IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

SHERIFF CLAY PARKER, TEHAMA COUNTY SHERIFF; HERB BAUER SPORTING GOODS; CALIFORNIA RIFLE AND PISTOL ASSOCIATION; ABLE'S SPORTING, INC.; RTG SPORTING COLLECTIBLES, LLC; AND STEVEN STONECIPHER, Plaintiffs and Respondents, v. THE STATE OF CALIFORNIA; KAMALA D. HARRIS, in her official capacity as Attorney General for the State of California; and THE CALIFORNIA DEPARTMENT OF JUSTICE, Defendants and Appellants.	)	Case No. F062490

Fresno County Superior Court, Case No. 10ECG02116
The Honorable Jeffrey Y. Hamilton, Judge

BRIEF AMICUS CURIAE OF THE LAW ENFORCEMENT ALLIANCE OF AMERICA, INC. IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS

The Law Enforcement Alliance of America, Inc. (LEAA) is a non-profit, non-partisan advocacy and public education organization founded in 1992 and made up of thousands of law enforcement professionals, crime victims, and concerned citizens united for justice and dedicated to making America safer. Many of LEAA's members reside and/or work in California. LEAA represents its members' interests by assisting law enforcement professionals, securing victims' rights over criminals' rights, seeking criminal justice reforms that target violent criminals, not law-abiding citizens, and explaining, from a law enforcement perspective, why firearms regulation is not effective in controlling crime. LEAA's interest in this case is two-fold: 1) protecting the interests of law enforcement officers from the negative effects of vague laws, such as lawsuits for false arrest and failure to train, setting aside of convictions to which limited law enforcement resources have been devoted, and the need for specialized training (and to carry around a constantly-being-revised "bullet guide"; and 2) the advancement of public safety, based on the experience of the large majority of states, where law-abiding, trained adults are allowed to carry firearms for lawful protection.

LEAA has been an amicus in other cases in California and on the prevailing side in two cases decided by the United States Supreme Court, and, as an organization representing law enforcement professionals who are on the front lines of enforcing the law, LEAA can assist the court by providing the court with the perspective of law enforcement professionals.

INTRODUCTION

The provisions of California law at issue in this appeal purporting to regulate so-called "handgun ammunition" (the "Challenged Provisions") employ a vague standard that cannot be applied by law enforcement officers. Laws, such as the Challenged Provisions, that fail to explain what items fall within their reach are of concern to Amicus because they not only result in a waste of law enforcement resources due to officers having to defend against civil lawsuits and to spend time, money, and effort on arrests that will not procure convictions, but because such laws create an environment of mistrust between law enforcement and the public due to their fundamental unfairness and lack of clarity. Amicus seeks to make this court aware of the detrimental effects on law enforcement and, in turn, public safety in general when officers are tasked with enforcing vague laws like the Challenged Provisions, and the importance of holding the Legislature to its constitutional duty of making laws both law enforcement and the public understand.

ARGUMENT

Plaintiffs here have challenged Penal Code Sections 12060, 12061, and 12318 ("the Challenged Provisions"). At the heart of these challenges is the language of Penal Code Section 12323(a), which provides that handgun ammunition is:

> ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in subdivision (a) of Section 12001, notwithstanding that the ammunition may also be used in some rifles.

The "principally for use" in handguns language is void for vagueness as law

enforcement officers cannot determine from the language of the statute whether any particular ammunition is prohibited. This fundamental and fatal flaw in the statute is of great concern to Amicus because Amicus has an interest in ensuring the enactment of laws that provide sufficient clarity to law enforcement officers to ensure that law enforcement's limited resources are used in cases where convictions can realistically be expected to result and to be upheld. Moreover, laws that provide sufficient clarity to law enforcement officers can prevent civil lawsuits against officers.

I.
Applicable Standard of Review

Kolender v. Lawson, 461 U.S. 352 (1983), explained that the void-for-vagueness doctrine "requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." 461 U.S. at 357. The Court noted, however, that "[a]lthough the doctrine focuses both on actual notice to citizens and arbitrary enforcement," the Court has:

> recognized recently that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine — the requirement that a legislature establish minimal guidelines to govern law enforcement." *Smith* [*v. Goguen*, 415 U.S. 566 (1974)] at 574. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Id.*, at 575.

461 U.S. at 357-358.

More recently, the Court has held that, "even if an enactment does not reach a

substantial amount of constitutionally protected conduct, it may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests." *Chicago v. Morales*, 527 U.S. 41, 52 (1999). That is not to say, however, that the impact on constitutionally protected conduct is not a factor in vagueness analysis. In *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489 (1982), the Court first reviewed three factors that enter into vagueness analysis: is the law "economic regulation," are the penalties civil rather than criminal, and is there a *scienter* requirement. The Court then stated:

> [P]erhaps the *most important* factor affecting the clarity that the Constitution demands of a law is *whether it threatens to inhibit the exercise of constitutionally protected rights*. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply.

455 U.S. at 499 (emphasis added).[1]

Thus, because the Challenged Provisions are not merely "economic regulations," the penalties are criminal, there is no *scienter* requirement,[2] and they plainly threaten to inhibit

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[1] This holding belies Appellants' assertion that the "relevance of the Second Amendment to this case as pled is marginal, at best." Appellants' Reply Brief 5.

[2] Appellants concede that the challenged statutes "do not explicitly state a required mental state," but contend that "it is clear that a mental state is required." Appellants' Reply Brief 6, n.5. But what is not required is knowledge that the ammunition is handgun ammunition. A person who sells ammunition covered by the statute is subject to liability regardless of whether he/she has any knowledge that the ammunition was "handgun" ammunition. Moreover, even if Appellants were correct that the statute required *scienter*, a very stringent vagueness test would still apply because Appellants do not dispute that the statute is not "economic regulation," that the penalties are criminal, and that it threatens to inhibit the exercise of rights guaranteed by the Second Amendment.

the exercise of rights guaranteed by the Second Amendment (although this case does not challenge the laws as a violation the Second Amendment),[3] a very stringent vagueness test should apply, requiring the laws meet the "strictest standards of clarity" to be upheld. The State's Reply brief ignores this, and argues only that, in a facial constitutional challenge, a law must be unconstitutional in all of its applications for the challenger to succeed outside the free speech and abortion contexts. State's Reply Br. 1-2.

The fact that the extent to which a statute reaches a substantial amount of constitutionally protected conduct is not necessarily a factor in a vagueness challenge demonstrates the utter lack of merit of Appellants' argument that, when a vagueness challenge is made to a statute, the statute is constitutional unless it is "void in all applications." Appellants' Reply Brief 5. The "void in all applications" test applies only to facial challenges to statutes which are asserted to impinge upon a specific constitutionally guaranteed right, as was the case in *United States v. Salerno*, 481 U.S. 739 (1987) (facial challenge to Bail Reform Act based on Due Process Clause of the Fifth Amendment and Eighth Amendment's proscription against excessive bail) and in the cases cited at pages 5-6 of Appellants' Reply Brief, including *Sanchez v. City of Modesto*, 145 Cal.App.4th 660 (2007) (facial challenge based on Equal Protection Clause). *Salerno* and the cases cited at

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[3] Because this case this case does not challenge the laws as a violation of the Second Amendment, the statement in *District of Columbia v. Heller*, 554 U.S. 570 (2008) that the Court's opinion "should not be taken to cast doubt on . . . laws imposing conditions and qualifications on the commercial sale of arms," *Id*. at 627, has no bearing on the instant case, as suggested by Appellants. Appellants' Reply Brief 4.

pages 5-6 of Appellants' Reply Brief did not involve vagueness challenges to laws that abut upon constitutional rights. Thus, while the "void in all applications" test was properly applied in *Salerno* and the cases cited at pages 5-6 of Appellants' Reply Brief, it has no application to the instant case, which does involve a vagueness challenge to laws that impinge upon constitutional conduct and levy criminal penalties without a *scienter* requirement. Because the general "void in all applications" test does not apply, it is entirely immaterial whether there might be one (or even several) potentially valid applications of the law.[4]

Although it is inappropriate in facial vagueness challenges to laws that abut upon constitutional conduct, impose criminal liability, and/or lack a *scienter* requirement to look to whether the law is unconstitutional in all of its applications under the seldom-used *Salerno* test (or the more lenient "generality" of the cases test), should the court apply either test, it must conduct its review under the stringent vagueness analysis required of such laws. Laws that abut upon or impact fundamental rights require the highest levels of clarity, regardless of the specific right that they impact. The constitutionally protected freedoms that invoke a heightened standard of clarity are not limited to the First Amendment context. Laws that restrict or regulate any constitutional right, but particularly individual, fundamental rights,

[4] In any event, testimony from a few individuals based on their limited, personal experience and understanding, that they think a single cartridge (out of thousands) might be "used *exclusively in pistols*," as Appellants' Reply Brief asserts (at page 6) does not establish that the law has a valid application.

must provide greater clarity than, for example a law prohibiting arson or restricting the use of toxic materials. *See, e.g.*, *Kolender*, 461 U.S. at 355-56 (facial vagueness challenge to law infringing the constitutional right to freedom of movement and had the potential to suppress First Amendment liberties); *see also*, *Hoffman Estates*, 455 U.S. at 497. In other words, if the court looks to whether the Challenged Provisions have some valid application, it must determine whether, *in its applications*, they provide the highest level of clarity required of laws that abut upon constitutionally protected freedoms, are criminal in nature, and/or lack a scienter requirement.

II.
The Challenged Provisions Are Unconstitutionally Vague Because They Lack Sufficient Clarity To Prevent Arbitrary And Discriminatory Enforcement Of The Law

Chicago v. Morales emphasized that the primary concern of the void-for-vagueness doctrine is that a vague law "necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat." 527 U.S. at 60.

At issue in *Morales* was a Gang Congregation Ordinance which prohibited criminal street gang members from loitering with one another in any public place. 527 U.S. at 45. The ordinance defined "loitering" as "remaining in any one place with no apparent purpose." *Id.* at 47. The Chicago Police Department promulgated detailed guidelines that purported to prevent arbitrary or discriminatory enforcement of the ordinance. *Id.* at 48. For instance, arrest authority was confined to designated officers, established detailed criteria for defining street gangs and membership in such gangs, and provided for designated, but publicly

undisclosed, enforcement areas. *Id.* at 48-49. Despite these attempts to clarify the scope of the term "loitering," the Supreme Court of Illinois invalidated the ordinance on the basis that it did not "meet constitutional standards for definiteness and clarity" because it "provides absolute discretion to police officers to determine what activities constitute loitering." *Id.* at 61, 64. The United States Supreme Court confirmed that holding on the same grounds, finding that the law was unconstitutionally vague. *Id.* at 64.

Like the Gang Congregation Ordinance in *Chicago v. Morales,* the "principally for use" in handguns language in Penal Code Section 12323(a) violates "the requirement that a legislature establish minimal guidelines to govern law enforcement." *Kolender*, 461 U.S. at 358. The phrase "principally for use" in handguns not only does not establish minimal guidelines, it establishes no guidelines whatever, leaving enforcement to depend upon the knowledge of individual law enforcement officers.[5] And the statute is not even clear with respect to what knowledge the law enforcement officer must have. Does the phrase "principally for use" in handguns refer to use in the officer's jurisdiction? Or does it refer to use in the State of California (or to use in handguns sold through dealers in California)? Or use in the United States? Or use worldwide? The utter lack of guidelines in the statute caused the Department of Justice declarant, Blake Graham, to look to the number of handguns lawfully sold in California to determine the principal use of ammunition by caliber.

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[5] While this creates potential for law enforcement officers to pursue their "personal predilections," *Kolender v. Lawson,* 461 U.S. at 358, by the same token, it potentially exposes even the most conscientious of officers to liability for false arrest.

Declaration of Blake Graham at ¶ 13 (J.A. VIII 2257-2258), notwithstanding that the Challenged Provisions prohibit vendors throughout the State from shipping "handgun ammunition" to California, and vendors in California from shipping such ammunition to vendors outside California. The plaintiffs' declarant, Stephen Helsley (who had worked for many years at the Department of Justice), by contrast, considered ammunition as it was used worldwide. Declaration of Stephen Helsley at ¶¶ 22-64 (J.A. VIII 2022-2035). If two senior law enforcement officials with the backgrounds of Graham and Helsley had such a different view of even the universe to be considered, it is abundantly obvious that the average law enforcement officer on the street, without even the background of Graham or Helsley, would be wholly unable to apply the law in anything other than an arbitrary manner.[6]

Because there are no guidelines regarding which types of ammunition are "principally for use" in handguns, law enforcement officers have no way to determine whether particular ammunition is "principally for use" in a handgun, nor is there any place for them to acquire information necessary to make such a determination.[7] Thus, each law enforcement officer must make his or her own determination as to whether a particular type of ammunition is principally for use in handguns. Like the Gang Congregation ordinance in *Chicago v. Morales*, the "principally for use" in handguns language unlawfully "entrust[s] lawmaking

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[6] Prior to this litigation, the Department of Justice stated that it could not take an official position on the meaning of the law and which ammunition was "principally for use" in handguns. J.A. XI 2923, citing J.A. IV 0947-0948, 0955, 0957, 0959.

[7] The ammunition itself has no indicators of its "principal" use nor would its packaging.

to the moment-to-moment judgment of the policeman on his beat," encouraging arbitrary and discriminatory enforcement of the law in violation of due process. *Id.* at 359.

III.
Law Enforcement Officers Are Not Experts In The Uses Of Ammunition, And The Challenged Provisions Are Insufficient To Assist Them In The Uniform Enforcement Of The Law

Law enforcement officers are not experts in the uses of ammunition. In *Harrot v. County of Kings*, 108 Cal.Rptr.2d 445, 25 P.3d 649, 25 Cal.4th 1138 (Cal. 2001), the Supreme Court quoted a letter from Senator Don Rogers to the governor requesting the governor's signature on Senate Bill No. 2444, the bill which required the Attorney General to produce an "Identification Guide" for so-called "assault weapons." Letter to Governor Deukmejian Re: Sen. Bill No. 2444 (1989-1990 Reg. Sess.) Aug. 23, 1990. In that letter, Sen. Rogers stated:

> "[A] great many law enforcement officers who deal directly with the public are not experts in specific firearms identification . . . . [¶] There are numerous makes and models of civilian military-looking semi-automatic firearms which are not listed by California as `assault weapons' but which are very similar in external appearance. This situation sets the stage for honest law-enforcement mistakes resulting in unjustified confiscations of non-assault weapon firearms. Such mistakes, although innocently made, could easily result in unnecessary, time-consuming, and costly legal, actions both for law enforcement and for the lawful firearms owners affected."

Harrot, 108 Cal.Rptr.2d at 452, n.4.

Senator Rogers thus saw it as necessary to "'assur[e] that law enforcement officers are assisted in the proper performance of their duties through having at their disposal a reliable means of accurately identifying each listed 'assault weapon.'" *Id.* Without the

"Identification Guide," it was too likely that law enforcement officers would interpret and apply the law in an arbitrary and discriminatory manner because each officer's understanding of what constitutes an "assault weapon" could too easily differ from the next officer's understanding.

The Supreme Court agreed, stating that "[n]ot only would ordinary citizens find it difficult, without the benefit of the Identification Guide, to determine whether a semiautomatic firearm should be considered an assault weapon, ordinary law enforcement officers in the field would have similar difficulty." *Id.*

The same danger exists here. Just as the Supreme Court acknowledged in *Harrott* that law enforcement officers could not be expected to be experts in the identification of "assault weapons," neither can law enforcement be expected to be experts in the identification of ammunition that is "principally for use" in a handgun. Indeed, in the case of identification of ammunition, the task is more difficult because it requires knowledge of more than just the ammunition itself, but the use to which the ammunition has been, or may be, put by potentially millions of persons unknown to the law enforcement officer, or the use to which the ammunition was designed to be put by manufacturers unknown to the law enforcement officer, or the total number of firearms in circulation that fire any given ammunition.

IV.
Testimony From Both Experts And Plaintiffs-Respondents Demonstrate the Problems Law Enforcement Officers Will Face In Determining Which Ammunition Is "Handgun Ammunition"

When asked whether the "principally for use" in a handgun standard required

consideration of whether any particular ammunition might be fired more often through a handgun than a rifle, Appellants' expert responded:

> I would say [its] *not much of a factor* because principally for use really deals with the kind of firearm its going to go into, *in my – in my est- -- in my understanding*, so if you have one weapon that can shoot a million rounds a second and then you have 500,000 rounds – or handguns out there that shoot ten rounds a minute, that weapon is actually – or the ammunition is principally for use in *the larger pool of – of weapons*."

Undisputed Material Fact ("UMF") No. 100 (Joint Appendix, volume XI ["J.A. XI"] 2963, citing J.A. V. 1385-1386).

Thus, Appellants' expert's understanding of the standard appears to indicate that the actual use of the ammunition in a handgun versus a rifle does not matter; what matters, *to him*, is whether there are more handguns in circulation that fire the ammunition in question than rifles that fire that same ammunition. UMF No. 98 (J.A. XI 2961, citing J.A. V 1385-1386). And, when asked to clarify whether he would consider the numerosity of total firearms or the numerosity of models of those firearms to be the determining criteria, he stated:

> Given the *available information in the amount of time I had*, I *tried* to compare the *number of manufacturers* that may have produced a weapon in a particular caliber, *the number of models that each manufacturer used in that caliber*, and then, *perhaps*, the length of time that a particular gun has been available in a particular caliber.

UMF No. 101 (J.A. XI 2965, citing J.A. V 1417) (emphasis added).

Ultimately, therefore, Appellants' expert's methodology for determining what ammunition was "principally" used in handguns was an extensive research process that

involved looking at handgun sales records and reviewing manufacturers information. UMF Nos. 43-47, 61-65, 85-87, 93.[8] Appellants apparently believe that the enforcement of the law should be based upon law enforcement officers undertaking an extensive research process to attempt to determine what is covered by the law.

Just as Appellants' expert reached his conclusion as to what ammunition is regulated based on a research process he invented, so too will other law enforcement officers be left to apply the law based on their understanding of the law and whatever information they may be able to gather. The likelihood of arbitrary and discriminatory enforcement that will result from each individual officer's application of his/her methodologies and opinions to determine what ammunition is "principally for use" in a handgun is increased exponentially by the fact that there are literally thousands of different cartridges that may or may not be "principally for use" in a handgun.

Appellants assert:

> The ammunition expert retained by respondents conceded below that there are at least seven cartridges of ammunition that are unquestionably handgun

[8] UMF 43 (J.A. XI 2935, citing J.A. V 1374-1375, 1420); UMF 44 (J.A. XI 2935, citing J.A. V 1200); UMF 45 (J.A. XI 2935, citing J.A. V 1200, 1289-1290, 1302); UMF 46 (J.A. XI 2935-2937, citing J.A. V 1200, 1293-1294, 1340-1341); UMF 47 (J.A. XI 2937, citing J.A. V 1340-1341, 1374-1375); UMF 61 (J.A. XI 2943, citing J.A. V 1200); UMF 62 (J.A. XI 2943, citing J.A. V 1367-1368, 1375-1376); UMF 63 (J.A. XI 2943, citing J.A. V 1250-1252, 1282, 1285-1286); UMF 64 (J.A. XI 2945, citing J.A. V 1250-1251, 1272-1273, 1361, 1364, 1366-1367); UMF 65 (J.A. XI 2945, citing J.A. V 1376); UMF 85 (J.A. XI 2955, citing J.A. V 1359-1361); UMF 86 (J.A. XI 2955, citing J.A. V 1244-1245, 1248, 1298, 1352, 1355, 1359, 1381); UMF 87 (J.A. XI 2957, citing J.A. V 1244-1245, 1309-1310); UMF 93 (J.A. XI 2959, citing J.A. V 1200).

> ammunition within the meaning of the challenged definition. (JA VII 2175-76 [identifying .25 ACP, .45 GAP, 9mm Federal, 10mm Auto, .357 SIG, .44 Auto Mag, and .38 S&W as handgun ammunition].) Moreover, in deposition testimony offered below, fifteen different cartridges of ammunition were identified by plaintiffs as cartridges that were used more often in handguns than in rifles. (JA VII 2175-77.) In addition to these concessions by respondents, the record contains unrebutted expert testimony from the state that sixteen different ammunition cartridges were chambered (i.e. loaded) more frequently in handguns than in rifles. (JA VII 2257.)

Appellants' Reply Brief 7.

A review of the record, however, reveals that Plaintiffs' answers (and those of the parties' experts) varied widely across the board, and did so when merely asked about a small number of popular cartridges out of the thousands in circulation. That Plaintiffs identified different cartridges between them that they believe are "used more often in handguns than in rifles" based on their limited, personal experience and understanding does not make the task of enforcing the law any less difficult. Law enforcement officers, like Plaintiffs, will almost certainly have the same disagreements with each other about whether a given cartridge is "principally for use in a handgun" and the appropriate criteria by which to attempt to make such a determination.

Moreover, the Challenged Provisions refer to ammunition "principally for use" in handguns, which may or may not be the same as ammunition which is "used more often" in handguns since the statutory language appears to refer to the intention of the manufacturer of the ammunition, whereas Plaintiffs appear to be focusing on what they perceive as the actual volume of use the ammunition. The Department of Justice declarant, Blake Graham,

came up with yet a third understanding, when he stated in his declaration that he interpreted the phrase "principally for use" in a handgun as meaning that the ammunition is "chambered, or loaded, more frequently in handguns than in rifles" as determined, in his mind, by the number of models available and/or the number of firearms sold in the past five years. Declaration of Blake Graham at ¶ 12 (J.A. VIII 2257). Under either understanding, however, law enforcement officers cannot avoid arbitrary enforcement of the law because they would have no way of knowing how often any given cartridge is loaded into handguns versus long guns, the intention of the manufacturer of the ammunition, or the actual volume of use the ammunition (assuming they know the universe to which the word "principally" applied). In short, officers are unable to enforce the law, fairly or even close to uniformly, as each officer will have to rely not only on his or her understanding of the "principally for use" standard, but also on his or her application of that standard.

V.
Amicus' Concerns About The Detrimental Impacts Of Vague Laws, Like The Challenged Provisions, On Law Enforcement Are Not Merely Conjectural

This court decided a case that, although it was depublished and no longer has precedential value, illustrates exactly some of the harms from which Amicus is interested in protecting its officer members. In that case, *People v. Saleem*, 180 Cal.App.4th 254, 102 Cal. Rptr. 3d 652 (Cal. App. 2009), a previously convicted felon was appealing his subsequent conviction for violation of California's prohibition on felons wearing "body

armor."[9] This court deemed the statute under which *Saleem* was convicted to be void for vagueness, explaining that, if "only an expert would know if any particular protective body vest was proscribed by section 12370," "then we do not see how, without providing something like an official list of prohibited vests, the statute can be said to provide either fair notice to a defendant or meaningful guidelines to the officer on the street." 180 Cal.App.4th at 274. Amicus fears that significant law enforcement resources will be expended, and wasted, on enforcing the Challenged Provisions, and convictions overturned, as occurred in *Saleem*, since it appears the law struck down in that case suffered from defects similar to those in the Challenged Provisions.

The Challenged Provisions, however, could potentially be more problematic than the law struck down in *Saleem*, because, as Appellants suggest, a determination of whether each ammunition cartridge meets the "principally for use in a handgun" standard would have to be made. The scope of the Challenged Provisions would not be resolved in one single case. Moreover, the precedential value of any case finding a particular cartridge to be "principally for use in a handgun," and thus subject to the Challenged Provisions, would be dubious since, as explained by Respondents' expert and unrebutted by Appellants, the usage of a particular cartridge can change over time and depending on location. J.A. VIII 2036. Thus, the Challenged Provisions would create an endless and costly, vicious cycle funded by confused

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[9] *Saleem* was depublished because it was appealed to the California Supreme Court, but, before the case could be heard, legislation was passed redefining "body armor" and the state did not pursue the appeal further, considering the matter moot.

citizens and already struggling law enforcement budgets.

CONCLUSION

Because the Challenged Provisions are lacking in the clarity required, they are unconstitutionally vague. This court should affirm the judgment of the court below.

Respectfully Submitted,

Law Enforcement Alliance of America, Inc.
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the foregoing BRIEF AMICUS CURIAE OF THE LAW ENFORCEMENT ALLIANCE OF AMERICA, INC. IN SUPPORT OF RESPONDENTS is double-spaced, typed in Times New Roman proportionally spaced 13-point font, and the brief contains 4,532 words of text, including footnotes, as counted by the WordPerfect word-processing program used to prepare the brief.

Date: October 9, 2012

_____
Richard E. Gardiner
Attorney for Amicus Curiae

PROOF OF SERVICE

SHERIFF CLAY PARKER ET AL.
v.
THE STATE OF CALIFORNIA ET AL.

Court of Appeal, Fifth Appellate District, Case No. F062490

I, Richard E. Gardiner, declare as follows:

I am employed with The Law Offices of Richard E. Gardiner, which is located at 3925 Chain Bridge Road, Fairfax, VA 22030. I am over the age of eighteen years, and am not a party to the within action.

On October 9, 2012, I served the following: described as

[PROPOSED] BRIEF AMICUS CURIAE OF THE LAW ENFORCEMENT ALLIANCE OF AMERICA, INC. IN SUPPORT OF RESPONDENTS

on the interested parties in this action by placing a true and correct copy thereof enclosed in sealed envelope(s) addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

X (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Fairfax, Virginia.

Executed on October 9, 2012, at Fairfax, Virginia.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 9, 2012, at Fairfax, Virginia.

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