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**Re: Demand to Repeal \$212 Concealed Weapons Permit Fee; Opposition to
Proposed \$555 Psychological Testing Fee**

Honorable Members of the Board:

We write on behalf of our clients, the National Rifle Association and the California Rifle & Pistol Association, as well as the hundreds of thousands of their members in California, many residing within your jurisdiction, to demand the repeal of the current \$212 fee charged for concealed carry weapon ("CCW") applications, and to oppose the proposed \$555 fee for psychological testing as part of the CCW application process.¹

Currently, the Sonoma County Sheriff charges first time CCW applicants a local processing fee of \$212.² According to the Sheriff's website, a non-refundable portion of this application fee in the amount of \$42 is collected when the application is submitted.³ In addition, renewal applicants must pay a \$80.75 fee to renew their CCW.⁴

¹ Agenda Item Number 22, http://sonoma-county.granicus.com/MetaViewer.php?view_id=2&event_id=666&meta_id=205789.

² *Id.* (noting that on April 26, 2016, the Board approved the Sheriff's Annual Fee Ordinance, which included a change in the fee for new permits from \$100 to \$212, effective July 1, 2016).

³ <http://www.sonomasheriff.org/ccw/>.

⁴ *Id.*

But as explained in greater detail below, the Sonoma County Sheriff's established fee for CCWs violate the \$100 cap established by the California Penal Code and is thus invalid and unenforceable, as are the non-refundable application fee and renewal fee. We respectfully request the Board to initiate the repeal process or to inform us of its intentions within 30 days. For identical reasons, we ask the Board to oppose any proposed increase in the psychological testing fee.

I. LEGISLATIVE AUTHORITY GRANTED TO SONOMA COUNTY TO CHARGE LOCAL PROCESSING FEES RELATING TO CONCEALED WEAPON PERMIT APPLICATIONS

California has established a comprehensive and complex regulatory scheme regarding the issuance of licenses to carry a pistol, revolver, or other firearm capable of being concealed upon one's person.⁵ Individuals seeking such a license may apply either to the Sheriff of the County in which they reside, or to their respective Chief of Police of the City or City and County in which their residence is located.⁶ To qualify for a license, individuals applying for a license must demonstrate: (1) good moral character; (2) good cause for the issuance of the license; (3) residency; and, (4) completion of a mandatory 16-hour training course.⁷ Any policies and procedures relating to these requirements must be published by the issuing authority.⁸

To begin the application process, individuals must submit the proper application form to their respective licensing authority. The form itself is uniform throughout the state as prescribed by the California Attorney General,⁹ and applicants cannot be required to complete any additional forms or provide any information other than that necessary to complete the standard application form.¹⁰

The Penal Code allows licensing authorities to charge a fee equal to the actual costs for processing the application.¹¹ ***But in no case is this fee to exceed one hundred dollars.***¹² Only the first 20 percent of this "local fee" may be collected upon filing the initial application (up to \$20).¹³ What's more, once the local fee has been established, it may only be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of

⁵ See Cal. Penal Code §§ 26150-26225, *see also* Cal. Penal Code § 16530 (defining "firearm capable of being concealed upon the person").

⁶ Cal. Penal Code §§ 26150-26155.

⁷ Cal. Penal Code § 26155(a)(1-4).

⁸ Cal. Penal Code § 26160.

⁹ Cal. Penal Code § 26175(a)(1).

¹⁰ Cal. Penal Code § 26175(g).

¹¹ Cal. Penal Code § 26190(b)(1) (excluding the required fingerprinting and training costs).

¹² *Id.*

¹³ Cal. Penal Code § 26190(b)(2) (the remaining balance can only be collected upon issuance of the license).

Industrial Relations.¹⁴ As a result, the approval of the CCW fee increase from \$100 to \$212 by the Board of Supervisors as part of the Sheriff's Annual Fee Ordinance was improper.

A. Proposed Psychological Testing Fee Increase

For similar reasons, the proposed increase in psychological testing fees from \$150 to over \$555 is untenable. As stated in Penal Code section 26190, an "applicant may be charged for the actual costs of the testing *in an amount not to exceed one hundred fifty dollars (\$150)*."¹⁵ Here, the Sonoma County Sheriff is taking a blanket approach by requiring all applicants to undergo psychological testing, which as noted by the Sheriff is not required under the Penal Code. Tellingly, only three other counties have a similar requirement, indicating that a vast majority of Sheriffs find such a requirement unnecessary.

Contrary to the information provided by the Sheriff to the Board, data from the California Department of Justice indicates that in 2015 there were 52 active CCW permits issued by the Sonoma County Sheriff. Three of these permits were issued to judges, and one was issued to a reserve officer. There were also nine applications listed as "delayed," two of which were judges. If the Sheriff intends to require all applicants to undergo a psychological test, we ask the Sheriff to clarify to the Board if judicial and reserve officer applicants will be required to undergo the same testing.

B. Application of Government Code Section 54985

The Sheriff argues that Government Code section 54985 permits the Sheriff to charge a fee in excess of the amount allowed by the Penal Code. But this argument is without merit for several reasons.

First, section 54985 does not apply to California's CCW licensing scheme because unlike other state statutes which simply impose a fee cap for various services, Penal Code section 26190 specifically removes any authority to charge an excessive fee. As clearly stated in section 26190, "[e]xcept as authorized pursuant to this section, no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant, or requires the applicant to obtain liability insurance, *may be imposed by any licensing authority as a condition of the application for a license*."¹⁶

In cases where inconsistent statutes cannot otherwise be reconciled, "a particular or specific provision will take precedence over a conflicting general provision."¹⁷ As is the case here, the fact that

¹⁴ Cal. Penal Code § 26190(d). *See also California Consumer Price Index*, State of California, Department of Industrial Relations, <http://www.dir.ca.gov/OPRL/capriceindex.htm> (last visited Sept. 27, 2016).

¹⁵ Cal. Penal Code § 26190(f) (emphasis added).

¹⁶ Cal. Penal Code § 26190(g) (emphasis added).

¹⁷ *People v. Vessell*, 36 Cal.App.4th 285, 289 (1995) (applying Code Civ. Pro. Section 1859). In *Vessell*, a convicted felon was facing a charge of committing corporal punishment on a person with whom he cohabitated, punishable as either a misdemeanor or felony. The court accepted a plea to a

the Legislature enacted a specific statute is a powerful indication that the Legislature intended the specific provision alone to apply.¹⁸ Indeed, in most instances, an overlap of provisions is determinative of the issue of legislative intent and “requires us to give effect to the special provision alone in the face of the dual applicability of the general provision . . . and the special provision.”¹⁹ As a result, because Penal Code section 26190 specifically addresses CCW application fees in light of actual processing costs, it clearly controls over Government Code section 54985.

Second, the rules of statutory interpretation dictate that in construing inconsistent statutes, the later clause will control.²⁰ Here, Government Code section 54985 was originally enacted in 1983, and most recently amended by Senate Bill No. 676 in 2009. Penal Code section 26190, however, was formerly listed as Penal Code section 12054 until being renumbered in 2010 by Senate Bill No. 1080. Additionally, section 26190 was amended in 2011 by Senate Bill No. 610, which established further protections for applicants seeking a CCW license, particularly as it relates to applicants paying unnecessary fees. And at no point during consideration of Senate Bill No. 610 was Government Code section 54985 even mentioned. As a result, any conflict between Penal Code section 26190 and Government Code section 54985 must be resolved in favor of Penal Code section 26190 because, having been amended in 2011, it is the most recently enacted statute.

Finally, the California Legislature passed Assembly Bill No. 450 this year, which would have removed the statutory \$100 cap set forth under Penal Code section 26190.²¹ But on Monday, September 26, Governor Jerry Brown vetoed the proposed legislation, stating that “[t]his bill was spurred by a local dispute in one county,” and that he was “unaware of a larger problem that merits a statewide change at this time.”²² If Government Code section 54985 truly allowed what the Sonoma County Sheriff argues, there would have been no need for a legislative amendment to the \$100 local licensing cap in the first place. Otherwise, the Sacramento Sheriff would have simply charged the increased fee regardless of Assembly Bill No. 450’s outcome. As a result, the \$100 local licensing fee cap for initial applicants, the \$25 renewal fee cap, and the \$150 psychological testing fee cap remain in effect and prohibit Sonoma County from charging fees in excess of these amounts.

misdemeanor with a sentence in *county jail*, but the People appealed, arguing that the court did not have discretion to sentence the defendant because the Three Strikes Law at the time required a *state prison* term to be imposed. The conviction was ultimately upheld because although the sentence was in conflict with the Three Strike Law, was not vitiated by such, because the Legislature intended that courts have the specific discretion employed by the court in all cases, despite the mandates of the Three Strikes law.

¹⁸ *People v. Jenkins*, 28 Cal.3d 494, 505 (1980).

¹⁹ *People v. Gilbert*, 1 Cal.3d 475, 481 (1969).

²⁰ *State Dep’t of Pub. Health v. Superior Court*, 60 Cal.4th 940, 960 (2015) (stating that “if conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones”).

²¹ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB450.

²² A copy of the Governor’s veto message for Assembly Bill No. 450 can be viewed online at https://www.gov.ca.gov/docs/AB_450_Veto_Message.pdf.

II. CONCLUSION

Our clients and their members respectfully urge the Board to repeal the illegal fee currently charged for concealed weapon permits, and to vote in opposition to the proposed increase for fees associated with psychological testing. Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read 'MDC', with a long horizontal flourish extending to the right.

Matthew D. Cubeiro