

14-16840

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFF SILVESTER, et al.,

Plaintiffs-Appellees,

v.

**KAMALA D. HARRIS, Attorney General of
the State of California, in her official capacity,**

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of California

No. 1:11-cv-02137-AWI-SKO
The Honorable Anthony W. Ishii, Judge

**APPELLANT'S REPLY IN SUPPORT OF
MOTION TO TAKE JUDICIAL NOTICE**

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DISCUSSION

Appellant submits this reply in support of her Motion to Take Judicial Notice of Certain Documents (Motion) (Dkt. 25). Appellees' opposition to the Motion is primarily based on two arguments. First, Appellees argue that the Court should review the District Court's decision on judicial notice for abuse of discretion. Appellees' Opposition to Motion (Opposition) (Dkt. 43) at 2 (response to Exhibits B-D). This argument fails because Appellant is not seeking this Court's review of the District Court's decision on judicial notice (even though the District Court did abuse its discretion). Instead, Appellant's Motion is an independent request for this Court to take judicial notice of the submitted materials.

Second, Appellees argue that Appellant may not submit documents for this Court's consideration when it was not submitted below. Opposition at 3-4 (response to Exhibits E & F). This argument fails because requests for judicial notice may be made at any time. Fed. R. Evid. 201(d). Additionally, Appellant seeks judicial notice of the exhibits and their contents as legislative facts, not as adjudicative facts or trial evidence. As Appellant discussed in the Motion, no rule constrains the Court's judicial notice of legislative facts. Motion 3-4 (citing Advisory Comm. Notes to Fed. R. Evid. 201(a)). This Court may rely on any legislative facts relevant to legal reasoning and the lawmaking process, or which help the Court to determine the content of law and policy or in formulating a legal principle. Motion 3-4 (citing Advisory Comm. Notes to Fed. R. Evid. 201(a);

Sachs v. Republic of Austria, 737 F.3d 584, 596 n.10 (9th Cir. 2013); *Dagett v. Comm. on Gov't Ethics and Election Prac.*, 205 F.3d 445, 455-56 (1st Cir. 2001).

The materials submitted for judicial notice are excerpts of the legislative history of the Waiting Period Law for the 1974-1975 legislative sessions (Exhibit A), relevant excerpts of history books that discuss early firearm impressment laws and prevailing attitudes of founding era citizens (Exhibits B, C, and D), and reports prepared and issued by the federal government that demonstrate the existence and prevalence of waiting-period laws (Exhibits E and F).

These materials are relevant to this Court's determination of the issues, and federal courts of appeal routinely take judicial notice of these types of documents. *See, e.g., Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 227 (1959) (taking judicial notice of an act's legislative history); *Rusak v. Holder*, 734 F.3d 894, 898 (9th Cir. 2013) (judicial notice taken of governmental reports regarding religious intolerance in certain countries to establish plaintiff's claim of past persecution); *Cooper v. Pate*, 324 F.2d 165, 166 (7th Cir. 1963) (judicial notice taken of "accredited social studies of the Black Muslim Movement" to show political objectives of the group), *rev'd on other grounds* 378 U.S. 546 (1964) (per curiam).

CONCLUSION

For the reasons provided in Appellant's Motion to Take Judicial Notice and herein, Appellant's request for judicial notice should be granted.

Dated: June 30, 2015

Respectfully Submitted,

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Attorney General of California

/s/ PETER H. CHANG

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 30, 2015. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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