

No. 14-55873

IN THE
United States Court of Appeals for the Ninth Circuit

CHARLES NICHOLS

Plaintiff-Appellant,

v.

EDMUND G. BROWN JR., IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF CALIFORNIA, *ET AL.*

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California, No. CV 2:11-9916SJO (SS)
The Honorable James Otero, District Judge

**BRIEF FOR AMICUS CURIAE BRADY CENTER TO PREVENT GUN
VIOLENCE IN SUPPORT OF DEFENDANTS-APPELLEES AND IN
SUPPORT OF AFFIRMANCE**

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February 24, 2017

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the Brady Center to Prevent Gun Violence states that it has no parent corporations, nor has it issued shares or debt securities to the public. The organization is not a subsidiary or affiliate of any publicly owned corporation, and no publicly held corporation holds ten percent of its stock.

/s/ Megan Dixon
Megan Dixon

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Brady Center to Prevent Gun Violence is the nation's largest non-partisan, non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. It has filed numerous amicus curiae briefs in cases involving firearms regulations in the Supreme Court of the United States and in federal courts of appeal, including: *McDonald v. City of Chicago*, 561 U.S. 742, 870 n.13, 887 n.30, 891 n.34 (2010) (Stevens, J., dissenting) (citing Brady Center brief), *United States v. Hayes*, 555 U.S. 415, 427 (2009) (citing Brady

Center brief), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Peruta v. Cty. of San Diego*, No. 10-56971, 2016 WL 3194315 (9th Cir. June 9, 2016).¹

INTRODUCTION

During the past decade, more than 32,000 people—5,000 more than the number of undergraduate students at U.C. Berkeley—have been killed by guns in California.² Notably, however, that number is a marked improvement from the gun death rate before 1993, the year California began instituting stronger gun laws. In the early 1990s, California’s gun laws were among the most lax in the nation—and Californians paid for that with their lives, resulting in a gun date rate 15% higher than the national average. *See* Law Ctr. to Prevent Gun Violence, *The California Model: Twenty Years of Putting Safety First* 2 (June 18, 2013).³ California’s enactment of strong gun laws, including statutes restricting the open

¹ Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, amicus received consent from Defendants-Appellees. Plaintiff-Appellant declined to consent to the filing of this brief. Accordingly, amicus has filed an accompanying Motion for Leave to File. ECF. No. 41. No party, or party’s counsel, authored this brief in whole or in part. No party, party’s counsel, or person other than amicus, its members, or its counsel, contributed money intended to fund preparation and submission of this brief.

² Compare Arkadi Gerney et al., *America Under the Gun: A 50-State Analysis of Gun Violence and Its Link to Weak State Gun Laws*, Ctr. for American Progress 9 (Apr. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/04/AmericaUnderTheGun-3.pdf> with *Berkley: By the numbers*, Univ. of Cal. Berkeley, <http://www.berkeley.edu/about/bythenumbers> (last visited Feb. 23, 2017).

³ http://smartgunlaws.org/wp-content/uploads/2013/07/20YearsofSuccess_ForWebFINAL3.pdf.

carry of firearms, have contributed to a 56% decline in gun deaths between 1993 and 2010. Frank Smyth, *California: Did tough gun control laws cut firearm deaths?*, MSNBC (Sept. 13, 2013).⁴ This is staggering. But it is not surprising—reasonable gun restrictions effectively prevent gun violence.

Gun violence is not only a problem in California; it is a nationwide crisis. In 2014, the most recent year for which data from the Center for Disease Control is available, 33,736 people were killed with a gun—an average of 92.4 per day in the United States.⁵ The picture in 2016 is no better, with a demonstrated spike in officer shootings,⁶ mass shootings,⁷ and garden-variety homicides.⁸ On June 12, 2016, forty-nine people were killed and fifty-three were injured in the deadliest

⁴ <http://www.msnbc.com/all/california-did-tough-gun-control-laws-cut> (citing Law Ctr. to Prevent Gun Violence, *supra* note 3).

⁵ Ctr. for Disease Control and Prevention, *National Center for Health Statistics, Fast Stats: All Injuries*, U.S. Dep't of Health & Human Servs. (Oct. 7, 2016), <https://www.cdc.gov/nchs/fastats/injury.htm>.

⁶ Kim Soffen, *The Dallas sniper attack was the deadliest event for police since 9/11*, The Washington Post (July 8, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/08/dallas-sniper-shootings-when-where-and-how-often-police-are-shot-dead-in-america/?tid=a_inl&utm_term=.6007f202206f (noting that the number of police killed by firearms as of July 2016 was up 39% from the same date last year).

⁷ Mark Follman et al., *US Mass Shootings, 1982-2017: Data From Mother Jones' Investigation*, Mother Jones (Jan. 8, 2017), <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>.

⁸ Major Cities Chiefs Ass'n, *Violent Crime Survey-Totals: 1st Quarter Comparison between 2016 and 2015* (May 12, 2016), <https://assets.documentcloud.org/documents/2832727/MCCA-Violent-Crime-Data-1st-Quarter-2016-2015.pdf>.

mass shooting in American history.⁹ In fact, since the stay in this case expired on November 17, 2016, there have been 77 mass shootings in the United States, including ten in California.¹⁰ At the same time, studies continue to establish that strong gun laws reduce gun violence, while laws that more loosely regulate gun possession and carrying are associated with increases in gun violence.¹¹

As a result, the need for more responsible gun laws is at an all-time high. In June 2016, senators filibustered for nearly 15 hours to secure a vote on gun violence prevention legislation.¹² Members of Congress held a sit-in on the House

⁹ Hayley Tsukayama et al., *Gunman who killed 49 in Orlando nightclub had pledged allegiance to ISIS*, The Washington Post (June 13, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/06/12/orlando-nightclub-shooting-about-20-dead-in-domestic-terror-incident-at-gay-club/?utm_term=.2cc4d42ab972. Notably, the shooter in Orlando had a license to carry the firearm in public. Mary Ellen Klas, *Florida Leaders Raise Questions About Orlando Shooter's Access To Guns*, Miami Herald (June 12, 2016), available at <http://www.miamiherald.com/news/politics-government/state-politics/article83359697.html>.

¹⁰ *Mass Shootings in the United States in 2016*, VICE (Feb. 2, 2016), https://www.vice.com/en_us/article/mass-shootings-in-the-united-states-and-europe-in-2016; *Mass Shootings - 2017*, Gun Violence Archive (Feb. 20, 2017), <http://www.gunviolencearchive.org/reports/mass-shooting>. Mass shootings are defined here as four or more shot and/or killed (not including the shooter) in a single event and at the same general time and location. *Introducing the VICE 2016 Mass Shooting Tracker*, VICE (Feb. 2, 2016), https://www.vice.com/en_us/article/introducing-the-vice-2016-mass-shooting-tracker (citing Gun Violence Archive's definition).

¹¹ Daniel Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, 91 J. of Urb. Health 293 (May 2014).

¹² Nick Gass, *Murphy: Gun control filibuster 'made a difference' with GOP*, Politico (June 16, 2016), <http://www.politico.com/story/2016/06/chris-murphy-filibuster-guns-224412>.

floor, demanding that the Speaker hold votes on similar measures.¹³ And the American Medical Association declared gun violence “a public health crisis.”¹⁴ However, in recent years, Congress has taken no action to reduce gun violence. Indeed, just last week, Congress voted to roll back a Social Security Administration rule aimed at reducing gun violence.¹⁵

Against this background, California is fighting to maintain a cornerstone of its regime—a statute that prohibits open carry of firearms in counties with over 200,000 people. Cal. Pen. Code. §§ 25850, 26350. Even if an individual’s Second Amendment right extends beyond the home, a quantum leap beyond existing precedent that the Supreme Court and overwhelming majority of lower courts have declined to take, it certainly does not reach so far as to guarantee a private citizen the unfettered ability to openly carry a loaded firearm on the streets of California. And California’s decision to protect its citizens by restricting open carry is bolstered by statistical evidence showing that fewer guns mean less violence.

¹³ Nora Kelly et al., *A Sit-In on the House Floor Over Gun Control*, The Atlantic (June 22, 2016), http://www.theatlantic.com/politics/archive/2016/06/house-democrats-gun-control-sit-in/488264/?utm_source=atlfb.

¹⁴ Richard Gonzales, *Gun Violence ‘A Public Health Crisis,’ American Medical Association Says*, NPR.org (June 14, 2016), <http://www.npr.org/sections/thetwo-way/2016/06/14/482041613/gun-violence-a-public-health-crisis-says-ama>.

¹⁵ The Editorial Board, *Congress Moves to Roll Back a Sensible Obama Gun Policy*, The New York Times (Feb. 7, 2017), <https://www.nytimes.com/2017/02/07/opinion/congress-moves-to-roll-back-a-sensible-obama-gun-policy.html>.

For the reasons discussed in the Appellee's brief and below, the trial court properly granted judgment on the pleadings in favor of defendants. The public interest demands that this appeal be denied. Lives depend on it.

I. THE SECOND AMENDMENT RIGHT OF AN INDIVIDUAL TO BEAR ARMS DOES NOT EXTEND BEYOND THE HOME.

The Supreme Court has never held that an individual's Second Amendment right to bear a firearm extends beyond the home, and this Court should hold that California's common-sense restriction on open carry of firearms in public is beyond the Second Amendment's reach.

In *District of Columbia v. Heller*, the Supreme Court recognized a Second Amendment right only of "law-abiding, responsible citizens to use arms *in defense of hearth and home*." 554 U.S. at 635 (emphasis added). That is the full scope of the Court's holding. And though the *Heller* Court struck down the District of Columbia's ban on handgun possession in the home, the Court expressly contemplated the presumed validity of regulation of those weapons *outside the home*. See *Heller* 554 U.S. at 626, 636 (noting approvingly that "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" and that "The Constitution leaves the District of Columbia a variety of tools for combating [handgun violence], including some measures regulating handguns."). Subsequent Supreme Court jurisprudence has left no doubt that the *Heller* Court

intended to leave open the possibility of reasonable gun restrictions outside of the home. *See McDonald v. City of Chicago*, 561 U.S. at 791 (refusing to extend the Second Amendment protection beyond the home, noting that, “[i]n *Heller*, we held that the Second Amendment protects the right to possess a handgun *in the home* for the purpose of self-defense.”) (emphasis added).¹⁶

The interest at issue here—open carry of a firearm outside the home—does not fall within the core protection of the Second Amendment as identified by the Supreme Court in *Heller* and reaffirmed in *McDonald*. This Court should therefore affirm the decision of the court below upholding California’s open carry permitting process.

¹⁶ State courts of last resort have similarly refused to expand the scope of the Second Amendment beyond the home. *See Williams v. State*, 10 A.3d 1167, 1177 (Md. 2011) (“If the Supreme Court . . . meant its holding to extend beyond home possession, it will need to say so more plainly.”); *People v. Dawson*, 934 N.E.2d 598, 605-06 (Ill. App. Ct. 2010), *abrogated by People v. Aguilar*, 2 N.E.3d 321 (Ill. 2013) (“*Heller* specifically limited its ruling to interpreting the amendment’s protection of the right to possess handguns in the home The *McDonald* Court refused to expand on this right”) (internal citations omitted); *Commonwealth v. Williams*, No. 09-P-813, 2011 WL 3299022, at *3 (Mass. App. Ct. Aug. 3, 2011) (“The Second amendment does not protect [defendant] in this case because he was in possession of the firearm outside of his home.”) (internal citation omitted); *People v. Aguilar*, 944 N.E.2d 816, 823 (Ill. App. Ct. 2011), (*Heller* and *McDonald* limit “the right to possess handguns in the home, not the right to possess handguns outside the home.”).

II. CALIFORNIA’S LAWS RESTRICTING OPEN CARRY OF FIREARMS IN POPULATED COUNTIES IS CONSTITUTIONAL.

Even if this Court were to presume that the Second Amendment protects some ability to carry firearms in public, a question specifically left open in *Peruta*,¹⁷ whatever Second Amendment protection exists certainly does not confer an individual right to carry a firearm out in plain view on the public streets.

The Supreme Court has consistently reaffirmed the states’ ability to regulate firearms without running afoul of the Second Amendment. *Heller*, 554 U.S. at 636; *McDonald v. City of Chicago*, 561 U.S. at 784-85. In line with these principles, federal courts of appeal have uniformly upheld states’ restrictions on carrying firearms in public under intermediate scrutiny. *See Woodward v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (Maryland’s “good and substantial reason” requirement to obtain concealed carry permit is constitutional under intermediate scrutiny); *Drake v. Filko*, 724 F.3d 426, 429-30 (3rd Cir. 2013) (New Jersey’s “justifiable need” restriction “does not burden conduct within the scope of the Second Amendment’s guarantee” and, even if it did, withstands intermediate

¹⁷ *Peruta*, 824 F.3d at 927 (“We do not reach the question whether the Second Amendment protects some ability to carry firearms in public. . . .”). In *Peruta*, the en banc Ninth Circuit held that “the Second Amendment right to keep and bear arms does not include, in any degree, the right of a member of the general public to carry concealed firearms in public.” *Id.* at 939. In so holding, the Ninth Circuit specifically declined to address whether and to what extent the Second Amendment applies to open carry in public by members of the general public. *Id.*

scrutiny); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012) (applying intermediate scrutiny, New York’s “proper cause” restriction on concealed carry does not violate the Second Amendment); *Kolbe v. Hogan*, No. 14-1945, 2017 WL 679687, *2 (4th Cir. Feb. 21, 2017) (“Put simply, we have no power to extend Second Amendment protection to the weapons of war . . .”). While these cases involved challenges to concealed carry regulations or military-style weapons, similar reasoning applies to California’s statutory regulation of open carry. In these cases, the statutes are an exercise of what has consistently been confirmed as the state’s authority to protect the public from the mortal threat presented when more guns enter the public sphere.

Distinguishable from firearm restrictions that have been struck down as unconstitutional “total bans” on carrying by one circuit court of appeals,¹⁸ California’s regulatory scheme carves out a mechanism that allows for public carry—residents can apply for a permit to carry concealed firearms, through the process upheld as constitutional in *Peruta*. Cal. Penal Code §§ 26150, 26155 (allowing localities to issue licenses for “good cause,” which includes self-protection where the person has faced credible threats of violence); *Peruta*, 824

¹⁸ See *Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir. 2012) (finding total ban on carrying guns in public unconstitutional); see also *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) (remanding with instructions to enter a preliminary injunction against enforcement of a city ordinance that required firing range training as prerequisite to lawful gun ownership, but banning all firing ranges).

F.3d at 925-27 (reviewing at length California’s statutory scheme and the numerous exceptions allowing for concealed carry of firearms). California’s statutes simply do not constitute a total ban on public carrying, and the existing restrictions on the open carry of firearms are substantially related¹⁹ to an important government interest in public safety.

As prior courts examining Second Amendment challenges to public carrying restrictions have understood, the risks posed by gun carrying in public spaces is serious business. *See United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (“We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights.”). Further, it should be recognized that open carrying of firearms in public places would impinge on the rights of others, including their fundamental right to live. *See Jonathan Lowy & Kelly Sampson, The Right Not To Be Shot: Public Safety, Private Guns, and the Constellation of Constitutional Liberties*, 14 Geo. J. of Law and Pub. Pol’y 187 (2016). This Court should not strike down carefully considered regulations

¹⁹ *See infra*, Section III (“Social Science Supports California’s Laws Restricting Open Carry of Firearms in Populated Counties”).

specifically designed to protect the public²⁰ from the very real threat of gun violence.

III. SOCIAL SCIENCE SUPPORTS CALIFORNIA’S LAWS RESTRICTING OPEN CARRY OF FIREARMS IN POPULATED COUNTIES.

The distinction within Second Amendment jurisprudence between the core of the Second Amendment—*i.e.*, the protection of hearth and home—and the regulation of guns in public is grounded in sound, historically-rooted policy considerations: once removed from the home, guns pose a great threat to public safety. Openly carrying guns generates fear and confusion and can create dangerous situations for both law enforcement and the citizens they seek to protect. And this fear is legitimized by sound social science proving that guns create unique dangers in public spaces and increase violent crime.

A. Open Carry of Guns in Public Hinders and Harms Law Enforcement.

On July 7, 2016, police officers in Dallas were attacked during a demonstration, and the presence of citizens openly carrying AR-15s and other military-style rifles caused great confusion and added danger. The Mayor of Dallas, Mike Rawlings, specifically attributed danger to the state’s open carry culture: “[O]ne of the real issues with the gun right issues that we face, that in the

²⁰ Patrick McGreevy, *In move to ‘enhance public safety,’ Gov. Jerry Brown signs gun-control proposals into law*, The Los Angeles Times (Jul. 1, 2016), <http://www.latimes.com/politics/la-pol-ca-brown-guns-20160701-snap-story.html>.

middle of a firefight, it's hard to pick out the good guys and the bad guys.” *Face the Nation transcripts July 10, 2016: Rawlings, Johnson, Bratton Brooks, Cummings, Giuliani*, CBS News (July 10, 2016).²¹ Rawlings added, “This is the first time—but a very concrete time—that I think a law can hurt citizens, police and not protect them.” Manny Fernandez et al., *Texas Open-Carry Laws Blurred Lines Between Suspects and Marchers*, New York Times (July 10, 2016).²²

Pinellas County Sheriff Bob Gualtieri explained that people with guns in the crowd “drained law enforcement resources and subjected citizens to being unnecessarily taken into custody, and I think we should all be very grateful that nobody else got hurt.” Julia Harte, *In some U.S. cities, police push back against 'open-carry' gun laws*, Reuters (July 19, 2016).²³

As starkly illustrated by the attack in Dallas, open carry of firearms presents unique challenges and dangers to law enforcement officers, creating risks not only to their safety, but to their ability to protect the public in the event of an emergency. This is true for two reasons. First, law enforcement officers’ ability to protect themselves and the public could be greatly hindered if officers were required to presume that a person openly carrying a firearm in public was doing so

²¹ <http://www.cbsnews.com/news/face-the-nation-transcripts-july-10-2016-rawlings-johnson-bratton-brooks-cummings-giuliani/>

²² http://www.nytimes.com/2016/07/11/us/texas-open-carry-laws-blurred-lines-between-suspects-and-marchers.html?_r=0

²³ <http://www.reuters.com/article/us-usa-police-guns-analysis-idUSKCN0ZZ0BQ>.

lawfully. When the carrying of guns in public is restricted, possession of a “firearm by an individual in public is sufficient to create a reasonable suspicion that the individual may be dangerous, such that an officer can approach the individual and briefly detain him in order to investigate whether the person is properly licensed.” *Commonwealth v. Robinson*, 600 A.2d 957, 959 (Pa. Super. Ct. 1991); *accord Singleton v. United States*, 998 A.2d 295, 302 (D.C. 2010) (holding that the officer “had a reasonable articulable suspicion that appellant was carrying a firearm, which permitted the officer to temporarily stop and frisk appellant”).²⁴ By contrast, under a regime whereby individuals were permitted to openly carry firearms, an officer might not be deemed to have cause to arrest, search, or stop a person seen carrying a loaded gun, even though far less risky behavior could justify police intervention. Law enforcement should not have to wait for a gun to be fired before taking reasonable steps to protect the public.

Second, not only are police hindered from effectively protecting the public, but officers themselves are put at increased risk. Researchers from the Harvard School of Public Health and elsewhere recently concluded that “[o]fficers in the high-gun [ownership] states had *3 times the likelihood* of being killed compared with low-gun [ownership] states.” David I. Swedler et al., *Firearm Prevalence*

²⁴ *Robinson* involved a regulation on concealed-carry, but it stands to reason that the same principles would apply to an individual openly carrying a firearm in a location where open carry was restricted.

and Homicides of Law Enforcement Officers in the United States, 105 Am. J. of Pub. Health 2042, 2047 (Oct. 2015).²⁵ According to the researchers, “[t]he differences were large[,]” and “[s]tates could consider methods for reducing firearm ownership as a way to reduce occupational deaths of [officers].” *Id.* at 2042, 2047. Certainly, dismantling California’s open carry restrictions would not constitute a method of reducing firearm ownership in the state.

Because open carry exacerbates risks to law enforcement, many law enforcement officials oppose expanding open carry.²⁶ For good reason—as those recent events in Dallas, Texas demonstrate, the risk of dangerous escalation in a chaotic situation is a real and present danger. Given the prevalence of guns across the country, it is difficult to overstate the danger police officers face each day. One statistic in particular speaks volumes: in the first half of 2016, law enforcement firearm deaths spiked 78%, when compared to the previous year. Associated Press, *Shooting deaths of law enforcement spike in 2016, report reveals*, Fox News U.S. (July 27, 2016).²⁷ As of December 8, 2016, 63 officers had been killed by guns in the year. Janice Williams, *Police Shooting Statistics 2016: How Many*

²⁵ <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2015.302749> (emphasis added).

²⁶ Harte, *supra* note 23 (“In Florida and Texas, where open-carry laws were recently debated in the state legislatures, surveys found that a majority of law enforcement leaders opposed them. Open-carry legislation was defeated in Florida but passed in Texas.”).

²⁷ <http://www.foxnews.com/us/2016/07/27/shooting-deaths-law-enforcement-spike-in-2016-report-reveals.html>.

Officers Are Killed By Gunfire?, Int'l Business Times (Dec. 8, 2016).²⁸ The danger is real, and expanding open carry is not the solution.

B. Open Carry Creates a Unique Danger in the Public Sphere.

The open carry of gun in public leads to a unique threat—fear. The mere sight of a gun can cause a phenomenon referred to in empirical studies in the 1970s and 1980s as “weapon focus.”²⁹ This psychological and physiological response occurs when a person sees a weapon and “gives her whole attention to it—to the exclusion of other details in her surroundings.” *Id.* This creates real consequences for communities where open carry of guns is prominent. For example, in Burns, Oregon, where anti-government protestors became representatives of the open carry movement, schools closed for days, public meetings were canceled due to safety concerns, and public officials even quit their jobs and moved away. *Id.* This happened “[a]ll before a single shot was fired. Why? Because locals saw the open display of guns as something other than merely an exercise of Second Amendment rights. They saw a threat.” *Id.* Indeed, social science research has shown that “[g]uns are used to threaten and intimidate far more often than they are

²⁸ <http://www.ibtimes.com/police-shooting-statistics-2016-how-many-officers-are-killed-gunfire-2455933>.

²⁹ Matt Valentine, *Tallying the Costs of Open Carry*, The Atlantic (Jan. 31, 2016), <http://www.theatlantic.com/politics/archive/2016/01/open-carry-laws/436665/>.

used for self-defense.” David Hemenway, et al., *Gun use in the United States: results from two national surveys*, 6 Injury Prevention 263, 263 (2000).

Logically, the effect of fear is particularly acute when firearms are present. “Relative to other types of readily available weapons, guns are intrinsically more lethal, providing the assailant with the power to kill quickly, at a distance, and with little effort or sustained intent.” See Philip J. Cook & Jens Ludwig, *Principles for Effective Gun Policy*, 73 Fordham L. Rev. 589, 590 (2004). This lethality is concerning—especially in California, where “gun sales spik[ed] in 2016.” Aaron Mendelson, *California gun sales spiking in 2016* (Apr. 27, 2016).³⁰ In fact, in December of 2015, “gun dealers requested background checks on 253,946 potential buyers in California—the first time that number has gone above 200,000 since the FBI started keeping track in 1990.” *Id.* Approximately 2.4 million background checks were performed in California in 2016 alone. *NICS Firearm Checks: Month/Year by State*, FBI (2017).³¹

Simply put, dismantling common sense restrictions on the open carry of those weapons in public would make law enforcement’s job more difficult and would increase the risk of mass casualty shootings in California, where there were forty-four mass shootings in 2016, resulting in 38 deaths and 178 casualties. *Mass*

³⁰ <http://www.scp.org/news/2016/04/27/59895/california-seeing-records-numbers-of-people-wantin/>.

³¹ https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year_by_state.pdf/view.

Shootings in the United States in 2016, VICE, *supra* note 10.³² Allowing the open carry of firearms in public will increase collective fear, endanger many more lives, and, as the next section describes, lead to increased violence.

C. Looser Public Carrying Laws Are Associated with Increases In Violent Crime.

Guns not only create a unique threat in public spaces, but they also are associated with increase in violent crime. In 2014, a team led by Stanford law Professor John J. Donohue III published the findings of its study examining right-to-carry laws and their association with an increase in violent crime. Donohue's team concluded that "the totality of the evidence . . . suggests that right-to-carry laws are associated with *substantially higher* rates of" aggravated assault, rape, robbery, and murder. Clifton B. Parker, *Right-to-carry gun laws linked to increase in violent crime, Stanford research shows*, Stanford News (Nov. 14, 2014), <http://news.stanford.edu/2014/11/14/donohue-guns-study-111414/> (citing

³² *Id.* Admittedly, there is a dearth of data regarding the effects of broadened gun rights including open carry, largely due to what amounts to a ban on federally funded research into gun violence. See Steven E. Weinberger et al., *Firearm-Related Injury and Death in the United States: A Call to Action From 8 Health Professional Organizations and the American Bar Association* (Apr. 7, 2015) <http://annals.org/aim/article/2151828/firearm-related-injury-death-united-states-call-action-from-8>. To combat that problem, the American Bar Association and eight health professionals organizations came together to advocate for several measures to combat gun violence, including ensuring the Centers for Disease Control and Prevention, the National Institutes of Health, and the National Institute of Justice should receive adequate federal funding to research gun violence and to share their data. *Id.*

Abhay Aneja et al., *The Impact of Right to Carry Laws and the NRC Report: The Latest Lessons for the Empirical Evaluation of Law and Policy* (Stan. L. and Econ. Olin Working Paper No. 461, Dec. 1, 2014)) (emphasis added).³³ Earlier research on right-to-carry laws consistently reaffirms this study’s findings. Ian Ayres & John J. Donohue III, *Yet Another Refutation of the More Guns, Less Crime Hypothesis—With Some Help From Moody and Marvell*, 6 Econ J. Watch 35, 41 (Jan. 2009) (“[T]he vast bulk of the estimated effects . . . were suggestive of crime *increases* caused by RTC [right to carry] laws for seven of the nine FBI Index I crime categories.”) (emphasis in original); Ian Ayres & John J. Donohue III, *More Guns, Less Crime Fails Again: The Latest Evidence from 1977-2006*, 6 Econ. J. Watch 218, 229 (May 2009) (“The one consistent finding that is statistically significant . . . is that RTC laws increase aggravated assault.”); Matthew Miller, et al., *Firearm availability and unintentional firearm deaths*, 33 Accident Analysis & Prevention 477, 477 (Jul. 2000) (“A statistically significant and robust association exists between gun availability and unintentional firearm deaths.”).

In addition, studies have shown that people carrying guns, open or concealed, tend to misperceive others as being similarly armed, further augmenting

³³ Professor Donohue further explained that “if anything our 8 percent estimate . . . is likely to understate the true increases in aggravated assault caused by the RTC law.” *Id.* at 82. Indeed, his study notes that “RTC laws may be associated with. . . [an increase in] gun assaults by almost 33 percent.” Aneja et al., *supra* at 2. See also Parker, *supra* (citing Donohue’s study “confirm[ing] that right-to-carry gun laws are linked to an increase in violent crime.”).

the potential for dangerous escalation of disputes in the public sphere. Jessica K. Witt & James R. Brockmole, *Action Alters Object Identification: Wielding a Gun Increases The Bias to See Guns*, 38(5) J. Experimental Psych.: Hum. Perception & Performance 1159 (Oct 2012). A 2012 study reviewed participants' ability to determine if their "foe" was carrying a gun or a neutral object (such as a ball); the study found that if the participant was carrying a gun, he or she was more likely to think the other person was also carrying a gun. *Id.* Holding a gun can create a type of tunnel vision, in which the gun-holder sees those around him as dangerous and armed, leading to escalated and potentially deadly reactions. *Id.*³⁴

And violence against others is unfortunately not the only concern. Researchers have found that open carry of firearms is associated with higher suicide rates. Michael D. Anestis, et al., *Suicide Rates and States Laws Regulating Access and Exposure to Handguns*, 105Am. J. Pub. Health 1 (Aug. 13, 2015) (concluding laws regulating the open carry of firearms are associated with

³⁴ Notably, even within the home, gun possession has been linked to increased violence. See e.g., Lisa M. Hepburn & David Hemenway, *Firearm Availability and Homicide: A Review of the Literature*, 9 Aggression & Violent Behav. 417 (2004) ("[H]ouseholds with firearms are at higher risk for homicide, and there is no net beneficial effect of firearm ownership."); Matthew Miller et al., *Rates of Household Firearm Ownership and Homicide Across US Regions and States, 1988–1997*, 92 Am. J. Pub. Health 1988, 1988 (Dec. 2002) ("[I]n areas where household firearm ownership rates were higher, a disproportionately large number of people died from homicide."). Logically, an increase of guns in the streets is also likely to lead to an increase in guns in California homes.

“significantly lower firearm suicide rates” and a “lower overall suicide rate.”³⁵ A 2015 study found that in 82% of pairings between a state with open carry restrictions and a state without open carry restrictions, the statewide suicide rate was lower in the state that had the open carry restriction. *Id.* at 7. The study concluded that “[i]n short . . . legislating access and exposure to firearms saves lives.” *Id.* at 8.

* * * * *

If the Appellant prevails, more guns will enter public spaces, placing more people within range of a lethal firearm. This outcome would be directly contrary to the public interest. This Court should allow California to protect its citizens—both in and out of uniform—and affirm the judgment of the court below upholding California’s reasonable open carry statutes.

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https://www.researchgate.net/profile/Michael_Anestis/publication/280997383_Suicide_Rates_and_State_Laws_Regulating_Access_and_Exposure_to_Handguns/links/55d2a3d908aec1b0429ef0b3.pdf.

CONCLUSION

The Court should uphold the district court's order and deny the appeal.

February 24, 2017

Respectfully submitted,

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