

No. 18-55717

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

MICHELLE FLANAGAN, et al.,

Plaintiffs/Appellants,

v.

XAVIER BECERRA, et al.,

Defendants/Appellees.

On Appeal from the United States District Court
for the Central District of California (No. 16-6164-JAK-AS)

**BRIEF OF *AMICI CURIAE* COUNTY OF SANTA CLARA,
COUNTY OF ALAMEDA, COUNTY OF SAN MATEO,
AND CITY AND COUNTY OF SAN FRANCISCO
IN SUPPORT OF DEFENDANTS/APPELLEES**

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INTEREST OF AMICI CURIAE¹

Amici curiae are four California counties, representing more than one-tenth the population of our large, economically diverse, culturally vibrant state. Alameda County, San Mateo County, Santa Clara County, and the City and County of San Francisco wrap around the San Francisco Bay, containing three international airports, multiple public and private universities and national and state parks, the tech giants of Silicon Valley, miles of Pacific shoreline, and communities ranging from the densely populated urban neighborhoods of San Francisco, Oakland, Daly City and San José, to the scenic beach towns of Pacifica and Half Moon Bay, to sparsely populated agricultural regions.

Amici have a strong shared interest in this Court upholding California's carefully crafted system of state laws and locally tailored policies governing the issuance of gun carry permits. Amici and our local elected and appointed officials are responsible for providing essential services to the residents of our communities and safeguarding their health, safety, and welfare. Amici run the local law enforcement and criminal justice agencies, personnel, and facilities that carry out our paramount goal of keeping our communities safe. And we are united in supporting a common

¹ All parties have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to this brief's preparation or submission.

principle: that it is critically important to tailor local policies, particularly policies relating to public safety, to local needs. The heavy-handed, one-size-fits-all approach proposed by Plaintiffs-Appellants would erode this principle, forcing California communities from the Napa Valley to Hollywood to accept virtually all applications for gun carry permits, regardless of what their local judgment and experience counsels them to do to keep their residents safe. That result is not compelled by our nation's Constitution and would not be right for California.

INTRODUCTION

This appeal represents a poorly concealed attempt to relitigate this Court's *en banc* decision in *Peruta v. Cnty. of San Diego*, 824 F.3d 919 (9th Cir. 2016) (*en banc*), which only two years ago affirmed California's concealed carry laws against a Second Amendment challenge. Not only did the majority hold that "the Second Amendment does not preserve or protect a right of a member of the general public to carry concealed firearms in public," it also expressly agreed with the concurring opinion's recognition of the wisdom of California's localized approach to regulating concealed carrying of firearms. *Id.* at 924, 942. Notably, seven of the eleven judges sitting *en banc* in *Peruta* would "entirely agree" that "California's regulation of the carrying of concealed weapons in public . . . 'promotes a substantial government interest that would be achieved less effectively absent the regulation'" if they were to decide that issue. *Id.* at 942 (quoting *id.* at 945 (Graber, J., concurring)). The same is true of California's overall public carry regime.

A localized approach is particularly warranted in California. Its unparalleled size and diversity necessarily complicate the task of enacting statewide standards that are workable for all 58 counties, especially when it comes to matters of public safety. In enacting its public carry laws, the California Legislature recognized that local officials—the sheriffs and police chiefs responsible for directly protecting California’s communities—are best positioned to understand local public safety needs, by requiring only a minimum showing of “good cause” and otherwise vesting discretion in localities to respond to local conditions. *See* Cal. Penal Code §§ 26150, 26155. The merits of adopting a localized approach to regulating public carry are appreciable in the longstanding differences in the public safety needs of remote, rural populations, where law enforcement is necessarily slower to respond, compared with their urban city counterparts. This rural-urban distinction not only underlies the California laws generally allowing public carry of firearms in unincorporated territory, but also informs how some—but not all—localities exercise their discretion regarding issuance of carry licenses in incorporated cities and other public areas. *See id.* § 25850(a). These decisions are not arbitrary, but rather based on careful consideration of local circumstances and realities.

California’s localized approach to regulating concealed carry makes good policy sense and is consistent with core state and federal statutory and constitutional principles. With their on-the-ground experience, local sheriffs and police chiefs best understand the public safety needs of their communities and can appropriately tailor

the good cause standard and evidentiary requirements to serve those needs.

Foundational California law recognizes that sheriffs and police chiefs have the right and responsibility to police local communities. Cal. Const. Art. XI, § 7; Cal. Gov't Code §§ 26600, 26601, 26602, 41601. And it is a bedrock principle of constitutional law that the police power rests with the states and their political subdivisions, not the federal government—or the federal courts. *United States v. Morrison*, 529 U.S. 598, 618 (2000); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996).

There is also widespread recognition of the validity of local discretion, within constitutional limits, in the regulation of public carry. Such local control has been approved of by the federal courts, including this Court, and validated by the California State Auditor, which recently decided against recommending changes to state law after auditing the implementation of California's public carry law in three counties. *See Peruta*, 824 F.3d at 942, 945; Cal. State Auditor, *Concealed Carry Weapon Licenses* 36-38 (Dec. 2017), archived at <https://perma.cc/2FVV-Y6MN>. And it is overwhelmingly lauded by local law enforcement, including the California State Sheriffs' Association and International Association of Chiefs of Police, because they know that public safety suffers when these important decisions are taken out of local hands.

Having previously recognized the wisdom of California's localized approach to the regulation of concealed carry, this Court should do so again for all California's public carry laws. All Californians benefit from vesting broad discretion in the local sheriffs and police chiefs who understand their communities' public safety needs and

who can most readily be held accountable if they fail to protect those needs.

ARGUMENT

I. California Has Appropriately Elected not to Impose a Single Statewide “Good Cause” Standard for Issuing Carry Permits.

A. The State’s Diversity

California is a state of almost unparalleled diversity and complexity. The third largest state in the United States by land area, it is by far the most populous, home to over 39 million people—one out of every eight living in the United States. *See* Public Policy Inst. of Cal., *Just the Facts: Cal. Population* (Mar. 2017), archived at <https://perma.cc/695U-9VAQ>. California also enjoys incredible geographic diversity, including seven mountain ranges and three deserts; a vast Central Valley that supplies more than half of the fruits, vegetables, and nuts grown nationwide;² 28 national parks;³ an 840-mile Pacific coastline; and a 140-mile international border.⁴

California’s vast lands and population are not distributed uniformly across its 58 counties. Clustered near its coasts are California’s major population centers, including the largest county in the nation, Los Angeles County, which is home to more than 10 million residents and 88 cities packed into 4,000 square miles. *See* Cnty.

² U.S. House Comm. on Natural Res., *Cal. Central Valley: Producing America’s Fruits and Vegetables* (Feb. 5, 2014), archived at <https://perma.cc/J5KR-DLMD>.

³ U.S. Nat’l Park Serv., *California*, archived at <https://perma.cc/BN43-HK9L>.

⁴ U.S. Census Bureau, *Statistical Abstract of the U.S.: 2011, Table 359: U.S.-Canada and U.S.-Mexico Border Lengths; Table 360: Coastline and Shoreline of the U.S. by State*, archived at <https://perma.cc/H4KX-N67K>.

of Los Angeles, *Statistics*, archived at <https://perma.cc/MGF3-QR8F>. But many counties lying in the Central Valley, eastern mountain ranges, and northern forests are rural and sparsely populated. Fifteen California counties have populations under 50,000 people. See Cal. Demographics by Cubit, *Cal. Counties by Population* (2018), archived at <https://perma.cc/Z3NG-BFCH>. In a notable example of low density, the three-county region of Alpine, Mono, and Inyo, in the Sierra Nevada mountains on the state's eastern edge, covers 14,000 square miles but is home to only 34,000 residents. See Public Policy Inst. of Cal., *Cal. Pop.*, *supra*.

California's economic diversity is also stark. While the state is home to seven of the nation's 25 highest-income metropolitan areas, many counties have poverty rates well above the national average. See Samuel Stebbins & Michael B. Sauter, 25 *richest cities in America: Does your metro area make the list?*, USA Today (May 17, 2018), archived at <https://perma.cc/J7F6-Q3GS>; Evan Comen et al., *U.S. economy: A rundown of the poorest county in every state*, USA Today (Jan. 22, 2018), archived at <https://perma.cc/C7FY-LN8G>.⁵ Indeed, even within our wealthiest counties—such as Santa Clara County, with the highest-income metro area in the country—considerable income inequality persists. See Stebbins & Sauter, *supra*; Alex Thomas, *The Demographics of Poverty in Santa Clara Cnty.*, newgeography (Jan. 11, 2017), archived at

⁵ See also U.S. Census Bureau, *QuickFacts: Fresno Cnty., Cal.; Merced Cnty., Cal.; Tulare Cnty., Cal.; Trinity Cnty., Cal.; Imperial Cnty., Cal.*, archived at <https://perma.cc/8TCR-WZDE>.

<https://perma.cc/T7GF-94PH>.

These demographics can create complicated local public safety issues. High-crime communities in the United States typically have “poverty and unemployment rates exceeding the national average—dramatically so, in some instances—as well as lower-than-average median household incomes.” Matthew Green, *What’s the Link Between Economics and Crime in America’s Most Violent Cities?*, KQED News (Feb. 13, 2014), archived at <https://perma.cc/8ERD-R6RY>. But the correlation is not simple or consistent. A recent analysis of crime patterns in California during the year 2017 found that “[c]rime rates vary dramatically by region,” with the highest rate of violent crime occurring in impoverished San Joaquin County, but the highest rate of property crime in the relatively affluent counties of the San Francisco Bay Area. See Public Policy Inst. of Cal., *Just the Facts: Crime Trends in California* (Oct. 2018), archived at <https://perma.cc/9AHT-X7GY>. As further discussed below, these complicated dynamics underscore the need for local control over public safety policies.

B. The Difficulty of Establishing Statewide Public Safety Standards in California

Plaintiffs-Appellants object to the State of California’s decision not to mandate a single “good cause” standard statewide—one that would require local authorities to accept a self-articulated need for self-defense. But the sheer size and diversity of California make establishing statewide standards challenging in many areas of policy, especially those relating to public safety. Ensuring workable standards for all

Californians often requires striking the right balance between state and local control. In the case of large-scale statewide programs like California’s Public Safety Realignment, for example, the Legislature’s goal in shifting responsibility from the state to the counties to house and rehabilitate thousands of criminal offenders was to “manag[e] lower level offenders at the local level in locally-designed programs,” allowing “counties [to] retain significant discretion in their spending decisions” based on local needs. *See* Jeffrey Lin & Joan Petersilia, *Follow the Money: How Cal. Counties Are Spending Their Public Safety Funds*, Stanford Crim. Justice Ctr. 8 (Jan. 2014), *archived at* <https://perma.cc/KY5D-MCNJ>. A study of counties’ implementation of the legislation found they were “making sensible choices”—and significantly different ones—based on their “local political environments, economic health, and local criminal justice needs.” *Id.* at 10-13, 54-57.

The California Legislature struck a similar balance in adopting the “good cause” standard required to obtain open and concealed carry licenses in California. *See* Cal. Penal Code §§ 26150, 26155. It elected to set a minimum baseline, while leaving appropriate discretion to localities to define and implement the standard. In determining which facts and circumstances amount to good cause, localities are able to tailor the good cause standard to their unique populations, and the on-the-ground experience of local law enforcement in working with those populations.⁶

⁶ Indeed, in 2015, when state law was amended to allow county sheriffs to enter into

That local variations matter when regulating public carry is perhaps most appreciable in the differences that often exist between rural and urban areas of the state. Differences in standards for remote and populated areas date back to California's earliest days, and even the colonial era. *See* Los Angeles, Cal. Ord. Nos. 35-36 (1878); Adam Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America* 165 (2d ed. 2013) (contrasting the “untamed wilderness” where “[a]lmost everyone carried firearms” with frontier towns “where people lived and businesses operated, and the law often forbade people from toting their guns around”); Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 85 (2013) (“[P]erhaps no characteristic of gun control in the United States is as ‘longstanding’ as the stricter regulation of guns in cities than in rural areas” because of “the significant differences between urban and rural areas with regard to the prevalence, regulation, perceived importance, use, and misuse of guns.”). Even today this distinction holds true in some places; firearms

agreements with the police chiefs of cities within the county “to process all applications for licenses . . . in lieu of the sheriff” from applicants residing in their cities, *see* Cal Penal Code § 26150(c)(1)-(2), the Legislature credited the rationale of the California State Sheriffs’ Association that “the police chief, whose department may be more familiar with city residents than a county sheriff, can be better positioned”—even vis-à-vis the county sheriff—“to make the determination that a person should be granted a CCW [concealed carry weapons permit].” Cal. Senate Comm. on Pub. Safety, 2015-2016 Regular Session, Hearing on AB 1134, *Firearms: Concealed Firearm Licenses* (July 14, 2015). The fact that the decision whether to enter into such an agreement at all was left to the discretion of local officials in each county and city, *see* Cal. Penal Code §§ 26150(c), 26155(c), underscores the Legislature’s strong belief in the importance of not overriding local public safety decision-making authority.

offer potentially important protection in the mountains, forests, and other rural areas where fewer people are spread over greater expanses of land, and where law enforcement response times are necessarily slower.⁷ And there continue, conversely, to be greater costs attendant with arming an urban population where law enforcement officers are quick to arrive at the scene and are called upon to make split second decisions in assessing the danger posed by armed individuals.⁸ *See* Ans. Brief for State Appellee at 48-49.

The California Legislature recognized the importance of this distinction by allowing, with certain exceptions, the public carrying of guns in unincorporated lands without a permit. And, not surprisingly, the rural-urban distinction often factors into how localities implement the good cause standard in California. For example, the Madera County Sheriff, whose jurisdiction stretches far into the Sierra Nevadas, states in his guidance to concealed carry license applicants that “[m]any people understand,

⁷ *See, e.g.*, Cal. State Auditor, *supra*, at 36 (“San Diego’s sheriff noted that individuals in other counties with fewer deputies and larger geographical areas may have a greater need for personal protection because of slower response times from law enforcement.”).

⁸ *See, e.g.*, Martin Kaste, *Gun Carry Laws Can Complicate Police Interactions*, NPR (Jul. 19, 2016), archived at <https://perma.cc/AKQ8-F22G>; Jon Schuppe, *When police confront armed homeowners, it can be hard to tell good guys from bad*, NBC News (Jul. 31, 2018), archived at <https://perma.cc/W4J9-QGH3> (describing Colorado incident in which armed homeowner was fatally shot by police while defending his home against an intruder); Campbell Robertson & Timothy Williams, *As States Expand Gun Rights, the Police Object*, N.Y. Times (May 3, 2016), archived at <https://perma.cc/BE2Q-FH5L> (police officers say expansive public carry results in unnecessary escalation of incidents, “expose[s] officers to greater danger and prevent[s] them from doing their jobs effectively”).

and should articulate, that law enforcement emergency responses may be quite extended in many areas of the county and wish to have a means to protect themselves against crimes of violence, involving a threat of great bodily injury or death, until law enforcement arrives.”⁹ The same is true in some other California counties too. *See, e.g.,* Adam Randall, *Concealed weapons permit interest growing in Mendocino Cnty.*, The Ukiah Daily Journal (Jul. 14, 2016), *archived at* <https://perma.cc/8TJV-RJPD> (“With the wide-open remote spaces in Mendocino County, where police response time may take over an hour in some situations, [Sheriff] Allman thinks the CCW [concealed carry weapon] program makes that much more sense.”); *cf.* Nick Rahaim, *Can you get a concealed carry license in Sonoma Cnty.?*, Argus Courier (Jan. 10, 2018) *archived at* <https://perma.cc/85XX-T4BR> (“If I were in a rural county I would be more inclined to issue (concealed carry licenses),” said Santa Rosa Police Chief Hank Schreeder, noting long response times by law enforcement could be considered good cause. “But in an urban area like Santa Rosa our response time is less than 5 minutes.”).

But lower population density may come with correspondingly lower crime rates, both for violent crimes like robbery and property crimes like auto theft. *See* Public Policy Inst. of Cal., *Crime Trends, supra*. And in other counties, the needs of cities and unincorporated regions do not differ as starkly; in Santa Clara County, for

⁹ Cnty. of Madera, *Concealed Weapons Permit Info., CCW FAQs*, *archived at* <https://perma.cc/UJY2-J6D9>.

example, some unincorporated areas, known as “urban islands,” directly abut populated cities,¹⁰ and a review of dispatch operations found that only “in rare instances” did county residents, even “in unincorporated pockets, complain about slow response by law enforcement.”¹¹ Thus, even the unincorporated/incorporated distinction, standing alone, is not a substitute for local judgment.¹²

II. Preserving Local Discretion Protects Public Safety and Accords with Core Constitutional Values.

The legal regime devised by the Legislature for the public carrying of firearms in California recognizes that any attempt to craft a one-size-fits-all standard for our vast and diverse state could seriously harm public safety, and that local officials must be allowed to set appropriate standards for their respective communities based on their considered judgment and on-the-ground policing experience. *See* Cal. Penal Code §§ 26150, 26155. Delegating broad discretion to localities allows them to expressly define the good cause standard to be applied in their jurisdictions or, alternatively, to determine good cause on a case-by-case basis. With merits to either approach, it is localities that are best positioned to make that call.

Leaving policymaking in local hands protects public safety. Local law

¹⁰ *See* Cnty. of Santa Clara Dep’t of Planning and Dev., *Urban Islands Program* (Sep. 17, 2018), *archived at* <https://perma.cc/C8CR-3VJA>.

¹¹ *See* 2010-2011 Santa Clara Cnty. Civil Grand Jury Report, ‘*Can You Hear Me Now?*’ *Emergency Dispatch in Santa Clara Cnty.* 6 (May 19, 2011), *archived at* <https://perma.cc/78HK-498R>.

¹² In fact, in San Francisco—California’s only consolidated city and county—the distinction bears no weight at all.

enforcement agencies, through long experience generated by having boots on the ground, understand their jurisdictions and know whether a specific definition of good cause will fit the security needs of the entire populace, or instead whether a more individualized approach is warranted. Local sheriffs and police chiefs are also familiar with the nature and volume of gun carry applications in their jurisdictions, and can make reasoned determinations regarding the appropriate review process for applicants' documentation and corroborating evidence. *See, e.g.,* Cal. State Auditor, *supra*, at 36. These careful judgments cannot safely be reduced to a single statewide standard under which all applicants who claim they require guns for self-defense are granted licenses. Instead, these decisions must take into account—as they do now—the availability and effectiveness of local law enforcement response, local crime rates and trends, demographic considerations, any special characteristics that may make the applicant vulnerable (e.g., regularly carrying cash from a small business), and any special public safety considerations in a given community, such as the presence of a casino or prison, among other things. *See, e.g.,* Dylan Matthews, “*Studies: Casinos bring jobs, but also crime, bankruptcy, and even suicide*,” *The Wash. Post* (Oct. 30, 2012), *archived at* <https://perma.cc/ZP6T-CQ5T> (in communities with casinos, “crime, auto theft and larceny, and bankruptcy . . . all increased by 10 percent”). Indeed, criminologists emphasize “the unique nature of crime in each community and the myriad factors that may contribute to the problem, from variables as disparate as home ownership rates to the quality of local schools to the amount of open space and parks to the degree of

gang and drug activity. Every city has a distinct pulse and DNA.” *See* Green, *supra*.

Responsiveness to local needs, rather than rigid adherence to top-down policy mandates, is at the heart of the community policing initiatives that have been successfully implemented around the country with funding and recognition by the federal government. *See* Sarah Lawrence & Bobby McCarthy, *What Works in Cmty. Policing?*, Univ. of Cal. Berkeley, School of Law 5 (Nov. 2013), *archived at* <https://perma.cc/HVE2-UD8G>. These initiatives are rooted in a widespread understanding of “the value of a strong relationship” of trust between local police and residents: “when the public trust and respect police they are more likely to call on them for help, to cooperate with them in critical situations, and work together to solve community problems.” Brian A. Jackson, *Strengthening Trust Between Police and the Public in an Era of Increasing Transparency*, RAND Corp. 2 (Oct. 2015), *archived at* <https://perma.cc/95SW-3QQP>. And it is local law enforcement agencies that “must demonstrate to the public they serve—both in word and deed—the fairness and impartiality of their processes; must treat individuals during those processes with dignity and respect; and must give the public the opportunity to participate . . . in law enforcement policymaking.” *Id.* at 3. These responsibilities cannot simply be abdicated to a broader standard untethered to local circumstances.

Vesting discretion in local officials also makes good sense from the standpoint of accountability. Under California’s public carry regime, sheriffs and police chiefs are expected to set standards for the issuance of licenses based on the specific public

safety needs of their communities. If they get it wrong, and “citizens do not approve of the issuance policies that are employed by their respective sheriff or police chief, they can elect a different sheriff or demand a change in law enforcement leadership.” *See* Cal. State Auditor, *supra*, at 38. Indeed, “[t]oday’s communities demand more accountability and transparency from their police,” Police Exec. Research Forum, *Future Trends in Policing* (2014), archived at <https://perma.cc/P6MG-3672>, and local control over significant policy decisions such as those involving public carry ensures that matters which “concern the lives, liberties, and properties of the people” are determined “by governments more local and more accountable” to their perspectives, *see Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012).

Indeed, core state and federal statutory and constitutional principles mandate respect for California’s decision that local sheriffs and police chiefs are best positioned to set public safety standards for their communities. Under foundational California law, the core responsibility of a county sheriff is to “preserve peace,” to “prevent and suppress any affrays, breaches of the peace, riots, and insurrections that come to his or her knowledge,” and to investigate and make arrests for all “public offenses which have been committed” in the county. Cal. Gov’t Code §§ 26600, 26601, 26602; *see also id.* § 41601 (describing powers of city police chiefs). These officials have the responsibility and the right to set local policy on matters delegated to them by the United States and California Constitutions, including exercise of the police power. *See* Cal. Const. Art. XI, § 7. Because law enforcement and public safety

issues “are primarily, and historically, . . . matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” *Medtronic, Inc.*, 518 U.S. at 475 (citations omitted). “Indeed, [there is] no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.” *Morrison*, 529 U.S. 598 at 618.

The courts have recognized, consistent with principles of federalism and the Second Amendment, that states must be accorded considerable latitude within constitutional bounds to regulate the public carrying of firearms. *See, e.g., Peruta*, 824 F.3d at 942; *McDonald v. City of Chicago*, 561 U.S. 742, 783-85 (2010) (“Municipal respondents point out—quite correctly—that conditions and problems differ from locality to locality and that citizens in different jurisdictions have divergent views on the issue of gun control. . . . [The Second Amendment] thus *limits* (but by no means eliminates) their ability to devise solutions to social problems that suit local needs and values.”); *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 99 (2d Cir. 2012) (“[S]tate regulation of the use of firearms in public was ‘enshrined with[in] the scope’ of the Second Amendment when it was adopted.”) (quoting *Dist. of Columbia v. Heller*, 554 U.S. 570, 634 (2008)); *cf. Peruta*, 824 F.3d 919 (Callahan, J., dissenting) (notion that states must accommodate Second Amendment rights in a specific manner “is unsupported by Supreme Court precedent and contrary to federalism principles. The

Supreme Court has *never* dictated how states must accommodate a right to bear arms.”).

Judge Graber’s concurrence in this Court’s *en banc* decision in *Peruta*—joined by Chief Judge Thomas and Judge McKeown, and expressly approved of by the majority—rightly concluded that “California’s decision to confer permit discretion on its counties is not an arbitrary one.” 824 F.3d at 945 (Graber, J., concurring); *see also id.* at 942. The concurrence recognized the many benefits of local discretion:

Localizing the decision allows closer scrutiny of the interests and needs of each community, increasing the “reasonable fit” between the level of restriction and local conditions and decreasing the extent of restriction that otherwise would apply, statewide, in places that do not require it. Similarly, localizing the decision allows more careful and accurate consideration of each individual’s license application. California entrusts decision-making responsibility to local law enforcement officials because they are best positioned to evaluate the potential dangers that increasing or decreasing concealed carry would have in their communities. This structure allows for a nuanced assessment of the needs of each locality in processing applications for concealed carry. In short, California’s decision to place licensing in local hands is itself reasonable.

Id. at 945 (Graber, J., concurring); *see also Kachalsky*, 701 F.3d at 99 (upholding New York law under which “[l]icensing officers, often local judges, are vested with considerable discretion in deciding whether to grant a license application”) (citations omitted); *Drake v. Filko*, 724 F.3d 426, 439-40 (3d Cir. 2013) (declining “to intrude upon the sound judgment and discretion of the State of New Jersey” that carry permits should be subject to “careful case-by-case scrutiny of each application, by the police and a court”); *cf. id.* at 440-42 (Hardiman, J., dissenting) (“As befits a diverse

nation of fifty sovereign States and countless municipalities, gun regulation in the United States resembles a patchwork quilt that largely reflects local custom.”).

The California State Auditor also recently confirmed the wisdom of California’s approach after auditing the sheriffs of three counties: Los Angeles, Sacramento, and San Diego. While acknowledging opportunities for improving local processes in each county—including both those that applied a more liberal good cause standard and those that applied a more restrictive one—the State Auditor recognized “that the needs of local jurisdictions vary” and, in particular, that “the conditions that would justify carrying a concealed weapon might vary greatly across the state.” *See* Cal. State Auditor, *supra*, at 36-37. The State Auditor concluded that differences in local conditions, even among counties with similar population sizes, afforded a reasonable explanation for variations in definitions of good cause and numbers of licenses issued. *Id.* It further heeded the experience of local sheriffs in these counties that retaining local decision-making was consistent with protecting public safety. *Id.* at 38. Based on these considerations, the State Auditor declined to recommend changing state law to clarify issuance criteria. *Id.*

At bottom, the great diversity among California localities means that decisions about what constitutes “good cause” in a given community are best made at the local level. Imposing a one-size-fits all solution requiring counties to broadly approve applications for carry permits, regardless of circumstances on the ground, would fail Californians who depend on their leaders to make wise policy decisions for their

benefit, and would require localities to abdicate their core responsibility to develop thoughtful public safety policies responsive to local needs.

III. Local Law Enforcement Officials Overwhelmingly Support the Protection of Local Discretion to Make Public Safety Decisions Tailored to Their Communities.

Across the political spectrum, local law enforcement officials both within and outside of California are in near unanimity that public safety in our nation's communities critically hinges on leaving not just public safety issues generally, but public carry regulations specifically, in local hands. The California State Sheriffs' Association—which represents all 58 county sheriffs in our state—recently sent a letter to Congress opposing federal legislative proposals that would have required states to grant reciprocity to concealed carry permits issued by other states. It stated unequivocally that, “[i]n California, it is essential that *local law enforcement* maintain the ability to determine issuance of concealed weapons licenses for the safety of their constituents.” Cal. State Sheriffs' Ass'n, *CSSA Positions on Fed. Legis. – 2017*, 5/22/17 *CSSA Letter of Opp. re HR 38 (Rep. R. Hudson, R-NC-8) Concealed Carry Reciprocity Act of 2017*, archived at <https://perma.cc/7H8F-QLX9> (emphasis added).

Across the nation, other law enforcement groups agree. Earlier this year, the International Association of Chiefs of Police (IACP), joined by more than 400 individual sheriffs and police chiefs from across the country, opposed the same federal legislation, asserting that requiring states to accept one another's standards for

public carry would “dangerous[ly] encroach[] on individual state efforts to protect public safety.” See Tom Jackman, *Police chiefs implore Congress not to pass concealed-carry reciprocity gun law*, The Wash. Post (Apr. 19, 2018), archived at <https://perma.cc/GSN7-M6HV>. In a statement issued the same day, the IACP emphasized that public carry laws *must* “take into account the distinctive circumstances and needs in each” community, or risk “severely interfer[ing] with local law enforcement’s ability to prevent gun violence and safeguard the public.” Official Blog of the IACP, *Law Enf. Leaders Express Opp. to the Concealed Carry Reciprocity Act* (Apr. 19, 2018), archived at <https://perma.cc/4RFA-ACWB>. The Major Cities Chiefs Association concurred, “strongly condemn[ing]” the legislation because “[c]oncealed weapon permit laws have been tailored to the needs of regions and local communities over a period of many years,” and proposals for homogeneity are “certainly not in the interest of public safety.” Major Cities Chiefs Ass’n, *Major Cities Chiefs Denounce Combining Concealed Carry Reciprocity with the Fix NICS Act* (Dec. 4, 2017), archived at <https://perma.cc/D9RU-E9DA>.

The consensus among these many hundreds of local officials—those with on-the-ground experience both policing in, and setting and carrying out policy for, local communities—does not result from those officials donning blinders and refusing to consider alternative policy options. Nor is it a knee-jerk reaction based on the politics of the officials or their jurisdictions. Instead, where different communities agree that similar standards make sense for both of them, they already have the ability to align.

For example, Texas recognizes concealed carry licenses issued in California “because each state’s criteria for issuing such permits satisfie[s] the other” state’s stringent training requirements and other prerequisites for a public carry license. *See* Jackman, *supra*. Forcing local officials’ hands would fail to respect their careful decision-making process. And certainly nothing in our Constitution compels such a result.

CONCLUSION

For the reasons set forth above, amici urge the Court to affirm the district court’s judgment.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5,245 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2010 in Garamond 14-point font, a proportionally spaced typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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