
No.: 14-55873 [DC 2:11-cv-09916-SJO-SS]

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Charles Nichols,

Plaintiff-Appellant,

v.

EDMUND G. BROWN JR., in his official capacity as Governor of California

and

**XAVIER BECERRA, in his official capacity as Attorney General of
California,**

Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
[DC 2:11-cv-09916-SJO-SS]**

**PLAINTIFF-APPELLANT NICHOLS' NOTICE OF ASSEMBLY BILL 424
- POSSESSION OF A FIREARM IN A SCHOOL ZONE**

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In Pro Per**

PLEASE TAKE NOTICE that on January 1, 2018, Assembly Bill 424 – Possession of a Firearm in a School Zone (2017-2018 Reg. Sess.) (“AB 424”) went into effect.

Prior legislation, already cited, had removed the ability of persons who hold a license to carry a concealable firearm pursuant to California Penal Code sections 26150 or 26155 to carry a firearm on the grounds of a school but not within 1,000 feet of a K-12 public or private school but still allowed schools to permit the carrying of concealable firearms in schools and on school grounds and within 1,000 feet of a public or private K-12 school, with or without a state issued license.

This legislation (AB 424) removed the authority of a school district superintendent, his or her designee, or equivalent school authority to provide written permission for a person to possess a concealable firearm within a school zone as defined by California Penal Code Section 626.9 and exempts the Open Carry of Unloaded Handguns from the prohibition created by California Penal Code Section 26350. See California Penal Code section “PC” 26370 “Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9, if that carrying is not prohibited by Section 626.9.”

PC 626.9 defines “school zone” (4) “School zone” means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or

grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.”

Section 26405 of the Penal Code is amended to read: (in relevant part)
“Section 26400 (the ban on openly carrying unloaded long guns) does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances: (j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition., (n) Within a school zone, as defined in Section 626.9, if that carrying is not prohibited by Section 626.9.”

Similarly to PC 25850, the ban on carrying loaded firearms, PC 626.9 does not exempt the carrying of a loaded handgun for the purpose of self-defense. Instead, it provides for an affirmative defense but adds the additional hurdles of a current restraining order *and* a reasonable belief that he or she is in grave danger in order to raise that defense. See PC 626.9(c)(3). It was extensively argued in the opening brief that an affirmative defense is not an exception.

PC 626.9(c)(5) does not apply “When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is not in, or on the grounds of, a public or private school providing instruction in

kindergarten or grades 1 to 12, inclusive, but within a distance of 1,000 feet from the grounds of the public or private school.”

California Penal Code section 626.9 did not, and does not, prohibit the lawful possession or carrying of a long gun. See PC 626.9(c)(2) “This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.”

From Appellant’s Opening Brief at 21-22:

“Under California law it is illegal for Plaintiff-Appellant Nichols to step even one inch outside the door of his home into the curtilage of his home while carrying a loaded firearm for the purpose of self-defense. The only firearms he is allowed to carry in incorporated cities are unloaded antiques and even then he is prohibited from openly carrying even an unloaded antique handgun within 1,000 feet of a K-12 public or private school (PC626.9) without a license, a license which is unavailable to him by statute because he does not reside in a county with fewer than 200,000 people.”

As-applied to unloaded handguns openly carried it appears that the net effect of the legislation is that if one is within 1,000 feet of the grounds of a K-12 public or private school (but not on the grounds of the school) then one can openly carry an unloaded handgun “Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.” (PC 626.9(c)(1)) but nowhere else without a state license or pursuant to one of the other exceptions which do not apply to *Nichols*.

As-applied to unloaded long guns, and presumably not intended by the legislature, it is now legal to openly carry an unloaded long gun within 1,000 feet of a K-12 public or private school regardless of whether or not the school is located within an incorporated city or “prohibited” area of unincorporated county territory.

But it is a crime to openly carry the same unloaded long gun, for the purpose of self-defense, outside of a motor vehicle in an incorporated city or “prohibited” area of unincorporated county territory if one *is not* within 1,000 feet of a K-12 public or private school.

Absent prospective declaratory relief to that effect, or the prospective declaratory and prospective injunctive relief requested by *Nichols*, the only firearms he can openly carry outside the doors to his home for the purpose of self-defense, even in the curtilage of his home, are unloaded antique long guns and unloaded antique handguns, provided he does not carry the unloaded antique handguns within 1,000 feet of a K-12 public or private school except where it is not prohibited as previously cited by PC 626.9.

This legislation does not raise a new issue on appeal. *Nichols*’ operative complaint, which seeks prospective injunctive and prospective declaratory relief against (but not limited to) California Penal Code sections 25850, 26350, 26400, 26150, 26155 (and ancillary statutes as applied only to Open Carry) need not be amended.

Such relief also falls within the four corners of *Nichols*' operative complaint such as, but not limited to, his Prayer for Relief at page 39 "X. Such other and further relief as this Court may deem appropriate."

As in *Wrenn v. District of Columbia*, 864 F.3d 650 (2017) at 667, this court has the "power to dispose [of it] `as may be just under the circumstances,'" *Gross v. United States*, 390 U.S. 62, 71, 88 S.Ct. 709, 19 L.Ed.2d 906 (1968) (quoting 28 U.S.C. § 2106), and should do so "to obviate further and entirely unnecessary proceedings below," *id.* at 72, 88 S.Ct. 709..."

A copy of the bill, AB 424, is attached.

Date: January 8, 2018

Respectfully submitted,

/s/ Charles Nichols
CHARLES NICHOLS
Plaintiff-Appellant In Pro Per