly carry a loaded firearm for the purpose of self-  
14 defense and for other lawful purposes. California statutes require that PLAINTIFF  
15 and individuals similarly situated "voluntarily" give permission to an  
16 unconstitutional search and seizure of his property and person in order to exercise a  
17 fundamental constitutional right to openly carry a firearm in non-sensitive public  
18 places or risk arrest, prosecution, fine and imprisonment. Defendant City of  
19 Redondo Beach ordinances unconstitutionally prohibit the carrying of all weapons  
20 in all open spaces. Defendant City of Redondo Beach has interpreted its local  
21 ordinance, 4-35.20 to apply to all public, open spaces within the city including the  
22 costal parklands and public coastal property not zoned as parkland to which the  
23 prohibitions in 4-35.20 are statutorily excluded from its own city ordinances: 4-  
24 35.01, 4-35.06, and 5-8.01(a)(1). DEFENDANT HARRIS has taken no steps to  
25 correct the unlawful behavior of the CITY or to intervene PLAINTIFF'S behalf in  
26 his criminal prosecution. DEFENDANT HARRIS has done nothing to stop the  
27 unlawful conduct of the CITY.



1 37. Redondo Beach City ordinances prohibit PLAINTIFF and similarly situated  
2 individuals from openly carrying a firearm; loaded and unloaded, openly or  
3 concealed and even unloaded within a fully enclosed locked container. Unloaded  
4 and in a fully enclosed locked container is the lawful manner of transporting a  
5 handgun through areas, such as school zones, where openly carrying a firearm is  
6 prohibited. DEFENDANT HARRIS has taken no steps to correct the unlawful  
7 behavior of the CITY or to intervene on PLAINTIFF'S behalf in his criminal  
8 prosecution.

9  
10 38. The State of California has preempted local governments from enacting and  
11 enforcing local ordinances regulating the carrying of firearms, loaded and  
12 unloaded, openly or concealed. Local governments are prohibited from issuing or  
13 denying licenses to openly carry loaded firearms except where provided by state  
14 law. DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the  
15 CITY.

16  
17 39. A publication by the State of California's Office of Attorney General titled  
18 "CONCEALABLE FIREARMS CHARGES IN CALIFORNIA 2000-2003" on  
19 page 14 in Table N-17 indicates that there were 7,775 charged offenses for  
20 violation of California Penal Code Section 12031 during that time period. This  
21 number does not reflect arrests which were not charged or searches conducted  
22 pursuant to the statute. The most recent publication by DEFENDANT HARRIS  
23 titled "Crime In California 2010" indicates that there were 22,216 felony arrests  
24 and 5,800 misdemeanor arrests for weapons violations on pages 34 and 43  
25 respectively. The documents also contain breakdowns of arrests by race which  
26 shows that racial minorities are disproportionately arrested. Effective January 1,  
27 2012 California Penal Code Section 12031 was renumbered. Former Penal Code  
28 Section 12031(a)(1) is now Penal Code Section 25850(a) and former section

1 12031(e) is now 25850(b). The text of these two subsections was left unchanged  
2 when they were renumbered.

3  
4 40. The Office of the Attorney General has one or more databases containing  
5 arrests made for violations of California Penal Code Section 25850 (formerly  
6 PC12031) and other weapons offenses from 1979 to the present.

7  
8 41. Pursuant to California Penal Code Section 25850 et al the State of California  
9 has clearly and unequivocally set forth an unconstitutional policy of prohibiting  
10 firearms (loaded and unloaded) from being openly carried in non-sensitive public  
11 places for the purpose of self-defense and other lawful purposes in all incorporated  
12 cities and unincorporated county territory where the discharge of firearms is  
13 prohibited. DEFENDANT HARRIS has participated in its enforcement.

14  
15 42. Pursuant to California Penal Code Sections 25850, 26350, 26150, 26155 et  
16 al, the State of California has clearly and unequivocally set forth an  
17 unconstitutional policy of rationing licenses to openly carry a loaded and unloaded  
18 handgun for the purpose of self-defense and for other lawful purposes. In addition  
19 to limiting the exercise of PLAINTIFF'S and similarly situated individuals Second  
20 Amendment right, the California licensing and prohibition on openly carrying  
21 loaded and unloaded firearms in public places is designed and intended to deny  
22 persons of color their Second Amendment right. DEFENDANT HARRIS has  
23 participated in their enforcement, promulgates the prohibitions, prepares the forms,  
24 conducts the background checks and a license may not be issued without her  
25 approval.

26  
27 43. The intent of the California Legislature when it enacted California Penal  
28 Code Section 12031 (now PC 25850 in part) in July of 1967 was that it apply to

1 openly carried firearms, which the legislative history clearly states. The  
2 Legislature did not intend for it to apply to the concealed carry of firearms. The  
3 legislation was intended to disarm members of the Black Panther Party for Self-  
4 Defense while providing for the Open Carry of a loaded firearm when one  
5 reasonably believed himself to be in danger or while hunting within the city limits  
6 of an incorporated city, town or village. The self-defense threshold was raised to a  
7 grave and immediate danger in 1981. Under California case law, convicted felons  
8 and other prohibited persons still fall under the pre-1981 "reasonable fear"  
9 threshold whereas PLAINTIFF and all others who fall within the scope of the  
10 Second Amendment are subject to the much higher "grave, immediate danger"  
11 self-defense threshold.

12  
13 44. In 1969, the California courts held that the statute (PC 12031 now  
14 renumbered in part as 25850(a) & (b)) could be applied as a separate offense to  
15 carrying a concealed firearm in public. In 2012, the California Supreme Court held  
16 that a person may not be punished for violating more than one law for the same act  
17 pursuant to Penal Code section 654. For example, a person may not presently be  
18 punished for both unlawfully carrying a concealed handgun and for a violation of  
19 PC 25850 for the same act.

20  
21 45. California Penal Code Section 25850 and Redondo Beach City ordinances 4-  
22 35.01 and 4-35.20 were enforced on PLAINTIFF on May 21, 2012 when Redondo  
23 Beach police officer Heywood enforced subsection (b) of PC 25850 on  
24 PLAINTIFF by taking PLAINTIFF'S firearm over PLAINTIFF'S clearly  
25 communicated refusal to comply with subsection (b) of PC 25850. Officer  
26 Heywood then inspected the firearm to determine whether or not it was loaded  
27 pursuant to subsection (b) of PC 25850 which he referred to as a "Chamber  
28 Check." City of Redondo Beach Police Officer Heywood then seized

1 PLAINTIFF'S openly carried firearm and other property and an unidentified  
2 Redondo Beach police officer informed PLAINTIFF that his firearm was being  
3 seized for violating the city ordinances. PLAINTIFF was then informed by this  
4 police officer that PLAINTIFF'S violation of the city ordinances had been referred  
5 to the Redondo Beach City Attorney and City Prosecutor for criminal prosecution.  
6 This police officer stated that PLAINTIFF was neither being cited nor arrested and  
7 that he did not have a warrant. PLAINTIFF submits that his person and property  
8 were unlawfully seized and searched against his will and that PLAINTIFF was  
9 unlawfully arrested and/or detained against his will while engaged in peaceful  
10 protest and openly carrying an unloaded firearm as part of his protest and as the  
11 only means then not prohibited by state law to defend PLAINTIFF with a firearm  
12 in public. PLAINTIFF'S protest of May 21, 2012 for which he was arrested and  
13 prosecuted was conducted entirely within the "Beach" zone to which the local  
14 ordinance he was charged with violating does not apply according to CITY'S own  
15 municipal code. At the time of his arrest, PLAINTIFF posed no threat, imminent  
16 or otherwise, of death, personal injury (serious or otherwise) to any police officer  
17 or to any other person. PLAINTIFF was arrested, searched and his property seized  
18 on a street with a posted 5MPH speed limit open to the public and posted as  
19 "PRIVATE PROPERTY." PLAINTIFF and fellow Open Carry activists were  
20 threatened with prosecution of Redondo Beach City ordinance 4-35.20 on August  
21 7, 2010 at an Open Carry event which PLAINTIFF had scheduled in advance of  
22 the date with the CITY but was prohibited from taking place by CITY police  
23 officers at the direction of the CITY in retaliation for a member of the South Bay  
24 Open Carry movement not wanting to postpone the event until the following  
25 month. PLAINTIFF was injured and suffers an ongoing injury. PLAINTIFF'S  
26 constitutional rights were violated. PLAINTIFF suffered a personal injury as well.  
27 PLAINTIFF was prosecuted for his subsequent protest which was held and then  
28 broken up by CITY police officers on May 21, 2012. DEFENDANT HARRIS has

1 not intervened in his prosecution which is her duty to do so. DEFENDANT  
2 HARRIS has done nothing to stop the unlawful conduct of the CITY.

3  
4 46. PLAINTIFF asked CITY OF REDONDO BEACH Police Chief Joseph  
5 Leonardi through his then attorney and through Redondo Beach Captain Jeff Hink  
6 for an application and a license to openly carry a loaded handgun on May 17, 2012.  
7 Captain Jeff Hink referred PLAINTIFF'S request for an application and a license  
8 to openly carry a loaded firearm to the City Attorney and informed PLAINTIFF of  
9 this via email.

10  
11 47. On May 21, 2012 after both California Penal Code Section 25850 and the  
12 Redondo Beach city ordinances 4-35.20 and 4-35.01 had been enforced on  
13 PLAINTIFF and his firearm seized, the Redondo Beach Police Chief through his  
14 attorney, the Redondo Beach City Attorney, denied PLAINTIFF both an  
15 application and a license to openly carry a loaded firearm citing California Penal  
16 Code section 26155(b)(2) prohibiting the issuance of licenses in counties with a  
17 population of 200,000 or more people and California Penal Code section  
18 26155(a)(3) limiting the issuance of licenses only to residents of the city.  
19 PLAINTIFF resides in a city adjacent to the City of Redondo Beach and receives  
20 his mail from a post office box in the City of Redondo Beach. The City of  
21 Redondo Beach is also where PLAINTIFF shops, travels through and frequents on  
22 a regular basis. There is no administrative appeal available for PLAINTIFF to  
23 appeal the denial of an application for a license to openly carry a loaded handgun  
24 in public. DEFENDANT HARRIS has told every police chief and county sheriff  
25 in the state that PLAINTIFF and similarly situated individuals may not be issued a  
26 license to openly carry a loaded firearm in the state. It is futile for PLAINTIFF to  
27 apply for a license to openly carry a loaded handgun from any issuing authority in  
28 the State of California.

1 48. PLAINTIFF obtained a Law Enforcement Gun Release Letter from  
2 DEFENDANT HARRIS' California Department of Justice and demanded the  
3 return of his firearm and other property seized by CITY as required by California  
4 law. PLAINTIFF'S property was not returned by CITY. PLAINTIFF has no other  
5 appeal or administrative remedy for return of his firearm and other property.  
6 DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the  
7 CITY.

8  
9 49. PLAINTIFF has frequently and countless times violated California Penal  
10 Code Section 25850, the Redondo Beach City Ordinances and other California  
11 statutes prohibiting firearms from being carried in non-sensitive public places.  
12 PLAINTIFF continues to violate California Penal Code Section 25850, the  
13 Redondo Beach City Ordinances and other California statutes prohibiting firearms  
14 from being carried in public places and will continue to violate California Penal  
15 Code Section 25850, the Redondo Beach City Ordinances and other California  
16 statutes prohibiting firearms from being carried in public places on the 7th day of  
17 every month by carrying a firearm (a holstered handgun, rifle or shotgun of a type  
18 in common use by the public) in a public place. PLAINTIFF will violate  
19 California Penal Code Sections 25850, 26350, 26400 and the Redondo Beach City  
20 Ordinances and other California statutes prohibiting firearms from being carried in  
21 public places on August 7, 2013 in the same location in the City of Redondo Beach  
22 where he was prevented from openly carrying a firearm under threat of arrest on  
23 August 7, 2010 and where California Penal Code Section 25850 and the Redondo  
24 Beach City Ordinances 4-35.20 and 4-35.01 prohibiting the carrying of firearms in  
25 public places were enforced against PLAINTIFF on May 21, 2012. PLAINTIFF  
26 will then proceed from the Redondo Beach Pier and environs to the South Bay  
27 Shopping Center in the City of Redondo Beach to do some shopping. PLAINTIFF  
28 will then travel outside of the City of Redondo Beach to visit relatives in Torrance,

1 California where he will openly carry firearms along the public streets and on  
2 public sidewalks and on his relatives' residential property. PLAINTIFF will openly  
3 carry a loaded holstered handgun, loaded rifle and loaded shotgun of a type in  
4 common use by the public. PLAINTIFF will openly carry an unloaded holstered  
5 handgun, unloaded rifle and unloaded shotgun of a type in common use by the  
6 public. PLAINTIFF will openly carry, loaded and unloaded, a holstered handgun,  
7 rifle and shotgun of a type in common use by the public while travelling within the  
8 state of California within and without a motor vehicle. PLAINTIFF will openly  
9 carry a firearm when confronted by aggressors, it is impossible to know when such  
10 occasions will arise, if it were, PLAINTIFF would avoid them even though there is  
11 no "duty to retreat" in the State of California. At all times, PLAINTIFF will refuse  
12 to consent to the inspection of his firearm to see if it is loaded in violation of  
13 California Penal Code Section 25850.

14  
15 50. Although both the state statutes (California Penal Code Section 25850 &  
16 26155) and Redondo Beach City Ordinances (4-35.20 and 4-35.01) have already  
17 been enforced against PLAINTIFF and others. Each and every year, there are over  
18 1,000 arrests for violating California Penal Code Section 25850 alone and  
19 Defendant HARRIS continues to prosecute the upholding of criminal convictions  
20 for violation of the statute which are appealed. PLAINTIFF personally knows two  
21 persons who are members of his California non-profit association of which he is  
22 the President (California Right To Carry – An Open Carry advocacy group) who  
23 were prosecuted for having a "loaded" handgun in their vehicles even though the  
24 handgun was unloaded. Charges in both cases were eventually dismissed after a  
25 year of prosecution. A third member was arrested for lawfully transporting an  
26 unloaded handgun in a fully enclosed locked container but not prosecuted.  
27 DEFENDANT HARRIS had been made aware of the first two cases by  
28 PLAINTIFF and yet she refused to exercise her authority under California law to

1 end those prosecutions and prevent current and future unconstitutional  
2 prosecutions of the statute. Neither has DEFENDANT HARRIS instructed the  
3 Redondo Beach Defendants that their city ordinances prohibiting the carrying of  
4 firearms in public places are preempted by state law and is unconstitutional under  
5 Federal law nor has she intervened on behalf of PLAINTIFF in the criminal  
6 prosecution by the DEFENDANT CITY OF REDONDO BEACH or in the two  
7 prosecutions mentioned previously despite her duty to do so. Given the history of  
8 zealous enforcement of California's laws prohibiting the carrying of firearms in  
9 non-sensitive public places by HARRIS and others including by members of her  
10 own Department of Justice, with arrests, prosecutions and imprisonments  
11 numbering in the tens of thousands; future enforcement of the statute on  
12 PLAINTIFF is far more than likely - It is a certainty. The active enforcement by  
13 CITY against PLAINTIFF and enforcement by others on similarly situated parties  
14 constitutes a real threat of enforcement against PLAINTIFF as both members of  
15 PLAINTIFF'S non-profit were openly carrying an unloaded handgun at the time of  
16 their arrest which is the manner PLAINTIFF usually carried a firearm in non-  
17 sensitive public places unless he reasonably believed he was in danger; an  
18 inadvertent violation of former penal code section 12031(a)(1). PLAINTIFF was  
19 not even aware that the threshold for carrying a loaded firearm had been raised to  
20 grave, immediate danger until relatively recently. There is no knowledge  
21 requirement to the statutes. PLAINTIFF'S ignorance of the change in the law  
22 would not have prevented his arrest, prosecution fine and imprisonment.  
23 DEFENDANT HARRIS has done nothing to stop the unlawful conduct of the  
24 CITY, or of law enforcement officers, prosecutors and judges.

25  
26 51. When officer Todd Heywood enforced California Penal Code Section 25850  
27 against PLAINTIFF against his will and seized PLAINTIFF'S firearm and  
28 property against his will a definite and concrete dispute regarding the lawfulness of



1 that search and enforcement of that statute came into existence. Officer Heywood  
2 is an employee of CITY. DEFENDANT HARRIS has done nothing to stop the  
3 unlawful conduct of the CITY and its employees.  
4

5 52. When officer Todd Heywood and others enforced Redondo Beach City  
6 ordinances 4-35.01 and 4-35.20 against PLAINTIFF and seized PLAINTIFF'S  
7 firearm and property against his will a definite and concrete dispute regarding the  
8 lawfulness of that seizure and enforcement of those city ordinances came into  
9 existence. DEFENDANT HARRIS has done nothing to stop the unlawful conduct  
10 of the CITY and its employees.  
11

12 53. The Federal Bureau of Investigation (FBI) has a National Instant Criminal  
13 Background Check System (NICS) which has been operational since 1998. The  
14 NICS Section is accessible via a toll-free telephone number or electronically on the  
15 Internet through the NICS E-Check System to request a background check with the  
16 descriptive information provided on the ATF Form 4473. NICS is customarily  
17 available 17 hours a day, seven days a week, including holidays (except for  
18 Christmas). The NICS can be used to instantly determine whether a prospective  
19 buyer is eligible to buy firearms.  
20

21 54. In this case, injuries to PLAINTIFF have already occurred and are ongoing,  
22 thereby eliminating any concerns that PLAINTIFF'S fear of enforcement is purely  
23 speculative. PLAINTIFF'S injury is ongoing.  
24

25 **FIRST CLAIM FOR RELIEF:**

26 **SECOND AMENDMENT, FOURTH AMENDMENT, FOURTEENTH**

27 **AMENDMENT UNITED STATES CONSTITUTION**

28 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**

**PLAINTIFF vs DEFENDANT KAMALA HARRIS**

1  
2 55. All of the above paragraphs are re-alleged and incorporated herein by  
3 reference with the same force and effect as if fully set forth herein.

4  
5 56. The Second Amendment “guarantee[s] the individual right to possess and  
6 carry weapons in case of confrontation.” District of Columbia v. Heller, 554 U.S.  
7 570, 592 (2008) and was applied to all state and local governments in McDonald v.  
8 Chicago, 561 U.S. 3025 (2010).

9  
10 57. California Penal Code Section 25850 is unconstitutional on its face and as  
11 applied to firearms openly carried in non-sensitive public places. Mere possession  
12 or carrying of a loaded firearm, (i.e., exercising a fundamental right) when  
13 otherwise lawful under law cannot support the unlawful detention, arrest,  
14 prosecution, imprisonment or search of a person and seizure of a firearm when  
15 openly carried in non-sensitive public places (25850(a)). Mere possession of a  
16 firearm, (i.e., exercising a fundamental right) when otherwise lawful, cannot  
17 support a finding of probable cause to believe a crime has been committed, such  
18 that the Fourth Amendment’s warrant requirement can be legislatively disregarded  
19 (25850(b)). Openly carrying a loaded firearm in non-sensitive public places such  
20 as public streets, sidewalks, shopping centers, parking lots, piers, open spaces; of a  
21 type in common use for the purpose of self-defense or for other lawful purposes is  
22 a right guaranteed by the Second Amendment of the United States Constitution and  
23 is a fundamental right which cannot be denied to PLAINTIFF or the People under  
24 the Second and Fourteenth Amendments because PLAINTIFF happens to be in a  
25 non-sensitive public place in ALL incorporated cities or in ANY unincorporated  
26 county territory where the discharge of a firearm is prohibited. PC25850 should be  
27 construed as a Loaded Open Carry ban, which is what the legislature intended and  
28 is clear in the legislative history.

1 58. PLAINTIFF requests declaratory and/or prospective injunctive relief under  
2 42 U.S.C. § 1983 against DEFENDANT HARRIS to prevent future violations of  
3 his constitutional right to be free from unreasonable search and seizure under the  
4 Fourth Amendment to the United States Constitution while he is exercising his  
5 Second Amendment right to openly carry a loaded firearm in non-sensitive places  
6 for the purpose of self-defense and for other lawful purposes. PLAINTIFF desires  
7 to exercise his Second Amendment right. PLAINTIFF desires a judicial  
8 declaration of his rights and DEFENDANT'S duties namely, that California Penal  
9 Code Section 25850 infringes on PLAINTIFF'S Second, Fourth and Fourteenth  
10 Amendment rights to openly carry a loaded firearm in non-sensitive public places  
11 and/or prospective injunctive relief under 42 U.S.C. § 1983.

12  
13 59. The Second Amendment invalidates California Statutes to the extent they  
14 prevent private citizens who are not otherwise barred from exercising their Second  
15 Amendment Right (examples of prohibited persons include convicted felons,  
16 mentally ill, etc) from openly carrying firearms in non-sensitive public places,  
17 loaded and unloaded, for the purpose of self-defense and for other lawful purposes.

18  
19 60. California Penal Code Section 25850 is invalid as applied to prohibit, or  
20 infringe, a private citizen who is otherwise eligible to possess firearms from openly  
21 carrying a loaded and operable firearm in non-sensitive public places for the  
22 purpose of self-defense and for other lawful purposes.

23  
24 61. California Penal Code Section 25850 is unconstitutionally vague. A  
25 reasonable person would not conclude that either his private residential property or  
26 the inside of his motor vehicle is a public place. Neither would a reasonable  
27 person conclude that an unloaded firearm is loaded simply by having a magazine  
28 or clip attached to his firearm unless there was also a live round in the firing

1 chamber of the firearm. Prior to July of 1967 when former Penal Code section  
2 12031 went into effect a revolver was considered to be unloaded if it did not have a  
3 live round in the firing chamber even though it had live rounds in the cylinder.  
4 The exceptions and numerous subsections to former Penal Code section 12031, of  
5 which PC 25850 is a part, have been scattered throughout the California Penal  
6 code to such an extent that PC 25850 is unconstitutionally vague. It subjects the  
7 exercise of the right of bear arms to an unascertainable standard, and  
8 unconstitutionally broad because it authorizes the punishment of constitutionally  
9 protected conduct. PC 25850 is also unconstitutionally vague because a reasonable  
10 person would have to spend days searching through the California statutes and case  
11 law and still be uncertain as to whether or not a particular act, or being in a  
12 particular place, is in violation of PC 25850. Most of the subsections of former  
13 Penal Code section 12031 are now to be found in 16750(b), 16840(b), 17030,  
14 25850-26025 (inclusive), 26030(a)-(c), 26035-26055 (inclusive).

15  
16 62. California Penal Code Section 26350 is facially invalid and as applied to  
17 prohibit, or infringe, PLAINTIFF and private citizens who are otherwise eligible to  
18 possess a firearm from openly carrying an unloaded and operable handgun for the  
19 purpose of self-defense in non-sensitive public places. Mere possession of  
20 matching ammunition cannot make an unloaded handgun "loaded."

21  
22 63. California Penal Code Section 26400 is facially invalid and as applied to  
23 prohibit, or infringe, a private citizen who is otherwise eligible to possess an  
24 unloaded firearm that is not a handgun from openly carrying an unloaded and  
25 operable firearm that is not a handgun for the purpose of self-defense in non-  
26 sensitive public places. Mere possession of matching ammunition cannot make an  
27 unloaded firearm "loaded."

1 64. California Penal Code Sections 26150, 26155, 26160, 26165, 26175, 26180,  
2 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220, are facially invalid  
3 and as applied to prohibit, or infringe, PLAINTIFF and private citizens who are  
4 otherwise eligible to possess a firearm from openly carrying a loaded and operable  
5 handgun for the purpose of self-defense in non-sensitive public places.

6  
7 65. California Penal Code Sections 26150, 26155, 26160, 26165, 26175, 26180,  
8 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220 are unconstitutional on  
9 their face and as applied in this case to the extent that they restrict licenses to  
10 openly carry a loaded handgun only to persons within counties of a population of  
11 fewer than 200,000 persons which is valid only in those counties, to only those  
12 residents who reside within those counties and leaves the issuance of such licenses  
13 solely to the discretion of the issuing authority and prohibiting the issuing authority  
14 from issuing a license to other than a resident of the city, county or city and county  
15 thereby prohibiting PLAINTIFF from obtaining a license to openly carry a loaded  
16 handgun for the purpose of self-defense in non-sensitive public places afforded to  
17 similarly situated persons which is a violation of PLAINTIFF'S rights under the  
18 Second and Fourteenth Amendments.

19  
20 66. The invalidities of the aforesaid statutes, and Defendants' application of  
21 same, infringe PLAINTIFF'S Second, Fourth and Fourteenth Amendments right  
22 and damage PLAINTIFF in violation of 42 U.S.C. § 1983.

23  
24 67. PLAINTIFF is proceeding pro-se. None of his challenges should be  
25 construed as challenging any California statute as it pertains to the carrying of a  
26 weapon concealed on one's person in a public place. For example, "good cause,"  
27 "good moral character," "training," "fingerprinting," "residency," and the  
28 requirement for a license itself, etc., are only at issue in this case as they pertain to

1 licenses to carry firearms openly in non-sensitive public places and those places  
2 which PLAINTIFF submits are not public places, sensitive or otherwise, such as  
3 the curtilage of his home, within his motor vehicle including within any attached  
4 campers or trailers regardless of whether or not they are being used as a residence.

5  
6 68. PLAINTIFF'S injuries are irreparable because PLAINTIFF is entitled to  
7 enjoy his Constitutional rights in fact.

8  
9 69. PLAINTIFF requests declaratory and/or prospective injunctive relief under  
10 42 U.S.C. § 1983 against DEFENDANT HARRIS to prevent future violations of  
11 his Second Amendment right to openly carry a loaded firearm in non-sensitive  
12 public places for the purpose of self-defense and for other lawful purposes, his  
13 Fourth Amendment Right, and his Fourteenth Amendment rights to equal  
14 protection under the law and to due process. PLAINTIFF submits that no license  
15 is required to openly carry a firearm for the purpose of self-defense but if a license  
16 is required then PLAINTIFF and persons not prohibited from possessing a firearm  
17 have a liberty and/or property interest in a license and must be issued one. It is  
18 futile for PLAINTIFF and similarly situated individuals to apply for a license from  
19 any and all police chiefs, county sheriffs or other issuing authorities. ALL of the  
20 laws at issue in this case fail to survive even rational review. There is no rational  
21 basis to uphold them even absent the Constitution. Similarly, they cannot survive  
22 facial, as applied, and vagueness challenges and PLAINTIFF makes these  
23 challenges against all laws at issue in this complaint.

24  
25 **SECOND CLAIM FOR RELIEF:**

26 **UNREASONABLE SEARCH AND SEIZURE AND DUE PROCESS AND**  
27 **FIRST, SECOND, FOURTH, FOURTEENTH AMENDMENT -**  
28 **MUNICIPAL LIABILITY FOR UNCONSTITUTIONAL CUSTOM OR**

1 **POLICY PLAINTIFF vs DEFENDANT CITY OF REDONDO BEACH &**  
2 **DOES 1-8**

3 70. All of the above paragraphs are re-alleged and incorporated herein by  
4 reference with the same force and effect as if fully set forth herein. PLAINTIFF  
5 realizes that this court has indicated that this count will likely be dismissed  
6 pursuant to the Younger Abstention just as his count against the CITY ordinances  
7 were but given that the condition for the Younger Abstention may be lifted,  
8 PLAINTIFF is keeping this claim in for now but is not seeking to move it forward  
9 until the Abstention is lifted.

10  
11 71. DEFENDANT CITY OF REDONDO BEACH ongoing and unjustified  
12 violation of PLAINTIFF'S First, Second, Fourth and Fourteenth Amendment  
13 rights deprived PLAINTIFF of his right to peaceful protest and assembly under the  
14 First Amendment, his right to openly carry a firearm under the Second  
15 Amendment, his right against unreasonable search and seizure as guaranteed by the  
16 Fourth Amendment, all applied to states, local governments, state actors and agents  
17 of the states by the Fourteenth Amendment and his right to due process. The  
18 deprivation began on August 7, 2010 and continues to the present date.  
19 PLAINTIFF brought his initial suit on November 30, 2011 and amended his suit  
20 for damages on May 30, 2012 (within the statute of limitations). The criminal  
21 prosecution of his injuries sustained on May 21, 2012 has tolled the statute of  
22 limitations for that part of his damages claim.

23  
24 72. As a result of the conduct of the CITY and DOE DEFENDANTS 1-8,  
25 PLAINTIFF suffered and is suffering extreme pain and suffering and loss of  
26 earning either because they were integral participants or failed to intervene to  
27 prevent these violations. They acted with gross negligence and with reckless and  
28 deliberate indifference to the rights and liberties of the public in general, and of

1 PLAINTIFF, and of persons in their class, situation and comparable position in  
2 particular, knowingly maintained, enforced, and applied an official recognized  
3 custom policy and practice of:

4 (a) Employing and retaining as police officers and other personnel who at  
5 all times material herein knew or reasonably should have known had  
6 dangerous propensities for abusing their authority and for mistreating  
7 citizens by failing to follow Federal law, state law, and CITY's own  
8 municipal ordinances and policies.

9 (b) Of inadequately supervising, training, controlling, assigning, and  
10 disciplining CITY police officers and other personnel including  
11 DEFENDANTS DOES 1-8 who CITY knew or in the exercise of reasonable  
12 care should have known had the mentioned propensities and character traits.

13 (c) By maintaining grossly inadequate procedures for reporting,  
14 supervising, investigating, reviewing, disciplining and controlling the  
15 intentional misconduct by DEFENDANTS DOES 1-8.

16 (d) By failing to discipline CITY police officers' conduct, including but  
17 not limited to unlawful detention, arrest, search and seizure of  
18 PLAINTIFF'S person and property.

19 (e) By ratifying the intentional misconduct of police officers of CITY.

20 (f) By having and maintaining an unconstitutional policy, custom, and  
21 practice of detaining and/or arresting individuals without probable cause or  
22 reasonable suspicion which also is demonstrated by inadequate training  
23 regarding these subjects. The policies, customs and practices of DOES 1-8,  
24 were done with a deliberate indifference to individuals' rights.

25  
26 73. DEFENDANT CITY and DOES 1-8, together with various other officials  
27 whether named or unnamed, had either actual knowledge or constructive  
28 knowledge of the deficient policies, practices and customs alleged. Despite having



1 knowledge as stated these defendants condoned, tolerated and through actions and  
2 inactions thereby ratified such policies. Said defendants also acted with deliberate  
3 indifference to the foreseeable effects and consequences of these policies with  
4 respect to the Constitutional rights of PLAINTIFF and other individuals similarly  
5 situated.

6  
7 74. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct  
8 and other wrongful acts, CITY and DOES 1-8 acted with an intentional, reckless,  
9 and callous disregard for the safety, life and Constitutional rights of PLAINTIFF.  
10 Each of their actions was willful, wanton, oppressive, malicious, fraudulent, and  
11 extremely offensive and unconscionable to any person of normal sensibilities.

12  
13 75. Furthermore, the policies, customs and practices implemented and maintained  
14 and still tolerated by CITY and DOES 1-7, were affirmatively applied to and were  
15 a significantly influential force behind the injuries of PLAINTIFF.

16  
17 76. By reason of the mentioned acts and omissions of CITY and DOES 1-8,  
18 PLAINTIFF was caused to incur legal expenses, loss of earning and health  
19 problems.

20  
21 77. Accordingly, CITY and DOES 1-8 are each liable for to PLAINTIFF for  
22 compensatory damages under 42 U.S.C. 1983.

23  
24 78. The conduct of CITY and DOE DEFENDANTS 1-8 was willful, wanton,  
25 malicious, oppressive and done with reckless disregard for the rights and safety of  
26 PLAINTIFF and thereby warrants the imposition of exemplary and punitive  
27 damages as to DEFENDANT CITY OF REDONDO BEACH and DOE  
28 DEFENDANTS 1-8.

1 79. PLAINTIFF seeks damages against the DEFENDANT CITY OF  
2 REDONDO BEACH and DOE DEFENDANTS 1-8 in an amount according to  
3 proof for losses incurred as a result of their ongoing violations of PLAINTIFF'S  
4 rights since August 7, 2010, for the warrantless search of PLAINTIFF'S firearm,  
5 his detention, seizure, search and the subsequent illegal seizure of his valuable  
6 property (firearm, firearm's case, padlock and key) on May 21, 2012 and for  
7 expenditures (fees/costs) associated with the defense of criminal charges due to its  
8 officially promulgated policy, custom and/or persistent practice and/or deliberately  
9 indifferent training.

10  
11 **THIRD CLAIM FOR RELIEF:**

12 **FIRST AMENDMENT, SECOND AMENDMENT, FOURTH**  
13 **AMENDMENT, FOURTEENTH AMENDMENT UNITED STATES**

14 **CONSTITUTION**

15 **42 USC § 1983, 1988 - INJUNCTIVE/DECLARATORY RELIEF**

16 **PLAINTIFF vs DEFENDANT CITY OF REDONDO BEACH**

17 80. All of the above paragraphs are re-alleged and incorporated herein by  
18 reference with the same force and effect as if fully set forth herein. PLAINTIFF  
19 realizes that this count has been temporarily dismissed but given that the condition  
20 for the Younger Abstention may be lifted, PLAINTIFF is keeping the claim in for  
21 now but is not seeking to move it forward until the Abstention is lifted.

22  
23 81. Redondo Beach City ordinances 4-35.01 AND 4-35.20 are unconstitutional  
24 on their face, and as applied in this case. Mere possession or carrying of a firearm,  
25 (i.e., exercising a fundamental right) when otherwise lawful cannot support the  
26 unlawful detention, search, arrest, prosecution, and seizure of a firearm and other  
27 property which is lawfully possessed and carried under both state and Federal law.  
28 California law preempts local governments from regulating the possession and

1 carrying of firearms. The Second Amendment guarantees the right to carry a  
2 firearm for the purpose of self-defense and for other lawful purposes. The First  
3 Amendment guarantees the right to engage in peaceful protest with an unloaded  
4 firearm. The Fourth Amendment guarantees PLAINTIFF the right to be secure  
5 from unreasonable searches and seizures. CITY'S ongoing and unjustified  
6 violation of PLAINTIFF'S First, Second, Fourth and Fourteenth Amendment  
7 rights deprived PLAINTIFF of his right to peaceful protest and assembly under the  
8 First Amendment, his right to openly carry a firearm under the Second  
9 Amendment, his right against unreasonable search and seizure as guaranteed by the  
10 Fourth Amendment, all applied to states, local governments, state actors and agents  
11 of the states by the Fourteenth Amendment and his right to due process. The  
12 deprivation began on August 7, 2010 and continues to the present date.

13  
14 82. PLAINTIFF requests declaratory and/or prospective injunctive relief under  
15 42 U.S.C. § 1983 that Redondo Beach City ordinances 4-35.01 AND 4-35.20 are  
16 unconstitutional on their face and as applied in this case and are a violation of his  
17 Second Amendment Right to Openly Carry a firearm for the purpose of self-  
18 defense and for other lawful purposes, a violation of Plaintiff's Fourth Amendment  
19 rights from unlawful search and seizure and Plaintiff's Fourteenth Amendment  
20 right to equal protection due to DEFENDANT'S officially promulgated policy,  
21 custom and/or persistent practice and/or deliberately indifferent training..

22  
23 **SCOPE OF REQUESTED INJUNCTIVE RELIEF**

24 83. All of the above paragraphs are re-alleged and incorporated herein by  
25 reference with the same force and effect as if fully set forth herein.

26  
27 84. An injunction against California Penal Code Sections 25850, 26350 and  
28 26400 would enable PLAINTIFF and persons not prohibited from possessing

1 firearms to openly carry a firearm, loaded and unloaded, in places not otherwise  
2 prohibited by state or Federal law. For example, an injunction against 25850 would  
3 enable Plaintiff and similarly situated individuals to openly carry a loaded firearm  
4 in many places where it is now legal to openly carry a sheath knife with the notable  
5 exception of within 1,000 feet of a K-12 public or private school (see Penal Code  
6 section 626.9) wherein firearms must be unloaded and handguns unloaded and in a  
7 fully enclosed lock container (other than the vehicle's glove compartment). An  
8 injunction against 26350 & 26400 would restore the status quo which existed when  
9 this action was first filed (Nov. 30, 2011).

10  
11 85. An injunction against California Penal Code Sections 26150, 26155, 26160,  
12 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, 26220  
13 would enable PLAINTIFF and persons not prohibited from possessing firearms to  
14 obtain a license to openly carry a loaded handgun in the same places in which a  
15 person with an unrestricted license can carry a loaded handgun concealed. Unlike  
16 the numerous and burdensome licensing provisions for licenses to carry a  
17 concealed handgun, PLAINTIFF and persons not prohibited from possessing  
18 firearms would not have to provide any identifying information beyond that which  
19 is required to undergo a background check through the FBI National Instant  
20 Criminal Background Check System (NICS). The issuance of a license is  
21 PLAINTIFF'S alternate position. PLAINTIFF submits that no license is required  
22 for a private citizen to exercise his Second Amendment right to self-defense.

23  
24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, PLAINTIFF prays for the following relief:

26 A. Declaratory judgment that Penal Code section 25850 is invalid in that  
27 and to the extent that it is applied to prohibit private citizens who are  
28 otherwise qualified to possess firearms from openly carrying loaded firearms

1 for the purpose of self-defense on their own property, in their vehicles and in  
2 non-sensitive public places;

3 B. Injunctive relief restraining Defendants and their officers, agents,  
4 servants, employees, and all persons in concert or participation with them  
5 who receive notice of this injunction, from enforcing PC 25850 against  
6 private citizens who are otherwise qualified to possess firearms from openly  
7 carrying loaded firearms for the purpose of self-defense on their own  
8 property, in their vehicles and in non-sensitive public places;

9 C. Declaratory judgment that Penal Code section 26350 is invalid in that  
10 and to the extent that it is applied to prohibit private citizens who are  
11 otherwise qualified to possess firearms from openly carrying unloaded  
12 handguns for the purpose of self-defense on their own property, in their  
13 vehicles and in non-sensitive public places;

14 D. Injunctive relief restraining Defendants and their officers, agents,  
15 servants, employees, and all persons in concert or participation with them  
16 who receive notice of this injunction, from enforcing PC 26350 against  
17 private citizens who are otherwise qualified to possess firearms from openly  
18 carrying unloaded firearms for the purpose of self-defense on their own  
19 property, in their vehicles and in non-sensitive public places;

20 E. Declaratory judgment that Penal Code section 26400 is invalid in that  
21 and to the extent that it is applied to prohibit private citizens who are  
22 otherwise qualified to possess firearms from openly carrying unloaded  
23 firearms that are not handguns for the purpose of self-defense on their own  
24 property, in their vehicles and in non-sensitive public places;

25 F. Injunctive relief restraining Defendants and their officers, agents,  
26 servants, employees, and all persons in concert or participation with them  
27 who receive notice of this injunction, from enforcing PC 26400 against  
28 private citizens who are otherwise qualified to possess firearms from openly

1 carrying firearms for the purpose of self-defense on their own property, in  
2 their vehicles and in non-sensitive public places;

3 G. Declaratory judgment that Penal Code sections 26150, 26155, 26165,  
4 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, 26215, and  
5 26220 are invalid in that and to the extent that it is applied to prohibit or  
6 infringe private citizens, beyond that which is required to conduct an FBI  
7 instant background check, who are otherwise qualified to possess firearms,  
8 from being issued a license to openly carry firearms, loaded and unloaded,  
9 for the purpose of self-defense on their own property, in their vehicles and in  
10 non-sensitive public places;

11 H. Injunctive relief restraining Defendants and their officers, agents,  
12 servants, employees, and all persons in concert or participation with them  
13 who receive notice of this injunction, from enforcing Penal Code sections  
14 26150, 26155, 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205,  
15 26210, 26215, and 26220 to the extent that it is applied to prohibit or  
16 infringe private citizens, beyond that which is required to conduct an FBI  
17 instant background check, who are otherwise qualified to possess firearms,  
18 from being issued a license to openly carry firearms, loaded and unloaded,  
19 for the purpose of self-defense on their own property, in their vehicles and in  
20 non-sensitive public places;

21 I. General damages in the amount to be proven at trial (excluding  
22 DEFENDANT HARRIS);

23 J. Special damages according to proof; including medical expenses and  
24 loss of earnings (excluding DEFENDANT HARRIS);

25 K. For punitive damages against the individual defendants (excluding  
26 DEFENDANT HARRIS) in an amount to be proven at trial;

27 L. For interest (excluding DEFENDANT HARRIS);

28 M. Award costs of this action to PLAINTIFF;

1 N. Award reasonable attorney fees and costs to the PLAINTIFF on all  
2 Claims of the complaint, including but not limited to fee/cost awards under  
3 42 USC § 1983, 1988 and California Code of Civil Procedure § 1021.5;

4 O. Compel the immediate return of PLAINTIFF'S property;

5 P. A Declaration that Open Carry is the right guaranteed by the  
6 Constitution in non-sensitive public-places;

7 Q. A Declaration that firearms openly carried which do not have live  
8 ammunition in the firing chamber are unloaded and that possession of  
9 matching ammunition with an openly carried unloaded firearm does not  
10 make the firearm "loaded" regardless of whether or not the ammunition is  
11 attached in any way to the firearm;

12 R. A Declaration that no license is required to openly carry a firearm for  
13 the purpose of self-defense;

14 S. A Declaration that private residential property is not a public place  
15 regardless of whether or not it is fully enclosed by a fence or barrier.

16 T. A Declaration that a private motor vehicle and any attached campers  
17 or trailers are not public places and firearms may be carried therein.

18 U. Damages and/or Declaratory relief under 28 USC §§ 2201, 2202;

19 V. Declaratory judgment that Redondo Beach Municipal Code section 4-  
20 35.20 is invalid in that and to the extent that it is applied to prohibit private  
21 citizens who are otherwise qualified to possess weapons from openly  
22 carrying weapons for the purpose of self-defense;

23 W. Injunctive relief restraining Defendants and their officers, agents,  
24 servants, employees, and all persons in concert or participation with them  
25 who receive notice of this injunction, from enforcing Redondo Beach  
26 Municipal Code section 4-35.20 against private citizens who are otherwise  
27 qualified to possess weapons for the purpose of self-defense;

28 X. Such other and further relief as this Court may deem appropriate.


**DEMAND FOR JURY TRIAL**

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PLAINTIFF hereby requests a jury trial on all issues raised in this complaint.

Dated: March 12, 2013

Respectfully submitted,

  
By: Charles Nichols  
PLAINTIFF in Pro Per  
PO Box 1302  
Redondo Beach, CA 90278  
Voice: (424) 634-7381  
E-Mail:  
CharlesNichols@Pykrete.info

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **SECOND AMENDED COMPLAINT** was served via United States Mail, postage prepaid, on this 29, day of March, 2013; on the following:

KAMALA D. HARRIS

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PETER K. SOUTHWORTH

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State Bar No. 184162

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Attorneys for Defendant California Attorney General Kamala Harris

AND

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LISA BOND

AARÓN C. O'DELL

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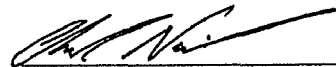
A Professional Corporation

355 South Grand Avenue, 40<sup>th</sup> Floor

Los Angeles, California 90071-3101

Attorney for Defendants:

CITY OF REDONDO BEACH and DOES 1 to 10



Charles Nichols

Plaintiff, In Pro Per

Case No. CV-11-9916 SJO (SS)

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Charles Nichols  
PO Box 1302  
Redondo Beach, CA 90278  
Voice: (424) 634-7381  
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In Pro Per

2013 APR 10 PM 2:43

CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY: 

**United States District Court  
Central District of California**

Charles Nichols,  
  
                    PLAINTIFF,  
  
                    vs.  
  
KAMALA D. HARRIS, Attorney  
General, in her official capacity as  
Attorney General of California, CITY  
OF REDONDO BEACH and DOES 1  
to 10,  
  
                    Defendants.

**Case No.: CV-11-9916 SJO (SS)**

**NOTICE OF MOTION AND  
MOTION FOR A PRELIMINARY  
INJUNCTION**

Date: May 20, 2013  
Time: 10:00 a.m.  
Location: United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012-4701  
Courtroom: 1 - 2nd Floor  
Judge: Samuel James Otero  
Date Action Filed: November 30, 2011

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR A PRELIMINARY  
INJUNCTION**

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 Notice is hereby given that on May 20, 2013, at 10:00 a.m., or as soon  
3 thereafter as counsel may be heard by the above-entitled Court, located at 312  
4 North Spring Street Los Angeles, CA 90012-4701 California, in the courtroom of  
5 the Honorable Judge Samuel James Otero, Plaintiff Charles Nichols will and  
6 hereby does move for a preliminary injunction pursuant to Rule 65(a) of the  
7 Federal Rules of Civil Procedure.

8  
9 Plaintiff will seek an order preliminarily enjoining Defendant KAMALA D.  
10 HARRIS, Attorney General, in her official capacity as Attorney General of  
11 California, her officers, agents, servants, employees, attorneys, and all other  
12 persons who are in active concert or participation with her and who receive actual  
13 notice of the injunction from:

14  
15 1. Enforcing California Penal Code section 25850(a) to the extent it  
16 penalizes, prohibits, or infringes on the right of PLAINTIFF and similarly situated  
17 individuals, who are not prohibited from possessing firearms, from openly carrying  
18 loaded firearms; in non-sensitive public places, on private residential property and  
19 inside or on a motor vehicle for the purpose of self-defense and for other lawful  
20 purposes.

21  
22 2. Enforcing California Penal Code section 25850(b).

23  
24 3. Enforcing California Penal Code section 26350.

25  
26 4. Enforcing California Penal Code section 26400.

27  
28  
**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR A PRELIMINARY**  
**INJUNCTION**

1 This Motion will be made on the grounds that immediate and irreparable  
2 injury will result to Plaintiff and similarly situated individuals unless the laws  
3 described above are enjoined pending resolution of this action. Plaintiff is likely to  
4 succeed on the merits because these laws violate Plaintiff's and similarly situated  
5 individuals right to openly carry firearms for the purpose of self-defense and for  
6 other lawful purposes under the Second Amendment and, in particular, his right to  
7 "possess and carry firearms in case of confrontation" as well as his right under the  
8 Fourth Amendment to be free from unlawful searches and seizures at the hands of  
9 California police officers and his Fourteenth Amendment right to Equal Protection  
10 under the law.

11  
12 Further, this motion will be based on this notice of motion and motion, the  
13 accompanying memorandum of points and authorities, the declaration and  
14 materials filed concurrently herewith, any matters of which the court may or is  
15 required to take judicial notice, the papers on file, and upon any further matters the  
16 Court deems appropriate.

17  
18  
19  
20 Dated: April 8, 2013

Respectfully submitted,

21  
22 

23 By: Charles Nichols  
24 PLAINTIFF in Pro Per  
25 PO Box 1302  
26 Redondo Beach, CA 90278  
27 Voice: (424) 634-7381  
28 E-Mail: CharlesNichols@Pykrete.info

///

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR A PRELIMINARY**  
**INJUNCTION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION** was served via United States Mail, postage prepaid, on this 9, day of April, 2013; on the following:

**KAMALA D. HARRIS**

Attorney General of California

**PETER K. SOUTHWORTH**

Supervising Deputy Attorney General

**JONATHAN M. EISENBERG**

Deputy Attorney General

State Bar No. 184162

300 South Spring Street, Suite 1702

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Attorney for Defendants:

**CITY OF REDONDO BEACH and DOES 1 to 10**



Charles Nichols

Plaintiff, In Pro Per

Case No. CV-11-9916 SJO (SS)

ORIGINAL

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3 Redondo Beach, CA 90278  
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6 In Pro Per

2013 APR 10 PM 2:43

CLERK OF COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

AP

8 United States District Court  
9 Central District of California

11 Charles Nichols,  
12 PLAINTIFF,  
13 vs.  
14 KAMALA D. HARRIS, Attorney  
15 General, in her official capacity as  
16 Attorney General of California, CITY  
17 OF REDONDO BEACH and DOES 1  
18 to 10,  
19 Defendants.

Case No.: CV-11-9916 SJO (SS)  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR A  
PRELIMINARY INJUNCTION

[Fed. R. Civ. P. 65]

Date: May 20, 2013  
Time: 10:00 a.m.  
Location: United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012-4701  
Courtroom: 1 - 2nd Floor  
Judge: Samuel James Otero  
Date Action Filed: November 30, 2011

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**INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 65, PLAINTIFF moves for a preliminary injunction barring the enforcement of California Penal Code sections 25850(a), 25850(b), 26350 and 26400 to the extent they prohibit, or infringe on the right of PLAINTIFF and similarly situated individuals, who are not prohibited from possessing firearms, from openly carrying firearms; in non-sensitive public places, on private residential property and inside or on a motor vehicle for the purpose of self-defense and for other lawful purposes. Penal Code section 25850(a) violates the U.S. Constitution by prohibiting the Open Carry of loaded firearms; in non-sensitive public places, on residential property and inside or on a motor vehicle for the purpose of self-defense and for other lawful purposes. Penal Code section 26350 violates the U.S. Constitution by prohibiting the Open Carry of an unloaded handgun; in non-sensitive public places, on residential property and inside or on a motor vehicle for the purpose of self-defense and for other lawful purposes. Penal Code section 26400 violates the U.S. Constitution by prohibiting the Open Carry of unloaded firearms that are not handguns; in non-sensitive public places, and on residential property, for the purpose of self-defense and for other lawful purposes. Private citizens who violate these statutes face arrest, prosecution fine and imprisonment. PLAINTIFF is likely to succeed on the merits of his constitutional challenge to Penal Code sections 25850, 26350 and 26400. Unless the Court grants a preliminary injunction, PLAINTIFF and similarly situated individuals will suffer immediate and irreparable injury because they will be subject to unlawful searches and seizures at the hands of California police officers, unlawful prosecutions, fines and imprisonment and will be unable to exercise their Second Amendment right to openly carry firearms in case of confrontation in California. The public interest will also be harmed if a preliminary injunction is not granted because it will result in systemic violations of constitutional rights

**MOTION FOR PRELIMINARY INJUNCTION**

1 throughout the state of California. Additionally, PC 26350 and PC 26400 should  
2 be preliminarily enjoined to preserve the status quo which had existed for over 160  
3 years while the Court adjudicates their constitutionality. The State's laws, if not  
4 preliminarily enjoined, also poses an immediate threat to public safety, as  
5 California residents have been and continue to be wrongfully denied the right and  
6 the full ability to defend their persons from criminal attack on their own residential  
7 property, in their motor vehicles and in non-sensitive public places. California has  
8 no valid interest in completely banning PLAINTIFF and similarly situated  
9 individuals from openly carrying firearms for the purpose of self-defense and for  
10 other lawful purposes. Therefore, the balance of interests falls heavily on  
11 PLAINTIFF'S side, and preliminary injunctive relief is warranted and appropriate.

#### 12 13 **PROCEDURAL AND FACTUAL BACKGROUND**

14 Effective January 1, 2012, California Penal Code section 12031 was  
15 repealed and section 25850, which similarly prohibits carrying a loaded firearm in  
16 public, became operative. Effective January 1, 2012, California Penal Code  
17 section 26350 which prohibits carrying an unloaded handgun in public became  
18 operative. Effective January 1, 2013, California Penal Code section 26400 which  
19 prohibits carrying an unloaded firearm that is not a handgun in public became  
20 operative.

21  
22 PLAINTIFF'S action was filed on November 30, 2011. On January 17,  
23 2012 PLAINTIFF filed an Ex Parte Application to Submit a Document Under Seal  
24 [Docket #10] which was an Incident Report filed with the Los Angeles County  
25 Sheriff's Department regarding a death threat against PLAINTIFF in support of his  
26 Complaint [Docket #1]. The application was denied on January 19, 2012 [Docket  
27 #11]. On May 7, 2012 the motions to dismiss [Docket #12 &13] were granted. On  
28 May 30, 2012 PLAINTIFF filed his First Amended Complaint [Docket #47]. On

#### **MOTION FOR PRELIMINARY INJUNCTION**

1 June 29, 2012 DEFENDANT HARRIS filed a motion to dismiss the FAC [Docket  
2 #58]. On March 3, 2013 her motion to dismiss was denied [Docket #82].  
3 PLAINTIFF filed his Second Amended Complaint on March 29, 2013.  
4

5 **Penal Code Section 25850(a) Bans The Open Carry Of Loaded Firearms.**

6 PC 25850(a) makes it a crime for PLAINTIFF to openly carry a loaded  
7 firearm: on his own residential property if it is not fully enclosed by a fence  
8 sufficiently tall to prevent access by the public, in a vehicle while in any public  
9 place or on any public street in an incorporated city or in any public place or on  
10 any public street in a prohibited area of unincorporated territory. PC 25850 does  
11 not contain a self-defense exception. PC 17030 defines "prohibited area" as  
12 "...any place where it is unlawful to discharge a weapon."  
13

14 **Penal Code Section 25850(b) Makes Refusal To Consent To A Search**  
15 **"Probable Cause" For An Arrest.**

16 PC 25850(b) states "Refusal to allow a peace officer to inspect a firearm  
17 pursuant to this section constitutes probable cause for arrest for violation of this  
18 section."  
19

20 **Penal Code Section 26350 Makes It A Crime To Openly Carry An Unloaded**  
21 **Handgun In Public.**

22 PC 26350 makes it a crime to openly carry an unloaded handgun when that  
23 person carries upon his or her person an exposed and unloaded handgun outside a  
24 vehicle while in or on any of the following: A public place or public street in an  
25 incorporated city or city and county, a public street in a prohibited area of an  
26 unincorporated area of a county or city and county, a public place in a prohibited  
27 area of a county or city and county, when a person carries an exposed and  
28 unloaded handgun inside or on a vehicle, whether or not on his or her person, while

**MOTION FOR PRELIMINARY INJUNCTION**

1 in or on any of the following: a public place or public street in an incorporated city  
2 or city and county, a public street in a prohibited area of an unincorporated area  
3 of a county or city and county, a public place in a prohibited area of a county or  
4 city and county. PC 17030 defines "prohibited area" as "...any place where it is  
5 unlawful to discharge a weapon." PC 26350 does not contain a self-defense  
6 exception.

7  
8 **Penal Code Section 26400 Makes It A Crime To Openly Carry An Unloaded**  
9 **Firearm That Is Not A Handgun.**

10 PC 26400 makes it a crime to openly carry an unloaded firearm that is not a  
11 handgun in an incorporated city or city and county when that person carries upon  
12 his or her person an unloaded firearm that is not a handgun outside a vehicle while  
13 in an incorporated city or city and county.

14  
15 **A PRELIMINARY INJUNCTION IS PROPER – ARGUMENT**

16  
17 "A plaintiff seeking a preliminary injunction must establish that he is likely  
18 to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
19 of preliminary relief, that the balance of equities tips in his favor, and that an  
20 injunction is in the public interest." *Winter v. Natural Resources Defense Council,*  
21 *Inc.*, 129 S. Ct. 365 - Supreme Court 2008 at 374. 555 U.S. 7, 20, 129 S.Ct. 365,  
22 172 L.Ed.2d 249 (2008). All four factors are established here.

23  
24 "Under the "sliding scale" approach to preliminary injunctions observed in  
25 this circuit, "the elements of the preliminary injunction test are balanced, so that a  
26 stronger showing of one element may offset a weaker showing of another."  
27 *Alliance for the Wild Rockies*, 632 F.3d at 1131 (citing *Clear Channel Outdoor,*  
28 *Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir.2003)). "[A]t an irreducible

**MOTION FOR PRELIMINARY INJUNCTION**

1 minimum," though, "the moving party must demonstrate a fair chance of success  
2 on the merits, or questions serious enough to require litigation." *Guzman v.*  
3 *Shewry*, 552 F.3d 941, 948 (9th Cir.2009)." *Pimentel v. Dreyfus*, 670 F. 3d 1096 -  
4 Court of Appeals, 9th Circuit 2012 at 1106. Given the Seventh Circuit Court of  
5 Appeals decision in *Moore v. Madigan*, 702 F. 3d 933 - Court of Appeals, 7th  
6 Circuit 2012 (en banc petition denied February 22, 2013), *Ezell v. City of Chicago*,  
7 651 F.3d 684 (7th Cir. 2011) the Tenth Circuit Court of Appeals decision in  
8 *Peterson v. Martinez*, Court of Appeals, 10th Circuit 2013 (No. 11-1149), and the  
9 losing "concealed carry" of handgun lawsuits such as *Hightower v. City of Boston*,  
10 693 F. 3d 61 - Court of Appeals, 1st Circuit 2012 (en banc denied 9-24-2012),  
11 *Kachalsky v. County of Westchester*, 701 F. 3d 81 - Court of Appeals, 2nd Circuit  
12 2012 (Petition for a writ of certiorari filed with U.S. Supreme Court on 1-8-2013),  
13 *WOOLLARD v. Gallagher*, Court of Appeals, 4th Circuit 2013 (No. 12-1437), *US*  
14 *v. Masciandaro*, 638 F. 3d 458 - Court of Appeals, 4th Circuit 2011, the Ninth  
15 Circuit decisions beginning with *US v. Vongxay*, 594 F. 3d 1111 - Court of  
16 Appeals, 9th Circuit 2010 as well as *US v. Fuentes*, 105 F. 3d 487 - Court of  
17 Appeals, 9th Circuit 1997 and the recent California State court decisions in *People*  
18 *v. Jones* 54 Cal. 4th 350; 278 P.3d 821; 142 Cal. Rptr. 3d 561; 2012 Cal. LEXIS  
19 5797 and *People v. Mitchell*, Cal. App. 4th Dist., Oct. 11, 2012 - D059254A -  
20 PLAINTIFF has far more than a fair chance of success on the merits.

21  
22 **I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS.**

23 **A. Plaintiff is likely to succeed in his claim that PC 25850(a) violates the**  
24 **Second and Fourteenth Amendments of the U.S. Constitution and is**  
25 **unconstitutionally vague.**

26  
27 PC 25850(a), on its face and as applied, penalizes the Second Amendment  
28 Right to openly carry a loaded firearm in public. PLAINTIFF, like all persons who

**MOTION FOR PRELIMINARY INJUNCTION**

1 fall within the scope of the Second Amendment, has the right to openly carry a  
2 loaded firearm in non-sensitive public places for the purpose of self-defense and  
3 for other lawful purposes. "In *Nunn v. State*, 1 Ga. 243, 251 (1846), the Georgia  
4 Supreme Court construed the Second Amendment as protecting the "natural right  
5 of self-defence" and therefore struck down a ban on carrying pistols openly. Its  
6 opinion perfectly captured the way in which the operative clause of the Second  
7 Amendment furthers the purpose announced in the prefatory clause, in continuity  
8 with the English right... Likewise, in *State v. Chandler*, 5 La. Ann. 489, 490  
9 (1850), the Louisiana Supreme Court held that citizens had a right to carry arms  
10 openly: "This is the right guaranteed by the Constitution of the United States, and  
11 which is calculated to incite men to a manly and noble defence of themselves, if  
12 necessary, and of their country, without any tendency to secret advantages and  
13 unmanly assassinations." *District of Columbia v. Heller*, 554 U.S. 570 (2008) at  
14 2809, 128 S. Ct. 2783; 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268.

15  
16 The majority opinion in *Heller* does not say "...the right of law-abiding,  
17 responsible citizens to use arms in defense of hearth and home." is "...the core of  
18 the Second Amendment right..." It is Justice Breyer in his dissent which makes  
19 that allusion at 2869 and even then he is referring to Justice Stevens' dissent at  
20 2846. The conclusion of the majority is that "self-defense" is the "central  
21 component of the right itself." *Heller* at 2801.

22  
23 "Not surprisingly, the plurality opinion in the Court's later Second  
24 Amendment case described the "central holding in *Heller*" as "the Second  
25 Amendment protects a personal right to keep and bear arms for lawful purposes."  
26 *McDonald v. City of Chicago*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3020, 3044, 177 L.Ed.2d  
27 894 (2010)" *US v. Potter*, 630 F. 3d 1260 - Court of Appeals, 9th Circuit 2011

28  
**MOTION FOR PRELIMINARY INJUNCTION**



1           “At the time of the founding, as now, to "bear" meant to "carry." See  
2 Johnson 161; Webster; T. Sheridan, A Complete Dictionary of the English  
3 Language (1796); 2 Oxford English Dictionary 20 (2d ed.1989) (hereinafter  
4 Oxford). When used with "arms," however, the term has a meaning that refers to  
5 carrying for a particular purpose—confrontation. In *Muscarello v. United States*,  
6 524 U.S. 125, 118 S.Ct. 1911, 141 L.Ed.2d 111 (1998), in the course of analyzing  
7 the meaning of "carries a firearm" in a federal criminal statute, Justice GINSBURG  
8 wrote that "[s]urely a most familiar meaning is, as the Constitution's Second  
9 Amendment . . . indicate[s]: 'wear, bear, or carry . . . upon the person or in the  
10 clothing or in a pocket, for the purpose . . . of being armed and ready for  
11 offensive or defensive action in a case of conflict with another person.'" *Id.*, at  
12 143, 118 S.Ct. 1911 (dissenting opinion) (quoting *Black's Law Dictionary* 214 (6th  
13 ed.1998)). We think that Justice GINSBURG accurately captured the natural  
14 meaning of "bear arms." Although the phrase implies that the carrying of the  
15 weapon is for the purpose of "offensive or defensive action," it in no way connotes  
16 participation in a structured military organization." *Heller* at 2793 (emphasis  
17 added).

18  
19           “Both *Heller* and *McDonald* do say that "the need for defense of self, family,  
20 and property is most acute" in the home, *id.* at 3036 (emphasis added); 554 U.S. at  
21 628, 128 S.Ct. 2783, but that doesn't mean it is not acute outside the home. *Heller*  
22 repeatedly invokes a broader Second Amendment right than the right to have a gun  
23 in one's home, as when it says that the amendment "guarantee[s] the individual  
24 right to possess and carry weapons in case of confrontation." 554 U.S. at 592, 128  
25 S.Ct. 2783. Confrontations are not limited to the home." *Moore v. Madigan*, 702 F.  
26 3d 933 - Court of Appeals, 7th Circuit 2012 at 936-937

27  
28  
**MOTION FOR PRELIMINARY INJUNCTION**

1            "...the Supreme Court made clear in *Heller* that it wasn't going to make the  
2 right to bear arms depend on casualty counts. 554 U.S. at 636, 128 S.Ct. 2783. If  
3 the mere possibility that allowing guns to be carried in public would increase the  
4 crime or death rates sufficed to justify a ban, *Heller* would have been decided the  
5 other way, for that possibility was as great in the District of Columbia as it is in  
6 Illinois." *Moore* at 939.

7  
8            "...had Peterson challenged the Denver ordinance, he may have obtained a  
9 ruling that allows him to carry a firearm openly while maintaining the state's  
10 restrictions on concealed carry. The specific constitutional challenge thus  
11 delineates the proper form of relief and clarifies the particular Second Amendment  
12 restriction that is before us." *Peterson v. Martinez*, Court of Appeals, 10th Circuit  
13 2013 at pg 20.

14  
15            "The Second Amendment states in its entirety that "a well regulated Militia,  
16 being necessary to the security of a free State, the right of the people to keep and  
17 bear Arms, shall not be infringed" (emphasis added). The right to "bear" as distinct  
18 from the right to "keep" arms is unlikely to refer to the home. To speak of  
19 "bearing" arms within one's home would at all times have been an awkward usage.  
20 A right to bear arms thus implies a right to carry a loaded gun outside the home."  
21 *Moore* at 936.

22  
23            The Second Amendment states: "A well regulated Militia, being necessary  
24 to the security of a free State, the right of the people to keep and bear Arms, shall  
25 not be infringed." U.S. Const. amend. II. In *Heller*, the Supreme Court struck down  
26 the District of Columbia's ban on handgun possession, concluding that the Second  
27 Amendment "guarantee[s] the individual right to possess and carry weapons in  
28

**MOTION FOR PRELIMINARY INJUNCTION**

1 case of confrontation." *US v. Henry*, 688 F. 3d 637 - Court of Appeals, 9th Circuit  
2 2012 at 639-640.

3  
4 In *McDonald v. City of Chicago*, 561 U.S. 3025, 130 S. Ct. 3020, 177 L. Ed.  
5 2d 894 (2010) Justice Alito delivered the majority opinion for the court in which  
6 he stated in the very first line of the decision "Two years ago, in *District of*  
7 *Columbia v. Heller*, 554 U.S. \_\_\_, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), we  
8 held that the Second Amendment protects the right to keep and bear arms for the  
9 purpose of self-defense, **and** we struck down a District of Columbia law that  
10 banned the possession of handguns in the home." (Emphasis added).

11  
12 Justice Scalia's majority opinion in *Heller* is 64 pages long. Justice Alito's  
13 majority opinion in *McDonald* is 45 pages long. Justice Scalia's concurrence in  
14 *McDonald* is 15 pages long. Justice Thomas' opinion in *McDonald* is 56 pages  
15 long. Nowhere, in either decision, does the majority even remotely suggest that  
16 the scope of the Second Amendment is limited to the narrow confines of one's  
17 home. It was not until Section IV, page 56 of *Heller* that the court finally turned to  
18 the D.C., in home handgun possession ban - "We turn finally to the law at issue  
19 here." Indeed, had the court intended to limit the scope of the Second Amendment  
20 to the narrow confines of one's home it could have done so with very few lines.

21  
22 The California ban on openly carrying loaded firearms applies to all  
23 incorporated cities as well as to prohibited areas of unincorporated county territory  
24 which PC 17030 defines as "...any place where it is unlawful to discharge a  
25 weapon." Los Angeles County has a countywide ban on the discharge of a  
26 weapon. Orange County has a ban on the discharge of a weapon in some  
27 unincorporated county territory. San Bernardino County has no ban on the  
28 discharge of a weapon in unincorporated county territory. Some counties provide

**MOTION FOR PRELIMINARY INJUNCTION**

1 vague exceptions for self-defense in their ordinances prohibiting the discharge of a  
2 firearm while others like Los Angeles County do not have any self-defense  
3 exception other than with imitation firearms.

4  
5 California's lone self-defense exception is Penal Code section 26045 which  
6 states in pertinent part: (a) Nothing in Section 25850 is intended to preclude the  
7 carrying of any loaded firearm, under circumstances where it would otherwise be  
8 lawful, by a person who reasonably believes that any person or the property of any  
9 person is in immediate, grave danger and that the carrying of the weapon is  
10 necessary for the preservation of that person or property. (c) As used in this  
11 section, "immediate" means the brief interval before and after the local law  
12 enforcement agency, when reasonably possible, has been notified of the danger and  
13 before the arrival of its assistance. Coupled with the bans on openly carrying  
14 unloaded firearms (PC 26350 & PC 26400) it is now impossible in most public  
15 places to even possess an unloaded firearm, so even the unconstitutionally  
16 restrictive threshold on carrying a loaded firearm only when one is in "immediate,  
17 grave danger" is unavailable to PLAINTIFF and similarly situated individuals.

18  
19 The only theoretical means available for private citizens to openly carry a  
20 loaded firearm, specifically firearms with a barrel length less than 16 inches (PC  
21 16530), is via a license issued pursuant to Penal Code sections 26150 & 26155 but  
22 these can only be issued to residents of counties within counties with a population  
23 of fewer than 200,000 people and these licenses are valid only in the county in  
24 which they are issued. Given that 94% of the people in this state reside in counties  
25 with a population of 200,000 or more persons, this is tantamount to a de jure ban  
26 on openly carried firearms (loaded and unloaded) in incorporated cities, towns and  
27 villages and in unincorporated county territory where the discharge of firearms is  
28 prohibited. Even absent the population and residency restrictions, the issuing

**MOTION FOR PRELIMINARY INJUNCTION**

1 authorities have an unfettered discretion in the issuance of Open Carry licenses  
2 (e.g., attorneys, bill collectors, insurance agents and brokers).

3  
4 “...it is clear that the Framers and ratifiers of the Fourteenth Amendment  
5 counted the right to keep and bear arms among those fundamental rights necessary  
6 to our system of ordered liberty.” *McDonald* at 3042.

7  
8 This disparate treatment is not limited to similarly situated individuals in  
9 incorporated cities, unincorporated county territory, and counties with a population  
10 of 200,000 or more people. California Penal Code section 626.9 allows “...the  
11 school district superintendent, his or her designee, or equivalent school  
12 authority...” to issue written permission slips to openly carry firearms within 1,000  
13 feet of a K-12 public or private school. Similarly, retired peace officers are  
14 generally exempt from the bans as are a host of special interest exemptions under  
15 the Business and Professions Code.

16  
17 “The phrase “public place” has not been used throughout the Penal Code  
18 with a clear and uniform legislative meaning.” *People v. Strider*, 177 Cal. App. 4th  
19 1393 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 2009 at 1401. In the  
20 context of carrying a loaded firearm in a public place, the court in *Strider*  
21 concluded that a sufficiently high fence that encloses residential property and acts  
22 as a barrier to public entry makes that residential property not a “public place.”

23  
24 In short, each time PLAINTIFF so much as steps outside of his door onto his  
25 private residential property with a firearm, loaded or unloaded, he is in violation of  
26 the statutes to which he seeks a preliminary injunction against while his neighbors  
27 with a sufficiently tall fence (4.5 to 5 feet tall) fully enclosing their property, or  
28 with permission from their local school (PC 626.9) or who are retired peace

**MOTION FOR PRELIMINARY INJUNCTION**

1 officers, are who have a handgun carry license are not in violation of PC 25850.  
2 This scenario does not even take into account a myriad of other factors such as  
3 exemptions to the unloaded open carry bans (PC 26350 & 26400) which may apply  
4 to PLAINTIFF'S neighbors who fall within one or more of the Business and  
5 Professions Code exemptions but not to PLAINTIFF.

6  
7 The California Courts cannot even agree on what constitutes a loaded  
8 firearm. *People v. Clark*, 45 Cal. App. 4th 1147 - Cal: Court of Appeal, 4th  
9 Appellate Dist., 1st Div. 1996 appeared to have restored the definition of a loaded  
10 firearm to what it was before former Penal Code section 12031 was enacted. A  
11 firearm is not loaded unless there is a live round in the firing chamber. "i.e., a shell  
12 placed in a position ready to be fired." *id.*, at 1155. *Rupf v. Yan*, 102 Cal. Rptr. 2d  
13 157 - Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. 2000 on the other hand  
14 concluded that an unloaded firearm is "loaded" if a magazine or clip containing  
15 ammunition is attached to the firearm even though there is not a live round in the  
16 firing chamber.

17  
18 Let us not forget the reason the California Legislature enacted the ban on  
19 openly carrying loaded firearms in public. It's explicitly stated intent was to  
20 disarm African-Americans. In particular, African-American members of the Black  
21 Panther Party for Self-Defense [Docket #1, Exhibits 2-4].

22  
23 "While not all court decisions in the 19th century were as supportive of the  
24 Second Amendment as was Nunn, no case from that century ruled that the Second  
25 Amendment was anything other than an individual right." Dave Kopel, "Guns in  
26 the Dock" - <http://www.davekopel.com/2A/Mags/Guns-in-the-Dock.htm>

27  
28  
**MOTION FOR PRELIMINARY INJUNCTION**

1           “But to be in conflict with the constitution, it is not essential that the act  
2 should contain a prohibition against bearing arms in every possible form; it is the  
3 right to bear arms in defence of the citizens and the state, that is secured by the  
4 constitution, and whatever restrains the full and complete exercise of that right,  
5 though not an entire destruction of it, is forbidden by the explicit language of the  
6 constitution.” *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90, 13 Am. Dec. 251 (1822)  
7 pg 92.

8  
9           “Writing for the court in an 1825 libel case, Chief Justice Parker wrote: "The  
10 liberty of the press was to be unrestrained, but he who used it was to be responsible  
11 in cases of its abuse; like the right to keep fire arms, which does not protect him  
12 who uses them for annoyance or destruction." *Commonwealth v. Blanding*, 20  
13 Mass. 304, 313-314. The analogy makes no sense if firearms could not be used for  
14 any individual purpose at all. See also Kates, *Handgun Prohibition and the Original*  
15 *Meaning of the Second Amendment*, 82 Mich. L.Rev. 204, 244 (1983) (19th-  
16 century courts never read "common defence" to limit the use of weapons to militia  
17 service).” *Heller* at 2803

18  
19           “More importantly, seven years earlier the Tennessee Supreme Court had  
20 treated the state constitutional provision as conferring a right "of all the free  
21 citizens of the State to keep and bear arms for their defence," *Simpson*, 13 Tenn.  
22 356, 5 Yer., at 360” *Heller* at 2809 citing *Simpson v. State*, 13 Tenn. (5 Yer.) 356  
23 (1833)

24  
25           Although the Ninth Circuit has yet to articulate a level of scrutiny for the  
26 carrying of concealed weapons, most of its Federal sister circuits and the State of  
27 California have applied intermediate scrutiny to this presumptively lawful  
28 prohibition. Even Judge Posner’s decision in *Moore* stated that Illinois can

**MOTION FOR PRELIMINARY INJUNCTION**

1 prohibit concealed carry pursuant to *Heller* if it wants to but did not articulate a  
2 level of scrutiny. This is not a concealed carry case, it is an Open Carry case. But  
3 even the 1924 California State Supreme Court in *In Re Rameriz* 193 Cal. 633; 226  
4 P. 914; 1924 Cal. LEXIS 351; 34 A.L.R. 51 which has been cited directly or  
5 indirectly in upholding convictions for unlicensed concealed carry ever since  
6 quoted *Nunn v. State* (cited as *Nunn v. Georgia*) the same as *Heller* did and  
7 remarked that an absolute prohibition on the right might be held to infringe a  
8 fundamental right. McDonald has already held that the Second Amendment right  
9 is fundamental and applicable to all state and local governments through the  
10 Fourteenth Amendment. Most recently in *Mitchell*, a concealed carry case, the  
11 California Courts said "Because the statute regulates but does not completely ban  
12 the carrying of a sharp instrument, we subject it to intermediate scrutiny."  
13

14 Even the municipal ordinance struck down in *Heller* was not a complete ban  
15 as it exempted in-home possession of handguns by some persons and the plaintiff  
16 himself had a license to openly carry a handgun in public. In such cases, such as  
17 existed in the District of Columbia and now exists in California, the Open Carry  
18 bans at issue cannot survive any level of scrutiny. Indeed, given the stated intent  
19 of California's Loaded Open Carry ban to disarm the African-American members  
20 of the Black Panther Party for Self-Defense, the law was unconstitutional the  
21 moment it was passed in July of 1967. The author of the Unloaded Open Carry  
22 bans argued on the Assembly and Senate floors that "You don't need a gun to buy  
23 a cheeseburger." How could this possibly survive even rational review were  
24 rational review even permissible? At a minimum, strict scrutiny is required.  
25

26 When PC 25850(a) was first enacted as PC 12031(a) in 1967 (subsequently  
27 PC 12031(a)(1)) it was intended to ban openly carried loaded firearms. California  
28 Penal Code section 654 prohibited punishment for more than one crime and

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1 California has had statewide regulation of carrying firearms concealed dating back  
2 to 1917. In 1969, it was held that PC 12031 (now PC 25850(a) in part) could be  
3 applied to any number of other offenses, including concealed carry, see *People v.*  
4 *Harrison* (1969) 1 Cal.App.3d 115 [81 Cal.Rptr. 396]. In 2012, the California  
5 Supreme Court held that "Because defendant's convictions were based on a single  
6 act, section 654 prohibits multiple punishment. As previously noted, we overrule  
7 *In re Hayes*, supra, 70 Cal.2d 604, and disapprove *People v. Harrison*, supra, 1  
8 Cal.App.3d 115." *People v. Jones*, 278 P. 3d 821 - Cal: Supreme Court 2012 at  
9 360.

10  
11 *Jones* greatly simplifies the constitutional analysis of PC 25850(a). Unless  
12 the California legislature modifies PC 654, a person may not be punished with  
13 multiple violations of the Penal Code (or Penal Code and infractions) for the same  
14 act. "Defendant Jarvonne Feredell Jones, a convicted felon, carried a loaded and  
15 concealed firearm. We must decide to what extent, if any, he may be punished  
16 separately for the crimes of possession of a firearm by a felon, carrying a readily  
17 accessible concealed and unregistered firearm, and carrying an unregistered loaded  
18 firearm in public. The question requires us to interpret Penal Code section 654...  
19 which prohibits multiple punishment for "[a]n act ... that is punishable in different  
20 ways by different provisions of law." Because different provisions of law punish in  
21 different ways defendant's single act, we conclude that section 654's plain language  
22 prohibits punishment for more than one of those crimes." *Jones* at 352 (footnote  
23 omitted). PC 25850(a) should be construed as the legislature intended when the  
24 language of the statute was first enacted in 1967, as a ban on openly carrying  
25 loaded firearms in public. Given that Open Carry is the right guaranteed by the  
26 Constitution (*Heller* at 2809 & 2816-2817) and PC 25850(a) can no longer be used  
27 as a separate included charge for unlawful concealed carry of a firearm (or for any  
28

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1 other application which lies outside of the scope of the Second Amendment), an  
2 injunction should be issued against PC 25850(a).

3  
4 The California Courts cannot agree on what constitutes a loaded firearm.  
5 The definition of a "public place" is similarly unclear to them. Most of the former  
6 subsections of PC 12031 are now scattered throughout the penal code. No person  
7 of reasonable intelligence can possibly know when he is in violation of the statute  
8 and the statute serves no purpose but to prohibit and inhibit the lawful exercise of a  
9 fundamental, enumerated right.

10  
11 "A statute which, under the pretence of regulating, amounts to a destruction  
12 of the right, or which requires arms to be so borne as to render them wholly useless  
13 for the purpose of defence, would be clearly unconstitutional." *State v. Reid*, 1 Ala.  
14 612, 35 Am. Dec. 44 (1840) pgs 616-617. See also *Heller* at 2818.

15  
16 **B. Plaintiff is likely to succeed in his claim that PC 25850(b) violates the**  
17 **Fourth Amendment of the U.S. Constitution**

18 PC 25850(b), on its face and as applied, penalizes the Fourth Amendment  
19 right to be free from unreasonable searches and seizures. California Penal Code  
20 section 25850(b) (formerly PC 12031(e)) was originally written in 1967. It is will  
21 established law that "Mere refusal to consent to a stop or search does not give rise  
22 to reasonable suspicion or probable cause. People do not have to voluntarily give  
23 up their privacy or freedom of movement, on pain of justifying forcible deprivation  
24 of those same liberties if they refuse." *US v. Fuentes*, 105 F. 3d 487 - Court of  
25 Appeals, 9th Circuit 1997 at 490.

26  
27 PC 25850(b) clearly states: "Refusal to allow a peace officer to inspect a  
28 firearm pursuant to this section constitutes probable cause for arrest for violation of

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1 this section.”

2 **C. Plaintiff Is Likely To Succeed In His Claim That PC 26350 & PC**  
3 **26400 Violate the Second & Fourteenth Amendments of the U.S.**  
4 **Constitution.**

5 PC 26350 and PC 26400 on their face and as applied, penalize the Second  
6 Amendment Right to openly carry a firearm in public. The argument against PC  
7 25850(a) applies equally to PC 26350 & PC 26400 and is fully incorporated herein  
8 by reference. Firearms were often carried unloaded, in the pre-PC 12031  
9 traditional sense of the word (no live round in the firing chamber) for personal  
10 safety reasons. Although most firearms manufactured today have modern safeties  
11 which prevent the accidental discharge of firearms, there are tens of millions of  
12 firearms which do not, including some owned by PLAINTIFF. The Second  
13 Amendment guarantees the right to openly carry a firearm, it does not require that  
14 a firearm be openly carried in an unsafe manner. PC 26350 and PC 26400 make it  
15 a crime to openly carry an unloaded firearm. Additionally, a preliminary  
16 injunction issued against PC 26350 & PC 26400 would preserve the status quo  
17 which existed in California for over 160 years including when PLAINTIFF'S  
18 action was first filed on November 30, 2011.

19  
20 **II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE**  
21 **RELIEF IS DENIED**

22 It is well established that the deprivation of constitutional rights  
23 "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373,  
24 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). PLAINTIFF and similarly situated private  
25 citizens in the State of California have a fundamental, enumerated Second  
26 Amendment right to openly carry fully functional firearms (loaded and unloaded)  
27 on his own property, in his motor vehicle and in non-sensitive public places.  
28 PLAINTIFF and all persons have a Fourth Amendment right to be free from

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1 unreasonable searches and seizures as well as a Fourteenth Amendment right to  
2 equal protection under the law. The question of whether PLAINTIFF, residing in  
3 California, and similarly-situated individuals enjoy Second and Fourteenth  
4 Amendment rights is an easy one – the Supreme Court has ruled that they do. “. . .  
5 ‘[T]he people’ protected by the . . . Second [Amendment] . . . refers to a class of  
6 persons who are part of a national community or who have otherwise developed  
7 sufficient connection with this country to be considered part of that community.”  
8 *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). That includes those  
9 who are legally in the country. See *United States ex rel. Turner v. Williams*, 194  
10 U.S. 279, 292 (1904). Even illegal aliens then-presently in the Country receive  
11 protection under the Fourteenth Amendment’s Due Process Clause. (See, e.g.,  
12 *Zadvydas v. Davis*, 553 U.S. 678, 693 (2001)). PLAINTIFF is prohibited from  
13 openly carrying even an unloaded long gun on his private residential property  
14 while an illegal alien a few blocks away in unincorporated county territory is not  
15 prohibited. He can legally stand in his front yard with an unloaded firearm  
16 (regardless of whether or not his property is fully enclosed by a tall fence) whereas  
17 PLAINTIFF would be subject to arrest, prosecution, fine and imprisonment for the  
18 same act because he resides in an incorporated city.

19  
20 **III. THE BALANCE OF THE EQUITIES TIPS SHARPLY IN FAVOR OF**  
21 **GRANTING A PRELIMINARY INJUNCTION AND AN INJUNCTION IS**  
22 **IN THE PUBLIC INTEREST**

23 PLAINTIFF is certain to prevail on the merits. Absent relief he and similarly  
24 situated individuals will continue to suffer irreparable injury in the loss of his  
25 Second, Fourth and Fourteenth Amendment rights, if not actual physical harm. The  
26 State has no legitimate interest in the prohibition; and the public interest strongly  
27 favors equal protection of the law, and the respecting of fundamental rights, to say  
28 nothing of the ability of all qualified California residents to defend themselves on

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1 their own private residential property, in their motor vehicles and in non-sensitive  
2 public places. The balance of interests could not more completely tilt in favor of  
3 immediate injunctive relief. DEFENDANT HARRIS has argued that it is  
4 hypothetical that PLAINTIFF would be arrested and prosecuted for openly  
5 carrying a firearm in public and that it is only "theoretically possible" she could  
6 prosecute PLAINTIFF under section 25850 while at the same time has not  
7 promised she will not prosecute or otherwise enforce or assist in the enforcement  
8 of the laws at issue. Indeed, DEFENDANT HARRIS' failure to intervene in  
9 PLAINTIFF'S own unlawful arrest and prosecution for lawfully openly carrying  
10 an unloaded firearm by the DEFENDANT CITY OF REDONDO BEACH in  
11 which she has both the power and duty to intervene and dismiss the case, proves  
12 her antipathy to the Second Amendment and the *Heller* decision which she has  
13 publicly derided. DEFENDANT HARRIS implies that she does not enforce  
14 California's ban on openly carrying firearms in public. DEFENDANT HARRIS  
15 cannot be harmed by an order enjoining an action she will not take.

16  
17 Furthermore, the injunction would be very narrow. It does not enjoin  
18 DEFENDANT HARRIS from enforcing any valid state laws prohibiting the  
19 carrying of firearms or weapons (openly or concealed, loaded or unloaded); in any  
20 sensitive public place such as schools and government buildings, by convicted  
21 felons or other prohibited persons, by persons who use illegal drugs, by persons  
22 who are mentally ill, by persons who are gang members or any of the  
23 presumptively lawful regulatory measures mentioned in *Heller* at 2816-2817.  
24 Neither would it enjoin DEFENDANT HARRIS from enforcing any valid state  
25 laws regulating the possession of "dangerous and unusual" weapons. Neither  
26 would it enjoin DEFENDANT HARRIS from enforcing any valid state laws  
27 prohibiting the brandishing of weapons. The California Penal code section  
28 regulating the possession, use and carrying of weapons is over 200 pages in length

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1 and that does not even include the Business and Professions Code, Health and  
2 Safety Code, Government Code or twenty-six other California Law Code sections.

3  
4 The Ninth Circuit has held that when plaintiffs challenge state action that  
5 affects the general public seeking to exercise constitutional rights, as PLAINTIFF  
6 does here for himself and California residents seeking the right to Openly Carry a  
7 firearm for the purpose of self-defense and for other lawful purposes, "the balance  
8 of equities and the public interest thus tip sharply in favor of enjoining the  
9 ordinance." *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009).  
10 And DEFENDANT HARRIS "cannot reasonably assert that [she] is harmed in  
11 any legally cognizable sense by being enjoined from constitutional violations."  
12 *Haynes v. Office of the Attorney General Phill Kline*, 298 F. Supp. 2d 1154, 1160  
13 (D. Kan. Oct. 26, 2004) (citing *Zepeda v. U.S. Immig. & Naturaliz. Serv.*, 753 F.2d  
14 719, 727 (9th Cir. 1983)).

15 **CONCLUSION**

16 PLAINTIFF has met all four factors for the issuance of a preliminary  
17 injunction. Therefore, PLAINTIFF respectfully requests that the Court grant his  
18 Motion for a Preliminary Injunction barring the enforcement of California Penal  
19 Code sections 25850(a), 25850(b), 26350 and 26400.

20 Dated: April 8, 2013

Respectfully submitted,

21  
22  
23 

24 By: Charles Nichols  
25 PLAINTIFF in Pro Per  
26 PO Box 1302  
27 Redondo Beach, CA 90278  
28 Voice: (424) 634-7381  
E-Mail:  
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///

**MOTION FOR PRELIMINARY INJUNCTION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** was served via United States Mail, postage prepaid, on this 9, day of April, 2013; on the following:

**KAMALA D. HARRIS**

Attorney General of California

**PETER K. SOUTHWORTH**

Supervising Deputy Attorney General

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Attorney for Defendants:

**CITY OF REDONDO BEACH and DOES 1 to 10**



Charles Nichols

Plaintiff, In Pro Per

Case No. CV-11-9916 SJO (SS)

ORIGINAL

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2013 APR 10 PM 2:44

FEDERAL DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

7  
8 **United States District Court**  
9 **Central District of California**

10  
11 Charles Nichols,  
12 **PLAINTIFF,**  
13 vs.  
14 **KAMALA D. HARRIS, Attorney**  
15 **General, in her official capacity as**  
16 **Attorney General of California, CITY**  
17 **OF REDONDO BEACH and DOES 1**  
18 **to 10,**  
19 **Defendants.**

Case No.: CV-11-9916 SJO (SS)  
**DECLARATION OF CHARLES NICHOLS IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

20 Date: May 20, 2013  
21 Time: 10:00 a.m.  
22 Location: United States Courthouse  
23 312 North Spring Street  
24 Los Angeles, CA 90012-4701  
25 Courtroom: 1 - 2nd Floor  
26 Judge: Samuel James Otero  
27 Date Action Filed: November 30, 2011  
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**DECLARATION OF CHARLES NICHOLS**

I, Charles Nichols, submit this declaration in support of Plaintiff's Motion for a Preliminary Injunction. I make this declaration of my own personal knowledge and if called as a witness I could and would testify competently to the truth of the matters set forth herein.

1. I am a resident of Los Angeles County and a natural born citizen of the United States and I am fifty-three years of age.

2. I am not prohibited under Federal or California law from receiving or possessing firearms.

3. I have violated the laws at issue in the past and have articulated a concrete plan to violate them in the future.

4. I am presently being prosecuted for openly carrying a firearm in violation of a City of Redondo Beach municipal ordinance even though I was openly carrying the firearm in the beach zone of the city which is exempt from the ordinance (all coastal parklands are exempt by the city's own municipal ordinances) and despite the findings of Magistrate Judge Suzanne Segal and Federal District Court Judge Samuel James Otero that the State of California had preempted local regulations concerning the carrying of firearms. According to the City Attorney whose City Prosecutor reports to him, the city's ban applies to all weapons in all public places of the city.

5. On October 24, 2012 California Superior Court judge David Sotelo denied my demurrer to the criminal charge stating "Given the uniqueness of the

1 City of Redondo Beach as (sic) beach community immediately west of cities such  
2 as Los Angeles, Compton and Carson, its' (sic) parks on the Pacific Ocean  
3 shoreline draw visitors not just (sic) these cities but every county, city and  
4 neighborhood.”

5  
6 6. The black population of the City of Redondo Beach is 2.8%. Only  
7 25.9% of Compton is white. Only 23.8% of Carson is white. The portions of the  
8 City of Los Angeles immediate east of Redondo Beach are similarly predominantly  
9 minority. The Cities of Torrance and Lomita which were not mentioned by judge  
10 Sotelo are also immediately to the east of the City of Redondo Beach. Torrance  
11 has a black population of 2.7%. Lomita has a black population of 5.3%. These  
12 figures were obtained from the U.S. Census website reflecting the 2010 Census.

13  
14 7. On May 21, 2011 I was stopped against my will by Redondo Beach  
15 police officers who took my long gun against my clear and vocal refusal to consent  
16 to the search. Redondo Beach Police Officer Todd Heywood performed a  
17 “chamber check” to see if the firearm was unloaded pursuant to California Penal  
18 Code section 25850 and then subsequently confiscated my firearm, carrying case,  
19 padlock and key thereby depriving me of my only means of self-defense even  
20 though the City of Redondo Beach has been aware since at least December 6, 2011  
21 that I have a documented death threat against me. The unloaded firearm was also  
22 seized during the course of a peaceful protest. The protest was coordinated with  
23 the Redondo Beach City Attorney and Police Chief in advance.

24  
25 8. I sustained a severe back injury in a riding accident in August of 2002  
26 leaving me partially disabled. I am not physically able to defend myself other than  
27 with a firearm. Current California law prevents me from openly carrying a firearm  
28

1 in case of confrontation for the purpose of self-defense. This includes self-defense  
2 with a less-lethal Taser which California defines as a "firearm."

3  
4 9. This leaves under California law the only means of self-defense; a  
5 knife openly carried. However, some California cities such as the City of Redondo  
6 Beach and the City of Los Angeles have made it a crime to openly carry a knife  
7 which leaves me completely defenseless in those communities even if I were  
8 physically able to defend myself with a knife.

9  
10 10. California law prohibits the issuance of licenses to openly carry a  
11 handgun to counties with a population of fewer than 200,000 people. These  
12 licenses are only theoretically available to residents of those counties and are only  
13 valid within the county within which they are issued.

14  
15 11. I asked for an application and license to openly carry a loaded  
16 handgun from the Redondo Beach police chief who denied my request citing  
17 California Penal Code section 26155 through his then attorney, the City Attorney  
18 for Redondo Beach.

19  
20 12. My public defender has stated in open court that he cannot provide me  
21 with a competent defense. The presiding judge, "Chet" Taylor did not replace my  
22 public defender.

23  
24 13. The only motion to dismiss the criminal case against me filed by my  
25 public defender referenced but a single sentence from Assembly Bill 1527, a 15  
26 page bill which made it a crime to openly carry an unloaded long gun in  
27 incorporated cities. The motion is based on state preemption.

28

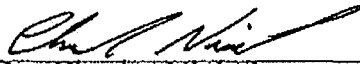
1           14. The sections of the California Penal code alone regulating the  
2 possession, use and carrying of weapons is over 200 pages long. Given that the  
3 municipal ordinance I am being charged with violating bans all weapons, a proper  
4 preemption motion would have been significantly longer.

5  
6           15. My public defender has thus far refused to file a motion based on the  
7 First and Second Amendments to the US Constitution saying that he and his office  
8 (the Los Angeles County Public Defenders Office) does not believe that the  
9 Second Amendment is a fundamental right despite the U.S. Supreme Court,  
10 Federal Courts and California's own state courts saying that the Second  
11 Amendment is a fundamental right. And despite the fact that prior to the Heller  
12 decision, the California Supreme court had recognized the carrying of firearms as a  
13 fundamental right, albeit one subject to rational review, since 1924.

14  
15           16. My own personal experience has proven that California police,  
16 prosecutors and judges do not obey their own laws. I cannot receive a fair trial.  
17 My only recourse is through the Federal courts.

18  
19           17. To the best of my knowledge, the exhibits are true and correct.

20 Executed in the United States on April 8, 2013,  
21

22  
23   
24 By: Charles Nichols  
25 PLAINTIFF in Pro Per  
26 PO Box 1302  
27 Redondo Beach, CA 90278  
28 Voice: (424) 634-7381  
E-Mail:  
CharlesNichols@Pykrete.info

28 ///

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **DECLARATION OF CHARLES NICHOLS IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** was served via United States Mail, postage prepaid, on this 9, day of April, 2013; on the following:

KAMALA D. HARRIS  
Attorney General of California  
PETER K. SOUTHWORTH  
Supervising Deputy Attorney General  
JONATHAN M. EISENBERG  
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AND

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Los Angeles, California 90071-3101  
Attorney for Defendants:  
CITY OF REDONDO BEACH and DOES 1 to 10



Charles Nichols  
Plaintiff, In Pro Per  
Case No. CV-11-9916 SJO (SS)

1 KAMALA D. HARRIS  
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 7 *Attorneys for Defendant California Attorney  
 General Kamala D. Harris*

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

13 **CHARLES NICHOLS,**  
 14 Plaintiff,  
 15 v.  
 16 **EDMUND G. BROWN, Jr., in his  
 official capacity as Governor of  
 California, KAMALA D. HARRIS,  
 Attorney General, in her official  
 17 capacity as Attorney General of  
 California, CITY OF REDONDO  
 18 BEACH, CITY OF REDONDO  
 BEACH POLICE DEPARTMENT,  
 19 CITY OF REDONDO BEACH  
 POLICE CHIEF JOSEPH  
 20 LEONARDI and DOES 1 to 10,**  
 21 Defendants.  
 22

CV-11-09916 SJO (SS)  
**DEFENDANT KAMALA D.  
 HARRIS'S ANSWER TO  
 PLAINTIFF CHARLES  
 NICHOLS'S SECOND AMENDED  
 COMPLAINT**

Trial Date: Not Yet Set  
 Action Filed: Nov. 30, 2011

24 Defendant Kamala D. Harris, Attorney General of the State of California (the  
 25 "Attorney General"), answers the second amended complaint herein of Plaintiff  
 26 Charles Nichols ("Nichols") as follows:  
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**JURISDICTION AND VENUE**

1. Answering enumerated paragraph 1, the Attorney General understands and contends that the paragraph contains assertions or statements of law only and does not require an answer, yet denies each and every allegation of the paragraph.

2. Answering enumerated paragraph 2, the Attorney General understands and contends that the paragraph contains assertions or statements of law only and does not require an answer, yet denies each and every allegation of the paragraph.

**PARTIES**

3. Answering enumerated paragraph 3, the Attorney General admits that Nichols is a natural person, i.e., a human being, but, for lack of sufficient information, knowledge, and belief, denies each and every other allegation of the paragraph.

4. Answering enumerated paragraph 4, the Attorney General admits that, since January 3, 2011, she has been (and presently is) the Attorney General of the State of California, and further that she must comply with her legal obligations as the Attorney General of the State of California, which legal obligations are found in various sources, including the U.S. Constitution, the California Constitution, statutes, and case law, which sources speak for themselves. The Attorney General denies each and every other allegation of the paragraph.

5. Answering enumerated paragraph 5, the Attorney General admits that Co-Defendant City of Redondo Beach (“Redondo Beach”) “is and was a duly organized public entity...existing under the laws of the State of California.” The Attorney General is informed and believes, and on that basis admits, that, at all times relevant to the present case, Redondo Beach employed police officers and city prosecutors. For lack of sufficient information, knowledge, and belief, the Attorney General denies each and every other allegation of the paragraph.

6. Answering enumerated paragraph 6, the Attorney General understands the paragraph merely to re-allege prior paragraphs, and the Attorney General

1 correspondingly incorporates herein her prior responses to those paragraphs, and  
2 denies each and every other allegation of the instant paragraph, to the extent such  
3 other allegations were made.

4 **BACKGROUND ALLEGATIONS**

5 7. Answering enumerated paragraph 7, the Attorney General understands  
6 and contends that the paragraph contains assertions or statements of law only and  
7 does not require an answer, yet the Attorney General admits that the U.S. Supreme  
8 Court issued the decision known as *District of Columbia v. Heller*, 554 U.S. 470  
9 (2008), which decision speaks for itself, and denies each and every other allegation  
10 of the paragraph.

11 8. Answering enumerated paragraph 8, the Attorney General understands  
12 and contends that the paragraph contains assertions or statements of law only and  
13 does not require an answer, yet the Attorney General admits that Nichols is not  
14 challenging the constitutionality of, or the constitutionality of enforcement of,  
15 certain state or federal laws, and denies each and every other allegation of the  
16 paragraph.

17 9. Answering enumerated paragraph 9, the Attorney General understands  
18 and contends that the paragraph contains assertions or statements of law only and  
19 does not require an answer, yet the Attorney General admits the existence of the  
20 legal authorities to which the paragraph appears to refer, which legal authorities  
21 speak for themselves, and denies each and every other allegation of the paragraph.

22 10. Answering enumerated paragraph 10, the Attorney General  
23 understands and contends that the paragraph contains assertions or statements of  
24 law only and does not require an answer, yet the Attorney General admits the  
25 existence of the legal authorities to which the paragraph appears to refer, which  
26 legal authorities speak for themselves, and denies each and every other allegation of  
27 the paragraph, and denies each and every other allegation of the paragraph.

28 11. Answering enumerated paragraph 11, the Attorney General



1 understands and contends that the paragraph contains assertions or statements of  
2 law only and does not require an answer, yet the Attorney General admits the  
3 existence of the legal authorities to which the paragraph appears to refer, which  
4 legal authorities speak for themselves, and denies each and every other allegation of  
5 the paragraph, and denies each and every other allegation of the paragraph.

6 12. Answering enumerated paragraph 12, the Attorney General admits that  
7 she complies with her responsibilities set forth in the California Penal Code. The  
8 paragraph appears to contain assertions or statements of law that, the Attorney  
9 General understands and contends, do not require an answer, yet the Attorney  
10 General admits the existence of the legal authorities to which the paragraph appears  
11 to refer, which legal authorities speak for themselves, and denies each and every  
12 other allegation of the paragraph.

13 13. Answering enumerated paragraph 13, the Attorney General  
14 understands and contends that the paragraph contains assertions or statements of  
15 law only and does not require an answer, yet the Attorney General admits the  
16 existence of the legal authorities to which the paragraph appears to refer, which  
17 legal authorities speak for themselves, and denies each and every other allegation of  
18 the paragraph.

19 **STATE LAWS AND COUNTY ORDINANCES**

20 14. Answering enumerated paragraph 14, the Attorney General  
21 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
22 General correspondingly incorporates herein her prior responses to those  
23 paragraphs, and denies each and every other allegation of the instant paragraph, to  
24 the extent such other allegations were made.

25 15. Answering enumerated paragraph 15, the Attorney General  
26 understands and contends that the paragraph merely restates a statute, which speaks  
27 for itself, and on that basis the Attorney General denies each and every allegation of  
28 the paragraph.

1           16. Answering enumerated paragraph 16, the Attorney General  
2 understands and contends that the paragraph merely restates a statute, which speaks  
3 for itself, and on that basis the Attorney General denies each and every allegation of  
4 the paragraph.

5           17. Answering enumerated paragraph 17, the Attorney General  
6 understands and contends that the paragraph merely restates a statute, which speaks  
7 for itself, and on that basis the Attorney General denies each and every allegation of  
8 the paragraph.

9           18. Answering enumerated paragraph 18, the Attorney General  
10 understands and contends that the paragraph merely restates a statute, which speaks  
11 for itself, and on that basis the Attorney General denies each and every allegation of  
12 the paragraph.

13           19. Answering enumerated paragraph 19, the Attorney General  
14 understands and contends that the paragraph merely restates a statute, which speaks  
15 for itself, and on that basis the Attorney General denies each and every allegation of  
16 the paragraph.

17           20. Answering enumerated paragraph 20, the Attorney General  
18 understands and contends that the paragraph merely restates a statute, which speaks  
19 for itself, and on that basis the Attorney General denies each and every allegation of  
20 the paragraph.

21           21. Answering enumerated paragraph 21, the Attorney General  
22 understands and contends that the paragraph merely restates a statute, which speaks  
23 for itself, and on that basis the Attorney General denies each and every allegation of  
24 the paragraph.

25           22. Answering enumerated paragraph 22, the Attorney General  
26 understands and contends that the paragraph merely restates a statute, which speaks  
27 for itself, and on that basis the Attorney General denies each and every allegation of  
28 the paragraph.

1           23. Answering enumerated paragraph 23, the Attorney General  
2 understands and contends that the paragraph merely restates a statute, which speaks  
3 for itself, and on that basis the Attorney General denies each and every allegation of  
4 the paragraph.

5           24. Answering enumerated paragraph 24, the Attorney General  
6 understands and contends that the paragraph merely restates a statute, which speaks  
7 for itself, and on that basis the Attorney General denies each and every allegation of  
8 the paragraph.

9           25. Answering enumerated paragraph 25, the Attorney General  
10 understands and contends that the paragraph merely restates a statute, which speaks  
11 for itself, and on that basis the Attorney General denies each and every allegation of  
12 the paragraph.

13           26. Answering enumerated paragraph 26, the Attorney General  
14 understands and contends that the paragraph merely restates a statute, which speaks  
15 for itself, and on that basis the Attorney General denies each and every allegation of  
16 the paragraph.

17           27. Answering enumerated paragraph 27, the Attorney General  
18 understands and contends that the paragraph merely restates a statute, which speaks  
19 for itself, and on that basis the Attorney General denies each and every allegation of  
20 the paragraph.

21           28. Answering enumerated paragraph 28, the Attorney General  
22 understands and contends that the paragraph merely restates a statute, which speaks  
23 for itself, and on that basis the Attorney General denies each and every allegation of  
24 the paragraph.

25           29. Answering enumerated paragraph 29, the Attorney General  
26 understands and contends that the paragraph merely restates a statute, which speaks  
27 for itself, and on that basis the Attorney General denies each and every allegation of  
28 the paragraph.

1 30. Answering enumerated paragraph 30, the Attorney General  
2 understands and contends that the paragraph merely restates a statute, which speaks  
3 for itself, and on that basis the Attorney General denies each and every allegation of  
4 the paragraph.

5 31. Answering enumerated paragraph 31, the Attorney General  
6 understands and contends that the paragraph merely restates a statute, which speaks  
7 for itself, and on that basis the Attorney General denies each and every allegation of  
8 the paragraph.

9 32. Answering enumerated paragraph 32, the Attorney General  
10 understands and contends that the paragraph merely restates a statute, which speaks  
11 for itself, and on that basis the Attorney General denies each and every allegation of  
12 the paragraph.

13 33. Answering enumerated paragraph 33, the Attorney General  
14 understands and contends that the paragraph merely restates an ordinance, which  
15 speaks for itself, and on that basis the Attorney General denies each and every  
16 allegation of the paragraph.

17 34. Answering enumerated paragraph 34, the Attorney General  
18 understands and contends that the paragraph merely restates an ordinance, which  
19 speaks for itself, and on that basis the Attorney General denies each and every  
20 allegation of the paragraph.

21 **FACTS**

22 35. Answering enumerated paragraph 35, the Attorney General  
23 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
24 General correspondingly incorporates herein her prior responses to those  
25 paragraphs, and denies each and every other allegation of the instant paragraph, to  
26 the extent such other allegations were made.

27 36. Answering enumerated paragraph 36, the Attorney General admits that  
28 she has not specifically instructed Redondo Beach in how to construe the local

1 ordinances mentioned or tried to intervene in Redondo Beach's criminal  
2 prosecution of Nichols. The paragraph appears to contain assertions or statements  
3 of law that, the Attorney General understands and contends, do not require an  
4 answer, yet the Attorney General admits the existence of the legal authorities to  
5 which the paragraph appears to refer, which legal authorities speak for themselves,  
6 and denies each and every other allegation of the paragraph.

7         37. Answering enumerated paragraph 37, the Attorney General admits that  
8 she has not specifically instructed Redondo Beach in how to construe the local  
9 ordinances mentioned or tried to intervene in Redondo Beach's criminal  
10 prosecution of Nichols. The paragraph appears to contain assertions or statements  
11 of law that, the Attorney General understands and contends, do not require an  
12 answer, yet the Attorney General admits the existence of the legal authorities to  
13 which the paragraph appears to refer, which legal authorities speak for themselves,  
14 and denies each and every other allegation of the paragraph.

15         38. Answering enumerated paragraph 38, the Attorney General admits that  
16 she has not specifically instructed Redondo Beach in how to construe the local  
17 ordinances mentioned. The paragraph appears to contain assertions or statements  
18 of law that, the Attorney General understands and contends, do not require an  
19 answer, yet the Attorney General admits the existence of the legal authorities to  
20 which the paragraph appears to refer, which legal authorities speak for themselves,  
21 and denies each and every other allegation of the paragraph.

22         39. Answering enumerated paragraph 39, the Attorney General admits that  
23 the Office of the Attorney General publishes California crime statistics information,  
24 which publications speak for themselves. The paragraph appears to contain  
25 assertions or statements of law that, the Attorney General understands and  
26 contends, do not require an answer, yet the Attorney General admits the existence  
27 of the legal authorities to which the paragraph appears to refer, which legal  
28 authorities speak for themselves, and denies each and every other allegation of the

1 paragraph.

2 40. Answering enumerated paragraph 40, the Attorney General admits that  
3 the California Department of Justice has one database or more containing  
4 information about arrests made for “weapons offenses,” and denies each and every  
5 other allegation of the paragraph.

6 41. Answering enumerated paragraph 41, the Attorney General admits that  
7 the Office of the Attorney General “has participated in [the] enforcement”  
8 (although that phrase is ambiguous) of California Penal Code section 25850. The  
9 paragraph appears to contain assertions or statements of law that, the Attorney  
10 General understands and contends, do not require an answer, yet the Attorney  
11 General admits the existence of the legal authorities to which the paragraph appears  
12 to refer, which legal authorities speak for themselves, and denies each and every  
13 other allegation of the paragraph.

14 42. Answering enumerated paragraph 42, the Attorney General admits  
15 that, in the past, the Office of the Attorney General “has participated in the  
16 enforcement” (although that phrase is ambiguous) of California Penal Code  
17 sections 25850, 26350, 26150, and 26155. The paragraph appears to contain  
18 assertions or statements of law that, the Attorney General understands and  
19 contends, do not require an answer, yet the Attorney General admits the existence  
20 of the legal authorities to which the paragraph appears to refer, which legal  
21 authorities speak for themselves, and denies each and every other allegation of the  
22 paragraph.

23 43. Answering enumerated paragraph 43, the Attorney General  
24 understands and contends that the paragraph contains assertions or statements of  
25 law only and does not require an answer, yet the Attorney General admits the  
26 existence of the legal authorities to which the paragraph appears to refer, which  
27 legal authorities speak for themselves, and denies each and every other allegation of  
28 the paragraph.

1           44. Answering enumerated paragraph 44, the Attorney General  
2 understands and contends that the paragraph contains assertions or statements of  
3 law only and does not require an answer, yet the Attorney General admits the  
4 existence of the legal authorities to which the paragraph appears to refer, which  
5 legal authorities speak for themselves, and denies each and every other allegation of  
6 the paragraph.

7           45. Answering enumerated paragraph 45, the Attorney General admits that  
8 she has not tried to intervene in Redondo Beach's criminal prosecution of Nichols.  
9 The paragraph appears to contain assertions or statements of law that, the Attorney  
10 General understands and contends, do not require an answer, yet the Attorney  
11 General admits the existence of the legal authorities to which the paragraph appears  
12 to refer, which legal authorities speak for themselves, and, for lack of sufficient  
13 information, knowledge, and belief, denies each and every other allegation of the  
14 paragraph.

15           46. Answering enumerated paragraph 46, for lack of sufficient  
16 information, knowledge, and belief, the Attorney General denies each and every  
17 other allegation of the paragraph.

18           47. Answering enumerated paragraph 47, the Attorney General admits that  
19 she complies with her responsibilities set forth in the California Penal Code. The  
20 paragraph appears to contain assertions or statements of law that, the Attorney  
21 General understands and contends, do not require an answer, yet the Attorney  
22 General admits the existence of the legal authorities to which the paragraph appears  
23 to refer, which legal authorities speak for themselves, and, for lack of sufficient  
24 information, knowledge, and belief, denies each and every other allegation of the  
25 paragraph.

26           48. Answering enumerated paragraph 48, the Attorney General admits that  
27 Nichols "obtained a Law Enforcement Gun Release" letter from the California  
28 Department of Justice, and that the Attorney General has not instructed Redondo

1 Beach with regard to returning or not returning any firearms or other property that  
2 Nichols alleges are his yet are being held by Redondo Beach. The paragraph  
3 appears to contain assertions or statements of law that, the Attorney General  
4 understands and contends, do not require an answer, yet the Attorney General  
5 admits the existence of the legal authorities to which the paragraph appears to refer,  
6 which legal authorities speak for themselves, and, for lack of sufficient information,  
7 knowledge, and belief, denies each and every other allegation of the paragraph.

8 49. Answering enumerated paragraph 49, the Attorney General notes that  
9 the paragraph contains predictions of Nichols's future behavior which are not  
10 appropriately or possibly subject to admissions or denials. The paragraph appears  
11 to contain assertions or statements of law that, the Attorney General understands  
12 and contends, do not require an answer, yet the Attorney General admits the  
13 existence of the legal authorities to which the paragraph appears to refer, which  
14 legal authorities speak for themselves, and denies each and every other allegation of  
15 the paragraph.

16 50. Answering enumerated paragraph 50, the Attorney General admits that  
17 that, in the past, the Office of the Attorney General has handled appeals of  
18 convictions under California Penal Code section 25850, and that the Attorney has  
19 not specifically instructed Redondo Beach in how to construe the local ordinances  
20 mentioned or tried to intervene in Redondo Beach's criminal prosecution of  
21 Nichols. The paragraph appears to contain assertions or statements of law that, the  
22 Attorney General understands and contends, do not require an answer, yet the  
23 Attorney General admits the existence of the legal authorities to which the  
24 paragraph appears to refer, which legal authorities speak for themselves, and, for  
25 lack of sufficient information, knowledge, and belief, denies each and every other  
26 allegation of the paragraph.

27 51. Answering enumerated paragraph 51, the Attorney General admits that  
28 she has not specifically instructed Redondo Beach in how to construe the state law



1 mentioned or tried to intervene in Redondo Beach's criminal prosecution of  
2 Nichols. The paragraph appears to contain assertions or statements of law that, the  
3 Attorney General understands and contends, do not require an answer, yet the  
4 Attorney General admits the existence of the legal authorities to which the  
5 paragraph appears to refer, which legal authorities speak for themselves, and, for  
6 lack of sufficient information, knowledge, and belief, denies each and every other  
7 allegation of the paragraph.

8 52. Answering enumerated paragraph 52, the Attorney General admits that  
9 she has not specifically instructed Redondo Beach in how to construe the local  
10 ordinances mentioned or tried to intervene in Redondo Beach's criminal  
11 prosecution of Nichols. The paragraph appears to contain assertions or statements  
12 of law that, the Attorney General understands and contends, do not require an  
13 answer, yet the Attorney General admits the existence of the legal authorities to  
14 which the paragraph appears to refer, which legal authorities speak for themselves,  
15 and, for lack of sufficient information, knowledge, and belief, denies each and  
16 every other allegation of the paragraph.

17 53. Answering enumerated paragraph 53, for lack of sufficient  
18 information, knowledge, and belief, the Attorney General denies each and every  
19 allegation of the paragraph.

20 54. Answering enumerated paragraph 54, the Attorney General denies  
21 each and every other allegation of the paragraph.

22 **FIRST CLAIM FOR RELIEF [ETC.]**

23 55. Answering enumerated paragraph 55, the Attorney General  
24 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
25 General correspondingly incorporates herein her prior responses to those  
26 paragraphs, and denies each and every other allegation of the instant paragraph, to  
27 the extent such other allegations were made.

28 56. Answering enumerated paragraph 56, the Attorney General

1 understands and contends that the paragraph contains assertions or statements of  
2 law only and does not require an answer, yet the Attorney General admits that the  
3 U.S. Supreme Court issued the decisions known as *District of Columbia v. Heller*,  
4 554 U.S. 470 (2008), and *McDonald v. City of Chicago*, 561 U.S. 3025 (2010),  
5 which decisions speaks for itself, and denies each and every other allegation of the  
6 paragraph.

7 57. Answering enumerated paragraph 57, the Attorney General  
8 understands and contends that the paragraph contains assertions or statements of  
9 law only and does not require an answer, yet the Attorney General admits the  
10 existence of the legal authorities to which the paragraph appears to refer, which  
11 legal authorities speak for themselves, and denies each and every other allegation of  
12 the paragraph.

13 58. Answering enumerated paragraph 58, the Attorney General  
14 understands and contends that the paragraph contains assertions or statements of  
15 law only and does not require an answer, yet the Attorney General admits the  
16 existence of the legal authorities to which the paragraph appears to refer, which  
17 legal authorities speak for themselves, and denies each and every other allegation of  
18 the paragraph.

19 59. Answering enumerated paragraph 59, the Attorney General  
20 understands and contends that the paragraph contains assertions or statements of  
21 law only and does not require an answer, yet the Attorney General admits the  
22 existence of the legal authorities to which the paragraph appears to refer, which  
23 legal authorities speak for themselves, and denies each and every other allegation of  
24 the paragraph.

25 60. Answering enumerated paragraph 60, the Attorney General  
26 understands and contends that the paragraph contains assertions or statements of  
27 law only and does not require an answer, yet the Attorney General admits the  
28 existence of the legal authorities to which the paragraph appears to refer, which

1 legal authorities speak for themselves, and denies each and every other allegation of  
2 the paragraph.

3 61. Answering enumerated paragraph 61, the Attorney General  
4 understands and contends that the paragraph contains assertions or statements of  
5 law only and does not require an answer, yet the Attorney General admits the  
6 existence of the legal authorities to which the paragraph appears to refer, which  
7 legal authorities speak for themselves, and denies each and every other allegation of  
8 the paragraph.

9 62. Answering enumerated paragraph 62, the Attorney General  
10 understands and contends that the paragraph contains assertions or statements of  
11 law only and does not require an answer, yet the Attorney General admits the  
12 existence of the legal authorities to which the paragraph appears to refer, which  
13 legal authorities speak for themselves, and denies each and every other allegation of  
14 the paragraph.

15 63. Answering enumerated paragraph 63, the Attorney General  
16 understands and contends that the paragraph contains assertions or statements of  
17 law only and does not require an answer, yet the Attorney General admits the  
18 existence of the legal authorities to which the paragraph appears to refer, which  
19 legal authorities speak for themselves, and denies each and every other allegation of  
20 the paragraph.

21 64. Answering enumerated paragraph 64, the Attorney General  
22 understands and contends that the paragraph contains assertions or statements of  
23 law only and does not require an answer, yet the Attorney General admits the  
24 existence of the legal authorities to which the paragraph appears to refer, which  
25 legal authorities speak for themselves, and denies each and every other allegation of  
26 the paragraph.

27 65. Answering enumerated paragraph 65, the Attorney General  
28 understands and contends that the paragraph contains assertions or statements of

1 law only and does not require an answer, yet the Attorney General admits the  
2 existence of the legal authorities to which the paragraph appears to refer, which  
3 legal authorities speak for themselves, and denies each and every other allegation of  
4 the paragraph.

5 66. Answering enumerated paragraph 66, the Attorney General  
6 understands and contends that the paragraph contains assertions or statements of  
7 law only and does not require an answer, yet the Attorney General admits the  
8 existence of the legal authorities to which the paragraph appears to refer, which  
9 legal authorities speak for themselves, and denies each and every other allegation of  
10 the paragraph.

11 67. Answering enumerated paragraph 67, the Attorney General admits that  
12 Nichols is pursuing his lawsuit pro se. The paragraph appears to contain assertions  
13 or statements of law that, the Attorney General understands and contends, do not  
14 require an answer, yet the Attorney General admits the existence of the legal  
15 authorities to which the paragraph appears to refer, which legal authorities speak for  
16 themselves, and denies each and every other allegation of the paragraph.

17 68. Answering enumerated paragraph 68, the Attorney General  
18 understands and contends that the paragraph contains assertions or statements of  
19 law that, the Attorney General understands and contends, do not require an answer,  
20 yet the Attorney General denies each and every allegation of the paragraph.

21 69. Answering enumerated paragraph 69, the Attorney General  
22 understands and contends that the paragraph contains assertions or statements of  
23 law that, the Attorney General understands and contends, do not require an answer,  
24 yet the Attorney General admits the existence of the legal authorities to which the  
25 paragraph appears to refer, which legal authorities speak for themselves, and denies  
26 each and every other allegation of the paragraph.

27 **SECOND CLAIM FOR RELIEF [ETC.]**

28 70. Answering enumerated paragraph 70, the Attorney General

1 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
2 General correspondingly incorporates herein her prior responses to those  
3 paragraphs, and denies each and every other allegation of the instant paragraph, to  
4 the extent such other allegations were made.

5         71. Answering enumerated paragraph 71, the Attorney General admits that  
6 Nichols filed the original complaint in this matter on or around November 30, 2011,  
7 and amended the complaint on or around May 30, 2012. The paragraph appears to  
8 contain assertions or statements of law that, the Attorney General understands and  
9 contends, do not require an answer, yet the Attorney General admits the existence  
10 of the legal authorities to which the paragraph appears to refer, which legal  
11 authorities speak for themselves, and, for lack of sufficient information, knowledge,  
12 and belief, denies each and every other allegation of the paragraph.

13         72. Answering enumerated paragraph 72, the Attorney General  
14 understands and contends that the paragraph contains assertions or statements of  
15 law that, the Attorney General understands and contends, do not require an answer,  
16 yet the Attorney General admits the existence of the legal authorities to which the  
17 paragraph appears to refer, which legal authorities speak for themselves, and, for  
18 lack of sufficient information, knowledge, and belief, denies each and every other  
19 allegation of the paragraph.

20         73. Answering enumerated paragraph 73, for lack of sufficient  
21 information, knowledge, and belief, the Attorney General denies each and every  
22 allegation of the paragraph.

23         74. Answering enumerated paragraph 74, for lack of sufficient  
24 information, knowledge, and belief, the Attorney General denies each and every  
25 allegation of the paragraph.

26         75. Answering enumerated paragraph 75, for lack of sufficient  
27 information, knowledge, and belief, the Attorney General denies each and every  
28 allegation of the paragraph.

1           76. Answering enumerated paragraph 76, for lack of sufficient  
2 information, knowledge, and belief, the Attorney General denies each and every  
3 allegation of the paragraph.

4           77. Answering enumerated paragraph 77, the Attorney General  
5 understands and contends that the paragraph contains assertions or statements of  
6 law that, the Attorney General understands and contends, do not require an answer,  
7 yet the Attorney General admits the existence of the legal authorities to which the  
8 paragraph appears to refer, which legal authorities speak for themselves, and, for  
9 lack of sufficient information, knowledge, and belief, denies each and every other  
10 allegation of the paragraph.

11           78. Answering enumerated paragraph 78, for lack of sufficient  
12 information, knowledge, and belief, the Attorney General denies each and every  
13 allegation of the paragraph.

14           79. Answering enumerated paragraph 79, for lack of sufficient  
15 information, knowledge, and belief, the Attorney General denies each and every  
16 allegation of the paragraph.

17                           **THIRD CLAIM FOR RELIEF [ETC.]**

18           80. Answering enumerated paragraph 80, the Attorney General  
19 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
20 General correspondingly incorporates herein her prior responses to those  
21 paragraphs, and denies each and every other allegation of the instant paragraph, to  
22 the extent such other allegations were made.

23           81. Answering enumerated paragraph 81, the Attorney General  
24 understands and contends that the paragraph contains assertions or statements of  
25 law only and does not require an answer, yet the Attorney General admits the  
26 existence of the legal authorities to which the paragraph appears to refer, which  
27 legal authorities speak for themselves, and, for lack of sufficient information,  
28 knowledge, and belief, denies each and every other allegation of the paragraph.

1           82. Answering enumerated paragraph 82, the Attorney General  
2 understands and contends that the paragraph contains assertions or statements of  
3 law that, the Attorney General understands and contends, do not require an answer,  
4 yet the Attorney General admits the existence of the legal authorities to which the  
5 paragraph appears to refer, which legal authorities speak for themselves, and, for  
6 lack of sufficient information, knowledge, and belief, denies each and every other  
7 allegation of the paragraph.

8                                   **SCOPE OF REQUESTED INJUNCTIVE RELIEF**

9           83. Answering enumerated paragraph 83, the Attorney General  
10 understands the paragraph merely to re-allege prior paragraphs, and the Attorney  
11 General correspondingly incorporates herein her prior responses to those  
12 paragraphs, and denies each and every other allegation of the instant paragraph, to  
13 the extent such other allegations were made.

14           84. Answering enumerated paragraph 84, the Attorney General  
15 understands and contends that the paragraph contains assertions or statements of  
16 law that, the Attorney General understands and contends, do not require an answer,  
17 yet the Attorney General admits the existence of the legal authorities to which the  
18 paragraph appears to refer, which legal authorities speak for themselves, and denies  
19 each and every other allegation of the paragraph.

20           85. Answering enumerated paragraph 85, the Attorney General  
21 understands and contends that the paragraph contains assertions or statements of  
22 law that, the Attorney General understands and contends, do not require an answer,  
23 yet the Attorney General admits the existence of the legal authorities to which the  
24 paragraph appears to refer, which legal authorities speak for themselves, and denies  
25 each and every other allegation of the paragraph.

26                                   **PRAAYER FOR RELIEF**

27           The Attorney General denies that Nichols is entitled to any and all of the  
28 relief requested. The Attorney General prays, instead, as follows:

- 1 1. This case should be dismissed with prejudice.
- 2 2. Nichols should garner no relief in this case.
- 3 3. Nichols should take nothing by his complaint.
- 4 4. The Court should order Nichols to and he should reimburse the  
5 Attorney General for her costs of suit.
- 6 5. The Court should grant such other and further relief as the Court  
7 deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 The Attorney General denies that Nichols is entitled to a jury trial against the  
10 Attorney General.

11 **SEPARATE AND ADDITIONAL DEFENSES**

12 The Attorney General asserts the following separate and additional defenses:

13 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

14 Nichols fails to state a claim upon which relief can be granted.

15 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

16 The Court lacks subject-matter jurisdiction, and would render an  
17 unconstitutional advisory opinion by deciding this case on the merits.

18 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

19 Nichols lacks standing to pursue this case against the Attorney General.

20 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

21 The Attorney General is immune from this lawsuit under the Eleventh  
22 Amendment to the U.S. Constitution.

23 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

24 Nichols cannot disprove that the Attorney General's alleged actions are  
25 justified under the appropriate standard of review; to the extent the Attorney  
26 General bears the burden of proof regarding such justification, the Attorney  
27 General's alleged actions are justified.

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**SIXTH SEPARATE AND ADDITIONAL DEFENSE**

Nichols's claims against the Attorney General are barred by the applicable statutes of limitations.

**SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

Nichols's claims against the Attorney General are barred by the doctrine of laches.

**EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

Nichols's claims against the Attorney General are barred by the applicable doctrine of estoppel.

**NINTH SEPARATE AND ADDITIONAL DEFENSE**

Nichols's claims against the Attorney General are barred by the doctrine of waiver.

Dated: April 16, 2013

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

*/s/ Jonathan M. Eisenberg*  
JONATHAN M. EISENBERG  
Deputy Attorney General  
*Attorneys for Defendant California*  
*Attorney General Kamala D. Harris*

**DECLARATION OF SERVICE BY ELECTRONIC MEANS AND U.S. MAIL**

Court Name: **U.S. District Court, Central District of California**  
Case Name: *Nichols v. Harris*  
Case No.: **CV-11-09916 SJO (SS)**

I declare:

I am employed in the Office of the California Attorney General (the "OCAG"), which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring St., Ste. 1702, Los Angeles, CA 90013.

It is my understanding that there are participants in this case who are registered CM/ECF users, and that participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I certify that I caused to be made, via the CM/ECF system, electronic service of the attached **DEFENDANT KAMALA D. HARRIS'S ANSWER TO PLAINTIFF CHARLES NICHOLS'S SECOND AMENDED COMPLAINT** with the Clerk of the Court.

It is my understanding that there are other participants in this case who are not registered CM/ECF users, and that participants in the case who are not registered CM/ECF users will not be served by the CM/ECF system and must be served by other means. I am familiar with the business practice at the OCAG for collection and processing of correspondence for mailing with the U.S. Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the OCAG is deposited with the U.S. Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. On April 16, 2013, I served the attached **DEFENDANT KAMALA D. HARRIS'S ANSWER TO PLAINTIFF CHARLES NICHOLS'S SECOND AMENDED COMPLAINT** by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in the internal mail collection system at the OCAG at 300 South Spring St., Ste. 1702, Los Angeles, CA 90013, addressed as follows:

Charles Nichols  
P.O. Box 1302  
Redondo Beach, CA 90278

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct and that this declaration was executed on April 16, 2013, at Los Angeles, California.

R. Velasco  
\_\_\_\_\_  
Declarant

\_\_\_\_\_  
Signature

1 KAMALA D. HARRIS  
 Attorney General of California  
 2 MARK R. BECKINGTON  
 Supervising Deputy Attorney General  
 3 JONATHAN M. EISENBERG  
 Deputy Attorney General  
 4 State Bar No. 184162  
 300 South Spring St., Ste. 1702  
 5 Los Angeles, CA 90013  
 Telephone: (213) 897-6505  
 6 Fax: (213) 897-1071  
 E-mail: [jonathan.eisenberg@doj.ca.gov](mailto:jonathan.eisenberg@doj.ca.gov)  
 7 *Attorneys for Defendant California Attorney  
 General Kamala D. Harris*

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN, JR., in his  
 official capacity as Governor of  
 California, KAMALA D. HARRIS,  
 Attorney General, in her official  
 17 capacity as Attorney General of  
 California, CITY OF REDONDO  
 18 BEACH, CITY OF REDONDO  
 BEACH POLICE DEPARTMENT,  
 19 CITY OF REDONDO BEACH  
 POLICE CHIEF JOSEPH  
 20 LEONARDI and DOES 1 to 10,**

21 Defendants.

CV-11-09916 SJO (SS)

**REQUEST FOR JUDICIAL  
 NOTICE OF LEGISLATIVE  
 HISTORY OF CALIFORNIA  
 PENAL CODE SECTIONS 26350  
 AND 26400  
 (FED. R. EVID. 201)**

Date: N/A  
 Time: N/A  
 Courtroom: 23 – 3d Flr.  
 Judge: Hon. Suzanne Segal  
 Trial Date: Not Set  
 Action Filed: Nov. 30, 2011

24 Under Federal Rule of Evidence 201, Defendant Kamala D. Harris, Attorney  
 25 General of California (the “Attorney General”), requests that the Court take judicial  
 26 notice of certain legislative history that are relevant to the instant motion of *Pro Se*  
 27 Plaintiff Charles Nichols for a preliminary injunction against enforcement of three  
 28

1 California firearms laws. The legislative history is of two of the laws in question,  
2 California Penal Code sections 26350 and 26400, and illuminates the governmental  
3 objectives behind the laws. It is appropriate for this Court to take judicial notice of  
4 California legislative history. *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir.  
5 2005); *Louis v. McCormick & Schmick Restaurant Corp.*, 460 F.Supp.2d 1153,  
6 1155 n.4 (C.D. Cal. 2006); *Joseph v. J.J. Mac Intyre Co.*, 238 F.Supp.2d 1158,  
7 1165 n.5 (N.D. Cal. 2002). The materials are authenticated by and presented in the  
8 declaration of Jonathan M. Eisenberg, accompanying the Attorney General's  
9 opposition to the instant motion.

10 Dated: May 2, 2013

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
MARK R. BECKINGTON  
Supervising Deputy Attorney General

/s/ Jonathan M. Eisenberg  
JONATHAN M. EISENBERG  
Deputy Attorney General  
*Attorneys for Defendant California  
Attorney General Kamala D. Harris*

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1 KAMALA D. HARRIS  
 Attorney General of California  
 2 MARK R. BECKINGTON  
 Supervising Deputy Attorney General  
 3 JONATHAN M. EISENBERG  
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 7 *Attorneys for Defendant California Attorney  
 General Kamala D. Harris*

9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

13 **CHARLES NICHOLS,**

14 Plaintiff,

15 v.

16 **EDMUND G. BROWN, JR., in his  
 official capacity as Governor of  
 17 California, KAMALA D. HARRIS,  
 Attorney General, in her official  
 18 capacity as Attorney General of  
 California, CITY OF REDONDO  
 19 BEACH, CITY OF REDONDO  
 BEACH POLICE DEPARTMENT,  
 20 CITY OF REDONDO BEACH  
 POLICE CHIEF JOSEPH  
 21 LEONARDI and DOES 1 to 10,**

22 Defendants.  
 23

CV-11-09916 SJO (SS)

**DECLARATION OF JONATHAN  
 M. EISENBERG IN OPPOSITION  
 TO PLAINTIFF CHARLES  
 NICHOLS'S MOTION FOR  
 PRELIMINARY INJUNCTION  
 (FED. R. CIV. P. 65(A))**

Date: N/A  
 Time: N/A  
 Courtroom: 23 – 3d Flr.  
 Judge: Hon. Suzanne Segal  
 Trial Date: Not Set  
 Action Filed: Nov. 30, 2011

24 I, Jonathan M. Eisenberg, declare as follows:

25 1. I have personal knowledge of the following facts, except where my  
 26 knowledge is based on information and belief, as indicated, and if called as a  
 27 witness in I could and would testify competently to the facts.  
 28

1           2. I am an attorney licensed to practice law in California and before this  
2 Court. I am one of the attorneys of record for Defendant Kamala D. Harris,  
3 Attorney General of California (the "Attorney General"), in the present case  
4 adverse to *Pro Se* Plaintiff Charles Nichols ("Nichols"). I make this declaration in  
5 opposition to Nichols's motion for a preliminary injunction.

6           3. In preparing the Attorney General's opposition to the instant motion, I  
7 undertook certain legal research. This research involved locating online and obtain  
8 copies of the documents comprising the legislative history of two statutes,  
9 California Penal Code sections 26350 and 26400, the constitutionality of which  
10 Nichols is challenging. On the World Wide Web site  
11 <http://leginfo.legislature.ca.gov>, which I understand to be an official Internet site of  
12 the California Legislature, I located all the available legislative-history documents  
13 for Assembly Bill Nos. ("AB") 144 and 1527, from the 2011-12 session of the  
14 California Legislature. I am informed and believe that AB 144 became California  
15 Penal Code section 26530, and AB 1527 became California Penal Code section  
16 26400. I printed out paper copies of those documents.

17           4. Attached hereto as Exhibit A is a true and correct print-out of the set of  
18 legislative history papers for AB 144.

19           5. Attached hereto as Exhibit A is a true and correct print-out of the set of  
20 legislative history papers for AB 1527.

21           I declare under the penalty of perjury under the laws of the United States of  
22 America that the foregoing is true and correct, and that I signed this declaration on  
23 April 30, 2013, at Los Angeles, California.

24  
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26  
27  
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/s/ Jonathan M. Eisenberg  
Jonathan M. Eisenberg

# EXHIBIT A



*California*

LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

**Assembly Bill No. 144**

**CHAPTER 725**

**An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 16520, 16750, 16850, 25595, and 25605 of, to add Sections 626.92, 16950, 17040, 17295, 17512, and 25590 to, and to add Chapter 6 (commencing with Section 26350) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.**

[ Approved by Governor October 09, 2011. Filed Secretary of State October 09, 2011. ]

LEGISLATIVE COUNSEL'S DIGEST

AB 144, Portantino. Firearms.

Existing law, subject to certain exceptions, makes it an offense to carry a concealed handgun on the person or in a vehicle, as specified. Existing law provides that firearms carried openly in belt holsters are not concealed within the meaning of those provisions.

This bill would establish an exemption to the offense for transportation of a firearm between certain areas where the firearm may be carried concealed, or loaded, or openly carried unloaded, as specified.

Existing law prohibits, with exceptions, a person from possessing a firearm in a place that the person knows or reasonably should know is a school zone, as defined.

This bill would additionally exempt a security guard authorized to openly carry an unloaded handgun and an honorably retired peace officer authorized to openly carry an unloaded handgun from that prohibition.

Existing law, subject to certain exceptions, makes it an offense to carry a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

The bill would, subject to exceptions, make it a misdemeanor to openly carry an unloaded handgun on the person or openly and exposed in a motor vehicle in specified public areas and would make it a misdemeanor with specified penalties to openly carry an exposed handgun in a public place or public street, as specified, if the person at the same time possesses ammunition capable of being discharged from the handgun, and the person is not in lawful possession of the handgun, as specified.

Existing law makes it a misdemeanor for any driver or owner of a motor vehicle to allow a person to bring a loaded firearm into the motor vehicle in a public place, as specified.

This bill would expand the scope of that crime to include allowing a person to bring an open and exposed unloaded handgun into the vehicle, as specified.

By creating a new offense, and expanding the scope of existing crimes, this bill would impose a state-mandated local program.

AG0003

SER000150



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 7574.14 of the Business and Professions Code is amended to read:

**7574.14.** This chapter shall not apply to the following:

- (a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.
- (b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.
- (c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.
- (d) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.
- (e) An attorney at law in performing his or her duties as an attorney at law.
- (f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.
- (g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.
- (h) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.
- (i) A person engaged solely in the business of securing information about persons or property from public records.
- (j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.
- (k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training

AG0004

SER000151

requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and empty handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
- (2) The screening and monitoring access of prearranged and preauthorized invited guests.
- (3) The screening and monitoring of vendors and suppliers.
- (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

**SEC. 2.** Section 7582.2 of the Business and Professions Code is amended to read:

**7582.2.** This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.1, and is employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

AG0005

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person

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- at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are limited to, the following business purposes:
- (1) The screening and monitoring access of employees of the same employer.
  - (2) The screening and monitoring access of prearranged and preauthorized invited guests.
  - (3) The screening and monitoring of vendors and suppliers.
  - (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.
- (r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

**SEC. 3.** Section 626.92 is added to the Penal Code, to read:

**626.92.** Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

**SEC. 4.** Section 16520 of the Penal Code is amended to read:

**16520.** (a) As used in this part, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.
- (15) Sections 30150 to 30165, inclusive.
- (16) Section 31615.

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(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes any rocket; rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signalling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, Inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

(6) Sections 26500 to 26588, Inclusive.

(7) Sections 26700 to 26915, Inclusive.

(8) Section 27510.

(9) Section 27530.

(10) Section 27540.

(11) Section 27545.

(12) Sections 27555 to 27570, Inclusive.

(13) Sections 29010 to 29150, Inclusive.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, Inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

**SEC. 5.** Section 16750 of the Penal Code is amended to read:

16750. (a) As used in Section 25400, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

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(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

**SEC. 6.** Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, and in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "locked container" means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

**SEC. 7.** Section 16950 is added to the Penal Code, to read:

16950. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed to be carried openly or exposed if the handgun is not carried concealed within the meaning of Section 25400.

**SEC. 8.** Section 17040 is added to the Penal Code, to read:

17040. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "public place" has the same meaning as in Section 25850.

**SEC. 9.** Section 17295 is added to the Penal Code, to read:

17295. For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

**SEC. 10.** Section 17512 is added to the Penal Code, to read:

17512. It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle a firearm in violation of Section 26350.

**SEC. 11.** Section 25590 is added to the Penal Code, to read:

25590. Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

- (a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.
- (b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.
- (c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

**SEC. 12.** Section 25595 of the Penal Code is amended to read:

25595. This article does not prohibit or limit the otherwise lawful carrying or transportation of any handgun in accordance with the provisions listed in Section 16580.

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25605. (a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Sections 25850 to 26055, inclusive.

**SEC. 14.** Chapter 6 (commencing with Section 26350) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

**CHAPTER 6. Openly Carrying an Unloaded Handgun**  
**Article 1. Crime of Openly Carrying an Unloaded Handgun**

26350. (a) (1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

- (A) A public place or public street in an incorporated city or city and county.
- (B) A public street in a prohibited area of an unincorporated area of a county or city and county.
- (C) A public place in a prohibited area of a county or city and county.

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

- (A) A public place or public street in an incorporated city or city and county.
- (B) A public street in a prohibited area of an unincorporated area of a county or city and county.
- (C) A public place in a prohibited area of a county or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:

- (A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- (B) The person is not in lawful possession of that handgun.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

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**Article 2. Exemptions**

26361. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

26362. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person to the extent that person may openly carry a loaded handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

26363. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

26364. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

26365. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.

26366. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

26367. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

26368. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

26369. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

26370. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

26371. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when in accordance with the provisions of Section 171b.

26372. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.

26373. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to loaning, selling, or transferring that handgun in accordance with Article 1 (commencing with Section 27500) of

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26374. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

26375. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

26376. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice pursuant to Section 23910.

26377. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun at any established target range, whether public or private, while the person is using the handgun upon the target range.

26378. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

26379. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

- (a) Complying with Section 27560 or 27565, as it pertains to that handgun.
- (b) Section 28000, as it pertains to that handgun.
- (c) Section 27850 or 31725, as it pertains to that handgun.
- (d) Complying with Section 27870 or 27875, as it pertains to that handgun.
- (e) Complying with Section 27915, 27920, or 27925, as it pertains to that handgun.

26380. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

26381. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

26382. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

26383. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry openly an unloaded handgun within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

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(a) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(b) The unloaded handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(c) The unloaded handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, inclusive.

26385. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to paragraph (3) of subdivision (b) of Section 171c.

26386. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to Section 171d.

26387. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to subparagraph (F) of paragraph (1) subdivision (c) of Section 171.7.

26388. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying that handgun is in lawful possession of that handgun.

26389. Section 26350 does not apply to, or affect, the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

**SEC. 15.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AB-144 Firearms. (2011-2012)

Date	Result	Location	Ayes	Noes	NVR	Motion
09/09/11	(PASS)	Assembly Floor	48	30	2	AB 144 PORTANTINO Concurrence in Senate Amendments
<p><b>Ayes:</b> Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez</p> <p><b>Noes:</b> Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Galgiani, Garrick, Grove, Hagman, Halderman, Harkey, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Perea, Silva, Smyth, Valadao, Wagner</p> <p><b>No Votes Recorded:</b> Gorell, Torrès</p>						
09/08/11	(FAIL)	Senate Floor	15	20	5	Assembly 3rd Reading AB144 Portantino By De León Reconsider
<p><b>Ayes:</b> Anderson, Berryhill, Blakeslee, Cannella, Dutton, Emerson, Fuller, Gaines, Harman, Huff, La Malfa, Runner, Strickland, Walters, Wyland</p> <p><b>Noes:</b> Alquist, Calderon, Corbett, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Liu, Negrete McLeod, Padilla, Pavley, Price, Simltian, Steinberg, Vargas, Wolk, Yee</p> <p><b>No Votes Recorded:</b> Correa, Lowenthal, Rubio, Simltian, Wright</p>						
09/08/11	(PASS)	Senate Floor	21	18	1	Assembly 3rd Reading AB144 Portantino By De León
<p><b>Ayes:</b> Alquist, Calderon, Corbett, De León, DeSaulnier, Evans, Hancock, Hernandez, Kehoe, Leno, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Simltian, Steinberg, Vargas, Wolk, Yee</p> <p><b>Noes:</b> Anderson, Berryhill, Blakeslee, Cannella, Correa, Dutton, Emerson, Fuller, Gaines, Harman, Huff, La Malfa, Rubio, Runner, Strickland, Walters, Wright, Wyland</p> <p><b>No Votes Recorded:</b> Lieu</p>						
06/07/11	(PASS)	Sen Public Safety	4	2	1	Do pass, but re-refer to the Committee on Appropriations.
<p><b>Ayes:</b> Hancock, Liu, Price, Steinberg</p> <p><b>Noes:</b> Anderson, Harman</p> <p><b>No Votes Recorded:</b> Calderon</p>						
05/16/11	(PASS)	Assembly Floor	46	29	5	AB 144 PORTANTINO Assembly Third Reading
<p><b>Ayes:</b> Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Gatto, Gordon, Hall, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez</p> <p><b>Noes:</b> Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Garrick, Grove, Hagman, Halderman, Harkey, Roger Hernández, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner</p> <p><b>No Votes Recorded:</b> Galgiani, Gorell, Mendoza, Norby, Torres</p>						
05/04/11	(PASS)	Asm Appropriations	12	5	0	Do pass.
<p><b>Ayes:</b> Blumenfield, Bradford, Charles Calderon, Campos, Davis, Fuentes, Gatto, Hall, Hill, Lara, Mitchell, Solorio</p> <p><b>Noes:</b> Donnelly, Harkey, Nielsen, Norby, Wagner</p> <p><b>No Votes Recorded:</b></p>						

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Date	Result	Location	Ayes	Noes	NVR	Motion
04/12/11	(PASS)	Asm Public Safety	5	2	0	Do pass and be re-referred to the Committee on Appropriations.
Ayes: Ammlano, Cedillo, Hill, Mitchell, Yamada						
Noes: Hagman, Knight						
No Votes Recorded:						

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California  
LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Date	Action
10/09/11	Chaptered by Secretary of State - Chapter 725, Statutes of 2011.
10/09/11	Approved by the Governor.
09/21/11	Enrolled and presented to the Governor at 3:30 p.m.
09/09/11	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 48. Noes 30. Page 3208.)
09/09/11	In Assembly. Concurrence in Senate amendments pending.
09/08/11	Read third time. Passed. Ordered to the Assembly. (Ayes 21. Noes 18. Page 2398.)
09/06/11	Read second time. Ordered to third reading.
09/02/11	Ordered to second reading.
09/02/11	From inactive file.
08/30/11	Ordered to inactive file at the request of Senator De León.
06/28/11	Read second time. Ordered to third reading.
06/27/11	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
06/07/11	From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 2.) (June 7). Re-referred to Com. on APPR.
06/01/11	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.
05/26/11	Referred to Com. on PUB. S.
05/16/11	In Senate. Read first time. To Com. on RLS. for assignment.
05/16/11	Read third time. Passed. Ordered to the Senate. (Ayes 45. Noes 29. Page 1389.)
05/09/11	Read second time. Ordered to third reading.
05/05/11	From committee: Do pass. (Ayes 12. Noes 5.) (May 4).
05/03/11	Re-referred to Com. on APPR.
05/02/11	From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
04/13/11	From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (April 12). Re-referred to Com. on APPR.
04/05/11	In committee: Set, first hearing. Hearing canceled at the request of author.
02/03/11	Referred to Com. on PUB. S.
01/14/11	From printer. May be heard in committee February 13.
01/13/11	Read first time. To print.

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*California*  
LEGISLATIVE INFORMATION

AB-144 Firearms, (2011-2012)

Bill Analysis
09/09/11- Assembly Floor Analysis
05/28/11- Senate Floor Analysis
05/06/11- Senate Public Safety
05/11/11- Assembly Floor Analysis
05/03/11- Assembly Appropriations
04/11/11- Assembly Public Safety

AG0017

SER000164

CONCURRENCE IN SENATE AMENDMENTS

AB 144 (Portantino and Ammiano)

As Amended June 1, 2011

Majority vote

ASSEMBLY: 46-29 (May 16, 2011) SENATE: 21-18 (September 8, 2011)

Original Committee Reference: PUB. S.

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.

The Senate amendments exempt a security guard authorized to openly carry an unloaded handgun and an honorably retired peace officer authorized to openly carry an unloaded handgun from prohibitions against a firearm in a school zone.

AS PASSED BY THE ASSEMBLY, this bill made it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Made it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries an exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Made the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) Stated that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provided that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) Stated that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) Stated that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in

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a locked container.

- 7) Provided that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
- a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
  - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
  - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;
  - d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
  - e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
  - f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
  - g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
  - h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
  - i) The open carrying of an unloaded handgun within a gun show;
  - j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
  - k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
  - l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;

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- m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
- n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
- s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,
- w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
  - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;

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- iii) The unloaded handgun is delivered by a licensed dealer;
- iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,
- v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.

8) Made conforming and non-substantive technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee analysis for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN: 0001386

AG0021

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**SENATE RULES COMMITTEE**

AB 144

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
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THIRD READING

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Bill No: AB 144  
Author: Portantino (D), et al  
Amended: 6/1/11 in Senate  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-2, 6/7/11

AYES: Hancock, Liu, Price, Steinberg

NOES: Anderson, Harman

NO VOTE RECORDED: Calderon

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 46-29, 5/16/11 - See last page for vote

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SUBJECT: Open Carrying of unloaded handguns

SOURCE: California Police Chiefs Association

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DIGEST: This bill (1) makes it a misdemeanor punishable by up to six months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person or in a vehicle; (2) makes it a misdemeanor punishable by up to one year in county jail and a \$1,000 fine to openly carry an unlawfully possessed unloaded handgun and ammunition in public in an incorporated city; (3) establishes specified exceptions to this prohibition; (4) makes it a misdemeanor, punishable by up to six months in jail and a fine of up to \$1,000 for the driver of a vehicle to knowingly allow a person to bring an openly carried, unloaded handgun into the vehicle; and (5) makes conforming and nonsubstantive technical changes to affected statutes.

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AG0022

SER000169

**ANALYSIS:** Existing law defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." (Penal Code Section 16640(a).)

Existing law prohibits carrying a concealed weapon, loaded or unloaded, unless granted a permit to do so. Except as otherwise provided, a person is guilty of carrying a concealed firearm when he/she:

- Carries concealed within any vehicle which is under his/her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
- Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.
- Carries concealed upon his/her person any pistol, revolver, or other firearm capable of being concealed upon the person. (Penal Code Section 25400(a).)

Existing law provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which carrying a concealed weapon may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law.
- A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen.
- A felony where the person is an active participant in a criminal street gang.
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm.

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AG0023

- An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor where:
  - Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded.
  - The person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (Penal Code Section 25400(c).)

Existing law provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code Sections 25600, 25605, 25610, 25505-25595, 25450-25475, 25615-25655, and 26150-26255.)

Existing law authorizes the sheriff of a county, or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of specified conditions, and has completed a course of training, as specified, to issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

- A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.
- Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(Penal Code Sections 26150-26255.)

Existing law prohibits the carrying of a loaded firearm on his/her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those

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AG0024

provided in Penal Code Section 25400(c) and provide numerous exceptions and limitation to this prohibition. (Penal Code Section 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (Penal Code Section 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code Section 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law.
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen.
- A felony where the person is an active participant in a criminal street gang.
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm.

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AG0025

- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code Section 25858(c).)

Existing law, the "Gun-Free School Zone Act," prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone," defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code Section 626.9.)

Existing law provides that any person who has ever been convicted of a felony and who owns or has in his/her possession or under his/her custody or control a firearm is guilty of a felony, punishable by 16 months, two or three years in prison. (Penal Code Section 29800(b).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. (Penal Code Section 417(a).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his/her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, two or three years. (Penal Code Section 417(c).)

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AG0026

SER000173

This bill provides that it shall be a misdemeanor, punishable by up to six months in the county jail, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his/her person or inside or on a vehicle, whether or not on his/her person, while in:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county.

This bill provides that it shall be a misdemeanor punishable by imprisonment in a county jail for up to one year, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun inside or on a vehicle, whether or not on his/her person, while in a public place or public street in an incorporated city or city and county is, if both of the following conditions exist:

- The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- The person is not in lawful possession of that handgun.

This bill provides that the above-stated provisions shall not preclude prosecution under any other law with a penalty that is greater.

This bill provides that the above-stated provisions are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that, notwithstanding the fact that the term "an unloaded handgun" is used in this section; each handgun shall constitute a separate and distinct offense.

This bill provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

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AG0027

SER000174



- The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun, as specified.
- The open carrying of an unloaded handgun by any person authorized to openly carry a loaded handgun, as specified.
- The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business.
- The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading or the members thereof when at the meeting places of their respective organizations.
- The open carrying of an unloaded handgun upon the person by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.
- The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting.
- The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.
- The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization.
- The open carrying of an unloaded handgun upon the person within a gun show, as specified.

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AG0028

SER000175

- The open carrying of an unloaded handgun within a schoolzone, as defined, with the written permission of the school district superintendent, his/her designee, or equivalent school authority.
- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol.
- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.
- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, as specified, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property.
- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.
- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while rehearsing or practicing, or while the participant or authorized employee or agent is at that production event or rehearsal or practice.
- The open carrying of an unloaded handgun upon the person incident to obtaining an identification number or mark assigned for that handgun from the DOJ.
- The open carrying of an unloaded handgun upon the person at any established target range, whether public or private, while the person is using the handgun upon the target range.
- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he/she is actually engaged in assisting that officer.

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AG0029

SER000176

- The open carrying of an unloaded handgun upon the person incident to any of the following:
  - Complying with requirements for importing that handgun or curio or relic into California.
  - Reporting disposition of a handgun to DOJ, as specified.
  - The sale or transfer of that firearm to a government entity, as specified.
  - Complying with requirements related to the transfer of a handgun obtained by gift or inheritance.
  - Complying with requirements for taking possession or title of that handgun.
- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer.
- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer.
- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon.
- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department.
- The open carrying of an unloaded handgun upon the person within a place of business; within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property.
- The open carrying of an unloaded handgun upon the person when all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.

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AG0030

- The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
- The unloaded handgun is delivered by a licensed dealer.
- The open carrying of an unloaded handgun by a person authorized to carry a handgun in the State Capitol or residences of the Governor or other constitutional officers.
- The open carrying of an unloaded handgun by authorized public transit officials, as specified.
- The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is in lawful possession of that handgun.
- The carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

This bill provides that the "Gun Free School Zones Act" described above does not apply to or affect the following persons:

- A security guard authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.
- An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in county jail, a fine of up to \$1,000, or both, for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle an openly carried unloaded handgun, as specified.

This bill makes conforming and nonsubstantive technical changes.

Related/Prior Legislation

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AG0031

AB 1934 (Saldana, 2010) passed the Senate Floor (21-16) on August 31, 2010. This bill died on Assembly Concurrence; AB 98 (Cohn, 2005) was held on Suspense in the Assembly Appropriations Committee; AB 2501 (Horton, 2004) failed passage in the Assembly Public Safety Committee; AB 2828 (Cohn, 2004) failed passage in the Assembly Public Safety Committee

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Verified 6/28/11)

California Police Chiefs Association (source)  
Brady Campaign to Prevent Gun Violence (California Chapters)  
City of Beverly Hills  
City of Los Angeles  
City of West Hollywood  
Coalition Against Gun Violence  
Friends Committee on Legislation  
Legal Community Against Violence  
Los Angeles Sheriff's Department  
Peace Officers Research Association of California

**OPPOSITION:** (Verified 6/28/11)

California Rifle and Pistol Association  
California Right To Carry  
Capitol Resource Family Impact  
Contra Costa Open Carry  
Diablo Valley Gun Works  
Gun Owners of California  
National Rifle Association  
Open Carry Organization  
Redline Ballistic  
Responsible Citizens of California  
South Bay Open Carry

**ARGUMENTS IN SUPPORT:** According to the author's office, the absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals and causing issues for law enforcement. Simply put, open carry creates a potentially dangerous situation for the Citizens of California.

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AG0032

Often, when an individual is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more armed individuals are present at a location.

In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of "open carry" creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other people who happen to be in the line of fire.

Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways.

**ARGUMENTS IN OPPOSITION:** The National Rifle Association and the California Rifle and Pistol Association state:

By denying individuals the ability to carry an unloaded firearm, SB 144 directly violates the constitutional right to keep and bear arms for self-defense. We urge you to oppose this attack on the rights of the law abiding population to carry a firearm in case of a self-defense emergency should they so choose.

In addition, we write to notify you that the problems facing SB 144 are compounded by the current state of California's concealed carry weapons (CCW) permitting system. Should AB 144 pass, it will wreak havoc on California's CCW permitting system. In most areas of California, CCW permits are rarely issued, and are usually reserved for those with political clout and the wealthy elite. Because of this reality, "open carrying" is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, SB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

**ASSEMBLY FLOOR:**

AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos,

CONTINUED

AG0033

Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Gatto, Gordon, Hall, Hayashi, Hill, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Garrick, Grove, Hagman, Halderman, Harkey, Roger Hernández, Huber, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Olsen, Perea, Silva, Smyth, Valadao, Wagner.  
NO VOTE RECORDED: Galgiani, Gorell, Mendoza, Norby, Torres

RJG:do 6/28/11 . Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

AG0034

SER000181

**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Loni Hancock, Chair  
2011-2012 Regular Session

A  
B  
  
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4

AB 144 (Portantino)  
As Amended June 1, 2011  
Hearing date: June 7, 2011  
Business and Professions Code and  
Penal Code  
SM:dl

OPEN CARRYING OF UNLOADED HANDGUNS

HISTORY

Source: California Police Chiefs Association

Prior Legislation: AB 1934 (Saldana) - 2010, died on Assembly Concurrence  
AB 98 (Cohn) - 2005, held on Suspense in Assembly Appropriations  
AB 2501 (Horton) - 2004, failed passage in Assembly Public Safety  
AB 2828 (Cohn) - 2004, failed passage in Assembly Public Safety

Support: Brady Campaign to Prevent Gun Violence (California Chapters); City of Beverly Hills; City of Los Angeles; City of West Hollywood; Coalition Against Gun Violence; Friends Committee on Legislation; Legal Community Against Violence; Los Angeles Sheriff's Department; Peace Officers Research Association of California (PORAC); over 200 individual citizens

Opposition: California Rifle and Pistol Association; Capitol Resource Family Impact; Diablo Valley Gun Works; Gun Owners of California; National Rifle Association; Responsible Citizens of California; 20 individual citizens

Assembly Floor Vote: Ayes 46 - Noes 29

KEY ISSUES

SHOULD IT BE A MISDEMEANOR PUNISHABLE BY UP TO SIX MONTHS IN COUNTY JAIL AND A \$1,000 FINE TO OPENLY CARRY AN UNLOADED HANDGUN ON ONE'S PERSON OR IN A VEHICLE?

(Continued)

(More)

AG0035



SHOULD IT BE A MISDEMEANOR PUNISHABLE BY UP TO ONE YEAR IN COUNTY JAIL AND A \$1,000 FINE TO OPENLY CARRY AN UNLAWFULLY POSSESSED UNLOADED HANDGUN AND AMMUNITION IN PUBLIC IN AN INCORPORATED CITY?

SHOULD SPECIFIED EXCEPTIONS TO THIS PROHIBITION BE ESTABLISHED?

SHOULD IT BE A MISDEMEANOR, PUNISHABLE BY UP TO SIX MONTHS IN JAIL AND A FINE OF UP TO \$1,000 FOR THE DRIVER OF A VEHICLE TO KNOWINGLY ALLOW A PERSON TO BRING AN OPENLY CARRIED, UNLOADED HANDGUN INTO THE VEHICLE?

#### PURPOSE

*The purpose of this bill is to (1) make it a misdemeanor punishable by up to 6 months in jail and a \$1,000 fine to openly carry an unloaded handgun on one's person or in a vehicle; (2) make it a misdemeanor punishable by up to one year in county jail and a \$1,000 fine to openly carry an unlawfully possessed unloaded handgun and ammunition in public in an incorporated city; (3) establish specified exceptions to this prohibition; (4) make it a misdemeanor, punishable by up to six months in jail and a fine of up to \$1,000 for the driver of a vehicle to knowingly allow a person to bring an openly carried, unloaded handgun into the vehicle; and (5) make conforming and nonsubstantive technical changes to affected statutes.*

Existing law defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." (Penal Code § 16640(a).)<sup>1</sup>

Existing law prohibits carrying a concealed weapon, loaded or unloaded, unless granted a permit to do so. Except as otherwise provided, a person is guilty of carrying a concealed firearm when he or she:

- Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person;
- Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person; or,

<sup>1</sup> SB 1080, Chap. 711, Stats. 2010, and SB 1115, Chap. 178, Stats. 2010, recast and renumbered most statutes relating to deadly weapons without any substantive change to those statutes. Those changes will become operative January 1, 2012. All references to affected code sections will be to the revised version unless otherwise indicated.

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- Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person. (Penal Code § 25400(a).)

Existing law provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which carrying a concealed weapon may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation; and,
- An alternate felony-misdemeanor where:
  - Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded; and,
  - The person is not listed with the Department of Justice (DOJ) as the registered owner of the firearm. (Penal Code § 25400(c).)

Existing law provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code §§ 25600, 25605, 25610, 25505-25595, 25450-25475, 25615-25655, and 26150-26255.)

Existing law authorizes the sheriff of a county, or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying satisfies any one of specified conditions, and has completed a course of training, as specified, to issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

- A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.
- Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(Pen Code § 26150-26255.)

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Existing law prohibits the carrying of a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those provided in Penal Code Section 25400(c) and provide numerous exceptions and limitation to this prohibition. (Penal Code § 25850.)

Existing law provides that a firearm shall be deemed to be loaded for the purposes of Penal Code Section 12031 when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (Penal Code § 16840(b).)

Existing law provides in the Fish and Game Code that it is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public. (Fish and Game Code § 2006.)

Existing law provides that a rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine. (*Id.*)

Existing law provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or both. However, there are several circumstances in which the penalty may be punishable as a felony or alternate felony-misdemeanor:

- A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
- A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
- A felony where the person is an active participant in a criminal street gang;
- A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
- An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the registered owner of the firearm.

(Penal Code § 25858(c).)

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Existing law, the "Gun-Free School Zone Act," prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone," defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code § 626.9.)

Existing law provides that any person who has ever been convicted of a felony and who owns or has in his or her possession or under his or her custody or control a firearm is guilty of a felony, punishable by 16 months, 2 or 3 years in prison. (Penal Code § 29800(b).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. (Penal Code § 417(a).)

Existing law provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his or her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, 2 or 3 years. (Penal Code § 417(c).)

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in the county jail, a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person or inside or on a vehicle, whether or not on his or her person, while in:

- A public place or public street in an incorporated city or city and county.
- A public street in a prohibited area of an unincorporated area of a county or city and county.
- A public place in a prohibited area of a county or city and county.

This bill provides that it shall be a misdemeanor punishable by imprisonment in a county jail for up to one year; a fine of up to \$1,000, or both, for any person to carry an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in a public place or public street in an incorporated city or city and county is, if both of the following conditions exist:

- The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.
- The person is not in lawful possession of that handgun.

This bill provides that the above-stated provisions shall not preclude prosecution under any other law with a penalty that is greater.

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This bill provides that the above-stated provisions are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

This bill provides that, notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.

This bill provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:

- The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun, as specified;
- The open carrying of an unloaded handgun by any person authorized to openly carry a loaded handgun, as specified;
- The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engage in that business or an authorized representative of that business;
- The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
- The open carrying of an unloaded handgun upon the person by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
- The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
- The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
- The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
- The open carrying of an unloaded handgun upon the person within a gun show, as specified;
- The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;

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- The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
- The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
- The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, as specified, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
- The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while rehearsing or practicing, or while the participant or authorized employee or agent is at that production event or rehearsal or practice;
- The open carrying of an unloaded handgun upon the person incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- The open carrying of an unloaded handgun upon the person at any established target range, whether public or private, while the person is using the handgun upon the target range.
- The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- The open carrying of an unloaded handgun upon the person incident to any of the following:
  - Complying with requirements for importing that handgun or curio or relic into California;
  - Reporting disposition of a handgun to DOJ, as specified;
  - The sale or transfer of that firearm to a government entity, as specified;
  - Complying with requirements related to the transfer of a handgun obtained by gift or inheritance;
  - Complying with requirements for taking possession or title of that handgun;
- The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;

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- The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- The open carrying of an unloaded handgun upon the person within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property;
- The open carrying of an unloaded handgun upon the person when all of the following conditions are satisfied:
  - The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.
  - The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
  - The unloaded handgun is delivered by a licensed dealer.
- The open carrying of an unloaded handgun by a person authorized to carry a handgun in the State Capitol or residences of the Governor or other constitutional officers;
- The open carrying of an unloaded handgun by authorized public transit officials, as specified;
- The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is in lawful possession of that handgun;
- The carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

This bill provides that the "Gun Free School Zones Act" described above does not apply to or affect the following persons:

- A security guard authorized to openly carry an unloaded handgun pursuant to the provisions of this bill;
- An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to the provisions of this bill.

This bill provides that it shall be a misdemeanor, punishable by up to 6 months in county jail, a fine of up to \$1,000, or both, for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle an openly carried unloaded handgun, as specified.

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This bill makes conforming and nonsubstantive technical changes.

### *RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION*

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation. As these cases have progressed, prison conditions have continued to be assailed, and the scrutiny of the federal courts over California's prisons has intensified.

On June 30, 2005, in a class action lawsuit filed four years earlier, the United States District Court for the Northern District of California established a Receivership to take control of the delivery of medical services to all California state prisoners confined by the California Department of Corrections and Rehabilitation ("CDCR"). In December of 2006, plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a three-judge federal panel issued an order requiring California to reduce its inmate population to 137.5 percent of design capacity -- a reduction at that time of roughly 40,000 inmates -- within two years. The court stayed implementation of its ruling pending the state's appeal to the U.S. Supreme Court.

On May 23, 2011, the United States Supreme Court upheld the decision of the three-judge panel in its entirety, giving California two years from the date of its ruling to reduce its prison population to 137.5 percent of design capacity, subject to the right of the state to seek modifications in appropriate circumstances.

In response to the unresolved prison capacity crisis, in early 2007 the Senate Committee on Public Safety began holding legislative proposals which could further exacerbate prison overcrowding through new or expanded felony prosecutions.

This bill does not appear to aggravate the prison overcrowding crisis described above.

### COMMENTS

#### 1. Need for This Bill

According to the author:

The absence of a prohibition on "open carry" has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals and causing issues for law enforcement. Simply put, open carry creates a potentially dangerous situation for the Citizens of California.

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Often, when an individual is openly carrying a firearm, law enforcement is called to the scene with few details, other than one or more armed individuals are present at a location.

In these tense situations, the slightest wrong move by the gun-carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation the practice of "open carry" creates an unsafe environment for all parties involved; the officer, the gun-carrying individual, and for any other people who happen to be in the line of fire.

Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways.

## 2. Background – The "Open Carry Movement" in California

California has some of the nation's strictest regulations regarding gun ownership. One practice that has remained unregulated is carrying an unconcealed, unloaded handgun. In 2004 and 2005, and then again last year there were unsuccessful attempts to prohibit this practice. (AB 2828 (Cohn) (2004); AB 2501 (Horton) (2004); AB 98 (Cohn) (2005), AB 1934 (Saldana) (2010).) A new movement to promote the open carrying of firearms in California and around the country has heightened debate around the issue, as reported in the New York Times:

For years, being able to carry a concealed handgun has been a sacred right for many gun enthusiasts. In defending it, Charlton Heston, the actor and former president of the National Rifle Association, used to say that the flock is safer when the wolves cannot tell the difference between the lions and the lambs. But a grass-roots effort among some gun rights advocates is shifting attention to a different goal: exercising the right to carry unconcealed weapons in the 38 or more states that have so-called open-carry laws allowing guns to be carried in public view with little or no restrictions. The movement is not only raising alarm among gun control proponents but also exposing rifts among gun rights advocates.

The call for gun owners to carry their guns openly in the normal course of business first drew broad attention last summer, when opponents of the Obama administration's health care overhaul began appearing at town-hall-style meetings wearing sidearms. But in recent weeks, the practice has expanded as gun owners in California and other states that allow guns to be openly carried have tested the law by showing up at so-called meet-ups, in which gun owners appear at Starbucks, pizza parlors and other businesses openly bearing their weapons.

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"Our point is to do the same thing that concealed carriers do," said Mike Stollenwerk, a co-founder of OpenCarry.org, which serves as a national forum. "We're just taking off our jackets."

The goal, at least in part, is to make the case for liberalized concealed weapon laws by demonstrating how uncomfortable many people are with publicly displayed guns. The tactic has startled many business owners like Peet's Coffee and Tea and California Pizza Kitchen, which forbid guns at their establishments. So far, Starbucks has resisted doing the same. (*Locked, Loaded, and Ready to Caffeinate*, New York Times, March 7, 2010.  
[http://www.nytimes.com/2010/03/08/us/08guns.html?pagewanted=print.](http://www.nytimes.com/2010/03/08/us/08guns.html?pagewanted=print))

### 3. Is Banning Open Carrying of Handguns Unconstitutional?

The Second Amendment to the United States Constitution states, "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed". (U.S. Const., Second Amend.) For many years, courts have wrestled with the question of whether the Second Amendment protects the individual's right to own a weapon. In *United States vs. Cruikshank* (1875) 92 U.S. 542, the Supreme Court held that the Second Amendment guaranteed states the right to maintain militias but did not guarantee to individuals the right to possess guns. Subsequently, in *United States vs. Miller* (1939), the Court upheld a federal law banning the interstate transportation of certain firearms. Miller, who had been arrested for transporting a double-barreled sawed-off shotgun from Oklahoma to Arkansas, claimed the law was a violation of the Second Amendment.

The Court rejected Miller's argument, stating:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. (*United States v. Miller*, 307 U.S. 174, 178 (1939).)

For many years following the Supreme Court's decision in *United States vs. Miller*, the orthodox opinion among academics and federal appeals courts alike was that the Second Amendment to the United States Constitution did not protect possession of firearms unrelated to service in the lawfully established militia. (Merkel, *Parker v. District of Columbia and the Hollowess of the Originalist Claims to Principled Neutrality*, 18 Geo. Mason U. Civil Right L. Journal, 251, 251.)

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That changed in June 2008, when the United States Supreme Court ruled in *District of Columbia vs. Heller* that a District of Columbia complete ban on possession of a handgun in the home was an unconstitutional violation of the Second Amendment. (*District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2797.) After a lengthy discussion of the historical context and meaning of the Second Amendment, the Court stated:

Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.' As we said in *United States v. Cruikshank* [citation omitted] '[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed ...' " (*Heller* at 2797.)

However, in the *Heller* decision, the Supreme Court also stated:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.  
n26

#### FOOTNOTES

n26 We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive. (*District of Columbia v. Heller*, 128 S. Ct. 2783, 2816-2817 (2008), citations omitted.)

Therefore, while the *Heller* decision established that the right to own a firearm is a personal right, not one limited to ownership while serving in a "well-regulated militia," it also held that the government may place reasonable restrictions on that right such as restricting "carrying

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firearms in sensitive places." It is not clear whether the Supreme Court would include in its list of lawful regulatory measures prohibiting the open carrying of unloaded handguns in public.

#### IS A BAN ON OPEN CARRYING OF HANDGUNS IN PUBLIC CONSTITUTIONAL?

##### 4. Arguments in Support

The Peace Officer Research Association of California states:

The practice by individuals and organizations to "openly carry" firearms in public places in order to challenge law enforcement and firearm statutes in California is increasing in frequency. While PORAC understands that most of these open carry demonstrations are being done by law abiding citizens, it places law enforcement and the public in a precarious and possibly dangerous situation. Most often, law enforcement is called to the scene based on a citizen or merchant complaint. When the officer arrives at the scene, it is their obligation to question those persons carrying the firearms and to inquire as to whether the firearm is loaded. Until that officer has physically seen if the firearm is loaded, that officer must assume that their lives and the lives of those around them may be in danger.

Again, these situations are potentially dangerous and should not occur in a public place wherein any number of things could go wrong. We believe this bill will be very helpful in preventing these potentially unsafe incidents from happening.

##### 5. Arguments in Opposition

The National Rifle Association and the California Rifle and Pistol Association state:

By denying individuals the ability to carry an unloaded firearm, SB 144 directly violates the constitutional right to keep and bear arms for self-defense. We urge you to oppose this attack on the rights of the law abiding population to carry a firearm in case of a self-defense emergency should they so choose.

In addition, we write to notify you that the problems facing SB 144 are compounded by the current state of California's concealed carry weapons (CCW) permitting system. Should AB 144 pass, it will wreak havoc on California's CCW permitting system. In most areas of California, CCW permits are rarely issued, and are usually reserved for those with political clout and the wealthy elite. Because of this reality, "open carrying" is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, SB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

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ASSEMBLY THIRD READING  
AB 144 (Portantino and Armmiano)  
As Amended May 2, 2011  
Majority vote

PUBLIC SAFETY                      5-2                      APPROPRIATIONS                      12-5

Ayes: Armmiano, Cedillo, Hill, Mitchell,  
Yamada

Ayes: Fuentes, Blumenfield, Bradford,  
Charles Calderon, Campos, Davis,  
Gatto, Hall, Hill, Lara, Mitchell,  
Solorio

Nays: Knight, Hagan

Nays: Harkey, Donnelly, Nielsen, Norby,  
Wagner

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun, outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person, or when that person carries and exposed and unlocked handgun inside or on a vehicle, whether or not is in on his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) States that the open carrying of an unloaded handgun does not apply to the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

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- 7) Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
- a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
  - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
  - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is licensed to engaged in that business or an authorized representative of that business;
  - d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
  - e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
  - f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
  - g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
  - h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
  - i) The open carrying of an unloaded handgun within a gun show;
  - j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
  - k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
  - l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
  - m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and

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carrying is with the permission of the owner or lessee of that private property;

- n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
- o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or agent is at that production event;
- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
- q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer;
- r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
- s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
- t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
- u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
- v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property; and,
- w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
  - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities;
  - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation;
  - iii) The unloaded handgun is delivered by a licensed dealer;

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- iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers; and,
  - v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- 8) Makes conforming and nonsubstantive technical changes.

FISCAL EFFECT: According to the Assembly Appropriations Committee, unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in "open carry" calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

FN: 0000523

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Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Felipe Fuentes, Chair

AB 144 (Portantino) - As Amended: May 2, 2011

Policy Committee: Public Safety

Vote: 5-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill makes it a misdemeanor to carry an exposed and unloaded handgun in a public place ('open carry'). Specifically, this bill:

- 1) Makes it a misdemeanor punishable by up to six months in county jail and/or a fine of up to \$1,000, to carry an exposed and unloaded handgun while in a public place.
- 2) Creates a lengthy series of exceptions to the prohibition on open carry, including peace officers, range shooting, hunters engaged in lawful hunting, incidental transport, gun shows, entertainment props, etc.
- 3) Makes a series of conforming and nonsubstantive changes.

FISCAL EFFECT

Unknown, likely minor, non-state-reimbursable local law enforcement and incarceration costs, offset to a degree by increased fine revenue.

COMMENTS

- 1) Rationale. The author and proponents contend the absence of a prohibition on open carry has created a surge in problematic instances of guns carried in public, alarming people and causing issues for law enforcement. According to the author:

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

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- 2) Current law specifies that carrying a loaded gun or a concealed gun is generally a misdemeanor, punishable by up to one year in a county jail and/or a fine of up to \$1,000. There are circumstances, however, where the penalty may be a wobbler if the offender has a specified prior conviction.
- 3) Supporters, including the Police Chiefs Association, the Peace Officer Research Association of CA (PORAC), the CA chapters of the Brady Campaign to Prevent Gun Violence, and the Legal Community Against Violence, contend that in recent years, members of the so-called 'open carry movement' have held open carry events in public places such as coffee shops, restaurants, and public parks. Open carry intimidates the public, wastes law enforcement resources, and increases the potential for death and injury.

According to the Legal Community Against Violence, "Although California law requires openly carried firearms to remain unloaded, this does little to improve public safety, since state law also permits the carrying of ammunition. The ability to carry firearms and ammunition makes the distinction between loaded and unloaded weapons almost meaningless, as open carry advocates have boasted about their abilities to load their weapons in a matter of seconds."

- 4) Opponents, including various gun owner organizations, contend this bill is part of a continuing effort to disarm the public. According to the Gun Owners of California in their opposition to a similar bill last year, "We believe that a ban on 'open carrying' of unloaded handguns will bring a chilling effect on the constitutional rights of all citizens. Since the Second Amendment includes both the right to keep and bear arms, the government of California is going to have to come to grips as to how bearing will take place. As long as Carry Concealed Weapons Permits (CCWs) are not available to the vast majority of law-abiding citizens in California, the only other option is open carry.

"The argument that citizens legally expressing their rights causes some to be intimidated or uncomfortable is a vapid excuse for curtailing both the First and Second Amendment rights of any citizen. It may make some people feel uncomfortable or intimidated to hear someone espousing communist or nazi or racist beliefs in the public square, but as long as they are not breaking the law by exercising their hate-filled beliefs into actual subversion of the country, their rights of free speech, no matter how detestable, are protected even if it makes some people uncomfortable. That is freedom!"

- 5) Similar legislation, AB 1934 (Saldana), 2010, passed the Assembly 46-30, passed the Senate 21-16, and died on the Assembly floor on concurrence when the 2009-10 session expired.

Analysis Prepared by: Geoff Long / APPR. / (916) 319-2081

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Date of Hearing: April 12, 2011  
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Tom Ammiano, Chair

AB 144 (Portantino) – As Introduced: January 13, 2011

SUMMARY: Makes it a misdemeanor for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county. Specifically, this bill:

- 1) Makes it a misdemeanor punishable by imprisonment in the county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment for any person to carry an exposed and unloaded handgun outside a vehicle upon his or her person while in any public place or on any public street in an incorporated city, or in any public place or public street in a prohibited area of an unincorporated county.
- 2) Makes the crime of openly carrying an unloaded handgun punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000, or by that fine and imprisonment if the handgun and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not the registered owner of the firearm.
- 3) States that the sentencing provisions of this prohibition shall not preclude prosecution under other specified provisions of law with a penalty that is greater.
- 4) Provides that the provisions of this prohibition are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.
- 5) States that notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a separate and distinct offense.
- 6) Provides that the crime of openly carrying an unloaded handgun does not apply to, or affect, the following:
  - a) The open carrying of an unloaded handgun by any peace officer or by an honorably retired peace officer authorized to carry a handgun;
  - b) The open carrying of an unloaded handgun by any person authorized to carry a loaded handgun;
  - c) The open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, wholesaling, repairing or dealing in firearms and who is

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- licensed to engaged in that business or an authorized representative of that business;
- d) The open carrying of an unloaded handgun by duly authorized military or civil organizations while parading, or the members thereof when at the meeting places of their respective organizations;
  - e) The open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range;
  - f) The open carrying of an unloaded handgun by a licensed hunter while engaged in lawful hunting;
  - g) The open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law;
  - h) The open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while an official parade duty or ceremonial occasions of that organization;
  - i) The open carrying of an unloaded handgun within a gun show;
  - j) The open carrying of an unloaded handgun within a school zone, as defined, with the written permission of the school district superintendent, his or her designee, or equivalent school authority;
  - k) The open carrying of an unloaded handgun when in accordance with the provisions relating to the possession of a weapon in a public building or State Capitol;
  - l) The open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest;
  - m) The open carrying of an unloaded handgun incident to loaning, selling, or transferring the same, so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property;
  - n) The open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business which is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training;
  - o) The open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event when the participant lawfully uses the handgun as part of that production or event or while the participant or authorized employee or

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agent is at that production event;

- p) The open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice (DOJ);
  - q) The open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace while he or she is actually engaged in assisting that officer; or,
  - r) The open carrying of an unloaded handgun incident to a private party transfer through a licensed firearms dealer;
  - s) The open carrying of an unloaded handgun by a person in the scope and course of training by an individual to become a sworn peace officer;
  - t) The open carrying of an unloaded handgun in the course and scope of training to in order to be licensed to carry a concealed weapon;
  - u) The open carrying of an unloaded handgun at the request of a sheriff or chief or other head of a municipal police department;
  - v) The open carrying of an unloaded handgun within a place of business, within a place of residence, or on private property if done with the permission of the owner or lawful possessor of the property;
  - w) The open carrying of an unloaded handgun when all of the following conditions are satisfied:
    - i) The open carrying occurs at an auction or similar event of a nonprofit or mutual benefit corporation event where firearms are auctioned or otherwise sold to fund activities.
    - ii) The unloaded handgun is to be auctioned or otherwise sold for the nonprofit public benefit mutual benefit corporation.
    - iii) The unloaded handgun is delivered by a licensed dealer.
    - iv) The open carrying of an unloaded handgun does not apply to person authorized to carry handguns in the State Capitol or residences of the Governor or other constitutional officers.
    - v) The open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying the handgun is the registered owner of the handgun.
- 7) The offense of openly carrying an unloaded handgun if all of the following apply:

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- a) The handgun is carried on a public street or in a public place in a prohibited area of an unincorporated area of a county that is less than 200,000 persons, as specified.
  - b) The person carrying the handgun is the registered owner of the handgun.
  - c) The area where that person is carrying that handgun is not a public street or a public place in a prohibited area of an unincorporated territory of a county where that unincorporated area is completely bordered by an incorporated city.
- 8) Makes conforming and nonsubstantive technical changes.

EXISTING LAW:

- 1) Defines "handgun" as any "pistol," "revolver," or "firearm capable of being concealed upon the person." [Penal Code Section 12001(a)(2).]
- 2) Provides, except as otherwise provided, that a person is guilty of carrying a concealed firearm when he or she:
  - a) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person;
  - b) Causes to be concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person; or,
  - c) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person. [Penal Code Section 12025(a).]
- 3) Provides that carrying a concealed firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or by both the fine and imprisonment. However, there are six circumstances where the penalty may be punishable as a felony or alternate felony-misdemeanor:
  - a) A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
  - b) A felony where the firearm is stolen and the person knew, or had reasonable cause to believe, that the firearm was stolen;
  - c) A felony where the person is an active participant in a criminal street gang;
  - d) A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
  - e) An alternate felony-misdemeanor where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation; and,
  - f) An alternate felony-misdemeanor where:

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- i) Both the concealable firearm and the unexpended ammunition for that firearm are either in the immediate possession of the person or readily available to that person or where the firearm is loaded; and,
  - ii) The person is not listed with the DOJ as the registered owner of the firearm. [Penal Code Section 12025(b).]
- 4) Provides a number of exceptions and limitations to the prohibition on carrying a concealed firearm including methods to lawfully carry firearms in a vehicle, a home, or a business, etc. (Penal Code Sections 12025.5, 12026, 12026.1, 12026.2, 12027, and 12050.)
  - 5) Defines a "loaded firearm" as "when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder." [Penal Code Section 12031(g).]
  - 6) Prohibits the carrying of a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or a prohibited area of unincorporated territory. The penalty provisions for this prohibition are substantially similar to those provided in Penal Code Section 12025(b) and provide numerous exceptions and limitation to this prohibition. (Penal Code Section 12031.)
  - 7) Provides that carrying a loaded firearm is generally a misdemeanor, punishable by up to one year in a county jail; by a fine of up to \$1,000; or by both the fine and imprisonment. However, there are six circumstances where the penalty may be punishable as a felony or alternate felony-misdemeanor:
    - a) A felony where the person has previously been convicted of any felony or of any crime made punishable by the Dangerous Weapons Control Law;
    - b) A felony where the firearm is stolen and the person knew or had reasonable cause to believe that the firearm was stolen;
    - c) A felony where the person is an active participant in a criminal street gang;
    - d) A felony where the person is not in lawful possession of the firearm, as defined, or the person is within a class of persons prohibited from possessing or acquiring a firearm;
    - e) An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person has been convicted of a crime against a person or property or of a narcotics or dangerous drug violation.
    - f) An alternate felony-misdemeanor punishable by imprisonment in the state prison; by imprisonment in a county jail not to exceed one year; by a fine not to exceed \$1,000; or by both that imprisonment and fine where the person is not listed with the DOJ as the

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registered owner of the firearm. [Penal Code Section 12031(b).]

- 8) Prohibits a person, without appropriate permission, as specified, from possessing a firearm within an area that the person knew or reasonably should have known was a "school zone", defined as an area in or on the grounds of or within 1,000 feet of the grounds of any public or private K-12 school. (Penal Code Section 629.9.)
- 9) Provides that any person who has ever been convicted of a felony and who owns or has in his or her possession or under his or her custody or control a firearm is guilty of a felony, punishable by 16 months, 2 or 3 years in prison. [Penal Code Section 12021(b).]
- 10) Provides that every person who, except in self-defense, draws or exhibits any firearm in public, loaded or unloaded, in the presence of another person, in a rude, angry or threatening manner is guilty of a misdemeanor and shall be imprisoned for not less than three months nor more than one year in the county jail; fined \$1,000; or both. [Penal Code Section 417(a).]
- 11) Provides that every person who, except in self-defense, draws or exhibits any firearm, loaded or unloaded, in a rude, angry or threatening manner in public, in the presence of a peace officer, who a reasonable person would know was in the performance of his or her duty, is guilty of an alternate misdemeanor/felony and shall be imprisoned for not less than nine months and up to one year in the county jail or in the state prison for 16 months, 2 or 3-years. [Penal Code Section 417(c).]

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) Author Statement: According to the author, "The absence of a prohibition on 'open carry' has created an increase in problematic instances of guns carried in public, alarming unsuspecting individuals causing issues for law enforcement.

"Open carry creates a potentially dangerous situation. In most cases when a person is openly carrying a firearm, law enforcement is called to the scene with few details other than one or more people are present at a location and are armed.

"In these tense situations, the slightest wrong move by the gun carrier could be construed as threatening by the responding officer, who may feel compelled to respond in a manner that could be lethal. In this situation, the practice of 'open carry' creates an unsafe environment for all parties involved: the officer, the gun-carrying individual, and for any other individuals nearby as well.

"Additionally, the increase in 'open carry' calls has placed to law enforcement has taxed departments dealing with under-staffing and cutbacks due to the current fiscal climate in California, preventing them from protecting the public in other ways."

- 2) Argument in Support: According to the Legal Community Against Violence, "Over the past two years, members of the so-called 'open carry movement' have held numerous carrying events in public places like coffee shops, restaurants, and public parks. These events have shocked Californians statewide, because the open carrying of handguns creates serious public

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safety concerns. Open carrying intimidates the public, wastes law enforcement resources, and presents opportunities for injury and death due to the accidental or intentional use of firearms. This conduct needlessly increases the likelihood that everyday interpersonal conflicts will turn into deadly shootouts.

"Open carrying poses particular challenges for law enforcement officers who must respond to 911 calls from concerned citizens about people carrying guns in public. A state issued by the San Mateo County Sheriff's Office described the significant dangers that open carrying creates:

" 'Open carry create a potentially very dangerous situation. When police are called to a "man with a gun" call they typically are responding to a situation about which they have few details other than that one or more people are present at a location and are armed. . . . Consequently, the law enforcement response is one of "hypervigilant urgency" in order to protect the public from an armed threat. Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. . . . Simply put, it is not recommended to open carry firearms.'

"Although California law requires openly carried firearms to remain unloaded, this does little to improve public safety, since state law also permits the carrying of ammunition. The ability to carry firearms and ammunition makes the distinction between loaded and unloaded weapons almost meaningless, as open carry advocates have boasted about their abilities to load their weapons in a matter of seconds."

- 3) Argument in Opposition: According to the National Rifle Association, "Should AB 144 pass, it will wreak havoc on CA's California's concealed weapons (CCW) permitting system. In most areas of California, CCW permits are rarely issued, and are a usually reserved for those with political clout and the wealthy elite. Because of this reality, 'open carrying' is the only method available to the overwhelming majority of law-abiding individuals who wish to carry a firearm for self-defense. Accordingly, by banning the open carrying of even unloaded firearms, AB 144 effectively shuts the door on the ability of law-abiding Californians to carry a firearm for self-defense at all.

"In fact, a recent 9<sup>th</sup> Circuit District Court decision expressly relied on the ability to 'open carry' as the basis for its decision to uphold the government's current policy denying CCW application unless the applicant demonstrates some special need or 'good cause' beyond that of general self-defense.

"In that case, *Peruta v. County of San Diego*, several Plaintiffs challenged the government's CCW permitting scheme. The suit alleged that the permitting scheme violated the Second Amendment because CCW applications are typically denied where the applicant identifies only a generalized self-defense need as the 'good cause' required by Cal. Pen. Code section 12050. And even though the Second Amendment requires the government to afford law abiding citizens the ability to 'bear' or 'carry' firearms for self-defense – without discretion as to who may be qualified to exercise that right – the Court ruled that the County's policy of requiring specific threats of harm, as opposed to general 'self-defense' need, did not violate the Second Amendment because the state *already* authorizes constitutional means of carrying a firearm for self-defense. That means of carry is found in section 12031, which permits the

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carrying of an unloaded firearm that may be loaded by the individual in a self-defense emergency.

" [A]s a practical matter, should the need for self-defense arise, nothing in section 12031[(j)] restricts the open carry of unloaded firearms and ammunition for instant loading' ... 'As a consequence, the Court declines to assume that section 12031 places an unlawful burden on the right to carry a firearm for self-defense... "

" (Order Denying Plaintiff's Motion for Partial Summary Adjudication and Granting Defendant's Motion for Summary Judgment at 8:8-10, 8:21-22, *Peruta v. County of San Diego*, No. 09-2371 (S.D. Cal. 2010)."

"If not for the lawful ability to openly carry a firearm that may be loaded for self-defense, the County's entire CCW scheme of requiring 'good cause' beyond that of self-defense would have been ruled unconstitutional in *Peruta*."

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign to Prevent Gun Violence  
California Police Chiefs Association, Inc.  
City of West Hollywood  
Friends Committee on Legislation of California  
Legal Community Against Violence  
Peace Officer Research Association of California

Opposition

Bay Area Open Carry Movement  
California Rifle and Pistol Association  
Californians for Natural Rights  
Capitol Resource Family Impact  
Contra Costa Open Carry  
Gun Owners of California  
Intelligent Recycling Solutions  
National Rifle Association  
Responsible Citizens of California  
South Bay Open Carry  
131 private individuals

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

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California  
LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

(a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a *any* calendar month.

(b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.

(d) Patrol special police officers appointed by the police commission of a *any* city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) A *Any* bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(i) A person engaged solely in the business of securing information about persons or property from public records.

(j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may

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not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services, or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(n) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
- (2) The screening and monitoring access of prearranged and preauthorized invited guests.
- (3) The screening and monitoring of vendors and suppliers.
- (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

**SEC. 2.** Section 7582.2 of the Business and Professions Code is amended to read:

**7582.2.** This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section ~~7574.01~~, 7574.1, and is employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(e) Patrol special police officers appointed by the police commission of a *any* city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) *Any* bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, ~~may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code,~~ and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) *Any* savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) *Any* secured creditor engaged in the repossession of the creditor's collateral and a *any* lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

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(q) A person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a *any* deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

- (1) The screening and monitoring access of employees of the same employer.
  - (2) The screening and monitoring access of prearranged and preauthorized invited guests.
  - (3) The screening and monitoring of vendors and suppliers.
  - (4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.
- (r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

- (1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.
- (2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

**SEC. 3.** Section 626.92 is added to the Penal Code, to read:

**626.92.** Section 626.9 does not apply to or affect any of the following:

- (a) A security guard authorized to openly carry an unloaded handgun pursuant to Chapter 6 (commencing with Section 26350) of Division 5 of Title 4 of Part 6.
- (b) An honorably retired peace officer authorized to openly carry an unloaded handgun pursuant to Section 26361.

**SEC. 4.** Section 16520 of the Penal Code is amended to read:

**16520.** (a) As used in this part, "firearm" means a *any* device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an *any* explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.

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(16) Section 31615.

(17) Sections 31705 to 31830, inclusive.

(18) Sections 34355 to 34370, inclusive.

(19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a *any* rocket, rocket propelled projectile launcher, or similar device containing an *any* explosive or incendiary material, *material* whether or not the device is designed for emergency or distress signaling purposes:

(1) Section 16750.

(2) Subdivision (b) of Section 16840.

(3) Section 25400.

(4) Sections 25850 to 26025, inclusive.

(5) Subdivisions (a), (b), and (c) of Section 26030.

(6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

(1) Subdivisions (a) and (c) of Section 16730.

(2) Section 16550.

(3) Section 16960.

(4) Section 17310.

(5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.

~~(6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.~~

~~(7) (6) Sections 26500 to 26588, inclusive.~~

~~(8) (7) Sections 26700 to 26915, inclusive.~~

~~(9) (8) Section 27510.~~

~~(10) (9) Section 27530.~~

~~(11) (10) Section 27540.~~

~~(12) (11) Section 27545.~~

~~(13) (12) Sections 27555 to 27570, inclusive.~~

~~(14) (13) Sections 29010 to 29150, inclusive.~~

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

**SEC. 5.** Section 16750 of the Penal Code is amended to read:

16750. (a) As used in Section 25400, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner

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(b) As used in Article 2 (commencing with Section 25850), Article 3 (commencing with Section 25900), and Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4, and Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and ~~Chapter 7 (commencing with Section 26400) of Division 5 of Title 4,~~ "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

**SEC. 6.** Section 16850 of the Penal Code is amended to read:

16850. As used in Sections 17740, 23925, 25105, 25205, and 25610, in Article 3 (commencing with Section 25505) of Chapter 2 of Division 5 of Title 4, and in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, and ~~in Chapter 7 (commencing with Section 26400) of Division 5 of Title 4,~~ "locked container" means a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

**SEC. 7.** Section 16950 is added to the Penal Code, to read:

16950. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed to be carried openly or exposed if the handgun is not carried concealed within the meaning of Section 25400.

**SEC. 8.** Section 17040 is added to the Penal Code, to read:

17040. As used in Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, "public place" has the same meaning as in Section 25850.

**SEC. 9.** Section 17295 is added to the Penal Code, to read:

17295. For purposes of Chapter 6 (commencing with Section 26350) of Division 5 of Title 4, a handgun shall be deemed "unloaded" if it is not "loaded" within the meaning of subdivision (b) of Section 16840.

**SEC. 10.** Section 17512 is added to the Penal Code, to read:

17512. It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, to knowingly permit any other person to carry into or bring into the vehicle a firearm in violation of Section 26350.

**SEC. 11.** Section 25590 is added to the Penal Code, to read:

25590. Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

- (a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.
- (b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.
- (c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

**SEC. 12.** Section 25595 of the Penal Code is amended to read:

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SEC. 13. Section 25605 of the Penal Code is amended to read:

25605. (a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Sections 25850 to 26055, inclusive.

SEC. 14. Chapter 6 (commencing with Section 26350) is added to Division 5 of Title 4 of Part 6 of the Penal Code, to read:

**CHAPTER 6. Openly Carrying an Unloaded Handgun**

**Article 1. Crime of Openly Carrying an Unloaded Handgun**

26350. (a) (1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if both of the following conditions exist:

(A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.

(B) The person is not in lawful possession of that handgun.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

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(d) Notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a distinct and separate offense under this section.

#### Article 2. Exemptions

26361. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

26362. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person to the extent that person may openly carry a loaded handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

26363. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

26364. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

26365. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using handguns upon the target ranges or incident to the use of a handgun at that target range.

26366. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

26367. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

26368. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

26369. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

26370. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9, with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority.

26371. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when in accordance with the provisions of Section 171b.

26372. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.

26373. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to loaning, selling, or transferring that handgun in accordance with Article 1 (commencing with Section 27500) of Chapter 4 of Division 6, or in accordance with any of the exemptions from Section 27545, so long as that

26374. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

26375. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

26376. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice pursuant to Section 23910.

26377. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun at any established target range, whether public or private, while the person is using the handgun upon the target range.

26378. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

26379. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

(a) Complying with Section 27560 or 27565, as it pertains to that handgun.

(b) Section 28000, as it pertains to that handgun.

(c) Section 27850 or 31725, as it pertains to that handgun.

(d) Complying with Section 27870 or 27875, as it pertains to that handgun.

(e) Complying with Section 27915, 27920, or 27925, as it pertains to that handgun.

26380. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

26381. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

26382. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

26383. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry openly an unloaded handgun within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

26384. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun if all of the following conditions are satisfied:

(a) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

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(c) The unloaded handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26925, Inclusive.

26385. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to paragraph (3) of subdivision (b) of Section 171c.

26386. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to Section 171d.

26387. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to subparagraph (F) of paragraph (1) subdivision (c) of Section 171.7.

26388. Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying that handgun is in lawful possession of that handgun.

26389. Section 26350 does not apply to, or affect, the carrying of an unloaded handgun, if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



*California*  
LEGISLATIVE INFORMATION

AB-144 Firearms. (2011-2012)

Senate: 1st Cmt 2nd 3rd 2nd 3rd Pass Chp  
 Assembly: 1st Cmt 2nd 3rd Pass Pass

<b>Bill Status</b>	
Measure:	AB-144
Lead Authors:	Portantino (A) , Ammlano (A)
Principal Coauthors:	-
Coauthors:	De León (S) , Huffman (A) , Swanson (A)
Topic:	Firearms.
31st Day in Print:	02/13/11
Title:	An act to amend Sections 7574.14 and 7582.2 of the Business and Professions Code, and to amend Sections 16520, 16750, 16850, 25595, and 25605 of, to add Sections 626.92, 16950, 17040, 17295, 17512, and 25590 to, and to add Chapter 6 (commencing with Section 26350) to Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.
House Location:	Secretary of State
Chaptered Date:	10/09/11
Last Amended Date:	06/01/11

<b>Type of Measure</b>	
Inactive Bill - Chaptered	
Majority Vote Required	
Non-Appropriation	
Fiscal Committee	
State-Mandated Local Program	
Non-Urgency	
Non-Tax levy	

<b>Last 5 History Actions</b>	
<b>Date</b>	<b>Action</b>
10/09/11	Chaptered by Secretary of State - Chapter 725, Statutes of 2011.
10/09/11	Approved by the Governor.
09/21/11	Enrolled and presented to the Governor at 3:30 p.m.
09/09/11	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 48. Noes 30. Page 3208.)
09/09/11	In Assembly. Concurrence in Senate amendments pending.

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## CERTIFICATE OF E-FILING AND SERVICE

Court: **U.S. Court of Appeals, Ninth Circuit**  
Case Name: ***Nichols v. Brown***  
Case No.: **13-56203**

I, R. Velasco, declare as follows:

I am 18 years of age or older and not a party to this matter. I am employed in Los Angeles, California, in the Office of the Attorney General, Department of Justice, State of California, which is the office of a member of the California State Bar, at which member's direction the following service is made.

I certify that at least some of the past or present participants in the above-entitled case are registered CM/ECF users. I further certify that, with Jonathan M. Eisenberg, one of the attorneys of record in the above entitled case, I electronically filed the document entitled **BRIEF OF RESPONDENT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS** with the Clerk of the Court for the U.S. Court of Appeals, Ninth Circuit, by using the appellate CM/ECF system on September 4, 2013. Participants in the case who are registered CM/ECF users will thereby be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed [1] **BRIEF OF RESPONDENT CALIFORNIA ATTORNEY GENERAL KAMALA D. HARRIS**, [2] **SUPPLEMENTAL EXCERPTS OF RECORD, VOLUME 1 (SER000001-37)**, [3] **SUPPLEMENTAL EXCERPTS OF RECORD, VOLUME 2 (SER000038-219)**, and [4] **SUPPLEMENTAL EXCERPTS OF RECORD, VOLUME 3 (SER000220-350)** by first-class U.S. mail, postage prepaid, or have dispatched the documents to a third-party commercial carrier for delivery within three calendar days to the following CM/ECF non-participants:

Charles E. Nichols; P.O. Box 1302; Redondo Beach, CA 90278

C.D. Michel, Sean A. Brady; Michel and Associates, P.C.; 180 E. Ocean Blvd., Ste. 200; Long Beach, CA 90802

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 4, 2013, at Los Angeles, California.

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R. Velasco  
Declarant



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Signature