

EXHIBIT 5

Guy A. Rossi
July 17, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHELLE FLANAGAN, SAMUEL GOLDEN, DOMINIC
NARDONE, JACOB PERKIO, and THE
CALIFORNIA RIFLE & PISTOL ASSOCIATION,

Plaintiffs,

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

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

Defendants.

Deposition Upon Oral Examination of:

Guy A. Rossi

Location: Alliance Court Reporting, Inc.
120 East Avenue, Suite 200
Rochester, New York 14604

Date: July 17, 2017

Time: 12:30 p.m.

Reported By: KIMBERLY A. BONSIGNORE

Alliance Court Reporting, Inc.

120 East Avenue, Suite 200

Rochester, New York 14604

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Guy A. Rossi
July 17, 2017

A P P E A R A N C E S

Appearing (via videoconference) on Behalf of
Plaintiffs:

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* * *

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Guy A. Rossi
July 17, 2017

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W I T N E S S

Name	Examination by	Page

Guy A. Rossi	Ms. Li	6-134

* * *

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3

Guy A. Rossi
July 17, 2017

1	E X H I B I T S		
2	Exhibit	Description	Marked ID'ed
3	-----		
4	EXH 1	Defendant Xavier Becerra's Notice of Deposition of Expert Witness	
5		Guy Rossi	7 7
6	EXH 2	Expert Report of Guy Rossi	7 7
7	EXH 3	An article titled "Defending Against Physical Attack, An	
8		Interview With Guy Ross"	74 74
9	EXH 4	Expert Witness Repot Of Former Covina Chief Of Police Kim Raney	83 83
10	EXH 5	An article titled "Gun Carry Laws Can Complicate Police	
11		Interactions"	103 103
12	EXH 6	Amicus brief - Peruta v. County of San Diego	
13			119 119

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EXHIBITS PREVIOUSLY MARKED

17	Exhibit	Description	Page
18	-----		
19	EXH		
20	(No Previously Marked Exhibits Presented)		

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Guy A. Rossi
July 17, 2017

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DOCUMENT REQUESTS

Request Page

(No Documents Requested)

* * *

CERTIFIED QUESTIONS

Question Page

(No Certified Questions)

* * *

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Guy A. Rossi
July 17, 2017

1 MONDAY, JULY 17, 2017;

2 (Proceedings in the above-titled matter
3 commencing at 12:27 p.m.)

4 * * *

5 GUY A. ROSSI,

6 called herein as a witness, first being sworn,
7 testified as follows:

8 EXAMINATION BY MS. LI:

9 Q. My name is Patty Li, and I represent the
10 Attorney General of California in this action, which
11 is the Flanagan versus Becerra matter.

12 And I'm going to ask you to state your
13 full name and spell your last name just for the
14 record.

15 A. Sure. My name is Guy Anthony Rossi, and
16 it's spelled R-O-S-S-I.

17 Q. And do you understand that you are
18 testifying today under the same oath that you would
19 take if you testified in a courtroom?

20 A. Absolutely.

21 Q. And is there anything that would prevent
22 you from thinking clearly and testifying truthfully
23 today?

24 A. No.

25 MS. LI: I'm going to ask the court

Guy A. Rossi
July 17, 2017

1 Q. And after that, what was your next law
2 enforcement position and what year did you start that?

3 A. I was hired by the Village of Fairport,
4 New York, as a patrol officer in the Village of
5 Fairport from 1978 through 1982.

6 Q. And after that?

7 A. I was -- I transferred to the Irondequoit
8 Police Department -- and that's the town I live in
9 now -- from 1982 to 1987.

10 And in 1987, I transferred to the
11 Rochester, New York, Police Department.

12 From 1987 through 1998 --

13 Q. And at the Irondequoit -- pardon me if I
14 mispronounce that -- the Irondequoit Police
15 Department, what was your rank?

16 A. I was a patrol officer.

17 Q. And at the Rochester Police Department,
18 when you joined the department, what was your rank?

19 A. Patrol officer.

20 Q. And when you retired from the department,
21 what was your rank?

22 A. Sergeant.

23 Q. So when you retired in 1998, you were a
24 sergeant?

25 A. Yes.

Guy A. Rossi
July 17, 2017

1 Q. And is it correct to say that you retired
2 from being a sworn law enforcement officer in 1998?

3 A. Correct.

4 Q. So you have not been a sworn law
5 enforcement officer since then?

6 A. That's correct.

7 Q. Can you describe your current occupation
8 for me? I understand from your report and your
9 curriculum vitae that you may have several lines of
10 work, so I would appreciate if you could describe each
11 of those for me.

12 A. Sure. Following my retirement from the
13 police department, I was employed by, per se, the
14 police academy in Monroe County, New York, which is
15 called the Public Safety Training Facility of Monroe
16 Community College. I was employed there for
17 approximately eight and a half years. I was a program
18 coordinator in charge of all law enforcement training
19 for the region.

20 Following that -- although, I'm still an
21 adjunct instructor at that academy; it was a full-time
22 job -- I worked full time for the Homeland Security
23 Management Institute of Monroe Community College for
24 five years, developing curriculum on personal safety
25 for civilians.

Guy A. Rossi
July 17, 2017

1 So I want to ask you about this analysis.
2 If a person is -- is there any difference between a
3 person carrying a knife and a person carrying a
4 firearm in terms of a law enforcement officer's
5 assessment of the, you know, possible dangers in that
6 situation?

7 A. Again, it depends on the threatening
8 action, but it also depends upon the proxemics, and it
9 also depends upon the nature of the weapon itself.
10 The example being a knife, a knife you would have to
11 be close in order to use a knife, that type of thing.

12 Q. And how far away would you have to be in
13 order to use a weapon? A firearm, excuse me.

14 A. I see firearms used point-blank range. It
15 can be -- there's no -- I mean, there's a range as far
16 as a maximum distance, but as far as proxemics, it
17 could be right on top of you, have close -- intimate
18 range, right on top of you.

19 Q. So let's imagine a situation in which
20 someone is very close to the officer, close enough to
21 either use a knife or a firearm, does it matter to the
22 officer whether that person is carrying a firearm or a
23 knife? Does it make a difference in the officer's
24 assessment of the safety of the situation?

25 A. Not really.

Guy A. Rossi
July 17, 2017

1 Q. So it sounds like what you're saying is
2 that it does not make a difference whether someone is
3 carrying a firearm versus carrying a knife, that both
4 are equally dangerous or both present no danger? I
5 can't quite tell.

6 A. Okay. Well, let me clarify it. What it
7 really comes down to is if the person possesses a
8 knife and they're not threatening or indicating that
9 they're going to be a threat by verbal or nonverbal
10 means, that person in the officer's mind is not a
11 threat.

12 If the person is carrying a gun and the
13 officer looks at him and there's no reason to believe
14 that he's committing a crime, and it's in a legal
15 state or location that they're able to carry a gun,
16 then it's not a crime.

17 So unless the person is a threat to the
18 officer or to someone else -- and I mean an imminent
19 threat, because we can say is the public alarmed,
20 sometimes that's not an imminent threat, depending on
21 the situation.

22 We're talking about an imminent personal
23 threat. You're talking about the officer, and
24 generally it's going to be that they're going to
25 respond based on their training and experience of

Guy A. Rossi
July 17, 2017

1 whether they believe that weapon is a threat.

2 Q. And are you saying it doesn't matter what
3 that weapon is?

4 MR. BRADY: Objection, argumentative.
5 Misstates testimony.

6 A. Any weapon -- any dangerous instrument
7 given malicious intent could be considered a threat.
8 Again, it's the intent that the subject is
9 demonstrating to the officer or to a third person
10 that's going to indicate his response.

11 Q. And what kind of a weapon is more
12 dangerous; a knife or a firearm?

13 MR. BRADY: Objection, vague as to "more
14 dangerous." Incomplete hypothetical. Asked and
15 answered.

16 A. I think I've answered that.

17 Q. So is it correct to say that your
18 testimony is that both a firearm and a knife could
19 present a danger to a police officer?

20 A. Given malicious intent, the answer would
21 be yes.

22 Q. And is it your testimony that a knife and
23 a firearm present the same amount of danger to a
24 police officer?

25 MR. BRADY: Objection, misstates

Guy A. Rossi
July 17, 2017

1 testimony.

2 You can go ahead, Mr. Rossi.

3 A. Again, it depends on the perception of the
4 officer, the proxemics involved, the capabilities of
5 that weapon, whether it's a baseball bat or a knife or
6 a gun.

7 Q. Is there a way to make a general
8 assessment of whether a knife is a more dangerous
9 weapon than a firearm?

10 MR. BRADY: Objection, vague.

11 A. It's a hard question to answer without
12 more than the hypothetical.

13 Q. Are you able to say based on your
14 experience as a sworn law enforcement officer and
15 someone who has spent years offering training to sworn
16 law enforcement officers whether a firearm presents a
17 greater danger to officer safety than a knife?

18 MR. BRADY: Objection, confusing.
19 Misstates testimony. Incomplete hypothetical. Asked
20 and answered.

21 Q. Mr. Rossi, are you going to answer the
22 question?

23 A. Oh, I thought I answered it. It's a
24 difficult question. I've seen people shoot as close
25 as point-blank and miss with a firearm, and I've seen

Guy A. Rossi
July 17, 2017

1 people that have been cut to pieces with a knife that
2 started from distances. It depends on the intent,
3 motivation of the offender. It's depends on the
4 perception of the officer.

5 You know, we've all been cut cutting a
6 tomato or some object in our house for food, so we
7 know what that feels like. So most of us are more
8 afraid of knives than we are of guns, because we don't
9 know what it's like to be shot with a gun.

10 So personally neither one is something
11 that I would rather have done to me, and I'm sure most
12 officers wouldn't want that done to them either. It's
13 based on their perception. They deal with knives and
14 guns every day on the street.

15 Q. What is more common to find on the street;
16 someone carrying a knife or someone carrying a
17 firearm?

18 A. Mostly a knife.

19 Q. Can you please turn to page 4 of your
20 expert report.

21 A. Sure.

22 Q. At the very bottom of the page, the
23 sentence that continues on to the next page, it
24 begins, "Absent malicious intent, presence of a weapon
25 is not the only factor that makes police-citizen

Guy A. Rossi
July 17, 2017

1 encounters easy or difficult."

2 So I want to know what you think about the
3 presence of a weapon. How does it rank in terms of
4 factors that a law enforcement officer considers when
5 they first arrive to assess a situation and the
6 possible dangers?

7 A. It's a very important factor. I mean,
8 it's probably the most important in most officer's
9 minds when they respond to a situation.

10 But, again, it's based on what that is
11 there for, what the object of the weapon or whatever
12 is -- what's the reason for being there.

13 Q. And you refer to "malicious intent" here?

14 A. Yes.

15 Q. Can you describe that a little bit more
16 for me; what do you mean by "malicious intent"?

17 A. Well, threatening behavior, deceiving
18 behavior, distracting behavior, threatening behavior
19 by -- for sure. So I would say that that encapsulates
20 what I think is malicious intent.

21 Q. And then turning to page 5, I'm looking at
22 the -- the second paragraph on the page that's the
23 first full paragraph. The last sentence there says,
24 "It is the suspicion of criminal conduct along with
25 the threat of violence that first elevates this

Guy A. Rossi
July 17, 2017

1 Is that consistent with your knowledge of
2 what happens in states with open carry, that people
3 will still call the cops even though open carry is
4 legal?

5 A. I believe so, yes.

6 Q. So even though open carry is legal, there
7 may be instances where members of the public are
8 alarmed by seeing a firearm and they will call the
9 police about something that you would describe as
10 lawful behavior; is that right?

11 A. Yes. That's why I mentioned that we have
12 to educate public and community and the officers.

13 Q. Is there anything to prevent someone from
14 calling the police when they see someone carrying a
15 gun in public, even if open carry is legal?

16 MR. BRADY: Objection, vague as to
17 "preventing."

18 Go ahead.

19 A. People call the police for the strangest
20 things. So I don't think you'll ever be able to stop
21 that, not totally. But then, again, there are
22 safeguards in place where telecommunicators -- or the
23 dispatchers and supervisors talk whether or not the
24 call is going to be handled at a lower priority or a
25 higher priority based upon the information that was

Guy A. Rossi
July 17, 2017

1 given.

2 Q. I just want to ask about the comment
3 that's at the very end of the page, which we read
4 earlier, "When you have all these people running
5 around with guns and rifles, you don't know who the
6 bad guy is." This is the comment by the law
7 enforcement officer in Texas. Would you agree or
8 disagree with that statement?

9 A. I would disagree with that statement.
10 Generally it's pretty clear who the bad guy is based
11 on their body language, their behavior, what they're
12 doing with that weapon, you know, so I would generally
13 disagree with that statement.

14 Q. It sounds like as a general matter you
15 think it is possible to distinguish between the good
16 guys and the bad guys, even if they're both carrying
17 firearms; is that right?

18 A. Officers get very good at reading people's
19 body language and their nonverbal cues and many, many
20 things, and you get to read it pretty good. And
21 officers fine-tune that skill over many, many years of
22 going to calls on a daily basis.

23 So I would think the majority of officers,
24 based on their training and experience, are able to
25 predict at a very high percentage who the good guy and

Guy A. Rossi
July 17, 2017

1 the bad guy is.

2 Q. In your experience, has a police officer
3 ever gotten it wrong in terms of distinguishing who
4 the good guys are and who the bad guys are, if
5 everyone is carrying a firearm?

6 A. Absolutely it's happened, and officers
7 have suffered for it, but it's the exception not the
8 rule.

9 Q. And in terms of it being the exception,
10 how big of an exception is that, or how small of an
11 exception is that? Is that 10 percent of the time, 5
12 percent of the time, 30 percent of the time?

13 MR. BRADY: Objection, calls for
14 speculation beyond what the expert was called to
15 testify about.

16 To the extent you can answer without
17 guessing, Mr. Rossi, you are free to do so.

18 A. Yeah, I would have a hard time. It's a
19 very small percentage.

20 Q. Very small as in single digits?

21 MR. BRADY: Objection, calls for
22 speculation. Beyond what the expert was called to
23 testify about.

24 A. I'm going to stick with my original
25 comment.

Guy A. Rossi
July 17, 2017

1 Q. If you look at -- again going back to your
2 curriculum vitae -- actually the page right after
3 that --

4 A. Uh-huh.

5 Q. -- so after page 20, it's actually the
6 page right after your curriculum vitae, the top of the
7 page says, "Guy Rossi Expert Trial and Deposition
8 Testimony."

9 A. Yes.

10 Q. So under the heading "Deposed," the first
11 entry there says, you know, kind of towards the bottom
12 of the page, it says, "Ninth District Amicus Brief
13 2011, recognized as an expert and assisted in the
14 research and writing of Peruta versus City of San
15 Diego."

16 Does this refer to the amicus brief that
17 we were just discussing that's listed under Special
18 Publications on your curriculum vitae, page 17; are
19 those two the same amicus briefs?

20 A. Yes.

21 Q. So it says that you assisted in research
22 and writing of that amicus brief from 2011 in the
23 Peruta matter; is that right?

24 A. Yes.

25 Q. Was that a brief submitted on behalf of

Guy A. Rossi
July 17, 2017

1 ILEETA as an amicus?

2 A. It may have, yes. I believe it did. I

3 don't totally recall, but I believe it did.

4 MS. LI: I'm going to ask the court

5 reporter to mark Exhibit 6.

6 (The following exhibit was marked for

7 identification: EXH Number 6.)

8 Q. So Exhibit 6 is a copy of the amicus

9 submitted by the International Law Enforcement

10 Educators and Trainers Association, as well as another

11 group called the Independence Institute. And this was

12 submitted, you can tell from the very top line, on May

13 30, 2011, in the Peruta versus County of San Diego

14 matter.

15 Does this appear to be the amicus brief

16 that we were just discussing that's referenced on your

17 curriculum vitae?

18 A. Yes, I believe so.

19 Q. And did you help to research and to write

20 this brief?

21 A. I helped with certain parts of it, with

22 research -- yes, research.

23 Q. Do you recall what topics you helped to

24 research?

25 A. Predominantly my focus was in the area of

Guy A. Rossi
July 17, 2017

1 individuals that pose threats.

2 Q. So in terms, though, of a comparison
3 between police practices or police departments in
4 California and those in New York, are there any key
5 differences that come to mind?

6 A. Well, the biggest key difference is local
7 laws and state laws. For the most part, police
8 officers around the country operate fairly the same
9 way as a result of accreditation training around the
10 country. So it's fairly consistent, I mean, with the
11 exception of local issues.

12 Q. Do you know under what circumstances it is
13 lawful to carry a firearm openly in public in
14 California?

15 A. No, I don't.

16 Q. When is it lawful to carry a firearm
17 openly in public in New York State, under what
18 circumstances?

19 MR. BRADY: Objection, beyond the scope of
20 what the deponent was called to testify about.

21 A. With the exception of hunting season, the
22 New York State area that I live in is a concealed
23 carry area by permit. It takes a very long time to
24 get one here, like it does there, I'm sure.

25 New York City has different rules and

Guy A. Rossi
July 17, 2017

1 the exception of a justified use of force with a legal
2 handgun that's been cleared by a grand jury.

3 Q. So you're saying that you're not
4 personally aware of someone who lawfully had a
5 handgun, committing a crime with that handgun, that's
6 not something that you have ever personally been aware
7 of in your 35 years?

8 A. That's correct.

9 Q. So you've never encountered a domestic
10 violence situation where someone in lawful possession
11 of a handgun, you know, discharged that weapon at home
12 in the middle of an argument or something like that?

13 A. No.

14 MR. BRADY: Objection, incomplete
15 hypothetical. Argumentative. Misstates prior
16 testimony.

17 You can answer, Mr. Rossi, to the extent
18 understand the question.

19 A. "No" is the answer.

20 Q. And when you say "personally been aware,"
21 that means you didn't encounter that when you were
22 sergeant -- I guess, what does that mean, "personally
23 been aware"? Are you aware -- you're not counting
24 things you might read in the news?

25 A. I'm talking about my own personal

Guy A. Rossi
July 17, 2017

1 information that I've received either by being at the
2 situation, being involved in training and talking to
3 somebody, living in the community that I've been
4 living in, having been a police officer in this
5 community and living in this community for many years,
6 I'm not aware of anything other than justifiable use
7 of force with a handgun by a law-abiding citizen.
8 That's been my experience.

9 Q. Now, beyond your personal experience, are
10 you -- have you read about, have you heard about, are
11 you otherwise aware of instances in which someone who
12 lawfully owned a handgun then committed a crime with
13 that handgun?

14 A. No.

15 Q. And you say in the last sentence in that
16 paragraph we've been looking at, "Further, in my
17 interactions with law enforcement officers throughout
18 the country, including those who I have instructed in
19 police-citizen encounters, in their experience, the
20 same has been true."

21 Does that mean that based on what you've
22 heard from law enforcement officers that you have
23 provided training to they also have not encountered
24 situations where someone who had lawfully owned a
25 handgun had then committed a crime with that handgun?

Guy A. Rossi
July 17, 2017

1 A. That's correct.

2 Q. And is that a topic that you would discuss
3 with law enforcement officers in the normal course of
4 providing training?

5 A. Specifically when I've been doing the law
6 enforcement interaction with legally armed citizens,
7 it's something that we talk about at the introduction
8 of the course, "What has been your experience?"

9 Most of the officers seem to be more upset
10 about being videotaped than having to deal with the
11 person with the gun.

12 Q. I just want to make sure I understand your
13 opinion here. Because if I'm reading it correctly, it
14 suggests anyway that of all the crimes that you are
15 personally aware of or that have discussed with the
16 law enforcement officers that you've trained, it
17 sounds like you're saying if any of those crimes have
18 involved a handgun, it's been a handgun that was not
19 used by its lawful owner, it was a handgun that was
20 stolen or otherwise obtained. Is that --

21 MR. BRADY: I'm sorry. Were you done with
22 your question? I didn't mean to jump on your
23 question, Ms. Li.

24 MS. LI: Oh, sorry. I was just finishing.
25 By a handgun that was, you know, stolen or not

Guy A. Rossi
July 17, 2017

1 lawfully obtained, was the end of my question.

2 MR. BRADY: Objection, misstates
3 testimony. Compound. Incomplete hypothetical.

4 You may answer, Mr. Rossi, to the extent
5 you understand the question.

6 A. I stand on what I said. My own personal
7 experience and people that I've talked to, the answer
8 has been "no."

9 Q. I just want to make sure we're on the same
10 page. The answer has been, no, you have not been
11 aware of a lawfully armed citizen committing a crime
12 with their handgun; is that correct?

13 A. That's correct.

14 Q. Okay. So the implication is that the
15 crimes you are aware of involving handguns have been
16 crimes in which the handgun is being used by someone
17 who is not the lawful owner or someone who cannot
18 lawfully possess that weapon in the first place; is
19 that right?

20 A. Correct.

21 Q. And you would say the same is true in the
22 experience of the law enforcement officers that you
23 have provided training to; is that correct?

24 A. Correct.

25 MS. LI: I don't think I have any other

Guy A. Rossi
July 17, 2017

ACKNOWLEDGMENT

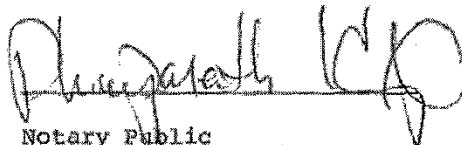
I, Guy A. Rossi, declare, swear and aver
that I have read my testimony contained herein and
that my answers are true and correct, with any
exceptions noted on the errata sheet, under penalty of
perjury.



Guy A. Rossi

I certify that this transcript was signed
in my presence by Guy A. Rossi on the 5 day of
September, 2017.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office of Rochester, New
York on this 5 day of September, 2017.



Notary Public
PHOTOGRAPHED & RECORDED
NOTARY PUBLIC STATE OF NEW YORK
NO. 0106614783
QUALIFIED IN MONROE COUNTY
COMMISSION EXPIRES JUNE 19, 2018

My Commission Expires:

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137

Case: 10-56971 05/30/2011 Page: 1 of 37 ID: 7767759 DktEntry: 24

No. 10-56971 [DC# CV 09-02371-IEG]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD PERUTA, et al.,

Plaintiffs-Appellants,

v.

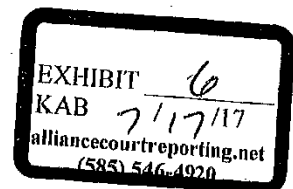
COUNTY OF SAN DIEGO, et al.,

Defendants-Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF OF *AMICUS CURIAE* INTERNATIONAL LAW
ENFORCEMENT EDUCATORS AND TRAINERS ASSOCIATION,
AND THE INDEPEDENCE INSTITUTE
IN SUPPORT OF NEITHER PARTY

David B. Kopel
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Counsel for Amici Curiae



Case: 10-56971 05/30/2011 Page: 33 of 37 ID: 7767759 DktEntry: 24

C. Fearful or phobic civilians may react inappropriately to open carry, and cause the waste of police time

A great deal of law enforcement time is already wasted by sincere but mistaken civilian reports of perceived crime. Some civilians are firearms aficionados, while other civilians loathe firearms. For a small minority of the loathers, the aversion to guns may be so intense as to constitute, according to at least some experts, a type of phobia. See PHILIP T. NINAN & W. DUNLOP BOADIE, CONTEMPORARY DIAGNOSIS AND MANAGEMENT OF ANXIETY DISORDERS 107 (2006) (“Hyplophobia” is a phobic fear of firearms).¹⁵

When a civilian sees someone engaged in lawful open carry, the civilian may not know that open carry is lawful, or may be so emotionally over-stimulated by the sight of a gun that he may call 911 and report “a man with gun.” Such a report is likely to result in a swift and aggressive response by multiple police units. At the least, the

¹⁵ Hyplophobia is a type of “specific phobia,” that is, “a persistent and unreasonable fear of an object or situation coupled with a strong desire to avoid it.” A “common” specific phobia is “aviatophobia,” the fear of flying. Hyplophobia is an “unusual” specific phobia; examples of other unusual specific phobias include pyrophobia (fear of fire), iatrophobia (fear of doctors), and entomophobia (fear of insects.) *Id.* at 106-07.

Case: 10-56971 05/30/2011 Page: 34 of 37 ID: 7767759 DktEntry: 24

response will be a tremendous waste of police time, and the worst, a mistake could lead to the shooting of an innocent civilian.

Finally, it should be noted that under current California law, unloaded open carry does not require training, whereas licensed, concealed carry does. While amici recognize that the police, who have to intervene in many diverse and complex situations, and therefore need much more training than do civilians who only wish to protect themselves while going about their daily routine, amici still believe that some firearms training for civilians is helpful and constructive. Accordingly, amici prefer to encourage civilians to adopt the form of carry which will result in them receiving training.

CONCLUSION

The Court's decision should take into account the inadequacy of unloaded open carry as a means of exercising the constitutional right of self-defense.

Respectfully submitted,

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