

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHELLE FLANAGAN, et al.,

Plaintiffs,

v.

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

Defendants.

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

**ORDER RULING ON
DEFENDANT'S OBJECTIONS TO
CERTAIN *OTHER* EVIDENCE
FILED IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT (DKT. 66)**

The cross-motions for summary judgment, one filed by Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California (“Defendant”), and the other filed by Plaintiffs Michelle Flanagan, Samuel Golden, Dominic Nardone, Jacob Perkio, and the California Rifle & Pistol Association (“Plaintiffs”), came on for hearing in this Court on November 6, 2017. Defendant had timely lodged evidentiary objections to the declaration of Sean Brady submitted in support of Plaintiffs’ motion for summary judgment. Defendant later timely had lodged amended evidentiary objections on the same subject matter, to conform the previously submitted objections to the requirements of the Court’s initial standing order for civil cases.

The Court having read and considered the objections in Defendant’s amended objections to certain evidence filed in support of Plaintiffs’ motion for summary judgment, rules as follows on each of Defendant’s objections.

DECLARATION OF SEAN A. BRADY [ETC.] (ECF No. 57-1)	OBJECTION	COURT’S RULING
[Objections 1, 2, 3] ¶ 10. I have researched and confirmed that 46 states allow the open carry of firearms in some form. States generally prohibiting open carry of any firearm by statute are California, Hawaii, Florida, Illinois as well as the District of Columbia.	1. Lacks foundation/personal knowledge. Fed. R. Evid. 602. 2. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 3. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702.	Sustained, without prejudice to citation to laws
[Objections 4, 5, 6] ¶ 11. I have researched and confirmed that there are	4. Lacks foundation/personal knowledge. Fed. R. Evid. 602.	Sustained, without prejudice to

1 2 3 4 5 6 7	three additional states that do not have statutory prohibitions against open carry, but state law has been construed to generally prohibit the practice. These states are Massachusetts, New York, and New Jersey.	5. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 6. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702.	citation to laws
8 9 10 11 12 13 14 15	[Objections 7, 8, 9] ¶ 12. I have researched and confirmed that there are two states which generally prohibit the open carry of handguns, but otherwise allow the open carry of long guns. These states are Maryland and South Carolina.	7. Lacks foundation/personal knowledge. Fed. R. Evid. 602. 8. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 9. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702.	Sustained, without prejudice to citation to laws
16 17 18 19 20 21 22 23 24 25 26 27 28	[Objections 10, 11, 12] ¶ 13. I have researched and confirmed that 34 states allow unlicensed persons to carry firearms openly, notwithstanding municipal ordinances in some states. There are six states which require a permit but permits are granted on a shall issue basis. These states are Indiana, Georgia, Minnesota, Oklahoma, Texas, and Tennessee. The remaining six states allow open carry with a permit but are “may issue” permit	10. Lacks foundation/personal knowledge. Fed. R. Evid. 602. 11. Irrelevant (improper legal argument). Fed. R. Evid. 401, 402. 12. Improper opinion testimony of a lay person. Fed. R. Evid. 701, 702.	Sustained, without prejudice to citation to laws

1	regimes, and it is unknown		
2	how many permits they		
3	issue.		
4			
5	[Objections 13, 14, 15]	13. Lacks foundation/personal	Sustained, without prejudice to citation to laws
6	¶ 14. I have researched	knowledge. Fed. R. Evid. 602.	
7	and confirmed that in the	14. Irrelevant (improper legal	
8	following 29 states, the	argument). Fed. R. Evid. 401,	
9	practice of openly carrying	402.	
10	a firearm in public was	15. Improper opinion testimony	
11	generally not prohibited	of a lay person. Fed. R. Evid.	
12	prior to the passage of	701, 702.	
13	“shall issue concealed		
14	weapon permit” statutes.		
15	These states include		
16	Alabama, Alaska, Arizona,		
17	Colorado, Idaho, Kansas,		
18	Kentucky, Louisiana,		
19	Maine, Michigan,		
20	Missouri, Mississippi,		
21	Montana, North Carolina,		
22	Nebraska, New Hampshire,		
23	New Mexico, Nevada,		
24	Ohio, Oregon,		
25	Pennsylvania, South		
26	Dakota, Utah, Virginia,		
27	Washington, West		
28	Virginia, Wisconsin,		
	Wyoming, Vermont. Most		
	of these states never		
	specifically banned the		
	practice of openly carrying		
	and firearm [<i>sic</i>]. And in		
	those states that did		
	prohibit the open carry of a		
	firearm, the prohibition		
	was ultimately eliminated		
	by statute or found		

1 unconstitutional under that
2 state's constitution.

3
4 IT IS SO ORDERED.

5 Dated: May 7, 2018



6 JOHN A. KRONSTADT
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28