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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MICHELLE FLANAGAN, et al.,

Plaintiffs,

v.

CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA, in her official capacity as Attorney General of the State of California, et al.,

Defendants.

Case No.: 2:16-cv-06164-JAK-AS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Judge: John A. Kronstadt
Hearing Date: November 6, 2017
Hearing Time: 8:30 AM
Courtroom: 10B

Action Filed: August 17, 2016
Trial Date: February 6, 2018

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INTRODUCTION

Plaintiffs are competent, law-abiding Californians who seek to carry firearms outside their homes for protection from violent crime. California generally forbids anyone who does not hold a license from doing so. Plaintiffs have each sought such a license but the State-designated authority exercised his discretion to deny their applications, concluding that their desire to carry for self-defense was insufficient "good cause" to obtain a license. Plaintiffs thus have no lawful means to carry a firearm in the clear majority of locations outside their homes "for the core lawful purpose of self-defense." *District of Columbia v. Heller*, 554 U.S. 570, 630, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

This case presents two questions: Does the Second Amendment protect a right to carry a firearm outside the home? And, if so, can a state flatly deny that right to law-abiding, competent adults? Although firearm regulation cases can be complex, this one is not. As the text, history, and purpose of the Second Amendment make clear—and as every federal court of appeals to consider the question has agreed—the right to bear arms is not confined to the home. Nor can that right, which the Second Amendment grants to "the people," be limited to the tiny fragment of the people who satisfy the very narrow exceptions California has created, or who can demonstrate a particularized need for self-defense that distinguishes them from other ordinary, law-abiding citizens. In short, given the Framers' decision to extend the Second Amendment to "the people," a "law-abiding citizen's right to bear common arms must enable the typical citizen," "to carry a gun." *Wrenn v. District of Columbia*, 864 F.3d 650, 2017 WL 3138111, at *12 (D.C. Cir. July 25, 2017) (No. 16-7025). California's complete denial of that constitutional right to Plaintiffs cannot be reconciled with the Second Amendment.

To be clear, the relief Plaintiffs request is narrow. They do not challenge California's myriad restrictions on the purchase, sale, and possession of firearms. They do not seek to carry in sensitive places, such as government buildings. They

do not seek to carry dangerous and unusual weapons. They seek only to carry protected arms beyond their homes *in some manner*, whether it be openly or concealed. Defendants may accommodate that right in different ways, but they must accommodate it. Denying all manner of carry to ordinary law-abiding citizens is one policy choice the Constitution takes "off the table." *Heller*, 554 U.S. at 635.

STATEMENT OF FACTS

I. THE CHALLENGED PROVISIONS

California imposes extensive regulations on who may obtain a firearm and how they may do so. To obtain a firearm, one must first pass a test covering firearm safety and laws to obtain a Firearm Safety Certificate from a California Department of Justice ("DOJ") certified instructor. Cal. Penal Code §§ 31610-31670. Once that is completed, to begin the purchase process, individuals must go to a licensed firearm dealer, present "clear evidence of identity and age," and sufficient proof of California residency, and complete federal and state forms, which are designed to confirm the purchaser is eligible for firearm possession. *Id.* §§ 16400, 26800-26850; *see also* Cal. Code Regs. tit., § 4045. The purchaser must then wait 10 days, during which the DOJ performs a background check and will deny the transfer if the purchaser is legally ineligible for firearm possession. Cal. Penal Code §§ 27540, 28220. If approved, the purchaser must demonstrate to the licensed dealer a command of safe-handling protocol for the firearm before receiving it. *Id.* §§ 26850-26860. Upon delivery, the firearm must be accompanied by a DOJ-approved firearm safety device (unless the buyer owns an approved gun safe and signs an affidavit to that effect) and certain warning labels. *Id.* § 23635(b); *see also id.* §§ 23620-23690. The firearm is also registered to the purchaser in a DOJ database. *Id.* §§ 33850. Once the purchaser has obtained the firearm, individuals remain subject to further restrictions on how they must store it. *Id.* §§ 25000, 25100-25140, 25200-25225. Local ordinances often expand this and many other firearm restrictions.

None of those restrictions is challenged here. This case challenges only the

provisions of California law that prevent Plaintiffs and other ordinary, law-abiding adults from carrying firearms outside their homes for self-defense in any manner. In California, it is generally illegal 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." *Id.* § 25850.[1] These same restrictions apply to carrying unloaded firearms openly, except for long-guns that remain in a vehicle. *Id.* §§ 26350, 26400. And, regardless of whether the firearm is loaded, California law also generally prohibits the possession of a concealed firearm in any place outside one's residence, place of business, or other private property, including within a vehicle. *Id.* §§ 25400, 25605.

While these general prohibitions are subject to several exceptions, most apply only to narrow sets of persons or places.[2] Accordingly, for most Californians,

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[1] Because California law does not define "public place," whether a location is deemed one depends on the facts of each case. Private property, including one's yard and business, can still be a "public place" for purposes of these restrictions. *See, e.g.*, *People v. Cruz*, 44 Cal. 4th 636, 674, 187 P.3d 970 (2008); *People v. Yarbough*, 169 Cal. App. 4th 303, 318-19 (2008) (driveway is a "public place"); *In re Zorn*, 59 Cal.2d 650, 381 P.2d 635 (1963) (barbershop is a "public place").

A "prohibited area" is "any place where it is unlawful to discharge a weapon." Cal. Penal Code § 17030. For example, because discharge of a firearm within 150 yards of buildings without the prior permission of the lawful possessor is illegal, Cal. Fish & Game Code § 3004(a), so is carrying a firearm in such areas. Likewise, the prohibition on discharging a firearm over any public road or highway, according to Defendant's predecessor, makes carrying a firearm on them illegal too. Cal. Penal Code § 374c; 51 Op. Atty. Gen. 197, 10-3-68 (Penal Code section 374c makes every public road or highway a "prohibited area" as defined in Penal Code section 17030); *see also* 36 C.F.R. § 27.41 (national wildlife refuges); 36 C.F.R. § 26.10(d) (national forest road, cave, or within 150 feet of a building); Cal. Fish & Game Code § 10500 (state game refuge); Cal. Code Regs. tit. 14, § 43B(a) (state parks); Cal. Code Regs. tit. 14, § 550(cc) (state wildlife areas); Cal. Code Regs. tit. 14, § 630 (ecological reserves). And local no-discharge ordinances can also create "prohibited areas."

[2] *See, e.g.*, Cal. Penal Code § 25900 (peace officers); *id.* § 26005 (target ranges and hunting on premises of shooting clubs); *id.* § 26015 (armored vehicle guards); *id.* § 26020 (retired federal officers); *id.* § 26025 (animal control officers and zookeepers); *id.* § 26035 (individuals engaged in lawful business); *id.* § 26040 (hunters); *id.* § 26050 (individuals making a lawful arrest); *id.* § 26055 (residences).

The concealed carry ban includes many of the same narrow and inapplicable exemptions as the open carry ban. *See, e.g.*, *id.* §§ 25510-25595.

the only potentially available exception is the one for "Carry License" holders, which allows individuals who have obtained a Carry License to carry a loaded handgun in public, subject to restrictions. *Id.* §§ 26150-26155.[3] California authorizes city police chiefs and county sheriffs ("Issuing Authorities") to issue Carry Licenses to their residents. To obtain a Carry License, the applicant must meet a host of eligibility requirements that are not challenged here, including passing a criminal background check and successfully completing a training course covering handgun safety and California firearms laws. *Id.* §§ 26165, 26185. The applicant must also convince the Issuing Authority that the applicant is of "good moral character" and has "good cause" to carry a loaded handgun in public. *Id.* §§ 26150(a)(1)-(2), 26155(a)(1)-(2).

Rather than defining "good cause," the State has delegated that task to each Issuing Authority. *Id.* § 26160. Issuing Authorities currently exercise "unfettered discretion" in deciding whether an applicant has "good cause" to be issued a Carry License. *Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Nichols v. County of Santa Clara*, 223 Cal. App. 3d 1236, 1243 (1990); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 665-66, 725 P.2d 470 (1986) (Mosk, J., dissenting). Some Issuing Authorities deny Carry Licenses to virtually all law-abiding residents, while others issue to any law-abiding, competent, otherwise-qualified adult applicant who seeks a Carry License for self-defense. *See Peruta v. County of San Diego*, 742 F.3d 1144, 1169 (9th Cir. 2014) (*Peruta II*), *vacated*, 824 F.3d 919 (9th Cir. 2016) (en banc).

Issuing Authorities in counties with populations over 200,000 residents can only issue licenses allowing the holder to carry a *concealed* firearm. California law prohibits them from issuing licenses to carry a loaded handgun in an exposed, open manner (e.g., in a visible hip holster). Cal. Penal Code §§ 26150(b)(2), 26155(b)(2).

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[3] Carry License holders are still restricted from carrying a firearm into schools, sterile areas of public transit facilities, certain California government buildings, and gun shows. Cal. Penal Code §§ 171b, 171.7(b)(1), 626.9, 27330.

Consequently, if the Issuing Authority in such a county has a restrictive "good cause" policy, then the typical law-abiding citizen cannot obtain a license to lawfully carry a loaded firearm either openly or concealed. Indeed, without a Carry License, the typical law-abiding citizen may possess a firearm in a "public place" only for the sole purpose of transporting it to a vehicle or an authorized location, and, even then, the firearm must be unloaded and stored in a locked container (if a handgun) or properly "encased" (if a long-gun) and "the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances." *Id.* §§ 25505, 26405(c).[4]

Carrying a firearm in public without a Carry License or without meeting one of the other limited exceptions to California's carry restrictions is punishable as either a misdemeanor or a felony. *Id.* §§ 25400, 25850, 26350, 26400. California provides one—and only one—affirmative defense to these prohibitions, for individuals who violate the loaded (but not concealed) carry restriction when they reasonably believe they or someone else is in "immediate, grave danger" of being attacked. *Id.* § 26045(a). But this defense is extremely narrow, as the law defines "immediate" to mean only "the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance." *Id.* § 26045(c).

In sum, under current law, ordinary law-abiding citizens in California are effectively banned from carrying firearms outside their homes for self-defense in any manner, whether openly or concealed, unless they have a Carry License, which can only be obtained upon the whim of an Issuing Authority.

II. THE CHALLENGED PROVISIONS APPLIED TO PLAINTIFFS

Plaintiffs have experienced the effect of California's carry ban. All individual

[4] What locations are "authorized" is not expressly explained in the California Code, but it seems that this is referring exclusively to those locations listed in Penal Code sections 25510-26405.

plaintiffs are adult residents of Los Angeles County who are qualified to possess firearms under federal and California laws and have not been found to pose any threat to public safety. Pls.' State. Uncont. Facts & Concl. of Law ("S.U.F.") ¶¶ 2-3, 5-6. Each currently possesses a handgun lawfully. S.U.F. ¶ 4.

The Sheriff of Los Angeles County, James McDonnell, is the sole Issuing Authority for Plaintiffs. Cal. Penal Code § 26150. Because Los Angeles County has a population well exceeding 200,000 people, Pls.' Req. Jud. Not. 2 & Ex. 8. A license to carry openly is completely unavailable under California law. For a concealed Carry License, Sheriff McDonnell requires applicants to prove a particularized need to carry a handgun in public. Specifically, to even potentially satisfy his "good cause" standard, an applicant must provide:

> convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm.

Pls.' Req. Jud. Not. 3 & Ex. 10.

Plaintiffs applied for Carry Licenses and satisfied all other requirement to obtain one, but Sheriff McDonnell denied each of their applications because their articulated desire to carry firearms for self-defense did not satisfy his exceedingly narrow "good cause" standard. S.U.F. ¶¶ 18, 23, 26, 29. Countless members of Plaintiff CRPA were likewise denied a Carry License by Sheriff McDonnell or refrained from applying for one, knowing that they could not satisfy his "good cause" standard. S.U.F. ¶ 35. Plaintiffs and CRPA's members accordingly cannot lawfully carry firearms in public for self-defense, as they have no means to obtain open carry licenses and have sought and been denied concealed carry licenses.

But for California's comprehensive restrictions on the public carriage of firearms and Plaintiffs' inability to obtain a Carry License, the individual Plaintiffs, and those members of Plaintiff CRPA who are similarly affected, would lawfully carry a firearm in non-sensitive public places for self-defense, but they refrain from doing so for fear of liabilities for violating one or more of California's laws that criminalize carrying a firearm. S.U.F. ¶¶ 7, 36.

LEGAL STANDARD

Summary judgment is proper when the record shows there is "no genuine dispute as to any material fact . . . and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 1106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Material facts are those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 107 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* Initially, the moving party bears the burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. If the movant meets its burden, the nonmoving party must produce sufficient evidence to rebut the movant's claim and create a genuine issue of material fact. *Id.* at 322-23.

ARGUMENT

I. ANALYTICAL FRAMEWORK FOR SECOND AMENDMENT CHALLENGES

The Second Amendment provides that "the right of the people to keep and bear Arms … shall not be infringed." For decades, there was uncertainty among lower courts about whether those words protect an individual right or only a collective right. *Compare, e.g., Silveira v. Lockyer*, 312 F.3d 1052, 1060-61 (9th Cir. 2002) (affirming 1996 decision concluding that the Second Amendment protects a collective right), *with Silveira v. Lockyer*, 328 F.3d 567, 568-70 (9th Cir. 2003) (Kozinski, J., dissenting from denial of rehearing en banc) (individual right); *id.* at 570-71 (Kleinfeld, J., dissenting from denial of rehearing en banc) (same).

The Supreme Court resolved that uncertainty in *Heller*, concluding after an exhaustive textual and historical analysis that the Second Amendment protects an "individual right to possess and carry weapons" for self-defense. 554 U.S. at 592. The Court then held that the law at issue in the case, a District of Columbia ordinance banning the possession of operable handguns in the home, violated the Second Amendment under "any of the standards of scrutiny that we have applied to enumerated constitutional rights"—that is, any standard of scrutiny stricter than rational basis review. *Id.* at 628 & n.27.

In *McDonald v. City of Chicago*, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), the Court held that the "right to keep and bear arms for the purpose of self-defense" recognized in *Heller* is "fully applicable to the States," *id.* at 750, because it is "among those fundamental rights necessary to our system of ordered liberty," *id.* at 778. Accordingly, the Court explained, states and municipalities must comply with the individual right protected by the Second Amendment and may not simply "enact any gun control law that they deem to be reasonable." *Id.* at 783 (plurality opinion); *see also Caetano v. Massachusetts*, __ U.S. __, 136 S. Ct. 1027, 194 L. Ed. 2d 99 (2016) (vacating state court decision on Second Amendment grounds).

In the years since *Heller* and *McDonald*, the Ninth Circuit has developed a two-step framework for adjudicating Second Amendment claims. First, a court "asks if the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the right." *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016) (citing *Heller*, 554 U.S. at 625). If so, the court analyzes the law under heightened scrutiny, with the degree of scrutiny varying depending on "how close the challenged law comes to the core of the Second Amendment right, and . . . the severity of the law's burden on that right." *Id.* (citing *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014)).

The court need not determine the level of scrutiny, however, if a law

"amounts to a destruction of the Second Amendment right," as such a law "is unconstitutional under any level of scrutiny." *Jackson*, 746 F.3d at 961. After all, "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 634. And as the Supreme Court has admonished, the Second Amendment is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald*, 561 U.S. at 780 (plurality opinion). In short, the Second Amendment is "a real constitutional right. It's here to stay." *Fisher v. Kealoha*, 855 F.3d 1067, 1072 (9th Cir. 2017) (Kozinski, J., separate opinion).

II. THE LAW BURDENS CONDUCT PROTECTED BY THE SECOND AMENDMENT BECAUSE THE SECOND AMENDMENT EXTENDS BEYOND THE HOME

California law prohibits Plaintiffs, who are ordinary, law-abiding adults, from carrying a handgun in public. The critical question in determining whether that prohibition "burdens conduct protected by the Second Amendment" is thus whether the Second Amendment protects a right to carry firearms that extends beyond the home. *Silvester*, 843 F.3d at 821. The text, structure, purpose, and history of the Second Amendment—not to mention common sense—all confirm that it does. Precedent reinforces that conclusion. Indeed, *Heller* itself suggests that the Second Amendment protects the right to carry firearms in public *in some fashion*. And no federal court (at least without provoking reversal) has rejected a Second Amendment claim on the theory that the right is confined to the home.

A. The Text, Structure, and Purpose of the Second Amendment Confirm That the Right to Bear Arms Extends Beyond the Home

Any inquiry into the scope of the Second Amendment must begin with its text. *See Heller*, 554 U.S. at 576. That text provides: "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. amend. II. Critically, the Supreme Court has already held that the text protects two separate rights: the right to "keep"

arms, and the right to "bear" them. *See Heller*, 554 U.S. at 591 ("keep and bear arms" is *not* a "term of art" with a "unitary meaning"). Under *Heller*'s binding construction, to "keep arms" means to "have weapons." *Id.* at 582. To "bear arms" means to "carry" a weapon for "confrontation"—to " 'wear, bear, or carry' " a firearm " 'upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.' " *Id.* at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998) (Ginsburg, J., dissenting)).

The right to bear arms cannot plausibly be confined to the home. "To speak of 'bearing' arms within one's home would at all times have been an awkward usage." *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012); *see Grace v. District of Columbia*, 187 F. Supp. 3d 124, 135 (D.D.C. 2016), *vacated on other grounds*, *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017) ("[R]eading the Second Amendment right to 'bear' arms as applying only in the home is forced or awkward at best, and more likely is counter-textual."). It is far "more natural to view the Amendment's core as including a law-abiding citizen's right to carry common firearms for self-defense beyond the home." *Wrenn*, 864 F.3d at 657. After all, "the idea of carrying a gun 'in the clothing or in a pocket, for the purpose . . . of being armed and ready,' does not exactly conjure up images of father stuffing a six-shooter in his pajama's pocket before heading downstairs to start the morning's coffee, or mother concealing a handgun in her coat before stepping outside to retrieve the mail." *Peruta II*, 742 F.3d at 1152. To the contrary, bearing arms "brings to mind scenes such as a woman toting a small handgun in her purse as she walks through a dangerous neighborhood, or a night-shift worker carrying a handgun in his coat as he travels to and from his job site"—much like what plaintiffs seek to do here. *Id.*

Accordingly, as every federal court that has analyzed the text has concluded, it is not plausible that the Framers understood the Second Amendment to protect

little more than carrying a gun from the bedroom to the kitchen. Indeed, this much is clear from the very opinion *Heller* cited to define the meaning of "bear arms." *Heller*, 554 U.S. at 584 (citing *Muscarello*, 524 U.S. at 147). Justice Ginsburg's opinion in *Muscarello*—on which *Heller* expressly relied—explained that "one could carry his gun to a car, transport it to the shooting competition, and use it to shoot targets." *Muscarello*, 524 U.S. at 147.

Finally, confining the right to "bear arms" to the home not only would be nonsensical, but would render the right largely duplicative of the separately protected right to "keep" arms. That would contradict the foundational principle that no "clause in the constitution is intended to be without effect." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174, 2 L. Ed. 60 (1803). In short, the most natural reading of the right to bear arms encompasses public carry.

That natural reading of the text is reinforced by the amendment's structure. As *Heller* explained, the Second Amendment's prefatory clause—"[a] well regulated Militia, being necessary to the security of a free State"—performs a "clarifying function" with respect to the meaning of the operative clause. 554 U.S. at 577-78. Here, the prefatory clause's reference to "the Militia" clarifies that the operative clause's protection of the right to "bear Arms" encompasses a right that extends beyond the home. Militia service, of course, necessarily includes bearing arms in public. The Revolutionary War was not won with muskets left at home; nor were the Minutemen notorious for their need to return home first before being ready for action. And all the Justices in *Heller* agreed that the right to bear arms was codified at least in part to ensure the viability of the militia. *See id.* at 599; *id.* at 637 (Stevens, J., dissenting). The Court thus *unanimously* agreed that one critical aspect of the right to bear arms extends beyond the home.

Confining the right to the home is also irreconcilable with the right's "*central component*": individual self-defense. *Id.* at 599 (majority opinion); *see id.* at 594 ("right to enable individuals to defend themselves"); *id.* at 616 ("individual right to

use arms for self-defense"); *id.* at 628 ("inherent right of self-defense"). The need for self-defense, of course, is "not limited to the home." *Moore*, 702 F.3d at 936. To the contrary, "the need for [self-defense] might arise beyond as well as within the home." *Wrenn*, 864 F.3d at 657; *accord Heller*, 554 U.S. at 679 (Stevens, J., dissenting) ("[T]he need to defend oneself may suddenly arise in a host of locations outside the home.").

If anything, the need to carry a firearm for self-defense is *more likely* to arise outside the home than within. Even if one's home is not literally a castle, it provides a measure of protection that a person lacks when walking through a dangerous neighborhood or traveling on a deserted street. In America's early days, for example, "[o]ne would need from time to time to leave one's home to obtain supplies from the nearest trading post, and en route one would be as much (probably more) at risk if unarmed as one would be in one's home unarmed." *Moore*, 702 F.3d at 936. The "right to keep and bear arms for personal self-defense in the eighteenth century" therefore "could not rationally have been limited to the home." *Id.*

The same is true today. Statistics compiled by the federal government show that a greater percentage of violent crimes "occur on the street or in a parking lot or garage" than "in the victim's home." *Grace*, 187 F. Supp. 3d at 135. Likewise, a substantial majority of rapes, armed robberies, and other serious assaults occur outside the home. *See* Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev. 585, 610-11 (2012) (citing Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization in the United States, 2007 Statistical Tables* tbl.62 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cvus07.pdf). As the Seventh Circuit explained, "a Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower." *Moore*, 702 F.3d at 937. Likewise, a "woman

who is being stalked or has obtained a protective order against a violent ex-husband is more vulnerable to being attacked while walking to or from her home than when inside." *Id.* "To confine the right to be armed to the home is [thus] to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*." *Id.*

B. The History of the Second Amendment Shows That the Right Extends Beyond the Home

The "historical background" of the Second Amendment "strongly confirm[s]" that the right to bear arms extends beyond the home. *Heller*, 554 U.S. at 592; *see Silvester*, 843 F.3d at 820 ("determining the scope of the Second Amendment's protections requires a textual and historical analysis"). Indeed, many of the "same sources" that *Heller* consulted to determine that the Second Amendment protects an individual right also show that the right is not confined to the home. *Wrenn*, 864 F.3d at 658.

The Second Amendment traces its roots back to England, where Blackstone described " 'the right of having and using arms for self-preservation and defence' " as " 'one of the fundamental rights of Englishmen.' " *Heller*, 554 U.S. at 594 (quoting 1 Blackstone 136, 139-40 (1765)). The fundamental right to use arms for "self-preservation and defense" necessarily includes the right to carry firearms outside the home because, as explained above, the need for self-defense necessarily arises outside the home. *See supra* Part II.A. Indeed, English authorities made clear that "the killing of a Wrong-doer . . . may be justified . . . where a Man kills one who assaults him *in the Highway* to rob or murder him." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 71 (1762) (emphasis added); *see also* 1 Matthew Hale, *Historia Pacitorum Coronae* 481 (Sollum Emlyn ed. 1736) ("If a thief assault a true man either abroad or in his house to rob or kill him, the true man . . . may kill the assailant, and it is not felony.").

The need to carry for self-defense beyond the home was even greater in an

early America dominated by "wilderness," threats from "hostile Indians," and other dangers. *Moore*, 702 F.3d at 936. As St. George Tucker explained in his American version of Blackstone's Commentaries, "'[i]n many parts of the United States, a man no more thinks, of going out of his house on any occasion, without his rifle or musket in his hand, than a European fine gentleman without his sword by his side.' " *Grace*, 187 F. Supp. 3d at 137 (quoting 5 George Tucker, *Blackstone's Commentaries*, app., n.B, at 19 (1803). Indeed, "it is unquestionable that the public carrying of firearms was widespread during the Colonial and Founding Eras." *Id.* at 136. Many of the Founding Fathers, including George Washington, Thomas Jefferson, and John Adams carried firearms in public and spoke in favor of the right to do so—a strong indication that the right to bear arms was not limited to the home. *Id.* at 136-37. And in many parts of early America, "carrying arms publicly was not only permitted—it was often *required*." *Id.* at 136; *see also* Nicholas J. Johnson, et. al., *Firearms Law and the Second Amendment* 106 (2012) ("[A]bout half the colonies had laws requiring arms-carrying in certain circumstances.").

Early American judicial authorities, including many relied upon in *Heller*, likewise make clear that the Second Amendment was understood to include the right to bear arms in public in some manner. The nineteenth century cases are analyzed in comprehensive detail by *Peruta II*, 742 F.3d at 1155-66, which concluded that "the majority of nineteenth century courts agreed that the Second Amendment right extended outside the home and included, at minimum, the right to carry an operable weapon in public for the purpose of lawful self-defense," *id.* at 1160; *see also* O'Shea, *supra*, at 590 ("American courts applying the individual right to bear arms for the purpose of self-defense have held with near-uniformity that this right includes the carrying of handguns and other common defensive weapons outside the home.").

The critical point, reiterated in each of these cases, is that the Second Amendment requires "*some form* of carry for self-defense outside the home."

Peruta II, 742 F.3d at 1172. The Georgia Supreme Court's decision in *Nunn v. State*, 1 Ga. 243 (1846), lauded for its analysis by *Heller*, 554 U.S. at 612, is illustrative. There, the court held a state statute "valid" so far as it "seeks to suppress the practice of carrying certain weapons *secretly*," because banning concealed-carry alone would not "deprive the citizen of his *natural* right of self-defence, or of his constitutional right to keep and bear arms." 1 Ga. at 251. But to the extent the law "contains a prohibition against bearing arms *openly*," the court explained, it "is in conflict with the Constitution, and *void*." *Id.*

Numerous other cases relied upon by *Heller* followed the same approach. 554 U.S. at 613, 629 (citing *Andrews v. State*, 50 Tenn. 165, 187 (1871); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Reid*, 1 Ala. 612 (1840)). The few cases that reached a different result have been "sapped of authority by *Heller* . . . because each of them assumed that the [Second] Amendment was only about militias and not personal self-defense." *Wrenn*, 864 F.3d at 658. In sum, under *Heller*, "history matters, and here it favors the plaintiffs." *Id.*

C. Precedent Confirms That the Right Extends Beyond the Home

Precedent too favors the plaintiffs on this question. Numerous federal courts have analyzed the scope of the Second Amendment in depth and concluded that it extends beyond the home. *See id.* at 657-64; *Moore*, 702 F.3d at 935-36; *Grace*, 187 F. Supp. 3d at 135-38; *Palmer v. District of Columbia*, 59 F. Supp. 3d 173, 181-82 (D.D.C. 2014). Notably, even courts of appeals that ultimately upheld carry restrictions like those at issue here did not hold that the Second Amendment *does not even apply* to those restrictions. The Second Circuit, for example, concluded that the Second "Amendment must have ***some*** application in the . . . context of the public possession of firearms." *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012).

That consensus should come as little surprise, as *Heller* itself strongly suggests that the Second Amendment applies outside the home. For instance, when

the Court searched in vain for past restrictions as severe as the District's handgun ban, it deemed restrictions on carrying firearms *outside* the home most analogous, and noted with approval that "some of those [restrictions] have been struck down." *Heller*, 554 U.S. at 629 (citing *Nunn*, 1 Ga. at 251 (striking down prohibition on carrying pistols openly), and *Andrews*, 50 Tenn. at 187 (same)). Such laws could hardly represent "severe" restrictions on the right to keep and bear arms for self-defense, *id.*, if the Second Amendment's protection were limited to the home. And when the Court identified certain "presumptively lawful" regulatory measures, it included on that list "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Id.* at 626-27 & n.26. The Court would not have needed to single out those public places as sites of permissible restrictions if there was no right to carry outside the home at all.

To be sure, *Heller* did observe that "the need for defense of self, family, and property is most acute" in "the home." 554 U.S. at 628. But the Court did so only in the section of its opinion devoted to applying the constitutional principles it recognized to the specific restriction at hand—namely, a ban on possession *in the home*. *Id.* at 628-36. By contrast, in the entirety of its 50-page explication of the text and historical understanding of the Second Amendment, the Court referred to the "home" or "homestead" a grand total of three times, and never once to suggest that the right is confined to the home. *Id.* at 576-626. That hardly suffices to compel the conclusion that the Court somehow intended to recognize "only a narrow individual right to keep an operable handgun at home for self-defense." *Young v. Hawaii*, 911 F. Supp. 2d 972, 989 (D. Haw. 2012).

Moreover, that the need for self-defense may be "most acute" in the home certainly "doesn't mean it is not acute"—let alone nonexistent—"outside the home." *Moore*, 702 F.3d at 935; *accord Wrenn*, 864 F.3d at 657. Many constitutional rights are particularly important within the home but also extend beyond the home. The privacy protection of the Fourth Amendment, for example, is

"at its zenith" in the home, *United States v. Scott*, 450 F.3d 863, 871 (9th Cir. 2006), but undeniably extends beyond the home as well, *see Riley v. California*, __ U.S. __, 134 S. Ct. 2473, 139 L. Ed. 2d 430 (2014); *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 945 (2012). There is no reason why the Second Amendment should be treated any differently. *See McDonald*, 561 U.S. at 780 (plurality opinion) (rejecting notion that Second Amendment is a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees"). Indeed, the Supreme Court has at least implicitly rejected the suggestion that the Second Amendment is confined to the home by unanimously vacating a state court opinion that held the Second Amendment inapplicable to a stun gun possessed by a woman *in a public parking lot*. *Caetano*, 136 S. Ct. at 1027-28; *see also id.* at 1029 (Alito, J., concurring).

Nor can anything be gleaned from the fact that *Heller* (like most judicial decisions) struck down only the law before it. Federal courts, particularly the Supreme Court, decide cases according to "general principles" that apply beyond the fact patterns at hand. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, __ U.S. __, 137 S. Ct. 2012, 2026, 198 L. Ed. 2d 551 (2017) (Gorsuch, J., concurring). The Court's conclusion that the Equal Protection Clause bars racial segregation in public schools, *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), for example, applies equally to public buses and beaches, *see Gayle v. Browder*, 352 U.S. 903, 77 S. Ct. 145, 1 L. Ed. 2d 114 (1956) (per curiam). *Cf. Pavan v. Smith*, __ U.S. __, 137 S. Ct. 2075, 198 L. Ed. 2d 636 (2017) (access to marriage by same-sex couples extends to "the Constellation of benefits" linked to marriage). Nothing in *Heller* suggests that the Court's decision is uniquely confined to the facts at hand, or that lower courts are excused from the obligation to apply the principles the Court enunciated to other Second Amendment cases—an obligation the Ninth Circuit has acknowledged in applying *Heller* to fact patterns beyond handgun possession in the home. *See Fyock v. Sunnyvale*, 779 F.3d 991,

998 (9th Cir. 2015) (possession of large-capacity magazines); *Jackson*, 746 F.3d at 967 (ammunition purchases). Simply put, the suggestion that *Heller*, while recognizing the individual right to keep and bear arms, simultaneously imposed a silent restriction on the exercise of that right anywhere but the home is fanciful.

Ninth Circuit precedent is not to the contrary. Indeed, the only Ninth Circuit opinion to squarely discuss the question concluded that the right to bear arms requires states to "permit *some form* of carry for self-defense outside the home," either concealed or open, *Peruta II*, 742 F.3d at 1172, and the Ninth Circuit vacated a decision resting on contrary reasoning, *Baker v. Kealoha*, 679 F. App'x 625 (9th Cir. 2017). To be sure, the panel decision in *Peruta II* was subsequently vacated and superseded by a decision of an en banc panel. *See Peruta v. County of San Diego*, 824 F.3d 919, 927 (9th Cir. 2016) (en banc) (*Peruta III*). But the en banc panel concluded only that the Second Amendment does not protect a freestanding right to *concealed* carry; the court expressly reserved the question of "whether the Second Amendment protects *some ability* to carry firearms in public." *Id.* (emphasis added); *see also id.* at 939, 942.[5] *Peruta II* thus remains the only Ninth Circuit decision to address the question, and it continues to be cited frequently as persuasive authority that the right to bear arms extends beyond the home. *See, e.g.*, *Wrenn*, 864 F.3d at 658, 663-64; *Grace*, 187 F. Supp. 3d at 130 n.2. Indeed, California itself conceded in *Peruta III* that the Second Amendment must have "some purchase" outside the home, and that a state may not be able to "categorically" ban carry beyond the home. Oral Arg. Rec. 41:05-50, 44:06-16, *Peruta III*, 824 F.3d 919 (9th Cir. 2016) (en banc) (No. 10-56971).

In short, *no federal court* to confront the question has concluded (at least without provoking appellate reversal) that the Second Amendment has no

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[5] Plaintiffs accept *Peruta III* as binding precedent on the question it addressed at this stage of the proceedings but preserve their right to challenge its holding in an appropriate forum. *Cf. Wrenn*, 864 F.3d at 663 n.5 (disagreeing "with the Ninth Circuit" position in *Peruta III*).

application beyond the home. This Court should not be the first.

III. BANNING CARRY BEYOND THE HOME FAILS UNDER ANY APPLICABLE LEVEL OF SCRUTINY

Concluding that the right to bear arms extends beyond the home all but resolves this case, as the total denial of a right protected by the Second Amendment "fail[s] constitutional muster" under "any of the standards of scrutiny." *Heller*, 554 U.S. at 628-29. Accordingly, whether this Court applies the categorical approach that *Heller* demands or applies one of the levels of heightened scrutiny, the result is the same: California's refusal to allow ordinary law-abiding citizens—the very "people" the Second Amendment protects—is unconstitutional.

A. California's Effective Ban on Carry by Ordinary, Law-abiding Citizens Is Categorically Invalid

Because California completely denies ordinary law-abiding residents any outlet to carry outside the home, there is no need to determine the applicable level of scrutiny, as a law that completely denies a constitutionally protected right to those entitled to exercise it "fail[s] constitutional muster" under "any of the standards of scrutiny." *Id.* That is the approach *Heller* took in striking down a total denial of the ordinary citizen's right to *keep* arms, *id.*, and it is the approach numerous courts have taken in striking down bans on the right to *bear* arms, *see Wrenn*, 864 F.3d at 664-66; *Peruta II*, 742 F.3d at 1175; *Moore*, 702 F.3d at 941-42; *Palmer*, 59 F. Supp. 3d at 182-83. It is also an approach that a unanimous Ninth Circuit panel endorsed in *Jackson*, noting that a law that "amounts to a destruction of the Second Amendment right, is unconstitutional under any level of scrutiny." 746 F.3d at 961. Because California law prevents Plaintiffs from publicly carrying a firearm, it "amounts to a destruction" of the ordinary citizen's right to bear arms, and is thus "unconstitutional under any level of scrutiny." *Id.*

To be sure, California's scheme is subject to a long litany of exceptions. But none of these exceptions, whether individually or in aggregate, satisfies the Second

Amendment's mandates.

First, that California's carry prohibitions exempt certain narrow categories of individuals that do not include Plaintiffs makes no difference at all. The Second Amendment guarantees the right to keep and bear Arms to "the people," not just to peace officers or other subsets of the people the state deems worthy of exercising the right. The right to bear arms can no more be limited to such individuals than the right to free speech can be limited to paid newspaper columnists. *See, e.g.*, *First Nat'l. Bank of Boston v. Bellotti*, 435 U.S. 765, 777, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978) (speech protection "does not depend upon the [speaker's] identity"). Indeed, the possession ban at issue in *Heller* had "minor exceptions" for certain people, such as retired police officers, *see* 554 U.S. at 575 n.1, but that did not stop the Court from characterizing it as a "complete prohibition" on the right of "the people" to keep arms or from categorically invalidating it, *id.* at 629. The same result should follow here. Because a ban "on the ability of most citizens to exercise an enumerated right would have to flunk any judicial test that was appropriately written and applied," this Court should "strike down [California's] law here apart from any particular balancing test." *Wrenn*, 864 F.3d at 666.

California's exception for Carry Licenses holders is irrelevant here for the same reason. To be sure, if the state required Issuing Authorities to recognize self-defense as "good cause" to obtain a Carry License, then that exception would provide ordinary-law abiding individuals with an outlet to exercise their right to bear arms. But the state does not impose such a limitation on Issuing Authorities' discretion, and Sheriff McDonnell (like several other Issuing Authorities) has chosen to adopt an exceedingly narrow "good cause" requirement that he concluded Plaintiffs do not satisfy. So, the Carry License exception is no exception at all, at least not for ordinary law-abiding individuals like Plaintiffs.[6]

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[6] Plaintiffs recognize that this Court has dismissed their Second Amendment claim to the extent it challenged the State's "good cause" regime or the Sheriff's

Nor is California's narrow affirmative defense to criminal prosecution for an individual facing "immediate, grave danger" a meaningful caveat to its otherwise-comprehensive prohibitions. That defense is not only limited to "grave danger," but it also applies *only* during "the brief interval" between when law enforcement officials are notified of the "grave danger" and when they arrive on scene. Cal. Penal Code §§ 26045(a)-(c). Being as an individual is prohibited from having an unloaded firearm on or near his person to load should "immediate, grave danger" arise, *see id.* §§ 26350 (prohibiting open carry of unloaded firearms) and 25400 (prohibiting concealed carry of firearms, even if unloaded), "where the fleeing victim would obtain a gun during that interval is apparently left to Providence." *Peruta II*, 742 F.3d at 1147, n.1. More fundamentally, the notion that the right to bear arms is sufficiently accommodated by a potential affirmative defense to a prosecution for its exercise cannot be reconciled with the Supreme Court's repeated admonishments that the Second Amendment protects a fundamental right; specifically, the right to be "armed and ready" in case of confrontation. *Heller*, 554 U.S. at 584 (quoting *Muscarello*, 524 U.S. at 143 (Ginsburg, J., dissenting)).

If anything, California's recognition through this affirmative defense and its Carry License exception that carrying firearms outside the home is useful for self-defense makes its refusal to allow ordinary law-abiding citizens to publicly carry *more* constitutionally problematic, not less. Unlike an effort to restrict a type of firearm or manner of carry that the government deems either unrelated to the constitutionally valid goal of self-defense or peculiarly dangerous, California's law recognizes that carrying handguns directly furthers the constitutionally valid end of

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"good cause" policy. Order Re Def. Harris' Mot. to Dismiss [Compl.] for Decl. & Inj. Rel.; Def. McDonnell's Mot. to Dismiss at 1 (Dkt. 39). Nonetheless, the fact that the Sheriff has adopted such a restrictive policy is relevant to the analysis of the constitutionality of the State's open carry prohibitions, as it confirms that Plaintiffs do not have an alternative channel for exercising their right to bear arms for self-defense. Plaintiffs preserve their right to challenge the constitutionality of the "good cause" regime and policy in the appropriate forum. Likewise, Plaintiffs preserve their previously dismissed second claim under the Equal Protection Clause.

self-defense. Having acknowledged as much, California cannot limit the carrying of handguns to a subset of "the people" protected by the Second Amendment. Wholly apart from any levels-of-scrutiny approach, the State's effort to limit the pursuit of a constitutionally protected end by a constitutionally protected means to only a subset of those protected by the Constitution is invalid. It is no different—and no more constitutional—than limiting the First Amendment to those with an exceptionally good reason to criticize the government (as judged by the censor), or to restricting the Sixth Amendment right to counsel or a criminal trial to those with an exceptional need to prove their innocence (as judged by the prosecutor).

Finally, while, as a technical matter, there are portions of unincorporated areas where it is legal to openly carry a firearm, the reality for most counties is that these are tiny islands in a sea of "prohibited areas." Cal. Penal Code §§ 17030, 25850(a). Under state law, "prohibited areas" generally include any public road or highway, as well as anywhere within 150 yards of any building. *See supra* n.1. The State also expressly describes certain areas it controls as "prohibited areas." *See supra* Part n.1. Moreover, local laws typically create additional "prohibited areas" via ordinance. In Los Angeles County, for example, much of the county is a "prohibited area." Req. Jud. Not. 2-3 & Ex. 9 (L.A. Cty., Cal., County Code of Ordinances 13.66.050, 13.66.130, 13.66.500). Thus, if individuals are anywhere near civilization in Los Angeles County—in other words, are pretty much anywhere in Los Angeles County where a need for self-defense might arise—they are prohibited from openly carrying a firearm.

Moreover, even for the limited areas in the county where it is legal to carry a firearm, those areas are often described in such a confusing manner that it makes it all but impossible for average law-abiding citizens to know with any amount of certainty where their boundaries lie. Nothing short of a civil engineering degree and a high skill level of map-reading will help individuals avoid legal trouble while attempting to carry a firearm without a Carry License in the unincorporated

portions of Los Angeles County, and most likely all other counties. In any event, even if one could determine where every "prohibited area" is located, that would not cure the more fundamental problem that the Second Amendment guarantees a right to bear arms *for self-defense*—a purpose that manifestly is not achieved by a law that allows individuals to carry firearms only if they avoid all roads, buildings, populous areas, and other regions designated off-limits by the state or county.

In short, for ordinary, law-abiding individuals like Plaintiffs, California's prohibitions are, in all meaningful respects, the functional equivalent of a flat ban on publicly carrying firearms for self-defense. Because a flat ban on the exercise of a right protected by the Constitution "amounts to a destruction" of the right, California's carry prohibitions are "unconstitutional under any level of scrutiny." *Jackson*, 746 F.3d at 961 (citing *Heller*, 554 U.S. at 629).

B. California's Effective Ban on Carry by Ordinary, Law-abiding Citizens Is Invalid Under Either Strict or Intermediate Scrutiny

If the Court applies one of the traditional levels of scrutiny, it should apply strict scrutiny. Under Ninth Circuit law, a "law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny." *Silvester*, 843 F.3d at 821. The "core Second Amendment right" is the "right of self-defense," *Jackson*, 746 F.3d at 968; *see Heller*, 554 U.S. at 599, and restrictions on bearing arms beyond the home clearly "implicate[]" that core right, *Silvester*, 843 F.3d at 821. *See supra* Part I. By any measure, moreover, a complete ban "severely burdens" the right to bear arms for self-defense. *Silvester*, 843 F.3d at 821. Strict scrutiny accordingly applies.

Ultimately, however, this Court need not resolve whether strict or intermediate scrutiny applies because California's total carry ban cannot survive even intermediate scrutiny. *Cf. McCutcheon v. FEC*, __U.S.__, 134 S. Ct. 1434, 1446, 188 L. Ed. 2d 468 (2014) (plurality opinion). Intermediate scrutiny requires a "reasonable fit between the challenged regulation" and a "significant, substantial, or

important" government objective. *Silvester*, 843 F.3d at 821-22; *Jackson*, 746 F.3d at 965. The government "bears the burden of justifying its restrictions" and "must affirmatively establish the reasonable fit" required. *Jackson*, 746 F.3d at 965. While a reasonable fit "is not necessarily perfect" and "not necessarily the least restrictive means," it must be "a means narrowly tailored to achieve the desired objective." *McCutcheon*, 134 S. Ct. at 1456-57.

Completely prohibiting ordinary, law-abiding citizens from carrying handguns is not a remotely, let alone reasonably, tailored means of furthering the State's legitimate objective of public safety. To the contrary, that flat ban is the paradigmatic *opposite* of tailoring. In applying intermediate scrutiny under the Second Amendment, the Ninth Circuit has stressed the distinction between laws that completely prohibit protected conduct and those that leave open "alternative channels" for that conduct. *Jackson*, 746 F.3d at 968. Unlike laws the Ninth Circuit has upheld under intermediate scrutiny, California's carry ban does *not* leave open alternative channels to bear arms for self-defense outside the home. Instead, the law flatly denies the right to all but those who can demonstrate—to the satisfaction of an Issuing Authority with unbridled discretion—a "good cause" for carrying—a criterion that "says nothing about whether he or she is more or less likely to misuse a gun." *Grace*, 187 F. Supp. 3d at 149.

California's carry ban thus can be justified only on the theory that allowing law-abiding citizens to carry handguns for self-defense creates an intolerable public safety risk. Not only is that theory lacking in empirical support, *see, e.g.*, *Moore*, 702 F.3d at 937-42, and belied by the State's recognition of the value of providing for Carry Licenses and an affirmative defense to prosecution for violating the carry restrictions when one is in "immediate" "grave danger"; it is a theory that the Second Amendment takes "off the table," *Heller*, 554 U.S. at 635-36. The drafters and ratifiers of the right to bear arms understood carrying firearms poses safety risks, but they chose to protect the right anyway. The State may disagree with that

determination, and they may do so with the best of intentions. But they have no more authority to second-guess the People's decision to protect the right to bear arms than they do to override the protection against unreasonable searches and seizures, the inadmissibility of coerced confessions, the criminal defendant's right to confront adverse witnesses, or any other provision of the Bill of Rights with "disputed public safety implications." *McDonald*, 561 U.S. at 783 (plurality opinion). Put simply, the Second Amendment "is the very *product* of an interest balancing by the people," and defendants many not "conduct [it] for them anew." *Heller*, 554 U.S. at 635; *cf. United States v. Stevens*, 559 U.S. 460, 470, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010) ("The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.").

In short, California's desire to bar ordinary citizens from publicly carrying handguns might be understandable, but it is nevertheless unconstitutional. The "enumeration of the right takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 634-65.

CONCLUSION

There are no material facts in dispute here. This case presents a pure and straightforward question of law: whether the Second Amendment protects a right to bear arms beyond the home. Because the answer is plainly yes, and Plaintiffs are deprived of that right, their Motion for Summary Judgment should be granted.

Dated: September 11, 2017 **MICHEL & ASSOCIATES, P.C.**

/s/ Sean A. Brady
Sean A. Brady
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed September 11, 2017

/s/ Laura Palmerin
Laura Palmerin