

No. 23-15016

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

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MARK BAIRD, *et ano.*,  
*Plaintiffs-Appellants*,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
*Defendant-Appellee*,

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Appeal from United States District Court for the Eastern District of California  
Civil Case No. 2:19-cv-00617-KJM-AC (Honorable Kimberly J. Mueller)

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**APPELLANTS' EXCERPTS OF RECORD  
INDEX VOLUME**

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Mark Baird and Richard Gallardo,  
Plaintiffs,

v.

Rob Bonta in his official capacity as Attorney  
General of the State of California, et al.,  
Defendants.

No. 2:19-cv-00617-KJM-AC  
ORDER

While this case is pending, plaintiffs Mark Baird and Richard Gallardo ask the court to enjoin two California laws that impose criminal liability on people who carry handguns openly in public. To obtain that relief, they must show the balance of equities tips in their favor and a preliminary injunction is in the public interest, among other things. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). They have not, so **their motion is denied**. In addition, they have not shown they have standing to pursue all of the claims in their complaint. Their complaint is **dismissed in part for lack of jurisdiction on the court’s own motion**, as explained in detail below.

**I. BACKGROUND**

Baird and Gallardo would like to carry loaded handguns openly for self-defense outside their homes. *See* Second Am. Compl. ¶ 3, ECF No. 68; Baird Decl. ¶ 5, ECF No. 65-1; Gallardo

1 Decl. ¶ 6, ECF No. 65-2. In this action they challenge two California criminal statutes imposing  
2 criminal liability on those who carry handguns openly in public. First, California Penal Code  
3 section 25850 makes it a crime to carry “a loaded firearm on the person or in a vehicle while in  
4 any public place or on any public street in an incorporated city or in any public place or on any  
5 public street in a prohibited area of unincorporated territory.” Cal. Penal Code § 25850(a).  
6 Second, Penal Code section 26350 makes it a crime to carry “an exposed and unloaded handgun”  
7 on the person or in a vehicle in several public places, such as on a “public street in an  
8 incorporated city or city and county.” *Id.* §§ 26350(a)(1), (a)(2).<sup>1</sup>

9 These general prohibitions are subject to several exceptions. For example, a “peace  
10 officer or any honorably retired peace officer” can openly carry a handgun in many  
11 circumstances. *Id.* §§ 25900, 26361. A licensed hunter can openly carry unloaded handguns to  
12 and from a “hunting expedition.” *Id.* § 26366. People can also keep firearms in their homes and  
13 businesses. *See Peruta v. Cty. of San Diego*, 824 F.3d 919, 925 (9th Cir. 2016) (en banc),  
14 *abrogated in part on other grounds by N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct.  
15 2111 (2022). These are, again, just examples; there are several other exceptions in the Penal  
16 Code. *See, e.g.*, Cal. Penal Code §§ 26361–26392; *see also Peruta*, 824 F.3d at 925–26  
17 (summarizing several exceptions). Federal laws also exempt certain current and former federal  
18 officers from some of California’s prohibitions. *See* 18 U.S.C. §§ 926B, 926C.

19 In addition to these exceptions, a person can apply “for a license to carry a pistol,  
20 revolver, or other firearm capable of being concealed upon the person.” Cal. Penal Code  
21 § 26155(a); *see also* Cal. Penal Code § 26150. Local city and county law enforcement agencies  
22 administer this licensing regime. *See id.* §§ 26150, 26155. Applicants must live in the relevant  
23 city or county, complete a training course, and be “of good moral character.” *Id.* §§ 26150(a)(1)–  
24 (4); 26155(a)(1)–(4). The statutes formerly imposed a “good cause” requirement as well, but  
25 earlier this year, after the Supreme Court struck down a similar requirement in New York, the

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<sup>1</sup> The Penal Code lists three places: “(A) A public place or public street in an incorporated city or city and county. (B) A public street in a prohibited area of an unincorporated area of a county or city and county. (C) A public place in a prohibited area of a county or city and county.” Cal. Penal Code §§ 26350(a)(1)(A)–(C), (a)(2)(A)–(C).

1 California Attorney General—the defendant in this case—instructed prosecutors not to enforce  
2 that part of the licensing statute. *See* Office of the Attorney General, Legal Alert (June 24, 2022)  
3 (citing *Bruen*, 142 S. Ct. 2111).<sup>2</sup>

4 The Penal Code sections giving local authorities the power to issue licenses define a two-  
5 part system. *See id.* §§ 26150(b), 26155(b). City and county law enforcement agencies in any  
6 California county can issue licenses to carry a concealed handgun on the person. *Id.*  
7 §§ 26150(b)(1), 26155(b)(1). But in counties with a population of less than 200,000, authorities  
8 can also issue licenses to carry handguns “loaded and exposed in only that county.” *See id.*  
9 §§ 26150(b)(2), 26155(b)(2).

10 Baird and Gallardo filed this case in 2019. *See generally* Compl., ECF No. 1. They  
11 sought declaratory and injunctive relief and moved for a preliminary injunction. *See* Compl. at  
12 55–58 (prayer for relief); First Mot. Prelim. Inj., ECF No. 14. The court denied that motion. *See*  
13 *generally* Prev. Order, ECF No. 33. Although Baird and Gallardo then raised serious questions  
14 about whether California’s firearms regime violated the Second Amendment, they did not show  
15 the balance of interests tipped sharply in their favor, as the court found would have been  
16 necessary to obtain a preliminary injunction. *See id.* at 5–10. The court noted, however, that a  
17 number of appeals pending in the Ninth Circuit raised similar questions, so the court permitted  
18 Baird and Gallardo to renew their motion if the circuit eventually issued a decision favoring their  
19 position. *See id.* at 10. The court also dismissed several of their claims with leave to amend. *See*  
20 *id.* at 10–18.

21 The Ninth Circuit then issued its opinion in *Young v. Hawaii*, 992 F.3d 765 (9th Cir.  
22 2021) (en banc), which upheld a Hawaii firearm licensing scheme against a similar constitutional  
23 challenge. The plaintiffs amended their complaint. *See generally* Am. Compl., ECF No. 34.  
24 They also moved again for a preliminary injunction. Mot. Prelim. Inj., ECF No. 40. In response,  
25 the state moved for summary judgment. ECF No. 56. Before the court could resolve those  
26 motions, however, the Supreme Court granted the petition for certiorari in *Bruen*, so the parties

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<sup>2</sup> <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf> (last visited Dec. 7, 2022).

1 jointly requested a stay while *Bruen* was pending. ECF No. 58. After the Supreme Court issued  
2 its decision in *Bruen*, it also vacated the Ninth Circuit’s decision in *Young*, *see* 142 S. Ct. 2895  
3 (2022), and the Ninth Circuit then remanded the case to the district court for further proceedings,  
4 45 F.4th 1087 (2022). This court then lifted the stay here, the plaintiffs renewed their motion for  
5 a preliminary injunction, and amended their complaint. *See generally* Second Am. Compl., ECF  
6 No. 68; Mot., ECF No. 65.<sup>3</sup>

7 In both their complaint and motion, Baird and Gallardo ask the court to enjoin the  
8 enforcement of Penal Code sections 26350 and 25850 “against individuals who carry a handgun  
9 open and exposed in public throughout the State of California.” Mot. at 2; *see also* Second Am.  
10 Compl. at 17. They do not ask for any relief related to concealed handguns. The state opposes  
11 their motion, *see generally* Opp’n, ECF No. 69, which is now fully briefed, *see generally* Reply,  
12 ECF No. 73. The court submitted the motion after hearing oral arguments on November 4, 2022.  
13 At the hearing, Amy Bellantoni appeared for Baird and Gallardo. Ryan Davis and R. Matthew  
14 Wise appeared for the state.

## 15 **II. JURISDICTION**

16 “The first question, as always, is whether this court has jurisdiction.” *Tomer v. Gates*,  
17 811 F.2d 1240, 1242 (9th Cir. 1987) (per curiam). The state does not argue this court lacks  
18 jurisdiction. *See* Status Rep. at 5, ECF No. 72. But a federal court must ensure it has jurisdiction  
19 even if the parties voice no doubts. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009).

20 Several limits on this court’s jurisdiction are derived from the Constitution’s references to  
21 “Cases” and “Controversies” in Article III. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332,  
22 352 (2006). One of these limits is constitutional standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330,  
23 338 (2016). To have standing, plaintiffs “must have (1) suffered an injury in fact, (2) that is fairly  
24 traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a

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<sup>3</sup> The parties agree the pending motion for a preliminary injunction should be evaluated on the basis of the claims and allegations in the operative Second Amended Complaint. The court treats the operative complaint as the controlling pleading. *See Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc) (“[T]he general rule is that an amended complaint super[s]sedes the original complaint and renders it without legal effect . . .”).

1 favorable judicial decision.” *Id.* They must satisfy these requirements for each claim they assert  
2 and for each form of relief they seek. *DaimlerChrysler*, 547 U.S. at 352.

3 Baird and Gallardo have standing to contest the state law generally in a facial challenge.  
4 *See United States v. Salerno*, 481 U.S. 739, 745 (1987) (describing facial challenges). They  
5 contend the Second Amendment countenances no limitations on their right to carry handguns  
6 openly in public, and they claim the Second Amendment precludes California’s scheme of  
7 prohibitions, exceptions, and licenses for carrying handguns openly in public. *See* Second Am.  
8 Compl. ¶ 8; Baird Decl. ¶ 7; Gallardo Decl. ¶ 7. They describe their right to carry loaded  
9 handguns openly in public as “God-bestowed,” as a right they can exercise without “permission  
10 from the government, licensing, registration, or any other action,” and as a right the Second  
11 Amendment to the United States Constitution protects against “any encroachment.” Second Am.  
12 Compl. ¶ 8 (emphasis omitted). At hearing, their counsel described this facial challenge as their  
13 principal or primary claim. Baird and Gallardo have standing to assert this facial claim: they are  
14 subject to the challenged Penal Code sections, and an injunction or declaration would relieve  
15 them of these constraints.

16 Although Baird and Gallardo have standing to assert these broad facial challenges, and  
17 although their counsel focused on their challenges at the hearing on their current motion, their  
18 complaint can also be interpreted as asserting claims that are more specific to their personal  
19 circumstances. Each lives in a county with a population of less than 200,000, meaning the local  
20 permitting authorities have authority to issue permits to carry loaded handguns openly in those  
21 jurisdictions. *See* Baird Decl. ¶¶ 2, 7; Gallardo Decl. ¶¶ 2, 7; Cal. Penal Code §§ 26155(b)(2),  
22 26150(b)(2). Baird and Gallardo argue, however, that there is no way to apply for such a permit  
23 in practice. *See* Baird Decl. ¶ 7; Gallardo Decl. ¶ 7. They also suspect their local sheriffs’ offices  
24 would deny their applications outright even if they could apply. *See* Baird Decl. ¶ 7; Gallardo  
25 Decl. ¶ 7. In this sense, their complaint raises a challenge to the state’s statutes as applied. *See*  
26 *Calvary Chapel Bible Fellowship v. Cty. of Riverside*, 948 F.3d 1172, 1177 (9th Cir. 2020)  
27 (“How the statute has been interpreted and applied by local officials is the province of an as-  
28 applied challenge . . .”).

1           The court does not have jurisdiction over an as-applied challenge along these lines. Baird  
2 and Gallardo have not shown they have standing to assert claims on behalf of people who live in  
3 larger counties. *Cf., e.g., Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343–44  
4 (1977) (discussing third-party standing); *Washington v. Trump*, 847 F.3d 1151, 1160 (9th Cir.  
5 2017) (per curiam) (same). As for their claim that licensing authorities would reflexively deny all  
6 open-carry permit applications, they have brought this case against the wrong defendant. They  
7 have sued the state’s Attorney General, but California does not give its Attorney General  
8 authority to issue permits. As a result, Baird and Gallardo have not shown a favorable decision  
9 would redress their alleged injury. They do not have standing to assert any as-applied challenges.  
10 *See Nat’l Parks & Conservation Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1074 (9th Cir.  
11 2010) (reaching same conclusion in case against wrong agency). Their complaint is dismissed to  
12 this extent. Plaintiffs may seek to amend their complaint to bring an as-applied challenge if they  
13 choose, but only if the amendment would show at least one plaintiff had standing to challenge the  
14 statutes as applied at the time the case began. *See Northstar Fin. Advisors Inc. v. Schwab Invs.*,  
15 779 F.3d 1036, 1043–48 (9th Cir. 2015).

### 16       **III. PRELIMINARY INJUNCTION**

#### 17           **A. Legal Standard**

18           To obtain a preliminary injunction, Baird and Gallardo must establish four things “by a  
19 clear showing”: they are “likely to succeed on the merits,” they are “likely to suffer irreparable  
20 harm in the absence of preliminary relief,” “the balance of equities tips in [their] favor,” and “an  
21 injunction is in the public interest.” *City & Cty. of San Francisco v. United States Citizenship &*  
22 *Immigr. Servs.*, 944 F.3d 773, 788–89 (9th Cir. 2019) (emphasis omitted) (first quoting *Mazurek*  
23 *v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam); then quoting *Winter*, 555 U.S. at 20).  
24 “Alternatively, ‘serious questions going to the merits and a balance of hardships that tips sharply  
25 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also  
26 shows that there is a likelihood of irreparable injury and that the injunction is in the public  
27 interest.’” *Id.* at 789 (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.  
28 2011)). When the party opposing an injunction is the state, as is true in this case, the balance of



1 equities and public interests “merge.” *E.g.*, *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Roman v.*  
2 *Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020) (per curiam).

3 Preliminary injunctions are ordinarily intended “merely to preserve the relative positions  
4 of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390,  
5 395 (1981). When a plaintiff asks to change the status quo rather than preserve it, district courts  
6 exercise greater caution. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc).  
7 To obtain an injunction that instructs an opposing party to change its behavior, thus altering the  
8 status quo, a plaintiff must show “extreme or very serious damage” will occur unless the  
9 requested injunction is granted. *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2022) (quoting  
10 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)).  
11 Such affirmative pretrial relief is not appropriate in “doubtful” cases. *Garcia*, 786 F.3d at 740  
12 (quoting *Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th  
13 Cir. 2011)).

14 The parties advance conflicting arguments about their respective burdens. For the first  
15 part of the *Winter* test, showing a likelihood of success on the merits, Baird and Gallardo argue  
16 their only burden is to prove their conduct “falls within the plain language of the Second  
17 Amendment.” Reply at 1. If so, then in their view, the state must “show that the challenged  
18 regulations are consistent with this Nation’s historical traditions of firearm regulation.” *Id.* The  
19 state acknowledges it must ultimately “put forth the relevant historical evidence to prevail at final  
20 judgment.” Opp’n at 12. It also argues, however, that Baird and Gallardo must “show that they  
21 are likely to prevail on the merits,” a task the state describes as impossible given the uncertainties  
22 of history, the expertise and time required to study that history, and how fundamentally *Bruen*  
23 changes Second Amendment law. *See id.* at 12–13.

24 The parties cite no Ninth Circuit or Supreme Court authority allocating the parties’  
25 burdens for preliminary injunction motions in a post-*Bruen* Second Amendment challenge. This  
26 court is aware of no such authority. The Supreme Court did not reach that question in *Bruen*  
27 because the district court had dismissed the complaint for failure to state a claim. *See generally*

1 354 F. Supp. 3d 143 (N.D.N.Y. 2018), *aff'd*, 818 F. App'x 99 (2d Cir. 2020), *rev'd*, 142 S. Ct.  
2 2111.

3 The Supreme Court's opinion in *Bruen* does, however, signal the path forward. The Court  
4 first rejected the two-part test lower courts had previously adopted. *See* 142 S. Ct. at 2126–30. It  
5 settled instead on an historical test: “When the Second Amendment’s plain text covers an  
6 individual’s conduct, the Constitution presumptively protects that conduct. The government must  
7 then justify its regulation by demonstrating that it is consistent with the Nation’s historical  
8 tradition of firearm regulation.” *Id.* at 2129–30. The Court justified this rule in part by  
9 comparing it to the rules it has adopted for First Amendment claims. *See id.* at 2130. By drawing  
10 this connection, the Supreme Court was not broadly pronouncing that the government’s burdens  
11 in Second Amendment cases mirror its burdens in First Amendment cases. The Court’s analogy  
12 nevertheless suggests First Amendment cases can offer insights about the parties’ burdens when a  
13 plaintiff alleges a law or regulation violates the Second Amendment.

14 Federal appellate decisions in First Amendment cases do in fact offer useful insights.  
15 When a plaintiff moves for a preliminary injunction in a First Amendment case, there is a tension  
16 between the plaintiff’s burden of showing it is likely to succeed on the merits and the  
17 government’s ultimate burden “of justifying its speech-restrictive law” at trial. *Thalheimer v.*  
18 *City of San Diego*, 645 F.3d 1109, 1115 (9th Cir. 2011), *overruled in part on other grounds by*  
19 *Bd. of Trustees of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019) (en  
20 banc); *see also Ashcroft v. A.C.L.U.*, 542 U.S. 656, 666 (2004). Under the Supreme Court’s  
21 decision in *Bruen*, the parties’ burdens create the same tension: the plaintiff must show it is likely  
22 to succeed on the merits, but the government must ultimately “justify its regulation by  
23 demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”  
24 142 S. Ct. at 2129–30. The Supreme Court and the Ninth Circuit have alleviated this tension in  
25 First Amendment cases by essentially accelerating the government’s obligations. *See A.C.L.U.*,  
26 542 U.S. at 666; *Thalheimer*, 645 F.3d at 1116. Unless the government “justifies the restriction”  
27 under the standard that would apply at trial, the plaintiff is “deemed likely to prevail,” *A.C.L.U.*,  
28 542 U.S. at 666. In this limited way, “the burdens at the preliminary injunction stage track the



1 burdens at trial.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418,  
2 429 (2006).

3 The similarities between the test adopted in *Bruen* and the government’s burden in First  
4 Amendment cases suggest strongly that the Supreme Court would require the government, not the  
5 plaintiffs, to identify historical analogs in response to a motion for a preliminary injunction in  
6 Second Amendment cases. Other district courts have assumed this is so. *See, e.g., Rigby v.*  
7 *Jennings*, \_\_\_ F. Supp. 3d \_\_\_, No. 21-1523, 2022 WL 4448220, at \*8 (D. Del. Sept. 23, 2022)  
8 (finding plaintiffs were likely to succeed on the merits after finding defendants had not  
9 demonstrated challenged statutes were consistent with historical tradition); *Nat’l Ass’n for Gun*  
10 *Rts., Inc. v. City of San Jose*, \_\_\_ F. Supp. 3d \_\_\_, No. 22-00501, 2022 WL 3083715, at \*4 (N.D.  
11 Cal. Aug. 3, 2022) (generalizing rule to all “cases where the government bears the burden as to  
12 the ultimate question of the challenged law’s constitutionality” in Second Amendment challenge);  
13 *see also Antonyuk v. Hochul*, \_\_\_ F. Supp. \_\_\_, No. 22-0986, 2022 WL 5239895, at \*12  
14 (N.D.N.Y. Oct. 6, 2022) (adopting this scheme in response to motion for temporary restraining  
15 order).

16 California argues otherwise, citing *Ramos v. Wolf*. *See* Opp’n at 12 (citing 975 F.3d 872  
17 (9th Cir. 2020)). In *Ramos*, the plaintiffs alleged the President had adopted a racially  
18 discriminatory immigration policy in violation of the Equal Protection Clause. *See id.* at 883.  
19 The district court granted the plaintiffs’ motion for a preliminary injunction, *see id.* at 884–87, but  
20 the Ninth Circuit reversed, *id.* at 899. In the Circuit’s assessment, there was “no evidentiary  
21 support for the conclusion” that the policy change “was motivated by racial animus.” *Id.* The  
22 Circuit emphasized that the plaintiffs could succeed on their Equal Protection Clause challenge at  
23 trial only by offering “proof of racially discriminatory intent or purpose.” *Id.* at 896 (alterations  
24 omitted) (quoting *Village of Arlington Heights v. Metro. Housing Development Corp.*, 429 U.S.  
25 252, 265 (1977)). Here, by contrast, the government would bear the burden of proof at trial to  
26 show its regulations are justified by history and tradition. *See Bruen*, 142 S. Ct. at 2130. *Ramos*  
27 is not controlling, and the plaintiffs’ differing burdens at trial in that case deprive the Circuit’s  
28 reasoning of persuasive force.

1 In sum, for the first part of the preliminary injunction test, Baird and Gallardo must show  
2 they are likely to prove “the Second Amendment’s plain text covers” conduct regulated by  
3 California Penal Code sections 25850 and 26350. *Bruen*, 142 S. Ct. at 2129–30. If they do, the  
4 state bears the burden to show it is likely to “justify its regulation by demonstrating that it is  
5 consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130. In all other  
6 respects, the plaintiffs bear the burden of proof: they must show they are likely to suffer  
7 irreparable harm absent a preliminary injunction, and they must show the balance of harms and  
8 public interests favor a preliminary injunction. *See Winter*, 555 U.S. at 20.

9 **B. Discussion**

10 It is not necessary to decide whether California’s Penal Code restricts conduct within the  
11 Second Amendment’s plain text under *Bruen* or whether the challenged Penal Code sections are  
12 within the nation’s historical tradition of firearms regulation. Nor is it necessary to decide  
13 whether Baird and Gallardo would suffer irreparable harm if the court does not enter a  
14 preliminary injunction. As explained below, they have not shown the balance of harms and  
15 public interest favor a preliminary injunction.

16 A court cannot enter a preliminary injunction if the moving party does not show “the  
17 balance of equities tips in [its] favor,” and “an injunction is in the public interest.” *Winter*,  
18 555 U.S. at 20. *Winter* itself illustrates this point forcefully. The plaintiffs alleged the U.S. Navy  
19 had not adequately considered how harmful its training exercises were to marine mammals. *See*  
20 *id.* at 15–17. They brought claims under a collection of federal environmental protection laws.  
21 *See id.* at 16–17. When the case reached the Supreme Court, it turned on one question: how to  
22 balance the harms and public interest. *See id.* at 20–31. The Supreme Court did not “address the  
23 underlying merits.” *Id.* at 31. It also assumed without deciding the plaintiffs would suffer an  
24 irreparable harm. *See id.* at 23–24. The Court vacated the preliminary injunction because the  
25 district and circuit courts had “significantly understated the burden the preliminary injunction  
26 would impose on the Navy’s ability to conduct realistic training exercises, and the injunction’s  
27 consequent adverse impact on the public interest in national defense.” *Id.* at 24. The Court also

1 concluded a permanent injunction along the same lines would have been an abuse of discretion as  
2 well, even if the plaintiffs eventually prevailed on the merits. *See id.* at 32.

3 Turning back to this case, Baird and Gallardo argue that without an injunction, they and  
4 others in California will be denied the constitutional right to carry handguns openly in public. *See*  
5 *Mem.* at 9; *Reply* at 6. They claim that without an injunction, they cannot defend themselves  
6 with handguns in public and will lose the peace of mind that comes with carrying a handgun. *See*  
7 *Mem.* at 9. These arguments overstate the harms they will likely suffer without a preliminary  
8 injunction. Baird and Gallardo will not be without a means to defend themselves with handguns  
9 in public while the case is pending. They and others in California may carry concealed handguns  
10 in public. If a person cannot rely on one of the many exceptions to the Penal Code’s general  
11 prohibitions, as Baird and Gallardo each can, then that person may apply for a license, which  
12 California now issues under objective criteria.

13 The Supreme Court left no doubt in *Bruen* that it was not deciding whether states could  
14 regulate firearms using objective criteria like those California now imposes. The Court strongly  
15 implied that objective criteria and “shall-issue” licensing regimes are constitutional. The majority  
16 explained in the margin that “nothing” in the Court’s opinion “should be interpreted to suggest  
17 the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes.” 142 S. Ct. at 2138 n.9.  
18 “[I]t appears that these shall-issue regimes, which often require applicants to undergo a  
19 background check or pass a firearms safety course, are designed to ensure only that those bearing  
20 arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Id.* (quoting *District of*  
21 *Columbia v. Heller*, 554 U.S. 570, 635 (2008)).

22 Separate concurring opinions by three Justices in *Bruen* reinforce this point. Justice Alito,  
23 who joined the majority’s opinion, underscored that the Court had decided “nothing about who  
24 may lawfully possess a firearm or the requirements that must be met to buy a gun.” *Id.* at 2157  
25 (Alito, J., concurring). Nor had the Court “disturbed anything that [it] said in *Heller* or  
26 *McDonald v. Chicago*, 561 U.S. 742 (2010), about restrictions that may be imposed on the  
27 possession or carrying of guns.” *Id.* Justice Kavanaugh, who also joined the majority opinion,  
28 wrote similarly in a separate concurring opinion: “[T]he 6 States including New York [and

1 California] potentially affected by today’s decision may continue to require licenses for carrying  
2 handguns for self-defense so long as those States employ objective licensing requirements like  
3 those used by the 43 shall-issue States.” *Id.* at 2162 (Kavanaugh, J., concurring). In Justice  
4 Kavanaugh’s view, the Court’s opinion in *Bruen* does not prohibit states from “requir[ing] a  
5 license applicant to undergo fingerprinting, a background check, a mental health records check,  
6 and training in firearms handling and in laws regarding the use of force, among other possible  
7 requirements.” *Id.* The Chief Justice joined Justice Kavanaugh’s opinion. *Id.* at 2161.

8 In short, six Justices took care to explain why the Court’s opinion did not bar the vast  
9 majority of states from continuing to enforce their firearms licensing regimes. Two of the  
10 Justices whose votes were necessary to make up the six-member majority also wrote specifically  
11 that states like New York and California could continue using background checks and imposing  
12 training requirements, among other criteria. As a result, in this case, the only harm most people  
13 will likely face absent a preliminary injunction is (1) a requirement to obtain a license, which  
14 requirement the majority did not question in *Bruen* and (2) having to conceal any handguns they  
15 may wish to carry in public.

16 Baird and Gallardo have not shown that this harm outweighs the harms that would likely  
17 result from an immediate preliminary injunction. If California cannot enforce sections 25850 and  
18 26350 against those who carry handguns openly in public, then it would lose its primary means of  
19 limiting public handgun carrying to “ordinary, law-abiding citizens.” *Bruen*, 142 S. Ct. at 2122.  
20 A person who could not obtain a license to carry a concealed handgun—due, for example, to a  
21 lack of “good moral character” or refusal to complete a “course of training”—could circumvent  
22 the state’s laws by carrying the same gun openly. *See* Cal. Penal Code § 26150(a)(1), (4).

23 California also cites an unrebutted declaration from a former police chief and past  
24 president of the California Police Chiefs Association, who opines that “restrictions on the open  
25 carry of firearms greatly enhance public safety.” Raney Decl. ¶21, ECF No. 69-2. In his opinion,  
26 based on “39 years of law-enforcement experience” and other work, “the restrictions on the open  
27 carry of firearms in California have been critical to the safety of law-enforcement officers, our  
28 communities, and those people who would want to openly carry firearms in public.” *Id.* ¶¶ 2, 22.

1 To that same end, the state also cites academic research showing violent crime, property crime,  
2 and murder rates are higher in states that impose fewer restrictions on firearm carrying in public.  
3 *See* Opp’n at 18–19. The plaintiffs offer no countervailing evidence to show, for example, that  
4 crime rates are the same or lower when firearms regulations are relaxed. They instead criticize  
5 the cited studies as focusing on concealed firearms, whereas their complaint focuses on open  
6 carry alone. *See* Reply at 9. These criticisms limit the state’s evidence, but they do not eliminate  
7 its persuasive force. *See, e.g.,* Wise Decl. Ex. 4 at 7–13 (collecting theories of increased violent  
8 crime, including some that do not depend on whether guns are concealed). The plaintiffs bear the  
9 burden to prove an injunction is in the public interest, and they have offered no countervailing  
10 evidence, so the cited studies weigh against issuing a preliminary injunction despite their  
11 limitations.

12 Baird and Gallardo argue public safety concerns such as these are irrelevant, citing the  
13 Supreme Court’s observation that many constitutional rights carry “controversial public safety  
14 implications.” *Bruen*, 142 S. Ct. at 2126 n.3 (quoting *McDonald*, 561 U.S. at 783 (plurality op.)).  
15 Under *Bruen*, the state could not defend its laws at trial by arguing they advance a compelling  
16 state interest in public safety. *See id.* at 2127 (rejecting “means-end scrutiny in the Second  
17 Amendment context”). But Baird and Gallardo are not seeking final judgment; rather, they are  
18 seeking a preliminary injunction, and the Supreme Court has held that a court may not enter a  
19 preliminary injunction unless the moving party shows the balance of harms and public interest  
20 weigh in its favor. *See Winter*, 555 U.S. at 20, 32. Public safety is part of that balance.

21 Finally, “[a]ny time a State is enjoined by a court from effectuating statutes enacted by  
22 representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S.  
23 1301, 1303 (2012) (Roberts, J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W.*  
24 *Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)).

25 This court denied Baird’s and Gallardo’s previous motion for a preliminary injunction for  
26 similar reasons. *See* Order (Aug. 31, 2020) at 8–10, ECF No. 33. As this court wrote in its  
27 previous order, preliminary assessments of the merits can turn out to be incorrect. *See id.* at 9;  
28 *see also Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp. 3d 1182, 1193 (E.D. Cal. 2015), *aff’d*,

1 637 F. App'x 401 (9th Cir. 2016). The moving plaintiff must persuade the court that the benefits  
2 of a potential mistake outweigh the costs. *See Tracy*, 118 F. Supp. 3d at 1193. Courts hesitate  
3 when those costs are likely far-reaching, difficult to estimate, and potentially deadly. *See id.*  
4 Baird and Gallardo ask the court to force California to allow anyone to carry a loaded handgun  
5 openly in public without a permit while they attempt to prove the state's licensing regime is  
6 unconstitutional. They have not shown such a broad injunction would serve the public interest.

7 The affirmative character of the plaintiffs' proposal advises caution as well. As noted  
8 above, when a plaintiff asks to change the status quo rather than preserve it, district courts must  
9 exercise greater caution. *See, e.g., Garcia*, 786 F.3d at 740. "The status quo means the last,  
10 uncontested status which preceded the pending controversy." *Id.* at 740 n.4 (quoting *N.D. ex rel.*  
11 *Parents v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1112 n.6 (9th Cir. 2010)). This case began in  
12 2019; California's current regime had been operative since 2012, so the existing regime is the  
13 "status quo." *Compare* 2010 Cal. Stats. Ch. 711, §§ 6, 10 (S.B. 1080) (West), *with* Compl., ECF  
14 No. 1. As explained above, the preliminary injunction Baird and Gallardo propose would upend  
15 that regime. This is so even if their injunction could be described as "prohibitive" in that it would  
16 prohibit certain criminal prosecutions; what matters is whether the injunction preserves or alters  
17 the status quo. *See, e.g., Doe*, 28 F.4th at 111 (rejecting recharacterization of changes to status  
18 quo as "prohibitory"); *see also Schrier v. Univ. Of Co.*, 427 F.3d 1253, 1260 (10th Cir. 2005) ("It  
19 is not at all difficult to envision situations where a mandatory injunction would preserve the status  
20 quo and a prohibitory injunction would alter the status quo." (citation omitted)).

21 For these reasons, Baird and Gallardo must show this is not a "doubtful" case and that the  
22 preliminary injunction they propose is necessary to avoid "extreme or very serious damage."  
23 *Doe*, 28 F.4th at 111 (quoting *Marlyn Nutraceuticals*, 571 F.3d at 879). They have not done so;  
24 as explained above, the harm they seek to avoid is (1) compliance with an objective permitting  
25 scheme and (2) concealing any handguns carried in public. This is also a "doubtful" case.  
26 Deciding whether the state's laws are constitutional will require a difficult investigation and  
27 careful consideration of historical firearm regulations. Opp'n at 12 (citing Schrag Decl., *Miller v.*  
28 *Becerra*, No. 19-1537 (S.D. Cal. Aug. 29, 2022), ECF No. 129-1). The Ninth Circuit's extensive



1 discussion of historical open-carry regulations in *Young* has been vacated, so it is no longer the  
2 binding law in this circuit. And as Justice Barrett pointed out in her concurring opinion in *Bruen*,  
3 a number of “unsettled questions” and a “scholarly debate” further complicate this historical  
4 exercise. *See* 142 S. Ct. 2163 (Barrett, J., concurring). This court is indeed “ill equipped to  
5 conduct the type of searching historical surveys that the [Supreme] Court’s approach requires.”  
6 *Id.* at 2179 (Breyer, J., dissenting). Baird and Gallardo have not proven it would be better to  
7 upend the status quo than leave it in place while the court adjudicates their claims.

8 Because Baird and Gallardo have not shown their proposed preliminary injunction would  
9 serve the public interest, and because their proposal does not appropriately balance the likely  
10 harms, their motion is denied. *See Winter*, 555 U.S. at 20, 32.

#### 11 **IV. CONCLUSION AND ORDER TO SHOW CAUSE**

12 The Second Amended Complaint is **dismissed in part for lack of subject matter**  
13 **jurisdiction** as explained in section II above. The motion for a preliminary injunction (ECF No.  
14 65) is **denied**.

15 On the court’s own motion, to facilitate the court’s considerations of any obligations it has  
16 following *Bruen*, the parties are **ordered to show cause within thirty days** why the court should  
17 not appoint its own expert witness to collect and survey evidence of the “historical tradition that  
18 delimits the outer bounds of the right to keep and bear arms,” *Bruen*, 142 S. Ct. at 2127, as  
19 relevant to this case, *see* Fed. R. Evid. 706(a). In their responses, each party may submit  
20 nominations of potential experts if they wish. *See id.* The parties may also address the court’s  
21 tentative observation that an appointed expert could provide a more thorough, rigorous, and  
22 balanced perspective than those the parties have offered to date. *Cf., e.g., United States v.*  
23 *Bullock*, No. 18-cr-165, 2022 WL 16649175, at \*2–3 (S.D. Miss. Oct. 27, 2022) (ordering  
24 similarly in felony case based on 18 U.S.C. § 922 charge with motion to dismiss pending, after  
25 identifying and summarizing “a serious disconnect between the legal and historical  
26 communities”)<sup>4</sup>; *but cf., e.g., United States v. Kelly*, No. 22-0037, 2022 WL 17336578, at \*3

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<sup>4</sup> The parties have not yet filed their responses to the court’s order in *Bullock*; it appears the responses currently are due by December 12, 2022.

1 (M.D. Tenn. Nov. 16, 2022) (in criminal prosecution, observing “[p]ending gun cases must be  
2 decided, which means, now, that they must be decided through the methodology set forth in  
3 *Bruen*, whether the courts are actually well-suited to that inquiry or not.”).

4 IT IS SO ORDERED.

5 DATED: December 7, 2022.

  
CHIEF UNITED STATES DISTRICT JUDGE



No. 23-15016

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

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MARK BAIRD, *et ano.*,  
*Plaintiffs-Appellants*,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
*Defendant-Appellee*,

---

Appeal from United States District Court for the Eastern District of California  
Civil Case No. 2:19-cv-00617-KJM-AC (Honorable Kimberly J. Mueller)

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME 2 of 3**

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF CALIFORNIA

--o0o--

3 MARK BAIRD and RICHARD )  
4 GALLARDO, )

Case No. 2:19-cv-00617-KJM-AC

) Sacramento, California

) November 4, 2022

5 Plaintiff, )

10:53 a.m.

6 vs. )

) Re: Plaintiffs' Third Motion  
) for Preliminary Injunction

7 ROB BONTA, in his official )  
8 capacity as Attorney General )  
9 of the State of California, )  
and DOES 1-10, )

10 Defendants. )

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE KIMBERLY J. MUELLER  
13 UNITED STATES CHIEF DISTRICT JUDGE

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23 Proceedings reported via mechanical steno - transcript produced  
24 via computer-aided transcription  
25

1 SACRAMENTO, CALIFORNIA, FRIDAY, NOVEMBER 4, 2022

2 --o0o--

3 (In open venire.)

4 THE CLERK: Come to order. Court is back in session.  
5 You may be seated. Calling Civil Case 19-617 Baird, et al.,  
6 versus Bonta. This is on for Plaintiffs' Third Motion for  
7 Preliminary Injunction.

8 THE COURT: All right. Good morning. Appearances,  
9 please, for plaintiffs.

10 MS. BELLANTONI: Good morning, Your Honor. Amy  
11 Bellantoni for the plaintiffs.

12 THE COURT: Good morning, Ms. Bellantoni.  
13 For the Government, for the Attorney General?

14 MR. DAVIS: Good morning, Your Honor. Deputy Attorney  
15 General Ryan Davis. Here with me is Supervising Attorney  
16 General Matthew Wise.

17 THE COURT: All right, good morning to you each.

18 So this is Plaintiffs' Third Motion for Preliminary  
19 Injunction. Does it supersede the prior motion such that that  
20 is no longer pending before the Court?

21 MS. BELLANTONI: So I believe at the teleconference  
22 during the summer, we had -- there had been no decision on  
23 Plaintiffs' Second Motion for Preliminary Injunction, so we had  
24 withdrawn that.

25 THE COURT: I wanted to make certain that was

1 perfectly clear.

2 MS. BELLANTONI: Yes.

3 THE COURT: So that's what I understood as well.

4 And the pending Motion for Preliminary Injunction, do  
5 I have this right, was filed before the operative Complaint,  
6 but the operative Complaint defines the parameters of the case?

7 MS. BELLANTONI: Yes, ma'am. Yes, Your Honor.

8 THE COURT: That's all understood, Mr. Davis?

9 MR. DAVIS: Yes, Your Honor.

10 THE COURT: So just clarifying some of the basics,  
11 including some jurisdictional questions, Messrs. Baird and  
12 Gallardo are not asserting claims about concealed firearms?

13 MS. BELLANTONI: Correct.

14 THE COURT: It's only open and exposed?

15 MS. BELLANTONI: Yes.

16 THE COURT: And limited to handguns?

17 MS. BELLANTONI: Yes.

18 THE COURT: And so can I conclude they are asserting  
19 an as-applied challenge?

20 MS. BELLANTONI: This would be a facial challenge as  
21 well as as-applied, but from predominantly a facial challenge  
22 to the two criminal statutes in the context of applying them to  
23 individuals who open carry.

24 THE COURT: So to the extent there is an as-applied  
25 challenge in there, the plaintiffs are alleging there's no

1 application process for open carry licenses; is that right?

2 MS. BELLANTONI: Well, the Complaint has been  
3 narrowed, Your Honor, to challenges to Penal Code Sections  
4 25850 and 26350, which are the two criminal statutes that would  
5 be applicable and are being applied to the open carriage of  
6 handguns, both loaded and unloaded, which constitutes the ban  
7 on open carry.

8 THE COURT: All right. So I heard you say primarily  
9 facial challenge, but I didn't see you take "as applied" off  
10 the table. So if there is an "as applied" there, how is there  
11 standing for such a challenge?

12 MS. BELLANTONI: It would be as applied to individuals  
13 who open carry. So in other words, the Penal Code itself were  
14 challenging facially in the context of a criminal statute for  
15 the open carriage of handguns, but in the context of an  
16 as-applied challenge, just being as-applied to the plaintiffs  
17 in open carriage of a handgun.

18 THE COURT: How is this defendant, the right defendant  
19 for an as-applied challenge?

20 MS. BELLANTONI: Because this defendant is the  
21 individual who is the head law enforcement officer of law  
22 enforcement throughout the state and would be the individual to  
23 enjoin with regard to enforcement. So this defendant and all  
24 those acting in concert and at the direction of his  
25 jurisdiction.

1 THE COURT: So it's not that the Attorney General --  
2 you're not saying he has the authority to create a licensing or  
3 administrative process?

4 MS. BELLANTONI: No, we're asking for the two criminal  
5 statutes to be enjoined so that individuals who open carry will  
6 not be subject to criminal enforcement.

7 THE COURT: Just accepting the facial challenge, I  
8 understand the facial challenge part of it. I'm not certain I  
9 understand to the extent there is an as-applied challenge  
10 there. Do you want to say anything on that, Mr. Davis?

11 MR. DAVIS: I do want to say that my understanding, my  
12 reading of the Second Amended Complaint, is that it is entirely  
13 facial. I think what my colleague is referring to are the  
14 reasons for the facial challenge, which is that the law as  
15 written prohibits either the normal law-abiding citizens from  
16 open -- from carrying open and exposed without a license, and  
17 their contention is that that's unlawful under the Second  
18 Amendment, but it's a challenge to the law on its face as  
19 written not as applied to any particular individual.

20 THE COURT: So accepting the facial challenge, is the  
21 allegation that the Second Amendment does not allow California  
22 to place any restrictions on the right to carry handguns openly  
23 in public?

24 MS. BELLANTONI: So if we look to the *Bruen* test, in  
25 the second part of that test, which is looking to the text in

1 history and tradition of the Second Amendment at the time of  
2 the enactment, there were no criminal statutes to be enforced  
3 against an individual who open carried. In fact, the plain  
4 text of the Second Amendment to keep and bear arms shall not be  
5 infringed, would necessarily bear out the fact that open carry  
6 and carrying in public for self-defense were not crimes; they  
7 were specifically protected rights. So having a criminal  
8 statute enforced against people who are just exercising those  
9 rights violates the Second Amendment.

10 THE COURT: So it's not that the Second Amendment  
11 doesn't allow the placement of any restrictions on the right to  
12 carry handguns openly; is that what plaintiffs are alleging?

13 MS. BELLANTONI: We're alleging that the criminal  
14 statute should not be applied to individuals who open carry.

15 THE COURT: So on the preliminary injunction, you  
16 agree that the Court applies the *Winter* test?

17 MS. BELLANTONI: I believe that the submissions -- I  
18 have the legal standard in my submissions, Your Honor, so I  
19 would rest on the standard that's set forth therein.

20 THE COURT: Well, assuming it's the *Winter* test, and  
21 you agree with that, Mr. Davis?

22 MR. DAVIS: Yes, Your Honor.

23 THE COURT: Noting it looks like an amendatory  
24 injunction here, so I have some questions about that in just a  
25 bit, but the *Winter* test has four parts. I have to decide if



1 the balance of the equities tips in the plaintiffs' favor and  
2 an injunction is in the public interest, two of the factors.

3 So I just want to make perfectly clear what plaintiffs  
4 are saying the harm is they will face absent an injunction  
5 given that the law is currently in effect.

6 So right now the law provides for persons being able  
7 to keep guns at home and in their places of business. And the  
8 plaintiffs can carry concealed handguns in public, correct?  
9 You agree with both of those points?

10 MS. BELLANTONI: If individuals have a conceal carry  
11 license, then they are allowed to conceal carry, yes.

12 THE COURT: And California moved promptly, the  
13 Attorney General moved promptly once *Bruen* issued to make clear  
14 the State was no longer enforcing the good cause requirements  
15 in the California regime; agreed?

16 MS. BELLANTONI: Yes.

17 THE COURT: So did that not conform California's  
18 framework to *Bruen*?

19 MS. BELLANTONI: With respect to open carry it did not  
20 because there are still two criminal statutes that effectively  
21 ban open carry, and while there is language in the licensing  
22 statute that purportedly allows for open carry permits to be  
23 issued, there is -- no license has been issued since 2012.  
24 There's no application for an open carry. There is no process  
25 or procedure to apply for an open carry license.



1           But moreover, in 1791 there was no permission required  
2 to open carry. There was no licensing scheme. There were no  
3 criminal statutes to be enforced against people who were  
4 exercising the right that is codified in the Second Amendment.  
5 So all of those, the licensing scheme and the criminal  
6 statutes, are inconsistent with the Second Amendment.

7           THE COURT: So thinking about the harms, the way I  
8 need to think about it in consideration of a Motion for  
9 Preliminary Injunction, so one of the harms is that the  
10 plaintiffs would have to conceal any handguns they choose to  
11 carry in public, right, that's one of the harms?

12           MS. BELLANTONI: If they had a license to carry  
13 concealed, they would be required to conceal their handguns,  
14 that's correct, but the carry concealed licensing scheme is  
15 still a may-issue scheme. So it's still -- *Peruta II* clearly  
16 held the en banc Ninth Circuit opinion that conceal carry is  
17 merely a privilege. So I would find that not to be  
18 analogous --

19           THE COURT: To the harm is twofold: The need to apply  
20 for a license and the need to conceal any handguns carried in  
21 public. Those are the harms.

22           MS. BELLANTONI: The harm is the ban on the ability to  
23 open carry. The harm is the complete violation and inability  
24 at all to exercise the right to open carry. It's been  
25 terminated. So that would be the harm.

1           And for those who go forward to open carry, they're  
2 subject to arrest and incarceration and potentially the  
3 permanent loss of Second Amendment rights.

4           THE COURT: So in terms of the public interest  
5 specifically, you are making clear, as clear from your  
6 briefing, the plaintiffs are asking the Court to enjoin the  
7 Attorney General from enforcing the Penal Code sections while  
8 this case is pending, right?

9           MS. BELLANTONI: Yes.

10          THE COURT: So that would mean the state would not be  
11 able to prosecute persons who carry loaded or unloaded handguns  
12 in public; right?

13          MS. BELLANTONI: They would not be able to prosecute  
14 individuals who merely open carry, whether loaded or unloaded.

15          I say "merely" as a qualification because that's  
16 specific to self defense. An individual who has a handgun  
17 holstered on their person, you know, open and exposed in that  
18 regard, merely carrying for self-defense, yes, they would not  
19 be able to prosecute that individual. If there was a crime  
20 being committed, certainly, you know, there are Penal Code  
21 statutes to address any criminal activity.

22          THE COURT: Help me understand. Suppose a person had  
23 attempted and failed to obtain a license to carry a concealed  
24 handgun based on the history of violent crime or a refusal to  
25 complete a training course, so that person could carry a

1 handgun openly in public if I grant the motion?

2 MS. BELLANTONI: The way the law is written now is  
3 that it's very broad-based, so anyone, even nonprohibited  
4 individuals like my clients who have no disqualifiers under  
5 state or federal law to possessing firearms, those individuals  
6 are criminalized for exercising their rights under the Second  
7 Amendment.

8 If there was a felon, convicted felon, which is a  
9 recognized, at this point, disqualifier to firearm possession  
10 at all, who is carrying openly, there should be -- there is a  
11 federal statute they could be arrested under for possessing a  
12 firearm if they're a disqualified person under  
13 18 U.S.C. 922 (g), and if California has other penal codes that  
14 address prohibited people and punish them for possessing a  
15 firearm when they're disqualified, they could certainly be  
16 prosecuted under those statutes. But if they have a broad  
17 statute that criminalizes law-abiding, nonprohibited, you know,  
18 people from exercising a constitutionally protected right, it  
19 violates the constitution.

20 THE COURT: Do you identify all those other penal  
21 codes in your briefing?

22 MS. BELLANTONI: I do not.

23 THE COURT: But you're saying if I grant the  
24 injunction, the State is not prevented from carrying out some  
25 restriction on open carry that do recognize the possibility

1 that someone has a history of violent crime or refuses to  
2 complete basic training.

3 MS. BELLANTONI: I don't know that refusing to or  
4 being unable to complete basic training is a recognized  
5 disqualifier to the possession of firearms. But if an  
6 individual is disqualified from possessing firearm and falls  
7 under criminal statute, then certainly, or is committing a  
8 crime and not just carrying for self-defense like a law abiding  
9 person, then certainly they would be exposed to being  
10 prosecuted under the relevant criminal codes, and if California  
11 doesn't have codes that addresses disqualified individuals,  
12 then I'm sure they could swiftly enact such codes; most states  
13 do.

14 THE COURT: You are agreeing *Bruen* did not eliminate  
15 ability to regulate open carry in the interest of public  
16 safety?

17 MS. BELLANTONI: Oh, no, I think public safety is  
18 completely off the table, as does the Court in *Bruen* and  
19 *Caetano* and *McDonald* and in *Heller* clearly have taken public  
20 safety off the table, but with respect to individuals who are,  
21 from a State's perspective, disqualified in the first instance  
22 from possessing firearms, certainly those statutes could be  
23 written and passed if they're not already in place. I know  
24 various other states and certainly the federal government has  
25 such laws, but even those are open to constitutional challenge.

1           THE COURT: Mr. Davis, can you assist the Court, what  
2 other tools does the State have to keep handguns, open carry in  
3 particular, out of the hands of those who would put others in  
4 danger in public?

5           MR. DAVIS: There are no tools other than the  
6 prohibitions on possessing a firearm at all that would continue  
7 to exist. The convicted felon, certain convictions for  
8 domestic violence for a period of years, so there are the laws  
9 both under federal and state law that prohibit some categories  
10 of people from even possessing weapons, so those would continue  
11 to exist. But what the State uses, and like many other  
12 jurisdictions, to regulate public carry in particular as  
13 opposed to just possession, is the licensing scheme.

14           So plaintiffs' position, and what they're asking for  
15 with this injunction, is to do away with the licensing scheme  
16 entirely so that there is no licensing scheme in effect, and  
17 anyone who wants to, whether it sought previously or they  
18 haven't ever sought a public carry license, is -- would then be  
19 permitted to carry open and exposed throughout the State of  
20 California.

21           THE COURT: All right. Thank you, that's helpful.

22           For you, Ms. Bellantoni, I mentioned the possibility  
23 of a mandatory injunction. It appears you are seeking a  
24 mandatory injunction because it's not seeking to preserve the  
25 status quo. So the bar is raised when a party seeks a



1 mandatory injunction such that the plaintiffs need to  
2 demonstrate that they will suffer extreme or very serious  
3 damage. Do you agree that that's the way to think about this  
4 as a mandatory injunction?

5 MS. BELLANTONI: I could see how the Court would view  
6 this as a mandatory injunction with respect to the status quo,  
7 but the status quo only came into effect in 1967, which is  
8 relatively during the modern times, and only by virtue of the  
9 fact that those modern regulations are in direct conflict with  
10 of the Second Amendment as it was understood when it was passed  
11 in 1791. And as we've learned now from *Heller* and *Bruen*, that  
12 the relevant time period to look at with regard to these  
13 challenges is 1791, not to the modern day regulation.

14 So I would submit that the Mulford Act that was passed  
15 in 1967 and then the 2012 amendments -- excuse me, statute with  
16 regard to an unloaded handgun, carriage of a unloaded handgun  
17 in public are the status quo to the extent that they are in  
18 existence since then, but really should never have been. So  
19 plaintiffs shouldn't suffer an increased burden in that respect  
20 because the State chose the wrong path and an unconstitutional  
21 path.

22 And with regard to balancing, *Bruen* made clear that  
23 balancing the interests in the context of a Second Amendment  
24 challenge is off the table.

25 THE COURT: That's on the ultimate merits of the case.

1 MS. BELLANTONI: Yes, yes, Your Honor.

2 THE COURT: On the question of what's the status quo,  
3 does *Bruen* alter -- I hesitate to even use the word  
4 "traditional" -- does it alter what the courts should  
5 understand what qualifies as the status quo such as something  
6 as recent as 1967 is not the status quo anymore?

7 MR. DAVIS: No, Your Honor. If anything, I mean *Bruen*  
8 speaks to the standards that courts should use in analyzing  
9 Second Amendment claims, and it speaks specifically to the good  
10 cause requirement. It certainly does not undermine otherwise  
11 States' abilities to regulate public carry, to use licenses  
12 schemes to do that, etc. Those things are in place, have been  
13 in place for a long while. Undoing them would be upsetting the  
14 status quo.

15 THE COURT: Also for you, Mr. Davis, on the burdens,  
16 moving on to the burden at this stage. Thinking about *Bruen*,  
17 the Court there did look to the burden of proof in First  
18 Amendment cases, and say there is an analogy in Second  
19 Amendment cases, there is, of course, a significant burden on  
20 the Government to justify restrictions with First Amendment.  
21 So you do acknowledge in your briefing ultimately the need to  
22 meet that burden. Why is not the burden imposed at this stage  
23 of the case?

24 MR. DAVIS: Because at this stage it is the  
25 plaintiff's motion and under the *Winter* factors, it is the

1 plaintiffs who must show a substantial likelihood of success on  
2 the merits.

3           So in a world where *Bruen* was recently decided,  
4 upsetting what had been the law and the framework the courts  
5 used to analyze Second Amendment claims, the plaintiffs have a  
6 tough road rode to hoe because they need to establish that  
7 under this brand new framework, the State will not be able to  
8 establish that the historical record, and on *Bruen* itself,  
9 allows for regulating open carry and allows for licensing to be  
10 a part of that, because again, under the Second Amended  
11 Complaint, and they make this perfectly clear too in the papers  
12 on the motion, the licensing scheme is now what they are  
13 arguing is entirely out the window; that anyone who wants to,  
14 with or without license, needs to be permitted to carry open  
15 and exposed. So they have to establish -- it is their burden  
16 now, and I do think that gets lost somewhat in the papers,  
17 particularly in the reply brief filed by the plaintiffs, that  
18 they fault the Government for having failed at this stage in  
19 the proceedings to establish what the historical record shows.  
20 It is their burden, though, to establish a substantial  
21 likelihood of success.

22           THE COURT: Why is that not the case, Ms. Bellantoni,  
23 at this early stage of the case, particularly if it's a  
24 mandatory injunction?

25           MS. BELLANTONI: Sure, within the framework of



1 establishing likelihood of success on the merits, is the burden  
2 that we would have under the Second Amendment challenge itself,  
3 which is we've shown that the open carriage, which is the  
4 conduct that my clients are seeking to engage in, falls  
5 directly and squarely within the plain text of the Second  
6 Amendment. And at that point, the burden shifts entirely to  
7 the Government to show that their regulations are consistent  
8 with the text, history and tradition of firearm regulation. So  
9 their burden is still within that framework of the likelihood  
10 of success on the merits. Plaintiffs will succeed on the  
11 merits of this case.

12 THE COURT: But you reject the suggestion that what  
13 you have to show to satisfy likelihood of success is the  
14 defense cannot meet its burden, that's what Mr. Wise --  
15 Mr. Davis said. I'll just say you disagree with that  
16 characterization of that burden at this stage?

17 MS. BELLANTONI: I do, because within the framework of  
18 the plaintiffs' burden is the likelihood of success on the  
19 merits, and to be successful on the merits of the case, we  
20 would need to -- we would need to engage in the two-step *Bruen*  
21 test, which is plaintiff showed that the conduct falls within  
22 the plain text of the Second Amendment, which it does.

23 Then the burden shifts entirely to the Government to  
24 show that their regulation is consistent with the text, history  
25 and tradition of the Second Amendment, which it's not.

1 THE COURT: To the extent -- if I bought that  
2 argument, then the State effectively has said we don't have  
3 that at this point. We're prepared to assemble it. It's going  
4 to take time. It's complicated; right?

5 MR. DAVIS: That's true, Your Honor, with respect  
6 to -- well, two things: It's true with respect to open carry  
7 itself. But the Second Amended Complaint, as Your Honor  
8 pointed out, was filed after the initial preliminary injunction  
9 motion that's at issue here. It actually clarified things in  
10 this lawsuit. It clarified that the plaintiffs are seeking to  
11 both open carry and without a license.

12 So, actually, on that second point, I think they have  
13 an even harder time showing they have a substantial likelihood  
14 of success on the merits.

15 In *Bruen* itself, Justice Kavanaugh, joined by Justice  
16 Roberts, so two justices needed to count to five, said, quote,  
17 "The Court's decision does not prohibit states from imposing  
18 licensing requirements for carrying a handgun for  
19 self-defense."

20 THE COURT: Understood.

21 MS. BELLANTONI: May I, Your Honor?

22 THE COURT: Hold that thought, and you will have a  
23 chance to wrap up the argument.

24 In the public interest, I'm not seeing in the record  
25 currently before me on this preliminary motion, any information

1 about how often persons are charged with violating the penal  
2 codes that plaintiffs challenge, is that right, there's nothing  
3 there for me to evaluate?

4 MR. DAVIS: There is nothing there to evaluate.

5 THE COURT: And you've already reviewed the other  
6 tools the State has.

7 Just so I am a clear, under the current -- the current  
8 statutes, you mentioned prior felony, felony-in-possession  
9 statute is out there. Domestic violence can be a disqualifier,  
10 at least for a period of time.

11 So, let's say that a person had previously attempted  
12 and failed to obtain a license to carry a concealed handgun  
13 based on either violent crime or failure to participate in  
14 training. If I granted the motion, would a person like that  
15 now be able to carry a handgun openly in public?

16 MR. DAVIS: Yes, Your Honor, unless they are  
17 prohibited from possessing a firearm anywhere, then they would  
18 be permitted to carry openly if the injunction that's been  
19 requested is granted.

20 THE COURT: So a felon, is that a permanent -- under  
21 state law, that's a permanent disqualifier?

22 MR. DAVIS: That is, Your Honor.

23 THE COURT: As in federal law.

24 MR. DAVIS: Yes, Your Honor.

25 THE COURT: All right. I'll allow brief wrap-up

1 argument, and then I want to talk a bit more about the pending  
2 summary judgment motion and scheduling going forward.

3 So any wrap-up argument, Ms. Bellantoni?

4 MS. BELLANTONI: Yes, Your Honor, thank you.

5 So, just briefly, with regard to the status quo, I  
6 believe the *Bruen* case speaks to the deference that is  
7 generally afforded to the legislatures and the lawmakers when  
8 reviewing certain challenges to various statutes, but it makes  
9 clear that in Second Amendment challenges, no deference is due  
10 because specifically for this reason, we have modern-day  
11 regulations, such as California's ban on open carry, which are  
12 similar to New York's regulations that were constructed in the  
13 modern day and should have no deference because they were built  
14 on and passed under the false belief that the Second Amendment  
15 only applied to the collective and it didn't apply to the  
16 states.

17 THE COURT: With a focus on probable cause, good  
18 cause.

19 MS. BELLANTONI: No, generally.

20 THE COURT: That part of the requirement.

21 MS. BELLANTONI: No, generally. Generally, that these  
22 are modern-day statutes, and the only focus under a Second  
23 Amendment challenge is what was understood at the time that the  
24 founding fathers enacted the Bill of Rights and so that focus  
25 is squarely upon 1791. And at that period of time people

1 were -- which is the plain text of the Second Amendment -- free  
2 to keep and bear arms, weapons, not just handguns, but weapons,  
3 which shall not be infringed. So open carry certainly falls  
4 squarely within the text and history there.

5           There is no license available, so open carry is not an  
6 option through any licensing scheme in California. And despite  
7 *Bruen*, California still remains a may-issue state with regard  
8 to licensing, which the Justices did address. They talked  
9 about the shall-issue states can continue on, but even in the  
10 shall-issue states where there are lengthy wait times or other  
11 manipulations that are infringing or violating the Second  
12 Amendment right and the exercise of that right, even the  
13 shall-issue states may come under constitutional scrutiny, but  
14 certainly they also said that the may-issue states may continue  
15 as long as their criteria is objective, and nothing in  
16 California has changed to make their licensing scheme  
17 objective.

18           THE COURT: I'm thinking more about what you said  
19 earlier about the goal here is to vindicate the rights of  
20 persons who merely carry handguns in public.

21           Just so I understand the difference between open carry  
22 and concealed carry, I mean, I see your references in the  
23 briefing that concealed carry is cowardly. Is it that there's  
24 a deterrent effect associated by otherwise someone, you know,  
25 with no prior felonies, no history of violence, there is a

1 deterrent effect to the open carry that has a greater  
2 self-defense value?

3 MS. BELLANTONI: Your Honor, there are many different  
4 reasons why an individual would choose to open carry: One  
5 would be the deterrent effect. Another being the access to  
6 your firearm under duress in split-second decision making;  
7 whereas, a concealed carry, it may be more difficult to draw  
8 your weapon in that respect, Your Honor.

9 When I use the term "cowardly," certainly they're not  
10 my terms. That is the view that society took back in the 17  
11 and 1800s when concealed carry started to come about, and there  
12 were a few laws in the Antebellum period that were passed to  
13 prevent conceal carry because it was at the time viewed as, you  
14 know, slinky or cowardly, or, you know, more along the lines of  
15 something that a criminal would do. Whereas, a gentleman would  
16 open carry so the adversary would know that he was armed, a  
17 criminal might not do that because they don't want -- they're  
18 predatory in nature, all right, so they want to have the upper  
19 hand when it comes to victimization. So they're going to  
20 conceal their firearm so that they have the best advantage over  
21 the person that they're trying to victimize, and that was the  
22 general view on concealed carry at the time.

23 THE COURT: All right. Mr. Davis, just checking,  
24 anything further?

25 MR. DAVIS: I do have a couple --

1           THE COURT: Plaintiff as the movant -- plaintiffs, as  
2 the movant, I would still give the final word, but anything  
3 else you want to say?

4           MR. DAVIS: Yes, please, Your Honor. Thank you.

5           So the Second Amended Complaint, again, I've said this  
6 part, makes it very clear that what plaintiffs are seeking is  
7 to, one, carry handguns open and exposed throughout the state,  
8 and, two, to do so without a license. So I don't know, you  
9 know, why it's continuing -- why plaintiffs' counsel continues  
10 to press points about the licensing scheme, but plaintiffs'  
11 reply brief on the motion says that the licensing scheme is  
12 irrelevant. Their position now, that's in the Complaint, is  
13 that no licensing scheme -- that the licensing scheme can  
14 simply be ignored, that it does not matter. It violates the  
15 Second Amendment to prohibit anyone from open carry, and it  
16 violates the Second Amendment to require people to seek a  
17 license before they carry openly and in public.

18           So because that's their claim, they need to show that  
19 they're likely to succeed in establishing that the Second  
20 Amendment both demands that states cannot establish the manner  
21 of carry and that states can't require those who carry in  
22 public to get a license to do so.

23           The point about the Second Amendment not prohibiting  
24 states from regulating the manner of carry and how the *Bruen*  
25 decision is consistent with our view, I think is laid out in



1 the briefs.

2 The point I wanted to emphasize here, and maybe I'd  
3 done so already, but the point is that the Second Amendment  
4 allows -- the point is that the Second Amendment allows states  
5 to require those who carry in public to obtain and follow the  
6 conditions of a license is entirely clear from Bruen itself.  
7 Again, Justice Kavanaugh says it explicitly in his concurrent  
8 opinion.

9 My last point is just that because there's some sort  
10 of confusion of the standards as to the ultimate merits as  
11 opposed to this early stage in the proceedings, plaintiffs take  
12 a view that this Court should not even consider public safety  
13 in reaching its decision on the injunction and that is just  
14 entirely false.

15 At this stage, it's true that public safety may not  
16 belong in the ultimate merits question anymore, and so as to  
17 whether they could establish a substantial likelihood of  
18 success on the merits, that's not where it belongs, but it  
19 absolutely belongs in this Court's analysis in balancing the  
20 harms to the public interest versus the plaintiffs.

21 One final point in regards to the harm of the  
22 plaintiffs, I think when asked about it, plaintiffs' counsel, I  
23 think there was some blurring between the plaintiffs' harms  
24 that would emerge out of the plaintiffs as opposed to the  
25 public interest more generally. Both plaintiffs in this case

1 do have ability to carry and do carry concealed, so they  
2 already have what *Bruen* ultimately requires, which is the  
3 ability to carry for self-defense.

4 THE COURT: All right. I understand those arguments.  
5 Any final word on the motion itself, Ms. Bellantoni?

6 MS. BELLANTONI: Only to the extent that the licensing  
7 scheme wasn't at issue in *Bruen*; that was brought up in a  
8 concurrence opinion. And that in looking to 1791, there  
9 weren't no licensing schemes, nor was there any permission  
10 required, which is why the language of the Second Amendment is  
11 what it is, but nothing further, Your Honor.

12 I would just reiterate that with regard to the public  
13 safety issue, it's a conflation of the standards required, and  
14 it just goes directly in conflict with the whole purpose of the  
15 *Heller* decision and the *Bruen* decision, that public safety is  
16 never balanced against the individual rights of law-abiding  
17 individuals to be able to protect themselves in public, and  
18 it's the public and the people for whom the Constitution and  
19 the Bill of Rights was passed. They're being harmed, and the  
20 State has a conflict of interest here in seeking to preserve  
21 the control that they have over the People, and the People's  
22 right to freely exercise their constitutionally protected  
23 rights.

24 THE COURT: All right. I understand those arguments.  
25 Just a couple of questions. The State had filed a

1 Motion for Summary Judgment that the Court stayed. Is the  
2 State withdrawing that motion, or does it seek to supplement  
3 it; can that get set for hearing now?

4 MR. DAVIS: Your Honor, could I take one moment?

5 THE COURT: You may.

6 MR. DAVIS: In light of *Bruen*, Your Honor, that motion  
7 is withdrawn because it's based on the standards that no one  
8 would apply.

9 THE COURT: All right. Then the Court notes that  
10 Motion for Summary Judgment at Docket Number 56 is withdrawn.

11 I'm prepared to give you a schedule to move the case  
12 forward. I'll resolve the motions before me as promptly as I  
13 can.

14 One question I've had, I believe I surfaced it at the  
15 last hearing, should the Court, given the decision in *Bruen*,  
16 look to appoint its own neutral expert to evaluate the relevant  
17 historical evidence under Federal Rule of Evidence 706?

18 MS. BELLANTONI: No, Your Honor, it should not  
19 because, you know, *Bruen* was a carry case. It was all about  
20 public carry. *Bruen* and *Heller* have extensively discussed the  
21 history throughout, you know, from the time of England up  
22 until, you know, the more recent time period and have  
23 pinpointed 1791 as the date to look to with regard to Second  
24 Amendment challenges.

25 This is an open carry case. It's a public carry case

1 to an extent. *Bruen* was also a public carry case in that  
2 respect, and so the Court itself, the Supreme Court has already  
3 gone through the analysis and the scope and history and  
4 tradition of public carry, and it clearly shows that the only  
5 type of public carry that was constrained was conceal carry,  
6 and even at that, only during the antebellum period, not  
7 directly around the point in time of the founding era.

8 THE COURT: So *Bruen*, even though it wasn't considered  
9 in the California laws at issue here, has everything the Court  
10 needs to reach the conclusions that it needs to as the trial  
11 court of record?

12 MS. BELLANTONI: Yes, it does. And if the Court had  
13 doubts on that, the Court itself said that judges like yourself  
14 have the -- in your judicial role you do not need an expert.  
15 This doesn't have to be reinventing history here, that you can  
16 look to the statutes and the history itself and come to a  
17 determination of whether the challenged regulations are  
18 consistent with the Second Amendment. But I would say that  
19 *Bruen* itself speaks to the claims and the challenges here.

20 THE COURT: It's not reinventing history, it's trying  
21 to determine what the relevant history is.

22 MS. BELLANTONI: Which they've done.

23 THE COURT: What does the Attorney General say on  
24 whether or not the Court, in trying to do its job properly,  
25 should it be looking for its own neutral expert or rely on the

1 parties to develop any record, that more is needed than what  
2 *Bruen* says.

3 MR. DAVIS: Well, Your Honor, certainly more is needed  
4 than what *Bruen* says, because *Bruen* was about the good cause  
5 requirement in particular. It did not decide the question.  
6 We're very open about this in our briefs, we think it supports  
7 our view that the State can regulate the manner of carrying and  
8 so, therefore, regulate open carry, but the case was not about  
9 that. The case -- the *Bruen* decision does not answer it, and  
10 it does not answer the question it wasn't before whether  
11 licensing schemes themselves are unconstitutional as a way of  
12 regulating public carry. So *Bruen* does not contain all of the  
13 answers.

14 As to whether the Court should apply its own neutral  
15 expert, that may well be wise. I would appreciate the  
16 opportunity to answer the Court's question in a supplemental  
17 short brief, if the Court would deem that appropriate.

18 Of course -- well, I think that's the answer; that's  
19 my answer to that question. Either way, I think, the  
20 Government needs some time here to continue the historical  
21 analysis that *Bruen* does require. And I would disagree that  
22 the Court said in *Bruen* that the Courts do not need to consult  
23 expert historians.

24 What it said is that Courts are equipped to make  
25 ultimate decisions that rest on, you know, findings about

1 historical traditions, but certainly it's required to assess,  
2 to do the fact finding necessary before those decisions are  
3 made.

4 THE COURT: All right. I'll let you know if I need  
5 supplemental briefing on that, and I'll give equal opportunity.

6 On Rule 16 going forward, here's what I'd like to set  
7 in terms of deadlines: A fact discovery cut off of  
8 May 12, 2023.

9 Expert reports by June 9.

10 Rebuttal July 14.

11 Expert discovery closed August 4.

12 Dispositive motions heard by September 15, 2023.

13 I'll put those dates on the docket. Any initial  
14 concern with those, Ms. Bellantoni?

15 MS. BELLANTONI: Yes, Your Honor, fact discovery is  
16 closed. There have been no new factual allegations or  
17 occurrences that have taken place.

18 Expert discovery is closed. We've had an expert.  
19 They've been deposed.

20 Defense counsel had chosen an expert. They've put  
21 their expert declaration or information in their Motion for  
22 Summary Judgment.

23 There have been -- there's no new -- there's no new --  
24 what is it -- "framework" I guess is the word that was used,  
25 there's no need for any additional expert discovery here.



1 THE COURT: Do you agree with that?

2 MR. DAVIS: No, Your Honor. I think the notion there  
3 is *Bruen* changed everything and nothing at once. It changed,  
4 it absolutely changed the analytic framework the courts need to  
5 follow in Second Amendment cases.

6 Everything that came prior to *Bruen* was based on very,  
7 at the time, clearly established law under the Ninth Circuit  
8 precedent and other circuits of how these questions are to be  
9 approached and answered. And *Bruen* did absolutely dramatically  
10 change that.

11 MS. BELLANTONI: May I be heard, Your Honor?

12 THE COURT: Agreed.

13 MS. BELLANTONI: I do not agree with that at all, no.  
14 *Heller* was very clear in going through the historical  
15 analysis. To go now, like as in -- respectfully -- in the  
16 *Young* case and put forth a whole new historical perspective  
17 which was aggregated and reversed by the *Bruen* case is  
18 improper.

19 To hire experts that are going to attempt to make  
20 arguments that go opposite of what the Supreme Court now has  
21 said twice both in *Heller* and in *Bruen*, and they've clearly  
22 delineated the relevant time period and whatever regulations  
23 existed, which there were none until the Antebellum period at  
24 the time with regard to Second Amendment claims. This is not  
25 that kind of case.



1 By way of analogy, Your Honor, respectfully --

2 THE COURT: Well, let's do this, I'm going to set the  
3 schedule. You may file objections and I'll rule on the  
4 objections.

5 I'm going to put that schedule on the docket in light  
6 of what the Court believes are changed circumstances, but I'll  
7 allow you to file objections, as is always the case with the  
8 schedule, 14 days, and then I'll rule on those objections. But  
9 for now I thought it prudent to provide some sense of how the  
10 case will move forward.

11 MS. BELLANTONI: But, Your Honor, the fact discovery,  
12 the fact discovery, there's no -- there's no argument that you  
13 will need additional fact discovery, it's a 2019 case.

14 THE COURT: What I said, ma'am, is that you may file  
15 written objections now, and I will rule on those objections.  
16 So your record will be made, and I may sustain the objections.

17 So with that, the matter is submitted. We're taking  
18 another short break to get set up for virtual proceedings in  
19 the last matter.

20 MR. DAVIS: Thank you, Your Honor.

21 (Adjourned at 11:37 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the proceedings in the above-entitled matter.

  
\_\_\_\_\_  
MARYANN VALENOTI, RMR, CRR  
Official Court Reporter  
CA CSR #11266

11/12/2022  
DATE

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

**MARK BAIRD and RICHARD  
GALLARDO,**

Plaintiffs,

v.

**ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
and DOES 1-10,**

Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DEFENDANT ATTORNEY GENERAL  
ROB BONTA'S ANSWER TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

Courtroom: 3

Judge: Kimberly J. Mueller

Action Filed: April 10, 2019

Defendant Attorney General Rob Bonta hereby answers the Second Amended Complaint filed by Plaintiffs Mark Baird and Richard Gallardo as follows:

1. Paragraph No. 1 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

2. Paragraph No. 2 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

3. Paragraph No. 3 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

4. Paragraph No. 4 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

5. Defendant lacks sufficient information or belief to respond to the historical allegations in Paragraph No. 4, and on that basis denies each and every allegation. Paragraph No. 4 also contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

6. Paragraph No. 6 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

7. Paragraph No. 7 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

8. Paragraph No. 8 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

9. Paragraph No. 9 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

10. Paragraph No. 10 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

11. Paragraph No. 11 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

12. Paragraph No. 12 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

13. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 13, and on that basis denies each and every allegation.

14. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 14, and on that basis denies each and every allegation.

15. In answer to Paragraph No. 15, Defendant admits that he is the Attorney General of the State of California and that he is sued in his official capacity only. Paragraph No. 15 contains allegations that cite the California Constitution, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

16. Paragraph No. 16 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

17. Paragraph No. 17 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

18. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 18, and on that basis denies each and every allegation.

19. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 19, and on that basis denies each and every allegation.

20. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 20, and on that basis denies each and every allegation.

21. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 21, and on that basis denies each and every allegation.

22. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 22, and on that basis denies each and every allegation.

23. Paragraph 23 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

24. In answer to Paragraph 24, Defendant admits that the California Department of Justice does not provide a separate application for a permit to carry a handgun in an exposed (i.e., open) manner, but denies that the application it provides cannot be used in counties with populations of less than 200,000 persons to apply for a permit to carry a handgun in an exposed manner. Defendant lacks sufficient information or belief to respond to the remaining allegations in Paragraph No. 24, and on that basis denies each and every allegation.

25. In answer to Paragraph No. 25, Defendant admits that according to the 2020 census, Siskiyou County had a population of less than 200,000 people. Paragraph No. 25 includes allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

26. Defendant denies the allegation in Paragraph No. 26.

27. Paragraph No. 27 includes allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation. Regarding the allegations as to what Mr. Baird has been informed, Defendant lacks sufficient information or belief to respond, and on that basis denies the allegations.

28. Paragraph No. 28 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

29. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 29, and on that basis denies each and every allegation.

30. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 30, and on that basis denies each and every allegation.

31. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 31, and on that basis denies each and every allegation.

32. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 32, and on that basis denies each and every allegation.

33. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 33, and on that basis denies each and every allegation.

34. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 34, and on that basis denies each and every allegation.

35. Paragraph 35 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

36. In answer to Paragraph 36, Defendant admits that the California Department of Justice does not provide a separate application for a permit to carry a handgun in an exposed (i.e., open) manner, but denies that the application it provides cannot be used in counties with populations of less than 200,000 persons to apply for a permit to carry a handgun in an exposed manner. Defendant lacks sufficient information or belief to respond to the remaining allegations in Paragraph No. 36, and on that basis denies each and every allegation.

37. In answer to Paragraph No. 36, Defendant admits that according to the 2020 census, Siskiyou County had a population of less than 200,000 people. Paragraph No. 36 includes allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

38. Defendant denies the allegation in Paragraph No. 38.

39. Paragraph No. 39 includes allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies



each and every allegation. Regarding the allegations as to what Mr. Gallardo has been informed, Defendant lacks sufficient information or belief to respond, and on that basis denies the allegations.

40. Paragraph No. 40 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

41. Paragraph No. 41 contains allegations that cite a constitutional provision, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

42. Paragraph No. 42 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

43. Paragraph No. 43 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

44. Paragraph No. 44 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

45. Paragraph No. 45 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

46. Paragraph No. 46 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

47. Paragraph No. 47 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

48. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 48, and on that basis denies each and every allegation.

49. Paragraph No. 49 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

50. Paragraph No. 50 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

51. Paragraph No. 51 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

52. Paragraph No. 52 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

53. Paragraph No. 40 consists of allegations that contain argument and legal contentions. To the extent that a response to this paragraph is required, Defendant denies each and every allegation.

54. Paragraph No. 52 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

55. Paragraph No. 55 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

56. Paragraph No. 56 contains allegations that cite California law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

57. Paragraph No. 57 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

58. Paragraph No. 58 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

59. Paragraph No. 59 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

60. Paragraph No. 60 contains allegations that cite statutory provisions, which speak for themselves. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

61. Paragraph No. 61 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

62. Paragraph No. 62 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

63. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 63, and on that basis denies each and every allegation.

64. Paragraph No. 64 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

65. Paragraph No. 65 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

66. Paragraph No. 66 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

67. Paragraph No. 67 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

68. Paragraph No. 68 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

69. Paragraph No. 69 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

70. Paragraph No. 70 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

71. Paragraph No. 71 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

72. Paragraph No. 72 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

73. Paragraph No. 73 contains allegations that cite case law, which speaks for itself. Defendant denies any allegations that misstate the law. To the extent that a further response is required, Defendant denies each and every allegation.

74. Paragraph No. 74 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

75. Paragraph No. 75 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

76. Paragraph No. 76 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

77. Paragraph No. 77 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

78. Paragraph No. 78 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

79. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 79, and on that basis denies each and every allegation.

80. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 80, and on that basis denies each and every allegation.

81. Defendant lacks sufficient information or belief to respond to the allegations in Paragraph No. 81, and on that basis denies each and every allegation.

82. Paragraph No. 82 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

83. Paragraph No. 83 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

84. Paragraph No. 84 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

85. Paragraph No. 85 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

86. Paragraph No. 86 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

87. Paragraph No. 87 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

88. Defendant incorporates by reference the answers in Paragraphs 1 through 87 above.

89. Paragraph No. 89 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

90. Defendant incorporates by reference the answers in Paragraphs 1 through 89 above.

91. Paragraph No. 91 consists of allegations that contain argument and legal contentions. To the extent that a response to the allegations in this paragraph is required, Defendant denies each and every allegation.

### **AFFIRMATIVE DEFENSES**

In addition, without admitting any allegations contained in the Second Amended Complaint, Defendant asserts the following defenses based on information and belief:

#### **FIRST AFFIRMATIVE DEFENSE**

The Second Amended Complaint, and the claims for relief alleged therein, fails to state facts sufficient to constitute a cause of action.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims in this action are barred in that they do not have standing to bring them.

#### **THIRD AFFIRMATIVE DEFENSE**

The Second Amended Complaint, and each cause of action therein, is improper because Plaintiffs have an adequate remedy at law.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Second Amended Complaint, and each cause of action therein, is barred by the equitable doctrines of estoppel, laches, unclean hands, and/or waiver.

#### **FIFTH AFFIRMATIVE DEFENSE**

To the extent Defendant has undertaken any conduct with respect to the subjects and events underlying the Second Amended Complaint, such conduct was, at all times material thereto, undertaken in good faith and in reasonable reliance on existing law.

#### **SIXTH AFFIRMATIVE DEFENSE**

Defendant has not knowingly or intentionally waived any applicable affirmative defense. Defendant reserves the right to assert and rely upon additional affirmative defenses as may become available or apparent during discovery proceedings or as may be raised or asserted by others in this case, and to amend the Answer and/or affirmative defenses accordingly. Defendant further reserves the right to amend the Answer to delete affirmative defenses that they determine are not applicable after subsequent discovery.

WHEREFORE, Defendant prays that:

1. This Court deny Plaintiffs' Second Amended Complaint in its entirety and dismiss this case with prejudice.
2. Plaintiffs take nothing by the Second Amended Complaint.
3. Defendant be awarded his costs incurred in defending this action.
4. The Court grant such other and further relief in favor of Defendant and adverse to Plaintiffs that the Court deems just and proper.



Dated: October 31, 2022

Respectfully submitted,

ROB BONTA  
Attorney General of California  
R. MATTHEW WISE  
Supervising Deputy Attorney General

*/s/ Ryan R. Davis*

RYAN R. DAVIS  
Deputy Attorney General  
*Attorneys for Defendant Attorney General  
Rob Bonta*

## CERTIFICATE OF SERVICE

Case Name: Baird, Mark v. Rob Bonta No. 2:19-cv-00617-KJM-AC

I hereby certify that on October 31, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT ATTORNEY GENERAL ROB BONTA'S ANSWER TO PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 31, 2022, at Sacramento, California.

Ritta Mashriqi

Declarant

/s/Ritta Mashriqi

Signature

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36683598.docx

COSCA LAW CORPORATION  
CHRIS COSCA SBN 144546  
1007 7<sup>th</sup> Street, Suite 210  
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Telephone: 914-367-0090  
Facsimile: 888-763-9761  
*Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MARK BAIRD and  
RICHARD GALLARDO,

Plaintiffs,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,

Defendant.

Case No. 2:19-CV-00617

**REPLY DECLARATION OF  
AMY L. BELLANTONI IN SUPPORT OF  
PLAINTIFFS' THIRD MOTION FOR  
PRELIMINARY INJUNCTION**

Date: November 4, 2022  
Time: 10:00 a.m.  
Room: 3  
Judge: Hon. Kimberly J. Mueller

### DECLARATION OF AMY L. BELLANTONI

1. I am an attorney with The Bellantoni Law Firm, PLLC, attorneys for Plaintiffs, Mark Baird and Richard Gallardo. I am admitted to practice law before the United States District Court for the Eastern District of California, *pro hac vice*. I am also admitted to practice law before the United States District Courts for the Southern, Eastern, and Northern Districts of New York, the District of Columbia, the Second Circuit Court of Appeals, and the United States Supreme Court. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. This Third Motion for a Preliminary Injunction<sup>1</sup> is made to enjoin, during the pendency of these proceedings, Defendant Bonta, his agents, servants, employees, and those working in active concert with him, from enforcing and/or giving effect to California Penal Code sections 25850 and 26350 as they relate to the mere possession of a handgun by manner of open carry in public.

3. The instant motion for a preliminary injunction is made based on the irreparable and continued harm to Plaintiffs resulting from the enforcement and effect of California Penal Code Sections 25850 and 26350, which will continue absent an injunction of the statutes. The plain language of the aforementioned statutes, as well as the *de facto* ban on open carry in the State of California enforced by defendant Attorney General Rob Bonta through the California Department of Justice, his agents, employees, servants, including the respective state's firearms licensing agencies, to wit, the sheriffs and chiefs of police throughout the state, constitutes a violation of the Second Amendment.

<sup>1</sup> During the parties' July 28, 2022 Status Conference with the Court, held by videoconference, the Court granted Plaintiffs' oral application to withdraw their Second Motion for a Preliminary Injunction, filed on April 13, 2021, which was pending decision.

4. It is the opinion of the Ninth Circuit that the concealed carry of a firearm does not fall within the scope of the protections provided by the Second Amendment. Upholding a challenge to California’s “good cause” requirement for the issuance of a CCW license in *Peruta v County of San Diego*, 824 F3d 919, 942 (9<sup>th</sup> Cir 2016) (en banc) (*Peruta II*) (cert. den.), the Ninth Circuit held that the Second Amendment did not protect *in any degree* the right to carry a concealed firearm in public and that *any* prohibition or restriction a state might choose to impose on concealed carry, was not unconstitutional. (emphasis added). Concealed carry, the Circuit reasoned, was a mere privilege, not a ‘right’.

5. As set forth in the accompanying Memorandum of Points and Authorities and Reply Memorandum of Points and Authorities, with accompanying Declarations, the Supreme Court and history of this nation and the State of California bear out that the open carriage of handguns for self-defense falls squarely within Second Amendment protected activity. A contrary view is irrational and in conflict with the plain text of the Amendment.

6. As detailed in the accompanying Memoranda, the complained of statutes preclude non-prohibited, regular people, including Plaintiffs, from the free exercise of the right to open carry a firearm for self-defense in public by criminalizing the “mere possession” of a handgun carried open and exposed outside of one’s home, which exposes ordinary individuals to criminal penalties for exercising the right to open carry, whether loaded or unloaded.

7. Defendant, who alone has the burden, has failed to forth *any evidence* that the challenged regulations – Penal Code sections 25850 and/or 26350 - are consistent with this Nation’s historical traditions of regulating firearms.

8. The Supreme Court has, more than once, flatly rejected any manner of ‘public safety’, means-end scrutiny as a response to Second Amendment challenges. See, *D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 562 U.S. 742 (2010); *NYSRPA v. Bruen*, 142

S.Ct. 2111 (2022).

9. Yet, defiantly, Defendant continues to offer ‘public safety’ arguments, like those espoused by his law enforcement ‘expert’, former Covina Chief of Police Kim Raney, speculating about how open carry will affect public safety. Attached hereto as Exhibit 1 is Mr. Raney’s deposition testimony.

10. Mr. Raney has never served as a law enforcement officer in an open carry jurisdiction. [Ex. 1 at 19:1-3]. Everything Mr. Raney testified to regarding ‘public safety’ in an open carry jurisdiction is based on speculation.

11. While ‘public safety’ is an *improper consideration* when it comes to Second Amendment challenges<sup>2</sup>, Plaintiffs’ law enforcement expert, Chuck Haggard, *does* serve in an open carry jurisdiction and was employed as a police officer when the state of Kansas legalized open carry overnight. No “instant mayhem” occurred, as Raney hypothesizes. [See, the deposition testimony of Chuck Haggard attached hereto as Ex. 2 at pp. 46-48; 61-62].

12. “So, just the mere fact that somebody’s carrying a gun - - and I’ll go with a holstered handgun, let’s say, in and of itself. It just is what it is. It isn’t a negative or doesn’t have an effect on public safety. The idea that the police would show up and be, “Oh, my God, that guy’s got a gun, we better shoot him” borders on the ridiculous in my mind, that- - and a bunch of that is personal observation.” [Ex. 2 at p. 53]. Mr. Haggard’s observation is based on his personal observation as a police officer and civilian firearms trainer in Kansas, as well as in other states where he has either conducted training or been involved in training including Texas, Oklahoma, Missouri, Utah, and Wyoming, where carrying a firearm open and exposed would garner the reaction, “It’s a sunny day out, that guy’s carrying a gun. It’s not a positive, it’s not a negative, it

<sup>2</sup> *D.C. v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 562 U.S. 742 (2010); *NYSRPA v. Bruen*, 142 S.Ct. 2111 (2022).

just is.” [Ex. 2 at pp. 53-54]. “I can tell you I’ve walked up on car stops where I’ve had people with shotguns and rifles in the back window of a pickup truck, guns in consoles, guns laying on seats, I’ve dealt with people who are wearing holstered guns on their hip, that sort of thing, and, quite frankly, the guns that I can see, the weapons that I can see, I was never very worried about. I was worried about the behavior of the people who were, you know, literally being furtive, who were trying to conceal what they were up to. It was more behavior-focused...It’s what you don’t know that is a problem.” [Ex. 2 at p. 70-71].

13. Attached hereto as Exhibit 3 is the deposition testimony of Richard Gallardo, which indicates that he was compliant with California Penal Code 171 (b)(B)(3) when he had his firearm on the CAL FIRE property in his locked vehicle; the statute allowed him to have his concealed weapon on CAL FIRE property with the concealed weapons permit that he had at the time. [Ex. 3 at 19]. Mr. Gallardo further showed a co-worker his handgun at the co-worker’s request, he did ‘display’ it in any sort of threatening manner as Defendant would have the Court believe. “Working at CAL FIRE, we were there anywhere from three days a week to two to three weeks in a row. And so, you know, lunchtime or evening hours or whenever we were not on the formal clock, what’s called hard time, we’re allowed to talk about that kind of stuff, so we talked about it often. And one of my fellow employees at the time was thinking about getting his concealed weapons permit, and he asked me what kind of gun I carried, and so I showed it to him.” Mr. Gallardo was compliant with the law. [Ex. 3 at 38-40]. Revoking his permit because he disagreed with an officer during a traffic stop also demonstrates the problem with California’s subjective, discretionary licensing scheme. [Ex. 3 at 24].

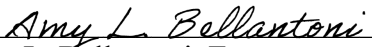
14. The within Declaration, exhibits, and accompanying Memoranda of Points and Authorities warrant the requested relief and issuance of an order enjoining defendant Bonta, his agents, servants, employees, and those working in active concert with him, from enforcing and/or



giving effect to California Penal Code sections 25850 and 26350 as they relate to merely carrying a handgun open and exposed on one's person in public during the pendency of this proceeding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 11, 2022

  
\_\_\_\_\_  
Amy L. Bellantoni, Esq.  
*Attorney for Plaintiffs*  
*Pro Hac Vice*  
abell@bellantoni-law.com

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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MARK BAIRD and RICHARD )  
GALLARDO, )

Plaintiffs, )  
)

vs. ) Case No. 2:19-cv-00617-KJM-AC  
)

ROB BONTA, in his official )  
capacity as Attorney General of)

the State of California, and )  
DOES 1-10, ) November 29, 2021

Defendants. )  

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DEPOSITION OF KIM RANEY  
TAKEN REMOTELY FROM LaQUINTA, CALIFORNIA

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Reported Remotely By:  
Lynne A. Howe, CSR  
License No. 13003

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REMOTE APPEARANCES

FOR THE PLAINTIFF:

THE BELLANTONI LAW FIRM, PLLC  
BY: AMY L. BELLANTONI, ESQUIRE  
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FOR THE DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL  
BY: R. MATTHEW WISE, DEPUTY ATTORNEY GENERAL  
P.O. Box 944255  
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(916) 210-6046  
matthew.wise@doj.ca.gov

Also Present: Mark Baird

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BE IT REMEMBERED, that pursuant to Notice of this deposition, and on Monday, the 29th day of November, 2021, commencing at the hour of 12:03 p.m. thereof, taken remotely with the witness appearing in LaQuinta, California, before me, LYNNE A. HOWE, a Certified Shorthand Reporter in and for the State of California, the following proceedings were held.

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KIM RANEY

having been first duly sworn, was examined and testified  
as follows:

EXAMINATION

BY MS. BELLANTONI:

Q. Good afternoon, Mr. Raney.

A. Good afternoon.

Q. My name is Amy Bellantoni and I am the attorney  
representing the plaintiffs in this matter entitled Baird  
v. Bonta, the plaintiffs being Mark Baird and Richard  
Gallardo. And I'll be asking you some questions today in  
connection with your retention as an expert for the  
defendants in this case.

Before we begin, can you state your full name  
and spell your last name, please.

A. Kimber James Raney, R-a-n-e-y.

Q. Have you been deposed before?

A. Yes.

Q. So you're familiar with kind of the ground rules  
in moving forward with a deposition.

There is a court reporter here who will be  
taking down everything that we say. So it's important  
that we don't talk over one another, which can sometimes  
happen in the course of the deposition. You may



1 anticipate once I'm halfway through a question what the  
2 rest of my question might be and begin answering before  
3 I'm finished, and likewise I may anticipate what the rest  
4 of your answer's going to be and start on my next  
5 question, which I've done many times in past depositions.

6 So I will make my best efforts not to speak over  
7 you, and I would ask that you make your best efforts not  
8 to speak over me so we can have a clear record. Sound  
9 good?

10 A. I understand.

11 Q. Do you understand that you've been sworn in to  
12 tell the truth under the penalty of perjury and as such,  
13 your testimony here in this deposition is the same as if  
14 you would be testifying in a courtroom?

15 A. Yes, I do.

16 Q. If you need to take a break at any time, just  
17 let me know. I would only ask that if there is an open  
18 question that you answer the question first before we  
19 take a break and then if you -- after the break, you need  
20 to clarify something about your testimony in answering  
21 that question, you can feel free to do so. All right?

22 A. Okay.

23 Q. If at any time during the deposition you think  
24 back to an answer that you gave or one that you weren't  
25 sure about or were unable to give at the time and you'd

1 like to clarify an earlier answer, please let me know so  
2 that we can ensure that we have an accurate and clear  
3 record. All right?

4 A. Okay.

5 Q. At the end of the deposition you will be  
6 provided with a copy of the transcript when it's been  
7 prepared by the court reporter, and you'll have an  
8 opportunity to review your testimony in that transcript  
9 and to make any changes or corrections to your testimony  
10 here today.

11 I would only let you know that in doing so, I  
12 would be allowed to comment on any of the changes that  
13 you made. You understand?

14 A. I understand.

15 Q. From time to time your attorney may have an  
16 objection to a question that I ask, maybe to the form of  
17 the objection or to the substance, and your attorney will  
18 state that objection on the record.

19 You will still be required to answer that  
20 question unless your attorney specifically tells you not  
21 to answer or instructs you not to answer that question.  
22 Do you understand?

23 A. I understand.

24 Q. If at any time I ask you a question that you're  
25 not sure what I'm asking or the form of the question just

1 is a little confusing -- that may happen because  
2 sometimes my questions are lengthy and they're not meant  
3 to confuse or to cause an unclear record. But if that  
4 does happen and you're unsure of what I'm asking, please  
5 let me know and I'll try to rephrase the question or make  
6 it a little more clearer. Okay?

7 A. Okay.

8 Q. If I ask a question and you answer, I'm going to  
9 assume that you understood what I was asking. I want to  
10 make sure we're both on the same page. All right?

11 A. Okay.

12 Q. Is there anything that would affect your ability  
13 as you sit here to understand and respond truthfully and  
14 in a responsive manner to my questions today?

15 A. No.

16 Q. Have you ever testified in court before?

17 A. Yes.

18 Q. And is that in your capacity as a law  
19 enforcement officer?

20 A. A law enforcement officer and then after  
21 retirement I've testified as an expert witness.

22 Q. And how many -- in court?

23 A. Yes.

24 Q. How many times have you testified as an expert  
25 witness in court?

1 A. Once.

2 Q. In what case was that?

3 A. I think it was Moreno, et al, versus The City of  
4 Beverly Hills.

5 Q. And what was the scope of your expertise in that  
6 case?

7 A. A lawsuit was filed by several members of the  
8 Beverly Hills Police Department command staff, and I was  
9 retained as an expert witness by the city in regards to  
10 police department management questions, leadership  
11 questions, in that area.

12 Q. And generally, just briefly, what was the issue  
13 in that case? What was the case about? What were they  
14 suing for?

15 A. They were suing the chief of police for  
16 discrimination, hostile work environment, inappropriate  
17 comments. Just there were I think 22 different  
18 allegations.

19 Q. Nothing in that case had to do with open carry  
20 or open carry policies?

21 A. No.

22 Q. And so many times throughout of the course of  
23 this deposition I will be using the term or the phrase  
24 "open carry." And by open carry, I'm referring to the  
25 open --

1 (Technical difficulties)

2 THE COURT REPORTER: I'm sorry, Ms. Bellantoni.  
3 You were breaking up. I missed half that question.

4 MS. BELLANTONI: All right. Can you hear me  
5 now?

6 THE COURT REPORTER: Yes.

7 BY MS. BELLANTONI:

8 Q. Mr. Raney, during the course of this deposition  
9 I'll be using the phrase "open carry," and by that term I  
10 mean the open carriage of a handgun that is holstered and  
11 carried upon the person.

12 Can we agree on that definition of that term?

13 A. I understand that, yes.

14 Q. Were you retained as an expert for the defendant  
15 in this case?

16 A. Yes.

17 Q. And were you also retained as an expert in the  
18 case Flanagan versus Becerra?

19 A. Yes.

20 Q. And other than those two cases and the case  
21 involving Beverly Hills, have you been retained as an  
22 expert in any other case?

23 A. Yes.

24 Q. In which case?

25 A. I don't know the name of the defendants. One

1 was a case that commenced several command staff members  
2 of the Buena Park Police Department making allegations of  
3 discrimination against the chief of police for failure to  
4 promote them.

5 I've been retained by the City of Ontario for a  
6 case where two police volunteers are suing the police  
7 department and chief of police for I guess discrimination  
8 and unlawful termination.

9 I was retained by the City of Chandler, Arizona,  
10 in a lawsuit filed by a motorcycle club against the city  
11 for closing down a business.

12 And those are the only ones I can remember right  
13 now.

14 Q. Is the Chandler, Arizona, case in the nature of  
15 First Amendment claim?

16 A. No. It was more of I think licensing  
17 discrimination where they alleged that the City of  
18 Chandler, Arizona, the police department, closed them  
19 down because of their affiliation to the Hell's Angels.

20 Q. Is it fair to say that your retention as an  
21 expert has only been on behalf of the defendants in  
22 litigation?

23 A. Yes.

24 Q. And you've not been retained as an expert for  
25 plaintiffs in litigation; is that correct?

1 A. That's correct.

2 Q. Were you deposed in the Flanagan versus Becerra  
3 case?

4 A. I was.

5 Q. And did you review your deposition in that  
6 matter in preparation for your deposition here today?

7 A. I did.

8 Q. And when did you have the opportunity to review  
9 that deposition?

10 A. I believe it was two or three weeks ago before  
11 the last deposition was canceled.

12 Q. Has your opinion on open carry changed since you  
13 gave that deposition?

14 A. No.

15 Q. And have you conducted any additional research  
16 on the issue of open carry since you gave the deposition  
17 in that matter?

18 A. Well, I've read a lot of newspaper articles,  
19 periodicals. Just because for the last three or four  
20 years since that deposition there's been a lot of public  
21 information about Second Amendment issues, so I've tried  
22 to stay contemporary.

23 Q. And the research that you've conducted since  
24 your deposition in the Flanagan case, was that research  
25 specific to open carry?



1           A. No. And I wouldn't necessarily call it  
2 research. It's more of just reading information that was  
3 available on Second Amendment issues, sometime the  
4 conflict between Second Amendment and First Amendment  
5 issues with all the public demonstrations that have  
6 happened in the country the last two or three years. So  
7 more in that vein.

8           Q. So what, if anything, have you read since that  
9 time that was specifically addressing open carry or open  
10 carry jurisdictions?

11           A. I reviewed a report by I think it's Professor  
12 John Donohue out of Stanford on open carry. Another  
13 document, and I don't remember what organization put it  
14 out, dealt with I think research over from January 2020  
15 until June 2021 kind of the dichotomy between First  
16 Amendment and public demonstrations versus the Second  
17 Amendment rights and some issues that have popped up  
18 around the country.

19           Q. And regarding that article, was that specific to  
20 open carry?

21           A. No. It wasn't specific to open carry. It was  
22 more about the presence of firearms at First Amendment  
23 demonstrations.

24           Q. Do you recall who published that article --

25           A. I don't.

1 Q. -- or authored?

2 A. I don't.

3 Q. Would you be able to provide a copy of it if you  
4 do remember to your counsel?

5 A. Yes.

6 Q. And the information that you read that had been  
7 published by Mr. Donohue, was that specific to open  
8 carry?

9 A. Well, I believe it was from knowledge he used  
10 was right to carry. So I don't know if it was specific  
11 to open carry in regards to handguns or open carry  
12 regards to both handguns and long guns.

13 Q. Aside from whether it referenced or was  
14 pertaining to handguns versus long guns, I'm just going  
15 to ask again just for clarification for myself and the  
16 record, was that dealing with -- the Donohue periodical,  
17 was that specific to open carry or was it geared towards  
18 concealed carry?

19 A. That was open carry.

20 Q. Do you still have a copy of that periodical?

21 A. Might have a link to it.

22 Q. All right. Do you think you could provide that  
23 to your attorney?

24 A. I could, yes.

25 Q. Thank you very much.

1 MS. BELLANTONI: And Mr. Wise, I would just ask  
2 if you could forward that along, I would appreciate that.

3 MR. WISE: Sure.

4 BY MS. BELLANTONI:

5 Q. Other than those two articles or publications,  
6 do you recall anything else that you reviewed since the  
7 Flanagan deposition that dealt specifically with open  
8 carry of a handgun?

9 A. Not specifically, no.

10 Q. And are you being compensated for your time as  
11 an expert for the defendants?

12 A. I am.

13 Q. How so?

14 A. \$250 an hour for document review, written  
15 reports, et cetera, and \$350 an hour for deposition and  
16 trial testimony.

17 Q. Have you read the complaint that was filed in  
18 this matter and/or the amended complaint, because the  
19 complaint was amended once as well?

20 A. Yes.

21 Q. Have you read both?

22 A. I believe the amended complaint.

23 Q. And what do you understand the plaintiffs'  
24 claims to be?

25 A. I understand that the plaintiffs are suing the

1 State of California for their inability to get a permit  
2 from -- for them as rural counties, populations of less  
3 than 200,000, to openly carry a handgun. And I believe  
4 they're contesting the lack of a process of an  
5 application that they haven't been able to submit to  
6 openly carry their handguns I think in those specific  
7 counties and I believe one of them also mentioned  
8 throughout the state of California.

9 Q. Can you describe how you prepared for your  
10 deposition today?

11 A. I prepared my declaration for the attorney  
12 general's office I think in August of this year. I  
13 reviewed the declaration of your expert witness. I  
14 reviewed his deposition transcripts. I reviewed my  
15 deposition transcripts in the Flanagan matter. And I  
16 reviewed the Penal Code sections in California regarding  
17 the open carry codified sections.

18 Q. I'm going to share my screen here to show you  
19 Exhibit 1.

20 (Whereupon, Plaintiffs' Exhibit 1 was marked for  
21 identification purposes only and attached hereto.)

22 BY MS. BELLANTONI:

23 Q. Are you able to see this document on screen?

24 A. Yes.

25 Q. And this document, for the record, is entitled

1 Plaintiff's Amended Notice of Deposition of Expert  
2 Witness Kim Raney.

3 And Mr. Raney, do you recognize the document as  
4 being the notice for your deposition to bring you here  
5 today?

6 A. Yes.

7 Q. All right. And now having switched to the  
8 second document, which will be marked as Exhibit 2, which  
9 for the record is entitled Expert Declaration and Report  
10 of Former Covina Chief of Police Kim Raney.

11 (Whereupon, Plaintiffs' Exhibit 2 was marked for  
12 identification purposes only and attached hereto.)

13 BY MS. BELLANTONI:

14 Q. Mr. Raney, can you see this document clearly?

15 A. Yes.

16 Q. I'm just going to scroll through. Do you  
17 recognize this as being the declaration that was  
18 submitted in connection with this case on your behalf?

19 Is that your declaration, sir?

20 A. Yes.

21 Q. And is that your signature there on Page 9?

22 A. Yes.

23 Q. Did you prepare this declaration or was it  
24 prepared for you?

25 A. I prepared it.

1 Q. Okay. And when you prepared it, did you provide  
2 a copy, a draft copy to Mr. Wise?

3 A. Yes.

4 Q. And is this the same -- is the document that  
5 you're looking at here the same in substance and form as  
6 the first draft that you had sent to Mr. Wise?

7 A. Yes.

8 Q. And going past Page 9 at Exhibit A, can we also  
9 find a copy of your curriculum vitae?

10 A. Yes.

11 Q. And that CV is comprised of two pages?

12 A. Yes.

13 Q. And does this declaration here and your expert  
14 report at Exhibit 2, does that document reflect your  
15 opinions in this matter in regard to open carry?

16 A. Yes, it does.

17 Q. And what specifically were you assigned to do?  
18 What were you asked to do in connection with this case?

19 A. I was asked to comment as a municipal chief of  
20 police my opinion on the concept or the laws around open  
21 carry in the state of California.

22 Q. And other than the documents that are referenced  
23 in this declaration, were there any other documents or  
24 information that you relied on in coming to your opinion?

25 A. No.

1 Q. Have you ever served as a law enforcement  
2 officer in an open carry jurisdiction?

3 A. No.

4 Q. And what, if any, research, other than the  
5 information that we discussed earlier from Mr. Donohue,  
6 his publication, and the publication that you had  
7 referenced regarding First Amendment issues and Second  
8 Amendment issues surrounding protests, what, if any,  
9 other research have you conducted regarding public safety  
10 issues in connection with the open carriage of handguns  
11 in public?

12 A. As far as specific point of research, none other  
13 than than what's been mentioned. But in 39 years of law  
14 enforcement in California and the last 15 years as a  
15 chief of police, it was 15 years of being at the table  
16 both at the municipal level, the county level, and the  
17 state level, the majority of the public policy  
18 conversations and decisions that were made in all those  
19 jurisdictions, so I think quite extensive experience in  
20 regard to public safety policy for the State of  
21 California.

22 Q. What personal experience do you have related to  
23 public safety regarding the open carriage of handguns?

24 A. The only personal experience again would be a  
25 period in I believe in 2010 or 2011 when some people



1 associated with, and I'll just use my term, the open  
2 carry or in the open carry movement were showing up at  
3 places like Starbucks and different coffee shops  
4 throughout Southern California, most of them in  
5 possession of long guns openly exposed, just to create a  
6 law enforcement response and then document that contact.

7 Q. How many such occurrences were there?

8 A. My jurisdiction was involved in several of  
9 those, and it was the topic of discussion at Los Angeles  
10 County Police Chiefs Association wherein there were  
11 anywhere of a dozen or so throughout the jurisdictions in  
12 Los Angeles County.

13 Q. Over the course of what time period as far as  
14 Covina is concerned?

15 A. I would say a period of a month.

16 Q. And during what time period? In what year?

17 A. Yeah, I believe it was 2010 or 2011, but I'm not  
18 not quite sure of the exact time period. There was just  
19 a movement from a group in what's called the South Bay  
20 Area of Los Angeles County where they were going out in  
21 the region and just I think seeing what the law  
22 enforcement response would be to a call for service if  
23 they showed up at a Starbucks openly carrying rifles.

24 Q. Were any of these individuals in Covina, were  
25 any of them open carry handguns?

1 A. I believe they were open carry of rifles.

2 Q. Not handguns?

3 A. I don't believe so.

4 Q. And with regard to -- well, I'm going to  
5 withdraw that.

6 Can you describe what you mean by the phrase  
7 "open carry movement"?

8 A. I believe there's a segment of the population  
9 who actively are working to use their Second Amendment  
10 rights, including in California as in this case, just  
11 trying to do what they can to openly carry a handgun. In  
12 this case, it looks like in conformance with the state  
13 laws. And their claims, to my understanding, is that  
14 they have been unable to get into the permit process in  
15 the one or two counties that they have applied to.

16 Q. I just want to back up. So I'm asking you about  
17 the open carry movement that you were describing in  
18 Covina that involved only the possession of long guns.

19 What specifically were you referring to when you  
20 say "open carry movement"?

21 A. Well, I believe there's again a segment of  
22 society who wants the ability to carry -- openly carry in  
23 communities handguns and rifles pursuant to their  
24 interpretation of the Second Amendment.

25 Q. And during that time period, which I believe you

1 described as around 2010 or 2011, it was completely legal  
2 in California to open carry a rifle or a handgun,  
3 correct?

4 A. I believe it was -- it wasn't illegal. I think  
5 there was a loophole or a gap in the law, and so I think  
6 part of that was closed by legislation 2011, 2012.

7 But yes, I think there was -- it wasn't a  
8 criminal act to openly carry a rifle in California.

9 Q. And it was also not illegal to carry a handgun  
10 open and exposed if it was unloaded at that point in  
11 time, correct?

12 A. Correct.

13 Q. And putting Covina to the side, during that same  
14 period you mentioned that there were certain gatherings  
15 in Los Angeles County as well.

16 Were those events, did those involve long guns  
17 or handguns or both?

18 A. I don't know. It was just -- the Los Angeles  
19 Police Chiefs Association is made up of 45 municipal  
20 police chiefs and we have a monthly meeting. At that  
21 meeting there's a round table conversation about any  
22 issues going on in your jurisdiction, and several of the  
23 chiefs just shared their experience when those situations  
24 arose in their jurisdictions. Basically is information  
25 with other chiefs that seem to be an organized practice

1 that was starting throughout Los Angeles County.

2 Q. Of individuals carrying openly in public? That  
3 was the movement?

4 A. Well, it was more where they were going to a  
5 Starbucks with several people and just seeing if there  
6 was a law enforcement call for service and the reaction  
7 of that call for services.

8 Q. Well, how do you know that was their intention  
9 or their motive --

10 A. I don't know if that -- that just seemed to be  
11 where the calls were coming from was coffee shops.

12 Q. But you don't know if the individuals  
13 specifically intended to see what the law enforcement  
14 response would be or to cause a law enforcement response?

15 A. Well, I don't know what their intent was. I  
16 know what happened because the chiefs shared that there  
17 were calls for service. And it seemed like there was  
18 dialogue.

19 I know in our jurisdiction there was dialog with  
20 the group that was there and I think it was basically --  
21 it wasn't a confrontational situation. It was more of  
22 just what was going to be the law enforcement response,  
23 what was the officers' knowledge of the law in California  
24 at that time.

25 Q. And what was the response in your jurisdiction?

1           A. I wasn't there. I was briefed on it. It was a  
2 call for service. There was more than one person who was  
3 at a Starbucks or a coffee shop location when they were  
4 contacted by the police. They just explained what they  
5 were doing. They weren't breaking any laws. I think the  
6 weapons were checked to ensure they weren't loaded. I  
7 think there was just an exchange of information and the  
8 parties left and the law enforcement left.

9           Q. Sounds pretty uneventful; would you agree?

10          A. I wouldn't agree with the term "uneventful." I  
11 don't know what happened, how the call was dispatched. I  
12 think it was resolved appropriately.

13          Q. Would you characterize it as being  
14 nonconfrontational?

15          A. Again I wasn't there. I wasn't briefed that  
16 there was a confrontation, so I'd have to make an  
17 assumption.

18          Q. Were you the chief of police at the time?

19          A. Yes.

20          Q. And you were briefed on the incident?

21          A. Yes.

22          Q. And no arrests were made, right?

23          A. No.

24          Q. And these people that were carrying the rifles,  
25 were they creating a disturbance of the peace or charged

1 with any disturbance?

2 A. I don't know what they were creating, but it did  
3 generate a call for service. As far as violating any  
4 laws, no, they were not arrested.

5 Q. So what was the major complaints at the chiefs  
6 of police meeting regarding these events?

7 A. It was more of a heads-up that, and again I'm  
8 just going to paraphrase the information that came out  
9 from the meeting, that this was an organized effort to  
10 gauge the law enforcement response to see if law  
11 enforcement was going to make an arrest, even though from  
12 all the information we had it wasn't a codified criminal  
13 act. More of a gauge just to gauge the law enforcement  
14 response to the calls.

15 Q. Was it an uncodified criminal act?

16 A. No. It wasn't a criminal act.

17 Q. Did these events have any -- well, withdrawn.

18 Did these events motivate the passing of the law  
19 in I think it was 2012, 2013 to criminalize the open  
20 carry of a loaded handgun?

21 MR. WISE: Objection. Calls for speculation.

22 BY MS. BELLANTONI:

23 Q. Well, do you know any of the -- were you  
24 involved in or do you know of the legislation behind such  
25 a law?

1           A. I'm familiar with the legislation, but I wasn't  
2 involved in the formation or the discussions around that  
3 legislation.

4           Q. Did you have any discussions with individuals  
5 who were involved in creating that legislation?

6           A. No.

7           Q. Was it an inconvenience to the police department  
8 to respond to these handful of calls?

9           A. I don't know if I'd use the word "inconvenient"  
10 even though I don't disagree with that term. I think it  
11 was just unnecessary.

12          Q. And why is that?

13          A. Because I think the -- again this is my  
14 opinion -- that the purpose of the conduct was to  
15 generate a call from the public so there would be a  
16 confrontation with the police to see how the police  
17 handled it.

18          Q. But you don't know that to be the actual  
19 purpose?

20          A. No. I just said that was my opinion. I don't  
21 know what the persons involved in this or person involved  
22 in this, I don't know what their motivation was.

23          Q. Have you reviewed any law enforcement policies  
24 in any jurisdictions in which open carry is lawful?

25          A. No.

1 Q. Have you spoken with anyone in law enforcement  
2 in an open carry jurisdiction regarding their policies or  
3 their procedures regarding open carry?

4 A. No.

5 Q. Have you spoken with anyone in law enforcement  
6 in an open carry jurisdiction regarding whether open  
7 carry has affected public safety in their communities?

8 A. No.

9 Q. You read the declaration of Chuck Haggard that  
10 was submitted in this case I believe you testified to,  
11 correct?

12 A. Correct.

13 Q. Have you reached out to Mr. Haggard to discuss  
14 with him how the change in the open carry laws has  
15 affected public safety in Kansas?

16 A. No.

17 Q. Can you describe or just clarify for me what a  
18 man with a gun call is in terms of law enforcement?

19 A. A man with a gun call is generated by a member  
20 of the public calling 911 or their local police  
21 department saying that there's a man with a gun in their  
22 vicinity, whether it's in a business, whether it's in a  
23 park. But obviously, they've made an observation that  
24 there is an armed person within their eyesight and  
25 they're calling for law enforcement response.



1 Q. And were these -- I'm just going to call them I  
2 guess the Starbucks incidents. Were those considered man  
3 with a gun call or responses?

4 A. Yes.

5 Q. And you know that's how they came in to the 911  
6 dispatch?

7 A. That's how I was told them came in as a 911. It  
8 was a 911 call was a man with a gun. I haven't reviewed  
9 the tapes.

10 Q. And when the police responded, do you know if  
11 the officer drew their weapons?

12 A. I don't know what the officers' conduct was.

13 Q. If the officers -- well, withdrawn.

14 In connection with the law enforcement response,  
15 if an officer draws their weapon, is there necessarily a  
16 certain procedure that takes place?

17 A. I'm not sure what you mean by "procedure."

18 Q. Well, is there -- withdrawn.

19 If an officer had drawn their firearm in  
20 responding to that type of event, is that something that  
21 you would have been alerted to?

22 A. No.

23 Q. Have you had the opportunity to speak with  
24 anyone in law enforcement in an open carry jurisdiction  
25 regarding how they handle man with a gun complaints?

1 A. No.

2 Q. In the context of this litigation here, what  
3 exactly is your expertise?

4 A. Again 39 years of municipal law enforcement  
5 experience, increasing responsibility the last 15 years  
6 as chief of police responsible for providing public  
7 safety to a city of 50,000.

8 On top of that, president of the Los Angeles  
9 County Police Chiefs Association where I represented the  
10 45 police chiefs in 2008 in a majority, if not all, the  
11 public regional public safety conversations that occurred  
12 in Los Angeles. And then from 2011 through 2014 on the  
13 executive board of the California Police Chiefs  
14 Association, including president in 2014, where we were  
15 involved in the majority of the state-wide issues that  
16 came up with public safety legislation.

17 Q. Specific to open carry, what is your expertise?

18 A. Again my expertise would be both working and  
19 living in a community where if firearms are available and  
20 openly carried in the public, from my experience and my  
21 opinion, what that could create and especially in the  
22 urban and suburban areas of California.

23 Q. And how do you know that those results will  
24 actually take place?

25 MR. WISE: Objection. Vague.

1 BY MS. BELLANTONI:

2 Q. Well, you said you're giving your opinion on  
3 what could possibly happen if your jurisdiction allowed  
4 for lawful open carry. And how do you know that the  
5 events that you think are going to happen will actually  
6 take place?

7 A. I think by my experience as a resident of  
8 California for 64 years, as my experience as a police  
9 officer, it would be a seismic shift for the state of  
10 California. And in my opinion, it will create  
11 unnecessary law enforcement responses. It will create  
12 unnecessary anxiety and concern in communities. It would  
13 be -- even if it were a legal practice, it would be an  
14 unwise or an unsafe practice. There would be a lot of  
15 unanticipated consequences as a result of that, and I  
16 think the risks outweigh the benefits.

17 Q. What risks would those be?

18 A. Well, I think they're multiple. I think if you  
19 go to an environment where you have open carry, you're  
20 setting up an environment where there could be a  
21 multitude of issues that have to be dealt with.

22 One is the person with open carry could very  
23 well be the victim of an assault themselves. Their gun  
24 could be taken from them. I'm not sure what their weapon  
25 retention skills are, what the quality of their holsters

1 are. If they were in a business where there's about to  
2 be a robbery and they were openly carrying, there's a  
3 likelihood or a possibility they would be the first  
4 victim. They would either be disarmed or the first  
5 victim shot.

6 If they had to lock up that gun or put that gun  
7 away, say there was restrictions on in what public places  
8 you could carry that gun or areas you could carry that  
9 gun, I would expect that most people then put the weapons  
10 in their cars. That could lead to a rash of guns being  
11 stolen out of cars.

12 And the environment we have right now where  
13 vehicle burglaries are on the rise in California, you  
14 have people out there who you don't know what their  
15 de-escalation skills are. You don't know what their  
16 emotional maturity is, you don't know what their  
17 intoxication levels are, and now they're making decisions  
18 and sometimes split-second decisions on whether they're  
19 going to use deadly force or not. And I think just the  
20 risks far outweigh the benefits.

21 Q. And what are the benefits?

22 A. Well, I think the benefit would be if somebody  
23 who was openly carrying and was going to be the immediate  
24 victim of a violent crime or saw a violent crime  
25 happening in their presence or a deadly crime, if it was

1 appropriate, they would have the option to, you know,  
2 engage with that firearm to end the circumstances and the  
3 contact.

4 But it's a lot of discretion to give somebody  
5 who is -- you don't know again their training, their  
6 maturity level, their intoxication, whether the incident  
7 they perceive is really that incident or it's just a  
8 perception issue and there's a way to retrieve or  
9 de-escalate. There's a lot of variables.

10 Q. Can we agree that retreat is not always an  
11 option to a victim of a violent confrontation?

12 A. I think it's always an option. It might not be  
13 the best option, but it's always an option.

14 Q. It's your opinion that retreat is always an  
15 option?

16 A. Unless you're barricaded or you have no means of  
17 retreat. I mean, I don't know what the physical  
18 environment is you're describing, but I think retreat  
19 would almost always be an option. I don't know if it  
20 would be the appropriate option, but it's always an  
21 option.

22 Q. Do you agree that every individual has the right  
23 to self-defense?

24 A. Yes.

25 Q. Do you agree that that's a

1 Constitutionally-protected right?

2 MR. WISE: Objection. Calls for a legal  
3 conclusion.

4 BY MS. BELLANTONI:

5 Q. Is a law enforcement officer sworn to uphold the  
6 Constitution?

7 A. You broke up for a second.

8 Q. As a law enforcement officer, were you sworn to  
9 uphold the United States Constitution?

10 A. Yes.

11 Q. And were you also sworn to uphold the  
12 Constitution of the State of California?

13 A. Yes.

14 Q. And can we agree that the Second Amendment of  
15 the United States Constitution protects the right to keep  
16 and carry firearms or weapons for self-defense?

17 MR. WISE: Objection. Calls for a legal  
18 conclusion.

19 MS. BELLANTONI: Well, he's testified that it  
20 was his job to uphold the Constitution, to know the  
21 Constitution.

22 BY MS. BELLANTONI:

23 Q. So what is your understanding, Mr. Raney, of the  
24 Second Amendment?

25 A. I understand the Second Amendment to provide

1 people with the right to bear arms.

2 Q. And what does that mean to you?

3 A. For me, it means the right to own firearms, to  
4 keep a firearm in your home for protection, and if  
5 necessary, to use that firearm in your home to protect  
6 yourself or your family.

7 Q. Are you aware that there's no duty of law  
8 enforcement to protect under the law, to protect any  
9 particular individual?

10 MR. WISE: Objection. Calls for a legal  
11 conclusion.

12 BY MS. BELLANTONI:

13 Q. Are you aware of a statute in California that  
14 absolves law enforcement for refusing or failing to  
15 protect a specific individual?

16 MR. WISE: Same objection.

17 BY MS. BELLANTONI:

18 Q. You can answer.

19 A. I'm not sure I understand your question.

20 Q. Are you aware of the statute in California that  
21 absolves or provides protection for law enforcement  
22 officers from being sued for failing to protect an  
23 individual resident of California?

24 A. Well, I know there's -- I don't know if it's a  
25 statute or if it's a case law decision, but I know

1 there's a mechanism that describes what you're talking  
2 about.

3 Q. And what is your understanding of that  
4 mechanism?

5 A. That the police don't have a duty to respond or  
6 protect.

7 Q. So how is an individual to protect themselves  
8 from violent crime in public if they're not allowed to  
9 carry a weapon for self-defense?

10 MR. WISE: Objection --

11 THE WITNESS: I don't agree --

12 MR. WISE: -- I'm sorry. Objection. Calls for  
13 speculation.

14 BY MS. BELLANTONI:

15 Q. Well, it's your testimony, Mr. Raney, that your  
16 understanding of the Second Amendment is that it only  
17 protects the right to have a handgun in your home; is  
18 that accurate?

19 MR. WISE: Objection. Misstates earlier  
20 testimony.

21 MS. BELLANTONI: Well, I'm asking him if it's  
22 accurate.

23 THE WITNESS: My understanding of the Second  
24 Amendment is the right to bear arms. I know there's  
25 language in there about a militia.



1           So anyway, I think -- again I'm not a  
2           Constitutional scholar, but I think that's the issue  
3           that's going to the Supreme Court right now as far as  
4           interpretation and application of the Second Amendment.

5           BY MS. BELLANTONI:

6           Q.    But it's your understanding that the scope of  
7           the Second Amendment applies to possessing a handgun in  
8           the home.  That's the extent of the right; is that  
9           accurate?

10          A.    No.

11          MR. WISE:  Objection.  Misstates earlier  
12          testimony.

13          BY MS. BELLANTONI:

14          Q.    So what is your understanding of the Second  
15          Amendment?

16          A.    The Second Amendment allows a person to bear  
17          arms.  I don't think it differentiates between a handgun  
18          and a long gun.  I believe it just talks about the right  
19          to bear arms.

20                And my interpretation of that and my  
21          understanding of that is it's the right of gun ownership.  
22          It's the right to maintain that gun in your home.

23          Q.    Okay.  So in your understanding of the Second  
24          Amendment, it does not apply to maintaining or bearing a  
25          handgun outside of the home; is that accurate?

1           A. Well, I think it's accurate. I think -- I think  
2 what we're seeing right now is states across the country  
3 with different applications or interpretations of the  
4 Second Amendment. Because there are a lot of states that  
5 have authorized open carry and right to carry in public.  
6 California is one of the few that hasn't done that. And  
7 I think that's the decision the Supreme Court's on track  
8 to discuss.

9           Q. I'm just trying to understand what your  
10 understanding is because you now both times have limited  
11 it to the home. So I'm trying to understand what your  
12 interpretation is.

13           Am I correct in understanding that your  
14 understanding of the Second Amendment is that it's  
15 limited to the home?

16           MR. WISE: Objection. Calls for a legal  
17 conclusion.

18           MS. BELLANTONI: I'm asking what his  
19 understanding is. He limited it to the home, so I want  
20 know if that's his understanding.

21           MR. WISE: Same objection.

22 BY MS. BELLANTONI:

23           Q. You can answer.

24           A. My understanding, it's the right to bear arms.

25           Again I don't want mean to argue with you. I'm

1 not being disagreeable with you. But I think my  
2 understanding as applies to again the State of  
3 California, it's the right to bear arms and own firearms  
4 and maintain those in your residence.

5 Q. Can we agree that crime rates are higher in the  
6 urban areas of California than they are in rural areas?

7 MR. WISE: Objection. Calls for speculation.

8 BY MS. BELLANTONI:

9 Q. When you were the chief of police did you have  
10 access to crime statistics throughout the state? Is that  
11 part of your knowledge and your understanding in  
12 reviewing law enforcement around the state of California?

13 A. I didn't review every jurisdiction and every  
14 county's crime statistics in the state of California.

15 Q. Were you generally aware of the crime rates in  
16 the urban areas of California and the suburban areas  
17 versus the rural areas of California?

18 A. No.

19 Q. So we can agree that the urban areas of  
20 California have a higher crime rate than the rural areas  
21 of California?

22 MR. WISE: Objection. Calls for speculation.

23 BY MS. BELLANTONI:

24 Q. You can answer.

25 A. Based on my experience, I would think the more

1 people you have, the more densely populated you have, the  
2 likelihood is that you would have higher crime rates than  
3 you would in sparsely populated areas.

4 Q. And does one's right to self-defense diminish  
5 depending on the population size of their county in your  
6 opinion?

7 MR. WISE: Objection. Calls for a legal  
8 conclusion.

9 BY MS. BELLANTONI:

10 Q. You can answer.

11 A. I don't know if I'd agree with the term  
12 "diminish." I'm not sure what you mean by that term.

13 Q. So reduces, is a reduction of the ability to  
14 defend one's self depending on their location within the  
15 state of California? In other words, is someone's right  
16 to self-defense the same in a rural area as it is in an  
17 urban area?

18 MR. WISE: Same objection.

19 BY MS. BELLANTONI:

20 Q. You can answer.

21 A. So is your question is someone's right to  
22 self-defense different in an urban area as compared to a  
23 rural area?

24 Q. Yes.

25 A. No. I don't believe the right to self-defense

1 changes based upon that demographic.

2 Q. Can we agree that criminals generally choose the  
3 time, place, and manner in which they're going to commit  
4 a crime?

5 MR. WISE: Objection. Vague, calls for  
6 speculation.

7 BY MS. BELLANTONI:

8 Q. You can answer.

9 A. I don't know if I wholeheartedly agree with  
10 that. I think some criminals do preplan and I think some  
11 criminals it's a crime of opportunity.

12 Q. And in being a crime of opportunity, would you  
13 agree that most criminals use the circumstances that are  
14 best advantageous to them?

15 MR. WISE: Objection. Vague, calls for  
16 speculation.

17 BY MS. BELLANTONI:

18 Q. You can answer.

19 A. I would think most do. I'm not sure if all of  
20 them have that tactical or reasoning process.

21 Q. Would you agree that most violent crime is  
22 committed outside the presence of a police officer?

23 A. Yes.

24 Q. Would you agree that most violent criminals  
25 choose a victim who is vulnerable?

1 MR. WISE: Objection. Calls for speculation,  
2 vague.

3 BY MS. BELLANTONI:

4 Q. You can answer.

5 A. I'm not sure if I'd use the term or agree with  
6 the term "vulnerable."

7 Q. What term would you agree with?

8 MR. WISE: Same objection.

9 THE WITNESS: Again I think -- I'd have to try  
10 to get in the mind of a criminal. I think in a lot of  
11 cases it's more of which victim's available.

12 BY MS. BELLANTONI:

13 Q. Would you agree that most victims have no  
14 advance knowledge of being attacked?

15 MR. WISE: Objection. Calls for speculation.

16 BY MS. BELLANTONI:

17 Q. You can answer.

18 A. I'd agree.

19 Q. Would you agree that law enforcement is trained  
20 to determine the behavior of individuals and assess a  
21 specific threat level when responding to an incident or a  
22 scene?

23 A. I don't understand your question as far as who's  
24 the individual?

25 Q. Just generally in the course of law enforcement,

1 in performing law enforcement duties, would you agree  
2 that police officers are trained to assess various levels  
3 of threat depending on the nature of the events, whether  
4 they're patrolling or whether they're responding to an  
5 actual call?

6 MR. WISE: Objection. Vague.

7 THE WITNESS: If I understand your question, I  
8 think what you're asking me is do law enforcements have  
9 the training, the intuition, the experience to assess the  
10 threat or dangers in a situation or environment that  
11 they're entering or exposed to?

12 BY MS. BELLANTONI:

13 Q. Yes.

14 A. I'd agree with that.

15 Q. And what factors do law enforcement officers  
16 take into consideration in making those assessments?

17 A. There's a myriad of factors that come in. It  
18 could be the location, the time of day, the behavior of  
19 the person you're coming in contact with, access or --  
20 the access to something that might cause you injury or  
21 danger, their ability to flee.

22 There's a variety of factors that would come  
23 into any situation that you'd have to assess.

24 Q. When you were working either as a patrolman or  
25 as a sergeant did you have any assignments involving gang

1 activity?

2 A. Yes.

3 Q. And can we agree that most gang activity is drug  
4 related and/or related to crimes of violence?

5 MR. WISE: Objection. Calls for speculation.

6 MS. BELLANTONI: It's his experience.

7 BY MS. BELLANTONI:

8 Q. In your experience, is the gang activity that  
9 you investigated or been involved in related to drugs  
10 and/or violent criminal activity?

11 A. I'd say the majority of that is either drug  
12 activity or some type of criminal enterprise, yes.

13 Q. That you would describe as violent?

14 A. Some are violent, yes.

15 Q. Can we agree that most gang activity is geared  
16 towards violence or is of a violent culture?

17 MR. WISE: Objection. Calls for speculation.

18 BY MS. BELLANTONI:

19 Q. In your experience. You can answer.

20 A. Not that I agree with the term of "most," but  
21 it's not unusual that there's violence associated with  
22 gang members.

23 Q. And what was the scope of your experience with  
24 gang-related activity?

25 A. I was a sergeant in charge of the detective



1 division, which included a gang unit. When I was a  
2 lieutenant I was in charge of our entire criminal  
3 investigations department, which included the gang unit.  
4 Even back into the '80s I was working narcotics in the  
5 cocaine trade in Southern California that dealt with both  
6 the Columbian and the crack cocaine epidemic.

7 Q. And in your experience, have you ever come  
8 across a gang member who was carrying a handgun openly in  
9 a holster?

10 A. Yes.

11 Q. And approximately how many occasions did you  
12 encounter that?

13 A. I think just a handful.

14 Q. Can we agree that most gang members or violent  
15 criminals will carry their firearm concealed on their  
16 person?

17 MR. WISE: Objection. Calls for speculation.

18 BY MS. BELLANTONI:

19 Q. In your experience.

20 In your experience in law enforcement, I think  
21 it's over 40 years now maybe, has it been your experience  
22 that criminals will carry their firearms concealed on  
23 their person?

24 A. It's my experience is they would carry it either  
25 concealed on their person, concealed in their car, or

1 have a female member of their gang or group carry it.

2 Q. And would the female member of their gang or  
3 group carry it concealed as well?

4 A. Yes.

5 Q. And in your experience, is it -- is the purpose  
6 of carrying such weapons concealed to provide an  
7 advantage to the criminal over law enforcement and/or a  
8 victim?

9 A. Can you repeat your question?

10 Q. Sure.

11 MS. BELLANTONI: Could you read that back,  
12 please?

13 (Whereupon, the requested portion of the record was read  
14 back by the Reporter.)

15 THE WITNESS: I don't know what their intent is.  
16 I don't know if it's to provide them an advantage. It's  
17 just to conceal it so it's not probable cause for  
18 contact. I'd have to guess.

19 BY MS. BELLANTONI:

20 Q. Can we agree that it would provide a criminal an  
21 advantage, either advantage against law enforcement or an  
22 advantage against a victim, to carry a firearm concealed  
23 on their person as to open?

24 A. Sure, it could. Yes.

25 Q. Can we also agree that the conduct and behavior

1 and emotional reaction of a criminal will differ markedly  
2 from that of a law-abiding person?

3 MR. WISE: Objection. Calls for speculation,  
4 vague.

5 THE WITNESS: Yeah, I'm not sure I understand  
6 your question.

7 BY MS. BELLANTONI:

8 Q. Well, in the course of your law enforcement  
9 experience, have you ever come across an individual who  
10 was in lawful -- in public in lawful possession of a  
11 handgun?

12 A. Yes.

13 Q. And can we agree that a person who is in lawful  
14 possession of a handgun will have different behavior or  
15 conduct or emotional reaction to police contact than a  
16 criminal or a gang member?

17 MR. WISE: Objection. Calls for speculation.

18 BY MS. BELLANTONI:

19 Q. You can answer.

20 A. I would agree generally with that, yes.

21 MS. BELLANTONI: Does anyone need a break?  
22 We've been going for a little while here. Lynne?

23 THE COURT REPORTER: Do you mind just five  
24 minutes?

25 MS. BELLANTONI: Not at all.

1 THE COURT REPORTER: Thank you.

2 MS. BELLANTONI: Back in five.

3 (Whereupon, a recess was taken.)

4 BY MS. BELLANTONI:

5 Q. Mr. Raney, back on the record after a short  
6 break. Is there anything about your prior testimony up  
7 to this point that you'd like to clarify or change?

8 A. No.

9 Q. During what period of time did you serve as the  
10 chief of police in Covina?

11 A. From 2001 through 2016.

12 Q. And I know I'm going back a little ways. Do you  
13 have a sense of how many murders were committed or how  
14 many arrests, charges of murder were there during the  
15 time that you were a police chief?

16 A. I don't have a total number for the entire 15  
17 years. Each year was different. Some years we would  
18 have two or three, some years we would have 12. One year  
19 we had a mass murder in 2008 where we had nine people  
20 killed at a Christmas Eve event.

21 So each year was different.

22 Q. And so you mentioned a Christmas Eve event in  
23 your declaration; is that right?

24 A. Yes.

25 Q. And were you one of the -- did you respond to

1 the scene of that event?

2 A. The incident started about 11:30 on Christmas  
3 Eve. I got a phone call at home about 11:40 and came in,  
4 so I was probably there within 20 minutes.

5 Q. And with regard to the scope of your expertise  
6 in this case on the issue of open carry, was that  
7 particular incident -- is that particular incident  
8 relevant to the issue of open carry?

9 A. No.

10 Q. Were -- did the homeowners or the individuals  
11 that were the victims, did they know the person that had  
12 attacked them?

13 A. Yes. It was their former son-in-law.

14 Q. This was not gang-related activity; is that  
15 correct?

16 A. No.

17 Q. And the individuals in the home, do you know if  
18 they had access to either a handgun or a rifle or  
19 shotgun?

20 A. I don't know.

21 Q. Do you recall whether there was any attempt to  
22 defend with the use of a firearm?

23 A. No. There was no attempt to defend themselves.

24 Q. And so how ultimately was the attacker -- was he  
25 caught or how did it resolve itself?

1           A. So he dressed up as Santa Claus. Because the  
2 family had a tradition at Christmas Eve where a neighbor  
3 would dress up as Santa Claus and come to the house and  
4 distribute gifts to the children at the event. It was a  
5 large family tradition.

6           So there had been a contentious divorce with one  
7 of the daughters. And the son-in-law, he started his  
8 planning months earlier, had a Santa Claus suit designed  
9 and tailored where he could conceal four handguns. And  
10 then he prepared a compressor with a hose and the ability  
11 to mix oxygen and racing fuel and wrapped that as a  
12 Christmas present and carried that to the front porch and  
13 put it down and knocked on the door.

14           So a little girl opened the door. She was  
15 immediately shot in the face by the suspect, who then  
16 went inside the house and executed nine family members  
17 sitting around a table. Went back to the porch and now  
18 retrieved his flamethrowing device and went in the house  
19 and started distributing the oxygenated-racing fuel.

20           The flaw in his plan was he didn't anticipate  
21 either the fireplace or candles to be lit, and the house  
22 exploded and blew him up and he suffered third degree  
23 thermal burns, but he survived.

24           So he fled to a car and then fled the scene and  
25 drove to an area, his brother's house in the northern

1 part of Los Angeles County about an hour away, and  
2 sometime before seven or eight o'clock the next morning  
3 he committed suicide.

4 Q. Do you know in what manner did he commit  
5 suicide?

6 A. Put a gun in his mouth, pulled the trigger.

7 Q. At the time in 2008 it was against the  
8 California Penal Code to carry a loaded firearm, correct?

9 A. Yes.

10 Q. Can we agree that criminals who seek to do harm  
11 to others, if they're intent on doing harm, are going to  
12 just disregard the law?

13 MR. WISE: Objection. Calls for speculation.

14 BY MS. BELLANTONI:

15 Q. You can answer.

16 A. I'd agree with that.

17 Q. I mean, the very definition, can we agree, of  
18 criminal is someone who is violating established laws,  
19 right?

20 A. They commit a crime.

21 Q. Right. Of the homicides that were committed  
22 during the time you were chief of police, do you recall  
23 any that were committed by individuals who were in lawful  
24 possession of a handgun?

25 A. Is your question was the victim or any of the

1 victims in lawful possession of a handgun?

2 Q. Apologies, no.

3 Was the criminal, was the perpetrator of the  
4 homicide, in lawful possession of the handgun that was  
5 used to commit the crime?

6 A. Not that I recall, no.

7 Q. And going to the victim side of the equation, in  
8 your experience in law enforcement, not just as chief but  
9 the entire law enforcement experience in Covina, have you  
10 had occasion to learn of or be involved in a circumstance  
11 where the victim was able to defend themselves from a  
12 violent attack by using a handgun?

13 A. I don't specifically remember one where the  
14 victim defended themselves with a firearm.

15 Q. Are you aware just through reading publications  
16 and announcements from other law enforcement agencies,  
17 either in California or from other jurisdictions, of  
18 circumstances where a victim has survived a violent  
19 attack through the use of their own handgun?

20 A. Yes. I have read of instances where that has  
21 happened.

22 Q. Of the homicides that were committed during the  
23 time where you were chief of police, were the majority of  
24 those homicides committed in the context of gang-related  
25 activity?



1           A. I would guess maybe 20 percent were gang  
2 activity, some were domestic, and some were random acts  
3 of violence.

4           Q. And I know you're just approximating here, so  
5 I'm just trying to get an approximation as well.

6           If 20 percent was roughly related to gang  
7 activity, do you know or can you recall how the remaining  
8 80 percent was calculated? Did it fall into domestic  
9 circumstances or just random --

10          A. Some -- some were in commission of other crimes,  
11 commission of robberies. And some were just the results  
12 of an argument or disagreement, some other event that led  
13 up to a homicide.

14          Q. And when we speak of domestics or the robberies  
15 or arguments, are these generally shootings -- withdrawn.

16                 How many, if you can recall, what's the  
17 percentage in your experience that were related to  
18 firearms as opposed to another means of homicide?

19          A. I would say over 90 to 95 percent were firearms.  
20 The other 5 percent were either blunt force or  
21 sharp-edged weapons.

22          Q. And of the 90 percent that utilized a firearm,  
23 can you think back as to what percentage generally  
24 occurred inside of a home as opposed to outside of a home  
25 in public?

1           A. I'd be guessing. Maybe 50, 60 percent inside a  
2 home, 40, 50 percent outside the home.

3           Q. And when we talk about the incidents of firearm  
4 use in a criminal matter inside of a home, in your  
5 experience as chief of police, were these domestic-type  
6 situations or were they more a random like a break-in  
7 burglary or robbery in a home or rape?

8           A. Almost I wouldn't say exclusively but the vast  
9 majority were either domestic or a former family member.  
10 But there were occasional homicides during the course of  
11 a break-in for sexual assault. We did have a rash, a  
12 handful of those that occurred in a series.

13          Q. And can we agree in your experience, has it been  
14 that violent crime can take place either in the home or  
15 out in public?

16          A. I'm sorry? I missed that.

17          Q. Is it the case that violent crime can take place  
18 in the home or outside of the home in public?

19          A. Yes.

20          Q. In California under the California Penal Code,  
21 from your experience in law enforcement, is it lawful to  
22 use deadly force in defense of certain types of crimes?  
23 In other words, in defense of a rape or a kidnapping or  
24 attempted murder.

25          A. I don't believe there's a catalog of crimes that

1 automatically allow you to resort to deadly force. I  
2 think it's described as the use of deadly force to  
3 prevent immediate death or serious injury.

4 Q. So just as an example, based on your experience,  
5 if a woman was being raped and shot her rapist, is that  
6 one of the types of crimes that would provide the defense  
7 of her use of deadly force?

8 A. Yes. I think that would provide a defense.

9 Q. Are you aware of California's history prior to  
10 1976 open carry being legal in the state?

11 A. You know, I've read I wouldn't say a lot of that  
12 but some of that, but I don't remember the particulars.  
13 But I couldn't disagree with that.

14 Q. Do you have any knowledge of what specifically  
15 happened in and around 1967 to cause a change in the law  
16 in California?

17 A. No. I don't know the specific reason.

18 Q. Have you heard of the Mulford Act? Is that  
19 familiar to you?

20 A. No.

21 Q. And in the course of your law enforcement  
22 experience, possibly even specifically as the chief of  
23 police, did you become aware of trends or particular  
24 issues relating to law enforcement in other jurisdictions  
25 in other states?

1 A. In regards to what?

2 Q. Anything. I mean, is that within the scope of  
3 your employment as the chief of police that you would  
4 either in getting a bulletin or subscribing to an email  
5 service that you would just see what, for instance, use  
6 of force trends are happening or specific, you know,  
7 drug-related courier activities are taking place  
8 throughout the country?

9 Did you have an opportunity to learn of other  
10 law enforcement issues that were happening around the  
11 country?

12 MR. WISE: Objection. Vague, compound.

13 MS. BELLANTONI: Very compound.

14 BY MS. BELLANTONI:

15 Q. Did you understand the question?

16 A. I think I understand it. Now was there a formal  
17 service that we got information from that was shared  
18 either nationally? No, except for information that would  
19 come from the FBI.

20 There is an association called the International  
21 Association of Chiefs of Police. They do have a  
22 conference every year. We would attend that conference.  
23 So within that, again it's a conference environment where  
24 there are programs or seminars or presentations that are  
25 put on from different agencies across the country and

1 across the world on things that are either relative, that  
2 are significant, that are trending, or that are things  
3 that the planners of the event feel that the profession  
4 could benefit from.

5 Q. Did you attend any of those events?

6 A. Yes. I was a presenter at two of them.

7 Q. What topic did you present on?

8 A. Medical marijuana.

9 Q. Yeah, so I was reading that you had engaged in  
10 some publications in your declaration. Were you --  
11 didn't know what side of the fence you ended up being on.

12 Were you a proponent of -- you're not medical  
13 marijuana. I'm talking about the legalization of  
14 marijuana. Two different things.

15 A. Well, medical marijuana was a Trojan horse for  
16 legalization. So it started as medical marijuana and  
17 then it evolved into the legalization of marijuana. So  
18 that was one of the topics I was involved with for six  
19 years.

20 Q. So I guess my curiosity was which side of the  
21 fence did you find yourself on? Were you a proponent of  
22 legalizing marijuana or an opponent?

23 A. So I was personally an opponent, and the Police  
24 Chiefs Association was an opponent and we were very  
25 active in 2010 when Proposition 19 was on the ballot and

1 we defeated that. That was for the legalization of I  
2 think it was termed "medical marijuana" or "marijuana,"  
3 but we defeated that.

4 But we could see -- and this is the hypocrisy of  
5 it. We could see through the state legislature, every  
6 year California state legislature was trying to legalize  
7 marijuana and every year we would defeat it. Even got to  
8 the point where they would pass something, meet with the  
9 governor, and he would veto. Then we had to get  
10 strategic.

11 So the analogy was it's going to be like playing  
12 hockey and eventually they're going to get one in the  
13 net. They're going to sneak one by the goal. So we  
14 thought strategically eventually the California State  
15 legislature is going to pass some marijuana legislation  
16 that is really problematic to the community and the  
17 public safety.

18 So we worked with other law enforcement  
19 associations and with State Senator Lou Correa, who's now  
20 a Congressman Lou Correa, and he carried the bill, the  
21 outline on the legalization or decriminalization of  
22 marijuana in California. It was a two year process.  
23 Eventually that bill was signed I think in 2015. 2015 or  
24 2016. And we were the sponsor of that.

25 Q. So --

1           A. -- responsible for legislation because we knew  
2 it was coming.

3           Q. So what were the I guess benefits versus the  
4 downside when you were the opponent and then ultimately  
5 what led you to the conclusion that it would be  
6 beneficial or that the benefits would outweigh the  
7 detriments?

8           A. Because we knew it was going to pass. We knew  
9 just based upon the state legislature that they were  
10 eventually going to pass some legislation. So we wanted  
11 to ensure that not only law enforcement but community  
12 stakeholders, the California League of Cities, other  
13 people are stakeholders in communities had a voice in the  
14 drafting and creation of this legislation to provide  
15 safeguards to the community.

16           So that was our focus on that to ensure that the  
17 safeguards were in place before -- and I think the term  
18 was decriminalize. They couldn't legalize it because of  
19 the federal issue, but decriminalize certain amounts of  
20 marijuana in the state of California.

21           Q. And specifically, what safeguards were put in  
22 place?

23           A. It's been a long time.

24           Q. If you can recall. Generally.

25           A. You know, it was more about the regulation of

1 it, cities being involved in the approval and permitting  
2 process of dispensaries or not approving. So cities  
3 would have the ability to say yes or no to a marijuana  
4 dispensary in their jurisdiction, not leave that up to  
5 the state, override cities. Because the vast majority of  
6 cities were against that.

7 So we ensured that the cities had the ability to  
8 either to approve, deny, license or regulate marijuana  
9 distribution within their cities. And most cities have  
10 opted not to do that.

11 Q. In the I believe it was the International  
12 Association...

13 A. International Association of Chiefs of Police.

14 Q. Chiefs of Police, yeah. In the times that you  
15 attended those conferences, was the topic of open carry  
16 ever raised or was that -- to your recollection. I'm  
17 sure there are many courses given. To your recollection,  
18 is that an issue that was brought up?

19 A. I don't recall open carry being an issue. I  
20 think more it got into the issue of ammunition stamping,  
21 waiting periods, gun shows, things like that.

22 Q. Do you recall seeing any law enforcement  
23 announcements that related to addressing public safety  
24 issues regarding open carry of handguns?

25 A. I don't know.



1 Q. Are you aware that only five states of the 50  
2 states including the District of Columbia, so six  
3 jurisdictions, only six of them banned open carry?

4 MR. WISE: Objection. Lacks foundation.

5 BY MS. BELLANTONI:

6 Q. Are you aware of that?

7 A. Yes, I am.

8 Q. Are you familiar with the term "Constitutional  
9 carry"?

10 A. I've heard of the term, yes.

11 Q. What is your understanding of Constitutional  
12 carry?

13 A. I'm not sure I understand it. So I don't want  
14 to be wrong, I don't want to guess.

15 Q. Are you aware that over 20 states have approved  
16 Constitutional carry? And that means to be able to carry  
17 concealed or open without needing a license?

18 MR. WISE: Objection. Lacks foundation.

19 THE WITNESS: No. I'm not aware of that.

20 BY MS. BELLANTONI:

21 Q. And -- withdrawn.

22 Is it your opinion that police officers in an  
23 open carry jurisdiction are better trained to deal with  
24 public safety issues regarding open carry?

25 A. So is your question are police officers --

1 that's what I understand, are they better trained in open  
2 carry issues compared to police officers that don't allow  
3 open carry?

4 Q. Right. And I guess I'm asking that in the  
5 context of your declaration speaking to the myriad of  
6 problems that would be posed to law enforcement officers  
7 in California if open carry were legalized.

8 So I'm just wondering if it's your opinion that  
9 the law enforcement officers in open carry jurisdictions  
10 are better trained to deal with those issues that would  
11 rise as a result of open carry being legal?

12 MR. WISE: Objection. Vague.

13 BY MS. BELLANTONI:

14 Q. You can answer.

15 A. I don't know if I'd agree with the term  
16 "better." I would agree that they have received some  
17 training since those jurisdictions have implemented open  
18 carry. I think then they have experience with open  
19 carry. So on those things I'd agree with that component  
20 of it.

21 Q. Can we agree that if law enforcement officers in  
22 California were properly trained to deal with the change  
23 in the law to allow open carry that they would rise to  
24 the challenge and respond appropriately in an open carry  
25 jurisdiction?

1 MR. WISE: Objection. Vague.

2 THE WITNESS: Yeah --

3 BY MS. BELLANTONI:

4 Q. Sorry, I didn't get your answer.

5 A. Sure. Law enforcement would rise to the  
6 occasion, law enforcement would be trained. But law  
7 enforcement training is only one component of the global  
8 issue of open carry, so that's my concern.

9 Q. Okay.

10 A. And that was my complaint with your expert  
11 witness's report is that he's a training expert, he's a  
12 firearms expert, but he was singley focused for the most  
13 part on the training component, and that is just one  
14 piece of this global issue on open carry.

15 Q. And by global, what do you mean by "global"?

16 A. Law enforcement training is one component. You  
17 have the complete change of environment in communities  
18 where now people who are going to restaurants, going to  
19 theaters, going to parks with their kids are now having  
20 to deal with somebody who they don't know who's openly  
21 carrying and possessing a firearm.

22 Q. So let's stop right there for a moment.

23 So how do you think that's going to change  
24 anything in the community if open carry is allowed, is  
25 legalized? What do you anticipate is going to happen?

1           A. I think there's potential for increased volume  
2 of service. Because people are going to see that and  
3 either (1) not be aware that it's been legalized, or (2)  
4 in spite of it being legalized, they are just  
5 uncomfortable with having somebody with a handgun sitting  
6 next to them in a theater or a restaurant or on the  
7 playground with their kids and they're going to call 911  
8 for law enforcement response.

9           That's my concern. That's my estimate that will  
10 happen.

11          Q. And do you base that on any actual events or is  
12 that just a concern that you have?

13          A. I think just -- I'm not using this term  
14 flippant -- I think just wisdom. Just I've lived here  
15 all my life. I'm familiar with the communities. I'm  
16 familiar with especially in the suburban/urban  
17 environment there will be a public reaction to that.

18          Q. So it's only been about I would say less than  
19 ten years since open unloaded carry has been  
20 criminalized. How was it dealt with before 2013?

21          A. How was open unloaded carry?

22          Q. Yes. In other words, you mentioned a concern  
23 that there would be chaos and people would be  
24 uncomfortable and there would be a lot of law enforcement  
25 response and certain other unknown events and reactions.

1 But to your knowledge and your experience as a law  
2 enforcement officer prior to 2012, 2013, open carry,  
3 albeit unloaded, was lawful. So how was it dealt with  
4 then?

5 MR. WISE: Objection. Misstates earlier  
6 testimony.

7 BY MS. BELLANTONI:

8 Q. Go ahead. You can respond.

9 A. I don't think I've used the term "chaos."

10 Q. Okay, so the reaction that you anticipate --

11 A. -- I'm concerned that -- as a resident even  
12 though I'm a retired cop, I would have that same concern.

13 Why is it different now than it was in 2010,  
14 2008, or whatever? Because I don't think the publicity,  
15 the awareness, just the volume of this issue was  
16 prevalent in our society as much as it is today, as much  
17 as the last few years. So 2007, 2008, 2010, those were  
18 very rare occurrences. Not saying they didn't happen,  
19 but they were rare.

20 But I think as society is changing I think there  
21 will be a lot more people who would take the opportunity  
22 to openly carry a firearm if it was legalized in  
23 California. And because of that volume, I'm concerned  
24 that, I'll use the word, the anxiety level of people  
25 would rise, which would then generate a law enforcement

1 response. Not that law enforcement response is going to  
2 create a crisis, but it's going to create a law  
3 enforcement response to a gun call. It's going to  
4 create --

5 Q. Why is --

6 A. -- it's going to --

7 Q. -- a problem?

8 A. Is that a problem? No, it's not a problem.

9 It's a resource issue, number one. It's a quality of  
10 life issue, number two. And again I'm speaking just as a  
11 retired cop who has the ability to carry a concealed  
12 weapon, but I'm not clairvoyant. I can't -- if someone's  
13 openly carrying a gun sitting next to me, I don't know  
14 what's going through their mind. I don't know what  
15 they're processing. I don't know where they're at.

16 And I use the term that the majority of people  
17 are law-abiding citizens, law-abiding citizens until  
18 they're not. And it's when that crosses the line when  
19 they're not that creates the problem.

20 Q. How do you know you're not sitting next to a  
21 person who has a concealed weapon and could be thinking  
22 something criminal or could be plotting to do something  
23 violent sitting next to you at the movie theater? At  
24 least if there's an open -- openly-carried handgun you  
25 would know that the person's armed, right?

1           A. I'd agree with that last part. I'd know that  
2 they were armed, yeah.

3           Q. As you sit next to anyone anywhere --  
4 restaurant, movie theater, park -- you have no idea who's  
5 carrying. Is that a fair statement, correct?

6           A. I don't know if it's a fair statement. I think  
7 it's a possibility.

8           Q. We don't know who's carrying concealed unless  
9 you can actually see a handgun, right, or some printing  
10 or have an idea or from a statement that they made that  
11 they have a firearm on them, right?

12          A. Right.

13          Q. Have you taken any steps to conduct research or  
14 a poll in the community to see whether people would  
15 actually feel uncomfortable with other people carrying a  
16 handgun in a holster on their person?

17          A. No.

18          Q. Do you know if there had been any polls  
19 conducted in the state of California as to whether  
20 individuals, residents would be opposed to allowing for  
21 open carry?

22          A. I'm not aware of any.

23          Q. I mean, the legislature provided a statute,  
24 right, for open carry permits to be issued, correct?

25          A. Correct.

1 Q. When you were chief of police, were you in  
2 charge of issuing or reviewing applications for carry  
3 permits?

4 A. For CCW permits?

5 Q. Let's start with, yeah, concealed carry.

6 Were you able to issue concealed carry permits?

7 A. Yes.

8 Q. Did there come a point in time when your  
9 department no longer -- I guess no longer reviewed those  
10 applications and they were left to the sheriff's  
11 department?

12 A. My successor did that. I did not.

13 Q. And did you issue any concealed carry permits?

14 A. I did not.

15 Q. Did you have any applications for a concealed  
16 carry permit to consider --

17 A. I did not.

18 Q. -- during your time as chief?

19 A. I did not.

20 Q. Nobody applied?

21 A. No application reached my desk.

22 Q. Does that mean people applied, but it just  
23 didn't get to you --

24 A. People might have inquired, but nobody ever  
25 followed through with a completed application process



1 that I had to do.

2 Q. Did you have a policy or make any public  
3 statements during your tenure or otherwise that you were  
4 an opponent of issuing concealed carry permits?

5 A. No.

6 Q. Do you believe that self-defense -- when you  
7 were chief of police, was it your opinion that  
8 self-defense was a valid reason for good cause to issue a  
9 concealed carry permit?

10 A. Solely self-defense?

11 Q. Yes.

12 A. No.

13 Q. And why is that?

14 A. Because I think anybody can make that claim. So  
15 my parameters, and again I never had to review one or  
16 deal with one, was there had to be extenuating  
17 circumstances.

18 For me, say hypothetically a district attorney  
19 was prosecuting a high profile gang crime that received  
20 threats and wasn't either going to get the level of  
21 protection from the district attorney's investigator's  
22 office, then I would consider a CCW for a district  
23 attorney, for a judge, and not solely just self-defense.

24 Q. Doesn't everyone have the right to self-defense?

25 MR. WISE: Objection. Argumentative.

1 BY MS. BELLANTONI:

2 Q. In your opinion does every individual have the  
3 right to defend themselves against a violent attack?

4 A. Yes.

5 Q. Then how is it that self-defense was not enough  
6 to issue a concealed carry permit while you were chief of  
7 police?

8 A. Because for me, there had to be a more  
9 significant threat. Because anybody could come in and  
10 say I want it for self-defense. And there had to be a  
11 higher threshold for that for me.

12 Q. In your position as the chief of police, was  
13 that an appointed position or an elected position?

14 A. Appointed

15 Q. Appointed? I'm sorry?

16 A. Appointed.

17 Q. And who were -- not the person's name, but who  
18 were you appointed by?

19 A. The city manager.

20 Q. Is that akin to like the mayor of the city or  
21 the executive of the city?

22 A. That's the paid executive. Not the elected, the  
23 paid executive.

24 Q. Is the city manager who appoints you also  
25 appointed?

1 A. Yes.

2 Q. And who appoints that person?

3 A. City council.

4 Q. And your concealed carry permit philosophy or  
5 policy when you were the chief of police, was that yours  
6 alone or was that a view that was reached in connection  
7 or in conjunction with the city manager or the city  
8 council?

9 A. That was mine. I did have discussions with the  
10 city manager. I did not discuss it with the city  
11 council.

12 Q. And were you and the city manager of the same  
13 mind-set with regard to the issuance of the concealed  
14 carry weapons permits?

15 A. I worked for four different city managers. So  
16 the only one who brought the topic up was the first city  
17 manager. The last three never brought the topic up.

18 Q. And did the first city manager indicate to you  
19 their preference for not issuing concealed carry  
20 licenses?

21 A. No. Just I had to go through a testing process,  
22 competitive testing process, and then there were two of  
23 us that were left and then we each had an interview with  
24 the city manager. During the course of that interview  
25 that was one of the questions he asked as far as our

1 philosophy about that. That was the extent of it.

2 Q. Do you know if your philosophy was different  
3 than the other person who interviewed for the job?

4 A. Don't know.

5 Q. Did the city manager share that same philosophy?

6 A. Well, he never disagreed with me. We didn't get  
7 into it, but he never disagreed with me on that topic.

8 Q. Did anyone apply for an open carry permit during  
9 your tenure as chief of police?

10 A. There was no open carry as far as permit  
11 process. I retired in 2016 and I believe it was limited  
12 to counties under 200,000 in population.

13 Q. And just for the record, what county was your  
14 jurisdiction located in?

15 A. Los Angeles County.

16 Q. And roughly, what's the population of LA County?  
17 Is it over 200,000?

18 A. About five to six million.

19 Q. And during your tenure as the chief of police  
20 did you have meetings with executive law enforcement from  
21 counties throughout the state?

22 A. Yes.

23 Q. And did that include sheriffs' offices as well  
24 as police departments?

25 A. My situation was unique. California Police

1 Chiefs Association is made up of 330 municipal police  
2 chiefs. So we had our own association and the board of  
3 directors had quarterly meetings and we had an annual  
4 symposium, seminar, whatever the word of the month is.

5 Sheriff's department, the California State  
6 Sherriffs Association had their own association. It's  
7 made up of the 57 or 58 county sheriffs in the state of  
8 California. So the two don't meet together.

9 But as the president of the Police Chiefs  
10 Association I was invited to all of their regional  
11 meetings. So I'd attended five of their quarterly  
12 meetings, if that makes sense, where I would be at the  
13 table as they discussed policies, legislative issues,  
14 political issues, and we'd have an exchange of  
15 information.

16 Q. Is it fair to say that the sheriffs are the  
17 agencies that are the executive law enforcement for the  
18 counties that have populations of 200,000 people or less?  
19 Does it break down that way?

20 A. So is your question are they the executive law  
21 enforcement?

22 Q. I'm going to rephrase that. That was messy.  
23 For counties -- generally, for counties in  
24 California that have a population of 200,000 people or  
25 less, is the licensing authority in those jurisdictions

1 typically a sheriff's agency?

2 A. I believe it is the sheriff or the chief of  
3 police.

4 Q. So it would be either one, is that --

5 A. I believe that, yes.

6 Q. And in attending the sheriffs' meetings, do you  
7 recall any discussions during any of those meetings with  
8 regard to the open carry process or issuing open carry  
9 licenses?

10 A. Not so much open carry. There were  
11 conversations about concealed carry because the sheriffs  
12 are involved in issuance of CWWs as well, so there were  
13 conversations about that. But open carry, I was at table  
14 with them in 2013, so that legislation hadn't quite  
15 ripened yet.

16 Q. And with regard to the chiefs of police for the  
17 counties that are under the 200,000 population, do you  
18 recall any view or approach to issuing or not issuing  
19 open carry licenses subsequent to 2013?

20 A. No. I don't remember having any conversations  
21 or big focused issues or conversations about that.

22 MS. BELLANTONI: Can we take a five minute  
23 break? I want to go over my notes. I think I'm pretty  
24 much ready to wrap it up. Is that okay?

25 THE WITNESS: Yes.

1 (Whereupon, a recess was taken.)

2 BY MS. BELLANTONI:

3 Q. We are back on the record, and Mr. Raney, I just  
4 want to take a look at your declaration. I'm going to go  
5 to Page 7 and can you see the document all right?

6 A. Yes. There's a lot of lines and then 25 percent  
7 is covered by the images.

8 Q. Let me see if I can... hold on. Let me see if I  
9 can resolve that.

10 A. I can read it if you want to make it a little  
11 bit smaller. I'm not that blind yet.

12 Q. There it is. Sorry. You okay?

13 A. Yeah.

14 Q. So if you're looking at Paragraph 25, I just  
15 want to talk a little bit about the Dallas shooting that  
16 you referenced in the declaration just to clarify it a  
17 little bit.

18 Paragraph 25 addresses a mass shooting that  
19 occurred in Dallas, Texas; is that correct?

20 A. Yes.

21 Q. And this is information that you learned as a  
22 result of an article, or did you have conversations with  
23 anyone who was present and/or law enforcement in Dallas  
24 at the time?

25 A. No. It was from an article.

1 Q. All right. And with regard to this mass  
2 shooting, is it fair to say that the people in the crowd  
3 who were attending whatever gathering was taking place  
4 outside were armed with long guns? They had rifles,  
5 AR-15s specifically?

6 A. In my understanding, they were long guns.

7 Q. So this is not a case where the crowd was  
8 engaged in open carry of a handgun in a holster, correct?

9 A. That's not my understanding, that they were in  
10 possession of long guns or AR-15s or M4s or whatever you  
11 have.

12 Q. And are you aware of whether law enforcement  
13 actually shot anybody who was at the gathering?

14 A. I'm not aware that they shot anybody at the  
15 gathering.

16 Q. So then is it fair to say that when police  
17 responded to the mass shooting at this location where  
18 numerous people in the crowd were carrying AR-15s, that  
19 the police did not arrive and then began shooting the  
20 demonstrators, the people who were demonstrating, simply  
21 because they were armed; is that fair?

22 MR. WISE: Object as to form.

23 THE COURT REPORTER: Was there an answer?

24 THE WITNESS: That's fair.  
25



1 BY MS. BELLANTONI:

2 Q. Are you aware of whether Texas has legalized  
3 open carry of a handgun?

4 A. I believe they have, yes.

5 Q. And the quote that's indicated at the bottom of  
6 Paragraph 25, quote, "We don't know" -- and this was a  
7 quote from the Dallas chief of police; is that correct?

8 A. That's my understanding, yes.

9 Q. And his quote is, "We don't know who the good  
10 guy is versus the bad guy when everyone starts shooting."

11 Is that what the quote is in your declaration?

12 A. Yes.

13 Q. But in fact, it was not the case that everyone,  
14 quote, "started shooting." In other words, the people in  
15 the crowd, the people demonstrating, didn't start  
16 shooting anyone; is that accurate?

17 A. Yes, that's accurate. I believe the shooter was  
18 the gunman.

19 Q. Right. So there was one gunman who was  
20 shooting. But when the shooting began and thereafter,  
21 the people in the crowd who had guns were not shooting  
22 anyone; is that accurate to say?

23 A. Not that I'm aware of, no.

24 Q. So that's a double negative. So yes, it is  
25 accurate?

1 A. Can you repeat your question?

2 Q. Sure.

3 MS. BELLANTONI: Can you read that back, please?  
4 (Whereupon, the requested portion of the record was read  
5 back by the Reporter.)

6 THE WITNESS: That's my understanding, yes.

7 BY MS. BELLANTONI:

8 Q. In your opinion and based on your experience as  
9 a law enforcement officer, if there's an uptick or an  
10 increase in crime, should that result in more restrictive  
11 measures on individual Constitutional rights?

12 A. No.

13 Q. I'm referencing Paragraph 26 here in your  
14 declaration, which in the second sentence indicates that  
15 after years of declining crime rates, violent crime in  
16 California has ticked upward in recent years.

17 It has ticked upward, correct?

18 A. Yes, as has property crimes.

19 Q. And I just want to reconcile -- and I'm going to  
20 shop sharing the screen here.

21 I just want to reconcile some earlier testimony,  
22 and that is with regard to the issuance of the concealed  
23 carry permits and it was a hypothetical.

24 You gave a hypothetical about if there was an  
25 assistant district attorney whose investigators couldn't

1 protect him or her in relation to whatever case was going  
2 on at the time. That's someone that you would consider  
3 giving a concealed carry permit to.

4 Is that accurate depiction of your prior  
5 testimony?

6 A. I believe so. I might have also indicated if  
7 they were doing a high profile or a violent gang crime  
8 and there had been threats on their life or again as the  
9 district attorney's office, the investigators, couldn't  
10 provide protection, then that would be one I would  
11 consider.

12 Q. And can we agree that not every individual is  
13 going to have the ability to have personal protection 24  
14 hours a day or a personal bodyguard? Is that a fair  
15 statement?

16 A. Yes.

17 Q. And you did earlier testify, but correct me if  
18 I'm wrong, that everyone has the right to self-defense.  
19 You did agree with that statement; is that accurate to  
20 say?

21 A. Yes.

22 Q. And so then I'm trying to reconcile this with is  
23 it your opinion that the right to self-defense only --  
24 for everyone, regular people, only exists inside the  
25 house or in their home or is their right to defend

1 themselves from violent attack, does that right travel  
2 with them wherever they are?

3 A. I think the right travels with them.

4 Q. I have no further questions.

5 Is there anything about your testimony that you  
6 would need to clarify or change?

7 A. Not change. Maybe clarify.

8 I'm not sure if I was clear or was misunderstood  
9 on I think I talked about the Donohue study, and I  
10 believe that was his terminology was right to carry. So  
11 it wasn't restricted to open carry with his research, it  
12 was right to carry states.

13 Q. Okay. Thank you.

14 Oh, and I was mistaken. The last thing: You  
15 referenced a San Mateo County Sheriff's Office  
16 publication, quote, "Unloaded Open Carry." And that  
17 was -- I can refer to the declaration if you don't recall  
18 that, but if you recall that then I won't.

19 A. I recall.

20 Q. Okay. And so what was the substance of that  
21 writing?

22 A. I believe that was at the time when again law  
23 enforcement were getting calls for service when  
24 individuals would show up at a business in their  
25 communicates openly caring a rifle.

1 Q. So that's the events that we were talking about  
2 the Starbucks and other places --

3 A. -- training bulletin in regards to that.

4 Q. And do you have copies of the -- do you still  
5 have access to that publication or the training  
6 bulletins?

7 A. I believe so.

8 Q. If you could locate your documents and provide  
9 them to Mr. Wise?

10 A. Okay.

11 Q. Would you kindly do that, sir?

12 A. Yes.

13 MS. BELLANTONI: All right. I have no further  
14 questions.

15 And like we had indicated before, you will  
16 receive a copy of the transcript to review and make any  
17 corrections or changes. I will have an opportunity to  
18 comment on the changes, but that's it. Okay?

19 Thank you for your time today. I appreciate  
20 that.

21 THE COURT REPORTER: Mr. Wise, do you wish to  
22 purchase a copy of the transcript?

23 MR. WISE: Yes. We would like a copy of the  
24 transcript and we'd like to review it. I think you had  
25 mentioned to Mr. Raney earlier, we would like to review

1 it and sign it. Thanks.

2 MS. BELLANTONI: Thank you, Lynne.

3 THE COURT REPORTER: You're welcome.

4 (Whereupon, the deposition concluded at 2:09 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

\*\*\*

I, KIM RANEY, the witness herein, declare under penalty of perjury that I have read the foregoing deposition in its entirety and that the testimony contained therein, as corrected by me, is a true and accurate transcription of my testimony elicited at said time and place.

Dated this                    day of                    ,  
20            , at                    , California.

KIM RANEY

1 State of California,  
2 County of Fresno.

3 I, LYNNE A. HOWE, License No. 13003, a Certified  
4 Shorthand Reporter of the State of California, do hereby  
5 certify:

6 That the witness in the foregoing deposition named  
7 was present at the time and place herein specified;

8 That the said proceeding was taken before me as a  
9 Certified Shorthand Reporter at the said time and place  
10 and was taken down in shorthand writing by me;

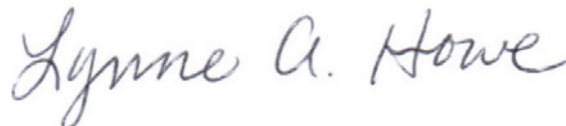
11 That the said proceeding was thereafter, under my  
12 direction, transcribed with the use of computer-assisted  
13 transcription, and that the foregoing transcript  
14 constitutes a full, true, and correct report of the  
15 proceedings which then and there took place;

16 That I am a disinterested person to the said action.

17 IN WITNESS WHEREOF, I have hereunto subscribed my  
18 hand this 10th day of December 2021.

19

20



21

22

Lynne A. Howe, CSR

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License No. 13003

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[00617 - ahead]

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[comprised - danger]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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## **EXHIBIT 2**

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

MARK BAIRD and RICHARD  
GALLARDO,

Plaintiff(s),

vs.

CASE NO.

2:9-cv-00617-KJM-AC

ROB BONTA, in his official  
capacity as Attorney  
General of the State of  
California, et al.,  
Defendant(s).

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DEPOSITION OF CHARLES D. HAGGARD  
Appearing Remotely From Topeka, Kansas  
Tuesday, October 19, 2021  
Volume I

Reported by:  
Carrie Pederson  
CSR No. 4373, RMR, CRR  
Job No. 4838109  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK BAIRD and RICHARD  
GALLARDO,

Plaintiff(s),

vs.

CASE NO.  
2:9-cv-00617-KJM-AC

ROB BONTA, in his official  
capacity as Attorney  
General of the State of  
California, et al.,  
Defendant(s).

---

Deposition of CHARLES D. HAGGARD, Volume I,  
taken on behalf of the defendants, at Topeka, Kansas,  
beginning at 9:06 a.m. and ending at 11:31 a.m. on  
Tuesday, October 19, 2021, before Carrie Pederson,  
Certified Shorthand Reporter No. 4373.

1 APPEARANCES :

2

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EXHIBITS

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CERTIFIED QUESTIONS/INSTRUCTED NOT TO ANSWER

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1 Topeka, Kansas, Tuesday, October 19, 2021

2 9:06 a.m. - 11:31 a.m.

3

4 CHARLES D. HAGGARD,

5 having been administered an oath, was examined and  
6 testified as follows:

7 --o0o--

8 EXAMINATION

9 BY MR. WISE:

10 Q. Good morning.

11 A. Morning.

12 Q. My name's Matthew Wise. I represent the  
13 California Attorney General in this case which is  
14 known as Baird v. Bonta. Would you state your full  
15 name and spell your last name for the record.

16 A. My name is actually Charles, D as in David,  
17 Haggard, H-a-g-g-a-r-d. I go by Chuck.

18 Q. Do you understand that you're testifying  
19 here under the same oath that you would be testifying  
20 under in a courtroom?

21 A. I do. Yes, I do.

22 Q. You've been retained as an expert for  
23 plaintiffs in this case?

24 A. Yes, sir.

25 Q. Have you ever had your deposition taken?

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1 A. Not in this case, but previously in life,  
2 yes, I have.

3 Q. The court reporter's recording everything  
4 that we say, so we need to try to have only one  
5 person speak at a time.

6 A. Sure.

7 Q. I'll try to let you finish your answer when  
8 I ask a question and before I ask another one. I  
9 just ask that you try to let me finish asking my  
10 question before you start to give your answer.

11 A. Certainly.

12 Q. If you need to take a break at any time,  
13 just let me know. The only thing I'd ask is that if  
14 there's a question pending, that you'd answer that  
15 question before we take our break.

16 A. Okie-doke.

17 Q. After I ask a question, it's possible that  
18 your attorney might have an objection to the  
19 question. You should still answer the question  
20 unless your attorney advises you not to answer the  
21 question.

22 A. Okay.

23 Q. If you don't understand a question, please  
24 let me know, and I'll try to rephrase the question.  
25 Do you understand that?

1 A. Yep, I do.

2 Q. You'll have an opportunity, after the  
3 deposition, to review the transcript that was made  
4 here today, and you'll be able to make corrections to  
5 the transcript, but you should know that there will  
6 be a record of the corrections that were made, and  
7 I'll be allowed to comment on any corrections that  
8 you make.

9 A. Okay.

10 Q. Is there anything affecting you today that  
11 would prevent you from thinking clearly and  
12 testifying truthfully?

13 A. No.

14 Q. How did you prepare for today's deposition?

15 A. I actually did not do any real formal  
16 preparation for this deposition. Ms. Bellantoni and  
17 I had a casual phone conversation a couple of days  
18 ago and wasn't -- actually hasn't been much more than  
19 that. Read through -- I forget the -- I don't have  
20 it in front of me on the email.

21 There was the other expert that has been  
22 retained. He's a chief of police or former chief of  
23 police. I was able to read his declaration or his  
24 statement and -- but that's been -- you know, this  
25 has been set up for a few weeks now, so I was able to



1 read that in the meantime, but that's about it.

2 Q. Is that the declaration of Kim Raney?

3 A. Yes.

4 Q. And other than Ms. Bellantoni, did you speak  
5 with anyone about this deposition?

6 A. No, sir.

7 Q. When did you first become involved in this  
8 case?

9 A. It's been awhile. As far as pulling a date  
10 up, I'd have to defer to Ms. Bellantoni for when she  
11 first contacted me to talk about this. It would be  
12 really hard for me to say. It seems like a year or  
13 two now.

14 Q. Okay. And was it Ms. Bellantoni who  
15 contacted you or someone else?

16 A. Yes, she did.

17 Q. Did anyone tell you what they wanted you to  
18 do as an expert in this case?

19 A. We had a conversation, Ms. Bellantoni and I,  
20 on she was looking for an expert witness to speak  
21 towards police training and practices as it pertained  
22 to this case, so my understanding of my input, like,  
23 here today would be as a law enforcement expert.

24 Q. Have you reviewed the complaint in this  
25 matter?

1 A. Yes, sir.

2 Q. Did you have a role in drafting the  
3 complaint?

4 A. No, I did not.

5 Q. Are you being compensated for your work in  
6 this case?

7 A. I am, although I have yet to send a bill in  
8 for anything, so, no, I have not been paid, but we --  
9 Ms. Bellantoni and I agreed on a price. Truthfully,  
10 I volunteered to do this one pro bono, and she  
11 insisted that I not do that, and so I believe it's in  
12 my statement or in my declaration, I think we agreed  
13 to 75 an hour or something like that.

14 Q. Okay. Let me share my screen. I will try  
15 to show you an exhibit here. Could we go off the  
16 record for just a moment?

17 (Discussion off the record)

18 MR. WISE: Can we go back on the record now?

19 BY MR. WISE:

20 Q. Okay. We're back on the record.

21 Mr. Haggard, can you see Exhibit 1 on your screen?

22 (Exhibit 1 marked)

23 THE WITNESS: Yes.

24 BY MR. WISE:

25 Q. Okay. Do you recognize this document?

1 A. I do.

2 Q. What --

3 A. This would be the declaration that you asked  
4 me, in my preparation, what I had read.

5 Q. Did you prepare this declaration?

6 A. I did not. I spoke to Ms. Bellantoni at  
7 length and wrote up my thoughts, and then she made it  
8 look real pretty on this document.

9 Q. Does this declaration reflect your thoughts?

10 A. Yes, sir.

11 Q. Okay. And did you sign a copy of this  
12 declaration?

13 A. Yes, I did, and then because of the nature  
14 of what we're doing, I had to sign and then scan that  
15 and then send that in so that you guys would have a  
16 legal copy.

17 Q. Okay. Let's look just at page 14 here. I  
18 notice that the declaration that I have is not  
19 signed, but you do have a signed version?

20 A. Yes, sir, I do.

21 Q. Okay. Would you work with plaintiff's  
22 counsel to provide me a signed copy of this  
23 declaration?

24 MS. BELLANTONI: Yeah, I'll get that over to  
25 you, Matthew.

1 MR. WISE: Terrific.

2 BY MR. WISE:

3 Q. Your declaration cites a number of  
4 documents. Besides the documents that you've cited,  
5 did you rely on any other documents in reaching your  
6 opinion on this case?

7 A. I read the original -- my legal training is  
8 failing me here -- the filing, the case that was put  
9 forward, and then the other expert, Chief Raney, I  
10 read those documents.

11 Q. Did you conduct research to locate the  
12 documents that form the basis of your opinion?

13 A. I'm not sure how you mean that. Which part  
14 are you referring to?

15 Q. Anything in the declaration itself. Did you  
16 conduct any research to try to come up with documents  
17 that would support your opinion?

18 A. Not really. A big part of my declaration  
19 would be personal observation and experience.

20 Q. Did anyone else provide you with documents  
21 that would support the basis of your opinion?

22 A. I don't believe so. Besides the documents  
23 that Ms. Bellantoni provided to me that I've talked  
24 about reading as far as, like, what's already  
25 pertinent to this case, I don't believe so. Like I

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1 say, we've been doing this for quite awhile. I will  
2 tell you that I do, you know, like, on a regular  
3 basis, read up on things like news, gun control  
4 issues, crime issues, things like that. All of that  
5 is still pertinent to my life. I am still an active  
6 duty police officer, so those are all things that I  
7 pay attention to, but I don't recall being provided,  
8 or, you know, anything like that, anything specific  
9 for this case, no, sir.

10 Q. Anyone other than plaintiff's counsel  
11 assisted you in preparing this declaration?

12 A. No. Huh-uh.

13 Q. Have you ever served as an expert witness?

14 A. Yes, sir, I have.

15 Q. How many times?

16 A. It's hard to say. Probably a good dozen.

17 I've been retained as an expert witness on police use  
18 of force both in civil court and in criminal court.

19 I have been retained as a defense expert on firearms  
20 and firearms training in a murder trial. I have been  
21 retained as an expert witness on firearms in a  
22 series. We had kind of a gang robbery homicide thing  
23 that turned into a series of probably eight separate  
24 trials because of the nature of that one, so I don't  
25 have an -- I'd say probably 10 to 12 times at least.

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1 Q. Have you ever testified as an expert on the  
2 public carry of firearms?

3 A. No, I have not.

4 Q. Did you attend college?

5 A. I did.

6 Q. What college?

7 A. Kansas State University.

8 Q. Did you graduate?

9 A. I did not. The police department decided to  
10 hire, and I had to weigh my options, so ended up  
11 taking the job.

12 Q. Besides college experience you had, did you  
13 complete any other formal education courses?

14 A. I've completed courses, Kan State  
15 University, and then other courses through the  
16 military that were adjunct to other colleges such as  
17 Washington University, Emporia State, couple of those  
18 that were out-of-state things like Louisiana State  
19 University that were part of the course that I was  
20 doing. That was both in a police capacity and a --  
21 or, when I was in the military, military capacity,  
22 and those were classes that if you did that, you  
23 could gain college credit for that.

24 I've also -- not pertinent to this, but also  
25 completed Kansas -- not Kansas State University --

1 Kansas University classes through things like fire  
2 science and that sort of thing that all count  
3 towards -- you know, so I've earned college credit in  
4 a whole bunch of places but never coalesced that into  
5 a degree as it were.

6 Q. Any other formal education that we haven't  
7 touched on?

8 A. Quite a bit. I'm assuming that you have a  
9 copy of my CV. A whole lot of what I've done is  
10 things like Force Science Research Center as a force  
11 analyst, training on excited delirium and things that  
12 are pertinent to police use of force, human dynamic  
13 factors, deescalation, verbal judo, etc., etc., as  
14 all is preparation and, you know, on-the-job  
15 improvement for the jobs that I was doing mainly at  
16 the Topeka Police Department, which since I've  
17 retired from, but then in my current roles, I'm still  
18 a national trainer for National Law Enforcement  
19 Training Center. I have my own business. I'm an  
20 adjunct instructor for Strategos International,  
21 adjunct instructor for Hardwire Tactical, and then  
22 I'm a police captain here at my current job.

23 Q. You mentioned that you served in the  
24 military. When did you serve in the military?

25 A. It would have been 1982 to -- it's been

1        awhile. 19 -- I'm going to -- I believe 1998, but I  
2        might be off on that, but definitely started in '82.

3        Q.     What positions did you hold in the military?

4        A.     So I was a reconnaissance specialist, and  
5        that's a fancy word for -- or fancy term for we go  
6        out and find the bad guys and tell everybody else  
7        where they are at. So in those roles, I was vehicle  
8        driver, I was a machine gunner, I was a squad leader,  
9        I was a platoon sergeant. At one point, I was an  
10       acting platoon commander when we did not have a  
11       lieutenant on who was assigned to our unit.

12       Q.     I think you just mentioned this, but did you  
13       become familiar with firearms while in the military?

14       A.     Oh, yes.

15       Q.     Can you describe your experience with  
16       firearms in the military?

17       A.     So actually in that role, in the job that I  
18       had, we were required to train with and qualify on a  
19       yearly basis more than most of the Army jobs. If  
20       you're, like, a truck driver or something like that,  
21       it's very minimal. Infantrymen, obviously you're  
22       going to be more that, but just as an example, when I  
23       first got into the job that I was in, I was required  
24       to qualify -- train with, qualify with a .45 pistol,  
25       M16a1 rifle, M60 machine gun, M2 50 caliber machine

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1 gun, the M203 40 millimeter grenade launcher, the LAW  
2 antitank rocket, Claymore antipersonnel mines.

3 I'm probably leaving something out of the  
4 list, but -- and then that -- as firearms changed  
5 within the military, like they upgraded pistol, they  
6 upgraded rifles, they added grenade launching machine  
7 guns and things like that, we all got -- we got  
8 trained on those as well.

9 Q. You mentioned that you've had a career in  
10 law enforcement. At what point did you begin that  
11 career?

12 A. 1987.

13 Q. What department did you work for?

14 A. The Topeka, Kansas Police Department.

15 Q. What were your roles there?

16 A. I started out as a patrolman. I was a  
17 patrol officer and eventually a patrol sergeant. I  
18 ended my career. The last six years of my career, I  
19 was a shift commander as a lieutenant, and then in  
20 the interim, I was a member of our SWAT team for  
21 little over 17 years, and so I was a breacher, I was  
22 a sniper, I was a squad leader.

23 At one point I was the team leader when we  
24 did not have a lieutenant assigned. I was a firearms  
25 trainer for the unit, a gas guy utilizing the grenade

1 launchers, and in the wider role for the department,  
2 I was a field training officer. Then when I  
3 promoted, I was a field training sergeant supervising  
4 field training officers.

5 I was a firearms instructor, use of force  
6 instructor on things like batons, taser, Pepper  
7 Spray, handcuffing, arrest and control tactics,  
8 things like that, ground fighting, weapon retention.

9 So we had a regional academy that was  
10 approved through our state CPOST, so we had -- we did  
11 recruit training and in-service training. At one  
12 point, I was responsible for all of the use of force  
13 and firearms training for the department, and for  
14 about -- it was just about three years there, I was  
15 the range master where my primary job was to do all  
16 of the recruit in-service firearms training,  
17 Maintenance, and then my role as a defensive tactic  
18 instructor, I was basically in charge of our use of  
19 force program where I had officers working for me who  
20 assisted with that training.

21 Q. Did you ever develop protocols on how to  
22 respond to an incident involving a firearm?

23 A. Yes, actually, and some of it very specific.  
24 Right after Columbine, we had -- you know, there was  
25 kind of a watershed event in law enforcement where

1 people were like, "Oh, my God, we can't do that"  
2 because the perception was that the officers there  
3 kind of waited around, so you had to have what we  
4 call a rapid response to an active shooter, and then,  
5 of course, I don't know if you've ever seen pictures  
6 coming outline of Columbine, but there was a wide  
7 variety of officers. There were detectives, there  
8 were officers in plainclothes, there were officers  
9 who showed up off duty, things like that, uniformed  
10 police officer from multiple different departments.

11 So, you know, a big part of that would be  
12 training the officers on what -- it's often called  
13 PID or positive identification. The last thing we  
14 want to do is replicate tragedies that have happened  
15 in the past in places like New York City where you  
16 have a blue-on-blue, you have, like, say, a uniformed  
17 officer shooting a plainclothes officer or something  
18 like that, so a big part of our training was  
19 responding to threat recognition and then proper  
20 response, you know, to the scenario as you find it.

21 Q. And what was your role in developing that  
22 training?

23 A. I actually developed it from scratch. I was  
24 given the job of -- because we wanted to have a rapid  
25 response program, I was given the job of, "Hey, we

1 need to come up with something for that."

2 So in my role as the primary firearms  
3 trainer at that point, or one of the primary firearms  
4 trainers at that point, I was given the role of  
5 coming up with an in-service training package so that  
6 we could run all our people through rapid response.

7 I would say Columbine was a watershed event  
8 for law enforcement in recognition of this, but in my  
9 career, I had already responded to two active shooter  
10 events, so that was something that was, you know, the  
11 type of training that, taken seriously, was really  
12 near and dear to my heart, that I'm glad they finally  
13 got the -- the command staff finally got the message  
14 that that needed to happen.

15 Q. After working at the Topeka Police  
16 Department, did you work in any other capacity as a  
17 law enforcement officer?

18 A. Yes, sir. Shortly after retiring, because  
19 we have a -- we have a technicality in our  
20 retirement, you can't do anything for 60 days for a  
21 paycheck, otherwise it screws up, you know, the --  
22 how the retirement fund works. We have to take  
23 60 days off before you're allowed to do anything else  
24 or you get paid, so I took short vacation, and then  
25 the county north of me, Jackson County Sheriff's

1 Department, was shortly of people, so I became a  
2 part-time deputy for them and was helping them out  
3 with road patrol and training, and then approximately  
4 almost exactly a year after I retired, I took the  
5 current job that I have now with Metropolitan Topeka  
6 Airport Authority Police and Fire. I know that's a  
7 mouthful.

8 And then since then, I am also -- I have --  
9 I'm no longer working for Jackson County part-time,  
10 but -- this is one of those you know, "You're getting  
11 old when." One of my recruit officers is now the  
12 sheriff of the county that I live in, and he asked me  
13 to come onboard as a part-time deputy, so I'm a sworn  
14 deputy with the Shawnee County, Kansas Police  
15 Department as well, and I'm currently doing that.

16 Q. Got it. Any other law enforcement roles  
17 that we haven't touched on?

18 A. No, sir.

19 Q. Do you have any other current forms of  
20 employment?

21 A. Just my side business, and I do consulting.  
22 Friend of mine's a retired officer, he has a security  
23 company, so every once in awhile, I'll do the  
24 qualifications for his guys and things like that, but  
25 primarily my Agile Training consulting business.

1 Q. What is Agile Training and Consulting?  
2 Would you describe it?

3 A. So my business model is I try to meet  
4 clients' needs instead of having a cookie cutter type  
5 package like, you know, basic -- I have Basic  
6 Pistol 1, Basic Pistol 2 or something like that. I  
7 kind of customize classes for people's needs. I've  
8 had people hit me up for things like -- I'm currently  
9 going -- about to do a in-service package for  
10 University Police Department over in Kansas City,  
11 Missouri, and they want to have two hours of Pepper  
12 Spray update, two hours of weapon retention update  
13 and then four hours of arrest and control and a  
14 handcuffing package just as an eight-hour day, "Can  
15 you do" -- "Yeah, I can, you know, put together a  
16 training package for your needs."

17 Much of what I've done lately has been  
18 firearms training, and, quite frankly, the business  
19 has been a lot better for civilian capacity training  
20 than law enforcement training as far as people who  
21 are paying for training.

22 Q. Do you conduct any trainings that involve  
23 how to respond to a person armed with a firearm?

24 A. Yes.

25 Q. An how do you train your clients to respond?

1           A.    Are you talking a -- I'm assuming you mean a  
2           nonsworn -- a non-police officer type person.

3           Q.    Yes.

4           A.    So part of the training I do is -- what we  
5           look for in behavioral aspects of pre-criminal  
6           assault behavior. One of my friends put a very good  
7           label on there, his name is Craig Douglas, and he  
8           calls it MUC, M-U-C, managing unknown contacts.

9                    Say you are approached by someone on the  
10           street that you don't know. How do you read that  
11           type of encounter? Is it threatening? Are they  
12           setting you up for, like, a mugging or a carjacking  
13           or something like that? And talk about the  
14           behavioral aspects of what criminal assault looks  
15           like.

16                    So it comes as some surprise to some people  
17           that bad guys can be very sneaky, and, you know,  
18           they're not going to have a big sign or, you know,  
19           something on the T-shirt that says "I'm a bad guy,"  
20           so a big part of mine is the pre-criminal assault  
21           behavior-type things, the recognition of what type of  
22           scenario you may have found yourself in to -- and  
23           then the how to respond correctly in those scenarios,  
24           and I will do that with verbal skills, verbal  
25           deescalation.

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1           Very popular part of my training has been  
2           Pepper Spray, how to do something that's not -- you  
3           know, what I call something between a harsh word and  
4           a gun, and then recognition of is -- you know, in my  
5           end of scenario that actually requires a firearms  
6           response, you know and, if so, how to do that, what  
7           that might that look like.

8           Q.     In those classes, do you recommend that your  
9           clients carry a firearm?

10          A.     I never recommend to anybody that they carry  
11          a firearm. That's a very personal decision. I can  
12          speak to the pluses and minuses of carrying a  
13          firearm, but I have clients that I have worked with  
14          who -- like, one friend of mine who used to be an  
15          ADA, and, as you can imagine, in that capacity  
16          putting people in prison, you can -- you know, she  
17          picked up a stalker, and then I helped her with a  
18          security package as a friend, how to harden her house  
19          and have some defensive options.

20                 She was adamant she did not want a gun. She  
21          was just not a gun person. I'm not going to push a  
22          gun on her. So we came up with non-gun home defense  
23          options for her that made her feel more comfortable.

24                 So if people want firearms training, I will  
25          offer firearms training. If people are adamant that



1 they don't want firearms training, that they're  
2 looking for something else, then, you know, that's  
3 like anything else, like whether you drink or not,  
4 that's an extremely personal decision.

5 Q. And just for the record, when you said  
6 "ADA," what were you referring to?

7 A. Assistant district attorney. I'm sorry.

8 Q. Do you believe that carrying a gun in and of  
9 itself makes a person safer?

10 MS. BELLANTONI: Objection.

11 You can answer.

12 THE WITNESS: Excuse me. I've been talking  
13 awhile. My throat is dry.

14 I believe it can. I have personally been  
15 involved in scenarios where I was just another dude  
16 off duty in which I know that if I had not had a  
17 firearm, I would have been a victim of a violent  
18 criminal assault or, you know, armed robbery, that  
19 sort of thing. I believe that having a firearm gives  
20 one the option of being able to not leave oneself at  
21 the other guy's mercy.

22 BY MR. WISE:

23 Q. Would you consider a gun a tool of limited  
24 utility in most situations?

25 A. It is definitely a tool of deadly force,

1 and, you know, one of the things that people need to  
2 know is you can't legally shoot people a little bit.  
3 It is a tool for managing situations that require a  
4 deadly force option.

5 Q. I think you were mentioning this earlier,  
6 but are there particular steps that you recommend  
7 that your clients take before they carry a firearm in  
8 public?

9 MS. BELLANTONI: Objection.

10 You can answer.

11 THE WITNESS: I would -- it sounds  
12 self-serving because I am in a training business, but  
13 I obviously counsel people that they need to have  
14 some sort of training and education both how to  
15 safely handle firearms -- I mean, something as  
16 simple -- even in a hunting capacity, most people  
17 would want to go through -- like we -- here in  
18 Kansas, we have a hunter safety course, you know,  
19 that just seems like a very logical thing, but going  
20 through some -- both the mechanics of how the firearm  
21 works and then how to effectively mechanically shoot  
22 the gun, what you would think of as marksmanship  
23 training and then having some sort of education on  
24 when that's appropriate.

25 I suppose smart people can do things like

1 here in Kansas, you can pull up the state law, and  
2 it's very clearly stated when defense of a person or  
3 your domicile is allowed, but I counsel people that  
4 they probably want to get some education, probably  
5 want to get some training just like anything else. I  
6 counsel driver's ed before you get behind the wheel  
7 of a car. It just seems to make sense.

8 BY MR. WISE:

9 Q. Before your clients carry a firearm in  
10 public, do you recommend that they get physically  
11 fit?

12 MS. BELLANTONI: Objection.

13 You can answer.

14 THE WITNESS: Was that, "Go ahead and  
15 answer" or --

16 MS. BELLANTONI: Go ahead and answer.

17 THE WITNESS: Actually, I recommend  
18 everybody get as physically fit as they can because  
19 we know heart attacks kill a lot more people than  
20 virtually anything else, you know, lifestyle. I  
21 don't want to get too deep in the whole COVID thing,  
22 but when you look at what makes you susceptible to  
23 COVID, the comorbidities are a very big deal.

24 However, comma, the most vulnerable  
25 populations are the people who are elderly, less

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1 physically fit, you know, and I have some sympathy to  
2 that. In my prime when I was in my 30s and I could  
3 run two miles in 12 and a half minutes and pick up  
4 600 pounds off of the ground any time I felt like it  
5 and I was a judo and Jujitsu guy, I could handle  
6 virtually any grown man that I ran into.

7 Now I'm 57, and I have a bad knee, and I've  
8 jumped out of too many airplanes, and I've  
9 rub-marched too many times. I have no cartilage in  
10 one of my knees and little cartilage in the other,  
11 and I need a hip replacement according to -- two out  
12 of three orthos say I need a hip replacement.

13 So the thought occurs to me that people who  
14 are less physically capable need more means to defend  
15 themselves, and that often means that they need tools  
16 to solve that problem.

17 BY MR. WISE:

18 Q. Before your clients carry a firearm, would  
19 you recommend that they carry other items to defend  
20 themselves?

21 A. So part of my training is -- I've obviously  
22 already mentioned that I'm a big proponent of Pepper  
23 Spray, I have taught it for a long time, and I've  
24 used it in a law enforcement capacity hundreds of  
25 times. I'm a big believer in that as a less than

1 lethal tool, and I point out that there are  
2 situations -- like, I know as a police officer, there  
3 are situations where if you use sufficient force  
4 early, that you could interdict having to use more  
5 force later.

6 The case of Kyle Dinkheller, who was a  
7 deputy who was famously murdered on his -- on car  
8 camera in a gun fight is one of those cases that's a  
9 glaring example. But Pepper Spray is a less than  
10 deadly force option for in a case where you find  
11 yourself subject to physical force. Guns are a tool  
12 of deadly force, and those are two different  
13 scenarios.

14 Q. Why do you train your clients to take these  
15 other steps before when they carry a firearm in  
16 public?

17 MS. BELLANTONI: I'm going to ask for some  
18 clarification on what other steps you're referring  
19 to.

20 THE WITNESS: I was about to do the same,  
21 so --

22 BY MR. WISE:

23 Q. Sure. And the other steps I mean are  
24 getting training, carrying Pepper Spray, reading up  
25 on the law, the steps that you just mentioned.

1 MS. BELLANTONI: I'm going to object to that  
2 as well because I don't believe there was testimony  
3 that he recommends they carry Pepper Spray, but maybe  
4 we could get clarification on that.

5 THE WITNESS: So I'm a big believer in human  
6 beings being as capable as possible, and that may be  
7 an artifice of my time as a police officer. I  
8 believe that, as a cop, you're in the lifesaving  
9 business, and now, you know, I'm also a firefighter  
10 on the side, so I'm in another lifesaving business,  
11 you should be as capable as you possibly can, so my  
12 counsel to human beings in general is that we should  
13 be working to be better human beings this week than  
14 we were last week, if you will, and that's kind of an  
15 off-take of that.

16 Also, the more capability -- the more  
17 training, education and capability you have, the more  
18 situations you are going to be able to overcome if  
19 you find yourself in a bad place. I think we could  
20 agree if you were an Olympic class swimmer, when your  
21 sailboat sinks, you're going to be a lot better off  
22 than your average dude that falls off a sailboat.

23 So if looking at my experience with street  
24 crime, things like muggings, purse snatchings,  
25 carjackings, person robberies, things like that,

1 those can have a -- they can be a large range of  
2 circumstances, so recognition of the problem,  
3 figuring out ways to try to deescalate that, if  
4 possible, having options if it's not a deadly force  
5 scenario, and then having options if it is a deadly  
6 force scenario is my counsel to people on how to best  
7 cover the range of possibilities that people find  
8 themselves in.

9 BY MR. WISE:

10 Q. Do you have concerns that some persons that  
11 carry openly don't know how to properly handle their  
12 firearm in public?

13 A. I'm not sure how to tactfully word this, but  
14 I have concerns, and I don't mean just the public, I  
15 mean the police and the military. I have concerns  
16 about the quality and quantity of training available  
17 to the human race in general.

18 I'm currently in a bit of a dispute with our  
19 state academy over what I believe is not -- the  
20 training they're offering could be better, I'll just  
21 say that. Do I worry about other people carrying  
22 guns? I've been around other people carrying guns my  
23 entire life, so not that much.

24 Q. You have already responded in part to this,  
25 but would you agree that a factor that affects

1 whether a person uses a firearm safely is their  
2 training?

3 A. Probably, yeah, yeah, I'd say that. Just  
4 like anything else, I mean, if you were to -- if  
5 you've never used a chainsaw before and you go pick  
6 one up and start it up, you know, that might not be  
7 the safest way to do business.

8 Q. Would you agree that a factor that affects  
9 whether a person uses a firearm safely is their  
10 ability to deescalate a situation?

11 MS. BELLANTONI: Objection.

12 You can answer.

13 THE WITNESS: I don't know that I'd agree  
14 per se with that. Deescalation is a two-way  
15 communication process, and the other person has a say  
16 in what you are doing. We have to deal with that in  
17 depth right now in law enforcement, "deescalation"  
18 has been a whole big ugly buzz word, but let's say I  
19 have somebody in a state of excited delirium or very  
20 high on drugs. You know, I can't communicate or  
21 deescalate with another person who isn't -- doesn't  
22 even realize I'm on the same planet with them.

23 I've had to deal with people who are -- you  
24 know, you try verbal deescalation, and you realize  
25 you're dealing with somebody who's profoundly



1 paranoid schizophrenic on a psychotic break, can't  
2 really talk to that person, so the onus, the -- you  
3 know, the weight of the deescalation on the person  
4 carrying the gun, I think, is only -- you can only do  
5 so much.

6 BY MR. WISE:

7 Q. Are there certain situations, though, when  
8 the ability to deescalate a situation allows a person  
9 to carry a firearm more safely?

10 MS. BELLANTONI: Objection.

11 You can answer.

12 THE WITNESS: So I would argue that in some  
13 scenarios, like I was in a case where I was off duty,  
14 and I was with my girlfriend, we missed the last  
15 Metro, we missed the last subway back to our hotel,  
16 had to walk back in the dark, got confronted for what  
17 would have been a street robbery by three dudes who  
18 were all my size, so that's a fight I cannot win,  
19 can't fight three guys empty-handed.

20 I ended up pulling a snub nose revolver on  
21 them, and a combination of having a gun and then  
22 verbal commands was what allowed me to deescalate  
23 that scenario and kept it from turning into -- either  
24 into a robbery where I got beat down or a situation  
25 where I had to shoot one or more of them.

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1           So I would say with a gun, that the use of  
2           the gun can be part -- or the availability of the gun  
3           can be in fact part of the deescalation process  
4           where, if you have a criminal, they realize that you  
5           have the capability to defeat their means of  
6           assaulting you, and that becomes part of the  
7           deescalation process whereas if you did not have that  
8           with you, they would go ahead and carry on.

9           BY MR. WISE:

10          Q.     And so in that situation, your ability to  
11          deescalate the situation prevented you from having to  
12          fire your gun, for example?

13          A.     Well, in that case, the display of the gun  
14          and then the verbal -- you know, my commands to them  
15          to stop what they were doing was what allowed me --  
16          those in concert was what allowed me to keep that  
17          from turning into either a beat-down on my part or a  
18          shooting on their part.

19          Q.     Let me just circle back again and just make  
20          sure I'm understanding correctly.

21          A.     Okay.

22          Q.     So are there any situations where a person's  
23          ability to deescalate a situation allows them to  
24          carry a firearm more safely?

25          MS. BELLANTONI: I just want to just

1 clarify, I should have a couple of questions ago, but  
2 when we talk about deescalation, are we talking in  
3 terms of a uniformed police officer attempting a  
4 deescalation or civilian?

5 MR. WISE: Yeah. I was talking about a  
6 civilian. Thanks for clarifying.

7 MS. BELLANTONI: I object.

8 But you can go ahead and answer.

9 THE WITNESS: I'm having trouble thinking of  
10 a scenario where that would fit.

11 BY MR. WISE:

12 Q. Okay. Do you agree that a factor that  
13 affects whether a person uses a firearm safely is  
14 their decision making process under stress?

15 A. I could agree with that.

16 Q. Would you agree that a factor that affects  
17 whether a person uses a firearm safely is their  
18 marksmanship?

19 MS. BELLANTONI: I'm going to object to  
20 that, and I'm going to ask for clarification on  
21 distance, if you can provide more of a scenario-based  
22 circumstance because there's a lot of factors that go  
23 into that decision.

24 THE WITNESS: May I interject on that? So  
25 my answer was going to be not as much as people would

1 suspect. So in an overall view of most nonpolice  
2 defensive shootings, if you take anecdotal databases  
3 like the one that -- the ones we get off of the news  
4 that go into the NRA magazine that's out every  
5 month -- and they have an article called The Armed  
6 Citizen.

7 The vast majority of the people involved in  
8 these cases where you see, like, "78-year-old Grandma  
9 Shoots Burglar Used Alleging .22 rifle." Vast  
10 majority of those people have very little or no  
11 formal training.

12 And then the marksmanship issue that we see  
13 in a -- on the street -- I'm not talking about a home  
14 defense scenario, although that could -- it's pretty  
15 similar, but in a street, what I would consider a  
16 civilian street encounter or street crime encounter,  
17 let's say a mugging or carjacking or something like  
18 that, these encounters tend to be incredibly close.

19 The vast majority of bad guys, when they go  
20 to do things like mug you or car jack you, things  
21 like that, are within touching distance of the  
22 victim. Even in police encounters, we see that the  
23 vast majority of police officers, when they're  
24 feloniously killed with a firearm or killed within  
25 three feet to three yards of the suspect, so if we

1 look at the -- there's an old saying in pistol fights  
2 that it's three yards, three shots, three seconds,  
3 and if you look at a lot of these encounters, they  
4 fit right into what we're talking about, is the  
5 marksmanship issue actually isn't that tough.

6 BY MR. WISE:

7 Q. Would you agree that a factor that affects  
8 whether a civilian uses a firearm safely is their  
9 mental state?

10 MS. BELLANTONI: Objection.

11 You can answer.

12 THE WITNESS: So I'm going to assume -- by  
13 "mental state," do you mean their mental health or,  
14 like, their emotional state at the moment, or what do  
15 we mean?

16 BY MR. WISE:

17 Q. Sure. Let's just take that one-by-one then.  
18 Their mental health.

19 A. Well, I would hope that people who have  
20 significant mental health issues would not be running  
21 around with a gun. We're kind of supposed to screen  
22 for that. But then as far as their current mental  
23 state, having been in that scenario, being criminally  
24 victimized is obviously a very exciting, and, you  
25 know, it's an event in which it's going to be

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1 emotionally charged, so I don't think that you can  
2 put somebody in a scenario like that and not have a  
3 significant emotional response out of just human  
4 beings in general.

5 Q. Let's assume that they're not being  
6 victimized by just their carrying a firearm, okay,  
7 and so my question is would you agree that a factor  
8 that affects whether a person uses a firearm safely  
9 is, let's just say, their emotional state?

10 MS. BELLANTONI: Objection. So using a  
11 firearm, but they're not being victimized, so if I  
12 could just get more clarity on that question.

13 BY MR. WISE:

14 Q. Let's say that -- I'm sorry. I should just  
15 say carrying a firearm.

16 A. I'm not sure exactly how to quantify that  
17 one. I think like a lot of things that human beings  
18 do like driving cars, you should probably --  
19 utilizing chainsaws, you should probably be a mature  
20 adult if you will. There's a reason why we, you  
21 know, don't give 13-year-olds driver's licenses and  
22 things like that. So that, I guess, emotional  
23 stability or emotional maturity kind of comes with  
24 that, so I guess I'm kind of agreeing with you.

25 Q. Would you agree that a factor that affects

1 whether a civilian uses a firearm safely is whether  
2 they're intoxicated?

3 A. Certainly.

4 Q. Would you agree that in general, an off duty  
5 officer is more likely to be prepared to use a  
6 firearm safely than the average civilian?

7 MS. BELLANTONI: Objection.

8 You can answer.

9 THE WITNESS: I'm on the fence on that one.  
10 I'm really on the fence on that one. It's hard for  
11 me to mentally average law enforcement officers.  
12 It's also hard for me to mentally average non- -- I  
13 know -- I can think of quite a few people who are not  
14 cops that I would rather have backing me up on  
15 something bad happening than some of the cops that I  
16 know, and, of course, the flip side is also there, so  
17 that would be one I would have to ponder. I really  
18 can't give you an answer on that one.

19 BY MR. WISE:

20 Q. Would you agree that in general, an  
21 undercover officer is more likely to be prepared to  
22 use a firearm safely than the average person?

23 MS. BELLANTONI: Objection.

24 You can answer.

25 THE WITNESS: I'd have to have the caveat of

1 having to know what some of their training is. Like,  
2 here in my state, unfortunately, there's no  
3 requirement for police officers to do anything but  
4 shoot the qualification course from their police duty  
5 belt, so there's no formal instruction in the police  
6 system here in my state on, like, how to carry a gun  
7 concealed or how to deploy a gun concealed.

8 Officers who are doing those things and are  
9 very competent at them are either working that  
10 problem themselves or seeking training outside of  
11 their department to get that, or they have a very  
12 progressive training department who is offering that  
13 sort of training to their people. So, again, I'm not  
14 sure I can say that I agree with that.

15 BY MR. WISE:

16 Q. Would you agree that in general, a retired  
17 officer is more likely to be prepared to use a  
18 firearm safely than the average person?

19 MS. BELLANTONI: Objection.

20 You can answer.

21 THE WITNESS: I would say that if you've got  
22 a good street cop and they've had a lot of years on  
23 the job, what they're going to be good at, because  
24 they've been in a bunch of them, is handling critical  
25 incidents, so potentially, yes.

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1 BY MR. WISE:

2 Q. Would you agree that in general, a person  
3 who a law enforcement agency has determined to have  
4 good cause to possess a firearm is more likely to be  
5 prepared to use a firearm safely than the average  
6 civilian?

7 MS. BELLANTONI: Objection.

8 You can answer.

9 THE WITNESS: So I'm assuming, like, in a,  
10 you know, show cause type of state, if -- like, in  
11 New York, I know you have to prove that you have a  
12 good reason to have a gun before they'll give you a  
13 permit or something like that, so I assume you're  
14 speaking to that type of paradigm.

15 BY MR. WISE:

16 Q. That's right.

17 A. I can't say that's the case. You know, it  
18 would entirely depend upon the criteria. You know,  
19 they could make a -- depending on the criteria, but  
20 generally I disagree with that. I know a lot of the  
21 people who get permits, and I'll pick on New York. I  
22 have a little bit of knowledge of that, particularly  
23 New York City.

24 Your cause has to do with things like, you  
25 know, you're a high end jeweler and you carry a lot

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1 of cash or you do cash transports or jewelry  
2 transports or things like that, so the official  
3 perception of your threat level wouldn't really have  
4 anything to do with your ability to respond to that.

5 Q. Do you train your clients on how to prevent  
6 their firearm from being stolen?

7 A. Yes, I do.

8 MS. BELLANTONI: Objection. Can I just get  
9 more clarification on what you mean by "stolen"?  
10 Like, from the person? From their home?

11 BY MR. WISE:

12 Q. Stolen from their person, from their home,  
13 their car, wherever.

14 A. Actually, all of the above. I talk about --  
15 let's say you have a concealed carry, but you go to  
16 some someplace that has one of those no gun signs.  
17 Like, here in my state, you can lock your gun up in  
18 your car legally in the parking lot of that property,  
19 but, you know, you're not supposed to go -- like,  
20 let's say it's a department store. You're not  
21 supposed to go in the store with a gun, but you can  
22 lock your gun up legally on the parking lot, so they  
23 clarified that in the law.

24 You don't just want to leave your gun in  
25 someplace like the glove box, that's ill-advised, so

1 I advise things on like how to secure a gun in a car,  
2 how to secure a gun in the home, how to avoid having,  
3 like, your toddler get ahold of your gun or something  
4 like that, but then also one of my specialties is  
5 weapon retention and disarming skills. I've been  
6 teaching that for a very long time. So how to keep  
7 your gun from being taken away from you.

8 Q. Why is it important for your clients not to  
9 allow their firearms to be stolen?

10 A. You don't want the bad guys to have your  
11 guns, or, you know, something like leaving it out  
12 where a toddler can get it or, you know, whatever the  
13 case may be. I can point to specific cases. One  
14 of -- the last officer that was killed on my old job  
15 was a friend of mine, and he was shot in a gun stolen  
16 out of a home burglary. So somebody had an unsecured  
17 loaded pistol laying around their house, and he was  
18 shot dead with it during the course of a speeding --  
19 a car stopped for speeding.

20 So those are the type of things that, you  
21 know, I never -- I've worked a couple of cases where  
22 small children were shot over playing with guns, and  
23 those are pictures that are stuck in my head that are  
24 never going to go away, so I counsel people on the  
25 importance of things like safe storage but then also,

1 you know, if you have the gun on your person, how to  
2 go about safely doing that as well.

3 Q. Have you ever published any articles on  
4 topics related to the public carry of firearms?

5 A. I have.

6 Q. What articles did you publish?

7 A. It's been a few. So I've written for Recoil  
8 Magazine which is a paper, you know, type magazine.  
9 I have written for the Tactical Wire, which is a  
10 strictly online type of thing, and I have talked  
11 about, like, carriage of smaller guns, utilizing  
12 revolvers, things like that. So, yeah, I've dabbled  
13 in that.

14 Q. Were any of these articles based on  
15 independent research that you conducted?

16 A. I can't say formal research. Like, I did  
17 not do a scholarly-type paper or something like that,  
18 no, sir. It would be more things that I've read,  
19 things that I've studied up on and then personal  
20 observation and experience through my travels.

21 Q. Do you have any academic background in  
22 conducting research?

23 A. Minimal.

24 Q. Besides what we've discussed today, do you  
25 have any other experience that informs your views on

1 the public carry of firearms?

2 A. I have quite a bit of experience with being  
3 around it. My state, of course, with Kansas, if you  
4 go back, we had Wyatt Earp, Bat Masterson, things  
5 like that, we had the Frontier Days, the cattle  
6 drives, Oregon-California Trail, things like that  
7 going on. I'm a big history buff.

8 And then if you go back to when I started my  
9 time in law enforcement, there was no way for anyone  
10 besides a commissioned law enforcement officer to  
11 carry a gun in the State of Kansas outside of, like,  
12 hunt -- they had an exception for hunting and  
13 fishing, you could carry a concealed handgun, and,  
14 obviously, if you're hunting, you could do things  
15 like carry your shotgun or your deer rifle, things  
16 like that, but that's -- it was allowed -- the state  
17 allowed individual cities to ban carry of firearms,  
18 things like that.

19 It was legal to have a loaded gun in your  
20 car but not on your person, weirdly enough, but then  
21 a lot of the cities banned loaded guns in cars. So  
22 that's where I started my time in law enforcement,  
23 and then since then, there's been decisions, legal  
24 precedents, things like that, particularly after  
25 Heller, the Kansas attorney general who came down

1 with an opinion that certain Kansas laws were  
2 unconstitutional. Some of those laws were changed.

3 There were several court cases where cities  
4 tried to go back to the old way of doing business,  
5 and they were disallowed from that, so in my time as  
6 a cop, we went from nobody could carry, and including  
7 retired law enforcement officers could not carry a  
8 gun. The only people who could carry was on duty  
9 cops or off duty cops but only with the permission of  
10 their chief law enforcement officer, so some off duty  
11 cops couldn't carry.

12 And then we went to a rather strict conceal  
13 carry permit system, then a much looser conceal carry  
14 permit system and then an attorney general's opinion  
15 that allowed what people would call the  
16 constitutional carry, if you will, where you could  
17 carry concealed or open carry without a license, and  
18 there were several lawsuits over -- like, I know  
19 Overland Park, Kansas tried to ban open carry, and  
20 the attorney general's office took them to court over  
21 that or was at least part of those proceedings.

22 And so in my state, it is legal to carry  
23 concealed, it is legal to carry unconcealed, it is  
24 legal to -- you can get a conceal carry permit which  
25 a lot of people do if that allows reciprocity. Like,

1 if you have a Kansas permit, you can carry in  
2 Missouri, Nebraska, Oklahoma, Colorado, Texas.  
3 There's a litany of places you could carry.

4 So some -- a lot of people will get the  
5 permit because, you know, you can travel, but also a  
6 lot of people don't. So it's very common for me to  
7 deal with nonpolice firearms carriers or to see  
8 people carrying a gun in public.

9 Q. Over the course of your career, have you  
10 served in any law enforcement command positions?

11 A. Yes, sir. I was a lieutenant shift  
12 commander for my department. At one point, we had a  
13 hiring freeze, and we had a promotion freeze, so I  
14 was simultaneously the first shift and second shift  
15 patrol commanders, and I was in charge of the  
16 motorcycle unit and the school resource officers.

17 Q. And what department were you working for?  
18 What timeframe?

19 A. That was Topeka, Kansas PD, and that would  
20 have been approximately -- I'm doing the math here.  
21 So I retired in December of 2014, and that would have  
22 been about -- I believe I got promoted in 2008 to  
23 lieutenant. I'm going to have to look that one up.  
24 It might have been '06, but it could have been '08,  
25 but I did approximately right about -- would be about

1 eight years, just under eight years as a lieutenant.

2 And then my current job, I'm the captain for  
3 the Airport Police and Fire here in the south part of  
4 Topeka at the airport, and so I'm in charge of all  
5 three of the lieutenants. I have all three of the  
6 shifts that we have. We have 24-hour shifts, so we  
7 have an A, B and C shift, I'm in charge of them, and  
8 then I'm also in charge of all of our firearms and  
9 other police training. We have another captain  
10 that's in charge of all the fire part of the  
11 organization.

12 Q. How long have you served in that role as  
13 captain?

14 A. About a year.

15 Q. Have you ever served as a deputy chief of  
16 police?

17 A. No, sir.

18 Q. Have you ever served as a chief of police?

19 A. No, sir.

20 Q. And I should go to the sheriff's department  
21 too. Have you served in any similar capacity,  
22 sheriff?

23 A. No. Just as a deputy.

24 Q. Do you have any background in public policy?

25 A. I have a background in police policy. I



1 have written a number of policy papers, what you  
2 would think of as general orders, things like that,  
3 but if you mean a larger -- like, the grandest thing  
4 I have done is written a municipal ordinance as far  
5 as, like, an overarching public policy.

6 Q. What was that municipal ordinance?

7 A. It was a Topeka city code on -- had to do  
8 with protests, and it bans masks and body armor while  
9 you're in the middle of a protest. I could pull up  
10 the number for you if you ever want to look at it.

11 Q. That's okay for now. Any other work that  
12 you've done creating a municipal ordinance or similar  
13 work?

14 A. Not on that. Mainly I -- I was the author  
15 of some of the general orders that we had at Topeka  
16 Police Department. My current department, I have  
17 written general orders, use of force policy, things  
18 like that. I have assisted in policy writing for the  
19 IACP.

20 Like, I was part of the model policy for  
21 response to excited delirium for International  
22 Association for Chiefs of Police organization. So  
23 the vast majority of the stuff I've done in that  
24 regard has all been cop stuff.

25 Q. Have you ever worked with a policy maker in

1 the creation of public safety policy?

2 A. If you mean like state laws or something  
3 like that, not more than lobbying or that sort of  
4 thing, no.

5 Q. Have you ever worked with a community  
6 stakeholder in the creation of public safety policy?

7 A. On the police level, yes, we had input.  
8 Like, things like our chase policy and our police use  
9 of force, things like that, we did take -- that  
10 wasn't all in-house. There was other people involved  
11 in that, mayor's office, city council members, other  
12 community -- I'll use the "stakeholder" word.

13 Q. Any other examples besides what you've just  
14 reviewed?

15 A. No, sir, none that I can think of.

16 Q. Have you ever worked with a researcher in  
17 the creation of public safety policy?

18 A. No, not really, no.

19 Q. Okay. Let's turn to your opinions. What  
20 field would you consider yourself an expert in?

21 MS. BELLANTONI: Objection.

22 You can answer.

23 THE WITNESS: Personally, I think the term  
24 "expert" is overused, but the courts have said I'm an  
25 expert in police use of force, use of force decision

1 making, firearms, firearms training and ballistics,  
2 terminal ballistics, firearms identification, police  
3 use of force other than firearms, Pepper Spray,  
4 taser, arrest and control tactics. I've been  
5 utilized as an expert on police response tactics. At  
6 any rate, those are the things that I've been  
7 court-recognized as an expert.

8 BY MR. WISE:

9 Q. What is the basis for your opinions in this  
10 case?

11 A. Basically the totality of my training and  
12 experience as a police officer.

13 Q. Okay. Let's look at page seven of your  
14 report.

15 A. I have to find my glasses for this one.

16 Q. Can you see the screen okay?

17 A. Yes, sir.

18 Q. Okay. Great.

19 A. I can now.

20 Q. Let's look at paragraph 20. You state "The  
21 implementation of laws that allow open carry in  
22 public does not have a negative impact on public  
23 safety. The act itself, a lawful person openly  
24 carrying a firearm in public does not have any  
25 negative or detrimental effect on public safety, does

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1 not itself create a safety hazard, and is not the  
2 cause of accidental or mistake-of-fact shootings of  
3 civilians by police officers." Is this your opinion?

4 A. Yes.

5 Q. Okay. Would you explain what you mean?

6 A. So just the mere fact that somebody's  
7 carrying a gun -- and I'll go with a holstered  
8 handgun, let's say, in and of itself. It just is  
9 what it is. It isn't a negative or doesn't have an  
10 effect on public safety.

11 The idea that the police would show up and  
12 be, "Oh, my God, that guy's got a gun, we better  
13 shoot him" borders on the ridiculous in my mind, that  
14 -- and a bunch of that is personal observation.

15 Both here in Kansas and part of the business  
16 that I do both as a police trainer and in my own  
17 business as a -- we'll just say civilian firearm  
18 trainer, is travelling to other states. You know,  
19 just this year, I've been to -- I've conducted  
20 training or been at training in Texas, Oklahoma,  
21 Missouri, Utah, Wyoming. I'm leaving something out.

22 But at any rate, I see -- I go to a lot of  
23 places, see a lot of stuff, and this is something  
24 that -- part of the reason in conversation when I  
25 talk to Ms. Bellantoni, you know, what's my personal

1 observations, like I guarantee you I can walk out of  
2 here now and go to someplace like Walmart here in my  
3 town and find somebody carrying a pistol in a holster  
4 visible on their belt or, quite frankly, carrying  
5 concealed poorly where everybody can tell that  
6 they're carrying a pistol, but, you know, you can see  
7 that there's an obvious bulge and things like that.

8 I can find somebody -- I can walk out of  
9 here and find somebody in 15 or 20 minutes, and it's  
10 just -- it just is what it is. It's like saying,  
11 "It's a sunny day out, that guy's carrying a gun."  
12 It's not a positive, it's not a negative, it just is.

13 I haven't noted, in observation in my time  
14 as a cop in dealing with people on the street, that  
15 open carry does anything that doesn't bring any  
16 detriment to the public safety realm.

17 Q. Besides your personal observations, what  
18 else did you rely on to reach this opinion?

19 A. Primarily, that was it. One of my big  
20 things that I do is every chance that I get, I delve  
21 into anything that involves the police. A lot of  
22 things that are out there in the police world get  
23 write-ups. There are famous things that we have to  
24 look at.

25 Obviously, you know, the George Floyd thing

1 last year, that was a botched arrest and control  
2 scenario, and that's right in the middle of my  
3 bailiwick on, you know, teaching cops how to avoid  
4 things like in custody deaths; and then, you know,  
5 less well known but pretty famous, the bad shooting  
6 that turned into a riot that came out of Atlanta PD,  
7 which was, you know, basically another arrest and  
8 control scenario with a taser.

9 So I try to stay on top of those trends  
10 absolutely as much as I can, and I also pay attention  
11 to anything in the police publications or any of the  
12 newsletters, any of the stuff that comes through my  
13 email. My email lists are fairly extensive.

14 So I'm always looking for after actions on  
15 incidents as much as possible, both to support my  
16 business and helping, you know, regular people not be  
17 the victims of crime, look for criminal, crime  
18 trends, look for trends in law enforcement. We know  
19 in the past couple of years, ambushes has been a  
20 thing that has been up, so trying to stay on top of  
21 that sort of thing as well.

22 Q. Did you rely on any research to support your  
23 opinion?

24 MS. BELLANTONI: Other than what he  
25 testified to?

1 THE WITNESS: I can't point you to a  
2 specific paper or anything like that, no, sir.

3 BY MR. WISE:

4 Q. You continue on page eight, paragraph 21 --

5 A. Uh-huh.

6 Q. -- stating "The lack of proper police  
7 training creates or can lead to a public safety  
8 hazard and the accidental shooting of civilians,  
9 whether unarmed, carrying concealed, or carrying  
10 exposed open carry." Would you explain what you  
11 mean?

12 A. So if you don't have -- you know, and this  
13 is something that is deep in the training that good  
14 law enforcement firearms instructors find themselves  
15 in. If we look at some of the court cases that are  
16 out there like, you know, the places lost big  
17 lawsuits, Zuchel v. Denver is an example that is  
18 glaring in the police world that is brought up.

19 If you look at Popow v. Margate and we look  
20 at what do the courts say valid police training  
21 should look like versus what had happened -- you  
22 know, if you look at the Popow case, they were  
23 shooting at a man that was running, and gentleman  
24 came out on his porch to see what was going on, and  
25 then as the suspect was running past the gentleman on

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1 his porch, he got shot by the police because he was  
2 downrange of where the bad guy was.

3 So that would be a glaring historical  
4 example of incorrect or improper or nonexistent  
5 police training contributing to a public safety  
6 hazard that, quite frankly, didn't exist before the  
7 police showed up. So avoiding mistake-of-fact  
8 shootings is a big deal in the police world and the  
9 training that is done right.

10 Q. Is it your opinion that proper law  
11 enforcement training is the most important factor to  
12 prevent civilian shootings by law enforcement  
13 officers?

14 A. If you mean mistake-of-fact or not shooting,  
15 shooting the wrong people, then I would say yes.

16 Q. Incidentally, is that one of the reasons you  
17 founded your company, Agile Tactical?

18 A. So I founded the company because I was  
19 getting -- I had been a police trainer for so long,  
20 and then that was mainly what I did, and as I reached  
21 retirement, I had so many people asking me outside of  
22 the police world for training, I thought, well, I  
23 should kind of formalize this thing.

24 Q. Do you believe that a person who is carrying  
25 a firearm in public, a civilian who's carrying a



1 firearm in public is more likely, all things being  
2 equal, to be shot than a civilian is who is unarmed?

3 MS. BELLANTONI: Objection.

4 You can answer if you can.

5 THE WITNESS: So historically, if you look  
6 at people who are big crime victims according to --  
7 and this is according to national stats, which, of  
8 course, fluctuate every -- year to year, things like  
9 that, but if you look at people who resist things  
10 like robberies, that sort of thing, the safest way to  
11 do that is to utilize a firearm. Statistically,  
12 that's the case, and that's been the case for quite  
13 some time.

14 So I'm not exactly sure how to quantify your  
15 question on are they more likely to be shot or not be  
16 shot, but I think it's pretty clear statistically if  
17 they resist being a crime victim through the use of a  
18 firearm, then they're less likely to suffer any  
19 injury at all. That's been the running statistic  
20 coming from the feds every year.

21 BY MR. WISE:

22 Q. And when you're referring to the statistics,  
23 what in particular are you referring to?

24 A. The national -- so I'm going to look up the  
25 formal name of that so I don't -- it's Bureau of

1 Justice Statistics. I don't want to misstate the  
2 name of what I'm talking about. I'm firing up my  
3 other magic Google box.

4 Q. If that would refresh your recollection, go  
5 ahead.

6 A. Okay. So the formal name for that page is  
7 Bureau of Justice Statistics. I was having a little  
8 Alzheimer's on the name of that one.

9 Q. Thank you. Okay. Do you believe that a  
10 civilian who's carrying a firearm in public is more  
11 likely, all things being equal, to be shot by a law  
12 enforcement officer than a person or a civilian who's  
13 unarmed?

14 MS. BELLANTONI: Objection.

15 You can answer if you can.

16 THE WITNESS: I don't because a lot of the  
17 mistake-of-fact shootings, particularly the ones that  
18 are very high profile, we can point to demonstrate  
19 they did not have a firearm on their person, and they  
20 were shot in a mistake-of-fact shooting because they  
21 had something as innocuous as a cellphone or  
22 something else.

23 If you look at the famous case out of NYPD,  
24 I can't pronounce the gentleman's name or -- well,  
25 it's something like Diallo, where their street crimes

1 unit fired the -- you know, the famous 47 rounds that  
2 Bruce Springsteen spoke of, he had a wallet in his  
3 hand when he was shot.

4 BY MR. WISE:

5 Q. I just want to make sure I'm understanding  
6 you because you mentioned a few examples. Are you  
7 talking in general or just examples that come to  
8 mind? And what I'm trying to --

9 A. I --

10 Q. Yeah.

11 A. I don't believe that you would be more  
12 likely to be mistakenly shot by the police, and I'm  
13 assuming someone who is not a criminal actor, but,  
14 you know, just an average Joe, I don't think you're  
15 more likely to be shot by the police whether you have  
16 a gun or you don't have a gun.

17 Q. Let's look at paragraph 24, still on  
18 page eight.

19 A. Okay.

20 Q. You state "Mr. Raney's opinions are based on  
21 speculation and a generalized fear that law-abiding  
22 individuals, simply by the act of carrying their  
23 firearm exposed, will cause panic among police  
24 officers and the public, waste political" -- excuse  
25 me -- "waste police resources and ultimately lead to

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1 police officers shooting civilians carrying exposed."

2 A. Okay.

3 Q. Is that your opinion?

4 A. Yes.

5 Q. Okay. Do you understand Mr. Raney to have  
6 the opinion that police officers will panic when  
7 responding to a call about a person who is carrying a  
8 firearm openly?

9 A. What he describes in his declaration sure  
10 appears to color it that way.

11 Q. Do you understand Mr. Raney to have the  
12 opinion that police officers are likely to shoot a  
13 person simply because they are carrying a firearm  
14 openly?

15 A. He also seemed to hint at that in his  
16 opinion.

17 Q. Do you understand those things to be his  
18 opinion, or are you saying that --

19 A. That's what I believe I read from his  
20 opinion.

21 Q. Okay. Let's look at page 26. We're still  
22 on page eight. I'm sorry. Paragraph 26. You state  
23 that "When open carry without a permit became allowed  
24 in Kansas, no instant mayhem was created"; is that  
25 right?

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1 A. Yes.

2 Q. Okay. Do you understand Mr. Raney to have  
3 the opinion that instant mayhem will result if open  
4 carry were allowed in California?

5 A. Without rereading his opinion on the spot,  
6 I'm not sure that I would -- I could say he said  
7 those exact words, but his opinion that I read, the  
8 impression of his opinion that I got from him was  
9 people couldn't open carry because it would make  
10 things much more chaotic, you know, the police would  
11 have all kinds of problems differentiating good guys  
12 from bad guys for, you know, cops and robbers, from  
13 want of a better term, and that it would cause -- you  
14 know, he'd almost colored it as though it would cause  
15 some sort of mass public hysteria.

16 Q. Let's look at page nine, paragraph 28. You  
17 state that "When open carry became allowed in Kansas,  
18 our police officers were not spontaneously shooting  
19 members of the public they observed carrying a  
20 firearm exposed on their body in public;" is that  
21 right?

22 A. Was that a -- I'm assuming that was the  
23 upper part. You said -- 28 now talks about banning  
24 open carry.

25 Q. Yeah. Let me see here. One second.

1 A. I think you were on the previous --

2 Q. Oh, sorry. I meant paragraph 26 on  
3 page eight still.

4 A. Sure.

5 Q. Is that your opinion in paragraph 26?

6 A. That police officers were not shooting  
7 members of the public?

8 Q. Correct.

9 A. Absolutely.

10 Q. Do you understand Mr. Raney had the opinion  
11 that if open carry were allowed in California, police  
12 officers would spontaneously shoot members of the  
13 public who were openly carrying firearms?

14 A. His opinion read to me as though he believed  
15 that open carry could not be allowed in the State of  
16 California because it would pose too great of risk of  
17 police officers shooting the wrong people merely for  
18 carrying a gun in the open. That is what I took from  
19 part of his opinion.

20 Q. Okay. Now let's go to paragraph 28.

21 A. Okay.

22 Q. You state "Banning open carry does not  
23 greatly enhance public safety, nor does it cure  
24 deficiencies in departmental training of police  
25 officers." Would you explain what you mean?

1           A.     Well, as I said, in my experience in the  
2 world, I went from a place where nobody could carry  
3 except the cops legally. A lot of people did it, but  
4 nobody could legally carry a gun beside the cops, and  
5 you certainly couldn't run around open carrying to a  
6 world where you could get a permit to a world to  
7 where you could open carry or conceal carry as you  
8 see fit.

9                     During that period of time, we actually had  
10 a great -- quite a bit of a -- and I cannot point to  
11 a statistical cause and effect relationship, but I  
12 did note that locally, you know, when I first started  
13 in the police world with things like gang violence  
14 and that sort of thing, our crime was significant.

15                     There was a port in my career where I looked  
16 up crime stats for the United States early in the  
17 '90s, and that's when things were still banned, and  
18 Topeka had a per capita crime rate greater than  
19 Los Angeles, and now we come to a point where you can  
20 carry a gun as you see fit, if you want to be open  
21 carry or conceal carry without a permit, or you can  
22 get a permit, and there was -- you know, that  
23 coincided with no uptick in crime.

24                     In fact, for the longest time, we had a  
25 Leave It to Beaver era level crime where it was so --

1 crime had dropped so much, everybody kind of forgot  
2 what that was like, but there was certainly no uptick  
3 in things like police shootings or, you know, other  
4 crimes relevant to -- I see -- and I guess I'm -- I  
5 don't know if I'm speaking out of turn here because  
6 it's more of a larger than this case, but there's  
7 people who push the opinion that if you allow people  
8 to carry guns, they're just going to run around  
9 killing people over things like parking lot disputes  
10 or, you know, "You took my parking space" or  
11 something like that. We just didn't see it. We  
12 didn't see any of that.

13 Q. When you state that "Banning open carry does  
14 not cure deficiencies in law enforcement training,"  
15 are you emphasizing, as we've discussed before, the  
16 critical importance of training in public safety?

17 A. Yes, and whether or not you're going to have  
18 mistake-of-fact shootings, things like that.

19 Q. Setting aside training for the moment, does  
20 banning open carry enhance public safety at least to  
21 some extent?

22 A. I don't believe so. I don't believe so.

23 Q. When you state that banning open carry does  
24 not, quote, "greatly enhance public safety," do you  
25 mean that banning open carry improves public safety



1 to some degree?

2 A. I don't believe it does. I don't believe it  
3 does. I see no -- I have personally noticed no cause  
4 and effect relationship. I have noticed no  
5 difference in police-citizen encounters.

6 One could argue that there's a possibility,  
7 although it's always -- it's impossible to measure in  
8 negative. Have people with an open carry firearm not  
9 been targeted for a crime because a criminal could  
10 see that that person is armed? We won't know. Those  
11 things are nebulous.

12 So I can't point to an exact cause and  
13 effect relationship or put statistics on that, but  
14 what I haven't noticed is we had open carry, and  
15 then, oh, my God, all of this bad stuff started  
16 happening. That was clearly not the case and hasn't  
17 been the case, and it hasn't been the case for years  
18 now. I know I'm kind of generalizing on that.

19 Q. I appreciate that. And the reason I'm  
20 asking is I'm just looking at your language, your  
21 report that says "Banning open carry does not greatly  
22 enhance public safety." It doesn't say, for example,  
23 banning open carry does not enhance public safety.  
24 That's why I was asking whether it enhances public  
25 safety to some extent.

1           A.    I totally get where you're coming from, and  
2           I don't believe it does either way, either one of  
3           those ways of wording that sentence.

4           Q.    Let's look at page nine, paragraph 31.

5                   (Discussion off the record)

6                   (Recess)

7           BY MR. WISE:

8           Q.    Okay.  Let's go back on the record and look  
9           at page nine, paragraph 31.  You observed that Kim  
10          Raney's report states that when an officer comes upon  
11          a scene where a person is carrying openly, the  
12          officer must rapidly assess a person's behavior,  
13          paragraph 22?

14          A.    Yes.

15          Q.    Split-second decisions sometimes have to be  
16          made, paragraph 24, where the results could be  
17          deadly, paragraph 22; is that right?

18          A.    Yes.

19                   MS. BELLANTONI:  I'm going to ask that you  
20          read that back.  Are you saying that that's what  
21          Mr. Haggard is saying or that's what he's referring  
22          to Mr. Raney's declaration?

23                   MR. WISE:  Yeah.

24          BY MR. WISE:

25          Q.    You're referring to Mr. Raney's declaration;

1 correct?

2 A. Yes.

3 Q. Okay. Do you understand Mr. Raney to have  
4 the opinion that it is uncommon in police work for an  
5 officer to have to rapidly assess a person's  
6 behavior?

7 A. I can't say that exactly, but it appears as  
8 though he tries to paint a picture that if you don't  
9 have open carry, then you won't have all of that  
10 going on.

11 Q. Do you understand Mr. Raney to have the  
12 opinion that it is uncommon in police work for an  
13 officer to have to make a split-second decision where  
14 the results could be deadly?

15 A. I can't say that he would have that opinion.  
16 Again, he appears to color his opinion as though if  
17 we were to eliminate open carry, that that would  
18 somehow solve that problem.

19 Q. Do you understand Mr. Raney to have the  
20 opinion that allowing open carry would increase the  
21 circumstances in which an officer would have to  
22 rapidly assess a person's behavior and make a  
23 split-second decision where the results could be  
24 deadly?

25 A. He appears to have that opinion to me.

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1 That's what I gather from reading his opinion.

2 Q. Do you agree that an officer that comes upon  
3 a scene where a civilian is carrying openly is more  
4 likely to have to rapidly assess that person's  
5 behavior?

6 MS. BELLANTONI: Objection.

7 You can answer.

8 THE WITNESS: I do not.

9 BY MR. WISE:

10 Q. Why not?

11 A. So something that is standard practice in  
12 the police world and has been by progressive  
13 departments who train hard since, if we get into the  
14 history of very tragic incidents, late '60s, early  
15 '70s, events such as the Newhall massacre there in  
16 California, the incidents that were written up in the  
17 famous book "Officer Down, Code 3," what we look at  
18 is that officers should be assessing, "Just because I  
19 can't see a gun doesn't mean somebody should have  
20 one."

21 Standard officer safety practice is if you  
22 pull somebody over for speeding or if you pull  
23 somebody -- you make a stop for whatever, the only  
24 safe assumption is to assume that a person is armed  
25 and that you comport yourself and your tactics and

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1 your approach and things like that with the  
2 assumption that a person could pull out a concealed  
3 weapon and utilize that weapon, and then, you know,  
4 if you run with that assumption, your tactics, your  
5 decision making, things like that, that it keeps you  
6 in the best frame of mind for good officer safety.

7 So in my mind, if we think that we're  
8 solving a problem by banning open carry -- so let's  
9 say I could push a magic button and there was no open  
10 carry. I've never had to deal with that problem.  
11 That doesn't solve the problem that we see in police  
12 work.

13 Q. Let's go to your example of the routine  
14 traffic stop. Would the presence of a firearm  
15 heighten the danger for the officer?

16 MS. BELLANTONI: Objection.

17 Can I get more -- can you be more specific  
18 in that scenario?

19 MR. WISE: I can ask the question again.

20 BY MR. WISE:

21 Q. In a routine traffic stop, would the  
22 presence of a firearm by the civilian in a car  
23 heighten the danger for the officer?

24 MS. BELLANTONI: Objection.

25 You can answer it if you can.

1 THE WITNESS: It would depend on that  
2 person's intent. I can tell you personally I've  
3 never really had to worry about the guns that I could  
4 see. I've walked up on car stops where I've had  
5 people with shotguns and rifles in the back window of  
6 a pickup truck, guns in consoles, guns laying on  
7 seats, I've dealt with people who are wearing  
8 holstered guns on their hip, that sort of thing, and,  
9 quite frankly, the guns that I can see, the weapons  
10 that I can see, I was never very worried about.

11 I was worried about the behavior of the  
12 people who were, you know, literally being furtive,  
13 who were trying to conceal what they were up to. It  
14 was more behavior-focused, you know, "Is this person  
15 in the middle of a crime and, thus, might try to take  
16 me out because they want to make an escape and  
17 utilize a weapon as part of that escape process?"

18 And literally the guns that I could see, I  
19 was never worried about. It's what you don't know  
20 that is a problem.

21 BY MR. WISE:

22 Q. In a routine traffic stop, would the  
23 presence of a firearm in the car make it more likely  
24 that an officer would have to make a split-second  
25 decision where the results could be deadly?

1 MS. BELLANTONI: Objection.

2 You can answer it if you can.

3 THE WITNESS: Again, I don't believe so. I  
4 have seen people do things like reach under the seat  
5 of the car, reach into a glove compartment, reach  
6 into a console in between the seats, bags, things  
7 like that.

8 Again, it's the things you don't know, it's  
9 the things you can't see that are the most worrisome,  
10 and that's where the split-second decision really  
11 comes into play, and then that becomes a  
12 behavioral -- reading the behavior of the person  
13 versus if they have, you know, a visible firearm or  
14 not, you know, and then it becomes reading the  
15 behavior and the scenario that you find yourself in.

16 Quite frankly, if I know -- let's say I have  
17 an actual bad guy, I know he's a bad guy, he's a  
18 suspect that we -- say we have a picture of the guy  
19 or video of the guy and I know that's the guy and I  
20 see he's got a gun on him, that's kind of a gimme on  
21 the decision making process.

22 It's when you don't know and you have to  
23 make those split second decisions because is he  
24 armed? Is he not armed? I don't know. That's where  
25 things become very worrisome.

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1 BY MR. WISE:

2 Q. Let me just drill down on that for a moment  
3 then. So what if you don't know the person's a bad  
4 guy, as you were saying, and they have a firearm?  
5 Does that affect the way that you approach that  
6 person?

7 MS. BELLANTONI: Objection.

8 You can answer if you can.

9 THE WITNESS: It --

10 MS. BELLANTONI: Can we get more clarity on  
11 where this firearm is? Very situational thing. It's  
12 very, like, amorphous scenario without much detail.

13 MR. WISE: Sure. I was going off the  
14 scenario he was talking about.

15 THE WITNESS: So I can point to -- I think  
16 more pertinent to what we're talking about, I can  
17 point to after we legalized the conceal carry, we had  
18 a gentleman come into the state who believed he was  
19 going to -- he was kind of antipolice, and he was  
20 going to do a conceal carry, what he called an  
21 audit -- or I mean a gun rights audit -- and see how  
22 we would react.

23 So he was wearing a visible -- a very large  
24 handgun in a holster visible, and he was walking up  
25 and down the sidewalk, on a public sidewalk in front

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1 of a very well-to-do subdivision, small gated  
2 community, and somebody thought he was acting kooky,  
3 so they called police.

4 We made contact with the guy. He was  
5 carrying a gun. We could see he had a gun, you know.  
6 I would instruct the gentleman, you know, "Don't  
7 reach for the gun that's clearly there," you know.  
8 "What's going on? We got a call."

9 And basically he was trying to turn it into  
10 a, "See, the police are antigun" confrontation type  
11 of thing, and the whole thing diffused because, you  
12 know, quite frankly, we didn't overreact. We had a  
13 guy pacing back and forth on a sidewalk, you know, so  
14 we have to ascertain, "is this a guy -- maybe he's  
15 suffering from mental illness, or, you know, why is  
16 he here?"

17 Because his behavior, his pacing back and  
18 forth did alarm people more than anything, you know,  
19 "Why is that guy acting kooky out here?"

20 And then when it turned out to be a  
21 specific -- kind of a public, you know, "We're going  
22 to get gotcha video on the police" type of a stunt  
23 that he was pulling and he didn't get the reaction he  
24 was hoping for, then the whole thing was over with.

25 And I've had to deal with a few things like

1 that, but overall, you know, if I were to have to  
2 make an approach on somebody, part of that approach  
3 would be, "What are the circumstances?" you know.

4 Is this guy in an alley behind a business in  
5 the middle of the night, or is this guy just walking  
6 down the sidewalk or -- you know, I guarantee you,  
7 like I say, I could go someplace in town here, like  
8 go to our Walmart, and I could find somebody with a  
9 gun on their hip, and, you know, they're in the green  
10 bean aisle and it's just an innocuous thing.

11 BY MR. WISE:

12 Q. Let's go to page 12, paragraph 40.

13 A. Again, it's silly, but every time you start  
14 to do that, I reach for my own mouse, and I feel like  
15 an idiot.

16 Q. Okay. Paragraph 40, you state "The behavior  
17 and demeanor of a person exercising his right to open  
18 carry will be markedly different than that of an  
19 individual posing a threat to the public. Any  
20 experienced honest law enforcement officer knows that  
21 to be the truth." Would you explain what you mean?

22 A. So it's a whole behavioral package. If you  
23 have a guy who's got a gun on his hip walking his  
24 dog, you got a guy, gun on his hip, shopping for  
25 groceries, whatever the case may be, there's no

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1 criminalistic behavior involved in any of those  
2 activities that would lead you -- like, whether he  
3 had a gun on his hip or not, this is not something  
4 that I could have probable cause for a stop, it is  
5 not something that I could do a Terry stop on a  
6 person over, you know, because it doesn't -- they're  
7 not -- if they're -- if they just exist and they  
8 happen to be carrying a gun and are going about their  
9 business and there's no behavioral indicators that  
10 would indicate criminal activity is afoot, then it  
11 just isn't an issue.

12           If you look at -- well, if you look at the  
13 classic case of Terry v. Ohio that speaks exactly  
14 what I'm talking about, the criminals in that case  
15 had handguns that were deeply concealed, but whether  
16 they saw -- whether Detective McFadden saw the guns  
17 or didn't see the guns, he obviously did not, it was  
18 the behavior manifest that they were displaying in  
19 that that led to the stop, the classic what we know  
20 as a Terry stop nowadays. Somebody just having a gun  
21 on their hip isn't -- it's -- the totality of the  
22 behavior is what a good cop is going to look at.

23           Q.    And what is the behavior that you're looking  
24 for to be able to determine whether a person carrying  
25 openly does not pose a threat to the public?

1 MS. BELLANTONI: Objection.

2 You can answer.

3 THE WITNESS: That's wide open. You know,  
4 it has everything to do with the location, is their  
5 activity congruent with the location, the time of  
6 day, things like that. You know, I mentioned  
7 previously do I have a guy behind a business after  
8 dark after it's closed? You know, that would be a  
9 guy that I'm going to take a second look at. Is this  
10 guy up to no good? You know, is he looking to  
11 burglarize this establishment? That sort of thing.  
12 So it's, you know, demeanor, their actual activity,  
13 the time of day, the location. All of that goes into  
14 play.

15 BY MR. WISE:

16 Q. And what's the basis for your opinion?

17 MS. BELLANTONI: Which one?

18 BY MR. WISE:

19 Q. In paragraph 40.

20 A. Thirty-four years of law enforcement and  
21 dealing with people both pre- and post-open carry  
22 being legal, that's just -- I would call that good  
23 police work at the street level is being able to read  
24 human beings and then evaluate their behavior.

25 Q. Let's talk about active shooter events.

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1 What is an active shooter event?

2 A. I'm actually not a big -- so that's a term  
3 of common usage that so many people utilize now. I'm  
4 not a fan of it, but if we want to talk about -- you  
5 know, something I prefer is, like, a mass murder or  
6 serial murder in progress where you have somebody  
7 actively -- you know, and I know of cases where they  
8 have been -- instead of an active shooter, they're an  
9 active stabber, you know.

10 You know, we've had cases in the literature  
11 of knives, swords. They just had one in Norway the  
12 other day that he was -- the dude was killing people  
13 with a bow and arrow. So I would call it a rabid  
14 serial murder in progress if you want a more precise  
15 term.

16 Q. So during such an event, an active shooter,  
17 mass shooting event, is the shooter always easily  
18 identifiable?

19 A. Well, at both of the ones that I went to, he  
20 sure was. Often if you don't know exactly where the  
21 person is, then what we teach our tactics for  
22 movement to contact, but the important part of an  
23 active shooter is it's active.

24 You have some -- if you don't see that's the  
25 guy shooting people or that's the guy stabbing

1 people, or in one case I was involved in, the guy  
2 was -- he was an active shooter, active bomber. He  
3 was throwing pipe bombs, what you would think of  
4 nowadays as IEDs, inside the building. If.

5 You don't see that or hear some stimulus to  
6 draw you where the person is, then it's not really an  
7 active shooter if you will.

8 Q. So in the scenario where you're not  
9 immediately able to identify where the shooting is  
10 coming from, what is the -- can you describe the  
11 atmosphere at such an event?

12 MS. BELLANTONI: I'm going to object.

13 You can answer, but I think we're going  
14 outside the scope of this case and causes of action  
15 that are being brought. But you can go ahead and  
16 answer.

17 THE WITNESS: In a word, it's going to be  
18 pretty tense. At the attack on our federal  
19 courthouse here in Topeka, we had a gentleman that  
20 was doing an active shooting, active bombing. He was  
21 throwing IEDs all over the building when I showed up.  
22 Things had gotten real quiet, and we had to  
23 transition from what you would think of now as a  
24 rapid response to what we believed we had was a  
25 hostage scenario in progress.

1           So that's part of what we do in the training  
2           is classically things like dealing with hostage  
3           negotiations, dealing with barricaded gunmen, things  
4           like that. You want to slow the scenario down and  
5           then utilize things like SWAT teams and negotiators  
6           and things like that.

7           So part of what you do in police training is  
8           a recognition of has the situation transitioned from  
9           one type of scenario to another, because that's  
10          entirely possible, but what you're looking for is  
11          either identifying the suspect or a stimulus that  
12          draws you to a location to where you can try to  
13          identify the suspect.

14         BY MR. WISE:

15           Q.     In a scene like that, can the sensation be  
16           chaotic or, you know, distort your perception, I  
17           guess?

18           A.     Well, any --

19           MS. BELLANTONI:   Objection. I'm going to  
20           object again. Same objection, that this is outside  
21           the scope of the causes of action that are being  
22           brought.

23           You can answer.

24           THE WITNESS:   Any critical incident I've  
25           been involved in has been tense, and human beings are

1 subject to their perceptions under duress.

2 BY MR. WISE:

3 Q. If a person who's not immediately  
4 identifiable as a cop is openly carrying a firearm  
5 during an active shooter event, how are the on duty  
6 law enforcement officers likely to react to that  
7 person?

8 MS. BELLANTONI: Objection.

9 You can answer if you can.

10 THE WITNESS: Well, I would hope that they  
11 were extraordinarily well trained because in my  
12 experience, every cop that knows about it is going to  
13 go regardless of their equipment and their mode of  
14 dress.

15 So if you look at photos of Columbine as an  
16 example, you have people with guns wearing suit and  
17 ties, you have people with guns -- there was one  
18 gentleman wearing gym shorts. If you look at video  
19 of the very famous North Hollywood event, one of the  
20 SWAT guys is wearing gym shorts and carrying an M-16.

21 So part of my assertion and my opinion on  
22 this paper was if you're going to have well-trained  
23 officers, they're going to have to allow for positive  
24 identification of -- you know, have some training on  
25 can't just see a gun and start shooting at that

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1 person because odds are pretty good it could be an  
2 off duty or undercover cop or some other person who  
3 is not in uniform who is not in fact your problem.

4 BY MR. WISE:

5 Q. What if that civilian is openly carrying  
6 their truck gun, let's say an AR-15? How are the on  
7 duty law enforcement officers likely to react?

8 MS. BELLANTONI: I'm going to object and ask  
9 you not to respond to that because we're not talking  
10 about the open carriage of ARs and long guns.

11 Specifically about handguns here, so that's  
12 completely outside the scope of this case and this  
13 deposition.

14 BY MR. WISE:

15 Q. You may recall that Dallas Chief of Police  
16 David Brown, in the aftermath of an active shooter  
17 event at a community protest that included the  
18 presence of openly carrying civilians, stated, "We  
19 don't know who the good guy is versus the bad guy  
20 when everyone starts shooting." Do you recall that?

21 A. I do.

22 Q. Do you agree with Chief Brown?

23 A. I do not.

24 Q. Why not?

25 A. So I have a little bit of insider baseball

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1 on the Dallas Police Department, and they used to be,  
2 used to be one of the most extraordinarily  
3 well-trained police departments on the planet, and I  
4 can't say that that is any longer the case.

5 Their firearms training, their use of force  
6 training, their defensive tactics training, in my  
7 opinion and observation, has suffered from politics  
8 and neglect. He may have found it to be problematic,  
9 or he may have been making it as a political  
10 statement for it to be problematic, but everything  
11 that I have seen -- and I have studied that incident  
12 at length because part of that incident was there was  
13 a lot of controversy on the manner in which they took  
14 that bad guy out, you know.

15 They utilized a police bomb to kill the  
16 gunman in that case, delivered by a robot, so there  
17 was a lot of controversy about that. I think the  
18 police officers who were right there on the scene  
19 immediately knew who the bad guy was.

20 If you see people running away who happen to  
21 be carrying -- and I know I'm dangerously segueing  
22 into what Ms. Bellantoni stated she didn't want me to  
23 answer because I knew people had long guns at that  
24 event as part of their -- the political part of the  
25 protest. If you have people leaving the vicinity in

1 a hurry, you can tell by demeanor and their carriage,  
2 how they're acting, that, "Yeah, that's not the guy  
3 I'm looking for."

4 Q. And by "demeanor" and "carriage," are you  
5 talking about the same factors you were saying  
6 earlier, behavior and demeanor, or are there other  
7 factors that we haven't discussed?

8 A. People who look like they're trying to kill  
9 you don't look like people who are afraid and trying  
10 to get out of someplace. That's been my experience.

11 Q. What if somebody is running toward the scene  
12 instead of away from the scene?

13 A. Well, then you'd have to evaluate, "Is that  
14 a good guy? Is that a bad guy? Is that an off duty  
15 SWAT cop that had his gear in the car and he hasn't  
16 had time to change clothes? Etc., etc.

17 Q. And how can you go about evaluating that?

18 A. It's going to be right there in the moment,  
19 you know. If the guy is running towards the scene,  
20 then I know he's not -- he hasn't been part of the  
21 scene. Is he -- do I look at that guy? What is his  
22 demeanor? What is his body posture? How does his  
23 facial expressions look? What is his movement like?  
24 Is he trying to get -- you know, is he putting a  
25 muzzle on people that are perceived to be victims?

1 That sort of thing. It all plays into that.

2 Q. Let's look at pages 12 and 13, paragraph 42.  
3 You state "There is, however, historical precedent to  
4 note that citizen non-law enforcement interdiction of  
5 active shooter suspects happens more frequently than  
6 interdiction by law enforcement officers." Would you  
7 explain what you mean?

8 A. So post-Columbine, the trend was to have  
9 what we would call a rapid response team approach  
10 where you would get -- depending on who was doing the  
11 training, typically it was a four-officer team, would  
12 gather together and then move in.

13 Let's take, for an example, because  
14 everybody's familiar with the Columbine event, that  
15 if you showed up at Columbine in the middle of that  
16 event, that you would wait for three other officers  
17 to show up, and then you would move in as a team in a  
18 particular set of tactics and then attempt to make  
19 contact with the suspects and do that as rapidly as  
20 possible.

21 What we found -- so -- excuse me. Sorry.  
22 Ragweed is bad right now, and my allergies are acting  
23 up.

24 So I wrote an article on solo response by  
25 officers to an active shooter event because I'm a big

1 believer that you don't have time to wait for a team.  
2 One of the active shooter events that I went to, I  
3 had to respond by myself. I didn't have anybody who  
4 was there, going to be there in a timely manner to  
5 assist me. I couldn't wait for backup.

6 So in doing my research for these events,  
7 what we find is is that more often than a law  
8 enforcement officer -- in any kind of team or normal  
9 police response that you would think of, more often  
10 than not, that there's more events that are  
11 interdicted by armed citizens than there are teams of  
12 police officers showing up on the scene.

13 If you extrapolate that paradigm to include,  
14 like, the Trolley Square mall shooting in Utah where  
15 it was an off duty officer on his own time,  
16 plainclothes, carrying a gun just like anybody else  
17 would be carrying, that was another event where we  
18 have off duty officer, but there are many events  
19 where we have civilian.

20 And I use a generic term "conceal carrier"  
21 but a civilian with a gun that's not -- somebody who  
22 is not a cop is the person that is right there on the  
23 scene and successfully interdicts or stops the bad  
24 guy versus a law enforcement response putting an end  
25 to it.

1 Q. Are the events that you just mentioned the  
2 historical precedent you're referring to, or are you  
3 referring to other historical precedent?

4 A. If you take a history of active shooters in  
5 the United States as a modern study, that's what I'm  
6 referring to.

7 Q. And are you aware of research that supports  
8 this opinion?

9 A. I am.

10 Q. Okay. What is that research?

11 A. There's going to be a little bit of a pile  
12 of that. What we're talking about is -- what we're  
13 talking about is when you actually quantify active  
14 shooter events, you know, beyond the famous ones like  
15 Columbine, etc., and you look at the factors involved  
16 in those events, what has been successful, what has  
17 not been successful, which has led to things like my  
18 advocacy for police solo response versus waiting for  
19 a team approach.

20 You know, one of the reasons, and I'm a big  
21 advocate of that, is that's where the research,  
22 that's where the data points to is what is  
23 successful, what is not successful. Team approach  
24 takes too long. It hasn't been successful.

25 The last I checked into that, there was one,

1 maybe two of these events that were successful by the  
2 team approach. Vast majority of the time, the cops  
3 show up too late if they utilize that model.

4 So one of the reasons I'm a big advocate for  
5 solo response on the police part is because that's  
6 been the model for success because it's more rapid,  
7 and if you look at these incidents on an anecdotal  
8 basis, if you have an armed good guy, whether they  
9 have a badge or not, immediately on the scene that  
10 takes action, that tends to be a successful  
11 interdiction.

12 As far as, like, titles to papers like a  
13 specific paper on the subject, I would definitely  
14 have to get back to you on that.

15 Q. Yeah. If there's any specific research you  
16 have in mind, would you work with Ms. Bellantoni to  
17 provide that to me?

18 A. Absolutely.

19 Q. Thank you. I appreciate that.

20 Do you mind if we go off the record for just  
21 a moment? I'm going to need 30 seconds to make sure  
22 my computer does not turn off.

23 (Discussion off the record)

24 MR. WISE: Thank you. I appreciate that.

25 We can go back on the record.

1 THE WITNESS: Okay.

2 BY MR. WISE:

3 Q. Let's look at page 13, paragraph 43. You  
4 state "Allowing open carry will not create a danger  
5 to public safety"; is that right?

6 A. Yes, sir.

7 Q. Are you familiar with research finding that  
8 right to carry laws are associated with higher  
9 aggregate violent crime rates?

10 MS. BELLANTONI: Objection.

11 You can answer.

12 THE WITNESS: I have read some of that, yes,  
13 sir.

14 BY MR. WISE:

15 Q. And what is your view of those studies in  
16 terms of your opinion on whether open carry of  
17 firearms in public --

18 A. It directly contradicts my firsthand  
19 observation in multiple states. I believe that those  
20 papers -- it is easy to utilize statistics to come to  
21 a prearranged opinion and to make opinion -- or to  
22 push an opinion towards a political end.

23 Q. And so have you evaluated the basis for that  
24 research?

25 MS. BELLANTONI: I'm going to object.

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1           You can answer.

2           THE WITNESS:   Depends on how you mean  
3           "evaluate," but in my opinion of observing -- and I  
4           don't know specifically which one you're -- which --  
5           because there's been a couple of such studies that  
6           have been pushing that idea.  I put it up there with  
7           the same research that people like Kellerman were  
8           pushing that if you have a gun in your home, you're  
9           43 times more likely to be killed than if you don't  
10          have a gun in your home which was statistically  
11          cooking the books.

12          If you look at the realities of crime and  
13          street crime and the people -- people will talk.  
14          They'll push an alarming statement like, "You're more  
15          likely to be killed by somebody you know than  
16          somebody you don't."

17          Well, that's certainly my experience as far  
18          as, like, gang crime because most people don't just  
19          up and kill people they don't know.  They have a  
20          specific beef with them.  You know, your rival drug  
21          dealer whom you know by name, you're going to go  
22          whack because he's coming -- he's, like, selling in  
23          your territory, things like that.

24          So you have to take -- you have to look at  
25          these things in context and, you know, look at the

1 numbers, where the numbers come from, what's the  
2 context of the numbers and that sort of thing because  
3 it's very, very easy to come to false conclusions on  
4 this sort of thing.

5 BY MR. WISE:

6 Q. You've reviewed the preliminary injunction  
7 submissions in this case?

8 A. Okay. I think so. I believe that's part of  
9 the -- Amy, was that all part of the paperwork that  
10 you gave me, or was that not?

11 MS. BELLANTONI: I'm not entirely sure. I'd  
12 have to look and see what I sent over.

13 THE WITNESS: Okay. I guess --

14 MS. BELLANTONI: We could refer to your  
15 declaration. It says that there's something that was  
16 turned over that you relied on.

17 MR. WISE: I believe it does. That's why I  
18 was asking the question.

19 BY MR. WISE:

20 Q. And the reason I'm asking is you had  
21 mentioned you're familiar with a few of the studies.  
22 Are you familiar with the peer reviewed studies  
23 conducted by Professor John Donahue about right to  
24 carry laws and the association with higher aggregate  
25 violent crime rates?

1 MS. BELLANTONI: I'm going to object because  
2 he's not a statistical expert, so that wouldn't have  
3 been in the purview of what he reviewed.

4 MR. WISE: He just mentioned he was familiar  
5 with a few studies, so I was trying to know which  
6 studies those might be.

7 MS. BELLANTONI: And I'm going to object  
8 because he's not a statistician, so I'm not going to  
9 have him giving testimony on -- it's not his  
10 expertise.

11 MR. WISE: Uh-huh.

12 MS. BELLANTONI: He's not a statistician,  
13 so --

14 BY MR. WISE:

15 Q. So just so I'm clear on what your opinion  
16 is, then, you're indicating that the findings of  
17 those studies are not consistent with your personal  
18 observations in the field; is that right?

19 A. Yes.

20 Q. But to be clear, you haven't relied on  
21 studies that -- for your opinion in this case at  
22 least, that support your opinion or that contradict  
23 the studies that we were just discussing?

24 A. So a big part of why I am here is both to  
25 speak to the law enforcement part of this and

1 personal experience that I can point to in living in  
2 the reality of an open carry state and not only my  
3 state but other states that I travel to, other states  
4 that I do business in and, you know, states where I  
5 am commonly in an open carry environment, if you  
6 will.

7 So a big part of why I'm here and we're  
8 talking is that firsthand observation and experience  
9 over a number of years as it deals with the open  
10 carry and the dynamic of police involvement with open  
11 carry people.

12 Q. Let's look at paragraph 44. We're still on  
13 page 13. You refer to U.S. News and World Reports  
14 public safety rankings and note that the top three  
15 states, in terms of public safety, Maine,  
16 New Hampshire and Idaho, allow a broader right to  
17 public carry than California; is that right?

18 A. That was certainly true at that time, yes,  
19 and then it's easy to look that up, the U.S. News and  
20 World Report part of that.

21 Q. Are you aware of how U.S. News and World  
22 Report determined these rankings?

23 A. I am not. Again, I can't say, you know, did  
24 they hire a statistician, did they look up Bureau of  
25 Justice Statistics or what their research methodology

1 was.

2 Q. Do you know whether U.S. News and World  
3 Report compared factors such as population density  
4 that might account for the difference in crime rates  
5 between states such as Maine versus California?

6 A. I don't, nor do I know if they looked at  
7 things like sentencing guidelines or a variety of  
8 other factors.

9 Q. Do you agree that regional differences are  
10 an important factor to consider in developing an  
11 effective public safety response?

12 MS. BELLANTONI: Objection. And  
13 specifically what public safety response are you  
14 referring to?

15 MR. WISE: Well, response that includes open  
16 carry policy.

17 MS. BELLANTONI: Could you be more specific?  
18 I'm not understanding the question.

19 MR. WISE: Sure. Well, this case is about  
20 California, and the expert here is from Kansas, and  
21 I'm asking if he agrees. Let me restate the  
22 question.

23 BY MR. WISE:

24 Q. Do you agree that regional differences are  
25 an important factor to consider in developing an

1 effective public safety response with regard to  
2 firearms?

3 A. And --

4 MS. BELLANTONI: I object.

5 You can go ahead and answer.

6 THE WITNESS: I'm going to say in this case,  
7 it does not, just as, you know, if we look at police  
8 use of force, everybody in the United States is bound  
9 by things like Graham v. Conner, Garr versus  
10 Tennessee. It is what it is. Is my First Amendment  
11 right to free speech different in the State of  
12 California versus the State of Kansas? It is not.

13 Is my freedom of religion different in the  
14 State of California versus the State of Kansas? It  
15 is not. So as far as that context, we're still  
16 talking about the United States of America. So, no,  
17 I don't believe so.

18 BY MR. WISE:

19 Q. Do you agree that demographic differences  
20 are an important factor to consider in developing an  
21 effective public safety response, again, with regard  
22 to firearms?

23 MS. BELLANTONI: Objection.

24 You can answer.

25 THE WITNESS: I don't. I don't because I

1 believe that public safety factors response policy  
2 are all far, far, far broader than that.

3 BY MR. WISE:

4 Q. Have you ever been to California?

5 A. Yes.

6 Q. Have you ever served as a law enforcement  
7 officer in California?

8 A. I have not.

9 Q. Are you familiar with open carry laws in  
10 California?

11 A. Just from what I have been able to read as  
12 far as what is publicly available and then what I  
13 have been briefed on in this case by Ms. Bellantoni.

14 Q. Would you describe your understanding of  
15 where, if at all, open carry is permitted in  
16 California?

17 MS. BELLANTONI: Objection. He's not  
18 testifying as an expert in that area. I'm going to  
19 ask him not to answer that question.

20 MR. WISE: So is he an expert in open carry  
21 in Kansas only? I'm confused.

22 MS. BELLANTONI: He's an expert and a law  
23 enforcement officer in open carry jurisdiction. It's  
24 kind of irrelevant since it's banned in California  
25 anyway, so --

1 BY MR. WISE:

2 Q. Are you aware that open carry is allowed in  
3 certain circumstances in the State of California?

4 MS. BELLANTONI: Objection. That's actually  
5 not true.

6 BY MR. WISE:

7 Q. Are you aware that there are laws permitting  
8 open carry in certain circumstances in California?

9 MS. BELLANTONI: Objection.

10 THE WITNESS: Frankly, at this point, with  
11 the two attorneys arguing about that, I believe that  
12 that would be the type of thing that you guys would  
13 be the experts in. It appears that you guys are at  
14 an impasse on whether it's legal or not. That would  
15 certainly leave a layperson at a disadvantage to know  
16 whether they were breaking the law or not.

17 BY MR. WISE:

18 Q. Let's look at paragraph 45, same page, still  
19 on page 13. You state "People who legally possess  
20 and carry firearms are generally compliant and  
21 law-abiding, statistically speaking among the most  
22 law-abiding group of persons in our country." Would  
23 you explain what you mean?

24 A. So if you take people with -- and I'm going  
25 to go with the statistics because we can nail those

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1 down on persons with a concealed carry license  
2 because we can actually quantify that because, quite  
3 frankly, on a day-to-day basis, if nobody tells  
4 anybody that they're carrying a gun, we're not --  
5 who's going to know about it?

6 So if we look at statistically people with a  
7 concealed carry license, they are more law-abiding  
8 than virtually any other demographic in the United  
9 States, and that includes police officers.

10 When you look at things like -- even minor  
11 things like DUI arrests, that sort of thing, they  
12 tend to have a far lower criminal rate than any other  
13 demographic you would pluck out of whatever pool you  
14 want to look at, if you want to look at a certain  
15 profession or whatever the case may be.

16 And then, you know, the rest of that  
17 paragraph, if you will, my experience is is that  
18 people who are going to unlawfully do things don't  
19 look for permission, they don't get concealed carry,  
20 whether it's banned or not, you know.

21 In Kansas, when we banned all carry, even  
22 retired officers could not carry a gun, and that  
23 didn't slow down the gang members one little bit, you  
24 know. My belief, what we're talking about here is  
25 law-abiding citizens trying to gain access to the

1 ability to open carry legally within your state,  
2 clearly trying to go about doing thing the right way  
3 and stay within the boundaries of the law.

4 Q. What is the basis for your opinion?

5 A. Again, 34 years of street level police work  
6 and then some consultation of things like, you know,  
7 research that has been done in this area as far as,  
8 you know -- in particular, one of the things I look  
9 at is police use of force, and then I have been  
10 involved extensively in internal affairs  
11 investigations on police officers and then  
12 investigation on, like, officer-involved shootings,  
13 use of force, things like that.

14 So I've had occasion to look at the  
15 statistics that are out there that are available  
16 on -- if you look at how my profession stacks up to  
17 other professions where actually, you know, we do a  
18 lot better than a lot of other professions that are  
19 out there even though we -- you know, we are commonly  
20 demonized for violating people's rights and that sort  
21 of thing.

22 And then having looked into that as somebody  
23 in the past who I actually advocated for concealed  
24 carry in Kansas, which was -- didn't make me real  
25 popular in some law enforcement circles, but you have

1 to make sure you have your ducks in a row if you're  
2 going to advocate for something and make statements  
3 like that.

4 And in other places before Kansas had  
5 concealed carry, like Florida was very famous for  
6 that beginning in the '80s, the states of  
7 New Hampshire and Vermont were very, very liberal,  
8 and, in fact, my belief is Vermont has always had no  
9 permit carry within the state. I may have switched  
10 that with New Hampshire, but one of those two has  
11 always, like, historically had no permit carry, and  
12 if you look at the demographics of people with  
13 concealed carry, they tend to be extraordinarily  
14 law-abiding.

15 Q. And I think you were mentioning research  
16 this supports your opinion. What is that research  
17 specifically?

18 A. Some of it would be -- I can point to John  
19 Lott, the famous gun rights researcher, but then to  
20 another of -- pardon me -- a number of other sources  
21 as far as, like, the actual titles of that, again, I  
22 would have to research that and get back with you.

23 Q. Yeah, that'd be great if you could work with  
24 plaintiff's counsel to provide me any research that  
25 supports that opinion. I'd appreciate it.

1 Do you agree that there are incidents in  
2 which a previously law-abiding person engages in  
3 criminal behavior?

4 A. Well, I would argue, counselor, that  
5 everybody that doesn't have a criminal record who  
6 becomes a criminal was previously not, I mean,  
7 law-abiding.

8 Q. That's all the questions.

9 Ms. Bellantoni, are you on mute?

10 MS. BELLANTONI: Yeah, I was. I'm sorry.  
11 Can we just take a brief break? Just need to -- is  
12 that okay?

13 MR. WISE: Of course. I'm done with my  
14 questions. That was my last one.

15 MS. BELLANTONI: Can we just hold on one  
16 second before we wrap up?

17 MR. WISE: Of course.

18 MS. BELLANTONI: All right. Thanks.

19 THE WITNESS: I'm over here making myself a  
20 note on looking back at what we've been talking about  
21 so I can get back to Amy.

22 MR. WISE: Thank you.

23 (Recess)

24 MS. BELLANTONI: So I guess we're done. I  
25 don't have any questions.

1 MR. WISE: Let's go back on the record  
2 briefly.

3 Okay. I am done with my questions.

4 THE REPORTER: And, Ms. Bellantoni, do you  
5 want a copy?

6 MS. BELLANTONI: Mr. Wise, will you be  
7 sending a copy to the witness for him to review?

8 THE REPORTER: That's why I got his email.  
9 Veritext will send him a locked PDF.

10 MS. BELLANTONI: That's fine. I'll take a  
11 copy.

12 And also, Mr. Wise, can you just put some  
13 requests -- I know there were some requests made.  
14 Can you just put them in writing for me so I can  
15 refer to them and properly have whatever additional  
16 documents provided to you?

17 MR. WISE: Sure, of course. How formal  
18 would you like me to make the request?

19 MS. BELLANTONI: Email.

20 MR. WISE: Email? Okay.

21 MS. BELLANTONI: Email.

22 MR. WISE: Thank you.  
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I, CHARLES D. HAGGARD, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

\_\_\_\_\_  
CHARLES D. HAGGARD

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were duly sworn; that a record  
8 of the proceedings was made by me using machine  
9 shorthand which was thereafter transcribed under my  
10 direction; that the foregoing transcript is a true  
11 record of the testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review of  
15 the transcript [ ] was [ ] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21

22 Dated: 10/30/2021

23



CARRIE PEDERSON

24

CSR No. 4373

25

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1 CHARLES D. HAGGARD

2 chuck@agiletactical.com

3 November 1, 2021

4 RE: BAIRD vs. BONTA

5 October 19, 2021, CHARLES D. HAGGARD, JOB NO. 4838109

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext  
10 to schedule a time to review the original transcript at  
11 a Veritext office.

12 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF  
13 Transcript - The witness should review the transcript and  
14 make any necessary corrections on the errata pages included  
15 below, notating the page and line number of the corrections.  
16 The witness should then sign and date the errata and penalty  
17 of perjury pages and return the completed pages to all  
18 appearing counsel within the period of time determined at  
19 the deposition or provided by the Code of Civil Procedure.

20 \_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of  
21 Counsel - Original transcript to be released for signature  
22 as determined at the deposition.

23 \_\_\_ Signature Waived - Reading & Signature was waived at the  
24 time of the deposition.

25

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1     \_x\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
2           Transcript - The witness should review the transcript and  
3           make any necessary corrections on the errata pages included  
4           below, notating the page and line number of the corrections.  
5           The witness should then sign and date the errata and penalty  
6           of perjury pages and return the completed pages to all  
7           appearing counsel within the period of time determined at  
8           the deposition or provided by the Federal Rules.  
9     \_\_ Federal R&S Not Requested - Reading & Signature was not  
10           requested before the completion of the deposition.

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1 BAIRD vs. BONTA

2 CHARLES D. HAGGARD (#4838109)

3 E R R A T A S H E E T

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6 REASON\_\_\_\_\_

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24 WITNESS

Date

25

[& - agiletactical.com]

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[contacts - deescalate]

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[deescalation - early]

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[job - lists]

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[litany - military]

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[millimeter - officer]

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[officer - particularly]

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[party - police]

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[see - sort]

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[sounds - susceptible]

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[suspect - tool]

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[tools - utah]

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[utility - works]

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[world - zuchel]

<p><b>world</b> 54:22 56:18                      57:8,22 64:2,6,6                      64:13 69:12 93:13                      93:20,21 94:2  <b>worried</b> 71:10,11                      71:19  <b>worrisome</b> 72:9                      72:25  <b>worry</b> 32:21 71:3  <b>wrap</b> 101:16  <b>write</b> 54:23  <b>writing</b> 50:18                      102:14  <b>written</b> 45:7,9                      50:1,4,17 69:16  <b>wrong</b> 57:15 63:17  <b>wrote</b> 12:7 85:24  <b>wyatt</b> 46:4  <b>wyoming</b> 53:21</p>	<p style="text-align: center;"><b>z</b></p> <p><b>zuchel</b> 56:17</p>
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

-----x  
MARK BAIRD and  
RICHARD GALLARDO,

Plaintiffs,

**Case No.: 2:19-cv-00617-KJM-AC**

v.

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

ROB BONTA, in his official capacity  
as Attorney General of the State of California,

Defendant.

-----x

NOW COME Plaintiffs, MARK BAIRD and RICHARD GALLARDO, by and through their counsel, and allege against Defendant California Attorney General Rob Bonta as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory and injunctive relief proximately caused by the actions of the defendant for violations of the plaintiffs' Second and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983. This action seeks to turn back the hands of time to pre-Mulford Act California and the free exercise of the Right to open carry a handgun for self-defense, consistent with this Nation's history and Second Amendment traditions.

2. In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, the Supreme Court declared, “In keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 142 S. Ct. 2111, 2126 (2022).

3. Plaintiffs’ right to carry a handgun open and exposed throughout the State of California, loaded or unloaded, is conduct covered by the plain text of the Second Amendment and presumptively protected by the U.S. Constitution.

4. The *Bruen* Court continued, “To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.” *Id.* citing, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961).<sup>1</sup>

5. Firearms have been part of this Nation’s history since the colonists arrived.<sup>2</sup> The colonists would not have been able to defeat the English military in the Revolutionary War had the colonists not possessed and had access to firearms and ammunition – the colonists had no ‘military’ and, as *Heller* confirmed, the right to keep and bear arms is an *individual* right, not the collective right of some type of militia or otherwise. *D.C. v. Heller*, 554 U.S. 570, 591 (2008) (“...even if ‘keep and bear Arms’ were a unitary phrase, we find no evidence that it bore a military meaning...Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation.”).

<sup>1</sup> “Rather than begin with its view of the governing legal framework, the dissent chronicles, in painstaking detail, evidence of crimes committed by individuals with firearms. See post, at 2163 - 2168 (opinion of BREYER, J.). The dissent invokes all of these statistics presumably to justify granting States greater leeway in restricting firearm ownership and use. But, as Members of the Court have already explained, “[t]he right to keep and bear arms ... is not the only constitutional right that has controversial public safety implications.” *McDonald v. Chicago*, 561 U.S. 742, 783, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010) (plurality opinion).” *Bruen*, 142 S. Ct. at 2126, n. 3.

<sup>2</sup> <https://www.guns.com/news/2011/07/06/who-were-the-colonists-and-what-were-they-firing-guns-of-the-american-revolution>;  
<http://www.revolutionarywarjournal.com/rifles-in-the-revolutionary-war/#:~:text=Settlers%20who%20moved%20west%20of%20the%20Cumberland%20Mountains,making%20it%20the%20rifle-making%20center%20of%20the%20colonies.>

6. To be sure, “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.” *Heller*, at 598.

7. Handguns are weapons in common use for lawful purposes and are therefore covered by the plain text of the Second Amendment. *Heller*, at 629 (“It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon.”).

8. No permission from the government, licensing, registration, or any other action was required (or even imagined) for people to exercise the God-bestowed, preexisting right that was later codified in the Second Amendment. The very purpose of codifying the right to keep and bear arms and declaring that it “shall not be infringed”<sup>3</sup> was to prevent *any encroachment* of that right by the government. Yet, here we are.

9. Plaintiffs seek a judicial declaration that California Penal Code sections 25850 and 26350 violate the Second and Fourteenth Amendments to the U.S. Constitution and request an Order temporarily and permanently enjoining their enforcement.

10. The conduct being regulated under California Penal Code sections 25850 and 26350 is protected by the Second Amendment and the regulations are wholly inconsistent with this Nation’s historical traditions of firearm regulation.

#### **JURISDICTION AND VENUE**

11. The Court’s jurisdiction over Plaintiffs’ federal claims is authorized pursuant to 28 U.S.C. § 1331 and § 1343. The Court’s jurisdiction over Plaintiffs’ claims for injunctive and declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202. The Court’s jurisdiction over Plaintiffs’ federal claims and for statutory attorney’s fees is authorized pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

12. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.

<sup>3</sup> Infringe: encroach, limit, offend. <https://www.merriam-webster.com/thesaurus/infringe>  
While, for example, the Fourth Amendment protects against “unreasonable” searches and seizures, the Second Amendment prohibits *any measure* of intrusion.



## THE PARTIES

13. Plaintiff, MARK BAIRD (“Plaintiff” or “Mr. Baird”) is a United States citizen and a resident of Siskiyou County, California which, according to the most recent census, has a population under 200,000.

14. Plaintiff, RICHARD GALLARDO (“Plaintiff” of “Mr. Gallardo”) is a United States citizen and a resident of Shasta County, California which, according to the most recent census, has a population under 200,000.

15. Defendant ROB BONTA (“Defendant” or “Defendant Bonta”) is the Attorney General of the State of California. Defendant Bonta is sued herein in his official capacity only. Pursuant to California State Constitution Article V, Section 13, as the Attorney General for the State of California, Defendant is the chief law enforcement officer of the State whose duty it is to ensure that the laws of the State are uniformly and adequately enforced.

16. Defendant Bonta has direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to Defendant may seem advisable.

17. Whenever in the opinion of the Defendant any law of the State is not being adequately enforced in any county, it shall be Defendant’s duty to prosecute any violations of law of which the superior court shall have jurisdiction. In such cases Defendant shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, Defendant shall assist any district attorney in the discharge of the duties of that office.

## STATEMENT OF FACTS

### *Plaintiff Mark Baird*

18. Mark Baird is an individual of unquestionably good moral character, a law-abiding citizen, and has never been charged with, summoned, or arrested for any violation of the California Penal Code or any other criminal offense.

19. Mr. Baird is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. Mr. Baird lawfully possesses firearms (handguns and long guns) in his home for self-defense.

20. Mr. Baird does not hold a California firearm license and does not fall within any of the exemptions to California Penal Code sections 25850 and 26350 criminalizing the possession of firearms.

21. Mr. Baird has a present intention to carry a handgun open and exposed for self-defense, loaded or unloaded, throughout the State of California, today and every day for the remainder of his natural life.

22. Mr. Baird intends to exercise the rights protected by the Second and Fourteenth Amendments without seeking permission from the government, including applying for and obtaining a license under California's licensing scheme, Penal Code sections 26150 and 26155.

23. Mr. Baird presently faces imminent arrest, prosecution, fines, and other criminal penalties for carrying a handgun in public without a license under Penal Code sections 25850 and 26350, as well as other civil penalties including loss of property.

24. On more than one occasion, Mr. Baird has tried to apply for an open carry license in Siskiyou County, but there is no Open Carry license application available from the DOJ and, even if there were, no open carry licenses are issued anywhere in California, and he has been advised by the licensing authority in his county that no open carry licenses will be issued.

25. The County of Siskiyou, California, according to the most recent federal census, has a population of less than 200,000 people. As a resident of the County of Siskiyou, Mr. Baird is prohibited from applying for a handgun carry license in any other county in California. Even if issued an open carry license, such license would be invalid outside of Siskiyou County under Penal Code sections 26150 (b)(2) and 26155(b)(2). If Mr. Baird were to carry open and exposed outside of Siskiyou County with or without a license, he would be arrested, prosecuted, and subject to other criminal and civil penalties.

26. Upon information and belief, the licensing authorities' described conduct is performed at the direction of and/or with the knowledge and approval of Defendant Bonta.

27. There is no administrative appeal process available for challenging the denial of an application for an open carry license. Even if there were an available administrative appeal process to challenge the denial of Mr. Baird's application for an open carry license, such 'process' would have been futile because Mr. Baird has been informed that no open carry licenses will be issued.

28. More importantly, there is no historical tradition in this Nation of requiring a license or other permission to open carry a handgun outside of one's home for self-defense. Requiring any such license violates the Second and Fourteenth Amendments.

***Plaintiff Richard Gallardo***

29. Richard Gallardo is an individual of unquestionably good moral character, a law-abiding citizen, and has never been charged with, summoned, or arrested for any violation of the California Penal Code or any other criminal offense.

30. Mr. Gallardo is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

31. Mr. Gallardo does not hold a California firearm license and does not fall within any of the exemptions to the California Penal Code sections criminalizing the open carriage of a handgun firearms, whether loaded or unloaded.

32. Mr. Gallardo lawfully possesses firearms (handguns and long guns) in his home for self-defense.

33. Mr. Gallardo has a present intention to carry a handgun open and exposed for self-defense, loaded or unloaded, throughout the State of California, today and every day for the remainder of his natural life.

34. Mr. Gallardo intends to exercise the rights protected by the Second and Fourteenth Amendments without seeking permission from the government, including applying for and obtaining a license under Penal Code sections 26150 and 26155.

35. Mr. Gallardo presently faces imminent arrest, prosecution, fines, and other criminal penalties for carrying a handgun in public without a license under Penal Code sections 25850 and 26350, as well as other civil penalties including loss of property.

No. 23-15016

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

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MARK BAIRD, *et ano.*,  
*Plaintiffs-Appellants*,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
*Defendant-Appellee*,

---

Appeal from United States District Court for the Eastern District of California  
Civil Case No. 2:19-cv-00617-KJM-AC (Honorable Kimberly J. Mueller)

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME 3 of 3**

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36. On more than one occasion, Mr. Gallardo tried to apply for an open carry license in Shasta County, but there is no Open Carry application available from the DOJ and, even if there were, no open carry licenses are issued anywhere in California, and he has been advised by the licensing authority in his county that no open carry licenses will be issued.

37. The County of Shasta, California, according to the most recent federal census, has a population of less than 200,000 people. As a resident of Shasta County, Mr. Gallardo is prohibited from applying for a handgun carry license in any other county in California. Even if issued an open carry license, such license would be invalid outside of Shasta County under Penal Code sections 26150 (b)(2) and 26155(b)(2). If Mr. Gallardo were to carry open and exposed outside of Shasta County, with or without a license, he would be arrested, prosecuted, and subject to other criminal and civil penalties.

38. Upon information and belief, the licensing authorities' described conduct is performed at the direction of and/or with the knowledge and approval of Defendant Bonta.

39. There is no administrative appeal process available for challenging the denial of an application for an open carry license. Even if there were an available administrative appeal process to challenge the denial of Mr. Gallardo's application for an open carry license, such 'process' would have been futile because Mr. Gallardo has been informed that no open carry licenses will be issued.

40. More importantly, there is no historical tradition in this Nation of requiring a license or other permission to open carry a handgun outside of one's home for self-defense. Requiring a license to open carry violates the Second and Fourteenth Amendments.

## STATEMENT OF LAW

### *The Second Amendment*

41. The Second Amendment to the United States Constitution 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."

42. The Second Amendment does not *bestow* any rights to the individual to possess and carry weapons to protect himself; it *prohibits the government* from infringing upon the basic, fundamental right of the individual to keep and bear weapons in common use for self-defense in

the event of a violent confrontation. *Heller*, supra; *McDonald*, supra; *Caetano v. Massachusetts*, 577 U.S. (2016).

43. “Individual self-defense is the central component of the Second Amendment right.” *McDonald*, 561 U.S. at 767, citing, *Heller*, 554 U.S. at 599 (internal quotations omitted). The Second Amendment protects the core right of the individual to self-protection. *Heller*, 554 U.S. at 595-599, 628.

44. The Second Amendment is “deeply rooted in this Nation’s history and tradition” and fundamental to our scheme of ordered liberty”. *McDonald*, 561 U.S. at 768. The Second Amendment’s protections are fully applicable to the states through the Fourteenth Amendment. *McDonald*, 130 S. Ct. at 3026.

45. The “Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding ...” *Caetano v. Massachusetts*, 577 U.S. at 411.

46. Handguns are ‘bearable arms’ in common use for self-defense and therefore are presumptively protected by the Second Amendment. *Heller*, 554 U.S. at 629; *Caetano*, supra.

#### ***The “People” Protected By the Constitution***

47. *Heller* explained, “in all six other provisions of the Constitution that mention ‘the people,’ the term unambiguously refers to all members of the political community, not an unspecified subset.” *Heller*, at 580. “[T]he people’ ... refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *Id.* (citation omitted).

48. Plaintiffs are members of the national community with no prohibitors to the possession of firearms and are entitled to the full and unabridged protections of the Second and Fourteenth Amendments.

*The Bruen Test for Second Amendment Challenges*

49. The Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *Heller*, at 592.

“Putting all of these textual elements together, we find that they *guarantee* the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’ As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L.Ed. 588 (1876), ‘[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed ....’”

*Id.* (emphasis added).

50. In *Bruen*, the Supreme Court flatly rejected the tripartite, intermediate scrutiny, ‘means-end’ public safety balancing test<sup>4</sup> improperly created and applied by the Ninth Circuit<sup>5</sup> and others. Rather, the test that must be applied to Second Amendment challenges is as follows:

“we hold that when the Second Amendment's plain text covers an individual’s conduct, the Constitution **presumptively** protects that conduct.

To justify its regulation, the government may not simply posit that the regulation promotes an important interest.

Rather, **the government must demonstrate** that the regulation is consistent with this Nation's historical tradition of firearm regulation.

<sup>4</sup> Core Second Amendment rights, like the right to possess firearms in the home for self-defense, are not subject to ‘interest balancing’. *Heller*, 554 U.S. at 634 (“We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding ‘interest-balancing’ approach. The 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.”).

<sup>5</sup> “Despite the popularity of this two-step approach, it is one step too many. Step one of the predominant framework is broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history. But *Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context. Instead, the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, at 2127.



Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, at 2126 (emphasis added) citing, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961).

***Bruen Defined and Limited the Relevant Historical Time Period***

51. Because "not all history is created equal," the *Bruen* Court held that, when deciding whether the government's regulation is consistent with this Nation's historical tradition,

the only appropriate inquiry is what the public understanding of the right to keep and bear arms was during the ratification of the Second Amendment in 1791, and perhaps during ratification of the Fourteenth Amendment in 1868.

*Bruen*, at 2138.

52. "Post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Bruen*, at 2137 (emphasis supplied) citing, *Heller*, 670 F.3d at 1274, n. 6 (Kavanaugh, J., dissenting); *Espinoza v. Montana Dept. of Revenue*, 591 U.S. —, —, 140 S.Ct. 2246, 2258–2259 (2020).

***The Challenged Regulations Violate the Second and Fourteenth Amendments***

53. The plain text of the Second Amendment presumptively protects Plaintiffs' conduct: the open carriage of a handgun in public for self-defense.

54. Defendants "must demonstrate that their regulations are consistent with this Nation's historical tradition of firearm regulation. *Bruen*, at 2126. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command'." *Bruen*, at 2126.

55. Defendants cannot meet that burden.



## CALIFORNIA'S REGULATIONS

### *Penal Code Sections 25850 and 26350 Violate the Second and Fourteenth Amendments*

56. In California, the possession of a handgun in one's home is lawful and requires no license or permission from the government. But the 'mere possession' of a handgun in public is a crime. An average citizen who steps outside of his home armed with a handgun for self-defense risks arrest, incarceration, prosecution, fines, and other criminal and civil penalties, including permanent loss of Second Amendment rights and loss of property (firearms).

#### Penal Code § 25850

57. Under California Penal Code section 25850, a person is guilty of carrying a loaded firearm when he carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in a prohibited area of unincorporated territory. (emphasis added).

58. Section 25850 allows the police the unfettered ability to stop an individual to inspect their firearm to determine whether the firearm is or is not loaded; refusal to allow a peace officer to inspect a firearm constitutes probable cause for arrest.

#### Penal Code § 26350

59. Under California Penal Code section 26350, a person is guilty of openly carrying an unloaded handgun for carrying upon his person an exposed and unloaded handgun outside a vehicle while in a public place or public street in an incorporated city or city and county, a public street in a prohibited area of an unincorporated area of a county or city and county, or a public place in a prohibited area of a county or city and county. (emphasis added).

60. Penal Code sections 25850 and 26350 criminalize the mere possession of a handgun for self-defense – a right protected by the Second Amendment and enforced against the states through the Fourteenth Amendment.

61. In *Bruen*, the Supreme Court reaffirmed that the right to carry firearms outside of the home is protected by the Second and Fourteenth Amendments. *Bruen*, supra.

“In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.”

*Bruen*, 142 S. Ct. at 2122.

62. There is no American historical tradition of banning open carry, criminalizing the exercise thereof, or requiring a license or permission from the government exists. Indeed, while licensing schemes popped up in few areas of the country in the early 1900s, “post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text.” *Bruen*, at 2137.

63. Until 1967 open carry was a widely accepted, and largely unremarkable, practice right here in California until the racially motivated Mulford Act outlawed possessing a loaded handgun in public, followed by banning the open carriage of an unloaded handgun in 2012.<sup>6</sup>

64. In 2016, an en banc panel of the Ninth Circuit proclaimed that the “uncontradicted historical evidence overwhelmingly shows, the Second Amendment does not protect, in any degree, the right of a member of the general public to carry a concealed weapon in public. The Second Amendment may or may not protect to some degree a right of a member of the general public to carry a firearm in public.”<sup>7</sup> The en banc Court continued,

**“If there is such a right, it is only a right to carry a firearm openly.”**

*Peruta II*, at 942.

65. Well, there *is* such a Right. *Heller* put that issue to bed in 2008:

“Putting all of these textual elements together, we find that they **guarantee the individual right to possess and carry weapons...**”

<sup>6</sup> Even if open carry licenses were issued (and constitutional), which they are not, under a “may issue” licensing scheme, they can only be applied for and issued in counties with a population under 200,000 and are invalid outside of the county of issuance. Penal Code sections 26150, 26155.

<sup>7</sup> *Peruta v. County of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (emphasis added).

*Heller*, at 592.

66. In *Peruta II*, a Declaration “submitted by the County of San Diego indicates that *the point* of the concealed weapons licensing policy was to make concealed carry ‘a very rare privilege.’” *Id.* at n. 9 (emphasis added).

67. After the *Bruen* decision was published, California rushed to create even more restrictions on what is deemed the ‘privilege’ to carry concealed; “good cause” having been found unconstitutional by *Bruen*, Defendant and others pushed a massive bundle of restrictions in SB918 to further restrict and prevent ‘the People’ - even those with a concealed carry license - from carrying a handgun in public for self-defense.

68. Lest there be any doubt, California’s zealous anti-Second Amendment agenda was revealed in the 7+ page preamble to SB918 railing public policy and ‘means end’ lamentations that the Supreme Court has repeatedly rejected since *Heller* in 2008.

“After an exhaustive discussion of the arguments for and against gun control, Justice BREYER arrives at his interest-balanced answer: Because handgun violence is a problem, because the law is limited to an urban area, and because there were somewhat similar restrictions in the founding period (a false proposition that we have already discussed), the interest-balancing inquiry results in the constitutionality of the handgun ban. QED.

To which the majority responded,

“We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding “interest-balancing” approach. The 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. A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.

Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.”

*Heller*, at 634–35 (emphasis supplied).

69. *Bruen* confirmed the unconditional rejection of balancing emotions related to criminal acts against individual rights.

“Like that dissent in *Heller*, the real thrust of today’s dissent is that guns are bad and that States and local jurisdictions should be free to restrict them essentially as they see fit. That argument was rejected in *Heller*, and while the dissent protests that it is not rearguing *Heller*, it proceeds to do just that. See post, at 2176 - 2178.”

*Bruen*, at 2160–61.

70. Under this Nation’s historical traditions – and this State’s historical traditions - open carry is a Right covered by the Second Amendment and it *shall not be infringed*.

71. Exercising the right to carry handguns publicly for self-defense cannot, therefore, be punished by criminal penalties, including Penal Code sections 25850 and 26350. Non-prohibited individuals can no longer be punished for the ‘mere possession’ of a handgun for self-defense.

72. It is well-settled by a long line of decisions of the Supreme Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms. *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 151 (1969) quoting, *Staub v. City of Baxley*, 355 U.S. 313, 322.

“And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license.”

*Id.* see also, *People v. Tony Diaz*, (Case No. 21FE019850, Sup. Ct. Sacramento) (sustaining demurrer of felony charges post-*Bruen* holding § 25850, which “subjects anyone in a public place carrying a loaded firearm on the person or in a vehicle to criminal prosecution... amounts to a total ban on public carry...cannot survive *Bruen*’s holding that public carry is presumptively legal.” “As *Bruen* stated: The constitutional right to bear arms in public for self-defense is not a ‘second-class right, subject to an entirely different body of rules than other Bill of Rights Guarantees’.” (citation omitted).

73. An individual cannot be prosecuted for exercising a constitutionally protected right.  
*Id.*

### **DECLARATORY JUDGMENT ALLEGATIONS**

74. There is an actual and present controversy between the parties.

75. Plaintiffs' Second and Fourteenth Amendment rights are being violated and will continue to be violated by the enforcement of (i) Penal Code section 25850 makes it illegal to carry a loaded firearm when he carries a loaded firearm on his person or in a vehicle while in any public place or on any public street in an incorporated city or in a prohibited area of unincorporated territory; and allows the police the unfettered ability to stop an individual to inspect their firearm to determine whether the firearm is or is not loaded; refusal to allow a peace officer to inspect a firearm constitutes probable cause for arrest; (ii) Penal Code section 26350 makes it illegal to openly carry an unloaded handgun for carrying upon his person an exposed and unloaded handgun outside a vehicle while in a public place or public street in an incorporated city or city and county, a public street in a prohibited area of an unincorporated area of a county or city and county, or a public place in a prohibited area of a county or city and county.

76. Penal Code sections 25850 and 26350 regulate conduct that is protected by the plain language of the Second Amendment.

77. Penal Code sections 25850 and 26350 have no historical analogue.

78. Plaintiffs seek a judicial declaration that Penal Codes sections 25850 and 26350 violate the Second and Fourteenth Amendments.

### **INJUNCTIVE RELIEF ALLEGATIONS**

79. Mr. Baird and Mr. Gallardo have a present intention to carry a handgun open and exposed for self-defense, loaded or unloaded, throughout the State of California including those areas that were not designated 'sensitive areas' prior to the enactment of the Mulford Act of 1967, today and every day for the remainder of their natural lives.

80. Plaintiffs intend to exercise the rights protected by the Second and Fourteenth Amendments without seeking permission from the government, including applying for and obtaining a license under California's licensing scheme under Penal Code sections 26150 and 26155.

81. Plaintiffs face imminent arrest, prosecution, fines, and other criminal penalties for carrying a handgun open and exposed, loaded or unloaded, in public without a license, as well as other civil penalties including loss of property (firearms).

82. Plaintiffs' conduct is protected by the plain language of the Second Amendment.

83. The burden is exclusively on Defendant to demonstrate that the challenged regulations are consistent with the Nation's historical tradition of firearm regulation. Only then may this Court conclude that Plaintiffs' conduct falls outside the Second Amendment's 'unqualified command.' *Bruen*, supra.

84. There is no historical analogue for the challenged regulations.

85. Plaintiffs are being continuously injured, in fact, and will continue to be injured by the violation of their preexisting rights protected by the Second and Fourteenth Amendments by Defendant's enforcement of Penal Code sections 25850 and 26350 for the open carriage of a handgun, whether loaded or unloaded, outside of their home, including those areas of California not designated 'sensitive areas' prior to the Mulford Act of 1967.

86. California's criminal statutes are inconsistent with the Nation's historical tradition of firearm regulation and should be temporarily and permanently enjoined.

87. Plaintiffs should not have to risk criminal prosecution in the exercise of their fundamental right to self-protection outside of the home.

## COUNT I

### **Penal Code § 25850 Violates the Second and Fourteenth Amendments**

88. Repeat and reallege paragraphs "1" through and including "87" as if set forth in their entirety herein.

89. Defendant's enforcement of Penal Code § 25850 against individuals for carrying a handgun open and exposed on their person violates the Second and Fourteenth Amendments.  
42 U.S.C. § 1983.

## COUNT II

### **Penal Code § 26350 Violates the Second and Fourteenth Amendments**

90. Repeat and reallege paragraphs “1” through and including “89” as if set forth in their entirety herein.

91. Defendant’s enforcement of Penal Code § 26350 against individuals for carrying a handgun open and exposed on their person violates the Second and Fourteenth Amendments.

42 U.S.C. § 1983.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendant as follows:

- A judicial declaration that the enforcement of California Penal Code § 25850 against individuals for carrying a handgun open and exposed on their person throughout California violates the Second and Fourteenth Amendments;
- A judicial declaration that the enforcement of California Penal Code § 26350 against individuals for carrying a handgun open and exposed on their person throughout California violates the Second and Fourteenth Amendments;
- An order temporarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing Penal Code sections 25850 and 26350 against individuals who carry a handgun open and exposed on their person throughout the State of California;
- Reasonable statutory attorney’s fees, costs, and disbursements, under 42 U.S.C. § 1988 and any other applicable law; and
- Grant such further and alternative relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 26, 2022

THE BELLANTONI LAW FIRM, PLLC

/s/ Amy L. Bellantoni, Esq.

Amy L. Bellantoni

*Attorney for Plaintiffs*

*Pro Hac Vice*

Email: [abell@bellantoni-law.com](mailto:abell@bellantoni-law.com)



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7 *Attorneys for Defendant Attorney General Rob Bonta*

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12  
13 **MARK BAIRD and RICHARD**  
14 **GALLARDO,**

15 Plaintiffs,

16 v.

17 **ROB BONTA, in his official capacity as**  
18 **Attorney General of the State of California,**  
19 **and DOES 1-10,**

20 Defendants.  
21

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF R. MATTHEW WISE IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' THIRD MOTION FOR PRELIMINARY INJUNCTION**

Date: October 21, 2022  
Time: 10:00 a.m.  
Dept: 3  
Judge: Hon. Kimberly J. Mueller

Trial Date: None set  
Action Filed: April 9, 2019

1 I, R. Matthew Wise, declare as follows:

2 1. I am a Supervising Deputy Attorney General in the California Attorney General's  
3 Office. I represent Defendant Rob Bonta, in his official capacity as Attorney General of  
4 California, in the above-captioned matter. I have personal knowledge of each fact stated in this  
5 declaration, and if called as a witness I could and would testify competently thereto.

6 2. On August 31, 2021, counsel for Defendant deposed Plaintiff Mark Baird. Attached  
7 hereto as Exhibit 1 is a true and correct copy of excerpts from the transcript of Mr. Baird's  
8 deposition.

9 3. On August 31, 2021, counsel for Defendant deposed Plaintiff Richard Gallardo.  
10 Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the transcript of Mr.  
11 Gallardo's deposition.

12 4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from the Shasta  
13 County Sheriff-Coroner to Plaintiff Richard Gallardo, dated September 17, 2019, which  
14 Defendant obtained from the Shasta County Sheriff-Coroner pursuant to a subpoena duces tecum.

15 5. Attached hereto as Exhibit 4 is a true and correct copy of "Right-to-Carry Laws and  
16 Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic  
17 Control Analysis," by Stanford Law Professor John J. Donohue III, et al., an article published in  
18 the April 2019 issue of the Journal of Empirical Legal Studies.

19 6. Attached hereto as Exhibit 5 is a true and correct copy of "RTC Laws Increase  
20 Violent Crime: Moody and Marvell Have Missed the Target," by Donohue, et al., an article  
21 published in the March 2019 issue of Econ Journal Watch.

22 7. Attached hereto as Exhibit 6 is a true and correct copy of "Easiness of Legal Access  
23 to Concealed Firearm Permits and Homicide Rates in the United States," by Boston University  
24 Professor of Public Health Michael Siegel, et al., an article published in the December 2017 issue  
25 of the American Journal of Public Health.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
September 30, 2022, at Sacramento, California.

*/s/ R. Matthew Wise*  
\_\_\_\_\_  
R. MATTHEW WISE

# EXHIBIT 1

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

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MARK BAIRD and RICHARD  
GALLARDO,

Plaintiffs,

vs.

No. 2:19-cv-00617-KJM-AC

ROB BONTA, in his official  
capacity as Attorney General  
of the State of California,  
and DOES 1-10,

Defendants.

/

VIDEOCONFERENCE DEPOSITION OF MARK BAIRD  
August 31, 2021

Stenographically Reported by:  
Janice L. Belcher, CSR No. 12342  
Job No. 4782562  
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1 VIDEOCONFERENCE DEPOSITION OF MARK BAIRD

2  
3 BE IT REMEMBERED, that pursuant to Notice, and on  
4 the 31st day of August, 2021, commencing at the hour of  
5 9:02 a.m., Pacific Standard Time, via videoconference  
6 before me, JANICE L. BELCHER, a Certified Shorthand  
7 Reporter, appeared MARK BAIRD, produced as a witness in  
8 said action, and being by me first duly sworn, was  
9 thereupon examined as a witness in said cause.

10  
11 --o0o--

12  
13 APPEARANCES VIA VIDEOCONFERENCE:

14 For Plaintiffs:

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19 For Defendant Attorney General Rob Bonta:

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(916)210-6046  
23 matthew.wise@doj.ca.gov

24 Also Present:

25 RICHARD GALLARDO

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MARK BAIRD,  
sworn as a witness,  
testified as follows:

EXAMINATION

BY MR. WISE:

Q Good morning. My name is Matthew Wise. And I represent the California Attorney General in this case, with which is Baird vs. Bonta.

Would you state your full name and spell your last name for the record.

A Mark Allen Baird, B-A-I-R-D.

Q Do you understand that you're testifying here today under the same oath that you would as if you were testifying in a courtroom?

A I do.

Q Have you ever had your deposition taken?

A Yes.

Q And how many times?

A I don't know.

Q Approximately?

A I don't know.

Q So you're familiar with the deposition rules?

A Well, I don't know that I'm familiar with them. I've been on one side of the table before.



1           A     I asked them to issue me one, and his response  
2 generally speaking was that he doesn't -- he does not  
3 issue those. Sheriff Jon Lopey said that to me. He  
4 does not issue open carry permits, and that suggests  
5 that he not only does not, but has not.

6           Q     And when did Sheriff Lopey tell you that?

7           A     You know, it's in the email that you have. I  
8 don't remember the exact date.

9           Q     So that was in written correspondence, is what  
10 you're saying?

11          A     Well, I did it verbally as well, and that was  
12 prior to his written response.

13          Q     Where was that conversation with Sheriff Lopey  
14 that you had?

15          A     You know, it may have been a year or so ago.  
16 Like I said before, I don't recall the exact date. But  
17 indicative in the email that you have, it was prior to  
18 that.

19          Q     Okay. Have you ever applied to the Siskiyou  
20 County sheriff for a permit to carry a concealed  
21 firearm?

22          A     Of course I have. You have those records, as  
23 well.

24               MR. WISE: I'm going to stop sharing that for  
25 now.

1 BY MR. WISE:

2 Q How many times approximately have you applied  
3 for a concealed firearm?

4 A I don't know. Three, maybe.

5 Q Do you know approximately when you did so most  
6 recently?

7 A It was 2021. I believe it was January.

8 Q What was the result of that application?

9 A It was successful.

10 Q Why did you apply?

11 A Why did I apply? Because you can be arrested  
12 for carrying a firearm if you don't have government  
13 permission here.

14 Q And why did you want government permission to  
15 carry a firearm?

16 A I don't want government permission. I want to  
17 exercise my Second Amendment right, but if you don't ask  
18 government permission you can be arrested for carrying  
19 your firearm.

20 Q When you applied, did you need to give a reason  
21 for wanting to carry a firearm?

22 A Of course you do.

23 Q What was the reason that you gave?

24 A You know, I don't have that form in front of  
25 me, but I believe it was that we haul animals, we have a

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1 licenses, who are you referring to by "they"?

2 A Every sheriff in every jurisdiction in  
3 California.

4 Q What are you hoping to achieve through this  
5 lawsuit?

6 A I am hoping to achieve the unpermitted and  
7 unrestricted open carry of a loaded firearm in the state  
8 of California as guaranteed to me by the Second  
9 Amendment of the United States Constitution and  
10 Article 3, Section 1 of the California Constitution.

11 Q Are you seeking the right to carry a firearm  
12 openly in public without limitation?

13 A I didn't say that, without limitation.

14 MS. BELLANTONI: Objection.

15 You can answer.

16 THE WITNESS: No, I'm not.

17 (Technical difficulties.)

18 THE WITNESS: Are you talking to me or my  
19 attorney?

20 I think I was finished.

21 MS. BELLANTONI: I simply stated, objection.

22 You can answer.

23 THE WITNESS: Okay. I'll continue then.

24 We're not asking to carry the firearm in  
25 sensitive buildings or sensitive places. The court, the

Page 16

1 rights that you were just laying out?

2 A Given that I'm able to carry a firearm  
3 concealed? I'm not sure I understand where you're going  
4 with that.

5 Q You have a license to carry a firearm, correct?

6 A I have permission from the government today to  
7 carry a firearm concealed, and that permission is  
8 revocable at any moment in time without any right of  
9 appeal by myself, yes. That could end tomorrow, it  
10 could end today. It could end if you decide to make a  
11 phone call after this proceedings and ask the sheriff to  
12 determine that I don't have good moral character  
13 anymore, and that's why I'm demanding my right as  
14 guaranteed under the Constitution.

15 It is not dependent on you or any government  
16 official or agency.

17 Q If it were legal for you to carry a firearm  
18 concealed throughout California, would you still be  
19 seeking the right to carry openly throughout California?

20 A It's already legal for me to carry a firearm  
21 concealed throughout California with the single  
22 exception, I believe, of San Francisco County or parts  
23 of certain cities in the Bay Area, and I am still  
24 seeking to carry a firearm openly, yes.

25 Q Why is that?

# EXHIBIT 2

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

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MARK BAIRD and RICHARD  
GALLARDO,

Plaintiffs,

vs.

No. 2:19-cv-00617-KJM-AC

ROB BONTA, in his official  
capacity as Attorney General  
of the State of California,  
and DOES 1-10,

Defendants.

/

VIDEOCONFERENCE DEPOSITION OF RICHARD GALLARDO  
August 31, 2021

Stenographically Reported by:  
Janice L. Belcher, CSR No. 12342  
Job No. 4782562  
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1 VIDEOCONFERENCE DEPOSITION OF RICHARD GALLARDO

2  
3 BE IT REMEMBERED, that pursuant to Notice, and on  
4 the 31st day of August, 2021, commencing at the hour of  
5 10:04 a.m., Pacific Standard Time, via videoconference  
6 before me, JANICE L. BELCHER, a Certified Shorthand  
7 Reporter, appeared RICHARD GALLARDO, produced as a  
8 witness in said action, and being by me first duly  
9 sworn, was thereupon examined as a witness in said  
10 cause.

11 ---o0o--

12  
13 APPEARANCES VIA VIDEOCONFERENCE:

14 For Plaintiffs:

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19 For Defendant Attorney General Rob Bonta:

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(916)210-6046  
23 matthew.wise@doj.ca.gov

24 Also Present:

25 MARK BAIRD

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RICHARD GALLARDO,  
sworn as a witness,  
testified as follows:

EXAMINATION

BY MR. WISE:

Q Good morning. My name is Matthew Wise, and I represent the California Attorney General in this case, which is Baird vs. Bonta.

Would you state your full name and spell your last name for the record.

A Richard Jason Gallardo; last name G-A-L-L-A-R-D-O.

Q Do you understand that you're testifying here today under the same oath that you would take if you were testifying in a courtroom?

A Yes.

Q Have you ever had your deposition taken?

A I've had it done a couple of times, yes.

Q Are you familiar with the rules of taking a deposition?

A Vaguely. It's been a while.

Q When was the last time you were deposed, approximately?

A Oh wow. It's been so long ago, I don't

1 Q Approximately when did you apply for that?

2 A Approximately four years, maybe five.

3 Q Have you ever applied to the Shasta County  
4 sheriff for a permit to carry a concealed firearm?

5 A Yes.

6 Q How many times?

7 A Well, I applied once. The way it works, you do  
8 the application, and then you do renewals every, about  
9 two years.

10 Q Do you know approximately when you did that  
11 first application?

12 A I would be guessing. I have to go back to my  
13 notes which would take a couple minutes. But I probably  
14 first applied approximately six, seven years ago. Maybe  
15 eight.

16 Q Do you know approximately when you last got  
17 that license renewed?

18 A I would have to go back to my notes, which  
19 would take me about probably a couple of minutes to  
20 answer that question, so I did apply originally. I did  
21 renewals after that. I can't answer your questions  
22 specifically right at the moment without referring to  
23 notes.

24 Q That's fine. What was the result of your  
25 application to carry a concealed firearm?

1           A    It was approved for the sheriff.  I'm assuming  
2   we're still talking about Shasta County, it was  
3   approved.

4           Q    Yes, that's correct.  Why did you apply for  
5   that license?

6           A    At the time, the LEOSA credential was still in  
7   flux, so I did not have that LEOSA at the time.  So I  
8   wanted the ability to carry a concealed away from my  
9   home for my personal protection and my family  
10   protection.

11          Q    And when you say "LEOSA," just to be clear for  
12   the record, you're referring to L-E-O-S-A; and what does  
13   that mean, just so we're clear?

14          A    Federal law passed in 2003, Law Enforcement  
15   Officer Safety Act.  It's basically a nationwide  
16   concealed carry permit.  It's not a permit though, it's  
17   called a credential, but that's what LEOSA is.

18          Q    Some when you were applying for a license in  
19   Shasta County, did you need to give a reason for wanting  
20   to carry a firearm?

21          A    I did.

22          Q    What was that reason?

23          A    Personal protection.

24          Q    Can you elaborate on why you would need a  
25   firearm for personal protection?

1 Q What is it?

2 A I'm sorry, your question?

3 Q What is this document?

4 A This is a document where Sheriff Bosenko  
5 revoked my concealed carry permit. That's what that  
6 document is.

7 Q What is the date of the letter?

8 A September of 2019.

9 Q Did Sheriff Bosenko sign this letter?

10 A It appears so. I don't know what his original  
11 signature looks like, but it looks like his signature  
12 there.

13 Q Let's look at the first paragraph of the  
14 letter. It states that you were terminated from  
15 CAL FIRE for bringing a firearm onto state property. Is  
16 it true that you were terminated from CAL FIRE?

17 A I was, yes.

18 Q Was bringing a firearm onto state property the  
19 reason that CAL FIRE gave for terminating you?

20 A Yes.

21 Q Let's look at the second paragraph of the  
22 letter. It begins by stating that CAL FIRE issued a  
23 special alert bulletin as a result of statements that  
24 you made; is that right?

25 A Yeah, we can read this, this document together,

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1           A    Well, typically, Sean Pasley is the employee  
2           at, or was the employee, I don't know if he's still  
3           there, Sean Pasley was the employee at the time that  
4           normally took care of all the correspondence for  
5           Mr. Bosenko regarding these matters. That's why you see  
6           Sean Pasley's name is there.

7           Q    As of today, does your concealed carry permit  
8           in Shasta County remain revoked?

9           A    Yes.

10          Q    Are you legally permitted to carry a firearm  
11          concealed?

12          A    I am through the LEOSA credential I mentioned  
13          earlier.

14          Q    Okay. Without sharing private conversations  
15          with your attorney, would you tell me how you became a  
16          plaintiff in this case?

17          A    I don't remember how I heard about the case. I  
18          do listen to Mark Baird quite a bit, he's on our local  
19          radio shows quite a bit regarding a lot of patriotic  
20          matters. I may have heard it through him. I may have  
21          seen a social media post, so I can't exactly say how I  
22          heard about it. But once I heard of the case I thought,  
23          you know, this is kind of down my alley. And I  
24          discussed it with Mark, and from there, and then I have  
25          been at it as a co-plaintiff.

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1 Q Do you know or did you know Mr. Baird  
2 personally before this lawsuit was filed?

3 A Yes, I did.

4 Q And when you're saying that he's on the radio  
5 about patriotic matters, could you just describe what  
6 you're talking about?

7 A No. That's something you need to ask Mr. Baird  
8 about. I don't want to speak for him or about him. I  
9 would rather you ask him about that.

10 Q I wasn't looking for Mr. Baird's  
11 characterization, only what you -- you had used the  
12 word, and so I was just trying to understand what you  
13 were -- what your understanding is of, of that?

14 A Well, similar to this lawsuit, sorry to  
15 interrupt, similar to this lawsuit, he's fighting for  
16 patriotic manners, and that's exactly what this lawsuit  
17 is about, and he talks about very similar manners.

18 Q Can you elaborate on that when you're saying  
19 "what this lawsuit is about," what is this lawsuit  
20 about?

21 A I believe it's about the right to carry openly  
22 without government permission using the Second Amendment  
23 as originally written to keep and bear arms, that's what  
24 I believe this lawsuit is about.

25 Q What are you hoping to achieve through this

1 lawsuit?

2 A I hope to achieve the ability to open carry  
3 without government permission; that's what I hope to  
4 achieve.

5 Q Are you seeking the right to carry a firearm  
6 openly in public without any limitations?

7 A There's always going to be limitations, so the  
8 question I think -- so the answer to that is going to be  
9 no, because there's always going to be limitations,  
10 whether they be legal or societal or civil limitations.

11 Q Would there be any places where you think it  
12 would be okay to you not to be able to openly carry a  
13 firearm?

14 A Possibly. Possibly maybe a courthouse, but  
15 there's already armed bailiffs there. There's security  
16 measures usually in courthouses. They're fair.  
17 Certainly not entirely adequate, but they're fair. So  
18 maybe that's an example.

19 Q Anywhere else that comes to mind?

20 A Not off the top of my head now, no.

21 Q Would it be okay to you not to be able to  
22 openly carry a firearm when visiting an elementary  
23 school?

24 A So you're asking for my opinion?

25 Q Yes.

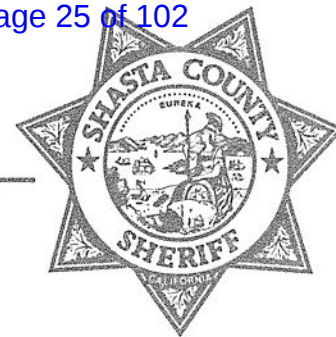
# EXHIBIT 3





# SHASTA COUNTY

## Office of the Sheriff



September 17, 2019

Richard J. Gallardo  
P. O. Box 494401  
Redding, CA 96049-4401

Tom Bosenko  
SHERIFF - CORONER

Re: Concealed Carry Weapon License

Mr. Gallardo,

I have become aware you were terminated from your position with a California State agency for bringing a firearm onto State property. While on State property, you displayed the firearm to co-workers. The possession of the firearm on state property is a violation of State Personnel Regulations.

On December 20, 2017 CALFIRE issued a *Special Alert Bulletin*, a copy of which was provided to me, regarding statements made by you. I have also been provided a copy of correspondence authored by you, dated September 2, 2019, addressed to CALFIRE and other agencies, It is my understanding the letter was distributed statewide to CALFIRE employees and others. I received information you were being investigated as a result of your September 2, 2019 correspondence. I was briefed by the California Highway Patrol regarding an interaction between you and a Red Bluff area California Highway Patrol Officer which took place August 2, 2019 regarding a traffic citation you received.

One of the requirements for persons authorized a Concealed Carry Weapon License is to be of good moral character and to obey all laws. Upon review of the information I have been provided, I am revoking your Concealed Carry Weapon License effective immediately. This revocation will be reported to the California Department of Justice. Carrying a concealed firearm without authorization or a Concealed Carry Weapon License is a crime.

Please return your Concealed Carry Weapon License to the Shasta County Sheriff's Office by mail or in person to:

Shasta County Sheriff's Office  
Concealed Carry Weapon Staff  
300 Park Marina Circle  
Redding, CA 96001

Sincerely,

A handwritten signature in black ink that reads "Tom Bosenko".

Tom Bosenko  
Sheriff-Coroner  
County of Shasta

TMB/ckw

# EXHIBIT 4

# Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis

*John J. Donohue, Abhay Aneja, and Kyle D. Weber\**

This article uses more complete state panel data (through 2014) and new statistical techniques to estimate the impact on violent crime when states adopt right to carry (RTC) concealed handgun laws. Our preferred panel data regression specification, unlike the statistical model of Lott and Mustard that had previously been offered as evidence of crime reducing RTC laws, both satisfies the parallel trends assumption and generates statistically significant estimates showing RTC laws *increase* overall violent crime. Our synthetic control approach also finds that RTC laws are associated with 13–15 percent *higher* aggregate violent crime rates 10 years after adoption. Using a consensus estimate of the elasticity of crime with respect to incarceration of 0.15, the average RTC state would need to roughly double its prison population to offset the increase in violent crime caused by RTC adoption.

## I. INTRODUCTION

For two decades, there has been a spirited academic debate over whether “shall issue” concealed carry laws (also known as right to carry or RTC laws) have an important impact on crime. The “More Guns, Less Crime” hypothesis originally articulated by John Lott and David Mustard (1997) claimed that RTC laws decreased violent

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crime (possibly shifting criminals in the direction of committing more property crime to avoid armed citizens). This research may well have encouraged state legislatures to adopt RTC laws, arguably making the pair's 1997 paper in the *Journal of Legal Studies* one of the most consequential criminological articles published in the last 25 years.

The original Lott and Mustard paper as well as subsequent work by John Lott in his 1998 book *More Guns, Less Crime* used a panel data analysis to support the theory that RTC laws reduce violent crime. A large number of papers examined the Lott thesis, with decidedly mixed results. An array of studies, primarily those using the limited data initially employed by Lott and Mustard for the period 1977–1992 and those failing to adjust their standard errors by clustering, supported the Lott and Mustard thesis, while a host of other papers were skeptical of the Lott findings.<sup>1</sup>

It was hoped that the 2005 National Research Council report *Firearms and Violence: A Critical Review* (hereafter the NRC Report) would resolve the controversy over the impact of RTC laws, but this was not to be. While one member of the committee—James Q. Wilson—did partially endorse the Lott thesis by saying there was evidence that murders fell when RTC laws were adopted, the other 15 members of the panel pointedly criticized Wilson's claim, saying that “the scientific evidence does not support his position.” The majority emphasized that the estimated effects of RTC laws were highly sensitive to the particular choice of explanatory variables and thus concluded that the panel data evidence through 2000 was too fragile to support any conclusion about the true effects of these laws.

This article answers the call of the NRC Report for more and better data and new statistical techniques to be brought to bear on the issue of the impact of RTC laws on crime. First, we revisit the state panel data evidence to see if extending the data for an additional 14 years, thereby providing additional crime data for prior RTC states as well as on 11 newly adopting RTC states, offers any clearer picture of the causal impact of allowing citizens to carry concealed weapons. We distill from an array of different panel data regressions for various crime categories for two time periods using two major sets of explanatory variables—including our preferred specification (DAW) and that of Lott and Mustard (LM)—a subset of regressions that satisfy the critical parallel trends assumption. All the statistically significant results from these regressions show RTC laws are associated with *higher* rates of overall violent crime, property crime, or murder.

Second, to address some of the weaknesses of panel data models, we undertake an extensive synthetic control analysis in order to present the most complete and robust

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<sup>1</sup>In support of Lott and Mustard (1997), see Lott's 1998 book *More Guns, Less Crime* (and the 2000 and 2010 editions). Ayres and Donohue (2003) and the 2005 National Research Council report *Firearms and Violence: A Critical Review* dismissed the Lott/Mustard hypothesis as lacking credible statistical support, as did Aneja et al. (2011) (and Aneja et al. (2014) further expanding the latter). Moody and Marvell (2008) and Moody et al. (2014) continued to argue in favor of a crime-reducing effect of RTC laws, although Zimmerman (2014) and McElroy and Wang (2017) find that RTC laws *increase* violent crime and Siegel et al. (2017) find RTC laws increase murders, as discussed in Section III.B.

results to guide policy in this area.<sup>2</sup> This synthetic control methodology first introduced in Abadie and Gardeazabal (2003) and expanded in Abadie et al. (2010, 2014) uses a matching methodology to create a credible “synthetic control” based on a weighted average of other states that best matches the prepassage pattern of crime for each “treated” state, which can then be used to estimate the likely path of crime if RTC adopting states had not adopted an RTC law. By comparing the actual crime pattern for RTC adopting states with the estimated synthetic controls in the postpassage period, we derive year by year estimates for the impact of RTC laws in the 10 years following adoption.<sup>3</sup>

To preview our major findings, the synthetic control estimate of the average impact of RTC laws across the 33 states that adopt between 1981 and 2007<sup>4</sup> indicates that violent crime is substantially higher after 10 years than would have been the case had the RTC law not been adopted. Essentially, for violent crime, the synthetic control approach provides a similar portrayal of RTC laws as that provided by the DAW panel data model and undermines the results of the LM panel data model. According to the aggregate synthetic control models regardless of whether one uses the DAW or LM covariates RTC laws led to increases in violent crime of 13–15 percent after 10 years, with positive but not statistically significant effects on property crime and murder. The median effect of RTC adoption after 10 years is 12.3 percent if one considers all 31 states with 10 years worth of data and 11.1 percent if one limits the analysis to the 26 states with the most compelling prepassage fit between the adopting states and their synthetic controls. Comparing our DAW specification findings with the results generated using placebo treatments, we are able to reject the null hypothesis that RTC laws have no impact on aggregate violent crime.

The structure of the article proceeds as follows. Section II begins with a discussion of the ways in which increased carrying of guns could either dampen crime (by thwarting or deterring criminals) or increase crime by directly facilitating violence or aggression by permit holders (or others), greatly expanding the loss and theft of guns, and burdening the functioning of the police in ways that diminish their effectiveness in controlling crime. We then show that a simple comparison of the drop in violent crime from

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<sup>2</sup>Abadie et al. (2014) identify a number of possible problems with panel regression techniques, including the danger of extrapolation when the observable characteristics of the treated area are outside the range of the corresponding characteristics for the other observations in the sample.

<sup>3</sup>The accuracy of this matching can be qualitatively assessed by examining the root mean square prediction error (RMSPE) of the synthetic control in the pretreatment period (or a variation on this RMSPE implemented in this article), and the statistical significance of the estimated treatment effect can be approximated by running a series of placebo estimates and examining the size of the estimated treatment effect in comparison to the distribution of placebo treatment effects.

<sup>4</sup>Note that we do not supply a synthetic control estimate for Indiana, even though it passed its RTC law in 1980, owing to the fact that we do not have enough pretreatment years to accurately match the state with an appropriate synthetic control. Including Indiana as a treatment state, though, would not meaningfully change our results. Similarly, we do not generate synthetic control estimates for Iowa and Wisconsin (whose RTC laws went into effect in 2011) or for Illinois (2014 RTC law), because of the limited postpassage data.

1977–2014 in the states that have resisted the adoption of RTC laws is almost an order of magnitude greater than in RTC adopting states (a 42.3 percent drop vs. a 4.3 percent drop), although a spartan panel data model with only state and year effects reduces the differential to 20.2 percent. Section III discusses the panel data results, showing that the DAW model indicates that RTC laws have increased violent and property crime, with weaker evidence that RTC laws increased homicide (but not non-gun homicide) over our entire data period, while both the DAW and the LM model provide statistically significant evidence that RTC laws have increased murder in the postcrack period.

The remainder of the article shows that, using either the DAW or LM explanatory variables, the synthetic control approach uniformly supports the conclusion that RTC laws lead to substantial increases in violent crime. Section IV describes the details of our implementation of the synthetic control approach and shows that the mean and median estimates of the impact of RTC laws show greater than double digit increases by the 10th year after adoption. Section V provides aggregate synthetic control estimates of the impact of RTC laws, and Section VI concludes.

## II. THE IMPACT OF RTC LAWS: THEORETICAL CONSIDERATIONS AND SIMPLE COMPARISONS

### A. *Gun Carrying and Crime*

#### 1. Mechanisms of Crime Reduction

Allowing citizens to carry concealed handguns can influence violent crime in a number of ways, some benign and some invidious. Violent crime can fall if criminals are deterred by the prospect of meeting armed resistance, and potential victims or armed bystanders may thwart or terminate attacks by either brandishing weapons or actually firing on the potential assailants. For example, in 2012, a Pennsylvania concealed carry permit holder became angry when he was asked to leave a bar because he was carrying a weapon and, in the ensuing argument, he shot two men, killing one, before another permit holder shot him (Kalinowski 2012). Two years later, a psychiatric patient in Pennsylvania killed his caseworker, and grazed his psychiatrist before the doctor shot back with his own gun, ending the assault by wounding the assailant (Associated Press 2014).

The impact of the Pennsylvania RTC law is somewhat ambiguous in both these cases. In the bar shooting, it was a permit holder who started the killing and another who ended it, so the RTC law may actually have increased crime. The case of the doctor's use of force is more clearly benign, although the RTC law may have made no difference: a doctor who routinely deals with violent and deranged patients would typically be able to secure a permit to carry a gun even under a may-issue regime. Only a statistical analysis can reveal whether in aggregate extending gun carrying beyond those with a demonstrated need and good character, as shall-issue laws do, imposes or reduces overall costs.

Some defensive gun uses can be socially costly and contentious even if they do avoid a robbery or an assault. For example, in 1984, when four teens accosted Bernie Goetz on a New York City subway, he prevented an anticipated robbery by shooting all four,



permanently paralyzing one.<sup>5</sup> In 2010, a Pennsylvania concealed carry holder argued that he used a gun to thwart a beating. After a night out drinking, Gerald Ung, a 28 year old Temple University law student, shot a 23 year old former star lacrosse player from Villanova, Eddie DiDonato, when DiDonato rushed Ung angrily and aggressively after an altercation that began when DiDonato was bumped while doing chin ups on scaffolding on the street in Philadelphia. When prosecuted, Ung testified that he always carried his loaded gun when he went out drinking. A video of the incident shows that Ung was belligerent and had to be restrained by his friends before the dispute became more physical, which raises the question of whether his gun carrying contributed to his belligerence, and hence was a factor that precipitated the confrontation. Ung, who shot DiDonato six times, leaving DiDonato partially paralyzed with a bullet lodged in his spine, was acquitted of attempted murder, aggravated assault, and possessing an instrument of crime (Slobodzian 2011). While Ung avoided criminal liability and a possible beating, he was still prosecuted and then hit with a major civil action, and the incident did impose significant social costs, as shootings frequently do.<sup>6</sup>

In any event, the use of a gun by a concealed carry permit holder to thwart a crime is a statistically rare phenomenon. Even with the enormous stock of guns in the United States, the vast majority of the time that someone is threatened with violent crime no gun will be wielded defensively. A five year study of such violent victimizations in the United States found that victims reported failing to defend or to threaten the criminal with a gun 99.2 percent of the time this in a country with 300 million guns in civilian hands (Planty & Truman 2013). Adding 16 million permit holders who often dwell in low crime areas may not yield many opportunities for effective defensive use for the roughly 1 percent of Americans who experience a violent crime in a given year, especially since criminals can attack in ways that preempt defensive measures.<sup>7</sup>

## 2. Mechanisms of Increasing Crime

Since the statistical evidence presented in this article suggests that the benign effects of RTC laws are outweighed by the harmful effects, we consider five ways in which RTC laws could increase crime: (a) elevated crime by RTC permit holders or by others, which can be induced by the greater belligerence of permit holders that can attend gun carrying or even through counterproductive attempts by permit holders to intervene protectively; (b) increased crime by those who acquire the guns of permit holders via loss or theft; (c) a change in culture induced by the hyper vigilance about one's rights and the need

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<sup>5</sup>The injury to Darrell Cabey was so damaging that he remains confined to a wheelchair and functions with the intellect of an eight-year-old, for which he received a judgment of \$43 million against Goetz, albeit without satisfaction (Biography.com 2016).

<sup>6</sup>According to the civil lawsuit brought by DiDonato, his injuries included "severe neurological impairment, inability to control his bowels, depression and severe neurological injuries" (Lat 2012).

<sup>7</sup>Even big city police officers rarely need to fire a weapon despite their far greater exposure to criminals. According to a 2016 Pew Research Center survey of 7,917 sworn officers working in departments with 100 or more officers, "only about a quarter (27%) of all officers say they have ever fired their service weapon while on the job" (Morin & Mercer 2017).

to avenge wrongs that the gun culture can nurture; (d) elevated harm as criminals respond to the possibility of armed resistance by increasing their gun carrying and escalating their level of violence; and (e) all of the above factors will either take up police time or increase the risks the police face, thereby impairing the crime fighting ability of police in ways that can increase crime.

*a. Crime committed or induced by permit holders:* RTC laws can lead to an increase in violent crime by increasing the likelihood a generally law abiding citizen will commit a crime or increasing the criminal behavior of others. Moreover, RTC laws may facilitate the criminal conduct of those who generally have a criminal intent. We consider these two avenues below.

*i. The pathway from the law-abiding citizen*

Evidence from a nationally representative sample of 4,947 individuals indicates that Americans tend to overestimate their gun related abilities. For example, 82.6 percent believed they were less likely than the average person to use a gun in anger. When asked about their “ability to responsibly own a handgun,” 50 percent of the respondents deemed themselves to be in the top 10 percent and 23 percent placed their ability within the top 1 percent of the U.S. population. Such overconfidence has been found to increase risk taking and could well lead to an array of socially harmful consequences ranging from criminal misconduct and gun accidents to lost or stolen guns (Stark & Sachau 2016).

In a number of well publicized cases, concealed carry permit holders have increased the homicide toll by killing someone with whom they became angry over an insignificant issue, ranging from merging on a highway and talking on a phone in a theater to playing loud music at a gas station (Lozano 2017; Levenson 2017; Scherer 2016). In one particularly tragic example in January 2019 at a bar in State College, Pennsylvania, a lawful permit holder, Jordan Witmer, got into a fight with his girlfriend. When a father and son sitting at the bar tried to intervene, Witmer killed both of them, shot his girlfriend in the chest, and fled. When his car crashed, Witmer broke into a nearby house, killed the 82 year old homeowner, who was with his wife on their 60th wedding anniversary, and then killed himself (Sauro 2019). Another such example occurred in July 2018 when Michael Drejka started to hassle a woman sitting in a car in a disabled parking spot while her husband and five year old son ran into a store. When the husband emerged, he pushed Drejka to the ground, who then killed him with a shot to the chest. The killing is caught on video and Drejka is being prosecuted for manslaughter in Clearwater, Florida (Simon 2018).

When Philadelphia permit holder Louis Mockewich shot and killed a popular youth football coach (another permit holder carrying his gun) over a dispute concerning snow shoveling in January 2000, Mockewich’s car had an NRA bumper sticker reading “Armed with Pride” (Gibbons & Moran 2000). An angry young man, with somewhat of a paranoid streak, who has not yet been convicted of a crime or adjudicated as a “mental defective,” may be encouraged to carry a gun if he resides in an RTC state.<sup>8</sup> That such

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<sup>8</sup>The Gun Control Act of 1968 prohibits gun possession by felons and adjudicated “mental defectives” (18 U.S.C. 922(d)(4), 2016).



individuals will be more likely to be aggressive once armed and hence more likely to stimulate violence by others should not be surprising.

Recent evidence suggests that as gun carrying is increasing with the proliferation of RTC laws, road rage incidents involving guns are rising (Biette Timmons 2017; Plumlee 2012). Incidents in which “someone in a car brandished a gun in a threatening manner or fired a gun at another driver or passenger have more than doubled in the last three years, from 247 in 2014 to 620 in 2016 .... The highest profile recent road rage incidents involved two NFL players, Joe McKnight and Will Smith, killed ... in separate road rage shootings in New Orleans” (Shen 2017).<sup>9</sup> In the nightmare case for RTC, two Michigan permit holding drivers pulled over to battle over a tailgating dispute in September 2013 and each shot and killed the other (Stuart 2013). Without Michigan’s RTC law, this would likely have not been a double homicide. Indeed, two studies—one for Arizona and one for the nation as a whole—found that “the evidence indicates that those with guns in the vehicle are more likely to engage in ‘road rage’” (Hemenway et al. 2006; Miller et al. 2002).<sup>10</sup> These studies may suggest either that gun carrying emboldens more aggressive behavior or reflects a selection effect for more aggressive individuals.<sup>11</sup> If this is correct, then it may not be a coincidence that there are so many cases in which a concealed carry holder acts belligerently and is shot by another permit holder.<sup>12</sup>

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<sup>9</sup>Joe McNight and Ronald Gasser were arguing through their open car windows as they drove for miles. When they were both stopped at a red light, McNight walked over to Gasser’s car, and the “two argued through the passenger-side window until Gasser pulled a gun from between his seat and the center console and shot McNight three times.” Gasser was convicted of manslaughter and sentenced to a prison term of 30 years (Calder 2018).

<sup>10</sup>A perfect illustration was provided by 25-year-old Minnesota concealed carry permit holder Alexander Weiss, who got into an argument after a fender bender caused by a 17-year-old driver. Since the police had been called, it is hard to imagine that this event could end tragically—unless someone had a gun. Unfortunately, Weiss, who had a bumper sticker on his car saying “Gun Control Means Hitting Your Target,” killed the 17-year-old with one shot to the chest and has been charged with second-degree murder (KIMT 2018).

<sup>11</sup>While concealed carry permit holders should be free of any felony conviction, and thus show a lower overall rate of violence than a group that contains felons, a study in Texas found that when permit holders do commit a crime, it tends to be a severe one: “the concentration of convictions for weapons offenses, threatening someone with a firearm, and intentionally killing a person stem from the ready availability of a handgun for CHL holders” (Phillips et al. 2013). See, for example, a Texas permit holder who told police he shot a man in the head at an IHOP restaurant in Galveston because “he was annoyed by the noise the victim and others were making just a table away” (ABC News 2018).

<sup>12</sup>We have just cited three of them: the 2012 Pennsylvania bar shooting, the 2000 Philadelphia snow-shoveling dispute, and the 2013 Michigan road-rage incident. Here are two more. Former NFL player Will Smith, a concealed carry permit holder with a loaded gun in his car, was engaged in a road rage incident with another permit holder, who killed him with seven shots in the back and one into his side and shot his wife, hitting both knees. The shooter was convicted of manslaughter and sentenced to 25 years in prison (Lane 2018). In yet another recent case, two permit holders glowered at each other in a Chicago gas station, and when one drew his weapon, the second man pulled out his own gun and killed the 43-year-old instigator, who died in front of his son, daughter, and pregnant daughter-in-law (Hernandez 2017). A video of the encounter can be found at <https://www.youtube.com/watch?v=I2j9vDHIBU>. According to the police report obtained by the *Chicago Tribune*, a bullet from the gun exchange broke the picture window of a nearby garden apartment and another shattered the window of a car with four occupants that was driving past the gas station. No charges were brought against the surviving permit holder, who shot first but in response to the threat initiated by the other permit holder.

In general, the critique that the relatively low number of permit revocations proves that permit holders do not commit enough crime to substantially elevate violent criminality is misguided for a variety of reasons. First, only a small fraction of 1 percent of Americans commits a gun crime each year, so we do not expect even a random group of Americans to commit much crime, let alone a group purged of convicted felons. Nonetheless, permit revocations clearly understate the criminal misconduct of permit holders, since not all violent criminals are caught and we have just seen five cases where six permit holders were killed, so no permit revocation or criminal prosecution would have occurred regardless of any criminality by the deceased.<sup>13</sup> Second, and perhaps more importantly, RTC laws increase crime by individuals other than permit holders in a variety of ways. The messages of the gun culture, perhaps reinforced by the adoption of RTC laws, can promote fear and anger, which are emotions that can invite more hostile confrontations leading to violence. For example, if permit holder George Zimmerman has sledged Trayvon Martin only because Zimmerman was armed, then the presence of Zimmerman's gun could be deemed to have encouraged a hostile confrontation, regardless of who ultimately becomes violent.<sup>14</sup>

Even well intentioned interventions by permit holders intending to stop a crime have elevated the crime count when they ended with the permit holder either being killed by the criminal<sup>15</sup> or shooting an innocent party by

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<sup>13</sup>In addition, NRA-advocated state laws that ban the release of information about whether those arrested for even the most atrocious crimes are RTC permit holders make it extremely difficult to monitor their criminal conduct.

<sup>14</sup>Psychologists have found that the very act of carrying a gun tends to distort perceptions of reality in a way that exaggerates perceived threats. "We have shown here that ... the act of wielding a firearm raises the likelihood that nonthreatening objects will be perceived as threats. This bias can clearly be horrific for victims of accidental shootings" (Witt & Brockmole 2012). As one permit holder explained: "a gun causes its bearer to see the world differently. A well-lit city sidewalk full of innocent pedestrians becomes a scene—a human grouping one of whose constituents you might need to shoot. Something good in yourself is, by this means, sacrificed. And more. In a sudden, unwieldy hauling-out of your piece, or just by having your piece in your pocket, you can fumble around and shoot yourself, as often happens and isn't at all funny. Or you might shoot some little girl on a porch across the street or two streets away, or five streets away. Lots and lots of untoward things can happen when you're legally carrying a concealed firearm. One or two of them might turn out to be beneficial—to you. But a majority are beneficial to neither man nor beast. Boats are said, by less nautical types, always to be seeking a place to sink. Guns—no matter who has them—are always seeking an opportunity to go off. Anybody who says different is a fool or a liar or both" (Ford 2016).

<sup>15</sup>In 2016 in Arlington, Texas, a man in a domestic dispute shot at a woman and then tried to drive off (under Texas law it was lawful for him to be carrying his gun in his car, even though he did not have a concealed carry permit.) When he was confronted by a permit holder, the shooter slapped the permit holder's gun out of his hand and then killed him with a shot to the head. Shortly thereafter, the shooter turned himself into the police (Mettler 2016). Similarly, when armed criminals entered a Las Vegas Walmart in 2014 and told everyone to get out because "[t]his is a revolution," one permit holder told his friend he would stay to confront the threat. He was gunned down shortly before the police arrived, adding to the death toll rather than reducing it (NBC News 2014). Finally, in January 2010, Stephen Sharp arrived at work at a St. Louis power plant just as co-worker Timothy Hendron began firing at fellow workers with an AK-47. Retrieving a pistol from his truck, Sharp opened fire at Hendron, and fecklessly discharged all six rounds from across the parking lot. Unharmed, Hendron returned fire, grievously wounding Sharp and continuing his rampage unabated. When the police arrived, there was "no clear distinction between attacker and victims." In the end, Hendron killed three and wounded five before killing himself (Byers 2010).

mistake.<sup>16</sup> Indeed, an FBI study of 160 active shooter incidents found that in almost half (21 of 45) the situations in which police engaged the shooter to end the threat, law enforcement suffered casualties, totaling nine killed and 28 wounded (Blair & Schweit 2014). One would assume the danger to an untrained permit holder trying to confront an active shooter would be greater than that of a trained professional, which may in part explain why effective intervention in such cases by permit holders to thwart crime is so rare. Although the same FBI report found that in 21 of a total of 160 active shooter incidents between 2000 and 2013, “the situation ended after unarmed citizens safely and successfully restrained the shooter,” there was only one case in a bar in Winnemucca, Nevada in 2008 in which a private armed citizen other than an armed security guard stopped a shooter, and that individual was an active duty Marine (Holzel 2008).

## ii. The pathway from those harboring criminal intent

Over the 10 year period from May 2007 through January 2017, the Violence Policy Center (2017) lists 31 instances in which concealed carry permit holders killed three or more individuals in a single incident. Many of these episodes are disturbingly similar in that there was substantial evidence of violent tendencies and/or serious mental illness, but no effort was made to even revoke the carry permit, let alone take effective action to prevent access to guns. For example, on January 6, 2017, concealed handgun permit holder Esteban Santiago, 26, killed five and wounded six others at the Fort Lauderdale Hollywood Airport, before sitting on the floor and waiting to be arrested as soon as he ran out of ammunition. In the year prior to the shooting, police in Anchorage, Alaska, charged Santiago with domestic violence, and visited the home five times for various other complaints (KTUU 2017). In November 2016, Santiago entered the Anchorage FBI office and spoke of “mind control” by the CIA and having “terroristic thoughts” (Hopkins 2017). Although the police took his handgun at the time, it was returned to him on December 7, 2016 after Santiago spent four days in a mental health facility because, according to federal officials, “there was no mechanism in federal law for officers to permanently seize the weapon”<sup>17</sup> (Boots 2017). Less than a month later, Santiago flew with his gun to Florida and opened fire in the baggage claim area.<sup>18</sup>

In January 2018, the FBI charged Taylor Wilson, a 26 year old Missouri concealed carry permit holder, with terrorism on an Amtrak train when, while carrying a loaded

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<sup>16</sup>In 2012, “a customer with a concealed handgun license ... accidentally shot and killed a store clerk” during an attempted robbery in Houston (MacDonald 2012). Similarly, in 2015, also in Houston, a bystander who drew his weapon upon seeing a carjacking incident ended up shooting the victim in the head by accident (KHOU 2015). An episode in June 2017 underscored that interventions even by well-trained individuals can complicate and exacerbate unfolding crime situations. An off-duty Saint Louis police officer with 11 years of service was inside his home when he heard the police exchanging gunfire with some car thieves. Taking his police-issued weapon, he went outside to help, but as he approached he was told by two officers to get on the ground and then shot in the arm by a third officer who “feared for his safety” (Hauser 2017).

<sup>17</sup>Moreover, in 2012, Puerto Rican police confiscated Santiago’s handguns and held them for two years before returning them to him in May 2014, after which he moved to Alaska (Clary et al. 2017).

<sup>18</sup>For a similar story of repeated gun violence and signs of mental illness by a concealed carry permit holder, see the case of Aaron Alexis, who murdered 12 at the Washington Navy Yard in September 2013 (Carter et al. 2013).

weapon, he tried to interfere with the brakes and controls of the moving train. According to the FBI, Wilson had (1) previously joined an “alt right” neo Nazi group and traveled to the Unite the Right rally in Charlottesville, Virginia in August 2017; (2) indicated his interest in “killing black people” and was the perpetrator of a road rage incident in which he pointed a gun at a black woman for no apparent reason while driving on an interstate highway in April 2016; and (3) possessed devices and weapons “to engage in criminal offenses against the United States.” Research is needed to analyze whether having a permit to legally carry weapons facilitates such criminal designs (Pilger 2018).

In June 2017, Milwaukee Police Chief Ed Flynn pointed out that criminal gangs have taken advantage of RTC laws by having gang members with clean criminal records obtain concealed carry permits and then hold the guns after they are used by the active criminals (Officer.com 2017). Flynn was referring to so called human holsters who have RTC permits and hold guns for those barred from possession. For example, Wisconsin permit holder Darrail Smith was stopped three times while carrying guns away from crime scenes before police finally charged him with criminal conspiracy. In the second of these, Smith was “carrying three loaded guns, including one that had been reported stolen,” but that was an insufficient basis to charge him with a crime or revoke his RTC permit (DePrang 2015). Having a “designated permit holder” along to take possession of the guns when confronted by police may be an attractive benefit for criminal elements acting in concert (Fernandez et al. 2015; Luthern 2015).

*b. Increased gun thefts:* The most frequent occurrence each year involving crime and a good guy with a gun is not self defense but rather the theft of the good guy’s gun, which occurs hundreds of thousands of times each year.<sup>19</sup> Data from a nationally representative web based survey conducted in April 2015 of 3,949 subjects revealed that those who carried guns outside the home had their guns stolen at a rate over 1 percent per year (Hemenway et al. 2017). Given the current level of roughly 16 million permit holders, a plausible estimate is that RTC laws result in permit holders furnishing more than 100,000 guns per year to criminals.<sup>20</sup> As Phil Cook has noted, the relationship between gun theft and crime is a complicated one for which few definitive data are currently available (Cook

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<sup>19</sup>According to Larry Keane, senior vice president of the National Shooting Sports Foundation (a trade group that represents firearms manufacturers): “There are more guns stolen every year than there are violent crimes committed with firearms.” More than 237,000 guns were reported stolen in the United States in 2016, according to the FBI’s National Crime Information Center. The actual number of thefts is obviously much higher since many gun thefts are never reported to police, and “many gun owners who report thefts do not know the serial numbers on their firearms, data required to input weapons into the NCIC.” The best survey estimated 380,000 guns were stolen annually in recent years, but given the upward trend in reports to police, that figure likely understates the current level of gun thefts (Freskos 2017b). According to National Crime Information Center data, the number of guns reported stolen nationally jumped 60 percent between 2007 and 2016 (Freskos 2018a).

<sup>20</sup>While the Hemenway et al. study is not large enough and detailed enough to provide precise estimates, it establishes that those who have carried guns in the last month are more likely to have them stolen. A recent Pew Research Survey found that 26 percent of American gun owners say they carry a gun outside of their home “all or most of the time” (Igielnik & Brown 2017, surveying 3,930 U.S. adults, including 1,269 gun owners). If 1 percent of 16 million permit holders have guns stolen each year, that would suggest 160,000 guns were stolen. Only guns stolen outside the home would be attributable to RTC laws, so a plausible estimate of guns stolen per year owing to gun carrying outside the home might be 100,000.

2018). But if there was any merit to the outrage over the loss of about 1,400 guns during the Fast and Furious program that began in 2009 and the contribution that these guns made to crime (primarily in Mexico), it highlights the severity of the vastly greater burdens of guns lost by and stolen from U.S. gun carriers.<sup>21</sup> A 2013 report from the Bureau of Alcohol, Tobacco, Firearms, and Explosives concluded that “lost and stolen guns pose a substantial threat to public safety and to law enforcement. Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun” (Office of the Director Strategic Management 2013; Parsons & Vargas 2017).

For example, after Sean Penn obtained a permit to carry a gun, his car was stolen with two guns in the trunk. The car was soon recovered, but the guns were gone (Donohue 2003). In July 2015 in San Francisco, the theft of a gun from a car in San Francisco led to a killing of a tourist on a city pier that almost certainly would not have occurred if the lawful gun owner had not left it in the car (Ho 2015). Just a few months later, a gun stolen from an unlocked car was used in two separate killings in San Francisco and Marin in October 2015 (Ho & Williams 2015). According to the National Crime Victimization Survey, in 2013 there were over 660,000 auto thefts from households. More guns being carried in vehicles by permit holders means more criminals will be walking around with the guns stolen from permit holders.<sup>22</sup>

As Michael Rallings, the top law enforcement official in Memphis, Tennessee, noted in commenting on the problem of guns being stolen from cars: “Laws have unintended consequences. We cannot ignore that as a legislature passes laws that make guns more accessible to criminals, that has a direct effect on our violent crime rate” (Freskos 2017a). An Atlanta police sergeant elaborated on this phenomenon: “Most of our criminals, they go out each and every night hunting for guns, and the easiest way to get them is out of people’s cars. We’re finding that a majority of stolen guns that are getting in the hands of criminals and being used to commit crimes were stolen out of vehicles” (Freskos 2017c). In 2015, 70 percent of guns reported stolen in Atlanta came from cars and trucks (Freskos 2016). Another Atlanta police officer stated that weapons stolen from cars “are used in crimes to shoot people, to rob people” because criminals find these guns to be easy to steal and hard to trace. “For them, it doesn’t cost them anything to break into a car and steal a gun” (Freskos 2016).<sup>23</sup>

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<sup>21</sup>Of the 2,020 guns involved in the Bureau of Alcohol, Tobacco, Firearms, and Explosives probe dubbed ‘Operation Fast and Furious,’ 363 have been recovered in the United States and 227 have been recovered in Mexico. That leaves 1,430 guns unaccounted for” (Schwarzschild & Griffin 2011). Wayne LaPierre of the NRA was quoted as saying: “These guns are now, as a result of what [ATF] did, in the hands of evil people, and evil people are committing murders and crimes with these guns against innocent citizens” (Horwitz 2011).

<sup>22</sup>In early December 2017, the sheriff in Jacksonville, Florida announced that his office knew of 521 guns that had been stolen so far in 2017—from unlocked cars alone! (Campbell 2017).

<sup>23</sup>Examples abound: Tario Graham was shot and killed during a domestic dispute in February 2012 with a revolver stolen weeks earlier out of pickup truck six miles away in East Memphis (Perrusquia 2017). In Florida, a handgun stolen from an unlocked Honda Accord in mid-2014 helped kill a police officer a few days before Christmas that year (Sampson 2014). A gun stolen from a parked car during a Mardi Gras parade in 2017 was used a few days later to kill 15-year-old Nia Savage in Mobile, Alabama, on Valentine’s Day (Freskos 2017a).

Of course, the permit holders whose guns are stolen are not the killers, but they can be the but for cause of the killings. Lost, forgotten, and misplaced guns are another dangerous byproduct of RTC laws.<sup>24</sup>

*c. Enhancing a culture of violence:* The South has long had a higher rate of violent crime than the rest of the country. For example, in 2012, while the South had about one quarter of the U.S. population, it had almost 41 percent of the violent crime reported to police (Fuchs 2013). Social psychologists have argued that part of the reason the South has a higher violent crime rate is that it has perpetuated a “subculture of violence” predicated on an aggrandized sense of one’s rights and honor that responds negatively to perceived insults. A famous experiment published in the *Journal of Personality and Social Psychology* found that southern males were more likely than northern males to respond aggressively to being bumped and insulted. This was confirmed by measurement of their stress hormones and their frequency of engaging in aggressive or dominant behavior after being insulted (Cohen et al. 1996). To the extent that RTC laws reflect and encourage this cultural response, they can promote violent crime not only by permit holders, but by all those with or without guns who are influenced by this crime inducing worldview.

Even upstanding citizens, such as Donald Brown, a 56 year old retired Hartford fire fighter with a distinguished record of service, can fall prey to the notion that resort to a lawful concealed weapon is a good response to a heated argument. Brown was sentenced to seven years in prison in January 2018 by a Connecticut judge who cited his “poor judgment on April 24, 2015, when he drew his licensed 9mm handgun and fired a round into the abdomen of Lascelles Reid, 33.” The shooting was prompted by a dispute “over renovations Reid was performing at a house Brown owns” (Owens 2018). Once again, we see that the RTC permit was the pathway to serious violent crime by a previously law abiding citizen.

*d. Increasing violence by criminals:* The argument for RTC laws is often predicated on the supposition that they will encourage good guys to have guns, leading only to benign effects on the behavior of bad guys. This is highly unlikely to be true.<sup>25</sup> Indeed, the

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<sup>24</sup>The growing TSA seizures in carry-on luggage are explained by the increase in the number of gun carriers who simply forget they have a gun in their luggage or briefcase (Williams & Waltrip 2004). A chemistry teacher at Marjory Stoneman Douglas High School in Parkland, Florida, who had said he would be willing to carry a weapon to protect students at the school, was criminally charged for leaving a loaded pistol in a public restroom. The teacher’s 9mm Glock was discharged by an intoxicated homeless man who found it in the restroom (Stanglin 2018).

<sup>25</sup>Consider in this regard, David Friedman’s theoretical analysis of how right-to-carry laws will reduce violent crime: “Suppose one little old lady in ten carries a gun. Suppose that one in ten of those, if attacked by a mugger, will succeed in killing the mugger instead of being killed by him—or shooting herself in the foot. On average, the mugger is much more likely to win the encounter than the little old lady. But—also on average—every hundred muggings produce one dead mugger. At those odds, mugging is a very unattractive profession—not many little old ladies carry enough money in their purses to justify one chance in a hundred of being killed getting it. The number of muggers—and muggings—declines drastically, not because all of the muggers have been killed but because they have, rationally, sought safer professions” (Friedman 1990). There is certainly no empirical support for the conjecture that muggings will “decline drastically” in the wake of RTC adoption. What Friedman’s analysis overlooks is that muggers can decide not to mug (which is what Friedman posits) or they can decide to initiate their muggings by cracking the old ladies over the head or by being

evidence that gun prevalence in a state is associated with higher rates of lethal force by police (even controlling for homicide rates) suggests that police may be more fearful and shoot quicker when they are more likely to interact with an armed individual (Nagin forthcoming).<sup>26</sup> Presumably, criminals would respond in a similar fashion, leading them to arm themselves more frequently, attack more harshly, and shoot more quickly when citizens are more likely to be armed. In one study, two thirds of prisoners incarcerated for gun offenses “reported that the chance of running into an armed victim was very or somewhat important in their own choice to use a gun” (Cook et al. 2009). Such responses by criminals will elevate the toll of the crimes that do occur.

Indeed, a panel data estimate over the years 1980 to 2016 reveals that the percentage of robberies committed with a firearm rises by 18 percent in the wake of RTC adoption ( $t = 2.60$ ).<sup>27</sup> Our synthetic controls assessment similarly shows that the percentage of robberies committed with a firearm increases by 35 percent over 10 years ( $t = 4.48$ ).<sup>28</sup> Moreover, there is no evidence that RTC laws are reducing the overall level of robberies: the panel data analysis associates RTC laws with a 9 percent higher level of overall robberies ( $t = 1.85$ ) and the synthetic controls analysis suggests a 7 percent growth over 10 years ( $t = 1.19$ ).

*e. Impairing police effectiveness:* According to an April 2016 report of the Council of Economic Advisers: “Expanding resources for police has consistently been shown to reduce crime; estimates from economic research suggests that a 10% increase in police size decreases crime by 3 to 10%” (CEA 2016:4). In summarizing the evidence on fighting crime in the *Journal of Economic Literature*, Aaron Chalfin and Justin McCrary note that adding police manpower is almost twice as effective in reducing violent crime as it is in reducing property crime (Chalfin & McCrary 2017). Therefore, anything that RTC laws do to occupy police time, from processing permit applications to checking for permit validity to dealing with gunshot victims, inadvertent gun discharges, and the staggering number of stolen guns is likely to have an opportunity cost expressed in higher violent crime.

The presence of more guns on the street can complicate the job of police as they confront (or shy away from) armed citizens. Daniel Nagin finds a pronounced positive association between statewide prevalence of gun ownership and police use of lethal force (Nagin forthcoming). A Minnesota police officer who stopped Philando Castile for a broken taillight shot him seven times only seconds after Castile indicated he had a permit to carry a weapon because the officer feared the permit holder might be reaching for the

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prepared to shoot them if they start reaching for a gun (or even wear body armor). Depending on the response of the criminals to increased gun carrying by potential victims, the increased risk to the criminals may be small compared to the increased risk to the victims. Only an empirical evaluation can answer this question.

<sup>26</sup>See footnotes 29–31 and accompanying text for examples of this pattern of police use of lethal force.

<sup>27</sup>The panel data model uses the DAW explanatory variables set forth in Table 2.

<sup>28</sup>The weighted average proportion of robberies committed by firearm in the year prior to RTC adoption (for states that adopted RTC between 1981 and 2014) is 36 percent while the similar proportion in 2014 for the same RTC states is 43 percent (and for non-RTC states is 29 percent).



gun. Another RTC permit holder, stranded in his disabled car early one morning on a Florida highway exit ramp, grabbed the gun he had legally purchased three days earlier when a police officer in plainclothes pulled up in a van with tinted windows and no lights. “It was not immediately clear what happened after [the officer] got out of his van, but the permit holder at some point started running ... and [the officer] fired six times,” killing the permit holder, whose body fell “about 80 to 100 feet from his vehicle,” with his undischarged handgun on the ground somewhere in between (Robles & Hauser 2015). After a similar encounter between an officer and a permit holder, the officer asked the gun owner: “Do you realize you almost died tonight?” (Kaste 2019).<sup>29</sup>

A policemen trying to give a traffic ticket has more to fear if the driver is armed. When a gun is found in a car in such a situation, a greater amount of time is needed to ascertain the driver’s status as a permit holder. A lawful permit holder who happens to have forgotten his permit may end up taking up more police time through arrest and/or other processing.

Moreover, police may be less enthusiastic about investigating certain suspicious activities or engaging in effective crime fighting actions given the greater risks that wide spread gun carrying poses to them, whether from permit holders or the criminals who steal their guns.<sup>30</sup> In a speech at the University of Chicago Law School in October 2015, then FBI Director James Comey argued that criticism of overly aggressive policing led officers to back away from more involved policing, causing violent crime to rise (Donohue 2017a). If the more serious concern of being shot by an angry gun toter impairs effective policing, the prospect of increased crime following RTC adoption could be far more substantial than the issue that Comey highlighted.<sup>31</sup>

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<sup>29</sup>A permit to carry instructor has posted a YouTube video about “How to inform an officer you are carrying a handgun and live” that is designed to “keep yourself from getting shot unintentionally” by the police. The video, which has over 4.2 million views, has generated comments from non-Americans that it “makes the US look like a war zone” and leads to such unnatural and time-consuming behavior that “an English officer ... would look at you like a complete freak” (Soderling 2016).

<sup>30</sup>“Every law enforcement officer working today knows that any routine traffic stop, delivery of a warrant or court order, or response to a domestic disturbance anywhere in the country involving people of any race or age can put them face to face with a weapon. Guns are everywhere, not just in the inner city” (Wilson 2016). In offering an explanation for why the United States massively leads the developed world in police shootings, criminologist David Kennedy stated: “Police officers in the United States in reality need to be conscious of and are trained to be conscious of the fact that literally every single person they come in contact with may be carrying a concealed firearm.” For example, police in England and Wales shot and killed 55 people over the 25-year period from 1990–2014, while in just the first 24 days of 2015, the United States (with six times the population) had a higher number of fatal shootings by police (Lopez 2018).

<sup>31</sup>A vivid illustration of how even the erroneous perception that someone accosted by the police is armed can lead to deadly consequences is revealed in the chilling video of five Arizona police officers confronting an unarmed man they incorrectly believed had a gun. During the prolonged encounter, the officers shouted commands at an intoxicated 26-year-old father of two, who begged with his hands in the air not to be shot. The man was killed by five bullets when, following orders to crawl on the floor toward police, he paused to pull up his slipping pants. A warning against the open carry of guns issued by the San Mateo County, California, Sheriff’s Office makes the general point that law enforcement officers become hyper-vigilant when encountering an armed individual: “Should the gun carrying person fail to comply with a law enforcement instruction or move in a way that could be construed as threatening, the police are forced to respond in kind for their own protection. It’s well and good in hindsight to say the gun carrier was simply ‘exercising their rights’ but the result could be deadly” (Lunny 2010).



The presence of multiple gun carriers can also complicate police responses to mass shootings and other crimes. When police arrived at an Alabama mall in November 2018, they saw a 21 year old concealed carry permit holder with gun drawn, and mistakenly killed him, thinking he was the shooter. In fact, the dead man had been assisting and protecting shoppers, and the real shooter escaped (McLaughlin & Holcombe 2018). Another benign intervention that ended in tragedy for the good guy with a gun occurred in July 2018 when police officers arrived as a “good Samaritan” with a concealed carry permit was trying to break up a fight in Portland, Oregon. The police saw the gun held by the permit holder a Navy veteran, postal worker, and father of three and in the confusion shot and killed him (Gueverra 2018).

Good guys with guns also can interfere with police anti crime efforts. For example, police reported that when a number of Walmart customers (fecklessly) pulled out their weapons during a shooting on November 1, 2017, their “presence ‘absolutely’ slowed the process of determining who, and how many, suspects were involved in the shootings, said Thornton [Colorado] police spokesman Victor Avila” (Simpson 2017).

Similarly, in 2014, a concealed carry permit holder in Illinois fired two shots at a fleeing armed robber at a phone store, thereby interfering with a pursuing police officer. According to the police: “Since the officer did not know where the shots were fired from, he was forced to terminate his foot pursuit and take cover for his own safety” (Glanton & Sadovi 2014).

Indeed, preventive efforts to get guns off the street in high crime neighborhoods are less feasible when carrying guns is presumptively legal. The passage of RTC laws nor normalizes the practice of carrying guns in a way that may enable criminals to carry guns more readily without prompting a challenge, while making it harder for the police to know who is and who is not allowed to possess guns in public.

Furthermore, negligent discharges of guns, although common, rarely lead to charges of violent crime but they can take up valuable police time for investigation and in determining whether criminal prosecution or permit withdrawal is warranted. For example, on November 16, 2017, Tennessee churchgoers were reflecting on the recent Texas church massacre in Sutherland Springs when a permit holder mentioned he always carries his gun, bragging that he would be ready to stop any mass shooter. While proudly showing his Ruger handgun, the permit holder inadvertently shot himself in the palm, causing panic in the church as the bullet “ripped through [his wife’s] lower left abdomen, out the right side of her abdomen, into her right forearm and out the backside of her forearm. The bullet then struck the wall and ricocheted, landing under the wife’s wheelchair.” The gun discharge prompted a 911 call, which in the confusion made the police think an active shooting incident was underway. The result was that the local hospital and a number of schools were placed on lockdown for 45 minutes until the police finally ascertained that the shooting was accidental (Eltagouri 2017).<sup>32</sup>

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<sup>32</sup>Negligent discharges by permit holders have occurred in public and private settings from parks, stadiums, movie theaters, restaurants, and government buildings to private households (WFTV 2015; Heath 2015). Thirty-nine-year-old Mike Lee Dickey, who was babysitting an eight-year-old boy, was in the bathroom removing his handgun from his waistband when it discharged. The bullet passed through two doors, before striking the child in his arm while he slept in a nearby bedroom (Associated Press 2015). In April 2018, a 21-year-old pregnant mother of two in

Everything that takes up added police time or complicates the job of law enforcement will serve as a tax on police, rendering them less effective on the margin, and thereby contributing to crime. Indeed, this may in part explain why RTC states tend to increase the size of their police forces (relative to nonadopting states) after RTC laws are passed, as shown in Table 1.<sup>33</sup>

### *B. A Simple Difference in Differences Analysis*

We begin by showing how violent crime evolved over our 1977–2014 data period for RTC and non RTC states.<sup>34</sup> Figure 1 depicts percentage changes in the violent crime rate over our entire data period for three groups of states: those that never adopted RTC laws, those that adopted RTC laws sometime between 1977 and before 2014, and those that adopted RTC laws prior to 1977. It is noteworthy that the 42.3 percent drop in violent crime in the nine states that never adopted RTC laws is almost an order of magnitude greater than the 4.3 percent reduction experienced by states that adopted RTC laws during our period of analysis.<sup>35</sup>

The NRC Report presented a “no controls” estimate, which is just the coefficient estimate on the variable indicating the date of adoption of a RTC law in a crime rate panel data model with state and year fixed effects. According to the NRC Report: “Estimating the model using data to 2000 shows that states adopting right to carry laws saw 12.9 percent increases in violent crime and 21.2 percent increases in property crime relative to national crime patterns.” Estimating this same model using 14 additional years of data (through 2014) and 11 additional adopting states (listed at the bottom of Appendix Table C1) reveals that the average postpassage increase in violent crime was

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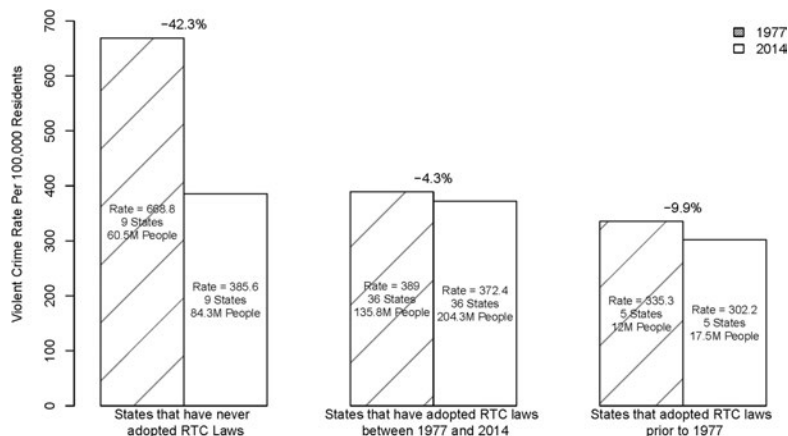
Indiana was shot by her three-year-old daughter when the toddler’s father left the legal but loaded 9mm handgun between the console and the front passenger seat after he exited the vehicle to go inside a store. The child climbed over from the backseat and accidentally fired the gun, hitting her mother through the upper right part of her torso. (Palmer 2018) See also Savitsky (2019) (country western singer Justin Carter dies when the gun in his pocket discharges and hits him in the face); Schwarz (2014) (Idaho professor shoots himself in foot during class two months after state legalizes guns on campuses); Murdock (2018) (man shoots himself in the groin with gun in his waistband in the meat section of Walmart in Buckeye, Arizona); Barbash (2018) (California teacher demonstrating gun safety accidentally discharges weapon in a high school classroom in March 2018, injuring one student); Fortin (2018) (in February 2018, a Georgia teacher fired his gun while barricaded in his classroom); US News (2018) (in April 2018, an Ohio woman with a valid concealed carry permit accidentally killed her two-year-old daughter at an Ohio hotel while trying to turn on the gun’s safety); and Fox News (2016) (“the owner of an Ohio gun shop was shot and killed when a student in a concealed carry permit class accidentally discharged a weapon,” striking the owner in the neck in a different room after the bullet passed through a wall).

<sup>33</sup>See Adda et al. (2014), describing how local depenalization of cannabis enabled the police to reallocate resources, thereby reducing violent crime.

<sup>34</sup>The FBI violent crime category includes murder, rape, robbery, and aggravated assault.

<sup>35</sup>Over the same 1977–2014 period, the states that avoided adopting RTC laws had substantially smaller increases in their rates of incarceration and police employment. The nine never-adopting states increased their incarceration rate by 205 percent, while the incarceration rates in the adopting states rose by 262 and 259 percent, for those adopting RTC laws before and after 1977, respectively. Similarly, the rate of police employment rose by 16 percent in the never-adopting states and by 38 and 55 percent for those adopting before and after 1977, respectively.

Figure 1: The decline in violent crime rates has been far greater in states with no RTC laws, 1977–2014.



DATA SOURCES: UCR for crime rates; Census for state populations.

NOTE: Illinois excluded since its concealed carry law did not go into effect until 2014. From 1977–2013, the violent crime rate in Illinois fell by 36 percent, from 631 to 403 crimes per 100,000 people.

20.2 percent, while the comparable increase in property crime was 19.2 percent (both having  $p$  values less than 5 percent).<sup>36</sup>

Of course, it does not prove that RTC laws increase crime simply because RTC states experience a worse postpassage crime pattern. For example, it might be the case that some states decided to fight crime by allowing citizens to carry concealed handguns while others decided to hire more police and incarcerate a greater number of convicted criminals. If police and prisons were more effective in stopping crime, the “no controls” model might show that the crime experience in RTC states was worse than in other states even if this were not a true causal result of the adoption of RTC laws. As it turns out, though, RTC states not only experienced higher rates of violent crime but they also had larger increases in incarceration and police than other states. Table 1 provides panel data evidence on how incarceration and two measures of police employment changed after RTC adoption (relative to nonadopting states). All three measures rose in RTC states, and the 7.8 percent greater increases in police in RTC states are statistically significant. In other words, Table 1 confirms that RTC states did *not* have relatively declining rates of

<sup>36</sup>The dummy variable model reports the coefficient associated with a RTC variable that is given a value of 0 when a RTC law is not in effect in that year, a value of 1 when a RTC law is in effect that entire year, and a value equal to the portion of the year a RTC law is in effect otherwise. The date of adoption for each RTC state is shown in Appendix Table A1. Note the fact that violent crime was noticeably higher in 1977 in the nine states that did not adopt RTC laws indicates that it will be particularly important that the parallel trends requirement of a valid panel data analysis is established, which is an issue to which we carefully attend in Section III.A.3. All our appendices are posted online at [https://works.bepress.com/john\\_donohue/](https://works.bepress.com/john_donohue/).

Table 1: Panel Data Estimates Showing Greater Increases in Incarceration and Police Following RTC Adoption: State and Year Fixed Effects, and No Other Regressors, 1977–2014

	<i>Incarceration</i>	<i>Police Employment per 100k</i>	<i>Police Officers per 100k</i>
	(1)	(2)	(3)
Dummy variable model	6.78 (6.22)	8.39*** (3.15)	7.08** (2.76)

NOTE: OLS estimations include state- and year-fixed effects and are weighted by population. Robust standard errors (clustered at the state level) are provided next to point estimates in parentheses. The police employment and sworn police officer data are from the Uniform Crime Reports (UCR). The source of the incarceration rate is the Bureau of Justice Statistics (2014). \* $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$ . All figures reported in percentage terms.

incarceration or total police employees after adopting their RTC laws that might explain their comparatively poor postpassage crime performance.

### III. A PANEL DATA ANALYSIS OF RTC LAWS

#### *A. Estimating Two Models on the Full Data Period 1977–2014*

We have just seen that RTC law adoption is followed by *higher* rates of violent and property crime (relative to national trends) and that the elevated crime levels after RTC law adoption occur despite the fact that RTC states actually invested relatively more heavily in prisons and police than non RTC states. While the theoretical predictions about the effect of RTC laws on crime are indeterminate, these two empirical facts based on the actual patterns of crime and crime fighting measures in RTC and non RTC states suggest that the most plausible working hypothesis is that RTC laws *increase* crime. The next step in a panel data analysis of RTC laws would be to test this hypothesis by introducing an appropriate set of explanatory variables that plausibly influence crime.

The choice of these variables is important because any variable that both influences crime and is simultaneously correlated with RTC laws must be included if we are to generate unbiased estimates of the impact of RTC laws. At the same time, including irrelevant and/or highly collinear variables can also undermine efforts at valid estimation of the impact of RTC laws. At the very least, it seems advisable to control for the levels of police and incarceration because these have been the two most important criminal justice policy instruments in the battle against crime.

#### 1. The DAW Panel Data Model

In addition to the state and year fixed effects of the no controls model and the identifier for the presence of an RTC law, our preferred “DAW model” includes an array of other factors that might be expected to influence crime, such as the levels of police and incarceration, various income, poverty, and unemployment measures, and six demographic controls designed to capture the presence of males in three racial categories (black, white, other) in two high crime age groupings (15–19 and 20–39). Table 2 lists the full

Table 2: Table of Explanatory Variables for Four Panel Data Studies

<i>Explanatory Variables</i>	<i>DAW</i>	<i>LM</i>
Right-to-carry law	x	x
Lagged per capita incarceration rate	x	
Lagged police staffing per 100,000 residents	x	
Poverty rate	x	
Unemployment rate	x	
Per capita ethanol consumption from beer	x	
Percentage of state population living in metropolitan statistical areas (MSA)	x	
Real per capita personal income	x	x
Real per capita income maintenance		x
Real per capita retirement payments		x
Real per capita unemployment insurance payments		x
Population density		x
Lagged violent or property arrest rate		x
State population		x
6 Age-sex-race demographic variables —all 6 combinations of black, white, and other males in 2 age groups (15–19, 20–39) indicating the percentage of the population in each group	x	
36 Age-sex-race demographic variables —all possible combinations of black, white, and other males in 6 age groups (10–19, 20–29, 30–39, 40–49, 50–64, and over 65) and repeating this all for females, indicating the percentage of the population in each group		x

NOTE: The DAW model is advanced in this article and the LM model was previously published by Lott and Mustard.

set of explanatory variables for both the DAW model and the comparable panel data model used by Lott and Mustard (LM).<sup>37</sup>

Mathematically, the simple dummy model takes the following form:

$$\ln(\text{crime rate}_{it}) = \beta X_{it} + \gamma RTC_{it} + \alpha_t + \delta_i + \varepsilon_{it} \quad (1)$$

where  $\gamma$  is the coefficient on the RTC dummy, reflecting the average estimated impact of adopting a RTC law on crime. The matrix  $X_{it}$  contains either the DAW or LM covariates

<sup>37</sup>While we attempt to include as many state-year observations in these regressions as possible, District of Columbia incarceration data are missing after the year 2001. In addition, a handful of observations are also dropped from the LM regressions owing to states that did not report any usable arrest data in various years. Our regressions are performed with Huber-White robust standard errors that are clustered at the state level, and we lag the arrest rates used in the LM regression models. The rationales underlying both choices are described in more detail in Aneja et al. (2014). All the regressions presented in this article are weighted by state population.

Table 3: Panel Data Estimates Suggesting that RTC Laws Increase Violent and Property Crime: State and Year Fixed Effects, DAW Regressors, 1979–2014

	<i>Murder Rate</i>	<i>Firearm Murder Rate</i>	<i>Nonfirearm Murder Rate</i>	<i>Violent Crime Rate</i>	<i>Property Crime Rate</i>
	(1)	(2)	(3)	(4)	(5)
Dummy variable model	2.27 (5.05)	2.90 (6.74)	1.53 (3.32)	9.02*** (2.90)	6.49** (2.74)

NOTE: All models include year- and state-fixed effects, and OLS estimates are weighted by state population. Robust standard errors (clustered at the state level) are provided next to point estimates in parentheses. The violent and property crime data are from the Uniform Crime Reports (UCR) while the murder data are from the National Vital Statistics System (NVSS). Six demographic variables (based on different age-sex-race categories) are included as controls in the regression above. Other controls include the lagged incarceration rate, the lagged police employee rate, real per capita personal income, the unemployment rate, poverty rate, beer, and percentage of the population living in MSAs. \* $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$ . All figures reported in percentage terms.

and demographic controls for state  $i$  in year  $t$ . The vectors  $\alpha$  and  $\delta$  are year and state fixed effects, respectively, while  $\varepsilon_{it}$  is the error term.

The DAW panel data estimates of the impact of RTC laws on crime are shown in Table 3.<sup>38</sup> The results are consistent with, although smaller in magnitude than, those observed in the no controls model: RTC laws on average increased violent crime by 9.0 percent and property crime by 6.5 percent in the years following adoption.<sup>39</sup> The effect of RTC laws on murder is seen in Table 3 to be very imprecisely estimated and not statistically significant.<sup>40</sup>

We should also note one caveat to our results. Panel data analysis assumes that the treatment in any one state does not influence crime in nontreatment states. However, as we noted above,<sup>41</sup> RTC laws tend to lead to substantial increases in gun thefts and those guns tend to migrate to states with more restrictive gun laws, where they elevate violent crime. This flow of guns from RTC to non RTC states has been documented by gun trace data (Knight 2013), and Olson et al. (2019) find that “firearm trafficking from states with less restrictive firearm legislation to neighboring states with more restrictive firearm legislation

<sup>38</sup>The complete set of estimates for all explanatory variables (except the demographic variables) for the DAW and LM dummy models are shown in Appendix Table B1.

<sup>39</sup>Defensive uses of guns are more likely for violent crimes because the victim will clearly be present. For property crimes, the victim is typically absent, thus providing less opportunity to defend with a gun. It is unclear whether the many ways in which RTC laws could lead to more crime, which we discuss in Section II.A.2, would be more likely to facilitate violent or property crime, but our intuition is that violent crime would be more strongly influenced, which is in fact what Table 3 suggests.

<sup>40</sup>We thank Phil Cook for informing us that UCR murder data are both less complete and less discerning than murder data collected by the National Vital Statistics. Note that we subtract all cases of justifiable homicides from the murder counts in our own Vital Statistics data.

<sup>41</sup>See text at footnotes 20–22.

increases firearm homicide rates in those restrictive states.”<sup>42</sup> As a result, our panel data estimates of the impact of RTC laws are downward biased by the amount that RTC laws induce crime spillovers into non RTC states.<sup>43</sup> One police investigation revealed that of the 224 guns a single gun trafficker in the DC area was known to have sold in just five months of 2015, 94 were later found at crime scenes from Virginia to New York (Hermann & Weiner 2019).

## 2. The LM Panel Data Model

Table 2’s recitation of the explanatory variables contained in the Lott and Mustard (LM) panel data model reveals there are no controls for the levels of police and incarceration in each state, even though a substantial literature has found that these factors have a large impact on crime. Indeed, as we saw in Table 1, both factors grew substantially and statistically significantly after RTC law adoption. A Bayesian analysis of the impact of RTC laws found that “the incarceration rate is a powerful predictor of future crime rates,” and specifically faulted this omission from the Lott and Mustard model (Strnad 2007:201, n.8). We have discussed an array of infirmities with the LM model in Aneja et al. (2014), including their reliance on flawed pseudo arrest rates, and highly collinear demographic variables.

As noted in Aneja et al. (2014):

The Lott and Mustard arrest rates ... are a ratio of arrests to crimes, which means that when one person kills many, for example, the arrest rate falls, but when many people kill one person, the arrest rate rises, since only one can be arrested in the first instance and many can in the second. The bottom line is that this “arrest rate” is not a probability and is frequently greater than one because of the multiple arrests per crime. For an extended discussion on the abundant problems with this pseudo arrest rate, see Donohue and Wolfers (2009).

The LM arrest rates are also econometrically problematic since the denominator of the arrest rate is the numerator of the dependent variable crime rate, improperly leaving the dependent variable on both sides of the regression equation. We lag the arrest rates by one year to reduce this problem of ratio bias.

Lott and Mustard’s use of 36 demographic variables is also a potential concern. With so many enormously collinear variables, the high likelihood of introducing noise into the estimation process is revealed by the wild fluctuations in the coefficient estimates on these variables. For example, consider the LM explanatory variables “neither black nor white male aged 30–39” and the identical corresponding female category. The LM dummy variable model for violent crime suggests that the male group will significantly

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<sup>42</sup>“Seventy-five percent of traceable guns recovered by authorities in New Jersey [a non-RTC state] are purchased in states with weaker gun laws, according to ... firearms trace data ... compiled by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ... between 2012 and 2016” (Pugliese 2018). See also Freskos (2018b).

<sup>43</sup>Some of the guns stolen from RTC permit holders may also end up in foreign countries, which will stimulate crime there but not bias our panel data estimates. For example, a recent analysis of guns seized by Brazilian police found that 15 percent came from the United States. Since many of these were assault rifles, they were probably not guns carried by American RTC permit holders (Paraguassu & Brito 2018).

Table 4: Panel Data Estimates of the Impact of RTC Laws: State and Year Fixed Effects, Using Actual and Modified LM Regressors, 1977–2014

<i>Panel A: LM Regressors Including 36 Demographic Variables</i>					
	<i>Murder Rate</i>	<i>Firearm Murder Rate</i>	<i>Nonfirearm Murder Rate</i>	<i>Violent Crime Rate</i>	<i>Property Crime Rate</i>
	(1)	(2)	(3)	(4)	(5)
Dummy variable model	-5.17 (3.33)	-3.91 (4.82)	-5.70** (2.45)	-1.38 (3.16)	-0.34 (1.71)
<i>Panel B: LM Regressors with 6 DAW Demographic Variables</i>					
	<i>Murder Rate</i>	<i>Firearm Murder Rate</i>	<i>Nonfirearm Murder Rate</i>	<i>Violent Crime Rate</i>	<i>Property Crime Rate</i>
	(1)	(2)	(3)	(4)	(5)
Dummy variable model	3.75 (5.92)	4.34 (7.85)	2.64 (4.02)	10.03** (4.81)	7.59** (3.72)
<i>Panel C: LM Regressors with 6 DAW Demographic Variables and Adding Controls for Incarceration and Police</i>					
	<i>Murder Rate</i>	<i>Firearm Murder Rate</i>	<i>Nonfirearm Murder Rate</i>	<i>Violent Crime Rate</i>	<i>Property Crime Rate</i>
	(1)	(2)	(3)	(4)	(5)
Dummy variable model	4.99 (5.50)	5.96 (7.20)	3.76 (4.29)	10.05** (4.54)	8.10** (3.63)

NOTE: All models include year- and state-fixed effects, and OLS estimates are weighted by state population. Robust standard errors (clustered at the state level) are provided next to point estimates in parentheses. In Panel A, 36 demographic variables (based on different age-sex-race categories) are included as controls in the regressions above. In Panel B, only six demographic variables are included. In Panel C, only six demographic variables are included and controls are added for incarceration and police. For all three panels, other controls include the previous year's violent or property crime arrest rate (depending on the crime category of the dependent variable), state population, population density, real per capita income, real per capita unemployment insurance payments, real per capita income maintenance payments, and real retirement payments per person over 65. \* $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$ . All figures reported in percentage terms.

increase crime (the coefficient is 219), but their female counterparts have an even greater dampening effect on crime (with a coefficient of -258). Both conflicting estimates (not shown in Appendix Table B1) are statistically significant at the 0.01 level, and they are almost certainly picking up noise rather than revealing true relationships. Bizarre results are common in the LM estimates among these 36 demographic variables.<sup>44</sup>

<sup>44</sup>Aneja et al. (2014) test for the severity of the multicollinearity problem using the 36 LM demographic variables, and the problem is indeed serious. The variance inflation factor (VIF) is shown to be in the range of 6 to 7 for the RTC variable in the LM dummy model when the 36 demographic controls are used. Using the six DAW variables reduces the multicollinearity for the RTC dummy to a tolerable level (with VIFs always below the desirable threshold of 5).



Table 4, Panel A shows the results of the LM panel data model estimated over the period 1977–2014. As seen above, the DAW model generated estimates that RTC laws raised violent and property crime (in the dummy model of Table 3), while the estimated impact on murders was too imprecise to be informative. The LM model generates no statistically significant estimates, except for an apparent decline in nonfirearm related murders. We can almost perfectly restore the DAW Table 3 findings, however, by simply limiting the inclusion of 36 highly collinear demographic variables to the more typical array used in the DAW regressions, as seen in Panel B of Table 4. This modified LM dummy variable model suggests that RTC laws increase violent and property crime, mimicking the DAW dummy variable model estimates, and this same finding persists if we add in controls for police and incarceration, as seen in Panel C of Table 4.

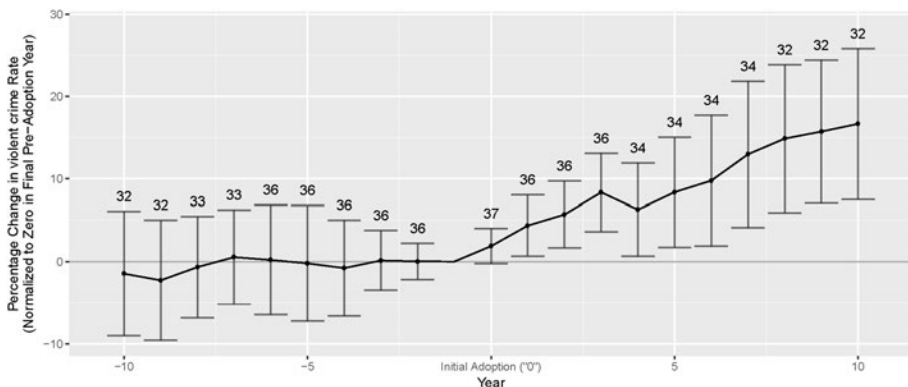
### 3. Testing the DAW and LM Models for the Parallel Trends Assumption

Many researchers are content to present panel data results such as those shown in Tables 3 and 4 without establishing their econometric validity. This can be a serious mistake. We have already registered concerns about the choice of controls included in the LM model, but, as we will see, the LM model regressions in Panel A of Table 4 including the spurious finding that RTC laws reduce nonfirearm homicides uniformly violate the critical assumption of parallel trends. In sharp contrast, the DAW model illustrates nearly perfect parallel trends in the decade prior to RTC adoption for violent crime and sufficiently satisfies this assumption in three of the other four regressions in Table 3 (murder, nonfirearm murder, and property crime).

To implement this test and to provide more nuanced estimates of the impact of RTC laws on crime than in the simple dummy models of Tables 3 and 4, we ran regressions showing the values on yearly dummy variables for 10 years prior to RTC adoption to 10 years after RTC adoption. If the key parallel trends assumption of panel data analysis is valid, we should see values of the preadoption dummies that show no trend and are close to zero. Figure 2 shows that the DAW violent crime model performs extremely well: the preadoption dummies are virtually all zero (and hence totally flat) for the eight years prior to adoption, and violent crime starts rising in the year of adoption, showing statistically significant increases after the law has been in effect for at least a full year. The upward trend in violent crime continues for the entire decade after adoption. Figure 2 also highlights that the single dummy models of Tables 3 and 4 (which implicitly assume an immediate and constant post adoption impact on crime) are misspecified. Importantly, we can now see the exact timing and pattern of the estimated impact on crime, which can, and in this case does, provide further support for a causal interpretation of the estimated increase in violent crime.

In contrast to the ideal performance of the DAW violent crime model, all of the Table 4 regressions using the LM model perform extremely poorly. For example, consider the LM model for firearm murder depicted in Figure 3, which shows that there is

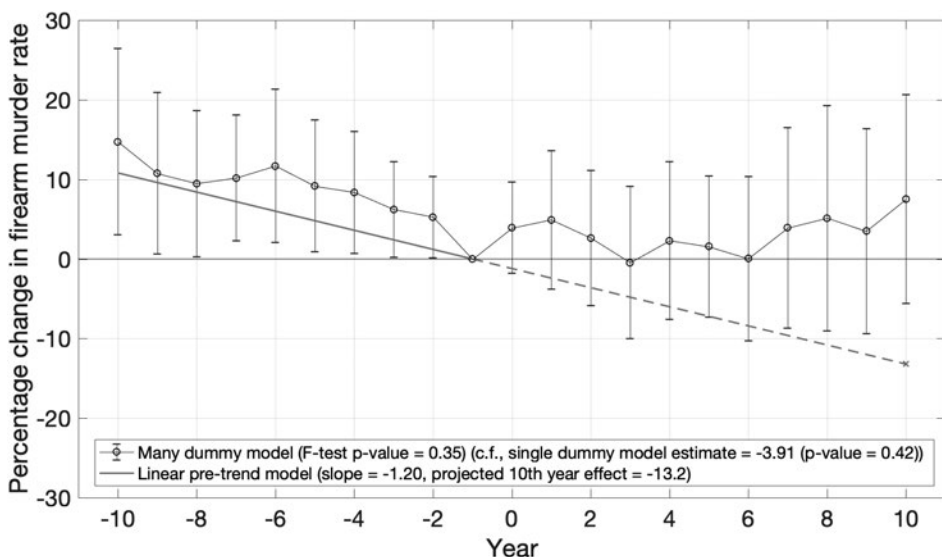
Figure 2: The impact of RTC laws on violent crime, DAW model, 1979–2014.



NOTE: We regress crime on dummies for pre and post passage years and DAW covariates. Reference year is year before adoption and adoption year is first year with RTC in place at any time, meaning that in states that adopt after January 1, this will capture only a partial effect of RTC laws. We display the 95 percent confidence interval for each estimate using cluster-robust standard errors and show the number of states that contribute to each estimate.

an enormously steep downward trend in the values of the pre adoption dummies. Indeed, we see that the downward trend reverses just at the time of adoption of the RTC law and after six years we observe statistically significant increases in firearm

Figure 3: The impact of RTC laws on firearm murder, LM model, 1977–2014



murder above the prior trend. Thus, while Table 4 ostensibly showed a statistically insignificant 3.9 percent drop in violent crime, the more discerning analysis of Figure 3 shows that that estimate is econometrically invalid, given such an influential violation of the parallel trends requirement. In fact, the LM model estimated for Figure 3 provides evidence that the adoption of RTC laws reversed a previous benign trend starting exactly at the time of RTC adoption and led to higher levels of fire arm homicide.

Appendix D depicts the same year by year estimates for the other crimes using both the DAW and LM models. It is worth noting that, for our entire data period, the four DAW and LM murder and firearm murder figures show an apparent malign break in trend at the time of RTC adoption, while the trend for non firearm murder remains unchanged in the DAW and LM models. The unchanged downward trend in the LM non firearm model illustrates the violation of the parallel trends assumption, invalidating the anomalous finding for that crime in Panel A of Table 4.<sup>45</sup>

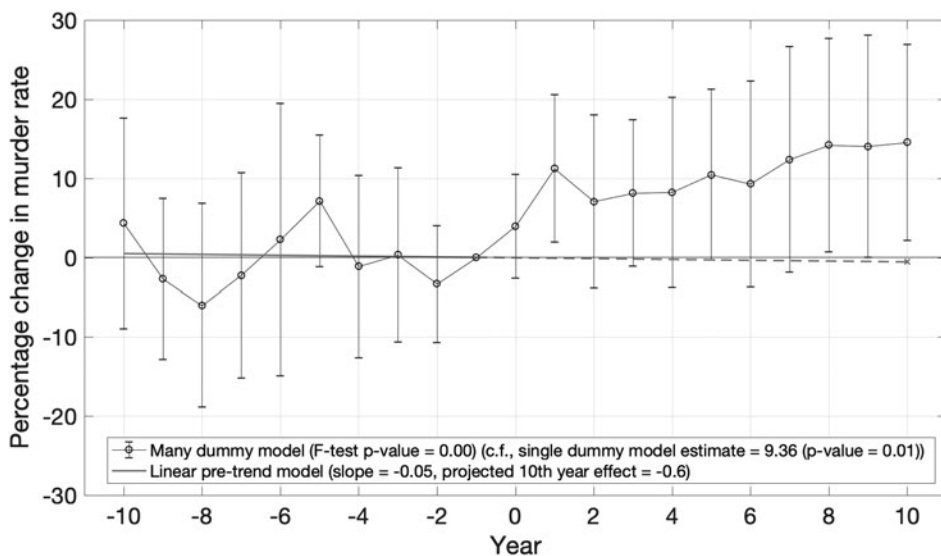
For the DAW and LM property crime panel data estimates, we see almost the same pattern. While the pre adoption performance of the DAW property crime model (see Appendix Figure D2) is not quite as perfect as it was for violent crime, it still shows a roughly flat pattern for the eight years prior to adoption, followed by a persistent pattern of increasing property crime in the 10 years after RTC adoption. The increase in property crime turns statistically significant at the time of adoption. In Appendix Figure D3, however, we again see the same deficient pattern observed for the LM model in Appendix Figure D1: property crime falls in the 10 years prior to adoption, and the pattern reverses itself, leading to increasing property crime in the decade following RTC adoption.

We also conducted a panel data assessment looking at the 11 states that adopted RTC laws in the period from 2000 2014 when the confounding effect of the crack epidemic had subsided. The results provide further support that RTC laws increase crime, including estimates that overall murder and firearm murder rise substantially with RTC adoption. See further discussion and relevant figures and estimates in Appendix C. Figure 4 shows the year by year estimated effect of RTC laws on overall murder for the DAW model for this postcrack time period. The figure shows a flat pretrend (albeit with some variance around it) and then a sizeable jump in murder starting just at the year of RTC adoption. The LM model shows substantially the same statistically significant increase in murder.

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<sup>45</sup>Appendix Figure D1 also illustrates why the LM dummy model estimate on violent crime in Panel A of Table 4 was not positive and statistically significant (as it was for the DAW model in Table 3 and the modified LM models in Panels B and C of Table 4): Appendix Figure D1 reveals that, for the LM model, violent crime was trending down throughout the pre-adoption period, dropping from 5 percentage points to zero over that decade, at which point it reverses and violent crime increases to roughly a 6 percent increase by 10 years after RTC adoption. The v-shape pattern over that two-decade period leads the LM dummy model to obscure the increase in violent crime that is clearly seen in Appendix Figure D1.

Figure 4: The impact of RTC laws on murder, DAW model, 2000–2014



### B. Summary of Panel Data Analysis

The uncertainty about the impact of RTC laws on crime expressed in the NRC Report was based on an analysis of data only through 2000. The preceding evaluation of an array of different specifications over the full data period from the late 1970s through 2014 as well as in the postcrack period has given consistent evidence that something bad happened to murder and violent and property crime right at the time of RTC adoption. The most statistically significant crime increases for the full period were seen for DAW violent and property crime. For the postcrack period, the largest and most highly statistically significant increases were seen for murder and firearm murder.

Other work has also provided evidence that RTC laws increase murder and/or overall violent crime—see Zimmerman (2014), examining postcrack era data and the recent work by Donohue (2017b) and Siegel et al. (2017) concluding that RTC laws increase firearm and handgun homicide. Work by McElroy and Wang (2017) reinforces this conclusion, with results from a dynamic model that accounts for forward looking behavior finding that violent crime would be one third lower if RTC laws had not been passed. We discuss other recent published studies finding that RTC laws increase violent crime in Appendix C.

Despite the substantial panel data evidence in the post NRC literature that supports the finding of the pernicious influence of RTC laws on crime, the NRC suggestion that

new techniques should be employed to estimate the impact of these laws is fitting. The important paper by Strnad (2007) used a Bayesian approach to argue that none of the published models used in the RTC evaluation literature rated highly in his model selection protocol when applied to data from 1977–1999.

Durlauf et al. attempt to sort out the different specification choices in evaluating RTC laws by using their own Bayesian model averaging approach using county data from 1979–2000. Applying this technique, the authors find that in their preferred spline (trend) model, RTC laws elevate violent crime in the three years after RTC adoption: “As a result of the law being introduced, violent crime increases in the first year and continues to increase afterwards” (2016:50). By the third year, their preferred model suggests a 6.5 percent increase in violent crime. Since their paper only provides estimates for three postpassage years, we cannot draw conclusions beyond this but note that their finding that violent crime increases by over 2 percent per year owing to RTC laws is a substantial crime increase. Moreover, the authors note: “For our estimates, the effect on crime of introducing guns continues to grow over time” (2016:50).<sup>46</sup>

Owing to the substantial challenges of estimating effects from observational data, it will be useful to see if yet another statistical approach that has different attributes from the panel data methodology can enhance our understanding of the impact of RTC laws. The rest of this article will use this synthetic control approach, which has been deemed “arguably the most important innovation in the policy evaluation literature in the last 15 years” (Athey & Imbens 2017).

#### IV. ESTIMATING THE IMPACT OF RTC LAWS USING SYNTHETIC CONTROLS

The synthetic control methodology, which is becoming increasingly prominent in economics and other social sciences, is a promising new statistical approach for addressing the impact of RTC laws.<sup>47</sup> While most synthetic control papers focus on a single

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<sup>46</sup>While our analysis focused on crime at the state level, there is obviously heterogeneity in crime rates within states, which is amalgamated into our population-weighted state average figures. A paper by Kovandzic et al. (KMV) buttresses the view that our state-focused estimates are not giving a misleading impression of the impact of RTC laws on violent crime. KMV limited their analysis to urban areas within each state, estimating the impact of RTC laws on crime using a panel data analysis from 1980–2000 on 189 cities with a population of 100,000 or more (Kovandzic et al. 2005). Although they did not estimate an overall violent crime effect, they did report that RTC laws were associated with a highly statistically significant increase in the rate of aggravated assault, the largest single component of violent crime. Their figures suggest that RTC laws led to a 20.1 percent increase in aggravated assault in the 10 years following adoption.

<sup>47</sup>The synthetic control methodology has been deployed in a wide variety of fields, including health economics (Nonnemaker et al. 2011), immigration economics (Bohn et al. 2014), political economy (Keele 2009), urban economics (Ando 2015), the economics of natural resources (Mideksa 2013), and the dynamics of economic growth (Cavallo et al. 2013).

treatment in a single geographic region, we look at 33 RTC adoptions occurring over three decades throughout the country. For each adopting (“treated”) state we will find a weighted average of other states (“a synthetic control”) designed to serve as a good counterfactual for the impact of RTC laws because it had a pattern of crime similar to that of the adopting state prior to RTC adoption. By comparing what actually happened to crime after RTC adoption to the crime performance of the synthetic control over the same period, we generate estimates of the causal impact of RTC laws on crime.<sup>48</sup>

#### A. *The Basics of the Synthetic Control Methodology*

The synthetic control method attempts to generate representative counterfactual units by comparing a treatment unit (i.e., a state adopting an RTC law) to a set of control units across a set of explanatory variables over a preintervention period. The algorithm searches for similarities between the treatment state of interest and the control states during this period and then generates a synthetic counterfactual unit for the treatment state that is a weighted combination of the component control states.<sup>49</sup> Two conditions are placed on these weights: they must be nonnegative and they must sum to 1. In general, the matching process underlying the synthetic control technique uses pretreatment values of both the outcome variable of interest (in our case, some measure of crime) and other predictors believed to influence this outcome variable.<sup>50</sup> For the reasons set forth in Appendix K, we use every lag of the dependent variable as predictors in the DAW and LM specifications. Once the synthetic counterfactual is generated and the weights associated with each control unit are assigned, the *synth* program then calculates values for the outcome variable associated with this counterfactual and the root mean squared prediction error (RMSPE) based on differences between the treatment and synthetic control units in the pretreatment period. The effect of the treatment can then be estimated by comparing the actual values of the dependent variable for the treatment unit to the corresponding values of the synthetic control.

#### B. *Generating Synthetic Controls for 33 States Adopting RTC Laws During Our Data Period*

To illustrate the procedure outlined above, consider the case of Texas, whose RTC law went into effect on January 1, 1996. The potential control group for each treatment state

<sup>48</sup>For a more detailed technical description of this method, we direct the reader to Abadie and Gardeazabal (2003) and Abadie et al. (2010, 2014).

<sup>49</sup>Our analysis is done in Stata using the *synth* software package developed by Alberto Abadie, Alexis Diamond, and Jens Hainmueller.

<sup>50</sup>Roughly speaking, the algorithm that we use finds  $\mathbf{W}$  (the weights of the components of the synthetic control) that minimizes  $\sqrt{(\mathbf{X}_1 - \mathbf{X}_0\mathbf{W})\mathbf{V}(\mathbf{X}_1 - \mathbf{X}_0\mathbf{W})}$ , where  $\mathbf{V}$  is a diagonal matrix incorporating information about the relative weights placed on different predictors,  $\mathbf{W}$  is a vector of nonnegative weights that sum to 1,  $\mathbf{X}_1$  is a vector containing pretreatment information about the predictors associated with the treatment unit, and  $\mathbf{X}_0$  is a matrix containing pretreatment information about the predictors for all the control units.

consists of all nine states with no RTC legislation as of the year 2014, as well as states that pass RTC laws at least 10 years after the passage of the treatment state (e.g., in this case, the five states passing RTC laws after 2006, such as Nebraska and Kansas, whose RTC laws went into effect at the beginning of 2007). Since we estimate results for up to 10 years postpassage,<sup>51</sup> this restriction helps us avoid including states with their own permissive concealed carry laws in the synthetically constructed unit (which would mar the control comparison).

After entering the necessary specification information into the *synth* program (e.g., treatment unit, list of control states, explanatory variables, etc.), the algorithm proceeds to construct the synthetic unit from the list of control states specific to Texas and generates values of the dependent variable for the counterfactual for both the pre-treatment and post-treatment periods. The rationale behind this methodology is that a close fit in the prepassage time series of crime between the treatment state and the synthetic control generates greater confidence in the accuracy of the constructed counterfactual. Computing the post-treatment difference between the dependent variables of the treatment state and the synthetic control unit provides the synthetic control estimate of the treatment effect attributable to RTC adoption in that state.

### 1. Synthetic Control Estimates of Violent Crime in Two States

Figure 5 shows the synthetic control graph for violent crime in Texas over the period from 1977 through 2006 (10 years after the adoption of Texas's RTC law). The solid black line shows the actual pattern of violent crime for Texas, and the vertical line indicates when the RTC law went into effect. Implementing the synthetic control protocol identifies three states that generate a good fit for the pattern of crime experienced by Texas in the pre-1996 period. These states are California, which gets a weight of 57.7 percent owing to its similar attributes compared to Texas, Nebraska with a weight of 9.7 percent, and Wisconsin with a weight of 32.6 percent.

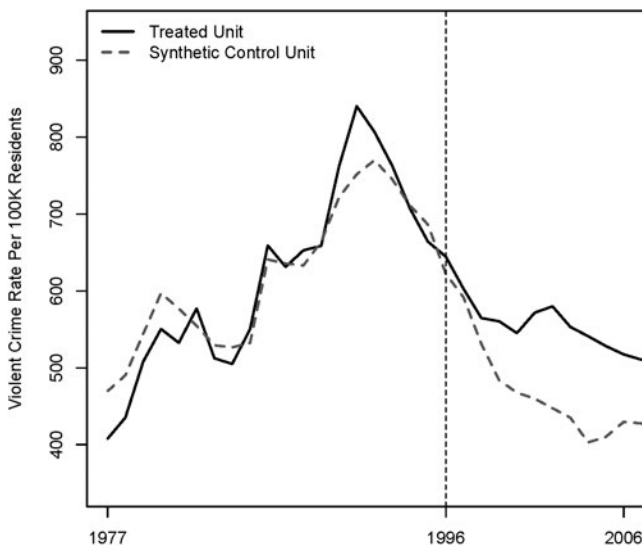
One of the advantages of the synthetic control methodology is that one can assess how well the synthetic control (call it "synthetic Texas," which is identified in Figure 5 by the dashed line) matches the pre-RTC passage pattern of violent crime to see whether the methodology is likely to generate a good fit in the 10 years of postpassage data. Here the fit looks rather good in mimicking the rises and falls in Texas violent crime from 1977-1995. This pattern increases our confidence that synthetic Texas will provide a good prediction of what would have happened in Texas had it not adopted an RTC law.

Looking at Figure 5, we see that while both Texas and synthetic Texas (the weighted average violent crime performance of the three mentioned states) show declining crime rates in the postpassage decade after 1996, the crime drop is

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<sup>51</sup>Our choice of 10 years is informed by the tradeoffs associated with using a different timeframe. Tables 5 and 6 indicate that the increase in violent crime due to RTC laws is statistically significant at the .01 level for all years after seven years post-adoption.

Figure 5: Texas: Violent crime rate.



Effect of 1996 RTC Law 10 Years After Adoption: 16.9%

NOTE: Passage Year Difference From SC: 3.6% Composition of SC: CA (0.577); NE (0.097); WI (0.326) CVRMSPE: 0.06 (8 of 33 states, where 1 denotes the state with the best pre-passage fit.)

States Never Passing RTC Laws Included in Synthetic Control: CA;

RTC Adopting States Included in Synthetic Control: NE (2007); WI (2012).

substantially greater in synthetic Texas, which had no RTC law over that period, than in actual Texas, which did. As Figure 5 notes, 10 years after adopting its RTC law, violent crime in Texas was 16.9 percent *higher* than we would have expected had it not adopted an RTC law.<sup>52</sup>

Figure 5 also illustrates perhaps the most important lesson of causal inference: one cannot simply look before and after an event to determine the consequence of the event. Rather, one needs to estimate the difference between what did unfold and the counterfactual of what would have unfolded without the event. The value of the synthetic control methodology is that it provides a highly transparent estimate of that counterfactual, using a tool designed to ensure the validity of the parallel trends assumption that we have already seen is so critical to achieving meaningful causal estimates. Thus, when Lott

<sup>52</sup>Texas's violent crime rate 10 years post-adoption exceeds that of "synthetic Texas" by 20.41 percent  $= \frac{517.3 - 496.6}{429.6} \times 100\%$ . While some researchers would take that value as the estimated effect of RTC, we chose to subtract off the discrepancy in 1996 between the actual violent crime rate and the synthetic control value in that year. This discrepancy is 3.55 percent  $= \frac{644.4 - 622.3}{622.3} \times 100\%$  (shown in the line just below the graph of Figure 5). See footnote 58 for further discussion of this calculation. Figure 5 shows a (rounded) estimated violent crime increase in Texas of 16.9 percent. We arrive at this estimate by subtracting the 1996 discrepancy of 3.55 percent from the 20.41 percent 10th-year discrepancy, which generates a TEP of 16.86 percent.

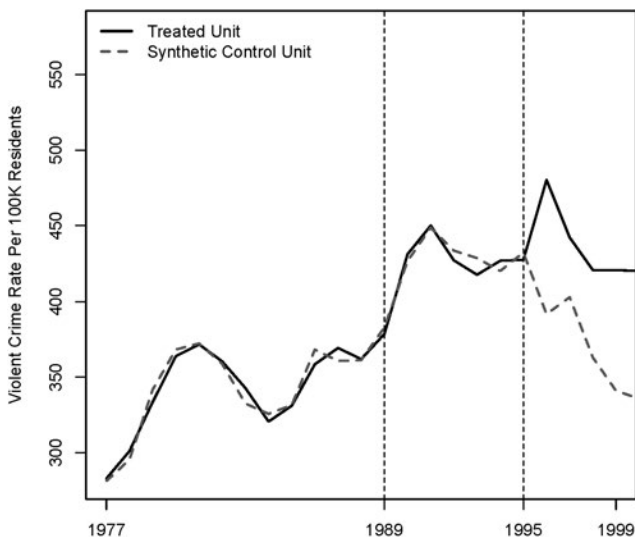


(2010) quotes a Texas District Attorney suggesting that he had reversed his earlier opposition to the state's RTC law in light of the perceived favorable experience with the law, we see why it can be quite easy to draw the inaccurate causal inference that Texas's crime decline was facilitated by its RTC law. The public may perceive the falling crime rate post 1996 (the solid black line), but our analysis suggests that Texas would have experienced a more sizable violent crime decline if it had not passed an RTC law (the dotted line). More specifically, Texas experienced a 19.7 percent decrease in its aggregate violent crime rate in the 10 years following its RTC law (between 1996 and 2006), while the state's synthetic control experienced a larger 31.0 percent decline. This counterfactual would not be apparent to residents of the state or to law enforcement officials, but our results suggest that Texas's RTC law imposed a large social cost on the state.

The greater transparency of the synthetic control approach is one advantage of this methodology over the panel data models that we considered above. Figure 5 makes clear what Texas is being compared to, and we can reflect on whether this match is plausible and whether anything other than RTC laws changed in these three states during the post passage decade that might compromise the validity of the synthetic control estimate of the impact of RTC laws.

Figure 6 shows our synthetic control estimate for Pennsylvania, which adopted an RTC law in 1989 that did not extend to Philadelphia until a subsequent law went into

Figure 6: Pennsylvania: Violent crime rate.



Effect of 1989 RTC Law 10 Years After Adoption: 24.4%

NOTE: Passage Year Difference From SC: -1.1%. Composition of SC: DE (0.078); HI (0.073); MD (0.038); NE (0.016); NJ (0.103); OH (0.27); WI (0.424) CVRMSPE: 0.017 (1 of 33 states, where 1 denotes the state with the best pre-passage fit).

States Never Passing RTC Laws Included in Synthetic Control: DE; HI; MD; NJ;

RTC Adopting States Included in Synthetic Control: NE (2007); OH (2004); WI (2012).



stochastic variation will be diminished as the overestimates and underestimates will tend to wash out in our mean treatment estimates. Figure 7 shows the synthetic control estimates on violent crime for all 31 states for which we have 10 years of postpassage data. For 23 of the 31 states adopting RTC laws, the increase in violent crime is noteworthy.<sup>54</sup> Although three states were estimated to have crime reductions greater than the 1.6 percent estimate of South Dakota, if one averages across all 31 states, the (population weighted) mean treatment effect after 10 years is a 14.3 percent *increase* in violent crime. If one instead uses an (unweighted) median measure of central tendency, RTC laws are seen to *increase* crime by 12.3 percent.

### 3. Less Effective Prepassage Matches

Section IV.B.1 provided two examples of synthetic controls that matched the crime of the treatment states well in the prepassage period, but this does not always happen. For example, we would have considerably less confidence in the quality of the synthetic control estimates for Maine, whose poor estimate is depicted in Appendix Figure I11. Maine also happens to be the state showing the greatest reduction in violent crime following RTC adoption, as indicated in Figure 7.

For Maine, one sees that the synthetic control and the state violent crime performance diverged long before RTC adoption in 1986, and that, by the date of adoption, Maine's violent crime rate was already 37.9 percent below the synthetic control estimate. The violent crime rate of actual Maine was trending down, while the synthetic control estimate had been much higher and trending up in the immediate pre adoption period. The difficulty in generating good prepassage matches for states like Maine stems from their unusually low violent crime in the prepassage period.

Appendix Figure D11 reproduces Figure 7 while leaving out the five states for which the quality of prepassage fit is clearly lower than in the remaining 26 states.<sup>55</sup> This knocks out North Dakota, South Dakota, Maine, Montana, and West Virginia, thereby eliminating three of the five outlier estimates at both ends of the scale, and leaving the mean and median effects of RTC laws relatively unchanged from Figure 7. As Appendix Figure D11 shows, the (weighted) mean increase in crime across the listed 26 RTC adopting states is 13.7 percent while the (unweighted) median increase is now 11.1 percent. Increases in violent crime of this magnitude are troubling. Consensus estimates of the elasticity of crime with respect to incarceration hover around 0.15 today, which suggests that to offset the increase in crime caused by RTC adoption, the average RTC state would need to approximately double its prison population.

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<sup>54</sup>The smallest of these, Kentucky, had an increase of 4.6 percent.

<sup>55</sup>In particular, for these five states, the prepassage CVRMSPE—that is, the RMSPE transformed into a coefficient of variation by dividing by the average prepassage crime rate—was 19 percent or greater. See note 61 for further discussion of this statistic.

## V. AGGREGATION ANALYSIS USING SYNTHETIC CONTROLS

A small but growing literature applies synthetic control techniques to the analysis of multiple treatments.<sup>56</sup> We estimate the percentage difference in violent crime between each treatment (RTC adopting) state and the corresponding synthetic control in both the year of the treatment and in the 10 years following it. This estimate of the treatment effect percentage (TEP) obviously uses data from fewer posttreatment years for the two treatment states<sup>57</sup> in which RTC laws took effect less than 10 years before the end of our sample.

We could use each of these 10 percentage differences as our estimated effects of RTC laws on violent crime for the 10 postpassage years, but, as noted above, we make one adjustment to these figures by subtracting from each the percentage difference in violent crime in the adoption year between the treatment and synthetic control states. In other words, if 10 years after adopting an RTC law, the violent crime rate for the state was 440 and the violent crime rate for the synthetic control was 400, one estimate of the effect of the RTC law could be 10 percent ( $= \frac{440 - 400}{400}$ ). Rather than use this estimate, however, we have subtracted from this figure the percentage difference between the synthetic and treatment states in the year of RTC adoption. If, say, the violent crime rate in the treatment state that year was 2 percent higher than the synthetic control value, we would subtract 2 from 10 to obtain an estimated 10th year effect of RTC laws of 8 percent.<sup>58</sup> We

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<sup>56</sup>The closest paper to the present study is Arindrajit Dube and Ben Zipperer (2013), who introduce their own methodology for aggregating multiple events into a single estimated treatment effect and calculating its significance. Their study centers on the effect of increases in the minimum wage on employment outcomes, and, as we do, the authors estimate the percentage difference between the treatment and the synthetic control in the post-treatment period. While some papers analyze multiple treatments by aggregating the areas affected by these treatments into a single unit, this approach is not well-equipped to deal with a case such as RTC law adoption where treatments affect the majority of panel units and more than two decades separate the dates of the first and last treatment under consideration, as highlighted in Figure 7.

<sup>57</sup>These two states are Kansas and Nebraska, which adopted RTC laws in 2007. See note 4 discussing the states for which we cannot estimate the impact of RTC laws using synthetic controls.

<sup>58</sup>It is unclear ex ante whether one should implement this subtraction. The intuitive rationale for our choice of outcome variable was that pretreatment differences between the treatment state and its synthetic control at the time of RTC adoption likely reflected imperfections in the process of generating a synthetic control and should not contribute to our estimated treatment effect if possible. In other words, if the treatment state had a crime rate that was 5 percent greater than that of the synthetic control in both the pretreatment and posttreatment period, it would arguably be misleading to ignore the pretreatment difference and declare that the treatment increased crime rates by 5 percent. On the other hand, subtracting off the initial discrepancy might be adding noise to the subsequent estimates.

We resolve this issue with the following test of our synthetic control protocol: we pretend that each RTC-adopting state actually adopted its RTC law five years before it did. We then generate synthetic control estimates of this phantom law over the next five years of actual pretreatment data. If our synthetic control approach is working perfectly, it should simply replicate the violent crime pattern for the five pretreatment years. Consequently, the estimated “effect” of the phantom law should be close to zero. Indeed, when we follow our subtraction protocol, the synthetic controls match the pretreatment years more closely than when we do not provide this normalization. Specifically, with subtraction the estimated “effect” in the final pretreatment year is a wholly insignificant 3.2 percent; without subtraction, it jumps to a statistically significant 5.3 percent. Consequently,

then look across all the state specific estimates of the impact of RTC laws on violent crime for each of the 10 individual postpassage years and test whether they are significantly different from zero.<sup>59</sup>

#### A. RTC Laws Increase Violent Crime

We begin our analysis of the aggregated synthetic control results using predictors derived from the DAW specification. Table 5 shows our results on the full sample examining violent crime.<sup>60</sup> Our estimates of the normalized average treatment effect percentage (TEP) suggest that states that passed RTC laws experienced more deleterious changes in violent criminal activity than their synthetic controls in the 10 years after adoption. On average, treatment states had aggregate violent crime rates that were almost 7 percent higher than their synthetic controls five years after passage and around 14 percent higher 10 years after passage. Table 5 suggests that the longer the RTC law is in effect (up to the 10th year that we analyze), the greater the cost in terms of increased violent crime.

As we saw in Figures 6 (Pennsylvania) and I11(Maine), the validity of using the posttreatment difference between crime rates in the treatment state (the particular state adopting an RTC law that we are analyzing) and its corresponding synthetic control as a measure of the effect of the RTC law depends on the strength of the match between these two time series in the pretreatment period. To generate an estimate of pretreatment fit that takes into account differences in pretreatment crime levels, we estimate the coefficient of variation for the root mean squared prediction error (RMSPE), which

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normalization is the preferred approach for violent crime. It should also be noted that our actual synthetic control estimates will be expected to perform better than this phantom RTC estimate since we will be able to derive our synthetic controls from five additional years of data, thereby improving our pretreatment fit.

As it turns out, the choice we made to subtract off the initial-year crime discrepancy is a conservative one, in that the estimated crime increases from RTC laws would be *greater* without subtraction. We provide synthetic control estimates for the DAW model without subtraction of the adoption-year percentage difference for violent crime, murder, and property crime in Appendix F. Comparison of these Appendix F estimates with those in the text (Table 5) reveals that our preferred method of subtracting yields more conservative results (i.e., a smaller increase in violent crime due to RTC). In Table 5, we estimate the 10th-year TEP for violent crime as roughly 13.5 to 14.3 percent, while the comparable estimates without subtraction are roughly 17–18 percent, as seen in Appendix Tables F1, F2, and F3. Indeed, without subtraction, every estimated impact would show RTC laws lead to a statistically significant increase in every crime category we consider except non-firearm homicide, as seen in Appendix F.

<sup>59</sup>This test is performed by regressing these differences in a model using only a constant term and examining whether that constant is statistically significant. These regressions are weighted by the population of the treatment state in the posttreatment year under consideration. Robust standard errors corrected for heteroskedasticity are used in this analysis.

<sup>60</sup>We discuss the synthetic control estimates for murder and property crime in Section V.F.

Table 5: The Impact of RTC Laws on the Violent Crime Rate, DAW Covariates, Full Sample, 1977-2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Average normalized treatment effect percentage (TEP)	-0.117 (1.076)	2.629* (1.310)	3.631* (1.848)	4.682** (2.068)	6.876*** (2.499)	7.358** (3.135)	10.068*** (2.823)	12.474*** (3.831)	14.021*** (3.605)	14.344*** (2.921)
N	33	33	33	33	33	33	33	31	31	31
Pseudo <i>p</i> value	0.936	0.274	0.220	0.192	0.094	0.106	0.060	0.038	0.032	0.032

NOTE: Standard errors in parentheses. Column numbers indicate postpassage year under consideration; N = number of states in sample. The synthetic controls method is run using the nested option, and each year's estimate and statistical significance is computed as explained in note 59. \**p* < 0.10; \*\**p* < 0.05; \*\*\**p* < 0.01

is the ratio of the synthetic control's pretreatment RMSPE to the pretreatment average level of the outcome variable for the treatment state.<sup>61</sup>

To evaluate the sensitivity of the aggregate synthetic control estimate of the crime impact of RTC laws in Table 5, we consider two subsamples of treatment states: states whose coefficients of variation are less than two times the average coefficient of variation for all 33 treatments and states whose coefficients of variation are less than this average. We then rerun our synthetic control protocol using each of these two subsamples to examine whether restricting our estimation of the average treatment effect to states for which a relatively "better" synthetic control could be identified would meaningfully change our findings.

All three samples yield roughly identical conclusions: RTC laws are consistently shown to increase violent crime, with the 10th year increase ranging from a low of 13.5 (when we remove the six states with above average values of the CV RMSPE) to a high of 14.3 percent (Table 5).

### B. The Placebo Analysis

Our ability to make valid inferences from our synthetic control estimates depends on the accuracy of our standard error estimation. To test the robustness of the standard errors that we present under the first row of Table 5, we incorporate an analysis using placebo treatment effects similar to Ando (2015).<sup>62</sup> For this analysis, we generate 500 sets of randomly generated RTC dates that are designed to resemble the distribution of actual RTC

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<sup>61</sup>While the RMSPE is often used to assess this fit, we believe that the use of this measure is not ideal for comparing fit across states, owing to the wide variation that exists in the average pretreatment crime rates among the 33 treatment states that we consider. For example, the pretreatment RMSPE associated with our synthetic control analysis using the DAW predictor variables and aggregate violent crime as the outcome variable is nearly identical for Texas (37.1) and Maine (36.4), but the pretreatment levels of Texas's aggregate violent crime rate are far greater than Maine's. To be more specific, Texas's average violent crime rate prior to the implementation of its RTC law (from 1977 through 1995) was 617 violent crimes per 100,000 residents, while the corresponding figure for Maine was 186 violent crimes per 100,000 residents, less than one-third of Texas's rate. The more discerning CV of the RMSPE is 0.06 for Texas (with a year of adoption discrepancy of only 3.6 percent), while for Maine, the CV is a dramatically higher at 0.196 (with an initial year discrepancy of -37.9 percent). Accordingly, since the percentage imprecision in our synthetic pretreatment match for Maine is so much greater than for Texas, we have greater confidence in our estimates that in the 10th year, Texas's RTC law had increased violent crime by 16.9 percent than we do in an estimate that Maine's law had decreased violent crime by 16.5 percent.

<sup>62</sup>Ando (2015) examines the impact of constructing nuclear plants on local real per capita taxable income in Japan by generating a synthetic control for every coastal municipality that installed a nuclear plant. Although the average treatment effect measured in our article differs from the one used by Ando, we follow Ando in repeatedly estimating average placebo effects by randomly selecting different areas to serve as placebo treatments. (The sheer number of treatments that we are considering in this analysis prevents us from limiting our placebo treatment analysis to states that never adopt RTC laws, but this simply means that our placebo estimates will likely be biased *against* finding a qualitatively significant effect of RTC laws on crime, since some of our placebo treatments will be capturing the effect of the passage of RTC laws on crime rates.) Our estimated average treatment effect can then be compared to the distribution of average placebo treatment effects. Heersink and Peterson (2016) and Cavallo et al. (2013) also perform a similar randomization procedure to estimate the significance of their estimated average treatment effects, although the randomization procedure in the latter paper differs from ours by restricting the timing of placebo treatments to the exact dates when actual treatments took place.

passage dates that we use in our analysis.<sup>63</sup> For each of the 500 sets of randomly generated RTC dates, we then use the synthetic control methodology and the DAW predictors to estimate synthetic controls for each of the 33 states whose randomly generated adoption year is between 1981 and 2010. We use these data to estimate the percentage difference between each placebo treatment and its corresponding synthetic control during both the year of the treatment and each of the 10 posttreatment years (for which we have data) that follow it. Using the methodology described in notes 52 and 58, we then test whether the estimated treatment effect for each of the 10 posttreatment years is statistically significant.

To further assess the statistical significance of our results, we compare each of the 10 coefficient estimates in Table 5 with the distribution of the 500 average placebo treatment effects that use the same crime rate, posttreatment year, and sample as the given estimate. To assist in this comparison process, we report a pseudo  $p$  value that is equal to the proportion of our placebo treatment effects whose absolute value is greater than the absolute value of the given estimated treatment effect. This pseudo  $p$  value provides another intuitive measure of whether our estimated average treatment effects are qualitatively large compared to the distribution of placebo effects. Our confidence that the treatment effect that we are measuring for RTC laws is real increases if our estimated treatment effect is greater than the vast majority of our estimated average placebo treatment effects. Examining our pseudo  $p$  values in Table 5, we see that our violent crime results are always statistically significant in comparison to the distribution of placebo coefficients at the 0.05 level eight years or more past RTC adoption.

### *C. Synthetic Control Estimates Using LM's Explanatory Variables*

In our Section III panel data analysis, we saw that RTC laws were associated with significantly higher rates of violent crime in the DAW model (Table 3), but not in the LM model (Table 4, Panel A). Under the synthetic controls approach, however, we find that the results are the same whether one uses the DAW or LM explanatory variables. This is necessarily true when one uses yearly lags in implementing the synthetic controls—see Kaul et al. (2016)—but it is also true when we use three lags of the dependent variable in our synthetic control protocol, as shown in Table 6. The detrimental effects of RTC laws on violent crime rates are statistically significant at the 0.05 level starting three years after the passage of an RTC law, and appear to increase over time. The treatment effects associated with violent crime in Table 6 range from 9.6 percent in the seventh posttreatment year to 12.8 percent in the 10th posttreatment year. Remarkably, the DAW and LM synthetic control estimates of the impact of RTC laws on violent crime are nearly identical

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<sup>63</sup>More specifically, we randomly choose eight states to never pass RTC laws, six states to pass RTC laws before 1981, 33 states to pass RTC laws between 1981 and 2010, and three states to pass their RTC laws between 2011 and 2014. (Washington, DC is not included in the placebo analysis since it is excluded from our main analysis.) These figures were chosen to mirror the number of states in each of these categories in our actual data set.



Table 6: The Impact of RTC Laws on the Violent Crime Rate, LM covariates, Full Sample, 1977–2014

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Average Normalized TEP	0.309 (1.318)	1.981 (1.646)	4.063* (2.192)	5.211* (2.572)	7.159** (2.887)	6.981** (3.319)	9.644*** (3.016)	11.160*** (3.680)	12.115*** (3.857)	12.794*** (3.200)
N	33	33	33	33	33	33	33	31	31	31

NOTE: Standard errors in parentheses. Column numbers indicate post-passage year under consideration; N = number of states in sample. The synthetic controls method is run using the non-nested option, and each year's estimate and statistical significance is computed as explained in footnote 59. \* $p < 0.10$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$

(compare Tables 6 and Appendix Table K1), and this is true even when we limit the sample of states in the manner described above.<sup>64</sup>

*D. The Contributions of Donor States to the Synthetic Control Estimates: Evaluating Robustness*

One of the key elements of the synthetic control approach is its selection among plausible control states. For each state adopting an RTC law in year X, the approach selects among states that do not have RTC laws through at least ten years after X, including never adopting states. Appendix Figure D10 lists all the states that are eligible under this criterion to serve as synthetic controls for one or more of the 33 adopting states, and shows how often they are selected. The horizontal length of each bar tells us how much that state contributes to our synthetic control violent crime estimates.<sup>65</sup> As the figure indicates, Hawaii appears most frequently contributing to a synthetic control 18 of the 33 times it is eligible and averaging a 15.2 percent contribution but California, a substantial contributor to multiple large states, edges it out for the largest average contribution (18.1 percent).

Hawaii's relatively large contribution as a donor state in the synthetic control estimates has some advantages but also raises concern that this small state might be unrepresentative of the states for which it is used as a control. For example, note that the largest share of Virginia's synthetic control comes from Hawaii (27.9 percent), with Rhode Island, Kansas, and Nebraska making up the lion's share of the remaining synthetic control. We had already mentioned one problem with the panel data analysis caused by the tendency of lax gun control states to serve as a source for guns that contribute to crime in the non RTC states, and Virginia has always been a major source of that interstate flow. Since Virginia's guns are not likely to end up in Hawaii, the bias that the treatment infects the control is reduced for that particular match. Nonetheless, one may be concerned that Hawaii might be unduly skewing the estimates of the impact of RTC laws on violent crime.

To address this, as well as the analogous concern for other potentially idiosyncratic control states, we generated 18 additional TEP estimates, with each one generated by dropping a single one of the 18 states that appears as an element of our synthetic control analysis (as identified in Appendix Figure D10). The results of this exercise are presented in Appendix Figure D12, which shows that our estimated increase in violent crime resulting from the adoption of an RTC law is extremely robust: All 18 estimates remain statistically significant at the 0.01 percent level, and

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<sup>64</sup>The 10th-year effect in the synthetic control analysis using the LM variables is 12.4 percent when we eliminate the three states with more than twice the average CV of the RMSPE. Knocking out the seven states with above-average values of this CV generates a similar 12.5 percent effect.

<sup>65</sup>In particular, it reflects the portion of each synthetic state it becomes part of, weighted by the treated state's population. For example, Texas's population is 13.6 percent of the total treated states' population. As a result, a state that made up 50 percent of synthetic Texas (but is not a donor for any other treatment state) would have a bar of size 6.8 percent.

the smallest TEP, which comes from dropping Illinois as a control state, is 12.0 percent. Note in particular that dropping Hawaii from the list of potential donor states slightly *increases* the estimate of the increase in violent crime caused by RTC laws. In fact, when we dropped Hawaii completely as a potential control and repeated the previous protocol of dropping one state at a time, the estimated increase in violent crime from RTC never fell below 12 percent (which was the value when New York was dropped as well as Hawaii). Indeed, the synthetic control finding that RTC laws increase violent crime is so robust that even if we drop California, New York, and Hawaii from the pool of potential donor states, RTC laws still increase violent crime by 8.9 percent after 10 years ( $p = 0.018$ ).

#### *E. Does Gun Prevalence Influence the Impact of RTC Laws?*

The wide variation in the state specific synthetic control estimates that was seen in Figures 7 and D11 suggests that there is considerable noise in some of the outlier estimates of a few individual states. For example, it is highly improbable that RTC laws led to a 16.5 percent decrease in violent crime in Maine and an 80.2 percent increase in violent crime in Montana, the two most extreme estimates seen in Figure 7. Since averaging across a substantial number of states will tend to eliminate the noise in the estimates, one should repose much greater confidence in the aggregated estimates than in any individual state estimate. Indeed, the fact that we can average across 33 separate RTC adopting states is what generates such convincing and robust estimates of the impact of RTC laws on violent crime.

Another way to distill the signal from the noise in the state specific estimates is to consider whether there is a plausible factor that could explain underlying differences in how RTC adoption influences violent crime. For example, RTC laws might influence crime differently depending on the level of gun prevalence in the state.

Figure 8 shows the scatter diagram for 33 RTC adopting states, and relates the estimated impact on violent crime to a measure of gun prevalence in each RTC adopting state. The last line of the note below the figure provides the regression equation, which shows that gun prevalence is positively related to the estimated increase in crime ( $t = 2.39$ ).<sup>66</sup>

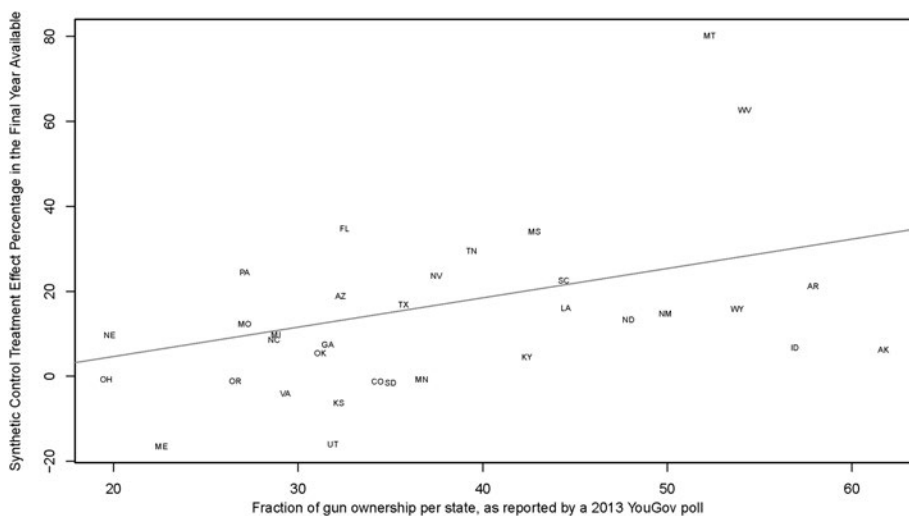
#### *F. The Murder and Property Crime Assessments with Synthetic Controls*

The synthetic control estimates of the impact of RTC laws on violent crime uniformly generate statistically significant estimates, and our phantom RTC law synthetic control estimates for the five pretreatment years (described in note 58) give us confidence that the synthetic control approach is working well for our violent crime estimates, as illustrated in Appendix Table L1. Since the estimated increases in violent crime are

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<sup>66</sup>The gun prevalence data were collected by the data analytics firm YouGov in a 2013 online survey (Kalesan et al. 2016); 4,486 people were initially surveyed, although only 4,000 results are used in the final data set. YouGov used a proximity matching method to select the survey results for inclusion, matching respondents by race, age, gender, and education to the demographic breakdown of the 2010 American Community Survey.

Figure 8: The impact of gun ownership on the increase in violent crime due to RTC laws (synthetic control estimates, 1977–2014).



NOTE: Treatment effect displayed is for the 10th year after RTC adoption (but 7th post passage year for Kansas and Nebraska). Treatment Effect =  $9.15 + 0.69 * \text{Gun Prevalence}$ .  $t = 2.39$ ;  $R^2 = 0.16$ . Regression weighted by population in the final TEP year.

statistically significant and consistently observed in both our panel data and synthetic control analyses, these represent our most robust finding.

Just as we saw in the panel data analysis, the synthetic controls provide evidence of increases in the murder and firearm murder categories, but it is weaker and less precise than our violent crime estimates. For example, both Appendix Tables E1 and E2 show estimated crime increases of 8.7 percent (murder) and 15.3 percent (firearm murder), but only the 8.7 figure is statistically significant at the 0.10 level. Interestingly, our phantom law test works well for murder and even suggests statistically significant increases in that crime beginning right at the time of RTC adoption (Appendix Table L3). The firearm murder estimates perform less well in this test, generating an estimated fall in crime of 6.8 percent in the year prior to RTC adoption (Appendix Table L5).

The results from implementing this phantom law approach for property crime are perhaps our less encouraging estimates. While our estimated “effect” in the year prior to adoption would ideally be close to zero in this test, for property crime it is 6.9 percent, with the latter significant at the 0.10 level. (The full results of this test for all the crime categories are shown in Appendix L.) If we accept our normalized estimate for the impact of RTC laws on property crime it would give little reason to reject a null hypothesis of no effect (Appendix Table E8). Because our synthetic control estimates for violent crime are validated by our phantom adoption test and generate uniform and highly

robust results whether dropping selected donor states or states with poor fit, or using either the DAW or LM models, we have greater confidence in and therefore highlight our violent crime estimates. Accordingly, we consign our further discussion of the synthetic control estimates of murder and property crime to Appendix E.

## VI. CONCLUSION

The extensive array of panel data and synthetic control estimates of the impact of RTC laws that we present uniformly undermine the “More Guns, Less Crime” hypothesis. There is not even the slightest hint in the data from any econometrically sound regression that RTC laws reduce violent crime. Indeed, the weight of the evidence from the panel data estimates as well as the synthetic control analysis best supports the view that the adoption of RTC laws substantially raises overall violent crime in the 10 years after adoption.

In our initial panel data analysis, our preferred DAW specification predicted that RTC laws have led to statistically significant and substantial increases in violent crime. We also presented both panel data and synthetic control estimates that RTC laws substantially increase the percentage of robberies committed with a firearm, while having no restraining effect on the overall number of robberies. Moreover, to the extent the massive theft of guns from carrying guns outside the home generates crime spillovers to non RTC states, our estimated increases in violent crime are downward biased.

We then supplemented our panel data results using our synthetic control methodology, and the finding from our panel data analysis was strongly buttressed. Whether we used the DAW or LM specifications, states that passed RTC laws experienced 13–15 percent *higher* aggregate violent crime rates than their synthetic controls after 10 years (results that were significant at either the 0.05 or 0.01 level after five years).

The synthetic control effects that we measure represent meaningful increases in violent crime rates following the adoption of RTC laws, and this conclusion remained unchanged after restricting the set of states considered based on model fit and after considering a large number of robustness checks. The consistency across different specifications and methodologies of the finding that RTC elevates violent crime enables far stronger conclusions than were possible over a decade ago when the NRC Report was limited to analyzing data only through 2000 with the single tool of panel data evaluation.

The best available evidence using different statistical approaches—panel data regression and synthetic control—with varying strengths and shortcomings and with different model specifications all suggest that the net effect of state adoption of RTC laws is a substantial increase in violent crime.

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# EXHIBIT 5



# RTC Laws Increase Violent Crime: Moody and Marvell Have Missed the Target

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[LINK TO ABSTRACT](#)

Donohue, Aneja, and Weber (2018), released as National Bureau of Economic Research working paper 23510, uses two distinct methodologies to provide the latest and most comprehensive evaluation of the impact on crime of state laws that confer on citizens a right to carry concealed weapons—so-called right-to-carry or RTC laws. Its most robust finding is that RTC laws *increased* violent crime: our preferred panel data estimate indicates a 9 percent increase, while our synthetic control analysis indicates that violent crime rose by about 14 percent in the first decade after RTC adoption.

In a comment on the Donohue, Aneja, and Weber (hereafter DAW) paper, Carlisle Moody and Thomas Marvell (hereafter MM) concede that the uniform approach of using population weights in panel data estimates of crime shows a strongly statistically significant increase of RTC laws on crime in the DAW model (MM 2019, 88). They make an unconvincing argument that the uniform practice should now be rejected and then proceed to show that simplistic panel data models not weighted by population (and using badly miscoded data) would diminish the strength of the finding that RTC laws increase violent crime (*ibid.*, 85–88). We show that both of the proffered MM models violate the basic ‘parallel trends’ requirement of a valid panel data analysis, so their resulting estimates must be rejected. But even with these serious flaws, a more nuanced implementation and

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evaluation of the MM models with attention to the requirements of panel data can illustrate and buttress the basic finding of the DAW panel data analysis that RTC laws *increase* violent crime.

MM (2019, 89–94) then present their own synthetic control analysis, which purports to establish that 14 states show statistically significant increases in violent crime while 12 states show statistically significant decreases. We have many criticisms of their implementation of the synthetic control analysis, from using inappropriate states as potential controls to failing to account for major pre-treatment differences. These problems cause MM to generate many severely inaccurate predictions, particularly for small states. Nonetheless, a simple aggregation of MM’s overall synthetic controls results—whether weighted by state population or the inverse of the pre-treatment error fit—reveals a strong pattern of increasing violent crime in the decade following RTC adoption.

We discuss these points in turn and then summarize in the final section.

## **DAW’s population-weighted model is superior to MM’s models, and it provides clear evidence that RTC laws increase crime**

### **Weighting by population is conceptually superior**

The uniform practice in the literature on estimating the impact of RTC laws on crime from the early work of John Lott through the DAW paper has been to present population-weighted panel data estimates. Every regression run by the authors of the National Research Council (2005) report examining RTC laws was weighted by population. In fact, this is the standard practice in virtually all panel data studies looking at state or county crime data,<sup>4</sup> including in prior work by MM on RTC laws.<sup>5</sup> In their current paper, however, they argue that the standard practice should now be rejected, and they would repose confidence in regressions that are not designed to reflect the relative population of each state.

MM acknowledge the reason that all researchers have used population-weighted regressions:

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4. For just two very recent examples, see Chalfin and McCrary 2018; Anderson, Sabia, and Tekin 2018.

5. See Moody and Marvell 2018; 2008; Moody, Marvell, Zimmerman, and Alemante 2014; Kovandzic, Marvell, and Vieraitis 2005; Moody 2001.

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[I]f the research goal is to estimate the overall national impact of a policy change, ... then weighting can be justified by arguing that the impact of laws in large states should be emphasized simply because they affect more people. (MM 2019, 85)

Put simply, we are trying to estimate the impact that RTC laws have had on Americans, and this can only be identified by a population-weighted regression. Following the unweighted approach that MM have suddenly decided to champion would imply that the impact of RTC laws on 600,000 individuals in Wyoming is considered to be equally important as the impact on 28 million Texans. To illustrate the importance of weighting by population, consider the MM synthetic control estimates of the impact on violent crime of the RTC laws in these two states. Using their non-normalized synthetic control approach, MM would predict that the Texas RTC law *increased* violent crime by 19.5 percent after ten years but that the Wyoming law had generated a 36 percent *decrease* in violent crime over the decade following adoption (although they never show these estimates in their paper). While we discuss below why we think MM's Wyoming estimate is so flawed, the decision to equally weight Texas and Wyoming, as MM would have us do, generates a prediction that the combined RTC laws *reduced* crime by 8.25 percent. A population-weighted average would show the total effect on the residents of these states to be an 18.3 percent *increase* in violent crime.<sup>6</sup> In this example, the 18.3 percent increase would reflect the effect of RTC laws on the average American who experienced this legal adoption, and a population-weighted analysis alone would generate this estimate. MM's approach would badly mischaracterize the impact of RTC laws, heralding a significant decline in violent crime when in fact the two RTC laws led to a combined large increase in violent crime.

Having conceded the key reason for population weighting in the panel data regressions, MM (2019, 85–86) then mention a second possible advantage of population weighting: it may serve to address the problem of heteroskedasticity. This is not the primary rationale, but it is often—although not always—a secondary benefit of weighting by population. Since MM conclude that the White test indicates the presence of heteroskedasticity in the DAW population-weighted regressions, MM present estimates using a non-weighted regression approach (their OLS results) and a non-population-weighted approach that seeks to directly

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6. MM's wildly inaccurate Wyoming estimate stems from their failure to normalize their synthetic control estimate, which leads them to attribute pre-treatment differences between the fit of the synthetic control and the treatment state to the effect of the treatment. Our DAW synthetic control estimates for the impact of RTC laws on violent crime showed a 16.9 percent increase for Texas and a 15.9 percent increase for Wyoming after ten years. The comparable *normalized* MM synthetic control estimates for these two states are a 13.4 percent increase for Texas and a 9.1 percent increase for Wyoming.



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control for heteroskedasticity (Feasible Generalized Least Squares, or FGLS). Neither of these approaches can succeed in our primary mission, which is to estimate the experience of the average American exposed to RTC laws. But in addition to the conceptual flaw in failing to weight by population, both of the MM suggested alternatives have further problems, including the second problem that they both fail the very test for homoskedasticity that MM advocate using.<sup>7</sup>

### **The importance of investigating the parallel trends assumption**

While that second problem underscores that the MM regressions are still marred by heteroskedasticity (or some specification error), a third problem with the simplistic MM models results from MM's failure to attend to the parallel trends assumption, which is critical to generating valid panel data estimates.

This third problem with MM's two new panel data regressions can be highlighted by comparing them to the results of the DAW population-weighted violent crime regression. The DAW paper provides the year-by-year effect on violent crime following RTC adoption from that regression (2018, 25), which we reproduce here as Figure 1 below. This figure illustrates the critical feature of a valid panel data model that the estimated values on the states that end up adopting RTC laws is virtually zero in the years prior to adoption. Not only are the deviations from zero small, but crucially there is virtually no slope to these pre-adoption values in the years prior to RTC passage. This is important because a panel data estimate will only reveal the causal effect of the RTC law if we can assume that the trends in crime between our two sets of states (adopters and non-adopters) would evolve similarly in the absence of the law.

Three lessons emerge from the Figure 1 DAW violent crime regression. First, we see an almost perfect pre-treatment pattern confirming the critical parallel trends assumption for a panel data regression. Controlling for an array of factors (the DAW explanatory variables), violent crime is flat prior to RTC adoption. Second, Figure 1 also reveals that there is a change in the previously stable relationship of crime in the RTC and non-RTC states, and that this change begins exactly in the year of adoption of the RTC laws. If RTC laws had no impact on violent crime, one would expect that flat pattern seen in the years before adoption would continue thereafter. If some factor other than RTC laws (and the array of explanatory variables controlled for in the DAW model) led to worse violent crime performance in RTC states, you would see an elevation in the violent crime estimates, but there

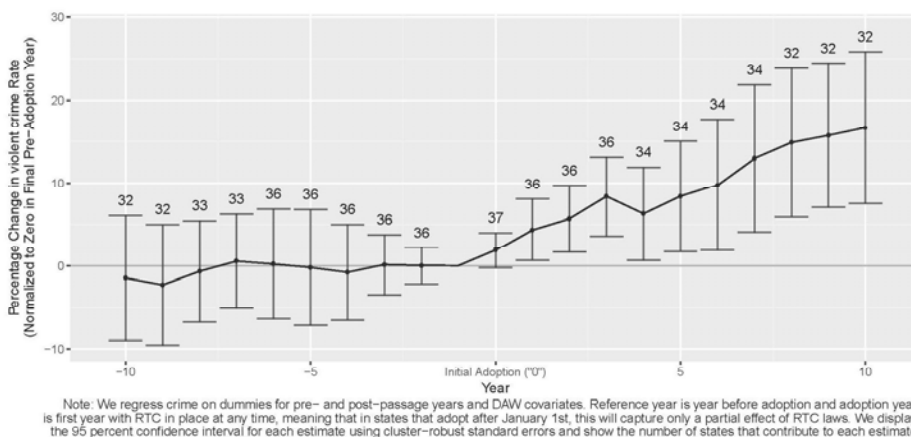
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7. This is true for both the MM unweighted OLS regression and for their FGLS regression, both of which badly fail the White test for homoskedasticity with p-values < 0.00000001.

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is no reason to think it would occur in exactly the year that the RTC law goes into effect. Figure 1 makes clear that a sharp secular increase in violent crime commences at the time of RTC adoption, again buttressing a causal interpretation of these results. Third, this increase in violent crime is statistically significant beginning in the first year after RTC adoption and every year thereafter.

**Figure 1.** The impact of RTC laws on violent crime, DAW model, 1979–2014 (population-weighted)



### Evaluating MM’s simple panel models

We can now compare the two alternative models—OLS and FGLS—that MM offer in place of the DAW violent crime estimates reflected in Figure 1. We must first discard all of the MM estimates because of serious coding errors they made in their panel data analysis. Specifically, the MM panel data analysis miscodes both North Dakota and South Dakota as having never adopted an RTC law during the 1977–2014 data period they analyze, even though North Dakota and South Dakota both adopted RTC laws in 1985. The error is perplexing because, in their subsequent synthetic control analysis, MM generate estimates for states adopting RTC laws, including both North and South Dakota, based on that actual year of adoption.<sup>8</sup> MM also code the date of adoption for Virginia differently in their two analyses. They give Virginia a starting date of 1996 in their synthetic control

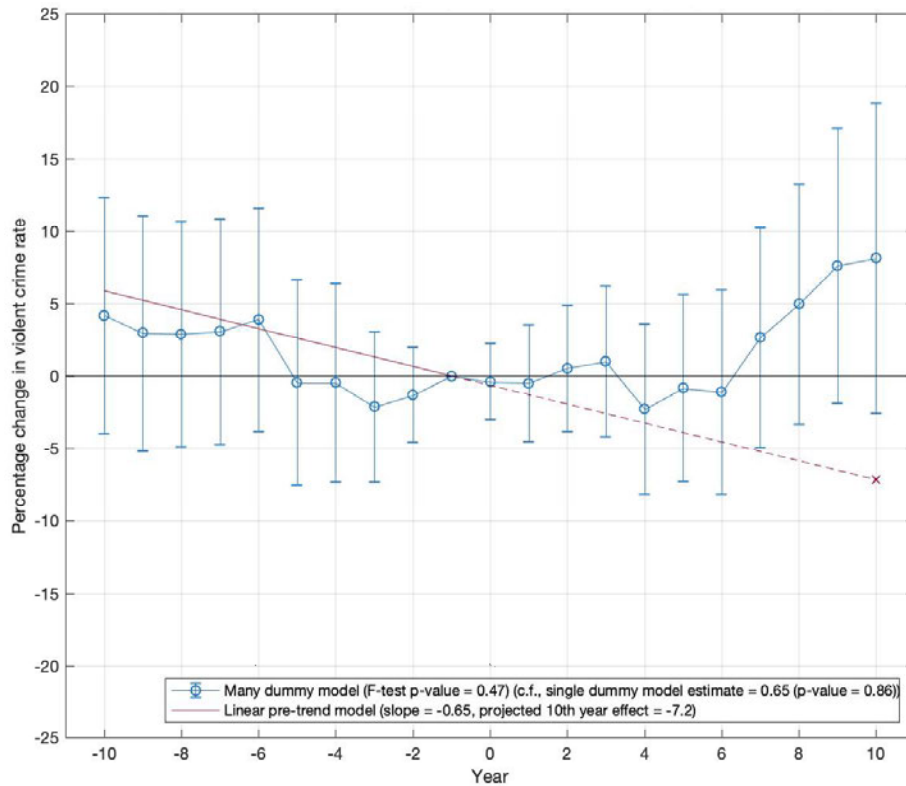
8. MM also have a less precise coding of their RTC law than we use in our DAW paper: they simply use a zero-one dummy that becomes one the first full year the RTC is in effect, while we use an RTC dummy that takes the value of the fraction of the year an RTC law was in effect during the year it was adopted. MM also exclude DC from their panel analysis, while we only exclude DC from our synthetic control analysis.

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analysis, which is consistent with their protocol of turning on their RTC indicator in the year after adoption. In their panel data analysis, however, MM use a Virginia date of 1995, which is doubly wrong in being both a violation of their own protocol and inconsistent with their treatment of Virginia in their synthetic control analysis.

Figure 2 shows violent crime estimates using the preferable DAW data but following MM’s “OLS” approach, which does not weight by population. Three lessons emerge from this analysis. First, Figure 2 reveals a substantial violation of the critical parallel trends assumption: the red line illustrates the sharply sloping downward linear trend in crime for RTC states *prior to RTC adoption*.

**Figure 2.** The impact of RTC laws on violent crime, DAW model, 1979–2014 (not weighted by population)



Second, the dashed continuation of this line shows the predicted path of violent crime in RTC states had their pre-RTC-adoption trend continued, and by assumption of panel data analysis, the dashed line of Figure 2 suggests that crime would have fallen (relative to non-adopting states) by 7.2 percent after ten years without RTC adoption. Instead we see that the observed post-adoption crime path

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is always above this predicted downward trend, suggesting RTC laws *increased* crime relative to trend.

Third, by the sixth year after adoption and beyond, the estimated increase in violent crime is always statistically significantly above this trend (at the .05 level). But instead of providing this more nuanced analysis, MM simply look at one number for the OLS violent crime estimate: they run a single dummy model for this unweighted regression, which generates the small positive estimate of 0.65 (as shown in the legend to Figure 2). But by failing to realize that such a simple model is marred by the violation of the parallel trends assumption, they merely present an inaccurate and misleading estimate of the impact of RTC laws on violent crime. In other words, MM's violent crime unweighted OLS estimate (MM 2019, 88, Table 1, row 1, column 5) is inaccurate and misleading.<sup>9</sup>

MM also include an FGLS model designed to address the problem of heteroskedasticity (although we have already noted this model's extreme failure of the White test). Figure 3 shows the DAW violent crime year-by-year estimates using this FGLS approach. What are the lessons from this MM-suggested model? First, unlike in the DAW model in Figure 1 where all the pre-treatment values are close to zero and flat in the years prior to RTC adoption, Figure 3 reveals both greater variability in those values and another departure from the ideal parallel trends as captured again in the downward-sloping red line in the period *prior to RTC adoption*. Indeed, this FGLS model fails the most basic test of parallel trends since its pre-trend dummy values are not jointly zero.<sup>10</sup>

Second, the dashed continuation of this line shows the predicted path of violent crime in RTC states had their pre-RTC-adoption trend continued, and it suggests that crime would have fallen (relative to non-adopting states) by 1.2 percent after ten years without RTC adoption. As in Figure 2, we see that the observed post-adoption crime path is always above this predicted downward trend, again suggesting RTC laws *increased* violent crime relative to trend, and that this

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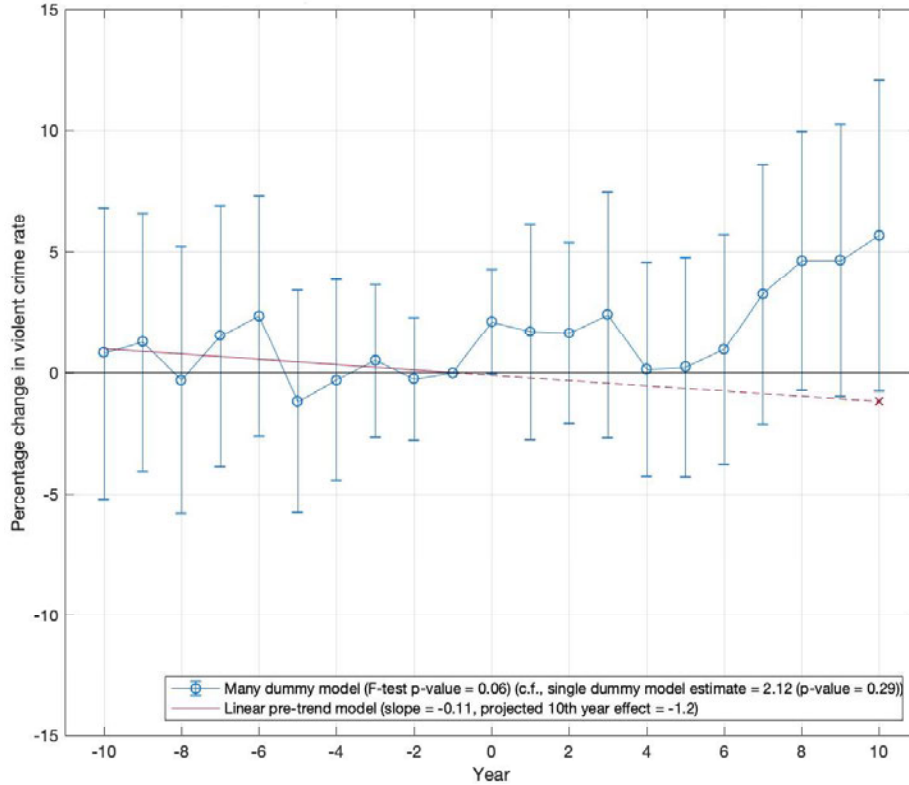
9. MM also present an additional row of "spline" estimates in their Table 1, which is a practice that also dates back to the initial Lott and Mustard (1997) paper. Since the RAND Corporation (2018) study on gun violence research has now argued that "spline" results should not be relied upon, we ignore that component of the MM paper (and have also dropped this model in our own forthcoming work). The RAND analysis of gun research identifies "the use of spline and hybrid effect codings that do not reveal coherent causal effect estimates" as a limitation of earlier studies (2018, xxvii).

10. The most basic statistical test of the assumption of parallel trends uses an F-test of the null hypothesis that the pre-period dummies are jointly equal to zero. Applying this test in Figure 3 generates a p-value of .057, which is too low to support the parallel trends assumption. For this very permissive initial test, one would typically like this p-value to be greater than .50 and certainly no lower than .20, so the Figure 3 FGLS model fails this test badly in a way that obscures any increase in violent crime resulting from RTC adoption. For comparison, the p-value on the same F-test for our far superior Figure 1 DAW violent crime population-weighted regression is .87.

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reversal in the path of violent crime occurred in the year of RTC adoption.

**Figure 3.** The impact of RTC laws on violent crime, DAW model, 1979–2014 (FGLS)



Third, Figure 3 shows that after the seventh year following RTC adoption, the estimated increase in violent crime is always statistically significantly (at the .05 level) above the dashed projected downward trend. Again, if one were to run the single dummy model for this FGLS regression and ignore the violation of parallel trends as MM do, one would not be presenting valid results. Accordingly, the small positive estimate of 2.12 (as shown in the legend to Figure 3) that emanates from this flawed model again yields an inaccurate and misleading picture of the true path of increased violent crime after RTC adoption. In other words, the MM violent crime regressions (2019, 88, Table 1, row 1, columns 5–6)—other than the population-weighted regression which shows a statistically significant increase in violent crime—are inaccurate and misleading. But note that both the Figure 2 and Figure 3 models that are merely more informative versions of the overly simplistic OLS and FGLS that MM present (using their badly miscoded data) still lead us to a

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very clear conclusion: regardless of the flaws or limitations of the two models that MM present, their more accurate and revealing versions in Figures 2 and 3 can still detect that RTC states experience statistically significant increases in violent crime relative to pre-existing trends within a decade of adoption.

In other words, MM would reject the DAW panel data estimates that RTC laws increase violent crime by roughly 9 percent by instead offering regressions with key miscodings of RTC states that are conceptually inferior because they don't address the primary question of interest (which is the impact of RTC laws on Americans), empirically unsophisticated by virtue of their failure to address the parallel trends assumption, and offer no benefit in addressing the problem of heteroskedasticity.

MM's discussion of heteroskedasticity is largely a distraction from a more important issue: that the difference in results between the population-weighted and unweighted regressions is likely signaling a specification issue. This finding provides an additional reason to turn to the synthetic control analysis, which can give insight into this concern and also provide potentially superior estimates, at least for those states for which good pre-treatment matches can be found. But before turning to the synthetic control estimates, it is important to highlight once again that the DAW violent crime panel data model dominates the MM models both conceptually and econometrically for the reasons set out above.

## Evaluating MM's synthetic control analysis, which despite its flaws is shown to reveal that RTC laws increase violent crime

The DAW synthetic control analysis aggregated across all RTC-adopting states generates a year-by-year prediction of the impact of RTC laws on violent crime over the ten years following adoption (2018, 36), shown here in Table 1.

**TABLE 1. The impact of RTC laws on violent crime rate, DAW covariates, 1977–2014**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Average normalized TEP	-0.117	2.629 <sup>*</sup>	3.631 <sup>†</sup>	4.682 <sup>**</sup>	6.876 <sup>***</sup>	7.358 <sup>**</sup>	10.068 <sup>***</sup>	12.474 <sup>***</sup>	14.021 <sup>***</sup>	14.344 <sup>***</sup>
	(1.076)	(1.310)	(1.848)	(2.068)	(2.499)	(3.135)	(2.823)	(3.831)	(3.605)	(2.921)
N	33	33	33	33	33	33	33	31	31	31
Pseudo p-value	0.936	0.274	0.220	0.192	0.094	0.106	0.060	0.038	0.032	0.032
Notes: Standard errors in parentheses. Column numbers indicate post-passage year under consideration; N = number of states in sample. Dependent variable is the difference between the percentage difference in the violent crime rate in treatment and synthetic control states at given post-treatment interval and at time of the treatment. See DAW (2018, 37–38) regarding how the pseudo p-value is estimated. * $p < 0.10$ , ** $p < 0.05$ , *** $p < 0.01$ .										



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The synthetic control analysis of Table 1 shows that after RTC laws have been in effect for a year, violent crime starts steadily rising (relative to the synthetic control state). After ten years, the DAW synthetic controls analysis estimates that violent crime is about 14.3 percent higher than it would be in the absence of the RTC law. Note that even though Figure 1 (panel data) and Table 1 (synthetic control analysis) are derived from entirely different methodologies, they both estimate that RTC laws increasingly elevate violent crime in the ten years after adoption, which mutually reinforces this conclusion.

Moreover, DAW (2018) showed that the synthetic control result was extremely robust. Indeed, one would generate very similar estimates whether one used the control variables of DAW (those used to derive the estimates shown in Table 1) or those of other papers examining the impact of RTC laws, such as those by Lott and David Mustard (1997) and the Brennan Center (Roeder et al. 2015), or an earlier Moody and Marvell paper (2008). Similarly, one could drop any single control state from the analysis or even completely drop New York and California from the set of potential controls and the results remained strong: RTC laws consistently led to statistically significant *increases* in violent crime after a decade.

DAW (2018) also showed that the result that RTC laws increase violent crime was not sensitive to whether one normalized the synthetic control estimates to be zero at the time of adoption or simply allowed the estimates to emerge from the matching protocol without adjustment. Similarly, the result was robust to efforts to trim off treatment states for which the synthetic control did not well match the target state in the period prior to RTC adoption. DAW also showed the violent crime results remained strong whether one used any of four different approaches designed to improve the fit of the synthetic control by including pre-treatment values of violent crime in the matching protocol or whether one included none of these values.

Since our finding was so strong and robust, we were surprised that Moody and Marvell (2019) offered their own synthetic control analysis that appeared to question the DAW results. Unfortunately, MM's analysis has gone astray, and the short answer is that they have not undermined the synthetic control finding that RTC laws *increase* violent crime in the first decade following adoption.

### **MM's flaws in implementing their synthetic control analysis**

The first step in a successful synthetic control analysis is to denote a set of possible states—called donor states—from which the synthetic control can be constructed. MM got off on the wrong foot by making a mess of that process. In total, we found 57 erroneous donor pool decisions by MM. Sometimes a state

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that should not be in the donor pool was included; other times, states that should have been included were left out. For example, in their synthetic control analysis, MM erroneously treat Alabama as not becoming an RTC state until 2014 while the dominant coding that we employ treats Alabama as an RTC state as of 1975 (which MM also did in their panel data analysis).<sup>11</sup> Accordingly, as an RTC state, Alabama cannot serve as a control, yet MM treat it as a potential donor state for 26 out of the 33 RTC states they analyze (and a component of the synthetic control in 14 of those 26 RTC adopters). Seventeen states have some other difference between the donor pool used by Moody and Marvell (2019) and the appropriate states used by DAW (2018). Out of 33 states in the analysis, MM used only five donor pools identical to the correct pools used by DAW.<sup>12</sup>

While the various problems in the MM synthetic control analysis are not worth extended discussion, we just want to highlight how their abbreviated presentation omits any discussion of some of the major pitfalls in their approach. One obvious problem can be seen by examining their own synthetic control estimate of the impact of RTC laws on violent crime in Idaho. MM indicate that Idaho had a violent crime rate of 290 per 100,000 during the first full year of having a RTC law in 1991. Unfortunately, their poorly fit synthetic control had an estimated value of 500 per 100,000 that year. For the next two years, that rather wide disparity between the actual and MM synthetic control estimates of violent crime remained roughly stable, suggesting there had been little impact on crime in those two years, yet under MM's assumptions these were years of more than 40 percent crime drops engineered by the adoption of RTC laws! In other words, MM attributed the massive discrepancy between violent crime in synthetic Idaho and actual Idaho *before* Idaho's RTC law was adopted—resulting from their poor fit—as a crime-reducing benefit of the RTC law.

Over the ten-year period following RTC adoption, the violent crime drop

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11. While there is some ambiguity in the appropriate date that Alabama should be coded as having an RTC law, we believe that MM were correct in their treatment of Alabama in their panel data analysis but wrong in using a 2014 RTC date for the state in their synthetic control analysis. The Rand Corporation's Gun Policy in America initiative "developed a longitudinal data set of state firearm laws" that codes the start of Alabama's RTC law as occurring in 1975, as we do (see <https://www.rand.org/pubs/tools/TL283.html> for the downloadable database). This is also consistent with the codings used by the National Rifle Association (NRA), John Lott, and the NRC *Firearms and Violence* report. Indeed, if one looks at Lott's estimated percentage of citizens with concealed carry permits, Alabama ranked first among all the states for which he had data. Lott lists the Alabama percentage as greater than 8 percent for 2007—seven years before the date that MM use for Alabama in their synthetic control analysis (Lott 2010, 238). Moreover, the 2014 date that MM use would imply that Alabama was one of the last states in the union to adopt a RTC law, which would not be consistent with the gun politics of the region nor the estimated percentage of permit holders in the state seven years prior to 2014. The NRA clearly would have successfully pushed for an RTC law in Alabama decades ago if Alabama was thought not to have one.

12. DAW (2018, 60, Table A1) provides the complete list of dates for RTC adoption.



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in MM's synthetic Idaho was estimated to be over 35 percent (from 501 to 324), which was substantially better than the far smaller 16 percent drop in actual Idaho (from 290 to 243). Yet MM treat this as evidence of statistically significant and substantial crime drops caused by Idaho's RTC law. Note that the DAW synthetic controls analysis was superior because it produced a much better fit (the DAW initial year synthetic Idaho estimate was 344, versus the MM estimate of 501!), but also because DAW did not treat that pre-existing difference as evidence that the RTC law immediately caused a major drop in crime.<sup>13</sup> By doing so, MM were able to mask the fact that their own analysis frequently showed that the synthetic control performed much better (with either larger crime drops or smaller crime increases) than the comparable RTC-adopting state over the ten years following adoption.<sup>14</sup>

### **Aggregating MM's synthetic control estimates reveals that RTC laws increase violent crime**

This unpromising beginning ends in an array of synthetic control estimates that on the whole are considerably less promising than those contained in the DAW synthetic control analysis. Essentially, MM got some very bad fits on small states and then used those poor fits to argue that there is no support for the DAW position because 14 states adopting RTC laws experienced statistically significant increases in crime and 12 experienced decreases.<sup>15</sup> (Note that our more accurate synthetic control analysis would show a 15-to-8 advantage for RTC laws causing statistically significant *increases* in crime, which grows to 16-to-4 if one limits the

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13. One can see this same problem illustrated in MM's synthetic control graph of the murder rate in Texas (MM 2019, 92, Figure 1). MM's poorly fitting synthetic Texas has a substantially higher murder rate than actual Texas at the time of adoption of the Texas RTC law. Their graph highlights that this occurred because Texas enjoyed a substantial drop in murder relative to the synthetic control—*prior to the adoption of the RTC law!* The MM calculus treats that ill-fitting differential as a benefit of the law, even though if one examined how crime changed in both Texas and synthetic Texas in the aftermath of RTC adoption, no such murder-reduction benefit would be observed.

14. Since we were trying to show whether the panel data finding that RTC laws increased crime was supported by a synthetic control analysis, it was important to use the same 1979–2014 time period for both approaches, which we did. Extending the data set further backwards creates data problems for variables such as poverty and unemployment, which were either not available or not consistently gathered prior to 1979. Disregarding these concerns, MM started their panel data analysis in 1977, and, without explanation, used a different time period (extending back to 1970) for their synthetic control analysis.

15. MM show that, for their statistically significant results, the majority of states experienced an increase in violent crime using the preferred “nested approach” but then go on to present inferior “default” results perhaps because the inferior estimates weakened their finding of a 14-to-12 state dominance for RTC laws increasing violent crime. This is not good practice, and the “default” estimates, which are only appropriate when “nested” results cannot be computed, should be ignored in the MM paper. See the documentation for the Stata synth program, which states that the nested option offers “better performance” than the default option (Abadie, Diamond, and Hainmueller 2014).

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analysis to six to ten years after adoption, reflecting the consistent pattern that the harm of RTC laws rises over the decade following adoption.) Even though the errors in implementation invalidate the MM synthetic control analysis, if MM had simply computed how much violent crime was estimated to have changed in aggregate for the 33 RTC-adopting states for each of the ten years using their own estimates, they would have generated the estimated impacts of RTC laws on violent crime shown in Table 2.

**TABLE 2. The impact of RTC laws on the violent crime rate, MM synthetic control methodology and data, 1970–2016**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Average non-normalized TEP	7.21*	7.61*	6.64	8.06	9.81*	10.97**	11.01**	12.55**	14.86**	16.26***
	(3.82)	(4.05)	(4.21)	(4.72)	(4.78)	(4.76)	(4.79)	(5.41)	(5.05)	(4.80)
N	33	33	33	33	33	33	33	33	33	31
P-value	0.07	0.07	0.13	0.10	0.05	0.03	0.03	0.03	0.01	0.00
Notes: Standard errors in parentheses. Column numbers indicate post-passage year under consideration; N = number of states in sample. Dependent variable is the percentage difference in the violent crime rate in treatment and synthetic control states at given post-treatment interval. * $p < 0.10$ , ** $p < 0.05$ , *** $p < 0.01$ .										

Table 2 presents the aggregate, population-weighted impact of RTC laws on violent crime using MM’s own data and synthetic control methodology (which does not normalize the estimates to equate the actual and synthetic control crime rates at the time of RTC adoption). In other words, Table 2 just takes MM’s actual individual state estimates—which they fail to show—and aggregates them. The finding is clear: RTC laws consistently generated a statistically significant increase in violent crime, rising from a 7.2 percent increase in the first year to 16.3 percent in the tenth year. Note that this is even a larger violent crime increase than that predicted in the DAW synthetic control table reproduced in Table 1 above. Remarkably, MM have completely disguised the key finding of their own synthetic control analysis, which is that, in aggregate, RTC laws are estimated to have substantially increased violent crime.<sup>16</sup>

16. The MM (2019) synthetic control analysis goes astray so badly because their non-normalized violent crime estimates tend to be large and positive for big states (for example, four of the five highest population states have positive estimates and three of those four are bigger than 15 percent by the fifth year after RTC adoption) and large and negative for small states (four of the five lowest population states have negative estimates by the fifth year, ranging from -29 percent for Wyoming to -78 percent for North Dakota). Not surprisingly, the unrealistically large negative results tend to be found in the states with the worst pre-treatment fits between synthetic control and treatment states. The DAW (2018) paper documents the ratio of the root mean-squared prediction error (RMSPE) to the mean violent crime rate as a measure of goodness of pre-treatment fit and indicated particular concern when this value rose above 19 percent. To highlight how the MM synthetic control model was doing a particularly bad job for generating plausible controls for small states, note that the error ratio averaged a whopping 48.3 percent for MM’s estimates for

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We are quite confident that the DAW (2018) paper has the best available synthetic control estimates of the impact of RTC laws on crime because our synthetic control analysis is done with greater care, with more accurate coding of RTC law adoption dates, and with a far more probing array of robustness checks than the MM analysis.

## **Conclusion: The best evidence shows that RTC laws increase violent crime**

We have shown that the DAW population-weighted panel data estimates shown in Figure 1 satisfy the parallel-trends assumption of a valid panel data analysis, while neither of the alternative models advanced by MM do. This is on top of the serious miscoding problems of the MM panel data analysis. Nonetheless, a proper interpretation of the two MM models (shown in Figures 2 and 3) can reveal that RTC laws alter the path of violent crime starting at the date of adoption and generate statistically significant deviations from prior trends within a decade of passage.

Of course, the fact that our Figure 1 is the best panel data model does not mean it is perfect, and we take the MM critique as providing another reason to be interested in the results of the synthetic control approach to gain insight into the difficult problem of specification that exists in every panel data analysis. While we find the MM synthetic control approach to be too flawed and primitive to rival the more accurate, thorough, and sound analysis in the DAW paper, it is encouraging to see that their analysis conducted over a longer time frame (1970–2016, while ours extended from 1977–2014) and using a non-normalized set of estimates (in contrast to our normalized estimates) still found that a majority of states experienced statistically significant increases in violent crime from RTC adoption. It is likewise encouraging that the aggregated impact across all states mimicked our own analysis in finding strongly increasing violent crime over the decade following RTC adoption (compare our estimates, shown in Table 1, with those aggregated from the MM results, shown in Table 2).

In summary, there is consistent evidence that RTC laws elevate violent crime in the decade after adoption whether one looks at DAW's panel data estimates (Figure 1) or synthetic controls estimates (Table 1) or the properly interpreted

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the nine smallest states and only 8.5 percent for the nine largest states. Accordingly, the clear pattern that RTC laws increase violent crime in the ten-year period following adoption emerges whether one weights the actual MM state estimates by population (as we show in Table 2), weights by the inverse of this error ratio, or simply drops the worst fits from the analysis.

panel data results using MM's suggested non-population weighted or FGLS approaches (Figures 2 and 3) or the MM synthetic controls estimates (Table 2). Policymakers and citizens should recognize that the best available empirical data to date supports the view that RTC laws have resulted in statistically significant increases in violent crime in the ten-year period after adoption.

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# EXHIBIT 6



# Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States


Michael Siegel, MD, MPH, Ziming Xuan, ScD, SM, MA, Craig S. Ross, PhD, MBA, Sandro Galea, MD, DrPH, MPH, Bindu Kalesan, PhD, MPH, MSc, Eric Fleegler, MD, MPH, and Kristin A. Goss, PhD, MPP

**Objectives.** To examine the relation of “shall-issue” laws, in which permits must be issued if requisite criteria are met; “may-issue” laws, which give law enforcement officials wide discretion over whether to issue concealed firearm carry permits or not; and homicide rates.

**Methods.** We compared homicide rates in shall-issue and may-issue states and total, firearm, nonfirearm, handgun, and long-gun homicide rates in all 50 states during the 25-year period of 1991 to 2015. We included year and state fixed effects and numerous state-level factors in the analysis.

**Results.** Shall-issue laws were significantly associated with 6.5% higher total homicide rates, 8.6% higher firearm homicide rates, and 10.6% higher handgun homicide rates, but were not significantly associated with long-gun or nonfirearm homicide.

**Conclusions.** Shall-issue laws are associated with significantly higher rates of total, firearm-related, and handgun-related homicide. (*Am J Public Health.* 2017;107:1923–1929. doi:10.2105/AJPH.2017.304057)

 See also Donohue, p. 1864, and also Galea and Vaughan, p. 1867.

Firearm violence is a major public health problem. In 2015, there were approximately 36 000 firearm related deaths in the United States; 13 463 were homicides, 22 018 were suicides, and 489 were unintentional injuries.<sup>1</sup> During the same year, 72.9% of homicides were firearm homicides<sup>1</sup> and, of these, approximately 90% were committed with a handgun. A central question in the debate about public policies to reduce firearm violence is whether easier access to concealed handguns increases or decreases the rate of firearm related homicides.<sup>2</sup> Some have argued that the feared or actual presence of armed citizens may deter violent crime.<sup>3</sup> Others have suggested that a higher prevalence of people carrying guns will increase the likelihood that an altercation results in a fatality.<sup>4</sup> Thus, having a clear understanding of the impact of concealed carry laws on firearm related homicide would help guide policymakers who are aiming to reduce firearm violence.

As of the end of 2015, all states allowed certain persons to carry concealed handguns, but there were 3 major variations in permitting policy<sup>5</sup> (Table 1). In 9 states, law

enforcement officials had wide discretion over whether to issue concealed carry permits; these are referred to as “may issue” states. In 32 states, there was little or no discretion; these are referred to as “shall issue” states because permits must be issued if requisite criteria are met. In an additional 9 states, there was no permit necessary to carry a concealed handgun; these are referred to as “permitless carry” states. The wide variation in these policies between states and over time presents the opportunity to compare homicide rates between states with varying concealed carry permitting policies to examine the impact of concealed carry laws on homicide.

The critical difference between may issue and shall issue laws is that in may issue

states, law enforcement officials may use their judgment in making decisions about whether to approve or deny a permit application, whereas in shall issue states, no judgment is involved—the application must be approved unless the applicant is categorically prohibited from concealed handgun possession. In may issue states, the element of discretion allotted to law enforcement is typically a judgment regarding the “suitability” or “need” of a person to carry a concealed weapon (Table 2). Law enforcement officials have a wide degree of latitude in making these judgments. In shall issue states, the categorical prohibitions consist of a list of specific criminal convictions.

Unfortunately, the existing literature on the impact of concealed carry laws is inconsistent. At least 10 national studies have examined the relationship between shall issue concealed carry laws and firearm related or total homicide rates at the state level (Table A, available as a supplement to the online version of this article at <http://www.ajph.org>).<sup>3,6–14</sup> In 2 studies, shall issue laws were found to decrease homicide rates.<sup>3,6</sup> In 2 studies, these laws were found to increase homicide rates.<sup>7,8</sup> Six studies reported no clear impact of shall issue laws on homicide rates.<sup>9–14</sup> The inconsistency of these results has understandably created some confusion about what approach is most effective to address the firearm violence problem.

Most of the published literature on this topic includes data that are more than a decade old: the most recent year of data analyzed was

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**TABLE 1—Concealed-Carry Permitting Laws and Age-Adjusted Firearm Homicide Rates by US State, 2015, and Status of Laws During the Period of 1991 to 2015**

State	Age-Adjusted Firearm Homicide Rate, <sup>a</sup> 2015 (per 100 000)	Status of Concealed-Carry Permitting Law, 2015	Effective Date of Current (as of 2015) Concealed-Carry Law
Hawaii <sup>b</sup>	0.75	May issue	Before 1991
New Hampshire	0.96	Shall issue	Before 1991
Rhode Island	0.99	May issue	Before 1991
Maine	1.14	Shall issue	Before 1991
Massachusetts	1.26	May issue	Before 1991
Utah	1.39	Shall issue	1995
Idaho	1.29	Shall issue	Before 1991
Iowa	1.62	Shall issue	Before 1991
North Dakota	1.69	Shall issue	Before 1991
Vermont	1.76	Permitless carry	Before 1991
Minnesota	1.77	Shall issue	2003
South Dakota	1.97	Shall issue	Before 1991
New York	2.07	May issue	Before 1991
Wyoming	2.16	Permitless carry	2011 <sup>c</sup>
Montana	2.17	Shall issue	Before 1991
Washington	2.32	Shall issue	Before 1991
Oregon	2.35	Shall issue	Before 1991
Connecticut	2.43	May issue	Before 1991
Colorado	2.46	Shall issue	2003
Nebraska	2.67	Shall issue	2007
West Virginia	2.89	Shall issue	Before 1991
Wisconsin	3.18	Shall issue	2011
New Jersey	3.22	May issue	Before 1991
Virginia	3.29	Shall issue	1995
Kansas	3.35	Shall issue	2007
California	3.52	May issue	Before 1991
Arizona	3.56	Permitless carry	2010 <sup>c</sup>
Kentucky	3.96	Shall issue	1996
Texas	4.04	Shall issue	1995
Pennsylvania	4.34	Shall issue	Before 1991
Ohio	4.38	Shall issue	2004
Nevada	4.49	Shall issue	1995
North Carolina	4.54	Shall issue	1995
Indiana	4.61	Shall issue	Before 1991
Florida	4.66	Shall issue	Before 1991
Michigan	4.74	Shall issue	2001
New Mexico	4.79	Shall issue	2001
Alaska	5.22	Permitless carry	2003 <sup>c</sup>

*Continued*

2010, and only 3 of the 10 studies examined data past the year 1998 (Table A, available as a supplement to the online version of this article at <http://www.ajph.org>). Since 1998, 11 additional states have enacted shall issue laws.<sup>5</sup> This provides more variation over time and a longer follow up period to examine this research question. Moreover, Ayres and Donohue<sup>15</sup> and Hepburn et al.<sup>11</sup> have suggested that the relationship between concealed carry laws and homicide rates may have been different during the period before and after the early 1990s. In addition, studies that included homicide rates from before 1994 were examining a trend that was increasing, whereas studies examining homicide rates after 1994 were capturing declining trends. For these reasons, a reexamination of this research question with more recent data is needed.

One limitation of the existing literature is that no previously published research has examined the specific impact of concealed carry laws on handgun versus long gun homicide rates. This is important because if such laws increase homicide by making it easier for people at high risk for violence to carry handguns, this effect should only be observed in relation to handgun related homicides, not homicides committed with long guns. On the other hand, if permissive concealed carry laws deter crime by generating fear among potential perpetrators of encountering an armed individual, then all crime including handgun, long gun, and nonfirearm homicide should decrease.

Another limitation of previous studies is that nearly all of them used linear models. However, homicide rates represent count data, and the distribution of homicide rates across states is highly skewed<sup>16</sup> (Figure A, available as a supplement to the online version of this article at <http://www.ajph.org>). Plassmann and Tideman argued that a count model (such as a Poisson or negative binomial model) is the most reliable for analyzing crimes, such as homicides, with low occurrence rates.<sup>16</sup> Beyond the Plassmann and Tideman study, only 1 other study<sup>11</sup> used a count model.

We examined the relationship between shall issue concealed carry laws and total, firearm related, and non-firearm related homicide rates, as well as handgun versus long gun homicide rates across all 50 states

TABLE 1—Continued

State	Age-Adjusted Firearm Homicide Rate, <sup>a</sup> 2015 (per 100 000)	Status of Concealed-Carry Permitting Law, 2015	Effective Date of Current (as of 2015) Concealed-Carry Law
Arkansas	5.34	Shall issue	1995
Illinois	5.45	Shall issue	2013
Tennessee	5.51	Shall issue	1994
Georgia	5.73	Shall issue	Before 1991
Oklahoma	5.87	Shall issue	1995
Delaware	6.12	May issue	Before 1991
South Carolina	7.55	Shall issue	1996
Maryland	7.69	May issue	Before 1991
Missouri	7.92	Shall issue	2003
Alabama	8.43	Shall issue	2013
Mississippi	9.11	Shall issue	1991
Louisiana	9.96	Shall issue	1996

Note. “May issue” states are those in which law enforcement officials had wide discretion over whether to issue concealed carry permits. “Shall issue” states are those in which there was little or no discretion; permits must be issued if requisite criteria are met. “Permitless carry” states are those in which there was no permit necessary to carry a concealed handgun.

<sup>a</sup>From Centers for Disease Control and Prevention (CDC).<sup>1</sup>

<sup>b</sup>Data for Hawaii are unavailable for the years 2010 to 2015 because the CDC’s Web Based Injury Statistics Query and Reporting Systems does not report homicide counts fewer than 10. The data here are from 2009.

<sup>c</sup>Changed from “may issue” to “shall issue” in 1994.

during the 25 year time period of 1991 to 2015 with both count and linear regression models. We examined the specificity of the relationship between concealed carry laws and homicide rates by separately modeling firearm versus nonfirearm homicide rates and then within firearm related homicides by modeling handgun versus long gun homicide rates. We analyzed the relationship between shall issue concealed carry laws and homicide rates by using both a count and a linear regression model, thus examining the robustness of results to the type of model used.

## METHODS

We used a quasi experimental panel design, taking advantage of changes in state concealed carry permitting laws over time, to explore the relationship between these laws and total, firearm related, and non-firearm related homicide rates in the 50 states over a 25 year period, 1991 to 2015. We

modeled homicide rates in 2 ways: (1) using a negative binomial regression with homicide rates as the outcome variable and (2) using linear regression with log transformed homicide rates as the outcome variable. In both cases, we included year and state fixed effects and controlled for a range of time varying, state level factors.

## Variables and Data Sources

**Outcome variables.** The main outcome variable was the age adjusted firearm homicide rate in each year analyzed. For example, Missouri’s shall issue law went into effect in 2003; thus, we analyzed homicide rates as associated with Missouri’s shall issue law for the years 2004 to 2015. We obtained homicide rates from the Centers for Disease Control and Prevention’s (CDC’s) Web Based Injury Statistics Query and Reporting Systems (WISQARS) database.<sup>1</sup> This is the ideal source for homicide data because there is complete annual reporting from all 50 states and because the data are extracted from the

Vital Statistics death registry maintained by the National Center for Health Statistics, which is based on standardized death certificates. The completeness of reporting is approximately 99%.<sup>17</sup> The CDC age adjusted the rates to the 2000 standard population.

The second outcome variable was the handgun or long gun homicide rate, obtained from the Federal Bureau of Investigation’s Uniform Crime Reports, Supplemental Homicide Reports (SHR).<sup>18</sup> Although WISQARS does provide mortality data from *International Classification of Diseases, Ninth Revision* and *Tenth Revision*, codes that can list handgun and long gun as the cause of death, unfortunately, most death certificates involving a firearm homicide do not specify the type of weapon used. Therefore, most firearm homicide deaths in WISQARS are classified as “other and unspecified” firearm, and it is not possible to use these data to disaggregate handgun and long gun homicides.<sup>19</sup> By contrast, the SHR is missing data on the type of weapon used in firearm homicides in just 13.4% of cases. Thus, the SHR is the best, if not only, source for state specific, firearm type-specific homicide data.

The SHR disaggregates firearm homicides into handgun, rifle, shotgun, and other (and unknown). We used the handgun deaths to generate handgun homicide rates and the sum of rifle, shotgun, and other gun deaths to generate long gun homicide rates for each state and year. Although SHR data may include listing of multiple weapons in an incident, only 1 weapon may be associated with a homicide death.<sup>20</sup> Because of missing data on weapon type, we excluded 13.4% of firearm homicide cases in estimating handgun homicide rates. Nevertheless, there was little discrepancy between the firearm homicide totals from WISQARS and the SHR, which were correlated at  $r = 0.98$ .

Because not all local law enforcement agencies complete the supplemental reports, the SHR data set excludes approximately 10% of all homicides.<sup>21</sup> This problem was addressed by applying weights that adjusted each state and year specific estimate up to the overall number of homicides reported in the Uniform Crime Report for that state and year. Fox kindly provided us with updated SHR files that added previously

**TABLE 2—Elements of Discretion in Law Enforcement Decisions to Approve or Deny Concealed Handgun Carry Permits: “May-Issue” US States, 2015**

State	Elements of Discretion	Citation
California	Applicant must be of “good moral character” and must have “good cause” for issuance of the license.	California Penal Code § 26150, § 26155
Connecticut	Applicant must intend only to make “legal use” of the handgun and must be a “suitable person to receive such permit.”	Connecticut General Statutes § 29-28
Delaware	Applicant must be “of good moral character,” must desire the handgun for “personal protection” or “protection of the person’s property,” and must submit signed, written statements of 5 “respectable citizens” of the county who testify that the applicant is a person “of sobriety and good moral character” and “bears a good reputation for peace and good order in the community” and that a handgun is “necessary for the protection of the applicant or the applicant’s property.” The Superior Court has discretion to approve or deny the application.	Delaware Code § 1441
Hawaii	Must be “an exceptional case,” the applicant must show “reason to fear injury to the applicant’s person or property,” the applicant must be “a suitable person” to be licensed, and the chief of police must determine that the person “is qualified to use the firearm in a safe manner.”	Hawaii Revised Statutes § 134-9
Maryland	Applicant must have a “good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger,” and the applicant must not have “exhibited a propensity for violence or instability that may reasonably render the person’s possession of a handgun a danger to the person or to another.”	Maryland Public Safety Code § 5-306
Massachusetts	Applicant must be a “suitable” person and must not be judged to potentially create a risk to public safety.	Massachusetts General Laws 140 § 131
New Jersey	Applicant must demonstrate a “justifiable need to carry a handgun” and must submit endorsements by 3 individuals who have known the applicant for at least 3 years that the applicant is “a person of good moral character and behavior.”	New Jersey Statutes § 2C:58-4
New York	Applicant must be “of good moral character,” must be “of good character, competency, and integrity,” and there must be no “good cause” for denial of the license.	New York Penal Law § 400.00
Rhode Island	Applicant must have “good reason to fear an injury to his or her person or property” or have “any other proper reason” for carrying a handgun and must be a “suitable person to be so licensed.”	General Laws of Rhode Island § 11-47-11

Note. “May issue” states are those in which law enforcement officials had wide discretion over whether to issue concealed carry permits.

missing data for Florida and included data through 2015.<sup>21</sup>

*Main predictor variable.* Using *Thomson Reuters Westlaw* to access historical state statutes and session laws, we developed a database indicating the presence or absence of 100 provisions of firearm laws in each state over the 25 year period.<sup>5</sup> We coded laws by the year they went into effect, regardless of the month of the effective date. However, in the analytic models, we lagged the state laws by 1 year, which ensured that all laws were in effect during the year in which their impact was being assessed. Following Lott and Mustard,<sup>22</sup> we assessed the impact of laws starting in the first full year they were in effect.

We examined the potential impact of shall issue laws, comparing them to may issue laws. In other words, using the may issue states as the reference group, we

estimated the impact of shall issue laws on homicide rates. Because only 4 states had permitless carry laws in place during the study period, there were not enough observations to allow any meaningful analyses of these laws. Therefore, we deleted state-year observations in which a permitless carry law was in effect.

*Control variables.* We controlled for 12 state level factors that (1) were found in the previous literature<sup>3,6-14</sup> to be significantly related to homicide rates and (2) were significantly related to the presence of shall issue laws in our data set (i.e., the regression coefficient for the variable was significant at a level of  $P = .05$  in a logistic regression with shall issue law as the dependent variable): household firearm ownership (using the standard proxy, which is the percentage of all suicides committed with a firearm), proportion of Blacks, proportion of young adults

(aged 18 to 29 years), proportion of men among young adults, proportion of the population living in urban areas, total population, population density, per capita alcohol consumption, the nonhomicide violent crime rate (aggravated assault, robbery, and forcible rape), the poverty rate, unemployment rate, median household income, per capita disposable income, incarceration rate, and per capita number of law enforcement officers. Variable definitions and data sources are provided in Table B, available as a supplement to the online version of this article at <http://www.ajph.org>. We also controlled for the following state firearm laws that could serve as alternative explanations for changes in homicide during the study period: (1) universal background checks required for all handgun purchases, (2) waiting periods required for all handgun purchases, and (3)

permits required to purchase or possess firearms.

### Analysis

**Count models.** Because homicide rates are not normally distributed but skewed and overdispersed, we modeled this outcome by using a negative binomial distribution. To control for clustering in our data by year (25 levels) and by state (50 levels), we entered year and state as fixed effects in the regression models. We used robust standard errors that account for the clustering of observations, serial autocorrelation, and heteroskedasticity.<sup>23</sup>

Our final model was as follows:

$$(1) \Pr(H_{st} = h_{st}) = \frac{[\Gamma(y_{st} + \alpha^{-1}) / \Gamma((y_{st} + 1)\Gamma\alpha^{-1})][1 / (1 + \alpha \mu_{st})]^{1\alpha} [\mu_{st} / (\alpha^{-1} + \mu_{st})]^{y_{st}}}$$

where  $\Pr(H_{st} = h_{st})$  is the probability that state  $s$  in year  $t$  has a homicide rate equal to  $h_{st}$ ,  $E(H_{st}) = \mu_{st}$ , and  $Var(H_{st}) = \mu_{st} + \mu_{st}^2$ .

The mean homicide rate was then modeled as follows:

$$(2) \ln(\mu_{st}) = \alpha + \beta_1 CC_{st} + \beta_2 C_{st} + S + T + e,$$

where  $CC_{st}$  is a dummy variable for the presence of a shall issue law,  $C$  is a vector of control variables,  $S$  represents state fixed effects, and  $T$  represents year fixed effects.

The negative binomial regression coefficients are reported as incidence rate ratios (IRRs). The IRR indicates the percentage difference in homicide rate for states with a shall issue concealed carry law compared with states with a may issue law.

**Linear models.** To check the robustness of our findings, we repeated the analyses with a linear regression model, with the log transformed homicide rate as the outcome variable, again by using robust standard errors.<sup>23</sup> As with the negative binomial models, we included year and state fixed effects, and we included the same state level control variables.

We conducted analyses with Stata version 14.1 (StataCorp LP, College Station, TX).

We evaluated the significance of regression coefficients by using a Wald test at  $\alpha = 0.05$ .

We checked the robustness of our results by conducting several sensitivity analyses, including

1. Restricting the analysis to the 23 states in which shall issue laws were adopted during the study period,
2. Using raw count data instead of homicide rates,
3. Restricting the analysis to states with population greater than 1 000 000,
4. Restricting the analysis to the period 1991 to 2002,
5. Restricting the analysis to the period 2003 to 2015, and
6. Using SHR instead of WISQARS homicide data (thus avoiding the problem of missing data for some smaller states after 1998).

### RESULTS

During the study period, 23 states adopted shall issue laws (Table 1). By 2015, 37 states had such laws. In the same year, the average firearm homicide rate in the states with shall issue laws was 4.11 per 100 000, compared with 3.41 per 100 000 in the may issue states. The number of states that had permitless carry laws in effect at all during the study period was small ( $n = 4$ ), as was the number of observations ( $n = 46$ ), limiting our ability to analyze the impact of these laws. Because CDC does not report homicide counts of fewer than 10 in years after 1998, we were missing outcome data for several years for 6 states (Hawaii, New Hampshire, North Dakota, South Dakota, Vermont, and Wyoming); a sensitivity analysis with SHR data revealed that these omissions do not affect our findings.

In negative binomial regression models, shall issue concealed carry permitting laws were significantly associated with 6.5% higher total homicide rates compared with may issue states (IRR = 1.065; 95% confidence interval [CI] = 1.032, 1.099; Table 3). The association was specific to firearm homicide rates, which were 8.6% higher in shall issue states (IRR = 1.086; 95% CI = 1.047, 1.126). There was no significant

association between shall issue laws and nonfirearm homicide rates (IRR = 1.014; 95% CI = 0.963, 1.068). Further disaggregation within firearm homicides showed that the association between shall issue laws and firearm homicide rates was specific to handgun homicide. Shall issue states had handgun homicide rates that were 10.6% higher (IRR = 1.106; 95% CI = 1.039, 1.177), but there was no significant association with long gun homicide rates (IRR = 0.999; 95% CI = 0.915, 1.090).

The results of the linear regression analyses were similar. Here, shall issue laws were significantly associated with 6.6% higher total homicide rates compared with may issue states (95% CI = 3.0%, 10.4%; data not shown). The association was specific to firearm homicide rates, which were 11.7% higher in “shall issue” states (95% CI = 6.4%, 17.2%); there was no significant association between these laws and nonfirearm homicide rates. Further disaggregation within firearm homicides showed that the association between shall issue laws and firearm homicide rates was specific to handgun homicide. Shall issue states had handgun homicide rates that were 19.8% higher (95% CI = 10.3%, 30.1%), but rates of long gun homicide were not significantly different in states with shall issue compared with may issue laws.

The significant association between shall issue laws and higher total, firearm, and handgun related homicide rates remained when we restricted the analysis to the 23 states in which these laws were adopted during the study period (Table 3). This pattern of results was robust to a series of additional sensitivity checks, including using raw count data, restricting the analysis to states with a population of more than 1 000 000, restricting the analysis to the period 1991 to 2002, restricting the analysis to the period 2003 to 2015, and using SHR instead of WISQARS homicide data.

### DISCUSSION

To the best of our knowledge, this is the first study to examine the relationship between concealed carry permitting laws and handgun specific homicide rates. We found that, when we used both count and linear

models and after we controlled for a range of time varying state factors and for unobserved time invariant state factors by using a fixed effects model, shall issue concealed carry permitting laws were significantly associated with 6.5% higher total homicide rates, 8.6% higher firearm related homicide rates, and 10.6% higher handgun specific homicide rates compared with may issue states.

A major reason for inconsistent results in the existing literature on the effects of concealed carry laws may be that the relationship between concealed carry laws and homicide rates was different during the period before and after the early 1990s.<sup>11,15</sup> It is possible that despite the enactment of early shall issue laws in the 1970s and 1980s, the demand for handgun permits in those states was modest. There has been a striking increase in the demand for pistols, especially those designed for concealed carry, during the past decade.<sup>24</sup> Recently, Steidley found that the adoption of shall issue laws during the period 1999 to 2013 was associated with a persistent, long term increase in handgun sales in all 7 states studied.<sup>25</sup> Our analysis provides further support for the hypothesis that the relationship between shall issue laws and higher homicide rates increased over time, as the regression coefficients for these laws was higher for the second half of the study period

(2003–2015) compared with the first half (1991–2002).

Our finding that the association between shall issue laws and homicide rates is specific to handgun homicides adds plausibility to the observed relationship. If the relationship between shall issue laws and homicide rates were spurious, one might expect to see the relationship hold for long gun as well as handgun homicide rates. Moreover, this finding is inconsistent with the hypothesis that permissive concealed carry laws deter crime by increasing the presence of armed individuals. Were that the case, one would expect to see lower handgun, nonhandgun, and nonfirearm homicide rates in shall issue compared with may issue states. The lack of an association between shall issue laws and long gun homicide rates is also inconsistent with the hypothesis that the presence of more concealed weapons escalates the level of violence in encounters that may involve a long gun.

### Strengths and Limitations

This study has several novel strengths, including the use of both count and linear models, the use of recent data (through 2015), and the disaggregation of homicide rates. Nevertheless, caution should be exercised in assessing causality from an ecological study

such as this one. In particular, these results should be interpreted with caution because of the possibility that they reflect a reverse association. That is, it is possible that the adoption of shall issue concealed carry laws is associated with higher baseline homicide rates so that we are picking up not a causal effect of these laws on homicide but a systematic difference in baseline homicide rates between states that do or do not have these laws. However, our findings hold even when the analysis is restricted to states that started with may issue laws at the beginning of the study period and adopted shall issue laws during the study period.

An additional limitation of this study is that we could not consider the enforcement of concealed carry laws.<sup>26</sup> Enforcement of these laws may vary not only among states, but also among counties in the same state.<sup>11</sup> In addition, we did not have information on the number of concealed carry permits issued in each state or the number of homicides committed by concealed carry permittees.

It is also important to note that we examined only fatal firearm injuries. Further research should investigate potential effects of concealed carry laws on nonfatal firearm injuries.

Finally, we were unable to analyze the impact of permitless carry laws because of the small number of observations. Only 4 states

**TABLE 3—Sensitivity Analyses of Relationship Between “Shall-Issue” Concealed-Carry Permitting Laws and Homicide Rates: United States, 1991–2015**

Type of Analysis	Homicide Rate, IRR (95% CI)		
	Total	Firearm	Handgun
Main analysis	1.065 (1.032, 1.099)	1.086 (1.047, 1.126)	1.106 (1.039, 1.177)
Analysis restricted to states that adopted shall-issue concealed-carry laws during study period	1.063 (1.028, 1.099)	1.068 (1.030, 1.108)	1.074 (1.002, 1.150)
Analysis using raw count of homicides with population as the exposure variable	1.051 (1.020, 1.083)	1.079 (1.039, 1.120)	1.139 (1.067, 1.217)
Analysis restricted to states with population > 1 million	1.055 (1.023, 1.087)	1.067 (1.030, 1.105)	1.095 (1.029, 1.166)
Analysis restricted to years before 2003 (1991–2002)	1.058 (1.014, 1.104)	1.067 (1.019, 1.116)	1.107 (1.037, 1.180)
Analysis restricted to years after 2002 (2003–2015)	1.064 (1.009, 1.122)	1.100 (1.028, 1.176)	1.274 (1.092, 1.488)
Analysis using Supplemental Homicide Report data instead of Vital Statistics data	1.044 (1.006, 1.083)	1.094 (1.047, 1.143)	1.106 (1.039, 1.177)

Note. “Shall issue” states are those in which there was little or no discretion; permits must be issued if requisite criteria are met. CI = confidence interval; IRR = incidence rate ratio. All models include year and state fixed effects and control for the following time varying, state level factors: household gun ownership levels, proportion of young men, proportion of young adults, proportion of Blacks, proportion living in an urban area, total population, population density, median household income, poverty rate, unemployment rate, per capita disposable income, per capita alcohol consumption, violent crime rate, incarceration rate, per capita law enforcement officers, universal background check laws for all handguns, waiting periods for all handguns, and permits required for all firearms.



had permitless carry laws in place during the study period. However, in the past 2 years, an additional 5 states have enacted such laws. Elucidating the impact of permitless carry laws will require follow up for the 9 states that now have such laws in effect.

## Conclusions

Despite these limitations, this study suggests that there is a robust association between shall issue laws and higher rates of firearm homicides. The trend toward increasingly permissive concealed carry laws is inconsistent with public opinion, which tends to oppose the carrying of guns in public.<sup>27</sup> Our findings suggest that these laws may also be inconsistent with the promotion of public safety. **AJPH**

## CONTRIBUTORS

M. Siegel conceptualized the study, led the data analysis and writing, and was the principal author of this article. Z. Xuan and C. S. Ross assisted with the study design and analytical plan. All authors contributed toward the interpretation of data analyses, critical review of the article, and revision of the article.

## ACKNOWLEDGMENTS

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**Note.** The views expressed here do not necessarily reflect those of the Robert Wood Johnson Foundation.

## HUMAN PARTICIPANT PROTECTION

This study made use of secondary data only and did not require institutional review board approval.

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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12  
13 **MARK BAIRD and RICHARD**  
14 **GALLARDO,**

15 Plaintiffs,

16 v.

17 **ROB BONTA, in his official capacity as**  
18 **Attorney General of the State of California,**  
19 **and DOES 1-10,**

20 Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF FORMER COVINA  
CHIEF OF POLICE KIM RANEY IN  
SUPPORT OF DEFENDANT'S  
OPPOSITION TO PLAINTIFFS' THIRD  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: October 21, 2022  
Time: 10:00 a.m.  
Dept: 3  
Judge: Hon. Kimberly J. Mueller

Trial Date: None set  
Action Filed: April 9, 2019

1 I, Kim Raney, declare as follows:

2 1. I am a retired Chief of Police of the Covina (California) Police Department. Counsel  
3 for Defendant Attorney General of California Rob Bonta asked me to offer an expert opinion in  
4 the above-entitled case. I have personal knowledge of each fact stated in this declaration, and if  
5 called as a witness I could and would testify competently thereto.

6 **I. BACKGROUND AND QUALIFICATIONS**

7 2. In October 2016, I retired as the Chief of Police for the Covina Police Department  
8 (Department), after 39 years of law-enforcement service. I served as Chief of Police for 15 years,  
9 as a Captain for one year, as a Lieutenant for 10 years, as a Sergeant for seven years, and as a  
10 police officer for six years. I also served as interim city manager of the City of Covina for four  
11 months.

12 3. As Chief of Police, I was responsible for the delivery of public-safety services to a  
13 community of 50,000 residents, and the leadership of 100 employees of the Department. This  
14 work included compliance with all local, state, and federal mandates, and enforcement and  
15 implementation of existing and new policies, as well as ensuring that the Department was a leader  
16 in engaging with emerging issues or trends in the criminal-justice system. I was Chief of Police  
17 on December 24, 2008, when nine family members in my community were shot and killed at a  
18 family holiday celebration, and I provided leadership to the community during this tragedy.

19 4. As a Captain, I was responsible for the Department's Administrative Division, which  
20 included oversight of detectives, the 9-1-1 communications center, custody of suspects, and  
21 property/evidence.

22 5. As a Lieutenant, I served as a watch commander overseeing patrols on a daily basis,  
23 as well as the auditing, training, and compliance for Department employees. I also supervised the  
24 Detective Division, which was accountable for investigating all crimes reported to the  
25 Department. I also helped to create and supervise a regional mutual-aid platoon comprised of 56  
26 officers from 15 area police departments, responsible for activation and deployment in response  
27 to any regional emergency or disaster. This work included the creation of a policy manual and  
28



1 activation protocols, and coordination of the training for over 100 police officers in topics such as  
2 riot response, crowd control, and command-and-control for team leaders.

3 6. As a Sergeant, I was responsible for the first-line supervision of police officers and  
4 detectives, including tactical leadership on critical service calls, daily training, evaluation of  
5 employees, and supervision of the field training program.

6 7. As a police officer, I was a first responder to all public-safety calls for service. When  
7 assigned as a detective, I worked narcotics investigations, regional surveillance, and undercover  
8 operations.

9 8. I am Past President of the California Police Chiefs Association. In my role with the  
10 California Police Chiefs Association, I spent five years on the Executive Board of Directors,  
11 culminating in my service as President in 2013. I was involved in discussions with state and local  
12 elected officials on all major legislative or ballot propositions involving law enforcement,  
13 including meetings with the Governor and Attorney General on major public-safety issues,  
14 legislation, and initiatives. I am also Past President of the Los Angeles County Police Chiefs  
15 Association.

16 9. I was one of two California police chiefs to serve on the Stanford Executive Session  
17 on Public Safety Realignment, which refers to legislation passed in 2011, and sometimes known  
18 as Assembly Bill 109, that shifted responsibility for monitoring, tracking, and incarcerating non-  
19 serious, non-violent, non-sex offenders from California state to the counties. A report based on  
20 the Executive Session's work was submitted to the California State Legislature and the Governor,  
21 and is available on the Internet at the following link: [https://www-cdn.law.stanford.edu/wp-  
22 content/uploads/2015/10/ES-Consensus-Report-final-report.pdf](https://www-cdn.law.stanford.edu/wp-content/uploads/2015/10/ES-Consensus-Report-final-report.pdf).

23 10. I served on the Executive Steering Committee for the California Board of State and  
24 Community Corrections, which committee was tasked with creating a new definition of the term  
25 "recidivism" for statewide use, pursuant to Assembly Bill 1050.

26 11. I have lectured to law-enforcement leaders and elected officials throughout California  
27 and the United States on issues such as leading a community in dealing with a mass shooting, the  
28

1 decriminalization of marijuana and its impact on communities, and public-safety realignment  
2 (Assembly Bill 109) in California.

3 12. I have received numerous awards throughout my career, including the Joe Malloy  
4 Award, the most prestigious award that the California Police Chiefs Association presents. This  
5 award is presented to one California police chief every year, and is bestowed based upon the  
6 recipient's professionalism, leadership, and contributions to and impacts on the profession of law  
7 enforcement.

8 13. I have a Bachelor of Science Degree in Organizational Leadership from Azusa Pacific  
9 University. I have a certificate for completing an eight-month law-enforcement-oriented program  
10 at the University of Southern California School of Public Policy, as well as a certificate for  
11 completing 40 hours of training at the FBI Southwest Command College.

12 14. A copy of my current resume is attached to this declaration as Exhibit A.

13 15. I wrote an article for the International Association of Chiefs of Police, titled  
14 "Proposition 19: California's Marijuana Legalization Debate," which appeared in the October  
15 2010 issue of *The Police Chief Magazine*. A portion of this publication is available on the  
16 Internet at the following link: [http://www.policechiefmagazine.org/proposition-19-californias-](http://www.policechiefmagazine.org/proposition-19-californias-marijuana-legalization-debate)  
17 [marijuana-legalization-debate](http://www.policechiefmagazine.org/proposition-19-californias-marijuana-legalization-debate).

18 16. I have testified as an expert in the following cases: *Flanagan v. Becerra* (C.D. Cal.  
19 No. 2:16-cv-06164-JAK-AS), *Forsyth, Holliday, and Shea v. City of Buena Park Police*  
20 *Department* (Orange County Super. Ct. BU010-037), and *Moreno, et al. v. City of Beverly Hills*  
21 (Los Angeles Super. Ct. BC687003).

22 17. I am being compensated for services performed in the above-entitled case at an  
23 hourly rate of \$250 for reviewing materials, participating in meetings, and preparing reports, and  
24 \$350 for depositions and court appearances (including travel time). My compensation is not in  
25 any way dependent on the outcome of this or any related proceeding, or on the substance of my  
26 opinion.

1 **II. MATERIALS REVIEWED**

2 18. Counsel for Defendant has provided me, and I have reviewed, the complaints and  
3 preliminary injunction motions in the above-entitled case.

4 19. I prepared an expert report in *Flanagan v. Becerra* (ECF No. 45-13) that is  
5 substantially similar to this declaration. In the course of preparing that report, I reviewed the  
6 following materials:

- 7
- 8 • Papers filed in *Flanagan v. Becerra* (C.D. Cal. No. 2:16-cv-06164-JAK-AS):  
9 Complaint for Declaratory and Injunctive Relief (ECF No. 1); Notice of Motion and  
10 Motion to Dismiss Complaint for Declaratory and Injunctive Relief (ECF No. 24).
  - 11 • Papers filed in *Nichols v. Brown* (9th Cir. No. 14-55873): Appellees' Brief (ECF No.  
12 36-1); Brady Center to Prevent Gun Violence's Motion for Leave to File Amicus Brief  
13 in Support of Defendants-Appellees (ECF No. 41-1); Motion for Leave to File Brief of  
14 Amicus Curiae Law Center to Prevent Gun Violence in Support of Appellees and  
15 Affirmance (ECF No. 44-1).
  - 16 • Manny Fernandez, Alan Blinder, and David Montgomery, "Texas Open-Carry Laws  
17 Blurred Lines Between Suspects and Marchers," *N.Y. Times*, July 10, 2016.
  - 18 • California Penal Code sections 25400, 25600, 25605, 25655, 25850, 26150, 26155,  
19 26160, 26165, 26170, 26350, 26361, 26362, 26364, 26366, 26377, 26378, 26383,  
20 26389, 26400, and 26405.
  - 21 • Analyses of Assembly Bill 144 (2011-2012 Reg. Sess.): Assembly Public Safety  
22 Committee Analysis (Apr. 12, 2011); Senate Public Safety Committee Analysis (Jun. 7,  
23 2011); Senate Floor Analysis (Jun. 28, 2011).<sup>1</sup>
  - 24 • Analyses of Assembly Bill 1527 (2011-2012 Reg. Sess.): Assembly Public Safety  
25 Committee Analysis (Mar. 27, 2012); Assembly Appropriations Committee Analysis  
26

27 <sup>1</sup> Available at  
28 [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201120120AB144](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120AB144).

1 (Apr. 18, 2012); Senate Public Safety Committee Analysis (June 26, 2012); Senate  
2 Floor Analysis (Aug. 23, 2012).<sup>2</sup>

- 3 • San Mateo County Sheriff’s Office, “Unloaded Open Carry” (Jan. 14, 2010).

4 20. Other than these materials, the materials that I have relied upon are cited in the notes  
5 accompanying the text of this declaration.

### 6 **III. OPINIONS**

7 21. Counsel for Defendant has asked me to express opinions on how restrictions on the  
8 open carry of firearms affect public safety. My overall opinion on this question is that restrictions  
9 on the open carry of firearms greatly enhance public safety.

10 22. From a law-enforcement perspective, the restrictions on the open carry of firearms in  
11 California have been critical to the safety of law-enforcement officers, our communities, and  
12 those people who would want to openly carry firearms in public. Law-enforcement officers are  
13 taught that guns can be a dangerous and deadly threat to their safety and the safety of the public  
14 they serve. Throughout a police officer’s career, his or her training emphasizes officer-safety  
15 tactics that place the officer in positions of advantage when dealing with incidents involving  
16 firearms. Police officers understand that any encounter involving a firearm can be both  
17 dangerous and grave. When police respond to a “man with a gun” call, officers typically are  
18 responding to a situation about which they have few details, other than that a person is at a  
19 location; the person is armed; and perhaps a description of the person. At least two police  
20 officers will be dispatched to each of these types of calls, which are of the highest priority. Upon  
21 arrival, the officers must rapidly assess the armed person’s behavior in regards to the public’s  
22 safety, the armed person’s safety, and the officers’ own safety. The officers may have no idea  
23 about the armed person’s motives, intent, mental condition, or emotional stability. The armed  
24 person’s behavior and ability or failure to comply with law enforcement’s instructions will have  
25 great bearing on the outcome of the contact. Should the armed person fail to comply with an  
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28 <sup>2</sup> Available at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201120120AB1527](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120AB1527).

1 officer's instructions or move in a way that could be construed as threatening, the results could be  
2 deadly.

3 23. In the event of a call for service regarding a violent crime involving a firearm, an  
4 environment that allows the open carry of firearms complicates the police response, and could  
5 unnecessarily divert critical police resources from the primary event. On a call about an armed  
6 robbery, officers will be given the location of the event as well as a description of the suspect, if  
7 that information is obtainable from any witnesses. Any person in, around, or leaving the area of  
8 the crime who matches the description provided has a high likelihood of being detained by  
9 responding law-enforcement personnel. The current restrictions on open carry in California help  
10 ensure that law-enforcement resources are not unnecessarily diverted or distracted by people who  
11 are in the vicinity and carrying firearms, and may generally match the description provided by  
12 witnesses.

13 24. When police officers encounter a person with a firearm, even one that may be legally  
14 possessed, officers usually have few details to help them quickly determine the armed person's  
15 intent or whether that person is a threat to the officer, the public, or the armed person. Split-  
16 second decisions sometimes have to be made, and unintended consequences can and do occur.  
17 The split-second decision police officers have to make may be judged by other people who have  
18 the luxury of time, additional information, and a controlled environment that the police officers  
19 did not have.

20 25. In the event of an active shooter, the presence of civilians openly carrying firearms  
21 has the potential to create deadly scenarios, as well as delaying first responders from the primary  
22 mission, to stop the shooter and save lives. As appropriately stated by Dallas Chief of Police  
23 David Brown in the aftermath of an active shooter in Dallas at a community protest that included  
24 the presence of openly carrying civilians—where the shooter caused the deaths of five police  
25 officers and the wounding of nine officers and two civilians—“We don't know who the good guy  
26 is versus the bad guy when everyone starts shooting.”<sup>3</sup>

27 \_\_\_\_\_  
28 <sup>3</sup> Molly Hennessy-Fiske, “Dallas Police Chief: Open Carry Makes Things Confusing During  
Mass Shootings,” *Los Angeles Times* (Jul. 11, 2016).

1           26. The criminal-justice system in California is currently recalibrating itself, and law-  
2 enforcement resources are both limited and at a premium. After years of declining crime rates,  
3 violent crime in California has ticked upward in recent years.<sup>4</sup> This trend requires law-  
4 enforcement resources to be reevaluated and deployed for maximum effectiveness in their  
5 communities, to slow or stop this troubling trend. In addition, law-enforcement officers have  
6 increasingly become the safety net and first responders for a myriad of social issues, including  
7 homelessness and mental-health calls for service. The restrictions currently in place on the open  
8 carry of firearms ensure that critical law-enforcement resources are not being diverted for  
9 unnecessary calls for service at incidents of the public display of firearms, which incidents, again,  
10 would receive a priority response involving multiple officers.

11           27. As law-enforcement executives, police chiefs and sheriffs across California are  
12 constantly working to improve and enhance the relationship between law enforcement and the  
13 communities we serve. The restrictions on open carry in California help ensure that law-  
14 enforcement personnel are not unnecessarily spending time on public contacts involving the open  
15 carrying of firearms. Police are very sensitive to seeing a gun in public or on open display, even  
16 if allowed by law. In an era where law enforcement is spending considerable time and resources  
17 to improve mutual trust and respect with our communities, an open-carry environment would lead  
18 to increased tensions.

19           28. From a community-safety perspective, California’s restrictions on the open carry of  
20 firearms is critical to a healthy, vibrant, and safe environment for our residents to live, shop, dine,  
21 worship, and enjoy recreational opportunities. Inserting firearms carried openly into a  
22 community setting, especially in urban or suburban communities, would create a highly stressful  
23 and unsafe environment for everyone, including the person in possession of the firearm.  
24 Unfortunately, in today’s society, shootings, including mass shootings, have become fairly  
25 commonplace. The presence of a firearm carried openly, or (sometimes) concealed, in places

26 \_\_\_\_\_  
27 <sup>4</sup> Public Policy Institute of California, “Crime Trends in California” (Aug. 2016),  
28 [http://www.ppic.org/main/publication\\_show.asp?i=1036](http://www.ppic.org/main/publication_show.asp?i=1036). This study defines “violent crimes” as  
“homicide, rape, robbery and aggravated assault.” See [https://www.ppic.org/data-set/crime-rates-  
in-california/](https://www.ppic.org/data-set/crime-rates-in-california/).

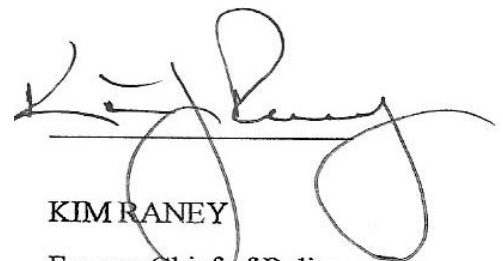
1 visited by the public, including parks, open retail or entertainment venues, theaters, restaurants, or  
2 community or political events, has the high potential to create panic and chaos, and would result  
3 in an immediate law-enforcement response.

4 29. People including families want to feel safe, whether at home or in a public setting.  
5 Parents want safe parks for their children, and the presence of an unknown (or maybe even  
6 known) person in possession of a firearm will have a chilling effect. In a community setting  
7 where a person openly carries a firearm, the likelihood is that no one else in that setting knows the  
8 armed person's intention, mental condition, or emotional state or stability, creating an  
9 environment of extreme uneasiness or fear.

10 30. Regarding the person with the firearm, what are his or her qualifications, training,  
11 marksmanship, mental state, emotional maturity, decision-making process under stress—all the  
12 components and more that come with making a decision to use a firearm? Is there an intoxicant  
13 involved? If so, the ability to make sound decisions is sometimes greatly compromised. If put in  
14 a situation where the armed person feels the need to deploy the firearm, what is his or her ability  
15 to de-escalate the situation? A person in legal possession of a firearm may perceive a threat in a  
16 situation where a threat is non-existent; the presence of a firearm serves only to escalate the  
17 situation. A person armed with a firearm may decide to use deadly force where it is not clearly  
18 required, creating a deadly situation that did not exist before. People in our communities will  
19 demand answers to these questions.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
21 September 30, 2022, at Kailua-Kona, Hawaii.

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KIM RANEY  
Former Chief of Police,  
Covina, CA

# EXHIBIT A



# Kim Raney

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## **Summary of qualifications**

- Accomplished and experienced Chief of Police - skilled at leading, directing, and managing sworn and civilian personnel
- Approachable, forthright, and fair – adept at establishing an environment that facilitates individual and organizational success and requires accountability
- Provide excellent law enforcement services with limited fiscal resources
- Possess the confidence and experience to make sound policy decisions and resolve problems
- Effective communication, presentation and public speaking skills
- Respected Law Enforcement Leader at the local, regional, and state level

## **Professional Experience**

### **City of Covina Police Department**

#### **Chief of Police (2001-2016)**

- Provide excellent, proactive law enforcement service to a community of 50,000
- Leadership of a Police Department with 60 sworn personnel, 50 civilian employees, and 40 volunteers
- Effectively manage a \$20 million budget
- Led a cultural change within the organization
- Led an internal reorganization of department structure
- Established excellent relationships with all community stakeholders, including business, education, and residential constituents
- Work with other Department Heads in a team environment
- Past President – California Police Chiefs Association
- Past President - Los Angeles County Police Chiefs Association

#### **Police Captain (2000-2001)**

#### **Police Lieutenant (1990-2000)**

#### **Police Sergeant (1984-2000)**

#### **Police Officer (1977-1984)**

**Education/  
Certificates**

Azusa Pacific University – Azusa, CA  
Bachelor of Science, Organizational Leadership  
POST Certificates – Executive, Management, Supervisory, Advanced, Basic  
FBI Southwest Command College  
USC School of Public Policy

**Professional  
memberships**

California Police Chiefs Association – President 2013-14  
Los Angeles County Police Chiefs Association – President 2008-09  
San Gabriel Valley Police Chiefs Association – President 2005  
International Association of Chiefs of Police  
Stanford University Law School – Steering Committee on AB 109  
Board of State and Community Corrections – Executive Steering Committee  
Los Angeles Regional Interoperable Communications System (LA-RICS) –  
Board of Directors

**Community  
activities**

Covina Chamber of Commerce  
Covina Sunrise Rotary Club  
San Gabriel Valley YMCA Board of Directors  
Citrus Valley Health Partners – Ethics Committee

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COSCA LAW CORPORATION  
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Sacramento, CA 95814  
916-440-1010

AMY L. BELLANTONI  
THE BELLANTONI LAW FIRM, PLLC  
2 Overhill Road, Suite 400  
Scarsdale, NY 10583  
914-367-0090  
*Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MARK BAIRD and  
RICHARD GALLARDO,  
  
Plaintiffs,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
and DOES 1-10,

Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF MARK BAIRD  
IN SUPPORT OF THIRD MOTION  
FOR PRELIMINARY INJUNCTION**

Date: October 21, 2022

Time: 10:00 a.m.

Room: 3

Judge: Hon. Kimberly J. Mueller

### DECLARATION OF MARK BAIRD

1. I, Mark Baird, am a plaintiff in the above-captioned matter. I submit this Declaration in support of the plaintiffs' motion for a preliminary injunction to enjoin California Penal Codes §§ 25850 and 26350 and their enforcement by Defendant Bonta, his officers, agents, servants, employees, and all persons acting in concert with him who receive actual notice of the injunction. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am over the age of 18 and a resident of Siskiyou County, California, located in the Eastern District of California.

3. I am not prohibited from possessing, purchasing, receiving, or transferring firearms under state or federal law.

4. I possess firearms in my home for self-defense, conduct which is not prohibited under the California Penal Code.

5. I intend to carry a firearm open and exposed on my person, loaded, or unloaded, for self-defense outside of my home and throughout California. While the right to carry a handgun for self-defense is presumptively protected by the Second and Fourteenth Amendments, under Penal Codes §§25850 and 26350, I will still face arrest, prosecution, incarceration, fines, and other criminal penalties simply for exercising the rights protected by the Second Amendment.

6. I do not hold a license to carry a firearm in California and I do not fall within any of the exemptions to those sections of the California Penal Code that criminalize the possession of firearms, whether loaded or unloaded, under Penal Codes §§ 26350 and 25850.

7. There is no avenue for obtaining an open carry license in California, no open carry license has been issued since 2012, and even if there were an avenue to obtain an open carry

license and the Siskiyou Sheriff would issue one (which all indications reveal he will not) requiring an ordinary citizen, like myself, to apply for and obtain a license *before* I can legally carry a firearm open and exposed for self-defense violates the plain text of the Second Amendment, which states that the right protected thereunder “shall not be infringed.”

8. I am suffering and continue to suffer irreparable harm by the ongoing deprivation of my preexisting and guaranteed individual right to bear arms for self-defense, the exercise of which will subject me to criminal penalties under Penal Codes §§ 26350 and 25850.

9. Based on the continuing violation of my right to bear arms in public for self-defense, I request that (i) defendant Bonta, his officers, agents, servants, employees, and all persons acting in concert with him who receive actual notice of the injunction, from enforcing Penal Codes §§ 25850 and 26350 against individuals carrying a handgun open and exposed for self-defense in public throughout the State of California for the pendency of this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 7, 2022

\_\_\_\_\_  
Mark Baird

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Scarsdale, NY 10583  
914-367-0090  
*Pro Hac Vice*

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

---

MARK BAIRD and  
RICHARD GALLARDO,

Plaintiffs,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
and DOES 1-10,

Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF MARK BAIRD**

**IN SUPPORT OF THIRD MOTION**

**FOR PRELIMINARY INJUNCTION**

Date: October 21, 2022

Time: 10:00 a.m.

Room: 3

Judge: Hon. Kimberly J. Mueller

---

**DECLARATION OF MARK BAIRD**

1. I, Mark Baird, am a plaintiff in the above-captioned matter. I submit this Declaration in support of the plaintiffs' motion for a preliminary injunction to enjoin California Penal Codes §§ 25850 and 26350 and their enforcement by Defendant Bonta, his officers, agents, servants, employees, and all persons acting in concert with him who receive actual notice of the injunction. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am over the age of 18 and a resident of Siskiyou County, California, located in the Eastern District of California.

3. I am not prohibited from possessing, purchasing, receiving, or transferring firearms under state or federal law.

4. I possess firearms in my home for self-defense, conduct which is not prohibited under the California Penal Code.

5. I intend to carry a firearm open and exposed on my person, loaded, or unloaded, for self-defense outside of my home and throughout California. While the right to carry a handgun for self-defense is presumptively protected by the Second and Fourteenth Amendments, under Penal Codes §§25850 and 26350, I will still face arrest, prosecution, incarceration, fines, and other criminal penalties simply for exercising the rights protected by the Second Amendment.

6. I do not hold a license to carry a firearm in California and I do not fall within any of the exemptions to those sections of the California Penal Code that criminalize the possession of firearms, whether loaded or unloaded, under Penal Codes §§ 26350 and 25850.

7. There is no avenue for obtaining an open carry license in California, no open

license and the Siskiyou Sheriff would issue one (which all indications reveal he will not) requiring an ordinary citizen, like myself, to apply for and obtain a license *before* I can legally carry a firearm open and exposed for self-defense violates the plain text of the Second Amendment, which states that the right protected thereunder “shall not be infringed.”

8. I am suffering and continue to suffer irreparable harm by the ongoing deprivation of my preexisting and guaranteed individual right to bear arms for self-defense, the exercise of which will subject me to criminal penalties under Penal Codes §§ 26350 and 25850.

9. Based on the continuing violation of my right to bear arms in public for self-defense, I request that (i) defendant Bonta, his officers, agents, servants, employees, and all persons acting in concert with him who receive actual notice of the injunction, from enforcing Penal Codes §§ 25850 and 26350 against individuals carrying a handgun open and exposed for self-defense in public throughout the State of California for the pendency of this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Dated: August 7, 2022

2

---

DECLARATION OF MARK BAIRD ISO  
THIRD MOTION FOR PRELIMINARY INJUNCTION



1 CHRIS COSCA SBN 144546  
2 COSCA LAW CORPORATION  
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5 916-440-1010

6 AMY L. BELLANTONI  
7 THE BELLANTONI LAW FIRM, PLLC  
8 2 Overhill Road, Suite 400  
9 Scarsdale, NY 10583  
10 914-367-0090  
11 *Pro Hac Vice*

12 Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MARK BAIRD and  
RICHARD GALLARDO,  
Plaintiffs,

v.

ROB BONTA, in his official capacity as  
Attorney General of the State of California,  
and DOES 1-10,

Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF  
RICHARD GALLARDO  
IN SUPPORT OF THIRD MOTION  
FOR PRELIMINARY INJUNCTION**

Date: October 21, 2022

Time: 10:00 a.m.

Room: 3

Judge: Hon. Kimberly J. Mueller

**DECLARATION OF RICHARD GALLARDO**

1  
2 1. I, Richard Gallardo, am a plaintiff in the above-captioned matter. I submit this  
3 Declaration in support of the plaintiffs' motion for a preliminary injunction to enjoin California  
4 Penal Codes §§ 25850 and 26350 and their enforcement by Defendant Bonta, his officers, agents,  
5 servants, employees, and all persons acting in concert with him who receive actual notice of the  
6 injunction. I make this declaration of my own personal knowledge and, if called as a witness, I  
7 could and would testify competently to the truth of the matters set forth herein.  
8

9 2. I am over the age of 18 and a resident of Shasta County, California, located in the  
10 Eastern District of California.

11 3. I am not prohibited from possessing, purchasing, receiving, or transferring  
12 firearms under state or federal law.

13 4. I possess firearms in my home for self-defense, conduct which is not prohibited  
14 under the California Penal Code.

15 5. I intend to carry a firearm open and exposed on my person, loaded, or unloaded,  
16 for self-defense outside of my home and throughout California. While the right to carry a  
17 handgun for self-defense is presumptively protected by the Second and Fourteenth Amendments,  
18 under Penal Codes §§ 25850 and 26350, I will still face arrest, prosecution, incarceration, fines,  
19 and other criminal penalties simply for exercising the rights protected by the Second Amendment.  
20

21 6. I do not hold a license to carry a firearm in California and I do not fall within any  
22 of the exemptions to those sections of the California Penal Code that criminalize the possession of  
23 firearms, whether loaded or unloaded, under Penal Codes §§ 26350 and 25850.  
24

25 7. There is no avenue for obtaining an open carry license in California, no open carry  
26 license has been issued since 2012, and even if there were an avenue to obtain an open carry  
27

1 license and the Shasta Sheriff would issue one (which all indications reveal he will not) requiring  
2 an ordinary citizen, like myself, to apply for and obtain a license *before* I can legally carry a  
3 firearm open and exposed for self-defense violates the plain text of the Second Amendment,  
4 which states that the right protected thereunder “shall not be infringed.”

5  
6 8. I am suffering and continue to suffer irreparable harm by the ongoing deprivation  
7 of my preexisting and guaranteed individual right to bear arms for self-defense, the exercise of  
8 which will subject me to criminal penalties under Penal Codes §§ 26350 and 25850.

9 9. Based on the continuing violation of my right to bear arms in public for self-  
10 defense, I request that (i) defendant Bonta, his officers, agents, servants, employees, and all  
11 persons acting in concert with him who receive actual notice of the injunction, from enforcing  
12 Penal Codes §§ 25850 and 26350 against individuals carrying a handgun open and exposed for  
13 self-defense in public throughout the State of California for the pendency of this matter.  
14

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct.

17  
18 Dated: August 8, 2022



Richard Gallardo

# **EXHIBIT 1**





**XAVIER BECERRA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**

1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
Public: (916) 445-9555  
Telephone: (916) 210-6183  
E-Mail: PublicRecords@doj.ca.gov

February 21, 2019

***Via email to:***

Mark A. Baird  
mcbair@icloud.com

RE: Your Recent Public Records Act Request Dated January 29, 2019; No. 2019-00207

Dear Mr. Baird:

This letter is in response to your recent correspondence, which was received by the Public Records Unit of the California Department of Justice on January 29, 2019. You have requested information pursuant to the California Public Records Act, found in California Government Code section 6250 et seq.

Specifically, you stated:

*I would like to know how many open carry permits, Ca Penal Code sec 26150[, subd. (b)(2)], have been issued since 2012.*

We checked with knowledgeable persons and searched logical places, and we did not identify any documents responsive to this request. Penal Code section 26150, subdivision (b)(2), authorizes county sheriffs to issue open carry permits when the population of a county is less than 200,000. Because the Department is not the issuing authority for open carry permits, and because the information the Department has is only as reliable as to what is reported to it by local agencies, it does not maintain any statistical data regarding the number of open carry permits issued by local law enforcement agencies under the cited Penal Code provision. The Department advises you to contact local law enforcement agencies in counties with populations under 200,000 for this information.

Sincerely,

A handwritten signature in black ink, appearing to be "G. Baird", written over a circular stamp or mark.

Public Records Coordinator

For **XAVIER BECERRA**  
**Attorney General**

**ER-454**

1 XAVIER BECERRA  
Attorney General of California  
2 MARK R. BECKINGTON  
Supervising Deputy Attorney General  
3 R. MATTHEW WISE, State Bar No. 238485  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P.O. Box 944255  
5 Sacramento, CA 94244-2550  
Telephone: (916) 210-6046  
6 Fax: (916) 324-8835  
E-mail: Matthew.Wise@doj.ca.gov  
7 *Attorneys for Defendant Attorney General Xavier  
Becerra*

8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11

12  
13 **MARK BAIRD and RICHARD**  
**GALLARDO,**  
14  
15 Plaintiffs,  
16  
17 **v.**  
18 **XAVIER BECERRA, in his official capacity**  
**as Attorney General of the State of**  
**California, and DOES 1-10,**  
19 Defendants.  
20

Case No. 2:19-cv-00617-KJM-AC  
**DEFENDANT ATTORNEY GENERAL**  
**XAVIER BECERRA’S ANSWER TO**  
**PLAINTIFFS’ FIRST AMENDED**  
**COMPLAINT**  
Courtroom: 3  
Judge: Kimberly J. Mueller  
Action Filed: April 10, 2019

21 Defendant Attorney General Xavier Becerra hereby answers the First Amended Complaint  
22 filed by Plaintiffs Mark Baird and Richard Gallardo as follows:

23 1. Paragraph No. 1 consists of allegations that contain argument and legal contentions.  
24 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
25 each and every allegation.

26 2. Paragraph No. 2 contains allegations that cite statutory provisions, which speak for  
27 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
28 response is required, Defendant denies each and every allegation.

1           3. Paragraph No. 3 contains allegations that cite statutory provisions, which speak for  
2 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
3 response is required, Defendant denies each and every allegation.

4           4. Paragraph No. 4 contains allegations that cite statutory provisions, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           5. Paragraph No. 5 contains allegations that cite statutory provisions, which speak for  
8 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
9 response is required, Defendant denies each and every allegation.

10          6. Defendant lacks sufficient information or belief to respond to the allegations in  
11 Paragraph No. 6, and on that basis denies each and every allegation.

12          7. Defendant lacks sufficient information or belief to respond to the allegations in  
13 Paragraph No. 7, and on that basis denies each and every allegation.

14          8. In answer to Paragraph No. 8, Defendant admits that he is the Attorney General of the  
15 State of California and that he is sued in his official capacity only. Paragraph No. 8 contains  
16 allegations that cite the California Constitution, which speaks for itself. Defendant denies any  
17 allegations that misstate the law. To the extent that a further response is required, Defendant  
18 denies each and every allegation.

19          9. Paragraph No. 9 consists of allegations that contain argument and legal contentions.  
20 To the extent that a response is required, Defendant denies each and every allegation.

21          10. Paragraph No. 10 consists of allegations that contain argument and legal contentions.  
22 To the extent that a response is required, Defendant denies each and every allegation.

23          11. Defendant lacks sufficient information or belief to respond to the allegations in  
24 Paragraph No. 11, and on that basis denies each and every allegation.

25          12. Defendant lacks sufficient information or belief to respond to the allegations in  
26 Paragraph No. 12, and on that basis denies each and every allegation.

27          13. Defendant lacks sufficient information or belief to respond to the allegations in  
28 Paragraph No. 13, and on that basis denies each and every allegation.

1           14. Defendant lacks sufficient information or belief to respond to the allegations in  
2 Paragraph No. 14, and on that basis denies each and every allegation.

3           15. Paragraph No. 15 contains allegations that cite California law, which speaks for itself.  
4 Defendant denies any allegations that misstate the law. To the extent that a further response is  
5 required, Defendant denies each and every allegation.

6           16. Defendant lacks sufficient information or belief to respond to the allegations in  
7 Paragraph No. 16, and on that basis denies each and every allegation.

8           17. Defendant lacks sufficient information or belief to respond to the allegations in  
9 Paragraph No. 17, and on that basis denies each and every allegation.

10          18. Defendant lacks sufficient information or belief to respond to the allegations in  
11 Paragraph No. 18, and on that basis denies each and every allegation.

12          19. In answer to Paragraph No. 19, Defendant admits that according to the 2010 census,  
13 Siskiyou County had a population of less than 200,000 people.

14          20. In answer to Paragraph No. 20, Defendant admits that California's statutory firearms  
15 licensing scheme does not prohibit Siskiyou County residents from applying for an open carry  
16 license. To the extent a further response is required, Defendant denies each and every allegation.

17          21. In answer to Paragraph No. 21, Defendant admits that Plaintiff Baird may only obtain  
18 a license to carry a firearm in his county of residence. To the extent a further response is  
19 required, Defendant denies each and every allegation.

20          22. Defendant lacks sufficient information or belief to respond to the allegations in  
21 Paragraph No. 22, and on that basis denies each and every allegation.

22          23. Defendant lacks sufficient information or belief to respond to the allegations in  
23 Paragraph No. 23, and on that basis denies each and every allegation.

24          24. Defendant lacks sufficient information or belief to respond to the allegations in  
25 Paragraph No. 24, and on that basis denies each and every allegation.

26          25. Defendant lacks sufficient information or belief to respond to the allegations in  
27 Paragraph No. 25, and on that basis denies each and every allegation.

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1           26. Defendant lacks sufficient information or belief to respond to the allegations in  
2 Paragraph No. 26, and on that basis denies each and every allegation.

3           27. Defendant lacks sufficient information or belief to respond to the allegations in  
4 Paragraph No. 27, and on that basis denies each and every allegation.

5           28. Defendant lacks sufficient information or belief to respond to the allegations in  
6 Paragraph No. 28, and on that basis denies each and every allegation.

7           29. Defendant lacks sufficient information or belief to respond to the allegations in  
8 Paragraph No. 29, and on that basis denies each and every allegation.

9           30. Defendant lacks sufficient information or belief to respond to the allegations in  
10 Paragraph No. 30, and on that basis denies each and every allegation.

11           31. Defendant lacks sufficient information or belief to respond to the allegations in  
12 Paragraph No. 31, and on that basis denies each and every allegation.

13           32. In answer to Paragraph 32, Defendant admits that California Department of Justice  
14 Bureau of Firearms Form 4012 contains a section for official use only that provides options for  
15 the “type of license requested.” Defendant lacks sufficient information or belief to respond to the  
16 remaining allegations in this paragraph, and on that basis denies each and every allegation.

17           33. In answer to Paragraph 33, Defendant admits that California Department of Justice  
18 Bureau of Criminal Information and Analysis Form 8016 contains a section for the applicant to  
19 provide the “authorized applicant type.” Defendant lacks sufficient information or belief to  
20 respond to the remaining allegations in this paragraph, and on that basis denies each and every  
21 allegation.

22           34. Paragraph No. 34 consists of allegations that contain argument and legal contentions.  
23 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
24 each and every allegation.

25           35. Paragraph No. 35 consists of allegations that contain argument and legal contentions.  
26 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
27 each and every allegation.

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1           36. Defendant lacks sufficient information or belief to respond to the allegations in  
2 Paragraph No. 36, and on that basis denies each and every allegation.

3           37. Defendant lacks sufficient information or belief to respond to the allegations in  
4 Paragraph No. 37, and on that basis denies each and every allegation.

5           38. Paragraph No. 38 contains allegations that cite statutory provisions, which speak for  
6 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
7 response is required, Defendant denies each and every allegation.

8           39. Defendant lacks sufficient information or belief to respond to the allegations in  
9 Paragraph No. 39, and on that basis denies each and every allegation.

10          40. Paragraph No. 40 contains allegations that cite statutory provisions, which speak for  
11 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
12 response is required, Defendant denies each and every allegation.

13          41. Defendant denies the allegations in Paragraph 41.

14          42. Defendant lacks sufficient information or belief to respond to the allegations in  
15 Paragraph No. 42, and on that basis denies each and every allegation.

16          43. Defendant lacks sufficient information or belief to respond to the allegations in  
17 Paragraph No. 43, and on that basis denies each and every allegation.

18          44. Defendant lacks sufficient information or belief to respond to the allegations in  
19 Paragraph No. 44, and on that basis denies each and every allegation.

20          45. Paragraph No. 45 consists of allegations that contain argument and legal contentions.  
21 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
22 each and every allegation.

23          46. Paragraph No. 46 contains allegations that cite statutory provisions, which speak for  
24 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
25 response is required, Defendant denies each and every allegation.

26          47. Paragraph No. 47 contains allegations that cite California law, which speaks for itself.  
27 Defendant denies any allegations that misstate the law. To the extent that a further response is  
28 required, Defendant denies each and every allegation.

1           48. Paragraph No. 48 contains allegations that cite statutory provisions, which speak for  
2 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
3 response is required, Defendant denies each and every allegation.

4           49. Paragraph No. 49 consists of allegations that contain argument and legal contentions.  
5 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
6 each and every allegation.

7           50. Paragraph No. 50 contains allegations that cite statutory provisions, which speak for  
8 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
9 response is required, Defendant denies each and every allegation.

10          51. Defendant lacks sufficient information or belief to respond to the allegations in  
11 Paragraph No. 51, and on that basis denies each and every allegation.

12          52. Paragraph No. 52 consists of allegations that contain argument and legal contentions.  
13 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
14 each and every allegation.

15          53. Defendant lacks sufficient information or belief to respond to the allegations in  
16 Paragraph No. 53, and on that basis denies each and every allegation.

17          54. Defendant lacks sufficient information or belief to respond to the allegations in  
18 Paragraph No. 54, and on that basis denies each and every allegation.

19          55. Defendant lacks sufficient information or belief to respond to the allegations in  
20 Paragraph No. 55, and on that basis denies each and every allegation.

21          56. Defendant lacks sufficient information or belief to respond to the allegations in  
22 Paragraph No. 56, and on that basis denies each and every allegation.

23          57. Defendant lacks sufficient information or belief to respond to the allegations in  
24 Paragraph No. 57, and on that basis denies each and every allegation.

25          58. Paragraph No. 58 contains allegations that cite California law, which speaks for itself.  
26 Defendant denies any allegations that misstate the law. To the extent that a further response is  
27 required, Defendant denies each and every allegation.

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1           59. Defendant lacks sufficient information or belief to respond to the allegations in  
2 Paragraph No. 59, and on that basis denies each and every allegation.

3           60. Defendant lacks sufficient information or belief to respond to the allegations in  
4 Paragraph No. 60, and on that basis denies each and every allegation.

5           61. Defendant lacks sufficient information or belief to respond to the allegations in  
6 Paragraph No. 61, and on that basis denies each and every allegation.

7           62. Defendant lacks sufficient information or belief to respond to the allegations in  
8 Paragraph No. 62, and on that basis denies each and every allegation.

9           63. In answer to Paragraph No. 63, Defendant admits that according to the 2010 census,  
10 Shasta County had a population of less than 200,000 people.

11           64. In answer to Paragraph No. 64, Defendant admits that California's statutory firearms  
12 licensing scheme does not prohibit Shasta County residents from applying for an open carry  
13 license. To the extent a further response is required, Defendant denies each and every allegation.

14           65. In answer to Paragraph No. 65, Defendant admits that Plaintiff Gallardo may only  
15 obtain a concealed carry or open carry license in his county of residence. To the extent a further  
16 response is required, Defendant denies each and every allegation.

17           66. Defendant lacks sufficient information or belief to respond to the allegations in  
18 Paragraph No. 66, and on that basis denies each and every allegation.

19           67. Defendant lacks sufficient information or belief to respond to the allegations in  
20 Paragraph No. 67, and on that basis denies each and every allegation.

21           68. Defendant lacks sufficient information or belief to respond to the allegations in  
22 Paragraph No. 68, and on that basis denies each and every allegation.

23           69. Defendant lacks sufficient information or belief to respond to the allegations in  
24 Paragraph No. 69, and on that basis denies each and every allegation.

25           70. Defendant lacks sufficient information or belief to respond to the allegations in  
26 Paragraph No. 70, and on that basis denies each and every allegation.

27           71. Defendant lacks sufficient information or belief to respond to the allegations in  
28 Paragraph No. 71, and on that basis denies each and every allegation.

1           72. Defendant lacks sufficient information or belief to respond to the allegations in  
2 Paragraph No. 72, and on that basis denies each and every allegation.

3           73. Defendant lacks sufficient information or belief to respond to the allegations in  
4 Paragraph No. 73, and on that basis denies each and every allegation.

5           74. Defendant lacks sufficient information or belief to respond to the allegations in  
6 Paragraph No. 74, and on that basis denies each and every allegation.

7           75. Defendant lacks sufficient information or belief to respond to the allegations in  
8 Paragraph No. 75, and on that basis denies each and every allegation.

9           76. Defendant lacks sufficient information or belief to respond to the allegations in  
10 Paragraph No. 76, and on that basis denies each and every allegation.

11           77. Defendant lacks sufficient information or belief to respond to the allegations in  
12 Paragraph No. 77, and on that basis denies each and every allegation.

13           78. Defendant lacks sufficient information or belief to respond to the allegations in  
14 Paragraph No. 78, and on that basis denies each and every allegation.

15           79. In answer to Paragraph No. 79, Defendant lacks sufficient information or belief to  
16 respond to the allegation that Sheriff Bosenko has stated publicly that, to his knowledge based on  
17 his regular meetings with the sheriffs around the State, none of the sheriffs serving in counties in  
18 California permitted to issue open carry licenses have ever issued open carry licenses. Defendant  
19 denies the remaining allegations in this paragraph.

20           80. Defendant lacks sufficient information or belief to respond to the allegations in  
21 Paragraph No. 80, and on that basis denies each and every allegation.

22           81. Defendant lacks sufficient information or belief to respond to the allegations in  
23 Paragraph No. 81, and on that basis denies each and every allegation.

24           82. Paragraph No. 82 contains allegations that cite statutory provisions, which speak for  
25 themselves. Defendant denies any allegations that misstate the law. Defendant lacks sufficient  
26 information or belief to respond to the remaining allegations in this paragraph, and on that basis  
27 denies each and every allegation.

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1           83. Paragraph No. 83 consists of allegations that contain argument and legal contentions.  
2 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
3 each and every allegation.

4           84. Paragraph No. 84 contains allegations that cite statutory provisions, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           85. In answer to Paragraph No. 85, Defendant admits that Plaintiff Gallardo may only  
8 apply for an open carry license in his county of residence. To the extent a further response is  
9 required, Defendant denies each and every allegation.

10          86. Defendant lacks sufficient information or belief to respond to the allegations in  
11 Paragraph No. 86, and on that basis denies each and every allegation.

12          87. Defendant lacks sufficient information or belief to respond to the allegations in  
13 Paragraph No. 87, and on that basis denies each and every allegation.

14          88. Paragraph No. 88 contains allegations that cite statutory provisions, which speak for  
15 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
16 response is required, Defendant denies each and every allegation.

17          89. Paragraph No. 89 contains allegations that cite statutory provisions, which speak for  
18 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
19 response is required, Defendant denies each and every allegation.

20          90. Defendant lacks sufficient information or belief to respond to the allegations in  
21 Paragraph No. 90, and on that basis denies each and every allegation.

22          91. Paragraph No. 91 consists of allegations that contain argument and legal contentions.  
23 To the extent that a response to the allegations in this paragraph is required, Defendant denies  
24 each and every allegation.

25          92. Defendant lacks sufficient information or belief to respond to the allegations in  
26 Paragraph No. 92, and on that basis denies each and every allegation.

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1           93. Paragraph No. 93 contains allegations that cite California law, which speaks for itself.  
2 Defendant denies any allegations that misstate the law. To the extent that a further response is  
3 required, Defendant denies each and every allegation.

4           94. Paragraph No. 94 contains allegations that cite statutory provisions, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           95. Paragraph No. 95 contains allegations that cite statutory provisions, which speak for  
8 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
9 response is required, Defendant denies each and every allegation.

10          96. Paragraph No. 96 contains allegations that cite statutory provisions and case law,  
11 which speak for themselves. Defendant denies any allegations that misstate the law. To the  
12 extent that a further response is required, Defendant denies each and every allegation.

13          97. Paragraph No. 97 contains allegations that cite statutory provisions, which speak for  
14 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
15 response is required, Defendant denies each and every allegation.

16          98. Paragraph No. 98 contains allegations that cite statutory provisions, which speak for  
17 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
18 response is required, Defendant denies each and every allegation.

19          99. Paragraph No. 99 contains allegations that cite statutory provisions, which speak for  
20 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
21 response is required, Defendant denies each and every allegation.

22          100. Paragraph 100 contains allegations that cite statutory provisions, which speak for  
23 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
24 response is required, Defendant denies each and every allegation.

25          101. Paragraph No. 101 contains allegations that cite statutory provisions, which speak for  
26 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
27 response is required, Defendant denies each and every allegation.

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1           102. Paragraph No. 102 contains allegations that cite statutory provisions, which speak for  
2 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
3 response is required, Defendant denies each and every allegation.

4           103. Paragraph No. 103 contains allegations that cite statutory provisions, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           104. Paragraph No. 104 contains allegations that cite statutory provisions, which speak for  
8 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
9 response is required, Defendant denies each and every allegation.

10           105. Paragraph No. 105 contains allegations that cite statutory provisions, which speak for  
11 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
12 response is required, Defendant denies each and every allegation.

13           106. Paragraph No. 106 contains allegations that cite statutory provisions, which speak for  
14 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
15 response is required, Defendant denies each and every allegation.

16           107. Paragraph No. 107 contains allegations that cite statutory provisions, which speak for  
17 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
18 response is required, Defendant denies each and every allegation.

19           108. Paragraph No. 108 contains allegations that cite statutory provisions, which speak for  
20 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
21 response is required, Defendant denies each and every allegation.

22           109. Paragraph No. 109 contains allegations that cite statutory provisions, which speak for  
23 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
24 response is required, Defendant denies each and every allegation.

25           110. Paragraph No. 110 contains allegations that cite statutory provisions, which speak for  
26 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
27 response is required, Defendant denies each and every allegation.

28           111. Defendant admits the allegations in Paragraph No. 111.



1           112. Paragraph No. 112 contains allegations that cite statutory provisions, which speak for  
2 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
3 response is required, Defendant denies each and every allegation.

4           113. Paragraph No. 113 contains allegations that cite statutory provisions, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           114. Defendant admits the allegations in Paragraph No. 114.

8           115. Defendant denies the allegations in Paragraph No. 115.

9           116. Defendant denies the allegations in Paragraph No. 116.

10          117. Defendant lacks sufficient information or belief to respond to the allegations in  
11 Paragraph No. 117, and on that basis denies each and every allegation.

12          118. Paragraph No. 118 contains allegations that cite statutory provisions, which speak for  
13 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
14 response is required, Defendant denies each and every allegation.

15          119. Defendant admits the allegations in Paragraph No. 119.

16          120. Paragraph No. 120 contains allegations that cite case law, which speaks for itself.  
17 Defendant denies any allegations that misstate the law. To the extent that a further response is  
18 required, Defendant denies each and every allegation.

19          121. Paragraph No. 121 contains allegations that cite case law, which speaks for itself.  
20 Defendant denies any allegations that misstate the law. To the extent that a further response is  
21 required, Defendant denies each and every allegation.

22          122. Paragraph No. 122 contains allegations that cite case law, which speaks for itself.  
23 Defendant denies any allegations that misstate the law. To the extent that a further response is  
24 required, Defendant denies each and every allegation.

25          123. Paragraph No. 123 contains allegations that cite case law, which speaks for itself.  
26 Defendant denies any allegations that misstate the law. To the extent that a further response is  
27 required, Defendant denies each and every allegation.

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1           124. Paragraph No. 124 contains allegations that cite case law, which speaks for itself.  
2 Defendant denies any allegations that misstate the law. To the extent that a further response is  
3 required, Defendant denies each and every allegation.

4           125. Paragraph No. 125 contains allegations that cite case law, which speaks for itself.  
5 Defendant denies any allegations that misstate the law. To the extent that a further response is  
6 required, Defendant denies each and every allegation.

7           126. Paragraph No. 126 contains allegations that cite case law, which speaks for itself.  
8 Defendant denies any allegations that misstate the law. To the extent that a further response is  
9 required, Defendant denies each and every allegation.

10           127. Paragraph No. 127 contains allegations that cite case law, which speaks for itself.  
11 Defendant denies any allegations that misstate the law. To the extent that a further response is  
12 required, Defendant denies each and every allegation.

13           128. Paragraph No. 128 contains allegations that cite case law, which speaks for itself.  
14 Defendant denies any allegations that misstate the law. To the extent that a further response is  
15 required, Defendant denies each and every allegation.

16           129. Paragraph No. 129 contains allegations that cite case law, which speaks for itself.  
17 Defendant denies any allegations that misstate the law. To the extent that a further response is  
18 required, Defendant denies each and every allegation.

19           130. Paragraph No. 130 contains allegations that cite case law, which speaks for itself.  
20 Defendant denies any allegations that misstate the law. To the extent that a further response is  
21 required, Defendant denies each and every allegation.

22           131. Paragraph No. 131 contains allegations that cite case law, which speaks for itself.  
23 Defendant denies any allegations that misstate the law. To the extent that a further response is  
24 required, Defendant denies each and every allegation.

25           132. Paragraph No. 132 contains allegations that cite case law, which speaks for itself.  
26 Defendant denies any allegations that misstate the law. To the extent that a further response is  
27 required, Defendant denies each and every allegation.

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1           133. Paragraph No. 133 contains allegations that cite case law, which speaks for itself.  
2 Defendant denies any allegations that misstate the law. To the extent that a further response is  
3 required, Defendant denies each and every allegation.

4           134. Paragraph No. 134 contains allegations that cite case law, which speaks for itself.  
5 Defendant denies any allegations that misstate the law. To the extent that a further response is  
6 required, Defendant denies each and every allegation.

7           135. Paragraph No. 135 contains allegations that cite case law, which speaks for itself.  
8 Defendant denies any allegations that misstate the law. To the extent that a further response is  
9 required, Defendant denies each and every allegation.

10           136. Paragraph No. 136 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           137. Paragraph No. 137 contains allegations that cite case law, which speaks for itself.  
14 Defendant denies any allegations that misstate the law. To the extent that a further response is  
15 required, Defendant denies each and every allegation.

16           138. Paragraph No. 138 consists of allegations that cite statutory provisions, which speak  
17 for themselves. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           139. Paragraph No. 139 consists of allegations that cite statutory provisions, which speak  
20 for themselves. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22           140. Paragraph No. 140 consists of allegations that cite statutory provisions, which speak  
23 for themselves. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           141. Paragraph No. 141 consists of allegations that cite statutory provisions and case law,  
26 which speak for themselves. To the extent that a response to the allegations in this paragraph is  
27 required, Defendant denies each and every allegation.  
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1           142. Paragraph No. 142 consists of allegations that cite statutory provisions, which speak  
2 for themselves. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           143. Paragraph No. 143 consists of allegations that cite statutory provisions, which speak  
5 for themselves. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           144. Paragraph No. 144 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           145. Paragraph No. 145 consists of allegations that cite statutory provisions, which speak  
11 for themselves. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           146. Defendant admits the allegations in Paragraph 146.

14           147. Paragraph No. 147 consists of allegations that cite statutory provisions, which speak  
15 for themselves. To the extent that a response to the allegations in this paragraph is required,  
16 Defendant denies each and every allegation.

17           148. Paragraph No. 148 consists of allegations that cite statutory provisions, which speak  
18 for themselves. To the extent that a response to the allegations in this paragraph is required,  
19 Defendant denies each and every allegation.

20           149. Defendant admits the allegations in Paragraph 149.

21           150. Defendant denies the allegations in Paragraph 150.

22           151. Defendant lacks sufficient information or belief to respond to the allegations in  
23 Paragraph No. 151, and on that basis denies each and every allegation.

24           152. Paragraph No. 152 consists of allegations that cite statutory provisions, which speak  
25 for themselves. To the extent that a response to the allegations in this paragraph is required,  
26 Defendant denies each and every allegation.

27           153. Defendant admits the allegations in Paragraph No. 153.

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1           154. Paragraph No. 154 consists of allegations that cite statutory provisions, which speak  
2 for themselves. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           155. Paragraph No. 155 consists of allegations that cite statutory provisions, which speak  
5 for themselves. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           156. Paragraph No. 156 consists of allegations that cite statutory provisions, which speak  
8 for themselves. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           157. Paragraph No. 157 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           158. Paragraph No. 158 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16           159. Paragraph No. 159 consists of allegations that cite statutory provisions, which speak  
17 for themselves. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           160. Paragraph No. 160 consists of allegations that cite statutory provisions, which speak  
20 for themselves. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22           161. Paragraph No. 161 consists of allegations that cite statutory provisions, which speak  
23 for themselves. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           162. Paragraph No. 162 contains allegations that cite case law, which speaks for itself.  
26 Defendant denies any allegations that misstate the law. To the extent that a further response is  
27 required, Defendant denies each and every allegation.  
28

1           163. Paragraph No. 163 contains allegations that cite case law, which speaks for itself.  
2 Defendant denies any allegations that misstate the law. To the extent that a further response is  
3 required, Defendant denies each and every allegation.

4           164. Paragraph No. 164 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           165. Paragraph No. 165 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           166. Paragraph No. 166 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           167. Paragraph No. 167 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16           168. Paragraph No. 168 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           169. Paragraph No. 169 contains allegations that cite case law, which speaks for itself.  
20 Defendant denies any allegations that misstate the law. To the extent that a further response is  
21 required, Defendant denies each and every allegation.

22           170. Paragraph No. 170 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           171. Defendant denies the allegations in Paragraph 171.

26           172. Paragraph No. 172 consists of allegations that contain argument and legal  
27 contentions. To the extent that a response to the allegations in this paragraph is required,  
28 Defendant denies each and every allegation.

1           173. Paragraph No. 173 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           174. Paragraph No. 174 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           175. Paragraph No. 175 contains allegations that cite case law, which speaks for itself.  
8 Defendant denies any allegations that misstate the law. To the extent that a further response is  
9 required, Defendant denies each and every allegation.

10           176. Paragraph No. 176 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           177. Paragraph No. 177 contains allegations that cite case law, which speaks for itself.  
14 Defendant denies any allegations that misstate the law. To the extent that a further response is  
15 required, Defendant denies each and every allegation.

16           178. Paragraph No. 178 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           179. Paragraph No. 179 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22           180. Paragraph No. 180 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           181. Paragraph No. 181 consists of allegations that cite statutory provisions, which speak  
26 for themselves. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.

28

1           182. Paragraph No. 182 consists of allegations that cite statutory provisions, which speak  
2 for themselves. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           183. Paragraph No. 183 consists of allegations that cite statutory provisions, which speak  
5 for themselves. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           184. Paragraph No. 184 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10          185. Paragraph No. 185 contains allegations that cite case law, which speaks for itself.  
11 Defendant denies any allegations that misstate the law. To the extent that a further response is  
12 required, Defendant denies each and every allegation.

13          186. Paragraph No. 186 contains allegations that cite case law, which speaks for itself.  
14 Defendant denies any allegations that misstate the law. To the extent that a further response is  
15 required, Defendant denies each and every allegation.

16          187. Paragraph No. 187 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19          188. Paragraph No. 188 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22          189. Paragraph No. 189 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25          190. Paragraph No. 190 consists of allegations that contain argument and legal  
26 contentions. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.  
28



1           191. Paragraph No. 191 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           192. Paragraph No. 192 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           193. Paragraph No. 193 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           194. Paragraph No. 194 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           195. Paragraph No. 195 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16           196. Paragraph No. 196 contains allegations that cite published sources, which speak for  
17 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
18 response is required, Defendant denies each and every allegation.

19           197. Paragraph No. 197 contains allegations that cite published sources, which speak for  
20 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
21 response is required, Defendant denies each and every allegation.

22           198. Paragraph No. 198 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           199. Paragraph No. 199 contains allegations that cite published sources, which speak for  
26 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
27 response is required, Defendant denies each and every allegation.

28

1           200. Paragraph No. 200 contains allegations that cite published sources, which speak for  
2 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
3 response is required, Defendant denies each and every allegation.

4           201. Paragraph No. 201 contains allegations that cite published sources, which speak for  
5 themselves. Defendant denies any allegations that misstate the law. To the extent that a further  
6 response is required, Defendant denies each and every allegation.

7           202. Paragraph No. 202 consists of allegations that cite statutory provisions, which speak  
8 for themselves. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           203. Paragraph No. 203 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           204. Paragraph No. 204 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16           205. Paragraph No. 205 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           206. Paragraph No. 206 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22           207. Paragraph No. 207 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           208. Paragraph No. 208 consists of allegations that cite statutory provisions, which speak  
26 for themselves. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.

28

1           209. Paragraph No. 209 consists of allegations that cite statutory provisions, which speak  
2 for themselves. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           210. Paragraph No. 210 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           211. Paragraph No. 211 consists of allegations that cite statutory provisions, which speak  
8 for themselves. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10          212. Paragraph No. 212 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13          213. Paragraph No. 213 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16          214. Paragraph No. 214 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19          215. Paragraph No. 215 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22          216. Paragraph No. 216 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25          217. Paragraph No. 217 consists of allegations that contain argument and legal  
26 contentions. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.  
28

1           218. Paragraph No. 218 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           219. Paragraph No. 219 consists of allegations that cite statutory provisions, which speak  
5 for themselves. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           220. Paragraph No. 220 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10           221. Paragraph No. 221 consists of allegations that contain argument and legal  
11 contentions. To the extent that a response to the allegations in this paragraph is required,  
12 Defendant denies each and every allegation.

13           222. Paragraph No. 222 consists of allegations that contain argument and legal  
14 contentions. To the extent that a response to the allegations in this paragraph is required,  
15 Defendant denies each and every allegation.

16           223. Paragraph No. 223 consists of allegations that contain argument and legal  
17 contentions. To the extent that a response to the allegations in this paragraph is required,  
18 Defendant denies each and every allegation.

19           224. Paragraph No. 224 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22           225. Paragraph No. 225 consists of allegations that cite statutory provisions, which speak  
23 for themselves. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25           226. Paragraph No. 226 consists of allegations that contain argument and legal  
26 contentions. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.  
28

1           227. Paragraph No. 227 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           228. Paragraph No. 228 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7           229. In answer to Paragraph 229, insofar as “these contentions” means the contentions  
8 alleged in Paragraph 228, Defendant cannot admit or deny the allegations, which contain  
9 argument and legal contentions. To the extent that a response to the allegations in this paragraph  
10 is required, Defendant denies each and every allegation.

11           230. Paragraph No. 230 consists of allegations that contain argument and legal  
12 contentions. To the extent that a response to the allegations in this paragraph is required,  
13 Defendant denies each and every allegation.

14           231. Paragraph No. 231 consists of allegations that contain argument and legal  
15 contentions. To the extent that a response to the allegations in this paragraph is required,  
16 Defendant denies each and every allegation.

17           232. Paragraph No. 232 consists of allegations that contain argument and legal  
18 contentions. To the extent that a response to the allegations in this paragraph is required,  
19 Defendant denies each and every allegation.

20           233. Paragraph No. 233 consists of allegations that contain argument and legal  
21 contentions. To the extent that a response to the allegations in this paragraph is required,  
22 Defendant denies each and every allegation.

23           234. Paragraph No. 234 consists of allegations that contain argument and legal  
24 contentions. To the extent that a response to the allegations in this paragraph is required,  
25 Defendant denies each and every allegation.

26           235. In answer to Paragraph 235, insofar as “these contentions stated herein” means the  
27 contentions alleged in Paragraph 233, Defendant cannot admit or deny the allegations, which  
28

1 contain argument and legal contentions. To the extent that a response to the allegations in this  
2 paragraph is required, Defendant denies each and every allegation.

3 236. Defendant incorporates by reference the answers in Paragraphs 1 through 235 above.

4 237. Paragraph No. 237 consists of allegations that contain argument and legal  
5 contentions. To the extent that a response to the allegations in this paragraph is required,  
6 Defendant denies each and every allegation.

7 238. Paragraph No. 238 consists of allegations that contain argument and legal  
8 contentions. To the extent that a response to the allegations in this paragraph is required,  
9 Defendant denies each and every allegation.

10 239. Defendant incorporates by reference the answers in Paragraphs 1 through 238 above.

11 240. Paragraph No. 240 consists of allegations that contain argument and legal  
12 contentions. To the extent that a response to the allegations in this paragraph is required,  
13 Defendant denies each and every allegation.

14 241. Paragraph No. 241 consists of allegations that contain argument and legal  
15 contentions. To the extent that a response to the allegations in this paragraph is required,  
16 Defendant denies each and every allegation.

17 242. Defendant incorporates by reference the answers in Paragraphs 1 through 241 above.

18 243. Paragraph No. 243 consists of allegations that contain argument and legal  
19 contentions. To the extent that a response to the allegations in this paragraph is required,  
20 Defendant denies each and every allegation.

21 244. Paragraph No. 244 consists of allegations that contain argument and legal  
22 contentions. To the extent that a response to the allegations in this paragraph is required,  
23 Defendant denies each and every allegation.

24 245. Defendant incorporates by reference the answers in Paragraphs 1 through 244 above.

25 246. Paragraph No. 246 consists of allegations that contain argument and legal  
26 contentions. To the extent that a response to the allegations in this paragraph is required,  
27 Defendant denies each and every allegation.  
28

1           247. Paragraph No. 247 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           248. Defendant incorporates by reference the answers in Paragraphs 1 through 247 above.

5           249. Paragraph No. 249 consists of allegations that contain argument and legal  
6 contentions. To the extent that a response to the allegations in this paragraph is required,  
7 Defendant denies each and every allegation.

8           250. Paragraph No. 250 consists of allegations that contain argument and legal  
9 contentions. To the extent that a response to the allegations in this paragraph is required,  
10 Defendant denies each and every allegation.

11          251. Defendant incorporates by reference the answers in Paragraphs 1 through 250 above.

12          252. Paragraph No. 252 consists of allegations that contain argument and legal  
13 contentions. To the extent that a response to the allegations in this paragraph is required,  
14 Defendant denies each and every allegation.

15          253. Paragraph No. 253 consists of allegations that contain argument and legal  
16 contentions. To the extent that a response to the allegations in this paragraph is required,  
17 Defendant denies each and every allegation.

18          254. Defendant incorporates by reference the answers in Paragraphs 1 through 253 above.

19          255. Paragraph No. 255 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22          256. Paragraph No. 256 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25          257. Defendant incorporates by reference the answers in Paragraphs 1 through 256 above.

26          258. Paragraph No. 258 consists of allegations that contain argument and legal  
27 contentions. To the extent that a response to the allegations in this paragraph is required,  
28 Defendant denies each and every allegation.

1           259. Paragraph No. 259 consists of allegations that contain argument and legal  
2 contentions. To the extent that a response to the allegations in this paragraph is required,  
3 Defendant denies each and every allegation.

4           260. Defendant incorporates by reference the answers in Paragraphs 1 through 259 above.

5           261. Paragraph No. 261 consists of allegations that contain argument and legal  
6 contentions. To the extent that a response to the allegations in this paragraph is required,  
7 Defendant denies each and every allegation.

8           262. Paragraph No. 262 consists of allegations that contain argument and legal  
9 contentions. To the extent that a response to the allegations in this paragraph is required,  
10 Defendant denies each and every allegation.

11          263. Defendant incorporates by reference the answers in Paragraphs 1 through 262 above.

12          264. Paragraph No. 264 consists of allegations that contain argument and legal  
13 contentions. To the extent that a response to the allegations in this paragraph is required,  
14 Defendant denies each and every allegation.

15          265. Paragraph No. 265 consists of allegations that contain argument and legal  
16 contentions. To the extent that a response to the allegations in this paragraph is required,  
17 Defendant denies each and every allegation.

18          266. Defendant incorporates by reference the answers in Paragraphs 1 through 265 above.

19          267. Paragraph No. 267 consists of allegations that contain argument and legal  
20 contentions. To the extent that a response to the allegations in this paragraph is required,  
21 Defendant denies each and every allegation.

22          268. Paragraph No. 268 consists of allegations that contain argument and legal  
23 contentions. To the extent that a response to the allegations in this paragraph is required,  
24 Defendant denies each and every allegation.

25          269. No response to Plaintiffs' Prayer for Relief is required. Defendant requests that the  
26 Court deny all relief requested by Plaintiffs.



1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The Court should dismiss Plaintiffs' Complaint because it fails to state a claim upon which  
4 relief can be granted.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The Court should dismiss Plaintiffs' Complaint because Plaintiffs have an adequate remedy  
7 at law.

8 **THIRD AFFIRMATIVE DEFENSE**

9 The Court should dismiss Plaintiffs' Complaint because it raises only abstract or  
10 hypothetical issues, i.e., there is no live, concrete, and ripe case or controversy for this Court to  
11 adjudicate, and the Court would have to render an advisory opinion in this case.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 The Court should dismiss Plaintiffs' Complaint because Plaintiffs lack standing.

14 WHEREFORE, Defendant prays that:

- 15 1. This Court deny Plaintiffs' Complaint in its entirety and dismiss this case with  
16 prejudice.
- 17 2. Plaintiffs take nothing by the Complaint.
- 18 3. Defendant be awarded his costs incurred in defending this action.
- 19 4. The Court grant such other and further relief in favor of Defendant and adverse to  
20 Plaintiffs that the Court deems just and proper.

21 Dated: November 2, 2020

Respectfully submitted,

22 XAVIER BECERRA  
23 Attorney General of California  
24 MARK R. BECKINGTON  
Supervising Deputy Attorney General

25 /s/ R. Matthew Wise

26 R. MATTHEW WISE  
27 Deputy Attorney General  
Attorneys for Defendant Attorney General  
Xavier Becerra

28 SA2019101934/34488397.docx

## CERTIFICATE OF SERVICE

Case Name: Baird, Mark v. Xavier Becerra No. 2:19-cv-00617-KJM-AC

I hereby certify that on November 2, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S ANSWER TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 2, 2020, at Sacramento, California.

Ritta Mashriqi

Declarant

/s/Ritta Mashriqi

Signature

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34553585.docx

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Facsimile: 888-763-9761  
*Pro Hac Vice*

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

-----x  
MARK BAIRD and  
RICHARD GALLARDO,

Plaintiffs,

**Case No.: 2:19-cv-00617-KJM-AC**

v.

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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

Defendant.

-----x

NOW COME Plaintiffs, MARK BAIRD and RICHARD GALLARDO, by and through their counsel, and allege against Defendant California Attorney General Xavier Becerra as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory and injunctive relief proximately caused by the actions of the defendant for violations of Plaintiffs' fundamental human rights under the Second Amendment to the United States Constitution pursuant to 42 U.S.C. §1983.

## **JURISDICTION AND VENUE**

2. The Court's jurisdiction over Plaintiffs' federal claims is authorized pursuant to 28 U.S.C. § 1331 and § 1343.

3. The Court's jurisdiction over Plaintiffs' claims for injunctive and declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202.

4. The Court's jurisdiction over Plaintiffs' federal claims and for statutory attorney's fees is authorized pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

5. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

## **THE PARTIES**

6. Plaintiff, MARK BAIRD ("Plaintiff" or "Mr. Baird") is a United States citizen and a resident of Siskiyou County, California.

7. Plaintiff, RICHARD GALLARDO ("Plaintiff" or "Mr. Gallardo") is a United States citizen and a resident of Shasta County, California.

8. Defendant XAVIER BECERRA ("Defendant" or "Defendant Becerra") is the Attorney General of the State of California. Defendant Becerra is sued herein in his official capacity only. Pursuant to California State Constitution Article V, Section 13, as the Attorney General for the State of California, Defendant is the chief law enforcement officer of the State whose duty it is to ensure that the laws of the State are uniformly and adequately enforced.

9. Defendant Becerra has direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to Defendant may seem advisable.

10. Whenever in the opinion of the Defendant any law of the State is not being adequately enforced in any county, it shall be Defendant's duty to prosecute any violations of law of which the superior court shall have jurisdiction. In such cases Defendant shall have all the powers of a district attorney. When required by the public interest or directed by the Governor,

Defendant shall assist any district attorney in the discharge of the duties of that office.

### STATEMENT OF FACTS

#### *Plaintiff Mark Baird: Siskiyou County*

11. Plaintiff Mark Baird is an individual of unquestionably good moral character, a law-abiding citizen, and has never been charged with, summoned, or arrested for any violation of the California State Penal Code or any other criminal offense.

12. Mr. Baird is not a person prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

13. Mr. Baird does not hold a California firearm license and does not fall within any of the exemptions to the California Penal Code sections criminalizing the possession of firearms, whether loaded or unloaded.

14. Mr. Baird possesses firearms (handguns and long guns) in his home for self-defense.

15. Under California law, no license is required to possess a handgun in one's home for self-protection.

16. Mr. Baird seeks to carry a handgun for self-protection outside of his home.

17. Mr. Baird seeks to carry a firearm for self-protection outside of his home and in public without the need to demonstrate any "cause" or "reason" for the issuance thereof.

18. Mr. Baird seeks to carry a firearm for self-protection outside of his home and in public without the government dictating the manner in which he carries his firearm - loaded and exposed, concealed, and/or unloaded and exposed.

19. The County of Siskiyou, California, according to the most recent federal census, has a population of less than 200,000 people.

20. Based on the population of Siskiyou County, its residents are eligible to apply for an open carry firearm license under California's statutory firearms licensing scheme.

21. As a resident of the County of Siskiyou, Mr. Baird is prohibited from applying for a handgun carry license in any other county in California.

22. Mr. Baird intends to carry a handgun outside of his home, open and exposed or otherwise, with or without a carry license.

23. Mr. Baird intends to carry a handgun open and exposed outside of Siskiyou County.

***Siskiyou County Application Process Devoid of “Open Carry” Option***

24. The Siskiyou County written criteria for the issuance of a carry license does not contain an option for applying for an open carry license.

25. The Siskiyou County written instructions for a “carry” license only identify an option for concealed carry, not open carry.

26. The Siskiyou County handgun licensing procedure has no option for individuals not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm to apply for an open carry license.

27. The Siskiyou County Sheriff’s Office Information Form is entitled, “CONCEALED WEAPON LICENSE RENEWAL/CHANGE”.

28. The Siskiyou County Sheriff’s Office has no form for an “Open Carry Renewal/Change”.

29. The second page of the Siskiyou County Sheriff’s Office Information Form indicates, “Signature of CCW holder”.

30. There are no forms used by the Siskiyou County Sheriff’s Office, or available to the law-abiding residents of Siskiyou County, for the purpose of applying for an “Open Carry” handgun license.

31. The Siskiyou County Sheriff’s website only provides “Concealed Carry Weapon Information”, and not “Open Carry Weapon Information”. The Siskiyou County Sheriff’s website has no information related to obtaining and/or applying for an open carry license.

32. The Siskiyou County Sheriff’s Office provides to carry license applicants an approved firearm application form issued by the State of California Department of Justice (the “DOJ Application”). The DOJ Application contains a section for the applicant to indicate the type of license being applied for, which is to be filled out by the applicant.

33. The “type of license” section on the DOJ Application handed out by the Siskiyou County Sheriff’s Office is pre-populated by the Siskiyou County Sheriff’s Office and indicates, “STANDARD CCW”.

34. By filling in the “type of license” section on the DOJ Application, the Siskiyou County Sheriff’s Office eliminates the ability for Siskiyou County residents to apply for an open carry license.

35. By filling in the “type of license” section on the DOJ Application, the Siskiyou County Sheriff’s Office purposely conceals from its residents their right to choose the type of handgun license to apply for, to wit, open carry.

36. On more than one occasion, Mr. Baird applied to Siskiyou County Sheriff Jon Lopey (“Sheriff Lopey”) for an open carry license for self-defense in public pursuant to California Penal Code § 26150.

37. Sheriff Lopey has denied each of Mr. Baird’s requests for an open carry firearms license.

38. In Siskiyou County, even where an applicant has met the criteria for the issuance of an open carry license, the “may issue” language of California’s licensing scheme gives Sheriff Lopey the authority to deny the application. (Penal Code § 26150(b)).

39. Mr. Baird has met the criteria for the issuance of an open carry license, yet Sheriff Lopey has denied his applications.

40. Sheriff Lopey was authorized to deny Mr. Baird’s applications because California’s licensing scheme contains the language “may issue”. (Penal Code § 26150(b)).

41. Upon information and belief, Sheriff Lopey’s described conduct is performed at the direction of and/or with the knowledge and approval of Defendant Becerra.

42. There is no administrative appeal process available for challenging Sheriff Lopey’s denial of Mr. Baird’s applications for an open carry license.

43. Even if there were an available administrative appeal process to challenge Sheriff Lopey’s denial of Mr. Baird’s application for an open carry license, such ‘process’ would be futile because Sheriff Lopey informed Mr. Baird that he will not issue “open carry” licenses.

44. Upon information and belief, Sheriff Lopey has not issued any open carry firearm licenses during his tenure as Sheriff of Siskiyou County.

45. If the language of California's licensing scheme provided that the Sheriffs "shall issue" an open carry license to applicants who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, Sheriff Lopey would be required by law to issue an open carry license to Mr. Baird.

46. Mr. Baird would apply for an open carry license in a county other than Siskiyou County, but is prohibited by California Penal Code § 26150 (b) (2).

47. California law requires open carry license applications be made in the county of residence.

48. Mr. Baird seeks to carry a firearm loaded and exposed for self-protection outside of Siskiyou County, but is precluded by California State Penal Code § 26150 (b) (2), which provides that an open carry license is only valid in the county of issuance.

49. If issued an open carry license. Mr. Baird's right to self-protection outside of his home will exist only within Siskiyou County.

50. The moment Mr. Baird steps over the line from Siskiyou County into any other county in California, his open carry license becomes invalid, leaving him subject to criminal prosecution and incarceration. (See, Penal Codes § 25850, § 26350, § 26150, and § 26155).

51. Mr. Baird, in fact, travels outside of Siskiyou County and intends to carry a handgun loaded and exposed for self-protection during such travels throughout the State of California.

52. Irrespective of the frequency of Mr. Baird's travels outside of Siskiyou County, his right to open carry while traveling outside of his county of residence is being infringed and violated by California State Law and Defendant who, *inter alia*, enforce and direct the enforcement of such laws.

53. Mr. Baird intends to exercise his Second Amendment right to carry a handgun outside of his home for self-protection, including carrying loaded and exposed, in Siskiyou County and throughout the State of California, with or without a license to carry, as he is not a person prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm who seeks to exercise a core right protected by the Second Amendment.



***Plaintiff Richard Gallardo: Shasta County***

54. Plaintiff Richard Gallardo is an individual of unquestionably good moral character, a law-abiding citizen, and has never been charged with, summoned, or arrested for any violation of the California State Penal Code or any other criminal offense.

55. Mr. Gallardo is not a person prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

56. Mr. Gallardo does not hold a California firearm license and does not fall within any of the exemptions to the California Penal Code sections criminalizing the possession of firearms, whether loaded or unloaded.

57. Mr. Gallardo possesses firearms in his home for self-defense.

58. Under California law, no license is required to possess a firearm in one's home for self-defense.

59. Mr. Gallardo seeks to carry a handgun for self-protection outside of his home.

60. Mr. Gallardo also seeks to carry a handgun loaded and exposed for self-protection outside of his home and in public.

61. Mr. Gallardo seeks to carry a firearm for self-protection outside of his home and in public without the need to demonstrate any "cause" or "reason" for the issuance thereof.

62. Mr. Gallardo seeks to carry a firearm for self-protection outside of his home and in public without the government dictating the manner in which he carries his firearm - loaded and exposed, concealed, and/or unloaded and exposed.

63. Mr. Gallardo is a resident of Shasta County, California. Shasta County has a population of less than 200,000 people. The residents of Shasta County are eligible to apply for an open carry firearm license under California's statutory firearms licensing scheme.

64. Based on the population of Shasta County, its residents are eligible to apply for an open carry firearm license under California's statutory firearms licensing scheme.

65. As a resident of the County of Shasta, Mr. Gallardo is prohibited from applying for a concealed carry or open carry license in any other county in California.

66. Mr. Gallardo intends to carry a handgun outside of his home, open and exposed or otherwise, with or without a carry license.

67. Mr. Gallardo intends to carry a handgun open and exposed outside of Shasta County.

***Shasta County Application Process Devoid of “Open Carry” Option***

68. The Shasta County written criteria for the issuance of a carry license does not contain an option for applying for an open carry license.

69. The Shasta County written instructions for a “carry” license identify only “concealed carry”.

70. The Shasta County handgun licensing procedure has no option for individuals not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm to apply for an open carry license.

71. The Shasta County Sheriff’s Office Criteria and Requirements Form only mentions the process for applying for a Concealed Carry License.

72. The Shasta County Sheriff’s Office has no application form for an “Open Carry Renewal/Change”.

73. There are no forms available or used by the Shasta County Sheriff’s Office for the purpose of applying for an “Open Carry” handgun license.

74. The Shasta County Sheriff’s website only provides information pertaining to applying for a “Concealed Carry Weapon” license, and no information pertaining to applying for an “Open Carry” license.

75. The Shasta County application instructions entitled, “Concealed Weapon Permit Application Process” only pertains to applying for a concealed carry license. Shasta County has no instructions pertaining to applying for an open carry license.

76. The Shasta County Sheriff’s Office provides the approved firearm application form issued by the State of California Department of Justice (the “DOJ Application”), which is entitled, “Standard Application for License to Carry a Concealed Weapon (CCW).”

77. Shasta County Sheriff Tom Bosenko (“Sheriff Bosenko”) has not issued any open carry firearm licenses during his tenure in Shasta County.

78. Sheriff Bosenko has publicly declared that he will never issue an open carry firearm license because open carry would cause a lot of angst, fear, and concern for his deputies.

79. Sheriff Bosenko stated publicly that, to his knowledge based on his regular meetings with the Sheriffs around the State, none of the Sheriffs serving in § 26150 (b) (2) counties in California have ever issued “open carry” pistol licenses. Upon information and belief, Sheriff Bosenko and all other Sheriffs in the State of California are refusing to issue open carry firearm licenses at the direction of and/or with the knowledge and approval of Defendant Becerra.

80. Mr. Gallardo applied to Sheriff Bosenko’s office for an open carry license on more than one occasion. Each of Mr. Gallardo’s applications for an open carry license were denied by the Shasta County Sheriff’s Office.

81. The Shasta County Sheriff’s Office explained, “We don’t offer a license to carry loaded and exposed in Shasta County. This type of license is only good in the county issued and we would have to extend this option to all permit holders.”

82. Mr. Gallardo has met the criteria for the issuance of an open carry license, yet the “may issue” language of California’s licensing scheme gives Sheriff Bosenko the authority to deny the application. (Penal Code §26150 (b)).

83. If the language of California’s licensing scheme provided that the Sheriffs “shall issue” an open carry license to applicants who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, Sheriff Lopey would be required by law to issue an open carry license to Mr. Baird.

84. Mr. Gallardo would apply for an open carry license in a county other than Shasta County, but is prohibited by California Penal Code 26150 (b) (2). California law requires open carry license applications be made in the county of residence. Open carry licenses are invalid outside of the county of issuance.

85. Mr. Gallardo does not have a residence outside of Shasta County and is, therefore, ineligible to apply for an open carry license in any other county.

86. There is no administrative appeal process available for challenging Sheriff Bosenko’s denial of Mr. Gallardo’s applications for an open carry license.

87. Even if there were an available administrative appeal process to challenge Sheriff Bosenko's denial of Mr. Gallardo's application for an open carry license, such 'process' would be futile because Sheriff Bosenko admitted that he does not, and will not, issue open carry licenses in Shasta County.

88. Mr. Gallardo seeks to carry a firearm loaded and exposed for self-protection outside of Shasta County, but is precluded by California State Penal Code § 26150 (b) (2), which provides that an open carry license is only valid in the county of issuance.

89. If Mr. Gallardo is ultimately issued an open carry license, his right to self-protection outside of his home will exist only within Shasta County. The moment Mr. Gallardo steps over the line from Shasta County into any other county in California, his open carry license would become invalid, leaving him subject to criminal prosecution and incarceration. See, Penal Codes § 25850, § 26350, § 26150, and § 26155.

90. Mr. Gallardo, in fact, travels outside of Shasta County and intends to carry a handgun loaded and exposed for self-protection during such travels throughout the State of California.

91. Irrespective of the frequency of Mr. Gallardo's travels outside of Shasta County, his right to open carry while traveling outside of his county of residence is infringed and violated by California State Law.

92. Mr. Gallardo intends to exercise his Second Amendment right to open carry in Shasta County and throughout the State of California, with or without an open carry license, as he is a law-abiding citizen, with no state or federal prohibitors to the possession of firearms, and seeks to exercise a core right protected by the Second Amendment, to wit, the right to open carry a firearm in public for self-protection.

***California Penal Codes § 26150 and § 26155***

93. Under California law, no license is required to possess a firearm, including handguns, in one's home for self-defense.

94. With limited exceptions, carrying a weapon capable of being concealed (i.e., a handgun) upon the person or in a vehicle outside of one's residence is a crime in the absence of a license to carry issued by the government. Penal Code § 25850.

95. To obtain a carry license, whether open carry or concealed carry, residents of California are required to apply to the statutory licensing authority, as enumerated in Penal Codes § 26150 and § 26155.

96. Penal Codes § 26150 and § 26155 were enacted prior to the Supreme Court's holding in *McDonald v. Chicago*, 561 U. S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

97. Penal Codes § 26150 and § 26155 were enacted under the false belief that the Second Amendment did not apply to the states.

98. The issuance of a license to possess a handgun outside of one's home is wholly within the subjective discretion of the county sheriff under Penal Code § 26150 and the chief or other head of a municipal police department of any city or city and county under § 26155.

99. Under each statute, the licensing authority is imbued with unfettered discretion to issue or deny an application possess a handgun outside of one's home by the language, "may issue a license".

100. The investigation process for a license to carry a handgun involves an investigation by the California Department of Justice, which determines whether the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. See, Penal Code § 26195.

101. A license to carry a handgun in public "shall not be issued if the Department of Justice determines that the [applicant] is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm." Penal Code § 26195.

102. Despite the mandatory investigation under § 26195, the licensing authorities are imbued with unfettered discretion under § 26150 and § 26155 to issue or deny an application to possess a handgun outside of the home.

103. Under § 26150 and § 26155, the licensing authority is imbued with unfettered discretion to subjectively judge whether applicant has proven s/he "is of good moral character" even though the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

104. Under § 26150 and § 26155, the licensing authority is imbued with unfettered discretion to judge whether an applicant has proven that “good cause exists for issuance of the license”.

105. Under § 26150 and § 26155, even where the above criteria have been satisfied, the licensing authority is imbued with unfettered discretion to issue or deny a (i) license to carry concealed or (ii) where the population of the county is less than 200,000 persons, a license to carry a handgun loaded and exposed.

106. Under § 26150 and § 26155, even where the above criteria have been satisfied, the licensing authority is imbued with unfettered discretion to deny an application for an open carry license.

107. Under § 26150 and § 26155, a license to carry open and exposed (“open carry”) is only valid within the issuing county.

108. Under § 26150 and § 26155, a license to carry open and exposed (“open carry”) can only be issued in a county with a population of less than 200,000.

109. Under § 26150 and § 26155, the licensing authority is imbued with unfettered discretion to impose whatever restrictions and conditions that s/he deems warranted including, but not limited to, restrictions as to the time, place, manner, and circumstances under which the licensee may carry a pistol, revolver, or other firearm capable of being concealed upon the person, over and above those enumerated by the California State Legislature.

110. Under Penal Code 26175 (a) (1), applications for carry licenses “shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.”

111. The California Department of Justice (“DOJ”) creates and provides to the state Sheriff’s Offices standard Concealed Carry (“CCW”) Application Forms. See, Penal Code § 26175.

112. Penal Code § 26175 prohibits the licensing authority from creating or offering an application for an open carry license that was not created by the California DOJ.

113. Under § 26175 (2), a committee composed of one representative of the California State Sheriffs’ Association, one representative of the California Police Chiefs Association, and

one representative of the Department of Justice is convened to review, and, as deemed appropriate, revise the standard application form for carry licenses.

114. The California DOJ has not created, nor does it distribute to the various licensing authorities in the state, a form application for an open carry license.

115. The licensing authorities in this state, along with Defendant Becerra, collectively consented to, and effectuated, a ban on the right to carry a handgun outside of the home for self-defense.

116. The licensing authorities in this state, along with Defendant Becerra, collectively consented to, and effectuated, a ban on the open carriage of handguns in this state

117. For the time period encompassing 2012 to the commencement of this action, none of the counties in California that have populations of less than 200,000 people (aka “26150(b)(2) counties”) have issued open carry licenses.

118. California Penal Code § 26225 requires that a copy of all firearms licenses issued in each county (open carry and concealed carry) be “filed immediately” with the California Department of Justice (“DOJ”).

119. For the time period encompassing 2012 to the commencement of this action, the DOJ’s records reflect no open carry licenses have been issued in the State of California.

#### **STATEMENT OF LAW<sup>1</sup>**

##### **Public Carry is a Right, Not a Privilege**

120. “In short, it would take serious linguistic gymnastics—and a repudiation of this Court’s decision in *Heller*—to claim that the phrase ‘bear Arms’ does not extend the Second Amendment beyond the home.” *Rogers v. Grewal*, 140 S. Ct. 1865, 1869, 207 L. Ed. 2d 1059, 1063, 2020 U.S. LEXIS 3248, \*9, 28 Fla. L. Weekly Fed. S 340 (U.S. June 15, 2020) (Thomas, J. dissenting from denial of certiorari).

121. As Justice Thomas clarified in *Rogers v. Grewal*, “at the time of the founding, as now, to ‘bear’ meant to ‘carry.’ When used with ‘arms,’ . . . the term has a meaning that refers to carrying for a particular purpose—confrontation.” *Rogers*, 140 S. Ct. at 1868 citing, *Heller*, 554

<sup>1</sup> The Statement of Law is integral to Plaintiffs’ claims and prayers for declaratory and injunctive relief.

U. S., at 584 (internal quotes omitted).

122. “[T]he right to “bear arms” refers to the right to “wear, bear, or carry 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.”” *Rogers*, 140 S. Ct. at 1868 (quoting *Muscarello v. United States*, 524 U. S. 125, 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998) (Ginsburg, J., dissenting) (alterations and some internal quotation marks omitted).

123. “The most natural reading of this definition encompasses public carry.” *Rogers*, 140 S. Ct. at 1868 citing, *Peruta v. California*, 582 U. S. \_\_\_, \_\_\_, 137 S. Ct. 1995, 198 L. Ed. 2d 746, 748 (2017) (Thomas, J., dissenting from denial of certiorari).

124. The majority of violent confrontations occur outside the home. See, *Rogers*, 140 S. Ct. at 1868 citing, *Moore v Madigan*, 702 F.3d 933, 937 (7th Cir 2012) (noting that “most murders occur outside the home” in Chicago). “Thus, the right to carry arms for self-defense inherently includes the right to carry in public. This conclusion not only flows from the definition of ‘bear Arms’ but also from the natural use of the language in the text. As I have stated before, it is ‘extremely improbable that the Framers understood the Second Amendment to protect little more than carrying a gun from the bedroom to the kitchen.’” *Rogers*, 140 S. Ct. at 1868 citing, *Peruta*, supra, at \_\_\_, 137 S. Ct. 1995, 198 L. Ed. 2d 746, 748 (Thomas, J. dissenting from denial of certiorari).

125. “The meaning of the term ‘bear Arms’ is even more evident when read in the context of the phrase ‘right . . . to keep and bear Arms. [U. S. Const., Amdt. 2.] To speak of ‘bearing’ arms solely within one’s home would conflate ‘bearing’ with ‘keeping,’ in derogation of *Heller*’s holding that the verbs codified distinct rights.” *Rogers*, 140 S. Ct. at 1869 citing, *Drake v Filko*, 724 F3d 426, 444 (3d Cir 2013) (Hardiman, J., dissenting); *Moore*, supra, at 936.

126. Founding era legal commentators in America understood the Second Amendment right to “bear Arms” to encompass the right to carry in public. *Rogers*, 140 S. Ct. at 1870.

127. An individual does not forfeit his right to self-protection by stepping outside of his home. The right to self-protection is as great outside of one’s home as it is inside the home. *Moore v Madigan*, 702 F3d 933, 941 (7th Cir 2012).



### **Multi-Tiered Scrutiny of Second Amendment Violations is “Made Up”**

128. “Many courts have resisted our decisions in *Heller* and *McDonald*. [citing *Silvester v. Becerra*, 583 U. S. \_\_\_, \_\_\_, 138 S. Ct. 945, 200 L. Ed. 2d 293, 299 (2018) (opinion dissenting from denial of certiorari)]. Instead of following the guidance provided in *Heller*, these courts minimized that decision’s framework. [citing, *Gould v. Morgan*, 907 F. 3d 659, 667 (CA1 2018) (concluding that our decisions “did not provide much clarity as to how Second Amendment claims should be analyzed in future cases”)]. They then ‘filled’ the self-created ‘analytical vacuum’ with a ‘two-step inquiry’ that incorporates tiers of scrutiny on a sliding scale. [citing *National Rifle Assn. of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F. 3d 185, 194 (CA5 2012); *Powell v. Tompkins*, 783 F. 3d 332, 347, n. 9 (CA1 2015) (compiling Circuit opinions adopting some form of the sliding-scale framework)].” *Rogers*, 140 S Ct 1865at 1866.

129. Of the states that require “good cause” or “proper cause” for the issuance of a carry license, like California and New York, the circuit courts have applied a test for scrutiny that is “**entirely made up**. The Second Amendment provides no hierarchy of ‘core’ and peripheral rights. And the Constitution does not prescribe tiers of scrutiny.” *Rogers*, 140 S. Ct. at 1867 (emphasis added) citing, *Whole Woman’s Health v. Hellerstedt*, 579 U. S. \_\_\_, \_\_\_, 136 S. Ct. 2292, 195 L. Ed. 2d 665, 706 (2016) (Thomas, J., dissenting); *Heller v District of Columbia*, 399 U.S. App DC 314, 670 F.3d 1283, 1247 (2011) (*Heller II*), *supra*, at 1283 (Kavanaugh, J., dissenting) (listing constitutional rights that are not subject to means-ends scrutiny).

130. “[T]here is nothing in our Second Amendment precedents that supports the application of what has been described as ‘a tripartite binary test with a sliding scale and a reasonable fit.’” *Rogers*, 140 S. Ct. at 1867 citing, *Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1117 (SD Cal. 2017), *aff ’d*, 742 Fed. Appx. 218 (CA9 2018).

### **Application of the “Made Up” Scrutiny Test Yields Analyses Inconsistent with *Heller***

131. “Even accepting this test on its terms, its application has yielded analyses that are entirely inconsistent with *Heller*. There, we cautioned that “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all,” stating that our

constitutional rights must be protected “whether or not future legislatures or (yes) even future judges think that scope too broad.” *Rogers*, 140 S. Ct. at 1867 citing, *Heller*, 554 U. S. at 634-635.

132. While erroneously applying a “made up” test inconsistent with the holding in *Heller*, [see, *Rogers v Grewal*, 140 S Ct at 1867] the Ninth Circuit has held that the “concealed carry” of firearms is merely a ‘privilege’ and not a core right subject to the protections of the Second Amendment. *Peruta v County of San Diego*, 824 F3d 919, 942 (9<sup>th</sup> Cir 2016) (en banc) (*Peruta II*) (cert. den.).

**“Interest Balancing” Public Safety Inquiries Were Explicitly Rejected by *Heller***

133. “The Second Amendment provides no hierarchy of ‘core’ and peripheral rights. And the Constitution does not prescribe tiers of scrutiny. On that basis, we explicitly rejected the invitation to evaluate Second Amendment challenges under an ‘interest-balancing inquiry, with the interests protected by the Second Amendment on one side and the governmental public-safety concerns on the other...But the application of the test adopted by the courts of appeals has devolved into just that.” *Rogers*, 140 S. Ct. at 1867.

134. “In fact, at least one scholar has contended that this interest-balancing approach has ultimately carried the day, as the lower courts systematically ignore the Court’s actual holding in *Heller*. See Rostron, Justice Breyer’s Triumph in the Third Battle Over the Second Amendment, 80 Geo. Wash. L. Rev. 703 (2012). With what other constitutional right would this Court allow such blatant defiance of its precedent?” *Rogers*, 140 S. Ct. at 1867.

**Law Enforcement Has No Duty to Protect Any Individual**

135. It is well-settled that law enforcement has no duty to protect the individual. See, *Balistreri v Pacifica Police Dept.*, 901 F2d 696, 699-700 (9th Cir 1988) (dismissing complaint where police failed to take steps to respond to the continued threats, harassment and violence by estranged husband because “there is, in general, no constitutional duty of state officials to protect members of the public at large from crime.”); *Martinez v. California*, 444 U.S. 277, 284-85, 62 L. Ed. 2d 481, 100 S. Ct. 553 (1980); *Ketchum v County of Alameda*, 811 F2d 1243, 1244-47 (9th Cir 1987); *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).

136. Not only does the individual have the right to self-protection, s/he has the duty of self-protection at home and in public because of the absence of law enforcement to protect any individual.

137. The Supreme Court has recognized that the individual's right to self-defense is as critical and fundamental *outside* of the home as it is *inside* of the home. See, *District of Columbia v. Heller*, 554 US at 595-599; *McDonald*, 561 U.S. at 776.

### **California's Handgun Licensing Scheme**

138. With limited exceptions, carrying a weapon capable of being concealed (i.e., a handgun) upon the person or in a vehicle outside of one's residence is a crime in the absence of a license to carry a handgun issued by the government. Penal Code § 25850.

139. Openly carrying an unloaded handgun upon one's person outside of the home is a crime. See, Penal Code § 26350.

140. To obtain a license to carry a handgun, whether for open carry or concealed carry, residents of California are required to apply to the statutory licensing authority, as enumerated in Penal Codes § 26150 and § 26155.

141. Penal Codes § 26150 and § 26155 were enacted prior to the Supreme Court's holding in *McDonald v. Chicago*, 561 U. S. 742, 778, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

142. Penal Codes § 26150 and § 26155 were enacted under the false belief that the Second Amendment did not apply to the states.

143. Under California's licensing scheme, the issuance of a license to possess a handgun outside of one's home is wholly within the subjective discretion of the county sheriff under § 26150 and the chief or other head of a municipal police department of any city or city and county under § 26155.

144. For every carry license issued, each licensing authority is imbued with unfettered discretion to impose whatever restrictions and conditions that s/he deems warranted including, but not limited to, restrictions as to the time, place, manner, and circumstances under which the licensee may carry a pistol, revolver, or other firearm capable of being concealed upon the person, over and above those enumerated by the California State Legislature.

145. Under Penal Code § 26175 (a) (1), applications for carry licenses “shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.”

146. The California Department of Justice (“DOJ”) creates and provides to the state Sheriff’s Offices standard Concealed Carry (“CCW”) Application Forms. See, Penal Code § 26175.

147. Penal Code § 26175 prohibits the licensing authority from creating or offering an application for an open carry license that was not created by the California DOJ.

148. Under § 26175 (2), a committee composed of one representative of the California State Sheriffs’ Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice is convened to review, and, as deemed appropriate, revise the standard application form for carry licenses.

149. The California DOJ has not created, nor does it distribute to the various licensing authorities in the state, a form application for an open carry license.

150. The licensing authorities in this state, along with Defendant Becerra, collectively consented to and effectuated a ban on the open carriage of handguns in this state.

151. For the time period encompassing 2012 to the commencement of this action, none of the counties in California that have populations of less than 200,000 people (aka “26150(b)(2) counties”) have issued open carry licenses.

152. California Penal Code § 26225 requires that a copy of all firearms licenses issued in each county (open carry and concealed carry) be “filed immediately” with the California Department of Justice (“DOJ”).

153. For the time period encompassing 2012 to the commencement of this action, the DOJ’s records reflect no open carry licenses have been issued in the State of California.

**“May Issue” Discretion of § 26150 and § 26155**

**Violates the Second Amendment**

154. Every application for a handgun carry license requires an investigation by the California DOJ to determine whether the applicant is prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm. See, Penal Code § 26195.

155. Under § 26150 (a) and § 26155 (a), even where an applicant is not prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm, the licensing authority has the discretion to deny the carry application.

156. The language in § 26150 (a) and § 26155 (a) that a licensing authority “may issue a license”, authorizes but does not require, the licensing authority to issue, a handgun carry license.

157. This discretionary power subjects the Second Amendment right to carry arms for self-protection outside of the home to the discretionary whims of the government.

### **Subjective “Moral Character” Discretion of § 26150 and § 26155**

#### **Violates the Second Amendment**

158. The licensing authorities are imbued with unfettered discretion to issue or deny an application to possess a handgun outside of one’s home even where an applicant has no prohibitors to firearm possession under state or federal law.

159. Under Penal Codes § 26150 and § 26155, the licensing authority has unfettered discretion to deny the issuance of handgun carry license to an applicant who is not otherwise prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm simply because the licensing authority feels that the applicant does not have “good moral character”.

160. The subjective and discretionary “moral character” language of § 26150 and § 26155 violates the Second Amendment.

### **“Good Cause” Requirement of § 26150 and § 26155**

#### **Violates the Second Amendment**

161. Under § 26150 (a) (2) and § 26155 (a) (2), an applicant must demonstrate “good cause” for the issuance of a carry license, whether for open carry or concealed carry.

162. Requiring an individual to prove “good cause” before a license to carry a handgun outside of the home – whether for a concealed carry license or an open carry license - violates the Second Amendment. See, *Rogers*, 140 S. Ct. at 1868 (quoting *Muscarello v. United States*, 524 U. S. 125, 143, 118 S. Ct. 1911, 141 L. Ed. 2d 111 (1998) (Ginsburg, J., dissenting) (alterations and some internal quotation marks omitted) (“[T]he right to “bear arms” refers to the right to

“wear, bear, or carry 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.”

### **The “Good Cause” Requirement Bans an Enumerated Right**

163. “It appears that a handful of States throughout the country prohibit citizens from carrying arms in public unless they can establish ‘good cause’ or a ‘justifiable need’ for doing so. The majority of States, while regulating the carrying of arms to varying degrees, have not imposed such a restriction, which amounts to a ban on the ability of most citizens to exercise an enumerated right.” *Rogers*, 140 S. Ct. at 1874 citing, *Wrenn v District of Columbia*, 431 US App DC 62, 78, 864 F3d 650, 666 (2017) (internal alterations omitted).

164. The average person cannot establish “good cause”, which is commonly defined in the Ninth Circuit and other circuits demonstrating a need for self-protection that is greater than the average person, requiring documented threats of violence that establish the applicant is a target and at risk for specific harm.

165. “Good cause” in California is rarely established because members of the general public have not had specific threats made against them nor can the average person demonstrate that they are being targeted for violent acts.

166. The definition of “good cause” in California does not include the basic human right to self-protection outside of one’s home.

167. The subjective nature of what constitutes “good cause” for the issuance of a carry license vary from county to county as determined by the sheriff in office at the time; the definition is subject to change at the whim of the sitting sheriff and/or when a new sheriff is elected.

168. The “good cause” requirement amounts to a total ban on public carry for the typical law-abiding citizen.

169. When the “good cause” requirement is analyzed regarding its effect on the typical law-abiding citizen, it prevents and precludes the typical member of society from self-protection outside of their home. See, *Wrenn v. District of Columbia*, 864 F.3d 650, 665-666 (DC Cir 2017) (“...the good-reason law is necessarily a total ban on most D.C. residents’ right to carry a gun in

the face of ordinary self-defense needs, where these residents are no more dangerous with a gun than the next law-abiding citizen.”).

170. The very objective of the “good cause” requirement is to eliminate the public carriage of firearms. Because the average person cannot establish “good cause” as defined under California jurisprudence, few “concealed carry” licenses are issued in this state.

171. The “good cause” requirement has, in fact, prevented the issuance of any open carry license in the State of California since 2012.

172. The “good cause” requirement is *per se* unconstitutional because it requires individuals to distinguish themselves from the typical law-abiding citizen, however, fundamental rights like the right to self-protection are the same for all non-prohibited persons.

173. No individual who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm can be required to prove they are entitled to protect themselves from harm, particularly when law enforcement has no duty to protect the individual.

174. Plaintiffs’ right to self-protection exists wherever they are – whether in public or at home – its value and inalienability does not change based on their location.

175. A person does not lose his right to protect himself simply by walking outside of his front door. See, *District of Columbia v. Heller*, 554 US at 595-599 (The basic human right to self-defense is inseparable from the individual. The right of the law-abiding individual to possess firearms for the safety, defense, and preservation of one’s own body, is as critical and fundamental outside of the home as it is inside of the home.).

176. By requiring “good cause” for the issuance of any carry license – open or concealed – California’s licensing scheme violates the Second Amendment.

177. To the extent that the Ninth Circuit upheld “good cause” requirements for the issuance of a concealed carry license based on the view that the Second Amendment does not extend to the concealed carry of firearms in public by members of the general public, [*Peruta v County of San Diego*, 824 F3d at 939] the “good cause” requirement for the issuance of an open carry license violates the Second Amendment.

178. The “good cause” requirement for the issuance of a license to carry a handgun under California Penal Code § 26150 and § 26155 should be declared a violation of the Second Amendment and should be enjoined from enforcement and stricken as unconstitutional.

179. Alternatively, those portions of California Penal Code § 26150 and § 26155 requiring an applicant to show “good cause” for the issuance of an “open carry” firearm license should be declared a violation of the Second Amendment, enjoined from enforcement, and stricken as unconstitutional.

**The Government’s Authority to Dictate How Handgun is Carried, Possessed, and Worn  
Violates the Second Amendment**

180. California’s licensing scheme, which creates two separate handgun carry licenses – concealed carry and open carry – violates the Second Amendment by interfering with the manner in which an individual chooses to wear, carry, and possess his/her firearm outside of the house.

181. Under § 26150 (b) and § 26155 (b), the licensing authority, not the individual, decides how his/her handgun will be carried, worn, and possessed for self-protection outside of the home.

182. Via the “may issue” language of § 26150 (b) and § 26155 (b) the licensing authority has unfettered discretion to issue a concealed carry license, an open carry license, or neither, but not both.

183. Conversely, § 26150 (b) and § 26155 (b) grant the government unfettered discretion to deny an application for an open carry license and, instead issue a concealed carry license via the “may issue” language.

184. The government’s interference with the manner in which an individual carries, wears, and possesses his/her handgun for self-protection in public violates the Second Amendment.

185. The term “bears a firearm” refers to an individual “carrying the weapon on or about his person for the purpose of being armed and ready for offensive or defensive action in case of a conflict.” *Muscarello v United States*, 524 US 125, 139-140 (1998) (Justice Ginsberg, dissenting opinion), citing, *Black's Law Dictionary* 214 (6th ed. 1990) (defining the phrase “carry arms or weapons”). “On or about his person” necessarily means one’s body or within his area of reach.



186. The government's interference with the manner in which a law-abiding individual can bear arms in public unlawfully infringes upon the Second Amendment and fails to promote any significant, substantial, or important government objective. *Pena v Lindley*, 898 F.3d 969, 979 (9th Cir. 2018), citing, *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 965 (9th Cir. 2014).

187. A firearm in the hands of a person not prohibited under state or federal law from possessing, receiving, or purchasing a firearm, such as Plaintiffs, is a tool for the protection of self and family.

188. A non-prohibited person carrying a firearm, such as Plaintiffs, is no more likely to commit a crime with that firearm than he is likely to commit a crime with the car he drives, the knife in his tackle box, or the axe in his shed.

189. California strives to eliminate the public carry of firearms altogether, as borne out by California's licensing scheme which requires of "good cause" for the issuance of any type of carry license whether for concealed carry or open carry.

190. Defendant Becerra, dubbed "The Enemy of the Second Amendment"<sup>2</sup>, has consistently taken steps in his professional capacity to restrict Second Amendment rights.

191. A non-prohibited person should not face criminal prosecution simply because s/he has made the tactical decision to carry a lawfully owned firearm in the small of the back holster, in a pocket, or underneath a sweater or jacket.

192. Concealed carry is the universally preferred method of law-abiding individuals, including Plaintiffs, to carry a firearm, for reasons including tactical advantage over an attacker, convenience of carry location, accessibility to one's firearm for self-defense, and practical considerations relating to one's wardrobe.

193. With the commencement of governmental regulation of the possession of firearms, legislative statutes and judicial case law have unconstitutionally redefined the term "concealed". "Concealment" was historically synonymous with an intention to hide or cover up forbidden conduct and/or objects, denoting malintent and a criminal *mens rea*.

<sup>2</sup> NRA-ILA January 7, 2017.

194. An individual who is lawfully carrying a firearm on their person in public – whether openly such that the firearm can be readily seen, or in a waistband holster covered by a winter jacket – is simply “carrying” their firearm. An individual exercising their right to self-protection has no malintent and no intention to use their firearm to commit a crime.

195. The definition of “open carry” or “exposed carry” cannot be conclusively established and creates an unlawful legal burden and risk of criminal prosecution on the law-abiding individual. An individual with a duly-issued open carry license who puts on a coat in the wintertime, is now ‘concealing’ his firearm. A woman wearing a dress upon which it would be impossible to secure a firearm “exposed”, will necessarily be stripped of the right to protect herself in public because she will be prosecuted as a criminal if she carries her firearm holstered underneath her dress or in her purse.

196. In 1863, California passed legislation banning concealed carry of firearms due to the high rate of crime during the Gold Rush.<sup>3</sup> As the San Francisco newspaper The Daily Alta California explained it:

*“During the thirteen years that California has been a State, there have been more deaths occasioned by sudden assaults with weapons previously concealed about the person of the assailant or assailed, than by all other acts of violence which figure on the criminal calendar.... Heretofore there has been no law passed which would remedy the evil. Public opinion, as expressed through the action of our legislators, seems to have sanctioned the custom, barbarous though it be. For many sessions prior to the last, ineffectual efforts were made to enact some statute which would effectually prohibit this practice of carrying concealed weapons. A radical change of public sentiment demanded it, but the desired law was not passed until the last Legislature, by a handsome majority, enacted the subjoined act, entitled “An Act to prohibit the carrying of concealed weapons.”*

197. Only 7 years later, California repealed the concealed carry ban. The Sacramento Daily Union published an editorial discussing the 1870 repeal of the concealed-carry ban:

<sup>3</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013, *citing*, “Three Years in California”, Borthwick, J.D. (1857); Gunfighters, Highwaymen, & Vigilantes”, McGrath, Roger (1984).

*“There is reason to believe it was generally observed by the vast majority of good citizens. There is as good reason to believe it was not observed by the vast majority of roughs, fighting men, and predatory characters. In many cases of assault between quiet citizens and these last named characters, it was found that the good citizen had to defend himself unarmed against the predacious one with arms, the former suffering for his respect of the law. It was also found that the police were apt to arrest any quiet citizen on whom they discovered concealed weapons, while they paid little attention to the roughs who were known to carry arms habitually.”<sup>4</sup>*

198. Criminals, by definition, do not follow the law. No purpose is served by restricting law-abiding people from carrying their firearms in the manner they feel most comfortable and are better able tactically to protect themselves.

199. “Laws preventing law-abiding citizens from carrying firearms for self-protection... become an abomination in practice... plac[ing] the peaceful citizen completely at the mercy of a class whose offenses against order it was intended to check, but did not, owing to the remissness in duty of the guardians of the law.” Sacramento’s experience was the immediate cause of the “repealing movement ... where bands of armed roughs, scorning the law against carrying concealed weapons, were perpetrating highway robberies on quiet, unarmed citizens, who could not prepare for self-defense without danger of being arrested and fined every day.”

200. “The editorial acknowledged that one of the good things hoped for had happened in the intervening months:

*“It was reasoned with much plausibility that if the roughs once knew that quiet citizens might prepare to defend themselves without danger of being punished for misdemeanor, the bare suspicion that such a person had about him a weapon would disarm the roughs and prevent robberies. This has in fact been one of the results.”*

201. Arguing against the reasons, the State of California repealed the ban on concealed carry. The Daily Alta newspaper editorialized, in part, “To put a thing in its customary and convenient receptacle is not concealment. Concealment is a matter of motive...”<sup>5</sup>

<sup>4</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013.

<sup>5</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013, *citing*, The Daily Alta California, 1869.

202. California Penal Code §25850 makes it a crime to carry a loaded firearm on one's person or in a vehicle, without regard to whether it is carried concealed or openly, while in any public place or on any public street in an unincorporated city, or any public place or public street in a prohibited area of an unincorporated territory.

203. Plaintiffs seeks to carry their firearms in public in the manner of their choosing, concealed or open, throughout the State of California.

204. The Second Amendment includes the right to carry a firearm in public. If an individual is not prohibited by state or federal law from possessing firearms, the government violates the Second Amendment by dictating and/or controlling how that person carries, wears, or otherwise possesses his/her firearm in public.

205. By eliminating Plaintiffs' ability to choose how to defend themselves in public and their tactical decision-making ability regarding how to carry their firearms, California's firearm licensing scheme unlawfully burdens and infringes upon Plaintiffs' Second Amendment rights.

206. There is no legitimate, measurable, or quantifiable impact on public safety that justifies California's interference with Plaintiffs' ability to choose how to carry their firearms for self-defense in public – and even if there were, the Supreme Court has conclusively rejected public safety “interest balancing” when it comes to Second Amendment rights. See, *Rogers*, supra.

207. California's firearm licensing scheme interfering with the manner in which non-prohibited people carry his/her firearm in public should be declared a violation of the Second Amendment, enjoined from enforcement, and stricken as unconstitutional.

### **Open Carry License Restriction by County of Issuance and Population Size**

#### **Violates the Second Amendment**

208. A license to carry a handgun loaded and exposed can only be applied for in counties with a population under 200,000. See, § 26150 (b) and §26155 (b).

209. An open carry license issued under § 26150 (b) and § 26155 (b) is only valid in the county of issuance.

210. The geographical and population restrictions of § 26150 (b) and § 26155 (b) violate the Second Amendment by forcing Plaintiffs to choose between being criminally prosecuted under § 25820 (carrying a loaded handgun) or § 26350 (if carrying open and unloaded) or exercising their preexisting rights as protected by the Second Amendment.

211. If an individual who is duly issued an open carry license carries his firearm loaded and exposed in a county other than his county of residence (the county of issuance) he will be subject to criminal penalties and sanctions, up to and including imprisonment. (Penal Code § 25850).

212. Individuals who are issued an open carry license in their home county are rendered unarmed and defenseless when traveling to any other part of California.

213. If Plaintiffs are issued an open carry license and thereafter choose to leave their firearms home while traveling to other counties in California, they will be left defenseless and unarmed.

214. While governmental regulations on sensitive areas, such as schools and courthouses have been upheld by the courts as presumptively lawful (*Heller*, 554 US at 626), California's broad and overreaching geographical (1) limitation on the validity of open carry licenses; and (2) ban on the issuance of an open carry license based on population size, eviscerates a core right of the individual to "open carry" for self-protection outside of the home.

215. Restricting the open carry of firearms from entire counties in the state based on population size unlawfully implicates a core Second Amendment right, serves no legitimate governmental interest, and has no provable or quantifiable effect on public safety – and even if it did, the Supreme Court has definitively rejected public safety interest balancing in Second Amendment analyses. See, *Rogers*, supra.

216. To the contrary, the danger to the individual and need for the protections of the Second Amendment increase in direct proportion to the increase in population density, due to the corresponding increase in criminals and criminal activity in highly populated areas. Preventing open carry by law-abiding individuals in high crime/highly populated areas does not increase public safety. To the contrary, the open carry of firearms by law-abiding people in highly

populated, high crime areas will decrease the rate of criminal activity.

217. California's firearm licensing scheme restricting the open carriage of firearms from entire counties in the state based on population size should be declared a violation of the Second Amendment, enjoined from enforcement, and stricken as unconstitutional.

**California's Unloaded Carry Restrictions Are Unconstitutional**  
**(Second Amendment Violation)**

218. A core right of the Second Amendment is the right of the law-abiding individual to carry a firearm ("bear arms") outside of the home. See cases cited, *supra*. An open carry license issued under § 26150(b) or § 26155(b) would permit Plaintiffs to carry a firearm in public "loaded and exposed".

219. California Penal Code § 26350 makes it a crime to open carry an unloaded handgun, whether on one's person, inside a vehicle, or on a vehicle. A violation of § 26350 carries penalties of imprisonment up to one year and/or fines.

220. Should Plaintiffs be issued open carry licenses and encounter a circumstance wherein their respective handguns are in an unloaded state while in public, Plaintiffs would face criminal prosecution and penalties, including imprisonment.

221. Should Plaintiffs be issued open carry licenses, they may also face circumstances wherein they possess their handgun inside of their respective vehicles in an unloaded state and would therefore face criminal prosecution and penalties including imprisonment under Penal Code § 26350.

222. The enforcement of § 26350 against individuals who are licensed to carry a handgun loaded and exposed violates the Second Amendment as an infringement on the manner in which an individual chooses to protect himself/herself outside of the home.

223. Likewise, the enforcement of § 26350 against individuals who are not otherwise prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm violates the Second Amendment.

224. California Penal Code § 26350 should be declared unconstitutional as applied to open carry licensees, enjoined from enforcement, and stricken as unconstitutional.

**Penal Code § 25850**

**Violates the Second Amendment**

225. Penal Code § 25850 criminalizes the possession of a loaded firearm, open or concealed.

226. The prosecution of individuals who are not otherwise prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm violates the Second Amendment.

227. California Penal Code § 25850 should be declared unconstitutional as applied to individuals who are not otherwise prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm, enjoined from enforcement, and stricken as unconstitutional.

**DECLARATORY JUDGMENT ALLEGATIONS**

228. There is an actual and present controversy between the parties. Plaintiffs contend their Second Amendment rights were violated in that: (1) California Penal Codes § 26150 and § 26155 violate the fundamental right to self-protection by carrying handguns outside of the home by (i) imbuing the licensing authorities with discretion to deny handgun carry licenses even where the applicant is not prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm under the language “may issue”; (ii) empowering licensing authorities to deny handgun carry licenses based on a subjective opinion that an applicant does not possess “good moral character” even where the applicant is not prohibited under state or federal law from possessing, receiving, owning, or purchasing a firearm; (iii) requiring “good cause” for the issuance thereof; (iv) arbitrarily and subjectively demarcating the manner in which individuals choose to carry, wear, and possess their firearms for self-protection outside of the home; (v) empowering the licensing authority to decide for the applicant how s/he can carry, wear, and possess their firearms for self-protection outside of the home; (vi) restricting the authority and validity of open carry licenses to the county of issuance; (vii) restricting open carry to counties based on population size; (viii) imbuing the licensing authorities with discretion to deny an application for an open carry license; (2) California Penal Code § 26350 criminalizes the open

carriage of an unloaded handgun by non-prohibited persons for self-protection outside of the home; (3) California Penal Code § 25850 violates the right of non-prohibited persons to carry a loaded handgun in public for self-protection, whether open or concealed carry; (4) that California Penal Code § 25850 violates the right of individuals who possess an open carry license to self-protection outside of the county of issuance.

229. Defendant denies these contentions.

230. Plaintiffs seek a judicial declaration that California Penal Codes § 26150, § 26155, § 25850, and § 26350 violate Plaintiffs' Second Amendment rights in the manner described in detail herein.

231. Plaintiffs also seek a judicial declaration that California's licensing scheme violates Plaintiffs' Second Amendment rights to carry a handgun for self-protection outside of the home, whether open or concealed, loaded, or unloaded.

232. Plaintiffs should not have to risk criminal prosecution in order to exercise the core fundamental rights detailed herein.

### **INJUNCTIVE RELIEF ALLEGATIONS**

233. Plaintiffs are being continuously injured, in fact, by the violation of the preexisting rights protected by the Second Amendment as a result of (1) Defendant's enforcement of the "may issue a license" language of Penal Codes § 26150 (a) and § 26155 (a) leaving issuance of a handgun carry license to the subjective whims of the licensing authority even where an investigation by the California DOJ has determined that the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm; (2) Defendant's enforcement of the "moral character" language of Penal Codes § 26150 (a) and § 26155 (a) leaving issuance of a handgun carry license to the subjective whims of the licensing authority even where an investigation by the California DOJ has determined that the applicant is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm; (3) Defendant's enforcement of the requirement that an applicant demonstrate "good cause" for the issuance of a license to carry a handgun for self-protection outside of the home, whether open carry or concealed carry; (4) Defendant's enforcement of the "may issue a license" language of



Penal Codes § 26150 (b) and § 26155 (b) imbuing discretion in the licensing authority decide the “format” of a carry license, by which the government dictates how an applicant can and cannot wear, carry, and possess a handgun for self-protection outside of the home; (5) Defendant’s enforcement of California Penal Codes § 26150 and § 26155 restricting the authority and validity of open carry licenses to the county of issuance; (6) Defendant’s enforcement of California Penal Codes § 26150 and § 26155 banning the open carriage of firearms in counties with a population over 200,000 persons and/or based on population size; (7) Defendant’s enforcement of the “may issue” language of California Penal Codes § 26150 (b) (2) and § 26155 (b) (2) leaving the issuance of an open carry license to the discretion of the licensing authority; (8) Defendant’s enforcement of California Penal Code § 26350 criminalizing the open carriage of a unloaded handgun by a non-prohibited person for self-protection outside of the home; (9) Defendant’s enforcement of California Penal Code § 25850 criminalizing the possession of a loaded firearm, whether concealed or open, by a non-prohibited person; (10) Defendant’s enforcement of California Penal Code § 25850 criminalizing the open carriage of a loaded firearm outside of the county of issuance.

234. Plaintiffs should not have to risk criminal prosecution in the exercise of their fundamental right to self-protection outside of the home.

235. Defendant denies the contentions stated herein.

## **COUNT I**

### **“May Issue” Discretionary Authority**

#### **§ 26150 (a) and § 26155 (a)**

236. Repeats and realleges paragraphs “1” through and including “235” as if set forth in their entirety herein.

237. The discretionary language “may issue a license” to carry in California Penal Codes § 26150 (a) and § 26155 (a) violates the Second Amendment.

238. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

## **COUNT II**

### **“Moral Character” Determination**

#### **§ 26150 (a) (1) and § 26155 (a) (1)**

239. Repeats and realleges paragraphs “1” through and including “238” as if set forth in their entirety herein.

240. The “good moral character” determination by a licensing authority in California Penal Code § 26150 (a) (1) and § 26155 (a) (1) violates the Second Amendment.

241. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

## **COUNT III**

### **“Good Cause” Requirement**

#### **§ 26150 (a) (1) and § 26155 (a) (1)**

242. Repeats and realleges paragraphs “1” through and including “241” as if set forth in their entirety herein.

243. The “good cause” requirement of California Penal Codes § 26150 (a) and § 26155 (a) for the issuance of license to carry a handgun for self-protection outside of the home violates the Second Amendment.

244. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

## **COUNT IV**

### **Discretionary Authority to Dictate How Handgun is Carried, Possessed and Worn of § 26150 (b) and § 26155 (b)**

245. Repeats and realleges paragraphs “1” through and including “244” as if set forth in their entirety herein.

246. California Penal Codes § 26150 (b) and § 26155 (b) violate the Second Amendment by imbuing the government with the discretion to decide for an individual how they can and cannot carry, wear, and possess a lawfully owned handgun for self-protection outside of the home.

247. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

#### **COUNT V**

##### **Limitation of the Type of Carry License to be Issued**

###### **§ 26150 (b) and § 26155 (b)**

248. Repeats and realleges paragraphs “1” through and including “247” as if set forth in their entirety herein.

249. California Penal Codes § 26150 (b) and § 26155 (b) violate the Second Amendment by issuing a license to carry a handgun “in either of the following formats” - concealed carry or open carry - but not both.

250. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

#### **COUNT VI**

##### **Open Carry License Restriction by County**

###### **§ 26150 (b) (2) and § 26155 (b) (2)**

251. Repeats and realleges paragraphs “1” through and including “250” as if set forth in their entirety herein.

252. California Penal Codes § 26150 (b) (2) and § 26155 (b) (2) violate the Second Amendment by restricting the validity and authority of an open carry license to the county of issuance.

253. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

#### **COUNT VII**

##### **Open Carry License Restriction by Population Size**

###### **§ 26150 (b) (2) and § 26155 (b) (2)**

254. Repeats and realleges paragraphs “1” through and including “253” as if set forth in their entirety herein.

255. California Penal Codes § 26150 (b) and § 26155 (b) violate the Second Amendment by restricting the open carriage of firearms to counties by population size, to wit, under 200,000 persons.

256. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

### **COUNT III**

#### **“May Issue” Language for Open Carry License**

##### **§ 26150 (b) and § 26155 (b)**

257. Repeats and realleges paragraphs “1” through and including “258” as if set forth in their entirety herein.

258. The discretionary language of California Penal Codes § 26150 (b) and § 26155 (b) that a license to carry open and exposed “may issue” violates the Second Amendment.

259. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

### **COUNT IX**

#### **Penal Code § 26350 Violates the Second Amendment**

260. Repeats and realleges paragraphs “1” through and including “259” as if set forth in their entirety herein.

261. Defendant’s enforcement of Penal Code § 26350, criminalizing the open carriage of an unloaded firearm, against individuals who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, violates the Second Amendment.

262. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

### **COUNT X**

#### **Penal Code § 25850 Violates the Second Amendment**

263. Repeats and realleges paragraphs “1” through and including “262” as if set forth in their entirety herein.

264. Defendant's enforcement of Penal Code § 25850, criminalizing the possession of a loaded firearm, open or concealed, against individuals who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, violates the Second Amendment.

265. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

## **COUNT XI**

### **Penal Code § 25850 Violates the Second Amendment**

266. Repeats and realleges paragraphs "1" through and including "265" as if set forth in their entirety herein.

267. Defendant's enforcement of Penal Code § 25850, criminalizing the licensed open carriage of a loaded firearm outside of the county of issuance, violates the Second Amendment.

268. Under the theory that Defendant is liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendant as follows:

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from exercising any discretion to deny an application for a license to carry a handgun under Penal Codes § 26150 and § 26155 for self-protection outside of the home by an applicant who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from exercising any discretion to deny an application for an open carry license under Penal Codes § 26150 and § 26155 for self-protection

outside of the home by an applicant who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing the “may issue”, “moral character” and “good cause” language for the issuance of license to carry a handgun for self-protection outside of the home as provided for in California Penal Codes § 26150 (a) and § 26155 (a) by an individual who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing the “may issue”, “moral character” and “good cause” language for the issuance of an open carry handgun license for self-protection outside of the home as provided for in California Penal Codes § 26150 (a) and § 26155 (a) by an individual who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing the “county of issuance” limitation of the validity and effectiveness of open carry licenses as provided for in California Penal Codes § 26150 (b) and § 26155 (b);

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing the restriction on the issuance of open carry licenses (i) based on county population size and (ii) to “counties having a population less than 200,000” as provided for in California Penal Codes § 26150 (b) and § 26155 (b);

- An Order preliminarily and permanently enjoining Defendant, his officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from enforcing California Penal Codes § 25850 and § 26350 against individuals who carry a handgun for self-protection outside of the home who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
- An Order preliminarily and permanently enjoining Defendant, their officers, agents, servants, employees, and all persons acting in concert with Defendant who receive actual notice of the injunction, from exercising discretion, interfering with and/or infringing upon the manner in which law-abiding individuals wear, carry, and possess their firearm in public under California Penal Codes § 26150 (b) and § 26155 (b) by delineating between open carry and concealed carry licenses;
- A declaration that the discretionary “moral character”, “good cause”, and “may issue” language of California Penal Codes § 26150 and § 26155 violates the Second Amendment;
- A declaration that the discretionary “moral character”, “good cause”, and “may issue” language of Penal Codes § 26150 and § 26155 violates the Second Amendment as applied to open carry licenses;
- A declaration that California Penal Codes § 26150 and § 26155 are unconstitutional and unenforceable as written generally and as applied to Plaintiffs and all individuals are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
- A declaration that California Penal Codes § 25850 and § 26350 are unconstitutional as applied to individuals who are not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
- A declaration that California Penal Codes § 25850 and § 26350 are unconstitutional as applied to individuals who have been issued a license to carry a handgun;

- A declaration that California Penal Codes § 25850 and § 26350 are unenforceable against law-abiding individuals who have been issued an open carry license;
- Reasonable statutory attorney's fees, costs, and disbursements, under 42 USC § 1988 and any other applicable law; and
- Grant such further and alternative relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 20, 2020

THE BELLANTONI LAW FIRM, PLLC

\_\_\_\_\_/s/ Amy L. Bellantoni, Esq.\_\_\_\_\_  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK BAIRD, et al.,  
Plaintiffs,  
v.  
XAVIER BECERRA, et al.,  
Defendants.

No. 2:19-cv-00617-KJM-AC

ORDER

In this case brought under 42 U.S.C. § 1983, plaintiffs challenge the constitutionality of California’s open carry licensing regime under the Second, Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution. Plaintiffs move for a preliminary injunction on their Second Amendment claim and defendants move to dismiss plaintiffs’ other constitutional claims. The court resolves the motion for a preliminary injunction and the motion to dismiss below.

I. BACKGROUND

California Penal Code section 26350 criminalizes the act of publicly carrying an unloaded firearm, and section 25850 criminalizes the act of publicly carrying a loaded firearm. There is an exception to these rules that allows an individual to publicly carry a firearm without a license, where the individual “reasonably believes that any person or the property of any person is

1 in immediate, grave danger and that the carrying of the weapon is necessary for the preservation  
2 of that person or property,” and local law enforcement has had a chance to respond. Cal. Pen.  
3 Code § 26045;<sup>1</sup> Mot. to Dismiss (“MTD”), ECF No. 10-1, at 9. Additionally, California has  
4 established a firearm licensing scheme at Penal Code sections 26150 to 26155. To qualify for a  
5 concealed carry<sup>2</sup> permit, the law requires that an applicant demonstrate: (1) good moral character;  
6 (2) “good cause exists for issuance of the license”; (3) residency in the county or city to which  
7 she is applying; and (4) completion of necessary training. Cal. Penal Code §§ 26150(a) &  
8 26155(a). Where the population of a county is less than 200,000 persons, a county sheriff or head  
9 of a municipal police department may issue an open carry permit subject to the same  
10 requirements as a concealed carry permit, with the permit valid only in the county of issuance.  
11 Cal. Penal Code § 26150(a), (b)(2); *id.* § 26155(a), (b)(2).

12 Plaintiff Baird is a resident of Siskiyou County, a county with less than 200,000  
13 residents, who meets all the requirements for a concealed carry or open carry license except, he  
14 alleges, the “good cause” requirement. Compl. ¶¶ 20, 25. Plaintiff wishes to carry a firearm in  
15 public openly, but alleges the Siskiyou County Sheriff has chosen not to make open carry licenses  
16 available in that county, exercising his discretion under the “may issue” language in California  
17 Penal Code sections 26150(b), 26155(b). *Id.* ¶¶ 39, 40, 43. Because plaintiff resides only in  
18  
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20 <sup>1</sup> The statute provides, in relevant part:

21 Nothing in Section 25850 is intended to preclude the carrying of any  
22 loaded firearm, under circumstances where it would otherwise be  
23 lawful, by a person who reasonably believes that any person or the  
24 property of any person is in immediate, grave danger and that the  
25 carrying of the weapon is necessary for the preservation of that  
26 person or property.

25 Cal. Pen. Code § 26045(a).

26 <sup>2</sup> The court uses the terms “concealed carry” and “open carry” to mean, respectively,  
27 carrying a concealed firearm on one’s person and carrying a firearm on one’s person openly and  
28 unconcealed. The court uses the term “public carry” to mean carrying a firearm in public, either  
in a concealed or unconcealed fashion.

1 Siskiyou County, he is not eligible to apply for an open carry license in any other county. *Id.*  
2 ¶ 47. Plaintiff Gallardo, a resident of Shasta County, makes similar allegations. *Id.* ¶¶ 53–82.

3 On April 9, 2019, plaintiffs filed the instant suit against the Attorney General  
4 challenging the constitutionality of California Penal Code sections 26150, 26155, 26350 and  
5 25850 under the dormant Commerce Clause and the Second, Fourth and Fourteenth  
6 Amendments. *See Compl.* As confirmed at hearing, plaintiffs have not named the sheriffs of  
7 their respective counties as defendants in this suit. As violations of the Second Amendment,  
8 plaintiffs challenge: (1) the requirement of “good cause” for an open carry license (claim 1), *id.*  
9 ¶¶ 254–56; (2) the provision limiting licenses’ validity to the county of issuance (claim 2), *id.*  
10 ¶¶ 257–259; (3) the restriction of the ability to open carry based on county population size (claim  
11 3), *id.* ¶¶ 260–62; (4) the provision that sheriffs “may issue” open carry licenses (claim 4), *id.*  
12 ¶¶ 138–42. *See also id.* ¶¶ 284–86 (claim 11) Plaintiffs also bring several other constitutional  
13 claims that derive from these challenges: (5) violation of the dormant Commerce Clause (claim  
14 5); violation of the Commerce Clause (claim 6); violation of the right to interstate travel (claims  
15 7, 8); violation of the Second, Fourth and Fourteenth Amendments (claims 9, 10); violation of  
16 procedural due process (claim 13); and violation of substantive due process (claim 14).

17 Defendants move to dismiss plaintiffs’ claims based on the dormant Commerce  
18 Clause and the Fourth and Fourteenth Amendments. MTD, ECF No. 10-1. Plaintiffs oppose,  
19 MTD Opp’n, ECF No. 19, and defendants have replied, MTD Reply, ECF No. 26. Plaintiffs also  
20 move for a preliminary injunction to prevent the enforcement of the aforementioned statutes,  
21 Prelim. Inj. Mot. (“PI Mot.”), ECF No. 14, defendants oppose, PI Opp’n, ECF No. 20, and  
22 plaintiffs have replied, PI Reply, ECF Nos. 27–28.

## 23 II. MOTION FOR PRELIMINARY INJUNCTION

24 Plaintiffs move for a preliminary injunction enjoining defendants from enforcing  
25 California Penal Codes sections 26150, 26155, 26350 and 25850, on the basis that the statutes  
26 violate the Second Amendment.<sup>3</sup> PI Mot. at 5.

27 \_\_\_\_\_  
28 <sup>3</sup> In a footnote, plaintiffs assert their preliminary injunction request is also based on  
“constitutional violations not relied upon herein,” but detailed in their complaint. Mot. Prelim.

1           A.     Legal Standard

2                     “A preliminary injunction is an extraordinary remedy never awarded as of right[.]”  
3     *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted), and should not  
4     be granted unless the movant carries the burden of proving this extraordinary remedy is warranted  
5     by clear and convincing evidence, *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (“A  
6     preliminary injunction . . . should not be granted unless the movant, by a clear showing, carries  
7     the burden of persuasion.” (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997))). In  
8     determining whether to issue a preliminary injunction, federal courts must consider whether the  
9     moving party “[1] is likely to succeed on the merits, . . . [2] is likely to suffer irreparable harm in  
10    the absence of preliminary relief, . . . [3] the balance of equities tips in [the movant’s] favor, and  
11    . . . [4] an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

12                     The Ninth Circuit has “also articulated an alternate formulation of the *Winter*  
13    test[.]” *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012). That formulation is referred to as  
14    the “serious questions” or the “sliding scale” approach: “‘serious questions’ going to the merits  
15    and a balance of hardships that tips sharply towards the plaintiff can support issuance of a  
16    preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable  
17    injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*,  
18    632 F.3d 1127, 1131–35 (9th Cir. 2011) (“[T]he ‘serious questions’ approach survives *Winter*  
19    when applied as part of the four-element *Winter* test.”). Under the “serious questions” approach  
20    to a preliminary injunction, “[t]he elements of the preliminary injunction test must be balanced,  
21    so that a stronger showing of one element may offset a weaker showing of another.” *Lopez*,  
22    680 F.3d at 1072. In each case and irrespective of the approach to a preliminary injunction, a  
23    court must balance the competing alleged harms while considering the effects on the parties of the  
24    granting or withholding of the injunctive relief. *Winter*, 555 U.S. at 24. In exercising that  
25    discretion, a court must also consider the public consequences of the extraordinary remedy. *Id.*

26    /////

27    \_\_\_\_\_  
28    Inj. at 5 n.1. Plaintiffs’ counsel clarified at hearing that the motion relies on the Second  
Amendment claim.

1           B.     Discussion

2                   1.     Likelihood of Success on the Merits

3                   In order to show a likelihood of success on the merits, plaintiffs must show the  
4 California’s regime likely violates the Second Amendment. Plaintiffs argue that strict scrutiny  
5 applies to any law that burdens one’s right to openly carry a firearm, based on their reading of the  
6 Supreme Court’s holdings in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald*  
7 *v. City of Chicago, Illinois*, 561 U.S. 742 (2010). Namely, plaintiffs argue, those cases define the  
8 “core component” of the Second Amendment right as “self-defense,” and therefore the right to  
9 carry a weapon in self-defense, even outside the home, is protected by the Second Amendment.  
10 PI Mot. at 7 (citing *Peruta v. County of San Diego*, 742 F.3d 1144, 1154 (9th Cir 2014)  
11 (*Peruta I*), *vacated en banc* by *Peruta v. Cty. of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016) (en  
12 banc) (*Peruta II*), *pet. for cert. denied*, 137 S. Ct. 1995 (2017)). Because the Second Amendment  
13 does not protect concealed carry, plaintiffs argue, open carry must be protected, and therefore,  
14 strict scrutiny should apply to any law that burdens one’s right to open carry. PI Mot. at 8–9  
15 (citing *Peruta II*, 824 F.3d 939). No controlling authority expressly supports this reading, and  
16 therefore plaintiffs cannot show a likelihood of success on the merits of their Second Amendment  
17 claims, as explained below.

18                   In *Heller*, the Supreme Court held the core protection of the Second Amendment is  
19 “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”  
20 554 U.S. at 635. In *McDonald*, the Court held the Second Amendment applied to the states  
21 through the Fourteenth Amendment and explained that *Heller* stands for the proposition that  
22 “individual self-defense is ‘the *central component*’ of the Second Amendment right.” 561 U.S. at  
23 767–68 (emphasis in original) (quoting *Heller*, 554 U.S. at 599). The Ninth Circuit has  
24 interpreted these two cases to mean the Second Amendment’s “core purpose” is to provide “self-  
25 defense in the home,” and has developed a two-step inquiry for reviewing Second Amendment  
26 challenges based on the degree to which a law burdens that “core” right. *Silvester v. Harris*, 843  
27 F.3d 816, 820–21 (9th Cir. 2016). To determine the proper level of scrutiny with which to review  
28 a challenged law that is subject to Second Amendment protection, the court must consider: (1)

1 “how close the challenged law comes to the core of the Second Amendment right, and (2) the  
2 severity of the law’s burden on that right.” *Id.* at 821 (citation omitted).

3 In *Peruta I*, the Ninth Circuit addressed the issue of whether the right to “bear  
4 arms” included the right to carry a firearm outside the home in the context of a challenge to the  
5 “good cause” requirement for a concealed carry permit in California. 742 F.3d at 1147–48 (citing  
6 Cal. Penal Code §§ 26150, 26155). The court concluded the Second Amendment protects the  
7 right to carry a firearm “in public for the lawful purpose of self-defense[.]” 742 F.3d at 1175  
8 (citing *Moore*, 702 F.3d at 941). However, two years later, in *Peruta II*, the court vacated and  
9 reversed *Peruta I* and held “the protection of the Second Amendment . . . simply does not extend  
10 to the carrying of concealed firearms in public by members of the general public.” 824 F.3d at  
11 927. Therefore, the court concluded, a “good cause” requirement for a concealed carry license  
12 does not violate the Second Amendment. *Id.* at 939. The court explicitly left open the “question  
13 whether the Second Amendment protects some ability to carry firearms in public, such as open  
14 carry.” *Id.* at 927.

15 In *Young v. Hawaii*, 896 F.3d 1044, 1068 (9th Cir. 2018), the court answered that  
16 question in part, holding “the Second Amendment encompasses a right to carry a firearm openly  
17 in public for self-defense” and that right is at the “core” of the Amendment. *Id.* at 1068, 1071.  
18 The Ninth Circuit has since granted rehearing en banc, *Young v. Hawaii*, 915 F.3d 681, 682 (9th  
19 Cir. 2019), and had stayed the en banc proceedings pending resolution of the Supreme Court’s  
20 decision in *New York State Rifle & Pistol Ass’n, Inc. v. City of New York, New York*, 140 S. Ct.  
21 1525, 152 (2020).<sup>4</sup> *Young v. Hawaii* (9th Cir.), No. 12-17808, ECF No. 219, 308 (scheduling oral  
22 argument September 24, 2020). As such, the original opinion in *Young v. Hawaii* is no longer  
23 precedential. *Young*, 915 F.3d at 682 (“The three-judge panel disposition in this case shall not be  
24 cited as precedent by or to any court of the Ninth Circuit.”).

25 /////

26 \_\_\_\_\_  
27 <sup>4</sup> *New York State Rifle* was recently remanded after the Supreme Court found the  
28 plaintiff’s claims for injunctive relief were mooted by a change in the New York statute. *New  
York State Rifle*, 140 S. Ct. at 152.

1           Thus, no controlling authority has held that the Second Amendment right protects  
2 an individual’s right to open carry. However, where “difficult legal questions require more  
3 deliberate investigation,” the court may grant a preliminary injunction to preserve the status quo  
4 so long as plaintiff demonstrates “that serious questions going to the merits were raised,” the  
5 balance of the hardships tips sharply in the plaintiff’s favor,” and plaintiff meets the other *Winter*  
6 requirements.

7           Upon review of the legal landscape relevant to plaintiffs’ constitutional argument,  
8 the court finds plaintiffs do raise “serious questions” going to the merits of their Second  
9 Amendment claim, and that this complex legal question requires further deliberation. The court  
10 makes this finding particularly in light of the likelihood that the Ninth Circuit will further clarify  
11 the scope of the Second Amendment as it applies to plaintiffs’ claims, in the relatively near  
12 future. For example, a similar dispute is the subject of another stayed appeal in *Nichols v.*  
13 *Newsom* (9th Cir.), No. 14-55873, ECF No. 119, which may soon be resolved in light of the  
14 Supreme Court’s *New York Rifle* decision. *See Nichols v. Harris*, 17 F. Supp. 3d 989 (C.D. Cal.  
15 2014) (rejecting similar challenge to California regime, based on *Peruta I*), *appeal pending sub*  
16 *nom.*, *Nichols v. Newsom* (9th Cir.), No. 14-55873; *see id.* at ECF No. 1199 (March 11, 2019)  
17 (submission of case remains vacated pending issuance of mandate in *Young v. Hawaii*); *see also,*  
18 *Flanagan v. Harris*, No. LACV1606164 JAK ASX, 2018 WL 2138462, at \*6 (C.D. Cal. May 7,  
19 2018) (rejecting challenge to same “good cause” requirement for open carry license), *appeal*  
20 *pending*, No. 18-55717 (9th Cir.); *see id.* at ECF No. 57 (July 30, 2019) (staying appeal pending  
21 resolution of *New York State Rifle*).

22           Furthermore, there is some support in the case law to suggest plaintiffs’ legal  
23 arguments have merit. For example, in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the  
24 Seventh Circuit struck down a law banning all public carry, concealed or open, finding that the  
25 Second Amendment “confers a right to bear arms for self-defense, which is as important outside  
26 the home as inside.” *Id.* at 935–36, 942; *see also Murphy v. Guerrero*, No. 1:14-CV-00026, 2016  
27 WL 5508998, at \*23 (D. N. Mar. I. Sept. 28, 2016) (following *Moore* and finding Second  
28 Amendment applies to some degree outside the home).



1 In sum, “Second Amendment law is evolving.” *Silvester v. Harris*, No. 1:11-CV-  
2 2137 AWI SAB, 2014 WL 6611592, at \*3 (E.D. Cal. Nov. 20, 2014). Taking plaintiffs’  
3 allegations as true, the challenged statutes effectively ban open carry in California, except in the  
4 case of immediate danger occurring directly outside one’s home. *See* Cal. Pen. Code § 26045. In  
5 light of the original holding in *Young*, the pending appeals in the Ninth Circuit, and the still-open  
6 question of whether and to what extent the Second Amendment protects a right to carry a firearm  
7 openly in public, the court finds plaintiffs’ Second Amendment claim raises serious questions  
8 going to the merits of their Second Amendment claim. Given this landscape and the existing  
9 authority in support of plaintiffs’ arguments, which is persuasive though not controlling, these  
10 questions are “substantial, difficult and doubtful, as to make them a fair ground for litigation and  
11 thus for more deliberative investigation,” and plaintiffs have a chance if not a “fair chance of  
12 success on the merits.” *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991).

13 C. Balance of Equities & Public Interest

14 Having found plaintiffs raise “serious questions going to the merits” of their  
15 Second Amendment claim, the court next considers the balance of equities and whether the public  
16 interest favors an injunction. These two factors merge when the government is the party  
17 opposing the injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiffs do not address this  
18 prong in depth, arguing the balance of hardships weighs in their favor, because they risk criminal  
19 penalties if they exercise their “right to self-protection via open carry.” PI Mot. at 21. The  
20 government argues the public interest “favors preserving the State’s duly enacted laws designed  
21 to protect the public safety and reduce gun violence.” PI Opp’n at 28 (citing *Tracy Rifle & Pistol*  
22 *LLC v. Harris*, 118 F. Supp. 3d 1182, 1193–94 (E.D. Cal. 2015)).

23 When balancing the hardships “of the public interest against a private interest, the  
24 public interest should receive greater weight.” *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1236  
25 (9th Cir. 1999) (internal quotation marks omitted). In assessing the burden on plaintiffs, the court  
26 considers the following: that plaintiffs are able keep guns in their homes without a license, *see*  
27 Baird Decl. ¶ 6, ECF No. 27-3; Gallardo Decl. ¶ 7, ECF No. 27-4; they would apparently be  
28 eligible for a concealed carry license if they could establish “good cause,” Cal. Pen. Code



1 § 26045; and California law allows them to carry a firearm near the home, if they are in  
2 immediate danger and local law enforcement does not respond, *see* Cal. Pen. Code § 26045(a).  
3 Moreover, as plaintiffs’ counsel represented at hearing, the harm plaintiffs suffer from the lack of  
4 an injunction has been ongoing since the Mulford Act was signed in 1967, suggesting the harm is  
5 not imminent or life-threatening. *See* Cal. A.B. 1591 (April 5, 1967) (amending Cal. Penal Code  
6 § 12031 to repealing law that allowed for open carry of loaded firearms). Plaintiffs’ hardship is  
7 weighed against the hardship to defendant, who will be prevented from enforcing a law intended  
8 to “protect public safety and reduce gun violence.” Opp’n at 28.

9           The court in *Rupp v. Becerra*, No. 817CV00746 JLS JDE, 2018 WL 2138452, at  
10 \*13 (C.D. Cal. May 9, 2018), conducted a similar balancing exercise when it considered a  
11 challenge to the Assault Weapons Control Act, which banned certain weapons in California.  
12 2018 WL 2138452, at \*1–3 (assessing Cal. Penal Code §§ 30510, 30680, 30900(b)(1), 30915).  
13 The court found the balance of hardships weighed in the state’s favor, even though plaintiff’s  
14 Second Amendment rights were implicated, because the state would suffer harm from being  
15 “enjoined from enforcing a law intended to increase public safety.” *Id.*, at \*13. In contrast, in  
16 addressing a preliminary injunction motion challenging a state law that criminalized the  
17 possession of high-capacity magazines, the court in *Duncan v. Becerra*, 265 F. Supp. 3d 1106,  
18 1136 (S.D. Cal. 2017), *aff’d*, 742 F. App’x 218 (9th Cir. 2018), did not discuss the hardship on  
19 the state. Rather, the court focused on the possible criminal sanctions plaintiff would face for  
20 failure to dispossess themselves of the newly-banned magazines and found the balance of  
21 hardships weighed in plaintiffs’ favor. Here, plaintiffs do not face any criminal sanctions for  
22 failure to act, making the reasoning in *Duncan* less persuasive in the context of this case.

23           Furthermore, the potential harm to the government and the public interest here is  
24 significant. *See* PI Opp’n at 28 (citing *Tracy Rifle & Pistol*, 118 F. Supp. 3d at 1193–94). As the  
25 court in *Tracy Rifle* explained, “[t]he costs of being mistaken, on the issue of whether the  
26 injunction would have a detrimental effect on handgun crime, violence, and suicide, would be  
27 grave. These costs would affect members of the public, and they would affect the Government  
28 which is tasked with managing handgun violence.” 118 F. Supp. 3d at 1193–94. By contrast, the

1 harm from complying with the challenged laws “appears to render little harm to Plaintiffs, outside  
2 of the inherent harm imposed by a violation of their [Second] Amendment Rights.” *Id.*

3 For these reasons, following the Ninth Circuit’s guidance in *F.T.C.* and  
4 considering plaintiffs’ available options for self-defense, plaintiffs have not shown the “balance  
5 of hardships . . . tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies*, 632 F.3d at  
6 1131–35 (9th Cir. 2011)

7 D. Conclusion

8 Though plaintiffs have raised “serious questions” going to the merits of their  
9 Second Amendment claim, the balance of equities does not tip “sharply” in their favor.  
10 Accordingly, the court declines to issue a preliminary injunction. The motion is DENIED  
11 without prejudice to plaintiff’s re-filing their request after the Ninth Circuit decides one of the  
12 aforementioned stayed appeals, if that decision affects plaintiffs’ legal grounds for an injunction  
13 such that reconsideration is warranted, and assuming an operative complaint asserts claims on  
14 which an injunction can rest.

15 III. MOTION TO DISMISS

16 A. Legal Standard

17 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may move to  
18 dismiss a complaint for “failure to state a claim upon which relief can be granted.” A court may  
19 dismiss “based on the lack of cognizable legal theory or the absence of sufficient facts alleged  
20 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
21 1990) (citation omitted).

22 Although a complaint need contain only “a short and plain statement of the claim  
23 showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), in order to survive a motion  
24 to dismiss this short and plain statement “must contain sufficient factual matter . . . to ‘state a  
25 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting  
26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something  
27 more than “an unadorned, the-defendant-unlawfully-harmed-me accusation” or “‘labels and  
28 conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’” *Id.* (quoting

1 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to dismiss  
2 for failure to state a claim is a “context-specific task that requires the reviewing court to draw on  
3 its judicial experience and common sense.” *Id.* at 679. Ultimately, the inquiry focuses on the  
4 interplay between the factual allegations of the complaint and the dispositive issues of law in the  
5 action. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

6 In making this context-specific evaluation, this court must construe the complaint  
7 in the light most favorable to the plaintiffs and accept as true the factual allegations of the  
8 complaint. *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007). This rule does not apply to “a legal  
9 conclusion couched as a factual allegation,” *Papasan v. Allain*, 478 U.S. 265, 286 (1986) *quoted*  
10 *in Twombly*, 550 U.S. at 555, nor to “allegations that contradict matters properly subject to  
11 judicial notice” or to material attached to or incorporated by reference into the complaint.  
12 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988–89 (9th Cir. 2001), *as amended on denial*  
13 *of rehearing at 275 F.3d 1187* (9th Cir. 2001). A court’s consideration of documents attached to  
14 a complaint or incorporated by reference or matter of judicial notice will not convert a motion to  
15 dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 907-08  
16 (9th Cir. 2003); *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *compare*  
17 *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002) (noting that even  
18 though court may look beyond pleadings on motion to dismiss, generally court is limited to face  
19 of the complaint on 12(b)(6) motion).

20 Defendants move to dismiss claims 5 through 8 and 12 through 14 on the grounds  
21 plaintiffs fail to state a claim for relief. In addition, defendants move to dismiss plaintiffs’ Fourth  
22 and Fourteenth Amendment allegations in claims 9 and 10. The court addresses each of these  
23 claims of plaintiffs below.

24 B. Dormant Commerce Claims (Claims 5 & 6)

25 Plaintiffs bring two claims based on the dormant Commerce Clause: claims 5 and  
26 6. In their opposition, plaintiffs withdraw their Dormant Commerce Clause claims. MTD Opp’n  
27 at 6 n.1; *see also Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 737 (9th Cir. 2017)  
28 (“[I]ntrastate commerce is beyond the scope of the Dormant Commerce Clause[.]”), *cert. denied*

1 *sub nom. Nationwide Biweekly Admin., Inc. v. Hubanks*, 138 S. Ct. 1698 (2018). Accordingly,  
2 claims 5 and 6 are DISMISSED with prejudice.

3 C. Intrastate Travel Claims (Claims 7 & 8)

4 “The Supreme Court has recognized a fundamental right to interstate travel.” *See*  
5 *Miller v. Reed*, 176 F.3d 1202, 1205 (9th Cir. 1999) (citing *Attorney General of New York v.*  
6 *Soto-Lopez*, 476 U.S. 898, 903 (1986) (Brennan, J., plurality opinion)); *see also United States v.*  
7 *Guest*, 383 U.S. 745, 759 (1966) (“Although there have been recurring differences in emphasis  
8 within the Court as to the source of the constitutional right of interstate travel . . . . All have  
9 agreed that the right exists.”). As plaintiffs admit, “[n]either the Supreme Court nor the Ninth  
10 Circuit have yet decided the issue of the right to intra-state travel.” MTD Opp’n at 18.  
11 Nevertheless, plaintiffs argue it is “plausible” that the Constitution protects the “right of the law-  
12 abiding person to travel freely within [] his/her own state” unrestricted. *Id.* at 18–19.

13 Claims 7 and 8 respectively allege that California has banned open carry  
14 (1) outside of one’s own county and (2) in counties with populations over 200,000. *Id.* at 19.  
15 According to plaintiffs, these requirements are unconstitutional because they force plaintiffs to  
16 choose between their Second Amendment right to carry a weapon openly and their right to travel  
17 outside their county of residence. *Id.* Therefore, the success of plaintiffs’ claim depends on the  
18 resolution of two open questions of constitutional law: whether there is a Second Amendment  
19 right to open carry and whether there is a constitutional right to intrastate travel.

20 Even assuming the Constitution protects both rights, plaintiffs would have to show  
21 the statutes they challenge penalize travel by denying a “very important benefit [or] right” to  
22 those who travel outside their counties. *See Attorney Gen. of New York v. Soto-Lopez*, 476 U.S.  
23 898, 907 (1986). The “very important . . . right” plaintiffs argue is threatened is the right to bear  
24 arms unconcealed for self-defense in public. However, the right recognized by the existing case  
25 law is the right to “bear” arms in public for self-defense, *McDonald*, 561 U.S. at 767; that right is  
26 not denied as a result of plaintiffs’ traveling outside their home counties, because a concealed  
27 carry permit is not limited to one’s county of residence, but is valid throughout California. *See*  
28 Cal. Pen. Code § 26150 (a). Only open carry licenses are limited to the county of issuance. *Id.*

1 § 26150(b)(2). In other words, by traveling outside their counties, plaintiffs are “penalized” only  
2 by having to switch from openly carrying their weapons to carrying them concealed. Plaintiffs  
3 have not cited, nor has the court located any viable authority suggesting there is a right to one  
4 method of “bearing” arms over another, with the possible exception of the vacated decision in  
5 *Young v. Hawaii*, 896 F.3d at 1070, which is not authoritative. *Peruta II*, 824 F.3d at 946  
6 (Callahan, J., dissenting) (“While states may choose between different manners of bearing arms  
7 for self-defense, the right [to bear arms for self-defense] must be accommodated.”).

8 Assuming the right to open carry is an “important right,” plaintiffs’ right to travel  
9 argument is still untenable. The basis of plaintiffs’ Second Amendment, Fourth Amendment and  
10 Fourteenth Amendment claims is that they are unable to obtain an open carry license because the  
11 sheriff in each of their counties refuses to issue them. *See* Compl. ¶¶ 39, 68–70. Plaintiffs do not  
12 plead they have obtained or could obtain an open carry license within their counties. *See*  
13 *generally* Compl. Plaintiffs cannot be deprived of an open carry license as a result of travel if  
14 they have never had a license or cannot obtain one in the first place. Therefore, plaintiffs have  
15 not pled facts showing they have been or will be penalized for traveling outside their counties,  
16 and thus have not sufficiently pled they have standing to bring their intrastate travel claims.  
17 Claims 7 and 8 are DISMISSED. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992)  
18 (requiring “actual or imminent” injury).

19 D. Fourth Amendment Unreasonable Seizure Claim (Claims 9, 10 & 12)

20 Plaintiffs allege the challenged statutes violate their Fourth Amendment rights  
21 because the statutes interfere with their “possessory and liberty interests” in their firearms by  
22 controlling how plaintiffs “wear, carry, or possess their handgun in public” and preventing them  
23 from “fully us[ing] and enjoy[ing] their property.” MTD Opp’n at 9.

24 The Fourth Amendment protects against “unreasonable searches and seizures.”  
25 *Virginia v. Moore*, 553 U.S. 164, 168 (2008). A “‘seizure’ of property occurs when there is some  
26 meaningful interference with an individual’s possessory interests in that property.” *United States*  
27 *v. Jacobsen*, 466 U.S. 109, 113 n.5 (1984). One can have a legitimate possessory interest in a  
28 lawfully owned handgun. *See Stutes v. Parrish*, No. 14-CV-02016-LHK, 2015 WL 8770720, at

1 \*6 (N.D. Cal. Dec. 15, 2015); *but see United States v. Janik*, 723 F.2d 537, 547 (7th Cir.  
2 1983) (no lawful property interest in unregistered gun); *United States v. Uu*, 293 F. Supp. 3d  
3 1209, 1214 (D. Haw. 2017) (defendant has diminished possessory interest in “contraband (such as  
4 the firearm)”); *cf. Nichols v. Harris*, 17 F. Supp. 3d 989, 1008–09 (C.D. Cal. 2014) (finding no  
5 reasonable expectation of privacy in one’s publicly carried firearm). Plaintiffs allege they own  
6 their firearms lawfully, but challenge the state’s ability to regulate how they use those firearms.

7 Plaintiffs’ Fourth Amendment claim is atypical in that it does not challenge a state  
8 actors’ physical interference with plaintiffs’ firearms, but rather a regulation forbidding certain  
9 ways of using a firearm. The parties have identified one controlling case involving a Fourth  
10 Amendment challenge to a regulation; it does not support plaintiffs’ claims. In *Cedar Point*  
11 *Nursery v. Shiroma*, 923 F.3d 524 (9th Cir. 2019), plaintiff brought a Fourth Amendment  
12 challenge against a regulation allowing union organizers access to the plaintiff company’s  
13 property under certain, limited circumstances. Plaintiffs argued the regulation constituted a  
14 meaningful interference with their possessory interests in their property. *Id.* at 535. The court  
15 found the “controlled, non-disruptive visits” limited “in time, place, and number of union  
16 organizers” at issue there did not constitute a meaningful interference in plaintiffs’ possessory  
17 interest in the property. *Id.* at 536. By contrast, the Ninth Circuit has recognized that “constant  
18 physical occupation” such as when a regulation allows the public to “freely and regularly”  
19 trespass on one’s land would constitute a meaningful interference with one’s possessory interest  
20 in one’s property such that a seizure occurs. *Presley v. City of Charlottesville*, 464 F.3d 480, 487  
21 (4th Cir. 2006) (quoted in *Cedar Point Nursery*, 923 F.3d at 535); *see also Soldal v. Cook Cty.*,  
22 *Ill.*, 506 U.S. 56, 72 (1992) (removing mobile home from its foundation and towing to another  
23 location was seizure); *Freeman v. City of Dallas*, 242 F.3d 642, 647 (5th Cir. 2001) (demolition  
24 of plaintiffs’ apartment buildings was seizure); *Severance v. Patterson*, 566 F.3d 490, 502 (5th  
25 Cir. 2009) (plaintiff’s allegation that State appropriated an easement over her beachfront property  
26 sufficiently alleged potential seizure to survive motion to dismiss)). Even assuming  
27 the regulations at issue effectively ban open carry in California, the factual allegations here are  
28

1 still more like those underlying *Cedar Point Nursery* than *Presley*. Plaintiffs are still able to  
2 “possess” their licensed firearms in a limited manner; they are limited to keeping them in their  
3 home and, when they can meet the requirements for concealed carry, they may possess them  
4 concealed in public. The challenged statutes do not “deprive[] [plaintiffs] of the use of [their]  
5 property” *Presley*, 464 F.3d at 487, such that they meaningfully interfere with their possessory  
6 interest in the firearms.

7  
8 This conclusion is bolstered by the Supreme Court’s decision in *Heller*, in which  
9 the Court explained that “[l]ike most rights, the right secured by the Second Amendment is not  
10 unlimited.” *Heller*, 554 U.S. at 626. “For example,” the Court goes on, “the majority of the 19th-  
11 century courts to consider the question held that prohibitions on carrying concealed weapons were  
12 lawful under the Second Amendment or state analogues.” *Id.* The Court endorsed certain  
13 regulations on the possession of firearms, such as “laws forbidding the carrying of firearms in  
14 sensitive places such as schools and government buildings, or laws imposing conditions and  
15 qualifications on the commercial sale of arms.” *Id.* at 626–27. Such an endorsement can be fairly  
16 read to imply one’s constitutionally protected property interest in a firearm, including one’s  
17 Second Amendment right to keep a firearm, is necessarily limited. *Id.*

18 Therefore, a Fourth Amendment challenge is not legally cognizable here, because  
19 plaintiffs have not alleged a search or seizure has occurred. Defendants’ motion to dismiss  
20 plaintiffs’ ninth, tenth and twelfth claims are DISMISSED, to the extent they rely on a claim  
21 under the Fourth Amendment. *Hill v. Opus Corp.*, 841 F. Supp. 2d 1070, 1082 (C.D. Cal. 2011)  
22 (court may dismiss portion of claim, while allowing remainder to proceed).

23 E. Substantive Due Process Claim (Claims 9, 10 and 14)

24 Substantive due process “prevents the government from engaging in conduct that  
25 ‘shocks the conscience,’ or interferes with rights ‘implicit in the concept of ordered liberty.’”  
26 *United States v. Salerno*, 481 U.S. 739, 746 (1987) (citations omitted). “To establish a  
27 substantive due process claim, a plaintiff must, as a threshold matter, show a government  
28



1 deprivation of life, liberty, or property.” *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th  
2 Cir. 1998).

3 Plaintiffs allege defendants “are violating a core fundamental human right  
4 protected by the Fourteenth Amendment, to wit, Plaintiffs’ substantive right to due process by  
5 enacting and enforcing a statutory scheme having criminal penalties that removes Plaintiffs’  
6 ability to decide how to carry their private property while in public.” Compl. ¶ 295. Plaintiffs do  
7 not identify any authority to support the proposition that there is a substantive due process right to  
8 “decide how to carry [one’s] private property while in public.” *Id.*; MTD Opp’n at 11–15. In  
9 their opposition and at hearing, plaintiffs conceded that their substantive due process claim is, in  
10 part, derivative of their Fourth Amendment claim. MTD Opp’n at 12 (statutes “constitute a  
11 blanket deprivation of Fourth and Fourteenth Amendment rights”). The balance of plaintiffs’  
12 argument relies on a right to self-defense, which plaintiffs confirmed at hearing is essentially a  
13 claim based on the Second Amendment. *See, e.g., id.* (“The basic human right of survival  
14 encompasses the right to make tactical decisions for yourself regarding how to carry, wear, and  
15 possess your handgun for the preservation of your own life, liberty, safety, and bodily integrity.”);  
16 *id.* at 13 (“How to carry one’s firearm outside of the home is a daily, personal, decision entered  
17 into intentionally . . . the effects of which will have a measurable impact on one’s ability to . . .  
18 effectively protect one’s life, liberty, personal safety, and bodily integrity.”). In other words,  
19 plaintiffs attempt to shoehorn their Fourth and Second Amendment claims into a substantive due  
20 process claim.

21 “The Supreme Court has long foreclosed this type of claim.” *Wilson v. Holder*,  
22 7 F. Supp. 3d 1104, 1122 (D. Nev. 2014), *aff’d sub nom. Wilson v. Lynch*, 835 F.3d 1083 (9th  
23 Cir. 2016). “Where a particular Amendment provides an explicit textual source of constitutional  
24 protection against a particular sort of government behavior, that Amendment, not the more  
25 generalized notion of substantive due process, must be the guide for analyzing these  
26 claims.” *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (internal quotation marks omitted)  
27 (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)); *see also Fontana v. Haskin*, 262 F.3d  
28 871, 882 (9th Cir. 2001) (“If a constitutional claim is covered by a specific constitutional



1 provision . . . the claim must be analyzed under the standard appropriate to that specific provision,  
2 not under the rubric of substantive due process.” (quoting *County of Sacramento v. Lewis*,  
3 523 U.S. 833, 843 (1998))).

4 Claim 14 is therefore DISMISSED without prejudice. To the extent claims 9 and  
5 10 are also based on the substantive due process element of the Fourteenth Amendment, these  
6 claims are also DISMISSED in part without prejudice.

7  
8 F. Procedural Due Process Claim (Claim 13)

9 “When government action depriving a person of life, liberty, or property survives  
10 substantive due process scrutiny, it must still be implemented in a fair manner. This requirement  
11 has traditionally been referred to as ‘procedural’ due process.” *Salerno*, 481 U.S. at 746. To  
12 successfully allege a procedural due process claim, plaintiffs must provide sufficient facts  
13 establishing the plausible existence of two elements: “(1) a deprivation of a constitutionally  
14 protected liberty or property interest, and (2) a denial of adequate procedural protections.”  
15 *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998).

16 Given that whether plaintiffs have a constitutionally protected right to open carry  
17 is still an open question, the court assumes without deciding that plaintiffs have adequately  
18 alleged a deprivation of a constitutionally protected liberty or property interest for the purpose of  
19 a procedural due process claim, and finds plaintiffs have adequately pled “a denial of adequate  
20 procedural protections.” Though it is unclear from plaintiffs’ briefing and oral argument what  
21 procedure plaintiffs believe should be afforded, the complaint’s general allegations suggest the  
22 claim is based on the lack of a meaningful “administrative appeal process available for  
23 challenging [the sheriffs’] denial of [plaintiffs’] applications for an open carry license.” Compl.

24 ¶¶ 42–43.<sup>5</sup>

25 \_\_\_\_\_  
26 <sup>5</sup> The court cautions the parties against attempting to cure deficiencies in the briefing by  
27 “incorporate[ing] the Complaint fully by reference” in a footnote. *See* MTD Opp’n at 7 n.3.  
28 Nonetheless, the court is careful to review the allegations in the complaint itself when  
adjudicating a motion to dismiss and disregards any argument that substantively departs from  
those allegations.

1           The court finds plaintiffs have sufficiently stated a claim for a violation of  
2 procedural due process at this stage. *See Fisher v. Kealoha*, 869 F. Supp. 2d 1203, 1217, 1223  
3 (D. Haw. 2012) (denying motion to dismiss where plaintiff alleged violation of Second  
4 Amendment right to “bear operational firearms and ammunition” without “minimal due process  
5 protections such as the opportunity to participate in the decision-making process, and a means to  
6 seek review of the denial of his application”). Therefore, defendants’ motion to dismiss Claim 13  
7 is DENIED. However, to the extent plaintiffs amend their complaint as provided by this order,  
8 they may also amend to clarify the basis of Claim 13.

9 IV.           CONCLUSION

10           Plaintiffs’ motion for a preliminary injunction is DENIED without prejudice, as  
11 described above. Defendants’ motion to dismiss is GRANTED in part and denied in part as  
12 follows:

- 13           1.       Claims 5 and 6 are DISMISSED;
- 14           2.       Claims 7 and 8 are DISMISSED;
- 15           3.       Claims 9, 10, 12 and 14 are DISMISSED to the extent they rely on the  
16           Fourth or Fourteenth Amendments; and
- 17           4.       The motion to dismiss is DENIED as to claim 13.

18           Plaintiffs shall file any amended complaint within 21 days of this order. The  
19 parties shall file a joint status report regarding the future scheduling of this case within 30 days of  
20 this order. *See* E.D. L.R. 240.

21           This order resolves ECF Nos. 10 and 14.

22           IT IS SO ORDERED.

23 DATED: August 28, 2020.

24  
25   
26 \_\_\_\_\_  
27 CHIEF UNITED STATES DISTRICT JUDGE  
28

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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 MARK BAIRD and  
17 RICHARD GALLARDO,  
18 Plaintiffs,

19 v.

20 XAVIER BECERRA, in his official  
21 capacity as Attorney General of the State of  
22 California, and DOES 1-10,

23 Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
42 U.S.C. §§ 1983, 1988**

24 NOW COME Plaintiffs, MARK BAIRD and RICHARD GALLARDO, by and through  
25 their counsel, and allege against Defendants California Attorney General Xavier Becerra and  
26 Does 1-10 as follows:

27 1. This is an action for declaratory and injunctive relief proximately caused by  
28 California's statutory firearms licensing scheme and the actions of the defendants for violations of  
Plaintiffs' fundamental human rights under, *inter alia*, the Second, Fourth, and Fourteenth  
Amendments to the United States Constitution pursuant to 42 U.S.C. §1983.

1 **JURISDICTION AND VENUE**

2 2. The Court’s jurisdiction over Plaintiffs’ federal claims is authorized pursuant to 28  
3 U.S.C. §1331 and §1343.

4 3. The Court’s jurisdiction over Plaintiffs’ claims for injunctive and declaratory relief is  
5 authorized by 28 U.S.C. §2201 and §2202.

6 4. The Court’s jurisdiction over Plaintiffs’ federal claims and for statutory attorney’s fees  
7 is authorized pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988.

8 5. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2) because a  
9 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.  
10

11 **THE PARTIES**

12 6. Plaintiff, MARK BAIRD (“Plaintiff” or “Mr. Baird”) is a United States citizen and a  
13 resident of Siskiyou County, California.

14 7. Plaintiff, RICHARD GALLARDO (“Plaintiff” or “Mr. Gallardo”) is a United States  
15 citizen and a resident of Shasta County, California.

16 8. Defendant XAVIER BECERRA (“Defendant” or “Defendant Becerra”) is the Attorney  
17 General of the State of California. Defendant Becerra is sued herein in his official capacity only.  
18 Pursuant to California State Constitution Article V, Section 13, as the Attorney General for the  
19 State of California, Defendant is the chief law enforcement officer of the State whose duty it is to  
20 ensure that the laws of the State are uniformly and adequately enforced.  
21

22 9. Defendant Becerra has direct supervision over every district attorney and sheriff and  
23 over such other law enforcement officers as may be designated by law, in all matters pertaining to  
24 the duties of their respective offices, and may require any of said officers to make reports  
25 concerning the investigation, detection, prosecution, and punishment of crime in their respective  
26 jurisdictions as to Defendant may seem advisable.  
27  
28

1 10. Whenever in the opinion of Defendant Becerra any law of the State is not being  
2 adequately enforced in any county, it shall be Defendant’s duty to prosecute any violations of law  
3 of which the superior court shall have jurisdiction. In such cases Defendant shall have all the  
4 powers of a district attorney. When required by the public interest or directed by the Governor,  
5 Defendant shall assist any district attorney in the discharge of the duties of that office.  
6

7 11. Becerra and Defendants “DOES 1-10” are personally and otherwise responsible for  
8 formulating, executing, and administering the California Penal Code, which include those related  
9 to the possession of firearms, licensing, and manner of carry.

10 12. The true names or capacities of Defendants DOES 1-10, whether individual,  
11 corporate, or otherwise, are presently unknown to Plaintiffs and are therefore sued herein as  
12 “Does 1-10”.  
13

14 13. Plaintiffs reserve the right to request leave of the Court to amend this complaint to  
15 identify the true names and/or capacities of one or more of Defendants Does 1-10 within a  
16 reasonable time of discovering their identities.

17 **STATEMENT OF FACTS**

18 14. In every county in California having a population under 200,000, where a law-abiding  
19 individual has met the criteria for the issuance of an open carry license, the Sheriff of such county  
20 has discretion to deny the application due to the “may issue” language of the statutes. (Penal  
21 Codes §26150 and §26155).  
22

23 15. The California Department of Justice (“DOJ”) creates and provides to the state  
24 Sheriff’s Offices standard Concealed Carry (“CCW”) Application Forms.

25 16. The California DOJ has not created, does not provide to the public via its website, and  
26 does not distribute to the various Sheriff’s Offices in the state, a standard application for an open  
27 carry license.  
28

1 17. None of the counties in California that have populations of less than 200,000 people  
2 (aka “26150(b)(2) counties”) have issued open carry licenses since 2012.

3 18. California Penal Code §26225 requires that a copy of all firearms licenses issued in  
4 each county (open carry and concealed carry) be “filed immediately” with the DOJ.

5 19. For the time period encompassing 2012 to the present, the DOJ’s records reflect no  
6 open carry licenses have been issued in the State of California.

7  
8 ***Plaintiff Mark Baird: Siskiyou County***

9 20. Plaintiff Mark Baird is an individual of unquestionably good moral character, a law-  
10 abiding citizen, and has never been charged with, summoned, or arrested for any violation of the  
11 California State Penal Code or any other criminal offense.

12 21. Mr. Baird does not hold a California firearm license and does not fall within any of  
13 the exemptions to the California Penal Code sections criminalizing the possession of firearms,  
14 whether loaded or unloaded.

15 22. Mr. Baird possesses firearms in his home for self-defense. Under California law, no  
16 license is required to possess a firearm in one’s home for self-defense.

17 23. Mr. Baird seeks to carry a handgun loaded and exposed (hereinafter “open carry”) for  
18 self-defense outside of his home and in public.

19 24. Mr. Baird seeks to carry a firearm loaded and exposed for self-defense in public  
20 without the need to demonstrate any “cause” or “reason” for the issuance thereof.

21 25. Mr. Baird is a resident of the County of Siskiyou, California, which according to the  
22 most recent federal census has a population of less than 200,000 people. Based on the population  
23 of Siskiyou County, its residents are eligible to apply for an open carry firearm license under  
24 California’s statutory firearms licensing scheme.  
25  
26  
27  
28

1            ***Siskiyou County Application Process Devoid of “Open Carry” Option***

2            26. The Siskiyou County written criteria for the issuance of a carry license does not  
3 contain an option for applying for an open carry license.

4            27. The Siskiyou County written instructions for a “carry” license only identify an option  
5 for concealed carry, not open carry.

6            28. The Siskiyou County handgun licensing procedure has no option for a law-abiding  
7 individual to apply for an open carry license.

8            29. The Siskiyou County Sheriff’s Office Information Form is entitled, “CONCEALED  
9 WEAPON LICENSE RENEWAL/CHANGE”.

10           30. The Siskiyou County Sheriff’s Office has no form for an “Open Carry Renewal/  
11 Change”.

12           31. The second page of the Siskiyou County Sheriff’s Office Information Form indicates,  
13 “Signature of CCW holder”.

14           32. There are no forms used by the Siskiyou County Sheriff’s Office, or available to the  
15 law-abiding residents of Siskiyou County, for the purpose of applying for an “Open Carry”  
16 handgun license.

17           33. The Siskiyou County Sheriff’s website only provides “Concealed Carry Weapon  
18 Information”, and not “Open Carry Weapon Information”. The Siskiyou County Sheriff’s website  
19 has no information related to obtaining and/or applying for an open carry license.

20           34. The Siskiyou County Sheriff’s Office provides to carry license applicants an  
21 approved firearm application form issued by the State of California Department of Justice (the  
22 “DOJ Application”). The DOJ Application contains a section for the applicant to indicate the type  
23 of license being applied for, which is to be filled out by the applicant.

1           35. The “type of license” section on the DOJ Application handed out by the Siskiyou  
2 County Sheriff’s Office is pre-populated by the Siskiyou County Sheriff’s Office and indicates,  
3 “STANDARD CCW”.

4           36. By filling in the “type of license” section on the DOJ Application, the Siskiyou  
5 County Sheriff’s Office eliminates the ability for Siskiyou County residents to apply for an open  
6 carry license.  
7

8           37. By filling in the “type of license” section on the DOJ Application, the Siskiyou  
9 County Sheriff’s Office purposely conceals from its residents their right to choose the type of  
10 handgun license to apply for, to wit, open carry.

11           38. On more than one occasion, Mr. Baird applied to Siskiyou County Sheriff Jon Lopey  
12 (“Sheriff Lopey”) for an open carry license for self-defense in public pursuant to California Penal  
13 Code §26150.  
14

15           39. Sheriff Lopey has denied each of Mr. Baird’s requests for an open carry firearms  
16 license.

17           40. In Siskiyou County, even where an applicant has met the criteria for the issuance of  
18 an open carry license, the “may issue” language of California’s licensing scheme gives Sheriff  
19 Lopey the authority to deny the application. (Penal Code §26150(b)).  
20

21           41. Mr. Baird has met the criteria for the issuance of an open carry license, yet Sheriff  
22 Lopey has denied his applications. Sheriff Lopey was authorized to deny Mr. Baird’s applications  
23 because California’s licensing scheme contains the language “may issue”. (Penal Code  
24 §26150(b)). Upon information and belief, Sheriff Lopey’s described conduct is performed at the  
25 direction of and/or with the knowledge and approval of Defendant Becerra.

26           42. There is no administrative appeal process available for challenging Sheriff Lopey’s  
27 denial of Mr. Baird’s applications for an open carry license.  
28



1 43. Even if there were an available administrative appeal process to challenge Sheriff  
2 Lopey's denial of Mr. Baird's application for an open carry license, such 'process' would be  
3 futile because Sheriff Lopey informed Mr. Baird that he will not issue "open carry" licenses.

4 44. Upon information and belief, Sheriff Lopey has not issued any open carry firearm  
5 licenses during his tenure as Sheriff of Siskiyou County.

6 45. If the language of California's licensing scheme provided that the Sheriffs "shall  
7 issue" an open carry license to applicants who meet the criteria under Penal Code §26150(a) for  
8 the issuance thereof, Sheriff Lopey would be required by law to issue an open carry license to Mr.  
9 Baird.

10 46. Mr. Baird would apply for an open carry license in a county other than Siskiyou  
11 County, but is prohibited by California Penal Code 26150(b)(2). California law requires open  
12 carry license applications be made in the county of residence. Mr. Baird's application for an open  
13 carry license in another county would be futile as none of the Sheriff Offices in California will  
14 issue an open carry license.

15 47. Mr. Baird does not have a residence outside of Siskiyou County and is, therefore  
16 ineligible under §26150 and/or §26155 to apply for an open carry license in any other county.

17 48. Mr. Baird seeks to carry a firearm loaded and exposed for self-protection outside of  
18 Siskiyou County, but is precluded by California State Penal Code §26150(b) and 26155(b), which  
19 provide that an open carry license is only valid in the county of issuance.

20 49. If Mr. Baird is ultimately issued an open carry license, his Second Amendment right  
21 to possess firearms for self-protection in public will exist only within Siskiyou County. The  
22 moment Mr. Baird steps over the line from Siskiyou County into any other county in California,  
23 his open carry license will become invalid, leaving him subject to physical harm, criminal  
24 prosecution and incarceration. (Penal Codes §25850, §26150, and §26155).

1           50. Mr. Baird, in fact, travels outside of Siskiyou County and intends to carry loaded and  
2 exposed for self-protection during such travels throughout the State of California.

3           51. Irrespective of the frequency of Mr. Baird’s travels outside of Siskiyou County, his  
4 right to open carry while traveling outside of his county of residence is being infringed and  
5 violated by California State Law and Defendants who, *inter alia*, enforce and direct the  
6 enforcement of such laws.  
7

8           52. Mr. Baird intends to exercise his Second Amendment right to open carry in Siskiyou  
9 County and throughout the State of California, with or without an open carry license, as he is a  
10 law-abiding citizen, with no state or federal prohibitors to the possession of firearms, and seeks to  
11 exercise a core right protected by the Second Amendment, to wit, the right to open carry a firearm  
12 in public for self-protection.  
13

14 ***Plaintiff Richard Gallardo: Shasta County***

15           53. Plaintiff Richard Gallardo is an individual of unquestionably good moral character, a  
16 law-abiding citizen, and has ever been charged with, summoned, or arrested for any violation of  
17 the California State Penal Code or any other criminal offense.

18           54. Mr. Gallardo possesses firearms in his home for self-defense. Under California law,  
19 no license is required to possess a firearm in one’s home for self-defense.  
20

21           55. Mr. Gallardo seeks to carry a handgun loaded and exposed (“open carry”) for self-  
22 defense outside of his home and in public.

23           56. Mr. Gallardo seeks to carry a firearm loaded and exposed for self-defense in public  
24 without the need to demonstrate any “cause” or “reason” for the issuance thereof.

25           57. Mr. Gallardo is a resident of Shasta County, California. Shasta County has a  
26 population of less than 200,000 people. The residents of Shasta County are eligible to apply for  
27 an open carry firearm license under California’s statutory firearms licensing scheme.  
28

1            *Shasta County Application Process Devoid of “Open Carry” Option*

2            58. The Shasta County written criteria for the issuance of a carry license does not contain  
3 an option for applying for an open carry license.

4            59. The Shasta County written instructions for a “carry” license identify only “concealed  
5 carry”.

6            60. The Shasta County handgun licensing procedure has no option for a law-abiding  
7 individual to apply for an open carry license.

8            61. The Shasta County Sheriff’s Office Criteria and Requirements Form only mentions  
9 the process for applying for a Concealed Carry License.

10           62. The Shasta County Sheriff’s Office has no application form for an “Open Carry  
11 Renewal/Change”.

12           63. There are no forms available or used by the Shasta County Sheriff’s Office for the  
13 purpose of applying for an “Open Carry” handgun license.

14           64. The Shasta County Sheriff’s website only provides information pertaining to applying  
15 for a “Concealed Carry Weapon” license, and no information pertaining to applying for an “Open  
16 Carry” license.

17           65. The Shasta County application instructions entitled, “Concealed Weapon Permit  
18 Application Process” only pertains to applying for a concealed carry license. Shasta County has  
19 no instructions pertaining to applying for an open carry license.

20           66. The Shasta County Sheriff’s Office provides the approved firearm application form  
21 issued by the State of California Department of Justice (the “DOJ Application”), which is  
22 entitled, “Standard Application for License to Carry a Concealed Weapon (CCW).”

23           67. Shasta County Sheriff Tom Bosenko (“Sheriff Bosenko”) has not issued any open  
24 carry firearm licenses during his tenure in Shasta County.  
25  
26  
27  
28

1           68. Sheriff Bosenko has publicly declared that he will never issue an open carry firearm  
2 license because open carry would cause a lot of angst, fear, and concern for his deputies.

3           69. Sheriff Bosenko stated publicly that, based on conversations during his regular  
4 meetings with the Sheriffs around the State, none of the Sheriffs serving in 26150(b)(2) counties  
5 in California have ever issued “open carry” pistol licenses. Upon information and belief, Sheriff  
6 Bosenko and all other Sheriffs in the State of California are refusing to issue open carry firearm  
7 licenses at the direction of and/or with the encouragement, knowledge and/or approval of  
8 Defendant Becerra.

9           70. Mr. Gallardo applied to Sheriff Bosenko’s office for an open carry license on more  
10 than one occasion. Each of Mr. Gallardo’s applications for an open carry license were denied by  
11 the Shasta County Sheriff’s Office.  
12

13           71. The Shasta County Sheriff’s Office explained, “We don’t offer a license to carry  
14 loaded and exposed in Shasta County. This type of license is only good in the county issued and  
15 we would have to extend this option to all permit holders.”  
16

17           72. Mr. Gallardo has met the criteria for the issuance of an open carry license, yet the  
18 “may issue” language of California’s licensing scheme gives Sheriff Bosenko the authority to  
19 deny the application. (Penal Code §26150(b)).  
20

21           73. If the language of California’s licensing scheme provided that the Sheriffs “shall  
22 issue” an open carry license to applicants who meet the statutory criteria under Penal Code  
23 §26150(a) for the issuance thereof, Sheriff Bosenko would be required by law to issue an open  
24 carry license to Mr. Gallardo.

25           74. Mr. Gallardo would apply for an open carry license in a county other than Shasta  
26 County, but is prohibited by California Penal Code §26150(b) and §26155(b). California law  
27 requires open carry license applications be made in the county of residence. Open carry licenses  
28

1 are invalid outside of the county of issuance.

2 75. Mr. Gallardo does not have a residence outside of Shasta County and is, therefore,  
3 ineligible to apply for an open carry license in any other county. Even if Mr. Gallardo were  
4 eligible to apply for an open carry license in a county having a population less than 200,000 other  
5 than Shasta County, such application would be futile as no Sheriff Offices in California issue  
6 open carry licenses.  
7

8 76. There is no administrative appeal process available for challenging Sheriff Bosenko's  
9 denial of Mr. Gallardo's applications for an open carry license.

10 77. Even if there were an available administrative appeal process to challenge Sheriff  
11 Bosenko's denial of Mr. Gallardo's application for an open carry license, such 'process' would be  
12 futile because Sheriff Bosenko affirmatively stated that he does not, and will not, issue open carry  
13 licenses in Shasta County.  
14

15 78. Mr. Gallardo seeks to carry a firearm loaded and exposed for self-protection outside  
16 of Shasta County, but is precluded by California State Penal Code §26150(b)(2), which provides  
17 that an open carry license is only valid in the county of issuance.

18 79. If Mr. Gallardo is ultimately issued an open carry license, his Second Amendment  
19 right to self-protection in public will exist only within Shasta County. The moment Mr. Gallardo  
20 steps over the line from Shasta County into any other county in California, his open carry license  
21 would become invalid, leaving him subject to physical harm, criminal prosecution, and  
22 incarceration. (See, Penal Codes §25850, §26150, and §26155).  
23

24 80. Mr. Gallardo, in fact, travels outside of Shasta County and intends to carry loaded and  
25 exposed for self-protection during such travels throughout the State of California.

26 81. Irrespective of the frequency of Mr. Gallardo's travels outside of Shasta County, his  
27 right to open carry while traveling outside of his county of residence is infringed and violated by  
28

1 California State Law.

2 82. Mr. Gallardo intends to exercise his Second Amendment right to open carry in Shasta  
3 County and throughout the State of California, with or without an open carry license, as he is a  
4 law-abiding citizen, with no state or federal prohibitors to the possession of firearms, and seeks to  
5 exercise a core right protected by the Second Amendment, to wit, the right to open carry of a  
6 firearm in public for self-protection.  
7

8 **STATEMENT OF LAW<sup>1</sup>**

9 ***Law Enforcement Has NO DUTY to Protect the Individual***

10 83. Despite the common misconception that law enforcement is required to “Serve and  
11 Protect”, police officers have no duty to protect any individual from physical harm caused by a  
12 third person. Citizens have no constitutional right to be protected by the state from physical attack  
13 by private third parties, absent some special relationship between the state and the victim or the  
14 criminal and the victim that distinguishes the victim from the general public. *Balistreri v Pacifica*  
15 *Police Dept.*, 901 F2d 696, 699-700 (9<sup>th</sup> Cir 1988) (dismissing complaint where police failed to  
16 take steps to respond to the continued threats, harassment and violence by estranged husband  
17 because “there is, in general, no constitutional duty of state officials to protect members of the  
18 public at large from crime.”); *Martinez v. California*, 444 U.S. 277, 284-85, 62 L. Ed. 2d 481, 100  
19 S. Ct. 553 (1980); *Ketchum v County of Alameda*, 811 F2d 1243, 1244-47 (9<sup>th</sup> Cir 1987); *Bowers*  
20 *v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).  
21  
22

23 84. California state laws cloak police officers with immunity from liability where police  
24 are alleged to have failed to deploy prospective protective services, such as by failing to provide  
25 armed security on buses, failing to provide police personnel to patrol a parking lot where a sexual  
26 assault subsequently occurred, or failing to dispatch police to a residence where a woman claimed  
27

28 <sup>1</sup> The Statement of Law is integral to Plaintiffs’ claims and prayers for declaratory and injunctive relief.

1 her estranged husband had threatened to kill her. See, e.g., *So v Bay Area R.T.*, 2013 US Dist  
2 LEXIS 149807, at \*17-18 [ND Cal Oct. 17, 2013, No. C-12-05671 DMR] citing, *Gates v.*  
3 *Superior Court*, 32 Cal. App. 4th 481, 505-07, 38 Cal. Rptr. 2d 489, 503-04 (1995) (summarizing  
4 cases; applying Section 845 immunity to LAPD officers sued for withdrawing from an area at the  
5 start of a riot).

6  
7 85. Neither a public entity nor a public employee is liable for injury caused by the failure  
8 to make an arrest or by the failure to retain an arrested person in custody. California Government  
9 Code §846. See also, *So v Bay Area R.T.*, 2013 US Dist LEXIS 149807 at \*27-29, n 8 [ND Cal  
10 Oct. 17, 2013, No. C-12-05671 DMR] citing, *Sullivan v. City of Sacramento* (1987) 190  
11 Cal.App.3d 1070, 1077, 235 Cal.Rptr. 844 (cases finding police officers not liable for failure to  
12 protect are generally grounded in the common law distinction between misfeasance and  
13 nonfeasance); *City of Sunnyvale v. Superior Court*, (1988) 203 Cal.App.3d 839, 842, 250  
14 Cal.Rptr. 214) (“One who has not created a peril is not liable in tort for merely failing to take  
15 affirmative steps to assist or protect another, absent a special relationship giving rise to a duty to  
16 so act.”) (internal citations omitted). See, e.g., *Adams v. City of Fremont*, 68 Cal. App. 4th 243,  
17 80 Cal. Rptr. 2d 196 (Cal. Ct. App. 1999) (asserting NIED and wrongful death actions against  
18 police who failed to prevent suicide); *Williams v. State of California*, 34 Cal. 3d 18, 192 Cal.  
19 Rptr. 233, 664 P.2d 137 (1983) (negligence claim against police officers who did not investigate  
20 or pursue owner of a passing truck whose brake drum broke off and was propelled through the  
21 windshield of plaintiff's car); *M.B. v. City of San Diego*, 233 Cal.App.3d 699, 284 Cal. Rptr. 555  
22 (Cal. Ct. App. 1991) (negligence claim against police who failed to investigate or take  
23 precautions against man who later raped woman who reported her fear of him to the police); *Von*  
24 *Batsch v. American District Telegraph Company*, 175 Cal. App. 3d 1111, 222 Cal. Rptr. 239  
25 (Cal. Ct. App. 1985) (wrongful death complaint against city and burglar alarm company for  
26  
27  
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1 failure to investigate and discover unauthorized entry of intruder who later killed plaintiffs’  
2 husband and employee); *Carpenter v. City of Los Angeles*, 230 Cal. App. 3d 923, 281 Cal. Rptr.  
3 500 (Cal. Ct. App. 1991) (negligent failure to warn witness of threats); *Wallace v. City of Los*  
4 *Angeles*, 12 Cal. App. 4th 1385, 16 Cal. Rptr. 2d 113 (Cal. Ct. App. 1993) (negligent failure to  
5 warn witness of danger); *McCorkle v. City of Los Angeles*, 70 Cal.2d 252, 74 Cal. Rptr. 389, 449  
6 P.2d 453 (1969).

8 86. Because law enforcement has no duty, legal or otherwise, to protect any individual  
9 from physical harm, each and every individual is responsible for protecting themselves from  
10 personal harm and danger.

11 87. The government cannot prevent law-abiding individuals from exercising their  
12 fundamental right to possess firearms in public to protect themselves from physical harm.

13 **The U.S. Constitution Codifies Pre-Existing Human Rights**

14 88. We hold these truths to be self-evident, that all men are created equal, that they are  
15 endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and  
16 the pursuit of Happiness. *The Declaration of Independence*, 1 U.S.C. § XLIII (1776).

17 89. Among the “self-evident truths” the Framers of the Constitution believed was that  
18 God endowed people with certain inalienable rights, rights no government could take away; these  
19 rights were inalienable by the government because they were derived from a source more  
20 powerful than, and entitled to more respect than, the government—even a democratically elected  
21 government. *Newdow v Rio Linda Union Sch. Dist.*, 597 F3d 1007, 1029 (9<sup>th</sup> Cir 2010) (analyzing  
22 whether the government’s inclusion of the phrase “under God” in the Pledge of Allegiance  
23 established a religion; ultimately holding it did not.).

24 90. “The Declaration of Independence was the promise; the Constitution was the  
25 fulfillment.” The Constitution fulfilled the promise of the Declaration by creating a government  
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1 of limited powers, divided into three coequal but separate branches that would check and balance  
2 one another to ensure the government remained *limited*, and the people’s rights secure. *Newdow v*  
3 *Rio Linda Union Sch. Dist.*, 597 F3d at 1030-1031.

4 91. The pre-existing human rights codified in the Bill of Rights (the first 10 Amendments  
5 to the U.S. Constitution) are attached to the *individual*.

6 92. The Bill of Rights protects pre-existing freedoms, *inter alia*, freedom of speech,  
7 religion, and the press, freedom from governmental intrusion by soldiers into one’s home,  
8 security in one’s person and home from warrants lacking probable cause, freedom from  
9 unreasonable governmental searches, freedom from cruel and unusual punishment by the  
10 government, freedom from being prosecuted twice for the same criminal offense, the right to a  
11 trial by jury, freedom from self-incrimination in the face of criminal charges, and *inter alia*, the  
12 right to confront witnesses against you. See, e.g., *Carpenter v United States*, \_\_\_US\_\_\_ , \_\_\_\_,  
13 138 S Ct 2206, 2257 (2018) (“As the plain language of the Fourth Amendment makes clear,  
14 Fourth Amendment rights are personal.”), citing, *Rakas v. Illinois*, 439 U. S. 128, 140, 99 S. Ct.  
15 421, 58 L. Ed. 2d 387 (1978).

16  
17  
18 **The Constitutional Amendments Are Fully Applicable to the States**

19 93. Decades ago, the United States Supreme Court abandoned the notion that the  
20 Fourteenth Amendment applies to the States only a watered-down, subjective version of the  
21 individual guarantees of the Bill of Rights. *McDonald v City of Chicago*, 561 US at 785-786,  
22 citing, *S New York*, 268 US 652, 654 (1925); *Cantwell v. Connecticut*, 310 U.S. 296 (1940);  
23 *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961)], the prohibition of unreasonable  
24 searches and seizures of the Fourth Amendment, [*Ker v. California*, 374 U.S. 23 (1963)], and the  
25 right to counsel guaranteed by the Sixth Amendment, [*Gideon v. Wainwright*, 372 U.S. 335  
26 (1963)] are all to be enforced against the States under the Fourteenth Amendment according to  
27  
28

1 the same standards that protect those personal rights against federal encroachment.”).

2 94. Likewise, the Second Amendment right to keep and bear arms for the purpose of self-  
3 defense is fully applicable to the states. *McDonald v City of Chicago*, supra.

#### 4 **The Second Amendment**

5 95. The rights codified in the Bill of Rights are self-evident – the individual has no  
6 burden to prove their entitlement to the exercise of these rights. Because these are pre-existing  
7 rights, the individual automatically benefits from, and is protected by, such rights.

8 96. No individual is required to seek permission from the government before enjoying the  
9 benefits of the rights codified in the Bill of Rights. The Bill of Rights limits the *government’s*  
10 *conduct*; it does not give anything to the individual other than freedom from governmental  
11 oppression.

12 97. “A well-regulated militia, being necessary to the security of a free State, the right of  
13 the people to keep and bear arms, shall not be infringed.” *United States Constitution, Amendment*  
14 *II*.

15 98. The Second Amendment does not *give* the individual the right to possess and carry  
16 weapons to protect himself; it *prohibits the government* from infringing upon the basic,  
17 fundamental right of the individual to (1) keep arms and (2) bear arms for self-defense. *United*  
18 *States Constitution, Amendment II*.

19 99. “Individual self-defense is *the* central component of the Second Amendment right.”  
20 *McDonald v City of Chicago*, 561 US at 767, citing, *District of Columbia v. Heller*, 554 U.S. 570,  
21 599 (emphasis added) (internal quotations omitted). The Second Amendment protects the core  
22 right of the individual to self-protection. *District of Columbia v. Heller*, 554 US at 595-599, 628.

23 100. The Second Amendment is “deeply rooted in this Nation’s history and tradition” and  
24 fundamental to our scheme of ordered liberty”. *McDonald v City of Chicago*, 561 US 742, 768  
25  
26  
27  
28

1 (2010). “The right to bear arms has always been the distinctive privilege of free men. Aside from  
2 any necessity of self-protection to the person, it represents among all nations power coupled with  
3 the exercise of a certain jurisdiction...[I]t was not necessary that the right to bear arms should be  
4 granted in the Constitution, for it had always existed.” *District of Columbia v Heller*, 554 US at  
5 619, *citing*, J. Ordranax, Constitutional Legislation in the United States 241-242 (1891).

### 7 **The Right to “Keep” and “Bear” Arms**

8 101. The right of law-abiding responsible citizens to use arms in the defense of hearth and  
9 home is a core right protected by the Second Amendment. *District of Columbia v. Heller*, 554 US  
10 570, 635 (2008).

11 102. But, the right of the individual to possess firearms for self-defense in the home is not  
12 **the** core right of the Second Amendment, as many judicial decisions misleadingly posit. The  
13 Supreme Court in *Heller* did not hold or even opine that the right to possess firearms **in the home**  
14 was the core right of the Second Amendment. Such a myopic view of the scope of the Second  
15 Amendment’s protections would render superfluous the language pertaining to the necessity of  
16 having a “well-regulated militia” to ensure “the security of a free State”. Surely, the framers of  
17 the Constitution did not envision or intend that the well-regulated militia would (or could) secure  
18 the freedom of the State from inside of their homes.

19 103. The individual’s right to “self-defense” is **the core** Second Amendment right  
20 identified by the Supreme Court in *Heller*. *Heller*, 554 US 630. Nowhere in *Heller* did the  
21 Supreme Court limit the scope of the Second Amendment to the possession of firearms in the  
22 home for self-defense; its holding simply found that the defendant government’s prohibition of  
23 firearm possession in the home violated the Second Amendment. The right of the people to keep  
24 arms (possess) and bear arms (carry in public), are each central and integral to the **core right to**  
25 **self-defense** that is protected by the Second Amendment and they are of equal importance. Self-  
26  
27  
28

1 defense at home and self-defense in public are equally important rights because keeping arms and  
2 bearing arms are necessary to the individual’s basic human right of self-defense.

### 3 **The Basic Human Right to Self-Defense**

4 104. Self-defense is a basic human right, recognized by many legal systems from ancient  
5 times to the present day. *McDonald v City of Chicago*, 561 US at 768. The fundamental right to  
6 self-defense is inseparable from the individual. The right of the law-abiding individual to possess  
7 firearms for the safety, defense, and preservation of one’s own body, is as critical and  
8 fundamental *outside* of the home as it is *inside* of the home. See, *District of Columbia v. Heller*,  
9 554 US at 595-599.  
10

11 105. The detailed analysis conducted by the Supreme Court in *Heller* bears out the  
12 Court’s desire to emphasize the existence the fundamental human right of the individual to self-  
13 defense – at home or in public. The narrow issue before the Court in *Heller* could have been  
14 resolved without the Justices taking the time to call attention to the fact that the Second  
15 Amendment “guarantee[s] the individual right to possess and carry weapons in case of  
16 confrontation. This meaning is strongly confirmed by the historical background of the Second  
17 Amendment. We look to this because it has always been widely understood that the Second  
18 Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. The very text of  
19 the Second Amendment implicitly recognizes the pre-existence of the right and declares only that  
20 it ‘shall not be infringed.’ As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L. Ed.  
21 588 (1876), ‘[t]his is not a right granted by the Constitution. Neither is it in any manner  
22 dependent upon that instrument for its existence. The second amendment declares that it shall not  
23 be infringed...” *District of Columbia v Heller*, 554 US 570, 592 (2008) (emphasis in the original).  
24  
25

26 106. The framers of the Constitution made clear that the core right to self-defense  
27 protected by the Second Amendment “*shall not be infringed*”. The core right to keep arms at  
28

1 home and bear arms in public *shall not* be interfered with to any extent. Infringement of a core  
2 Second Amendment right is *per se* unconstitutional.

3 107. An individual does not forfeit his right to self-protection by stepping outside of his  
4 home. The right to self-protection is as great outside of one's home as it is inside the home.

5  
6 *Moore v Madigan*, 702 F3d 933, 941 (7th Cir 2012).

7 108. Disarm a community and you rob them of the means of defending life. Take away  
8 their weapons of defense and you take away the inalienable right of defending liberty. *McDonald*  
9 *v City of Chicago*, 561 US at 776 (internal citation omitted).

10 **“Open Carry” is a Core Second Amendment Right**

11 109. It is beyond cavil that law enforcement has no duty to protect the individual from  
12 harm. Because law enforcement has no duty to protect the individual, the duty of self-protection  
13 lies with the individual. Each person is solely and individually responsible for his own self-  
14 defense and self-protection, at home and in public.

15  
16 110. The Supreme Court has recognized that the individual's right to self-defense is as  
17 critical and fundamental *outside* of the home as it is *inside* of the home. See, *District of Columbia*  
18 *v. Heller*, 554 US at 595-599; *McDonald*, 561 US at 776. Carrying firearms for self-defense  
19 outside of one's home is within the core rights protected by the scope of the Second Amendment.

20  
21 111. The Courts of this Circuit have held that the “concealed carry” of firearms is merely  
22 a ‘privilege’ and not a core right subject to the protections of the Second Amendment. *Peruta v*  
23 *County of San Diego*, 824 F3d 919, 942 (9<sup>th</sup> Cir 2016) (en banc) (*Peruta II*) (cert. den.).

24 112. Having trampled the right of the law-abiding individual to decide for himself how to  
25 carry his firearm for self-defense in public, the only remaining option for bearing arms for self-  
26 protection in this Circuit is open carry.

27 113. The United States Supreme Court expressly rejected the idea that the scope of the  
28

1 Second Amendment right should be determined by ‘judicial interest balancing’. *McDonald v City*  
2 *of Chicago*, 561 US at 785-786, citing, *Heller*, 554 U.S. at 633-635 (“Evidence from the period  
3 immediately following the ratification of the Fourteenth Amendment confirms that the right to  
4 keep and bear arms is considered a “fundamental” right”). (internal citations omitted).

5  
6 114. As such, the state cannot eviscerate a core right falling within the scope of the Second  
7 Amendment right to bear arms by requiring a showing of “good cause”, forcing a law-abiding  
8 person to beg the government for permission to exercise his fundamental right to protect himself  
9 from physical harm.

#### 10 **California Requires “Good Cause” for Open Carry Licenses**

11 115. In California, carrying a loaded firearm in public, whether open or concealed,  
12 without a license or some other statutory exemption is a criminal offense subjecting the offender  
13 to incarceration and other criminal penalties. (Penal Code §25850).

14 116. California’s firearm licensing scheme requires applicants to demonstrate “good  
15 cause” for the issuance of any carry license, whether for “concealed carry” or “open carry”.  
16 (Penal Code §26150-§26225).  
17

18 117. As with the other nine (9) Amendments, the Second Amendment attaches to the  
19 *individual* and is automatic. There is no requirement that an individual demonstrate to the  
20 government “cause” before being able to exercise the core rights within the scope of the Second  
21 Amendment - to possess and carry (“keep and bear”) firearms. *United States Constitution, Bill of*  
22 *Rights*.  
23

24 118. California Penal Code §26150(a) provides that when a person applies for a license to  
25 carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of  
26 a county may issue a license to that person upon proof of all of the following: (1) the applicant is  
27 of good moral character; (2) “good cause” exists for issuance of the license; (3) the applicant is a  
28

1 resident of the county or a city within the county, or the applicant’s principal place of  
2 employment or business is in the county or a city within the county and the applicant spends a  
3 substantial period of time in that place of employment or business; and (4) the applicant has  
4 completed a course of training as described in Section 26165.

5  
6 119. Similarly, under California Penal Code §26155(a), when an individual applies for a  
7 license to carry a pistol, revolver, or other firearm capable of being concealed upon the person,  
8 the chief or other head of a municipal police department of any city or city and county may issue  
9 a license to that person upon proof of all of the following: (1) The applicant is of good moral  
10 character; (2) Good cause exists for issuance of the license; (3) The applicant is a resident of that  
11 city; (4) The applicant has completed a course of training as described in Section 26165.

12  
13 120. Under California Penal Codes §26150 and §26155, where an applicant has been  
14 found to be approved for the issuance of a license to carry, including demonstrating “good cause”,  
15 the licensing officer<sup>2</sup> “may issue a license in either of the following formats: (1) A license to  
16 carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.  
17 (2) Where the population of the county is less than 200,000 persons according to the most recent  
18 federal decennial census, a license to carry loaded and exposed in only that county a pistol,  
19 revolver, or other firearm capable of being concealed upon the person.”<sup>3</sup>

20  
21 121. Under both licensing statutes, §26150 and §26155, an applicant for an “open carry”  
22 license in California must demonstrate “good cause” for the issuance of an “open carry” license.  
23 (Penal Code §26150(a)(2)).

24 **California’s “Good Cause” Requirement for Open Carry**  
25 **Violates the Second Amendment**

26 <sup>2</sup> The “sheriff” of the county pursuant to §26150 and the “chief or other head of a municipal police department”  
pursuant to §26155.

27 <sup>3</sup> (1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. (2)  
28 Where the population of the county in which the city is located is less than 200,000 persons according to the most  
recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other  
firearm capable of being concealed upon the person.



1  
2 122. Broadly prohibitory laws restricting a core Second Amendment right are  
3 categorically unconstitutional. *Heller*, 554 U.S. at 628-35 (“We know of no other enumerated  
4 constitutional right whose core protection has been subjected to a free-standing ‘interest-  
5 balancing’ approach.”); *McDonald*, 130 S. Ct. at 3047-48.

6 123. California’s “good cause” requirement for the issuance of an open carry firearms  
7 license restricts the core right to self-defense under the protections of the Second Amendment and  
8 is *per se* unconstitutional. A law-abiding person does not lose his right to protect himself simply  
9 by walking outside of his front door. See, *District of Columbia v. Heller*, 554 US at 595-599 (The  
10 basic human right to self-defense is inseparable from the individual. The right of the law-abiding  
11 individual to possess firearms for the safety, defense, and preservation of one’s own body, is as  
12 critical and fundamental outside of the home as it is inside of the home.).

13  
14 124. The Ninth Circuit upheld “good cause” requirements for the issuance of a concealed  
15 carry license based on the [unconstitutional] view that the Second Amendment does not extend to  
16 the concealed carry of firearms in public by members of the general public in *Peruta v County of*  
17 *San Diego*, 824 F3d at 939 (“any prohibition or restriction on concealed carry that a state may  
18 choose to impose, including a requirement of “good cause” however defined, does not violate the  
19 individual’s Second Amendment rights).

20  
21 125. Eliminating the concealed carry of firearms from the scope of the rights protected by  
22 the Second Amendment leaves only one option for self-defense in public - open carry. The  
23 *Peruta II* court acknowledged that if the Second Amendment protects the right of a member of  
24 the general public to carry a firearm in public, it is only the right to open carry. *Peruta II*, 824 F3d  
25 at 942.

26  
27 126. California’s “good cause” requirement, upheld by the Ninth Circuit as a lawful  
28 restriction on the ‘privilege’ to carry concealed, is categorically unconstitutional when applied to



1 open carry, which is [by default] a core Second Amendment right.

2 127. California’s “good cause” requirement is unconstitutional because it treats a core  
3 Second Amendment right (open carry) the same way it treats what it deems to be a ‘privilege’  
4 (concealed carry).

5 128. The average person cannot establish “good cause”, which is commonly defined in  
6 the Ninth Circuit and other circuits demonstrating a need for self-protection that is greater than  
7 the average person, requiring documented threats of violence that establish the applicant is a  
8 target and at risk for specific harm. “Good cause” can rarely be established because members of  
9 the general public have not had specific threats made against them nor can the average person  
10 demonstrate that they are being targeted for violent acts. The definition of “good cause” does not  
11 include the basic human right to self-defense in public.

12 129. The factors constituting “good cause” for the issuance of a carry license vary from  
13 county to county as determined by the sheriff in office at the time; the definition is subject to  
14 change at the whim of the sitting sheriff and/or when a new sheriff is elected.

15 130. Indeed, the Los Angeles Police Department has moved to cancel most of the few  
16 remaining concealed weapons permits in civilian hands, which have been held by law-abiding  
17 individuals since 1994 simply because Police Chief Michel Moore “does not believe [the  
18 concealed carry licensees] were still entitled to the permits, because he ‘felt’ it was ‘unlikely’ that  
19 they still faced ‘extraordinary physical danger’ to their lives.<sup>4</sup> “I do not believe the continued  
20 wholesale allowance for each to possess a CCW license based on circumstances that may have  
21 existed 24 years ago is in the best interest of the public,” Chief Moore said. *Id.* The right to carry  
22 firearms for self-protection cannot continue to be controlled and dictated by the arbitrary and  
23 unconstitutional views of governmental officials with an unnatural and aberrant compulsion to  
24  
25  
26  
27

28 <sup>4</sup> See, <https://bearingarms.com/tom-k/2019/04/01/lapd-wants-cancel-citizens-concealed-carry-permits/>.

1 dictate whether and how law-abiding individuals exercise their fundamental right to protect  
2 themselves. Indeed, left unchallenged and unchecked, this controlling and irrational conduct will  
3 effectively leave law-abiding individuals completely vulnerable and defenseless in the presence  
4 of armed criminals, lawbreakers, and delinquents. This is true because the police have no duty to  
5 protect anyone and criminals, by definition, do not follow the law.  
6

7 131. Aside from Defendants’ *de facto* ban on open carry and the issuance of open carry  
8 licenses since 2012, the state’s statutory “good cause” requirement amounts to a total ban on  
9 public carry for the typical law-abiding citizen. When the “good cause” requirement is analyzed  
10 regarding its effect on the typical law-abiding citizen, it prevents and precludes the typical  
11 member of society from self-protection outside of their home. See, *Wrenn v. District of*  
12 *Columbia*, 864 F.3d 650, 665-666 (DC Cir 2017) (“...the good-reason law is necessarily a total  
13 ban on most D.C. residents’ right to carry a gun in the face of ordinary self-defense needs, where  
14 these residents are no more dangerous with a gun than the next law-abiding citizen.”).  
15

16 132. The “good cause” and “proper cause” requirements in this Circuit and others are  
17 intentionally imposed by the government for the sole purpose of severely restricting the issuance  
18 of concealed carry licenses. The very goal of the “good cause” requirement is to eliminate the  
19 public carrying of firearms. Because the average person cannot establish “good cause” as defined  
20 under California jurisprudence, few “concealed carry” licenses are issued in this state.  
21

22 133. The “good cause” requirement has, in fact, prevented the issuance of any open carry  
23 license in the State of California since 2012.

24 134. The “good cause” requirement is *per se* unconstitutional and violates the Second  
25 Amendment because it requires individuals to distinguish themselves from the typical law-  
26 abiding citizen, however, fundamental rights like the right to self-protection are *the same* for  
27 every law-abiding individual.  
28

1 135. No law-abiding individual should be required to prove they are entitled to protect  
2 themselves from harm, particularly when law enforcement has no duty to protect the individual.

3 136. Plaintiffs’ right to self-protection exists wherever they are – whether in public or at  
4 home – its value and inalienability does not change based on their location.

5 137. Those portions of California Penal Code §26150 and §26155 requiring an applicant  
6 to show “good cause” for the issuance of an “open carry” firearm license should be declared a  
7 violation of the Second Amendment, enjoined from enforcement, and stricken as unconstitutional.

8  
9 **California’s “May Issue” Language for “Open Carry” is Unconstitutional**

10 138. California Penal Code §26150(a) provides that a sheriff of a county **may** issue a  
11 license to that person upon proof of all of the following: (1) the applicant is of good moral  
12 character; (2) good cause exists for issuance of the license; (3) the applicant is a resident of the  
13 county or a city within the county, or the applicant’s principal place of employment or business is  
14 in the county or a city within the county and the applicant spends a substantial period of time in  
15 that place of employment or business; and (4) the applicant has completed a course of training as  
16 described in Section 26165. (emphasis added).

17  
18 139. California Penal Code §26150 provides that “where an applicant has been approved”  
19 for the issuance of a license to carry a pistol, revolver, or other firearm capable of being  
20 concealed upon the person, the sheriff **may issue** a license to carry loaded and exposed (“open  
21 carry”) where the population of the county is less than 200,000 persons according to the most  
22 recent federal decennial census. (emphasis added).

23  
24 140. Similarly, Penal Code §26155 provides, “the chief or other head of a municipal  
25 police department **may issue** an “open carry” license...where the population of the county in  
26 which the city is located is less than 200,000 persons according to the most recent federal  
27 decennial census...” (emphasis added).

1           141. Where a law-abiding person has no state or federal prohibitors to firearm possession,  
2 the government is prohibited from interfering with and infringing that individual’s ability to  
3 exercise the basic human right to self-defense outside of the home. The right to self-protection  
4 outside of the home is as much a core and fundamental right falling within the scope of the  
5 Second Amendment as the right to self-protection inside of the home.  
6

7           142. The “may issue” language of California Penal Codes §26150 and §26155 should be  
8 declared a violation of the Second Amendment, enjoined from enforcement, and stricken as  
9 unconstitutional.

10                           **California’s Geographical Restrictions on “Open Carry” Are Unconstitutional**  
11   **(Second Amendment Violation)**

12           143. Applications for an open carry license must be made in the applicants’ county of  
13 residence.<sup>5</sup> (Penal Codes §26150(a)(3) and §26155(a)(3)).

14           144. There are certain exceptions to the general prohibitions on “open carry” in  
15 California, but Plaintiffs do not fall within any of the statutory exceptions that would permit the  
16 “open carry” of a firearm throughout the State of California without criminal penalties.  
17

18           145. Open carry licenses can only be issued in counties that have a population less than  
19 200,000 and are only valid in the county of residence/issuance. (Penal Codes §26150(b) and  
20 §26155(b)).

21           146. If an individual who is duly issued an open carry license carries his firearm loaded  
22 and exposed in a county other than his county of residence (the county of issuance) he will be  
23 subject to criminal penalties and sanctions, up to and including imprisonment. (Penal Code  
24 §25850).  
25

26           147. Individuals who are issued an open carry license in their home county are rendered

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27 <sup>5</sup> Statutory language relating to business ownership and/or employment have been omitted as immaterial to the  
28 instant matter. Plaintiff is not substantially employed in any other county or city and state law preempts local  
authorities from issuing handgun “open carry” licenses, except as provided by law.

1 unarmed and defenseless when traveling to any other part of California.

2 148. If Plaintiffs are issued an open carry license and thereafter choose to leave their  
3 firearms home while traveling to other counties in California, they will be left defenseless and  
4 unarmed.

5 149. While governmental regulations on sensitive areas, such as schools and courthouses  
6 have been upheld by the courts as presumptively lawful (*Heller*, 554 US at 626), California's  
7 broad and overreaching geographical (1) limitation on the validity of open carry licenses; and (2)  
8 ban on the issuance of an open carry license based on population size, eviscerates a core right of  
9 the individual to "open carry" for self-protection outside of the home.

10 150. Restricting the open carry of firearms from entire counties in the state based on  
11 population size unlawfully implicates a core Second Amendment right, serves no legitimate  
12 governmental interest, and has no provable or quantifiable effect on public safety.

13 151. Indeed, the danger to the individual and need for the protections of the Second  
14 Amendment increase in direct proportion to the increase in population density, due to the  
15 corresponding increase in criminals and criminal activity in highly populated areas. Preventing  
16 open carry by law-abiding individuals in high crime/highly populated areas does not increase  
17 public safety. To the contrary, the open carry of firearms by law-abiding people in highly  
18 populated, high crime areas will decrease the rate of criminal activity.

19  
20  
21  
22 *A. County of Issuance*

23 152. Those provisions of California Penal Code §26150(b) and §26155(b) restricting  
24 "open carry" to the county of issuance infringe on and violate a core right of the Second  
25 Amendment, to wit, the right to self-protection via "open carry" outside of the home in every  
26 other county in California.

27 153. Those portions of §26150(b) and §26155(b) restricting "open carry" to the county of  
28

1 issuance should be declared a violation of the Second Amendment, enjoined from enforcement,  
2 and stricken as unconstitutional.

3           B. *Counties With Populations Less Than 200,000*

4           154. Those provisions of California Penal Code §26150(b) and §26155(b) restricting  
5 “open carry” to counties with a population under 200,000 infringe on and violate a core right of  
6 the Second Amendment, to wit, the right to self-protection via “open carry” outside of the home.

7           155. Those portions of California Penal Code §26150(b) and §26155(b) restricting “open  
8 carry” to counties with a population under 200,000 should be declared a violation of the Second  
9 Amendment, enjoined from enforcement, and stricken as unconstitutional.

10                           **California’s Geographical Restrictions on “Open Carry” Are Unconstitutional**  
11   **(Fourteenth Amendment Violation)**

12           156. The right to travel “was recognized as a right fundamental to the national character  
13 of our Federal government” before the Fourteenth Amendment was ratified. *Edwards v*  
14 *California*, 314 US 160, 178 (1941). The fundamental constitutional right to travel is protected by  
15 the Privileges and Immunities Clause of Article IV, §2 of the U.S. Constitution, and the Privileges  
16 and Immunities and Equal Protection clauses of the Fourteenth Amendment to the U.S.  
17 Constitution. See, *Att’y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 902 (1986). This right  
18 “protects the right of a citizen of one State to enter and to leave another State.” *Saenz v. Roe*, 526  
19 U.S. 489, 500 (1999); see *United States v. Guest*, 383 U.S. 745 (1966); *Edwards v. California*,  
20 314 U.S. 160 (1941).

21           157. In *Bell v Maryland*, 378 US 226 (1964), the Supreme Court queried, “Is the right of  
22 a person to eat less basic than his right to travel, which we protected in *Edwards v. California*,  
23 314 U.S. 160? Does not a right to travel in modern times shrink in value materially when there is  
24 no accompanying right to eat in public places? The right of any person to travel interstate  
25  
26  
27  
28

1 irrespective of race, creed, or color is protected by the Constitution. Certainly his right to travel  
2 intrastate is as basic. Certainly his right to eat at public restaurants is as important in the modern  
3 setting as the right of mobility. In these times that right is, indeed, practically indispensable to  
4 travel either interstate or intrastate.” *Bell v Maryland*, 378 US at 255 (vacating the convictions of  
5 12 African American students charged with Criminal Trespass after they participated in a “sit-in”  
6 demonstration at a privately-owned restaurant that refused to serve members of their race.).  
7

8 158. The fundamental right to interstate and/or intrastate travel, in order to exercise the  
9 basic right to eat for self-preservation, is common sense.

10 159. The United States Supreme Court recognized that eating is a basic necessity for the  
11 body to continue its existence, but if the body succumbs to death from a physical attack, what  
12 good is food then? Protection of the body from physical harm is even more fundamental to  
13 human existence than food; if the body does not exist, neither does the need for travel, food, or  
14 water.  
15

16 160. The right of any person to travel interstate irrespective of race, creed, or color is  
17 protected by the Constitution. *Edwards v. California*, supra. “Certainly [the] right to travel  
18 intrastate is as basic. Certainly [the] right to eat at public restaurants is as important in the modern  
19 setting as the right of mobility. In these times that right is, indeed, practically indispensable to  
20 travel either interstate or intrastate.”  
21

22 161. The statutory ban on open carry (i) outside of one’s own county and (ii) in counties  
23 having a population over 200,000 violates Plaintiffs’ fundamental right to travel by forcing them  
24 to choose which constitutional right they would rather exercise: the right to travel or their Second  
25 Amendment right to self-defense in public.

26 162. California Penal Codes §26150(b) and §26155(b) *per se* interfere with and deter  
27 Plaintiffs’ right to intrastate travel by forcing Plaintiffs to choose between self-protection (Second  
28

1 Amendment) and their right to travel. See, e.g., *Soto-Lopez*, 476 U.S. at 903.

2 163. California Penal Codes §26150(b) and §26155(b) discriminate against individuals  
3 based on the exercise of their Second Amendment rights.

4 164. If Plaintiffs are granted an open carry license and carry a firearm outside of their  
5 respective counties of residence, which they each intend to do, they will risk having their open  
6 carry licenses revoked for failing to remain in the county of issuance while armed, which will  
7 deprive them of their Second Amendment right to open carry.

8 165. If Plaintiffs carry openly outside of their counties of issuance, which they intend to  
9 do, they will risk criminal prosecution because they will be carrying open and loaded without a  
10 valid license based on the restrictions of Penal Code §26150(b) and §26155(b). See, *Harman v.*  
11 *Forssenius*, 380 U.S. 528, 540 (1965) (“It has long been established that a State may not impose a  
12 penalty upon those who exercise a right guaranteed by the Constitution.”).

13  
14  
15 A. *County of Issuance*

16 166. Those portions of California Penal Codes §26150(b) and §26155(b) restricting the  
17 validity of an “open carry” license to the county of issuance violate the Fourteenth Amendment  
18 right to travel.

19 167. Those portions of California Penal Codes §26150(b) and §26155(b) restricting the  
20 validity of an “open carry” license to the county of issuance should be declared a violation of the  
21 Fourteenth Amendment right to travel, enjoined from enforcement, and stricken as  
22 unconstitutional.

23  
24 B. *Counties With Populations Less Than 200,000*

25 168. Those portions of California Penal Codes §26150(b) and §26155(b) restricting the  
26 issuance of “open carry” license to counties with a population under 200,000 violate the  
27 Fourteenth Amendment right to travel.  
28



1 169. Those portions of California Penal Codes §26150(b) and §26155(b) restricting the  
2 issuance of “open carry” licenses to counties with a population under 200,000 should be declared  
3 a violation of the Fourteenth Amendment right to travel, enjoined from enforcement, and stricken  
4 as unconstitutional.

5  
6 **California’s Geographical Restrictions on “Open Carry” Are Unconstitutional  
(Dormant Commerce Clause)**

7 170. The Constitution grants Congress the power to “regulate Commerce ... among the  
8 several States.” U.S. Const. art. I, §8, cl. 3. “Although the Constitution does not in terms limit  
9 the power of States to regulate commerce, [the Supreme Court] ha[s] long interpreted the  
10 Commerce Clause as an implicit restraint on state authority, even in the absence of a conflicting  
11 federal statute.” *United Haulers Ass’n, Inc. v. Oneida Herkimer Solid Waste Mgmt. Auth.*, 550  
12 U.S. 330, 338 (2007).

13  
14 171. The Commerce Clause’s implied restriction on state authority, referred to as the  
15 “dormant Commerce Clause,” is driven by a concern about economic protectionism—that is,  
16 regulatory measures designed to benefit in-state economic interests by burdening out-of-state  
17 competitors. *McBurney v. Young*, 133 S. Ct. 1709, 1719 (2013) (internal quotations omitted);  
18 *Maine v. Taylor*, 477 U.S. 131, 151 (1986) (“The Commerce Clause significantly limits the  
19 ability of States and localities to regulate or otherwise burden the flow of interstate commerce.”  
20 (emphasis added)).

21  
22 172. Plaintiffs intend to carry their firearms openly while traveling outside of their  
23 counties of issuance and into other counties within the State of California for all lawful purposes,  
24 including those activities that affect interstate and intrastate commerce.

25  
26  
27 173. California Penal Codes §26150(b) and §26155(b) violate the Dormant Commerce  
28 Clause by discriminating against interstate commerce, imposing burdens on commerce that far

1 exceed any purported local benefits, and impermissibly attempting to control economic activity  
2 that takes place entirely (i) outside of the county issuing an open carry license, and (ii) outside of  
3 counties having a population under 200,000.

4 174. California Penal Codes §26150(b) and §26155(b) impermissibly and negatively  
5 affect the regulation of commerce within and without counties having populations of 200,000 or  
6 less.  
7

8 *A. County of Issuance*

9 175. Those provisions of California Penal Codes §26150(b) and §26155(b) restricting  
10 “open carry” to the county of issuance violate the Dormant Commerce Clause.

11 176. Those provisions of California Penal Codes §26150(b) and §26155(b) restricting  
12 “open carry” to the county of issuance should be declared a violation of the Dormant Commerce  
13 Clause, enjoined from enforcement, and stricken as unconstitutional.  
14

15 *B. Counties With Populations Less Than 200,000*

16 177. Those provisions of California Penal Codes §26150(b) and §26155(b) restricting  
17 “open carry” to counties with a population under 200,000 violate the Dormant Commerce Clause.

18 178. Those provisions of California Penal Codes §26150(b) and §26155(b) restricting  
19 “open carry” to counties with a population under 200,000 should be declared a violation of the  
20 Dormant Commerce Clause, enjoined from enforcement, and stricken as unconstitutional.  
21

22 **California’s Unloaded Carry Restrictions Are Unconstitutional**  
23 **(Second Amendment Violation)**

24 179. A core right of the Second Amendment is the right of the law-abiding individual to  
25 carry a firearm (“bear arms”) outside of the home. See cases cited, *supra*. An open carry license  
26 issued under §26150(b) or §26155(b) would permit Plaintiffs to carry a firearm in public “loaded  
27 and exposed”.  
28

1 180. California Penal Code §26350 makes it a crime to open carry an unloaded handgun,  
2 whether on one's person, inside a vehicle, or on a vehicle. A violation of §26350 carries penalties  
3 of imprisonment up to one year and/or fines.

4 181. Should Plaintiffs be issued open carry licenses and encounter a circumstance  
5 wherein their respective handguns are in an unloaded state while in public, Plaintiffs would face  
6 criminal prosecution and penalties, including imprisonment.

7 182. Should Plaintiffs be issued open carry licenses, they may also face circumstances  
8 wherein they possess their handgun inside of their respective vehicles in an unloaded state, and  
9 would therefore face criminal prosecution and penalties including imprisonment under Penal  
10 Code §26350.

11 183. California Penal Code §26350 should be declared unconstitutional as applied to  
12 open carry licensees, enjoined from enforcement, and stricken as unconstitutional.

13  
14  
15 **Demarcating the Manner of Personal Carry Violates the Second Amendment**

16 184. A core right protected by the Second Amendment is the right to bear arms for self-  
17 defense. The term "bears a firearm" refers to an individual "carrying the weapon on or about his  
18 person for the purpose of being armed and ready for offensive or defensive action in case of a  
19 conflict." *Muscarello v United States*, 524 US 125, 139-140 (1998) (Justice Ginsberg, dissenting  
20 opinion), citing, *Black's Law Dictionary* 214 (6th ed. 1990) (defining the phrase "carry arms or  
21 weapons"). "On or about his person" necessarily means one's body or within his area of reach.

22 185. The government's interference with the manner in which a law-abiding individual  
23 can bear arms in public unlawfully infringes upon the Second Amendment and fails to promote  
24 any significant, substantial, or important government objective. *Pena v Lindley*, 898 F3d 969, 979  
25 (9th Cir 2018), citing, *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 965 (9th Cir.  
26 2014).

1           186. The law-abiding individual with no legal or factual prohibitors to firearm possession,  
2 such as Plaintiffs, is fit to possess firearms *in the first instance*.

3           187. A firearm in the hands of the law-abiding person, such as Plaintiffs, is a tool of self-  
4 protection, and sometimes, a tool of protection for law enforcement officers and fellow neighbors  
5 as well.

6           188. A law-abiding person carrying a firearm, such as Plaintiffs, is no more likely to  
7 commit a crime with that firearm than he is likely to commit a crime with the car he drives, the  
8 knife in his tackle box, or the axe in his shed.

9           189. California strives to eliminate the public carry of firearms altogether, as borne out by  
10 California’s licensing scheme which requires of “good cause” for the issuance of any type of  
11 carry license whether for concealed carry or open carry.  
12

13           190. Defendant Becerra, dubbed “The Enemy of the Second Amendment”<sup>6</sup>, has  
14 consistently taken steps in his professional capacity to restrict Second Amendment rights.  
15

16           191. A law-abiding individual who cannot demonstrate “good cause” as defined by  
17 Defendants, and California state and federal courts, should not face criminal prosecution simply  
18 because s/he has made the tactical decision to carry a lawfully owned firearm in the small of the  
19 back holster, in a pocket, or underneath a sweater or jacket.  
20

21           192. Concealed carry is the universally preferred method of law-abiding individuals,  
22 including Plaintiffs, to carry a firearm, for reasons including tactical advantage over an attacker,  
23 convenience of carry location, accessibility to one’s firearm for self-defense, and practical  
24 considerations relating to one’s wardrobe.

25           193. With the commencement of governmental regulation of the possession of firearms,  
26 legislative statutes and judicial case law have unconstitutionally redefined the term “concealed”.  
27

28 \_\_\_\_\_  
<sup>6</sup> NRA-ILA, January 7, 2017.

1 “Concealment” was historically synonymous with an intention to hide or cover up forbidden  
2 conduct and/or objects, denoting malintent and a criminal *mens rea*.

3 194. A law-abiding individual who is lawfully carrying a firearm on their person in public  
4 – whether openly such that the firearm can be readily seen, or in a waistband holster covered by a  
5 winter jacket – is simply “carrying” their firearm. A law-abiding person has no malintent; they  
6 have no intention to use their firearm to commit a crime. There is no legitimate governmental  
7 objective served by regulating how law-abiding people can carry their firearms.

8 195. The definition of “open carry” or “exposed carry” cannot even be conclusively  
9 established and creates an unlawful legal burden and risk of criminal prosecution on the law-  
10 abiding individual. An individual with a duly-issued open carry license who puts on a coat in the  
11 wintertime, is now ‘concealing’ his firearm. A woman wearing a dress upon which it would be  
12 impossible to secure a firearm “exposed”, will necessarily be stripped of the right to protect  
13 herself in public because she will be prosecuted as a criminal if she carries her firearm holstered  
14 underneath her dress or in her purse.

15 196. In 1863, California passed legislation banning concealed carry of firearms due to the  
16 high rate of crime during the Gold Rush.<sup>7</sup> As the San Francisco newspaper The Daily Alta  
17 California explained it:

18  
19  
20  
21 “During the thirteen years that California has been a State, there  
22 have been more deaths occasioned by sudden assaults with weapons  
23 previously concealed about the person of the assailant or assailed,  
24 than by all other acts of violence which figure on the criminal  
25 calendar.... Heretofore there has been no law passed which would  
26 remedy the evil. Public opinion, as expressed through the action of  
27 our legislators, seems to have sanctioned the custom, barbarous  
though it be. For many sessions prior to the last, ineffectual efforts  
were made to enact some statute which would effectually prohibit  
this practice of carrying concealed weapons. A radical change of

28 <sup>7</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013, *citing*, “Three Years in California”, Borthwick, J.D. (1857); Gunfighters, Highwaymen, & Vigilantes”, McGrath, Roger (1984).

1 public sentiment demanded it, but the desired law was not passed  
2 until the last Legislature, by a handsome majority, enacted the  
3 subjoined act, entitled “An Act to prohibit the carrying of concealed  
4 weapons.”

5 197. Only 7 years later, California repealed the concealed carry ban. The Sacramento  
6 Daily Union published an editorial discussing the 1870 repeal of the concealed-carry ban:

7 “There is reason to believe it was generally observed by the vast  
8 majority of good citizens. There is as good reason to believe it was  
9 not observed by the vast majority of roughs, fighting men, and  
10 predatory characters. In many cases of assault between quiet  
11 citizens and these last named characters, it was found that the good  
12 citizen had to defend himself unarmed against the predacious one  
13 with arms, the former suffering for his respect of the law. It was  
14 also found that the police were apt to arrest any quiet citizen on  
15 whom they discovered concealed weapons, while they paid little  
16 attention to the roughs who were known to carry arms habitually.”<sup>8</sup>

17 198. Criminals, by definition, do not follow the law. No governmental purpose is served  
18 by restricting law-abiding people from carrying their firearms in the manner they feel most  
19 comfortable and are better able tactically to protect themselves.

20 199. “Laws preventing law-abiding citizens from carrying firearms for self-protection...  
21 become an abomination in practice... plac[ing] the peaceful citizen completely at the mercy of a  
22 class whose offenses against order it was intended to check, but did not, owing to the remissness  
23 in duty of the guardians of the law.” Sacramento’s experience was the immediate cause of the  
24 “repealing movement ... where bands of armed roughs, scorning the law against carrying  
25 concealed weapons, were perpetrating highway robberies on quiet, unarmed citizens, who could  
26 not prepare for self-defense without danger of being arrested and fined every day.”

27 200. “The editorial acknowledged that one of the good things hoped for had happened in  
28 the intervening months:

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<sup>8</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013.

1 “It was reasoned with much plausibility that if the roughs once  
2 knew that quiet citizens might prepare to defend themselves without  
3 danger of being punished for misdemeanor, the bare suspicion that  
such a person had about him a weapon would disarm the roughs  
and prevent robberies. This has in fact been one of the results.”

4 201. Arguing against the reasons, the State of California repealed the ban on concealed  
5 carry. The Daily Alta newspaper editorialized, in part, “To put a thing in its customary and  
6 convenient receptacle is not concealment. Concealment is a matter of motive...”<sup>9</sup>

7  
8 202. California Penal Code §25850 makes it a crime to carry a loaded firearm on one’s  
9 person or in a vehicle, without regard to whether it is carried concealed or openly, while in any  
10 public place or on any public street in an unincorporated city, or any public place or public street  
11 in a prohibited area of an unincorporated territory.

12 203. Plaintiffs seeks to carry their firearms in public in the manner of their choosing,  
13 concealed or open, throughout the State of California.

14 204. By eliminating Plaintiffs’ ability to choose how to defend themselves in public and  
15 their tactical decision-making ability regarding how to carry their firearms, California’s firearm  
16 licensing scheme unlawfully burdens and infringes upon Plaintiffs’ Second Amendment rights.

17  
18 205. There is no legitimate, measurable, or quantifiable impact on public safety that  
19 justifies California’s interference with Plaintiffs’ ability to choose how to carry their firearms for  
20 self-defense in public.

21 206. California’s firearm licensing scheme stripping law-abiding people, including  
22 Plaintiffs, of the ability to choose how to carry their firearms for self-defense in public is  
23 unconstitutional and serves no legitimate purpose.

24  
25 207. California’s firearm licensing scheme restricting how Plaintiffs may carry their  
26 firearms for self-defense in public unlawfully infringes upon and violates Plaintiffs’ Second  
27

28 <sup>9</sup> NRA Institute for Legislative Action, Tuesday January 1, 2013, *citing*, The Daily Alta California, 1869.

1 Amendment right to bear arms for personal protection.

2 208. California's firearm licensing scheme deprives Plaintiffs of the ability to protect and  
3 defend themselves from physical harm in the manner they choose.

4 209. California's firearm licensing scheme controlling a licensee's manner of carrying his  
5 firearm in public should be declared a violation of the Second Amendment, enjoined from  
6 enforcement, and stricken as unconstitutional.  
7

8 **Demarcating the Manner of Personal Carry Violates the Fourth Amendment**

9 210. The protections of the Fourth Amendment are not limited to privacy interests; its  
10 protections encompass possessory and liberty interests even when privacy rights are not  
11 implicated. *Soldal v. Cook County*, 506 U.S. 56, 63-64, 113 S. Ct. 538, 121 L. Ed. 2d 450 & n.8  
12 (1992). A reasonable expectation of privacy is not required for Fourth Amendment protections to  
13 apply." *United States v. Jones*, 565 U. S. 400, 406, 132 S. Ct. 945, 950 (2012). "[E]ven in the  
14 absence of a trespass, a Fourth Amendment search occurs when the government violates a  
15 subjective expectation of privacy that society recognizes as reasonable...In *Katz*, this Court  
16 enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth  
17 Amendment does not turn upon the presence or absence of a physical intrusion." *Jones*, 565 at  
18 414 (internal citations omitted) (Sotomayor, J., concurring).  
19

20 211. A seizure for Fourth Amendment purposes may occur when there is some  
21 meaningful interference with an individual's possessory interest in property. *Kincaid v City of*  
22 *Fresno*, 2008 US Dist LEXIS 38532, at \*10-11 (ED Cal May 12, 2008, No. CV-F-06-1445  
23 OWW) citing, *Soldal v. Cook County, Ill.*, 506 U.S. 56, 63, 113 S. Ct. 538, 121 L. Ed. 2d 450  
24 (1992).  
25

26 212. A reasonable expectation of privacy is not required to trigger Fourth Amendment  
27 protection against seizures. See, e.g, *Miranda v. City of Cornelius*, 429 F.3d 858, 862 n.2 (9th Cir.  
28



1 2005) (the city’s seizure/impoundment of parked car was subject to the Fourth Amendment’s  
2 reasonableness standard based on its interference with plaintiff’s property interests regardless of  
3 whether there is an invasion of privacy”); *United States v. Paige*, 136 F.3d 1012, 1021 (5th Cir.  
4 1998) (“The Supreme Court recently made clear that the protection afforded by the Fourth  
5 Amendment extends to an individual’s possessory interests in property, even if his expectation of  
6 privacy in that property has been completely extinguished.”) (citing *Soldal*); *Lenz v. Winburn*, 51  
7 F.3d 1540, 1550 n.10 (11th Cir. 1995) (“It is true that a possessory interest is all that is needed for  
8 the Fourth Amendment’s reasonableness requirement to apply to a seizure.”) (citing *Soldal*);  
9 *Bonds v. Cox*, 20 F.3d 697, 702 (6th Cir. 1994) (“[O]ur finding that Bonds had no reasonable  
10 expectation of privacy in the house at 4174 Dunn Avenue does not affect our conclusion that  
11 Bonds has standing to challenge the seizure of her property.”).

12  
13  
14 213. Plaintiffs have a possessory interest in their firearms, inside of their homes and in  
15 public.

16 214. California’s firearm licensing scheme unreasonably interferes with Plaintiffs’  
17 possession and use of their personal property.

18 215. Analogous to a “prior restraint” of free speech, California’s firearms licensing  
19 scheme unnecessarily restricts Plaintiffs’ right to enjoyment and use of their personal property in  
20 public.

21  
22 216. California has enacted this statutory scheme because of the *type* of property that is  
23 involved, in the absence of any inherent danger related to the manner of carry.

24 217. There is no inherent danger created by the manner in which Plaintiffs carry their  
25 firearm in public for self-defense because they are law-abiding individuals with no statutory  
26 prohibitors to firearms possession.

27 218. California has no legitimate governmental interest in controlling and/or interfering  
28

1 with the way law-abiding individuals, including Plaintiffs, carry their firearms in public.

2 219. California’s interference with Plaintiffs’ ability to choose how to carry their firearms  
3 for self-defense in public is not substantially related to any legitimate governmental interest.

4 220. California’s firearm licensing scheme interference with, and restriction on, how a  
5 licensee can carry his firearms in public should be declared a violation of the Fourth Amendment,  
6 enjoined from enforcement, and stricken as unconstitutional.

7  
8 **Demarcating the Manner of Personal Carry Violates the Fourteenth Amendment**  
9 **(Procedural Due Process)**

10 221. Plaintiffs have a demonstrated property interest in their firearms.

11 222. California’s firearm licensing scheme deprives Plaintiffs of the right to enjoyment of  
12 their property without due process, which interferes with and restricts the use and enjoyment of  
13 their personal property.

14 223. There is no valid governmental interest is at stake that justifies the statutory  
15 interference with Plaintiffs’ use and enjoyment of their property outside of their home and in  
16 public.

17 224. California has no procedure in place to address the due process violations caused by  
18 its statutory scheme prior to the actual interference with the property rights of law-abiding  
19 individuals, including Plaintiffs.

20 225. California has no additional or substitute procedural safeguards to prevent this due  
21 process violation.

22 226. The only purpose of California’s statutory scheme is to deprive its law-abiding  
23 residents of the right to carry firearms in public by creating a “good cause” requirement for  
24 concealed carry, deemed by the state to be a mere ‘privilege’, a standard that the general member  
25 of the public cannot attain, including Plaintiffs.

26 227. It is unconstitutional to require Plaintiffs to demonstrate “good cause” before being  
27  
28

1 able to use and enjoy their property.

2 228. California’s licensing scheme unlawfully interferes with and restricts the  
3 constitutional right to the use and enjoyment of property and should be declared a violation of the  
4 Fourteenth Amendment right to due process, enjoined from enforcement, and stricken as  
5 unconstitutional.  
6

7 **Demarcating the Manner of Personal Carry Violates the Fourteenth Amendment**  
8 **(Substantive Due Process)**

9 229. The Constitution does not explicitly mention any right of privacy. In a line of  
10 decisions, going back as far as *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891), the  
11 Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of  
12 privacy, does exist under the Constitution. *Roe v Wade*, 410 US 113, 152-153 (1973) (citing the  
13 “roots of that right” in the First Amendment, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); in the  
14 Fourth and Fifth Amendments, *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968), *Katz v. United States*, 389  
15 U.S. 347, 350 (1967), *Boyd v. United States*, 116 U.S. 616 (1886), *Olmstead v. United States*, 277  
16 U.S. 438, 478 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, *Griswold*  
17 *v. Connecticut*, 381 U.S., at 484-485; in the Ninth Amendment (Goldberg, J., concurring); or in  
18 the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see *Meyer v.*  
19 *Nebraska*, 262 U.S. 390, 399 (1923)) (internal quotations omitted).  
20

21 230. The Supreme Court has a long history of recognizing unenumerated fundamental  
22 rights as protected by substantive due process, even before the term evolved into its modern  
23 usage. *Raich v Gonzales*, 500 F3d 850, 863 (9th Cir 2007) citing, *Casey*, 505 U.S. 833, 112 S. Ct.  
24 2791, 120 L. Ed. 2d 674 (to have an abortion); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L.  
25 Ed. 2d 147 (1973) (same); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349  
26 (1972) (to use contraception); *Griswold*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (to use  
27 contraception, to marital privacy); *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d  
28

1 1010 (1967) (to marry); *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952)  
2 (to bodily integrity); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S. Ct. 1110, 86 L.  
3 Ed. 1655 (1942) (to have children); *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L.  
4 Ed. 1070 (1925) (to direct the education and upbringing of one's children); *Meyer v. Nebraska*,  
5 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) (same); *Lawrence v. Texas*, 539 U.S. 558,  
6 578, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) (recognizing narrowly defined fundamental right  
7 to engage in consensual sexual activity, including homosexual sodomy, in the home without  
8 government intrusion).

9  
10 231. “The above decisions make it clear that ...personal rights that can be deemed  
11 ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in this guarantee of  
12 personal privacy.” *Roe v. Wade*, 410 US at 152.

13  
14 232. Abortion is a recognized, but unenumerated, fundamental right protected by  
15 substantive due process. *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

16 233. Abortion is believed to be the right of a woman to choose what happens to her own  
17 body during pregnancy.

18 234. Abortion is *not* an enumerated fundamental right under the Bill of Rights.

19 235. The right to bear arms *is* a “fundamental” “personal right”. The right to self-  
20 protection with a firearm inside and outside of one’s home is “fundamental” by the very fact that  
21 it is *enumerated* in the Bill of Rights and protected by the Second Amendment.

22 236. The right to bears arms, therefore, is more fundamental and more inalienable, than  
23 the unenumerated right to have an abortion.

24 237. The right to bear arms is a right protected by substantive due process.

25 238. As a woman is free to choose the manner in which she handles her pregnancy based  
26 on an unenumerated right, the law-abiding individual has a greater right to choose the manner in  
27  
28

1 which s/he carries a firearm to protect her/his body in public, which is an enumerated right.

2 239. How could the right to decide what happens to one's body in one circumstance,  
3 which has been argued to be for the protection of the life of the mother, be more fundamental than  
4 the right of the individual to decide how to protect her/his life and preserve her/his body *in the*  
5 *first instance*?

6 240. Forcing the law-abiding general member of the public, who cannot meet the "good  
7 cause" criteria, to carry openly, thereby stripping her/him of any element of surprise or tactical  
8 advantage s/he may have over a criminal assailant, violates the individual's right to personal  
9 liberty.

10 241. The Second Amendment provides that the right to keep and bear arms "*shall not be*  
11 *infringed*". Whatever historical reasons or infringements on the manner of carry have occurred  
12 throughout the years, the "we've always done it that way" excuse fails.

13 242. There is no "compelling state interest" justifying California's interference with how  
14 an individual carries her/his firearm for self-protection in public. *Cf., Roe v Wade*, 410 US at 156  
15 (1973) (internal citations omitted). Unlike an abortion, which affects the rights of two beings - the  
16 woman and her unborn baby, the right to bear arms *only* affects the individual and her/his right to  
17 self-protection.

18 243. There is no compelling state interest justifying such an intrusion into the very  
19 personal choice of how one carries, and trains mentally and physically to carry, a firearm and the  
20 circumstances under which it is employed for self-preservation.

21 244. California's licensing scheme should be declared a violation of the Fourteenth  
22 Amendment right to substantive due process, enjoined from enforcement, and stricken as  
23 unconstitutional.

**DECLARATORY JUDGMENT ALLEGATIONS**

1  
2           245. There is an actual and present controversy between the parties. Plaintiffs contend  
3 that: (1) California Penal Codes §26150 and §26155 violate Plaintiffs’ fundamental right to open  
4 carry, a core right protected by the Second Amendment, by requiring “good cause” for the  
5 issuance thereof; (2) California Penal Codes §26150 and §26155 violate Plaintiffs’ fundamental  
6 right to open carry, a core right protected by the Second Amendment, by restricting the authority  
7 and validity of open carry licenses to the county of issuance; (3) California Penal Codes §26150  
8 and §26155 violate Plaintiffs’ fundamental right to open carry, a core right protected by the  
9 Second Amendment, by geographically restricting open carry licensees from carrying firearms in  
10 various counties based on the population size of the county; (4) the “may issue” language of  
11 California Penal Codes §26150 and §26155 is unconstitutional because open carry is a core and  
12 fundamental right protected by the Second Amendment, not subject to the subjective whims of a  
13 licensing authority; (5) the geographical and population restrictions on open carry licenses set  
14 forth in California Penal Codes §26150 and §26155 violate the Dormant Commerce Clause; (6)  
15 the geographical and population restrictions on open carry licenses set forth in California Penal  
16 Codes §26150 and §26155 violate Plaintiffs’ Fourteenth Amendment right to interstate and  
17 intrastate travel; (7) California Penal Code §26350 violates Plaintiffs’ Second, Fourth, and  
18 Fourteenth Amendment rights to open carry of an unloaded handgun outside of their homes; (8)  
19 California Penal Code §25850 criminalizing the open carry of a loaded firearm violates Plaintiffs’  
20 rights under the Second Amendment, Fourth Amendment, and Fourteenth Amendment; and that  
21 (9) California’s statutory licensing scheme unconstitutionally interferes with Plaintiffs’ Second,  
22 Fourth, and Fourteenth Amendment (substantive and procedural) rights by artificially and  
23 subjectively demarcating the manner in which they choose to carry their property, to wit,  
24 firearms, in public. Defendants deny these contentions.  
25  
26  
27  
28



1 forth in California Penal Codes §26150 and §26155, in violation of the Dormant Commerce  
2 Clause; (6) Defendants’ enforcement of the geographical and population restrictions of open carry  
3 set forth in California Penal Codes §26150 and §26155, in violation of the Fourteenth  
4 Amendment right to interstate and intrastate travel; (7) Defendants’ enforcement of California  
5 Penal Code §26350, which violates Plaintiffs’ Second, Fourth, and Fourteenth Amendment rights  
6 to open carry unloaded handguns in public; (8) Defendants’ enforcement of California Penal  
7 Code §25850 criminalizing the open carry of a loaded firearm where an open licensee carries in  
8 public outside of the county of issuance, which violates Plaintiffs’ rights under the Second  
9 Amendment, Fourth Amendment, and Fourteenth Amendment; and (9) Defendants’ enforcement  
10 of California’s statutory licensing scheme, which unconstitutionally interferes with Plaintiffs’  
11 Second, Fourth, and Fourteenth Amendment (a) substantive and (b) procedural Due Process  
12 rights by artificially and subjectively demarcating the manner in which they choose to carry their  
13 personal property, to wit, firearms, in public.

14  
15  
16 250. The aforementioned statutes, customs, and policies prohibit Plaintiffs from openly  
17 carrying a firearm in public for self-defense. If an injunction does not issue, Plaintiffs will  
18 continue to be irreparably harmed by the continued violation of their fundamental rights as  
19 guaranteed and protected by the United States Constitution. Plaintiffs should not have to risk  
20 criminal prosecution in order to exercise the core fundamental rights detailed above and they  
21 should not have to choose between exercising their fundamental rights and being subject to  
22 criminal prosecution, incarceration, and other legal penalties.

23  
24 251. If not enjoined, Defendants will continue to enforce these statutes, policies, and  
25 customs in derogation of Plaintiffs’ constitutional rights. Plaintiffs have no speedy and adequate  
26 remedy at law. Damages are indeterminate and/or unascertainable and would not fully redress any  
27 harm suffered by Plaintiffs as a result of being unable to engage in activity protected by, *inter*  
28



1 *alia*, the Second, Fourth, and Fourteenth Amendments.

2 252. The injunctive relief sought herein would eliminate the irreparable harm and allow  
3 Plaintiffs to exercise their core, fundamental rights as described herein, to wit, open carry of a  
4 firearm throughout the State of California, loaded or unloaded, and the ability to choose the  
5 manner in which they carry their personal property, to wit, firearms for self-defense in public.  
6 Accordingly, injunctive relief is appropriate.  
7

8 253. Upon information and belief, Defendants deny the contentions stated herein.

9 **COUNT I**  
10 **Second Amendment “Good Cause” Requirement**

11 254. Repeat and reallege paragraphs “1” through and including “253” as if set forth in  
12 their entirety herein.

13 255. Defendants have violated a core right protected by the Second Amendment, to wit,  
14 Plaintiffs’ right to bear arms publicly by means of open carry by the enforcement of Penal Codes  
15 §26150 and §26155 requiring “good cause” for the issuance of an open carry license. Defendants,  
16 who bear the burden of justifying the restrictions placed on the exercise of fundamental rights,  
17 have no viable legal justification for the constitutional violations detailed herein.  
18

19 256. Under the theory that Defendants are liable to Plaintiffs for violations of their  
20 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
21 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
22 forth herein and in Plaintiffs’ Prayer for relief.  
23

24 **COUNT II**  
**Second Amendment Open Carry License Restriction by County**

25 257. Repeat and reallege paragraphs “1” through and including “256” as if set forth in  
26 their entirety herein.

27 258. Defendants have violated a core right protected by the Second Amendment, to wit,  
28

1 Plaintiffs’ right to bear arms publicly by means of open carry by the enforcement of Penal Codes  
2 §26150 and §26155 which restrict the validity and authority of an open carry license to the county  
3 of issuance. Defendants, who bear the burden of justifying the restrictions placed on the exercise  
4 of fundamental rights, have no viable legal justification for the constitutional violations detailed  
5 herein.

6  
7 259. Under the theory that Defendants are liable to Plaintiffs for violations of their  
8 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
9 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
10 forth herein and in Plaintiffs’ Prayer for relief.

### 11 **COUNT III**

#### 12 **Second Amendment Open Carry License Restriction by Population Size**

13 260. Repeat and reallege paragraphs “1” through and including “259” as if set forth in  
14 their entirety herein.

15 261. Defendants have violated a core right protected by the Second Amendment, to wit,  
16 Plaintiffs’ right to bear arms publicly by means of open carry by the enforcement of Penal Code  
17 §26150 and §26155 which restricts Plaintiffs’ ability to open carry based on county population  
18 size. Defendants, who bear the burden of justifying the restrictions placed on the exercise of  
19 fundamental rights, have no viable legal justification for the constitutional violations detailed  
20 herein.

21  
22 262. Under the theory that Defendants are liable to Plaintiffs for violations of their  
23 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
24 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
25 forth herein and in Plaintiffs’ Prayer for relief.

### 26 **COUNT IV**

#### 27 **Second Amendment “May Issue” Language for Open Carry License**



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**COUNT VI**  
**Commerce Clause Violation – County Population Size**

269. Repeat and reallege paragraphs “1” through and including “268” as if set forth in their entirety herein.

270. Defendants’ enforcement of Penal Codes §26150 and §26155 restricting open carry of a loaded firearm to counties having a population under 200,000 violates the [Dormant] Commerce Clause, U.S. Const. art. I, §8, cl. 3. Defendants, who bear the burden of justifying the restrictions placed on the exercise of fundamental rights, have no viable legal justification for the constitutional violations detailed herein.

271. Under the theory that Defendants are liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and preliminary injunctive relief against such unconstitutional statutes, customs and policies as set forth herein and in Plaintiffs’ Prayer for relief.

**COUNT VII**  
**Fourteenth Amendment Violation – County of Issuance**  
**(Right to Intrastate Travel)**

272. Repeat and reallege paragraphs “1” through and including “271” as if set forth in their entirety herein.

273. Defendants’ enforcement of Penal Codes §26150 and §26155 restricting the open carry of a loaded firearm to the county of issuance violates Plaintiffs’ Fourteenth Amendment right to intrastate travel. Defendants, who bear the burden of justifying the restrictions placed on the exercise of fundamental rights, have no viable legal justification for the constitutional violations detailed herein.

274. Under the theory that Defendants are liable to Plaintiffs for violations of their constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and preliminary injunctive relief against such unconstitutional statutes, customs and policies as set

1 forth herein and in Plaintiffs' Prayer for relief.

2 **COUNT VIII**  
3 **Fourteenth Amendment Violation – County Population Size**  
4 **(Right to Intrastate Travel)**

5 275. Repeat and reallege paragraphs "1" through and including "274" as if set forth in  
6 their entirety herein.

7 276. Defendants' enforcement of Penal Codes §26150 and §26155 restricting open carry  
8 of a loaded firearm to the county of issuance violates Plaintiffs' Fourteenth Amendment rights to  
9 intrastate travel. Defendants, who bear the burden of justifying the restrictions placed on the  
10 exercise of fundamental rights, have no viable legal justification for the constitutional violations  
11 detailed herein.

12 277. Under the theory that Defendants are liable to Plaintiffs for violations of their  
13 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
14 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
15 forth herein and in Plaintiffs' Prayer for relief.

16 **COUNT IX**  
17 **Second, Fourth, and Fourteenth Amendment Violation**  
18 **(Penal Code §25850)**

19 278. Repeat and reallege paragraphs "1" through and including "277" as if set forth in  
20 their entirety herein.

21 279. Defendants' enforcement of California Penal Code §25850, to the extent that the  
22 statute criminalizes the open carry of a loaded firearm by an open carry licensee in a county other  
23 than the county of issuance, whether on one's person or in a vehicle while in any public place or  
24 on any public street in an unincorporated city, or any public place or public street in a prohibited  
25 area of an unincorporated territory, violates Plaintiffs' Second, Fourth, and Fourteenth  
26 Amendment rights. Defendants, who bear the burden of justifying the restrictions placed on the  
27  
28

1 exercise of fundamental rights, have no viable legal justification for the constitutional violations  
2 detailed herein.

3 280. Under the theory that Defendants are liable to Plaintiffs for violations of their  
4 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
5 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
6 forth herein and in Plaintiffs' Prayer for relief.  
7

8 **COUNT X**  
9 **Second, Fourth, and Fourteenth Amendment Violation**  
10 **(Penal Code §26350)**

11 281. Repeat and reallege paragraphs "1" through and including "280" as if set forth in  
12 their entirety herein.

13 282. Defendants' enforcement of California Penal Code §26350, to the extent that the  
14 statute criminalizes the open carry of an unloaded firearm by an open carry licensee on one's  
15 person or in a vehicle while in any public place or on any public street in an unincorporated city,  
16 or any public place or public street in a prohibited area of an unincorporated territory, violates  
17 Plaintiffs' Second, Fourth, and Fourteenth Amendment rights. Defendants, who bear the burden  
18 of justifying the restrictions placed on the exercise of fundamental rights, have no viable legal  
19 justification for the constitutional violations detailed herein.  
20

21 283. Under the theory that Defendants are liable to Plaintiffs for violations of their  
22 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
23 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
24 forth herein and in Plaintiffs' Prayer for relief.

25 **COUNT XI**  
26 **Second Amendment Violation**  
27 **Demarcation of Manner of Carry**

28 284. Repeat and reallege paragraphs "1" through and including "283" as if set forth in

1 their entirety herein.

2 285. Defendants have violated a core right protected by the Second Amendment, to wit,  
3 Plaintiffs' right to carry their firearms in public for self-protection in a manner of their choosing  
4 by dictating the manner in which they carry their firearms while in public through a statutory  
5 licensing scheme, including Penal Codes §26150 and §26155, and criminal statutes §26350 and  
6 §25850, which are based on artificial and speculative beliefs and ideas having no actual effect on  
7 a legitimate governmental interest. Defendants, who bear the burden of justifying the restrictions  
8 placed on the exercise of fundamental rights, have no viable legal justification for the  
9 constitutional violations detailed herein.  
10

11 286. Under the theory that Defendants are liable to Plaintiffs for violations of their  
12 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
13 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
14 forth herein and in Plaintiffs' Prayer for relief.  
15

## 16 **COUNT XII**

### 17 **Fourth Amendment Interference with Property and Possessory Interests**

18 287. Repeat and reallege paragraphs "1" through and including "286" as if set forth in  
19 their entirety herein.  
20

21 288. Defendants have violated a core right protected by the Fourth Amendment, to wit,  
22 Plaintiffs' fundamental possessory right to their private property by dictating the manner in which  
23 they carry their firearms in public through a statutory licensing scheme, including Penal Codes  
24 §26150 and §26155, and criminal statutes §26350 and §25850, which are based on artificial and  
25 speculative beliefs and ideas having no actual effect on a legitimate governmental interest.  
26 Defendants, who bear the burden of justifying the restrictions placed on the exercise of  
27 fundamental rights, have no viable legal justification for the constitutional violations detailed  
28

1 herein.

2 289. Under the theory that Defendants are liable to Plaintiffs for violations of their  
3 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
4 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
5 forth herein and in Plaintiffs' Prayer for relief.  
6

7 **COUNT XIII**  
8 **Fourteenth Amendment Violation – Procedural Due Process**  
9 **Demarcation of Manner of Carry**

10 290. Repeat and reallege paragraphs "1" through and including "289" as if set forth in  
11 their entirety herein.

12 291. Defendants are violating a core right protected by the Fourteenth Amendment, to  
13 wit, Plaintiffs' right to procedural due process by enacting and enforcing a statutory scheme  
14 having criminal penalties that interfere with and extinguish their ability to decide how to carry  
15 their private property while in public through a statutory licensing scheme, including Penal Codes  
16 §26150 and §26155, and criminal statutes §26350 and §25850, which are based on artificial and  
17 speculative beliefs and ideas having no actual effect on a legitimate governmental interest,  
18 without the opportunity to be heard.

19 292. Defendants' actions constitutes an unreasonable, unjustified and unlawful  
20 interference with, and deprivation of, the full use and enjoyment of Plaintiffs' property.  
21 Defendants, who bear the burden of justifying the restrictions placed on the exercise of  
22 fundamental rights, have no viable legal justification for the constitutional violations detailed  
23 herein.  
24

25 293. Under the theory that Defendants are liable to Plaintiffs for violations of their  
26 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
27 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
28



1 forth herein and in Plaintiffs' Prayer for relief.

2  
3 **COUNT XIV**  
4 **Fourteenth Amendment Violation – Substantive Due Process**  
5 **Demarcation of Manner of Carry**

6 294. Repeat and reallege paragraphs "1" through and including "293" as if set forth in  
7 their entirety herein.

8 295. Defendants are violating a core fundamental human right protected by the  
9 Fourteenth Amendment, to wit, Plaintiffs' substantive right to due process by enacting and  
10 enforcing a statutory scheme having criminal penalties that removes Plaintiffs' ability to decide  
11 how to carry their private property while in public through a statutory licensing scheme, including  
12 Penal Codes §26150 and §26155, and criminal statutes §26350 and §25850, which are based on  
13 artificial and speculative beliefs and ideas having no actual effect on a legitimate governmental  
14 interest. Defendants, who bear the burden of justifying the restrictions placed on the exercise of  
15 fundamental rights, have no viable legal justification for the constitutional violations detailed  
16 herein.

17 296. Under the theory that Defendants are liable to Plaintiffs for violations of their  
18 constitutional rights pursuant to 42 U.S.C. §1983, Plaintiffs are entitled to declaratory and  
19 preliminary injunctive relief against such unconstitutional statutes, customs and policies as set  
20 forth herein and in Plaintiffs' Prayer for relief.

21  
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs request that judgment be entered in their favor and against  
24 Defendants as follows:

- 25 1. A declaration that the open carriage of firearms by law-abiding individuals for self-  
26 defense in public is a core and fundamental right protected by the Second Amendment.  
27 2. A declaration that state laws prohibiting the open carriage of firearms in public by law-  
28

1 abiding individuals for self-defense is facially unconstitutional and as applied to Plaintiffs.

2 3. A declaration that the “good cause” language of California Penal Codes §26150 and  
3 §26155 for the issuance of an open carry firearm license is facially unconstitutional and as  
4 applied to Plaintiffs as it violates the Second Amendment.

5 4. A declaration that the “may issue” language of California Penal Codes §26150 and  
6 §26155 for the issuance of an open carry firearm license is facially unconstitutional and as  
7 applied to Plaintiffs as it violates the Second Amendment.

8 5. A declaration that the ability of law-abiding individuals to choose the manner in which  
9 they possess and/or carry their property [firearms] in public for self-defense is a fundamental  
10 right protected by the Second, Fourth and Fourteenth Amendments.

11 6. A declaration that state laws demarcating and/or interfering with the manner in which  
12 law-abiding individuals possess and/or carry their property [firearms] in public for self-defense  
13 are facially unconstitutional and as applied to Plaintiffs.

14 7. A declaration that California Penal Codes §26150 and §26155 are facially  
15 unconstitutional and as applied to Plaintiffs because they unlawfully and unjustifiably interfere  
16 with Plaintiffs’ use and enjoyment of their property, to wit, firearms in violation of the Second,  
17 Fourth, and Fourteenth Amendments.

18 8. A declaration that California’s restrictions on the geographical validity of a carry  
19 license to the county of issuance violates the Second, Fourth, and Fourteenth Amendments, and  
20 the Dormant Commerce Clause.

21 9. A declaration that restricting the validity of a carry license to a particular  
22 county/counties based on their population size the Second, Fourth, and Fourteenth Amendments,  
23 and the Dormant Commerce Clause.

24 10. A declaration that Penal Codes §26150, §26155, §26350, and §25850 are facially  
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1 unconstitutional and as applied to Plaintiffs as they preclude law-abiding individuals from openly  
2 carrying a firearm in public for self-defense.

3           11. An Order preliminarily and permanently enjoining the Attorney General of California  
4 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
5 from enforcing the “good cause” requirement for the issuance of open carry license as provided  
6 for in California Penal Codes §26150 and §26155.

8           12. An Order preliminarily and permanently enjoining the Attorney General of California  
9 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
10 from enforcing the “may issue” language for the issuance of open carry license as provided for in  
11 California Penal Codes §26150 and §26155.

12           13. An Order preliminarily and permanently enjoining the Attorney General of California  
13 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
14 from enforcing the “county of issuance” limitation of the validity and effectiveness of open carry  
15 licenses as provided for in California Penal Codes §26150 and §26155.

17           14. An Order preliminarily and permanently enjoining the Attorney General of California  
18 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
19 from enforcing geographical restrictions on the issuance of open carry licenses based on the  
20 population of the county as provided for in California Penal Codes §26150 and §26155.

22           15. An Order preliminarily and permanently enjoining the Attorney General of California  
23 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
24 from enforcing California Penal Codes §25850 and §26350 against open carry licensees for  
25 openly carrying loaded and/or unloaded firearms.

26           16. An Order preliminarily and permanently enjoining the Attorney General of California  
27 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
28

1 from interfering with and/or infringing upon the manner in which law-abiding individuals carry  
2 their firearm in public as provided for in California Penal Codes §26150 and §26155.

3 17. An Order preliminarily and permanently enjoining the Attorney General of California  
4 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
5 from enforcing any other laws that interfere with and/or deny the fundamental right of Plaintiffs  
6 and other law-abiding individuals to openly carry a firearm in public for self-defense.

7 18. An Order preliminarily and permanently enjoining the Attorney General of California  
8 and all officers, agents, servants, employees, and persons acting in concert and under his authority  
9 from enforcing any other laws that interfere with and/or deny the fundamental right of Plaintiffs  
10 and other law-abiding individuals to choose the manner in which they possess and/or carry a  
11 firearm in public for self-defense.

12 19. Reasonable statutory attorney's fees, costs of suit, and disbursements pursuant to 42  
13 U.S.C. § 1988.

14 20. Any such further or alternative relief as the Court deems just and proper.  
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17  
18 Respectfully submitted,

19 Dated: April 9, 2019

20 COSCA LAW CORPORATION

21 /s/ Chris Cosca

22 Chris Cosca

23 Counsel for Plaintiffs

24 Email: [coscalaw@gmail.com](mailto:coscalaw@gmail.com)

25 Amy L. Bellantoni (AB3061)  
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\*Pro Hac Vice Application Forthcoming

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11 Facsimile: 888-763-9761  
12 *Pro Hac Vice*

13 Attorneys for Plaintiffs

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 -----x  
17 MARK BAIRD and  
18 RICHARD GALLARDO,

19 Plaintiffs,

20 **Case No.: 2:19-cv-00617-KJM-AC**

21 v.

22 **NOTICE OF APPEAL**

23 ROB BONTA, in his official capacity  
24 as Attorney General of the State of California,

25 Defendant.

26 -----x  
27 PLEASE TAKE NOTICE that the plaintiffs, MARK BAIRD and RICHARD GALLARDO,  
28 hereby appeal to the United States Court of Appeals for the Ninth Circuit from the annexed Order  
of the Hon. Kimberly J. Mueller entered by the Clerk of the Court on December 8, 2022 and each  
and every part thereof that denied the plaintiffs’ motion for a preliminary injunction, and *sua sponte*  
dismissed the plaintiffs’ as applied challenge, and each and every part thereof that is contrary to  
and/or prejudiced the plaintiffs’ rights, claims, and interests.

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Dated: January 3, 2023

THE BELLANTONI LAW FIRM, PLLC

/s/ Amy L. Bellantoni, Esq.

Amy L. Bellantoni

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*Pro Hac Vice*

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**U.S. District Court  
Eastern District of California - Live System (Sacramento)  
CIVIL DOCKET FOR CASE #: 2:19-cv-00617-KJM-AC**

Baird et al v. Bonta  
Assigned to: Chief District Judge Kimberly J. Mueller  
Referred to: Magistrate Judge Allison Claire  
Case in other court: US Court of Appeals, 23-15016  
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 04/09/2019  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Mark Baird**

represented by **Christopher Richard Cosca**  
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*ATTORNEY TO BE NOTICED*

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**Plaintiff**

**Richard Gallardo**

represented by **Christopher Richard Cosca**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amy L. Bellantoni , PHV**  
(See above for address)  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Rob Bonta**  
*in his official capacity as Attorney General  
of the State of California*

represented by **R. Matthew Wise**  
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Po Box 944255

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**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
04/09/2019	<a href="#">1</a>	COMPLAINT For Declaratory and Injunctive Relief against Xavier Becerra by Mark Baird, Richard Gallardo. Attorney Cosca, Christopher Richard added. (Attachments: # <a href="#">1</a> Civil Cover Sheet)(Cosca, Christopher) (Entered: 04/09/2019)
04/09/2019	<a href="#">2</a>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Mark Baird, Richard Gallardo for attorney Amy L. Bellantoni to appear Pro Hac Vice. (Cosca, Christopher) (Entered: 04/09/2019)
04/09/2019		PAYMENT for <a href="#">2</a> Pro Hac Vice Application in the amount of \$ 225, receipt number 0972-8203995. (Cosca, Christopher) (Entered: 04/09/2019)
04/09/2019		PAYMENT for Civil Case filing fee in the amount of \$ 400, receipt number 0972-8203739. (Cosca, Christopher) Modified on 4/23/2019 (Nelson, J). (Entered: 04/09/2019)
04/10/2019	<a href="#">3</a>	SUMMONS ISSUED as to *Xavier Becerra* with answer to complaint due within *21* days. Attorney *Christopher Richard Cosca* *Attorney at Law* *1007 7th Street, Suite 210* *Sacramento, CA 95814*. (Mena-Sanchez, L) (Entered: 04/10/2019)
04/10/2019	<a href="#">4</a>	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference SET for 8/15/2019 at 02:30 PM in Courtroom 3 (KJM) before District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Standing Order, # <a href="#">2</a> Consent Form, # <a href="#">3</a> VDRP) (Mena-Sanchez, L) (Entered: 04/10/2019)
04/30/2019	<a href="#">5</a>	PRO HAC VICE ORDER signed by District Judge Kimberly J. Mueller on 4/29/19. Added attorney Amy L. Bellantoni, PHV for Mark Baird and Richard Gallardo. (Mena-Sanchez, L) (Entered: 04/30/2019)
05/01/2019	<a href="#">6</a>	[DISREGARD TO BE REFILED BY ATTORNEY] SUMMONS RETURNED EXECUTED: Xavier Becerra served on 4/18/2019, answer due 5/9/2019. (Bellantoni, Amy) Modified on 5/2/2019 (Washington, S). (Entered: 05/01/2019)
05/01/2019	<a href="#">7</a>	CERTIFICATE of SERVICE by Mark Baird, Richard Gallardo re <a href="#">4</a> Civil New Case Documents for KJM. (Bellantoni, Amy) (Entered: 05/01/2019)
05/02/2019	<a href="#">8</a>	SUMMONS RETURNED EXECUTED: Xavier Becerra served on 4/18/2019. (Bellantoni, Amy) Modified on 5/3/2019 (Washington, S). (Entered: 05/02/2019)



05/08/2019	<a href="#">9</a>	STIPULATION to Extend Time to Respond to Complaint by Xavier Becerra. Attorney Wise, R. Matthew added. (Wise, R.) (Entered: 05/08/2019)
06/06/2019	<a href="#">10</a>	MOTION to DISMISS by Xavier Becerra. Motion Hearing set for 7/26/2019 at 10:00 AM in Courtroom 3 before District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Points and Authorities)(Wise, R.) (Entered: 06/06/2019)
06/07/2019	11	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller: The court is in receipt of Defendant's Motion to Dismiss (ECF No. <a href="#">10</a> ). The motion is noticed for hearing on 7/26/2019, which is not an available law and motion date. Accordingly, the hearing on the motion is RESET for 8/9/2019 at 10:00 AM. Filing deadlines are reset as provided by Local Rule 230. It is FURTHER ORDERED that the Status (Pretrial Scheduling) Conference set for 8/15/2019 is VACATED and ADVANCED to 8/9/2019 at 10:00 AM, with the filing of a joint status report due seven days prior. Both hearings will be held in in Courtroom 3 before District Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Entered: 06/07/2019)
06/21/2019	<a href="#">12</a>	STIPULATION and PROPOSED ORDER to Continue Status Conference, Briefing Deadlines and Hearing Date for Defendant's Motion to Dismiss Plaintiffs' Complaint by Xavier Becerra. (Wise, R.) Modified on 6/25/2019 (Mena-Sanchez, L). (Entered: 06/21/2019)
06/27/2019	<a href="#">13</a>	STIPULATION and ORDER signed by District Judge Kimberly J. Mueller on 6/27/19 RESCHEDULING the Status Conference and hearing on Defendants' <a href="#">10</a> Motion for 9/6/2019 at 10:00 AM in Courtroom 3 (KJM) before District Judge Kimberly J. Mueller. And APPROVING the Parties' briefing and hearing Schedule: 7/8/19: Plaintiffs to file preliminary injunction motion. 7/29/19: Plaintiffs to file opposition to Defendant's motion to dismiss. 8/2/19: Defendant to file opposition to Plaintiffs' preliminary injunction motion. 8/30/19: Parties to file joint status report, Plaintiffs to file reply in support of preliminary injunction motion, and Defendant to file reply in support of motion to dismiss. (Mena-Sanchez, L) (Entered: 06/27/2019)
07/08/2019	<a href="#">14</a>	MOTION for PRELIMINARY INJUNCTION by Mark Baird, Richard Gallardo. Motion Hearing set for 9/6/2019 at 10:00 AM in Courtroom 3 (KJM) before District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Declaration of Amy L. Bellantoni, # <a href="#">2</a> Declaration of Richard Gallardo, # <a href="#">3</a> Declaration of Mark Baird)(Bellantoni, Amy) (Entered: 07/08/2019)
07/08/2019	<a href="#">15</a>	(DISREGARD; REFER TO AMENDED FILING AT ECF NO. <a href="#">18</a> ) MEMORANDUM by Mark Baird, Richard Gallardo in support of <a href="#">14</a> Motion for Preliminary Injunction. (Bellantoni, Amy) Modified on 7/9/2019 (Benson, A.) (Entered: 07/08/2019)
07/11/2019	<a href="#">16</a>	REQUEST to FILE Amended <a href="#">14</a> Memorandum of Points and Authorities by Mark Baird, Richard Gallardo. (Bellantoni, Amy) Modified on 7/12/2019 (Benson, A.). (Entered: 07/11/2019)
07/16/2019	17	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller: Plaintiffs' Request to File an Amended Memorandum of Points and Authorities in Connection with Plaintiffs' Motion for Preliminary Injunction is GRANTED. (See ECF Nos. <a href="#">14</a> and <a href="#">16</a> ) Plaintiffs' amended filing shall be filed forthwith. (Text Only Entry) (Schultz, C) (Entered: 07/16/2019)
07/16/2019	<a href="#">18</a>	AMENDED <a href="#">15</a> MEMORANDUM of POINTS in SUPPORT of <a href="#">14</a> Motion for Preliminary Injunction by Mark Baird, Richard Gallardo. (Bellantoni, Amy) Modified on 7/17/2019 (York, M). (Entered: 07/16/2019)
07/30/2019	<a href="#">19</a>	OPPOSITION by Mark Baird, Richard Gallardo to <a href="#">10</a> Motion to Dismiss. (Bellantoni, Amy) (Entered: 07/30/2019)

08/02/2019	<a href="#">20</a>	OPPOSITION by Xavier Becerra to <a href="#">14</a> Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Declaration of R. Matthew Wise, # <a href="#">2</a> Declaration of Former Covina Chief of Police Kim Raney)(Wise, R.) (Entered: 08/02/2019)
08/28/2019	21	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller: On the court's own motion, the Status (Pretrial Scheduling) Conference and Motion Hearing as to Defendant's Motion to Dismiss and Plaintiff's Motion for Preliminary Injunction (ECF Nos. <a href="#">10</a> and <a href="#">14</a> ) set for 9/6/2019 is VACATED and RESET for 10/8/2019 at 10:00 AM in Courtroom 3 before District Judge Kimberly J. Mueller. Motion related briefing deadlines are reset as provided by Local Rule 230. The parties shall file a joint status report no less than seven days prior to the new date of the status conference. (Text Only Entry) (Schultz, C) (Entered: 08/28/2019)
09/06/2019	<a href="#">22</a>	NOTICE of INTENT to present sworn testimony at the 10/8/2019 <a href="#">14</a> preliminary injunction hearing by Plaintiffs Mark Baird, Richard Gallardo. (Bellantoni, Amy) Modified on 9/9/2019 (Benson, A.). (Entered: 09/06/2019)
09/09/2019	<a href="#">23</a>	OBJECTIONS by Defendant Xavier Becerra to <a href="#">22</a> Notice of Intent. (Wise, R.) Modified on 9/9/2019 (Benson, A.). (Entered: 09/09/2019)
09/10/2019	<a href="#">24</a>	NOTICE of WITHDRAWAL of <a href="#">22</a> Notice of Intent by Mark Baird, Richard Gallardo. (Bellantoni, Amy) Modified on 9/10/2019 (Benson, A.). (Entered: 09/10/2019)
10/01/2019	<a href="#">25</a>	JOINT STATUS REPORT by Mark Baird, Richard Gallardo. (Bellantoni, Amy) (Entered: 10/01/2019)
10/01/2019	<a href="#">26</a>	REPLY by Xavier Becerra in support of <a href="#">10</a> Motion to Dismiss. (Wise, R.) (Entered: 10/01/2019)
10/02/2019	<a href="#">27</a>	REPLY by Mark Baird, Richard Gallardo in support of <a href="#">14</a> Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Declaration of Clayton Cramer, # <a href="#">2</a> Declaration of Charles "Chuck" Haggard, # <a href="#">3</a> Declaration of Mark Baird, # <a href="#">4</a> Declaration of Richard Gallardo) (Bellantoni, Amy) (Entered: 10/02/2019)
10/02/2019	<a href="#">28</a>	DECLARATION of Amy L. Bellantoni in support of <a href="#">14</a> Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4) (Bellantoni, Amy) Modified on 10/2/2019 (Benson, A.). (Entered: 10/02/2019)
10/08/2019	29	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller: Due to unforeseen circumstances and on the court's own motion, the Status (Pretrial Scheduling) Conference and Motion Hearing set for 10/8/2019 is VACATED and RESET for 10/9/2019 at 11:00 AM in Courtroom 3 before District Judge Kimberly J. Mueller. (Text Only Entry)(Schultz, C) (Entered: 10/08/2019)
10/09/2019	30	MINUTES for MOTION HEARING and SCHEDULING CONFERENCE held before District Judge Kimberly J. Mueller on 10/9/2019. Plaintiffs' Counsel, Amy Bellantoni, present. Defendant's Counsel, R. Matthew Wise, present. The court heard oral argument as to Defendant's Motion to Dismiss (ECF no. <a href="#">10</a> ) and Plaintiffs' Motion for Preliminary Injunction (ECF No. <a href="#">14</a> ). The court and counsel also discussed case scheduling. After careful consideration of the parties' arguments, the court took the matters under submission. A written order will issue. Court Reporter: Kacy Barajas. (Text Only Entry) (Schultz, C) (Entered: 10/09/2019)
10/11/2019	<a href="#">31</a>	TRANSCRIPT REQUEST by Mark Baird for proceedings held on October 9, 2019 before Judge Kimberly J. Mueller. Court Reporter Kacy Barajas. (Barajas, K) (Entered: 10/11/2019)
10/29/2019	<a href="#">32</a>	TRANSCRIPT of Proceedings, Motion to Dismiss, Motion for Preliminary Injunction,

		Status Conference held on October 9, 2019, before District Judge Kimberly J. Mueller, filed by Court Reporter Kacy Barajas, Phone number 916-426-7640 E-mail kbarajas.csr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 11/21/2019. Redacted Transcript Deadline set for 11/29/2019. Release of Transcript Restriction set for 1/27/2020. (Barajas, K) (Entered: 10/29/2019)
08/31/2020	<a href="#">33</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 8/28/2020 DENYING Plaintiffs' <a href="#">14</a> motion for a preliminary injunction without prejudice. GRANTING in part and DENYING in part Defendants' <a href="#">10</a> motion to dismiss as follows: Claims 5 and 6 are DISMISSED; Claims 7 and 8 are DISMISSED; Claims 9, 10, 12 and 14 are DISMISSED to the extent they rely on the Fourth or Fourteenth Amendments; and The motion to dismiss is DENIED as to claim 13. Plaintiffs shall file any amended complaint within 21 days of this order. The parties shall file a joint status report regarding the future scheduling of this case within 30 days of this order. See E.D. L.R. 240. (Becknal, R) (Entered: 08/31/2020)
09/21/2020	<a href="#">34</a>	FIRST AMENDED COMPLAINT against Xavier Becerra by Mark Baird, Richard Gallardo.(Bellantoni, Amy) (Entered: 09/21/2020)
09/28/2020	<a href="#">35</a>	FIRST AMENDED STATUS REPORT by Mark Baird, Richard Gallardo. (Bellantoni, Amy) (Entered: 09/28/2020)
10/13/2020	<a href="#">36</a>	STIPULATION and PROPOSED ORDER re extension of time to file answer by Xavier Becerra. (Wise, R.) Modified on 10/14/2020 (Kaminski, H). (Entered: 10/13/2020)
10/16/2020	<a href="#">37</a>	STIPULATION and ORDER signed by Chief District Judge Kimberly J. Mueller on 10/15/2020 EXTENDING the deadline to 11/2/2020 for Defendant to answer Plaintiffs' Complaint. (Mena-Sanchez, L) (Entered: 10/16/2020)
11/02/2020	<a href="#">38</a>	ANSWER by Xavier Becerra.(Wise, R.) (Entered: 11/02/2020)
04/12/2021	<a href="#">39</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 4/12/2021. The Court ORDERS as follows: Initial disclosures are due 4/30/2021. Fact Discovery must be completed by 8/27/2021. Expert opinions must be disclosed by 8/27/2021. Rebuttal expert opinions must be disclosed by 9/24/2021. Expert Discovery must be completed by 10/29/2021. The last day for hearing Dispositive Motions is 12/17/2021. (Mena-Sanchez, L) (Entered: 04/12/2021)
04/13/2021	<a href="#">40</a>	MOTION for PRELIMINARY INJUNCTION by Mark Baird, Richard Gallardo. Motion Hearing set for 6/18/2021 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Memorandum of Points and Authorities, # <a href="#">2</a> Declaration of Mark Baird, # <a href="#">3</a> Declaration of Richard Gallardo)(Bellantoni, Amy). Modified on 4/14/2021 (Kaminski, H). (Entered: 04/13/2021)
06/04/2021	<a href="#">41</a>	OPPOSITION to <a href="#">40</a> Motion for Preliminary Injunction by Defendant Xavier Becerra. (Attachments: # <a href="#">1</a> Declaration of R. Wise, # <a href="#">2</a> Declaration of K. Raney)(Wise, R.) Modified on 6/7/2021 (Kaminski, H). (Entered: 06/04/2021)
06/17/2021	<a href="#">42</a>	MOTION for CONTINUANCE return date of Plaintiffs' Motion for a Second Preliminary Injunction by Mark Baird, Richard Gallardo. Motion Hearing SET for 6/18/2021 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Declaration)(Bellantoni, Amy) Modified on 6/21/2021 (Mena-Sanchez, L). (Entered: 06/17/2021)
06/17/2021	<a href="#">43</a>	CLARIFICATION of position by Xavier Becerra re <a href="#">42</a> Motion to Continue. (Wise, R.)

		Modified on 6/21/2021 (Mena-Sanchez, L). (Entered: 06/17/2021)
06/17/2021	<a href="#">44</a>	[VACATED] MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 6/17/2021: On the court's own motion and pursuant to Local Rule 230(g), Plaintiffs' Motion for a Preliminary Injunction, ECF No. <a href="#">40</a> , is SUBMITTED without oral argument. The motion is submitted on the briefs, including the reply brief, if any filed no later than 7/9/2021. Accordingly, the hearing date of 6/18/2021 is VACATED. If the court determines that oral argument is needed, it will be scheduled at a later date. Plaintiffs' Motion for Continuance, ECF No. <a href="#">42</a> , is DENIED as MOOT. (Text Only Entry) (Schultz, C) Modified on 6/22/2021 (Mena-Sanchez, L). (Entered: 06/17/2021)
06/22/2021	<a href="#">45</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 6/18/2021 EXTENDING Reply brief deadline to 7/9/2021. The Motion <a href="#">40</a> hearing is RESET for 7/16/2021 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. The 6/17/2021 44 Minute Order is VACATED. (Mena-Sanchez, L) (Entered: 06/22/2021)
07/09/2021	<a href="#">46</a>	REPLY by Mark Baird, Richard Gallardo in support to <a href="#">40</a> Second Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Declaration of Chuck Haggard (not signed), # <a href="#">2</a> Declaration of Clayton Cramer)(Bellantoni, Amy) Modified on 7/13/2021 (Reader, L). (Entered: 07/09/2021)
07/09/2021	<a href="#">47</a>	REPLY DECLARATION of Amy L. Bellantoni in support of <a href="#">40</a> Motion for Preliminary Injunction,. (Attachments: # <a href="#">1</a> Reply Declaration of Mark Baird, # <a href="#">2</a> Reply Declaration of Richard Gallardo, # <a href="#">3</a> Exhibit FOIL Response of California Department of Justice, # <a href="#">4</a> Exhibit DOJ Concealed Carry Application Forms, # <a href="#">5</a> Exhibit Testimony of Eugene Volokh, # <a href="#">6</a> Exhibit Priorities for Research to Reduce the Threat of Firearm-Related Violence, # <a href="#">7</a> Exhibit The Second Amendment and the Personal Right to Arms, Duke University School of Law, # <a href="#">8</a> Exhibit U.S. News and World Report, Open Carry Deters Crime,)(Bellantoni, Amy) Modified on 7/13/2021 (Reader, L). (Entered: 07/09/2021)
07/14/2021	<a href="#">48</a>	AMENDED DOCUMENT by Mark Baird, Richard Gallardo: Amended <a href="#">47</a> Declaration,,. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8)(Bellantoni, Amy) (Entered: 07/14/2021)
07/14/2021	<a href="#">49</a>	AMENDED DOCUMENT by Mark Baird, Richard Gallardo: Amended <a href="#">46</a> Reply to Response to Motion,. (Attachments: # <a href="#">1</a> Declaration Chuck Haggard, # <a href="#">2</a> Declaration Clayton Cramer)(Bellantoni, Amy) (Entered: 07/14/2021)
07/16/2021	50	MINUTES for MOTION HEARING held via video conference before Chief District Judge Kimberly J. Mueller on 7/16/2021. Plaintiffs' Counsel, Amy Bellantoni, present. Plaintiff Mark Baird, present. Defendant's Counsel, R. Matthew Wise, present. After hearing oral argument as to Plaintiff's <a href="#">40</a> Motion for Preliminary Injunction, the court SUBMITTED the matter. A written order will issue. Court Reporter: Jennifer Coulthard. (Text Only Entry) (York, M) (Entered: 07/16/2021)
07/18/2021	<a href="#">51</a>	TRANSCRIPT REQUEST by Mark Baird, Richard Gallardo for proceedings held on 7/16/2021 before Judge Hon. Kimberly Mueller. Court Reporter Jennifer Coulthard. (Bellantoni, Amy) (Entered: 07/18/2021)
07/27/2021	<a href="#">52</a>	TRANSCRIPT of Proceedings Motion for preliminary injunction held on 7/16/2021, before Chief District Judge Kimberly J. Mueller, filed by Jennifer Coulthard, Phone number 530-537-9312 E-mail jenmrcrr2@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 8/19/2021. Redacted Transcript Deadline set for 8/27/2021.



		Release of Transcript Restriction set for 10/25/2021. (Coulthard, Jennifer) (Entered: 07/27/2021)
08/18/2021	<a href="#">53</a>	STIPULATION and PROPOSED ORDER to extend time for fact discovery by Xavier Becerra. (Wise, R.) Modified on 8/19/2021 (Reader, L). (Entered: 08/18/2021)
10/28/2021	<a href="#">54</a>	STIPULATION and PROPOSED ORDER for an extension of expert discovery by Mark Baird, Richard Gallardo. (Bellantoni, Amy) (Entered: 10/28/2021)
11/03/2021	<a href="#">55</a>	STIPULATION and ORDER signed by Magistrate Judge Allison Claire on 11/3/21 ORDERING that the October 29, 2021 expert discovery deadline is extended to November 30, 2021. (Kaminski, H) (Entered: 11/03/2021)
11/19/2021	<a href="#">56</a>	MOTION FOR SUMMARY JUDGMENT by Rob Bonta. Motion Hearing set for 12/17/2021 at 10:00 AM in Courtroom 3 before Chief District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Memorandum , # <a href="#">2</a> Request for Judicial Notice, # <a href="#">3</a> Declaration of R. Matthew Wise, # <a href="#">4</a> Statement of Undisputed Facts, # <a href="#">5</a> Proof of Service )(Wise, R.) Modified on 11/22/2021 (Benson, A.). (Entered: 11/19/2021)
12/01/2021	<a href="#">57</a>	STIPULATION and PROPOSED ORDER for to Stay the Proceedings re <a href="#">56</a> Motion for Summary Judgment by Mark Baird, Richard Gallardo. (Bellantoni, Amy) (Entered: 12/01/2021)
12/02/2021	<a href="#">58</a>	STIPULATION and ORDER signed by Chief District Judge Kimberly J. Mueller on 12/2/2021 STAYING this matter pending a decision from the United States Supreme Court in the matter of NYSRPA v. Bruen, Case No. 20-843. CASE STAYED. (Huang, H) (Entered: 12/02/2021)
07/07/2022	<a href="#">59</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 7/7/22 LIFTING the stay and a Status Conference is SET for 7/28/2022 at 02:30 PM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. A joint status report is due seven days prior to the hearing. (Kastilahn, A) (Entered: 07/07/2022)
07/08/2022	<a href="#">60</a>	NOTICE of APPEARANCE by Ryan Richard Davis on behalf of Rob Bonta. Attorney Davis, Ryan Richard added. (Attachments: # <a href="#">1</a> Proof of Service)(Davis, Ryan) (Entered: 07/08/2022)
07/08/2022	<a href="#">61</a>	MOTION to CONTINUE by Mark Baird, Richard Gallardo. Motion Hearing SET for 7/12/2022 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Declaration of Amy L. Bellantoni)(Bellantoni, Amy) Modified on 7/13/2022 (Mena-Sanchez, L). (Entered: 07/08/2022)
07/13/2022	62	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 7/13/2022: The Status Conference set for 7/28/2022 before Chief District Judge Kimberly J. Mueller will proceed by videoconference through the Zoom application. The Courtroom Deputy will provide counsel with the hearing access information no less than 24 hours before the hearing. Accordingly, Plaintiffs' Motion to Appear Remotely or, Alternatively, for a Continuance, ECF No. <a href="#">61</a> , is DENIED as MOOT. (Text Only Entry) (Schultz, C) (Entered: 07/13/2022)
07/21/2022	<a href="#">63</a>	SECOND AMENDED JOINT STATUS REPORT by Mark Baird, Richard Gallardo. (Bellantoni, Amy) Modified on 7/22/2022 (Mena-Sanchez, L). (Entered: 07/21/2022)
07/28/2022	64	MINUTES for STATUS CONFERENCE held (via videoconference) before Chief District Judge Kimberly J. Mueller on 7/28/2022, and FRCP 16 BENCH ORDER: Plaintiffs' Counsel, Amy Bellantoni, present. Plaintiff, Mark Baird, present. Defendant's Counsel, R. Matthew Wise and Ryan Davis, present. The court and counsel discussed case scheduling. After careful consideration of the parties' comments, the court ORDERED as follows: Plaintiffs shall file a Second Amended Complaint within sixty (60) days, and the parties

		shall file a Further Joint Status Report by 10/7/2023. The Further Joint Status Report must state the parties' positions on whether additional discovery is necessary, including expert discovery, and must propose a schedule for the resolution of this matter. SO ORDERED. Court Reporter: Thresha Spencer. (Text Only Entry) (Schultz, C) (Entered: 07/28/2022)
08/08/2022	<a href="#">65</a>	THIRD MOTION for PRELIMINARY INJUNCTION by Mark Baird, Richard Gallardo. Motion Hearing set for 10/21/2022 at 10:00 AM in Courtroom 3 (KJM) before Chief District Judge Kimberly J. Mueller. (Attachments: # <a href="#">1</a> Declaration Mark Baird, # <a href="#">2</a> Declaration Richard Gallardo, # <a href="#">3</a> Memorandum of Points and Authorities)(Bellantoni, Amy) (Entered: 08/08/2022)
08/12/2022	<a href="#">66</a>	UNOPPOSED MOTION for EXTENSION of TIME to Respond to Third Motion for Preliminary Injunction by Rob Bonta. (Attachments: # <a href="#">1</a> Declaration, # <a href="#">2</a> Proposed Order, # <a href="#">3</a> Proof of Service)(Davis, Ryan) Modified on 8/12/2022 (Benson, A.). (Entered: 08/12/2022)
08/16/2022	67	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 8/16/2022: Defendant's Motion for Administrative Relief Requesting to Extend Time to Respond to Plaintiffs' Third Motion for Preliminary Injunction, ECF No. <a href="#">66</a> , is GRANTED. Accordingly, Defendant's Brief in Opposition to the Motion for a Preliminary Injunction is due 9/30/2022, and Plaintiffs' Reply in Support of their Motion is due 10/11/2022. (Text Only Entry) (Schultz, C) (Entered: 08/16/2022)
09/27/2022	<a href="#">68</a>	SECOND AMENDED COMPLAINT against Rob Bonta by Mark Baird, Richard Gallardo.(Bellantoni, Amy) (Entered: 09/27/2022)
09/30/2022	<a href="#">69</a>	OPPOSITION by Rob Bonta to <a href="#">65</a> Motion for Preliminary Injunction,. (Attachments: # <a href="#">1</a> Declaration, # <a href="#">2</a> Declaration, # <a href="#">3</a> Proof of Service)(Davis, Ryan) (Entered: 09/30/2022)
10/03/2022	70	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 10/3/2022: On the court's own motion, the Motion Hearing as to Plaintiffs' Third Motion for Preliminary Injunction, ECF No. <a href="#">65</a> , set for 10/21/2022 is RESET for 11/4/2022 at 10:00 AM in Courtroom 3 before Chief District Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Entered: 10/03/2022)
10/03/2022	<a href="#">71</a>	STIPULATION and PROPOSED ORDER to Extend Time to File Answer by Rob Bonta. (Davis, Ryan) Modified on 10/4/2022 (Coll, A). (Entered: 10/03/2022)
10/07/2022	<a href="#">72</a>	THIRD AMENDED STATUS REPORT by Mark Baird, Richard Gallardo. (Bellantoni, Amy) (Entered: 10/07/2022)
10/11/2022	<a href="#">73</a>	REPLY by Mark Baird, Richard Gallardo to response to <a href="#">65</a> Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Declaration of Amy L. Bellantoni, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Exhibit 2, # <a href="#">4</a> Exhibit 3)(Bellantoni, Amy) Modified on 10/17/2022 (Zignago, K.). (Entered: 10/11/2022)
10/14/2022	<a href="#">74</a>	STIPULATION and ORDER signed by Chief District Judge Kimberly J. Mueller on 10/13/2022 EXTENDING the deadline for defendant to answer plaintiffs' first amended complaint to 11/1/2022. (Zignago, K.) (Entered: 10/14/2022)
10/25/2022	75	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Chief District Judge Kimberly J. Mueller on 10/25/2022: The Motion Hearing as to Plaintiffs' Third Motion for Preliminary Injunction, ECF No. <a href="#">65</a> , set for 11/4/2022 at 10:00 AM is ADVANCED on the same date for 9:00 AM in Courtroom 3 before Chief District Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Entered: 10/25/2022)
10/31/2022	<a href="#">76</a>	ANSWER by Rob Bonta.(Davis, Ryan) (Entered: 10/31/2022)
11/04/2022	77	MINUTES for MOTION HEARING and SCHEDULING CONFERENCE held before

		Chief District Judge Kimberly J. Mueller on 11/4/2022, and FRCP 16 BENCH ORDER: Plaintiffs' Counsel, Amy Bellantoni, present. Defendants' Counsel, Ryan Davis and R. Matthew Wise, present. The court heard oral arguments on the pending Motion for a Preliminary Injunction, at ECF No. <a href="#">65</a> , and discussed case scheduling. The court also confirmed that the Motion for a Preliminary Injunction, at ECF No. <a href="#">40</a> , and the Motion for Summary Judgment, at ECF No. <a href="#">56</a> , are WITHDRAWN. After careful consideration of the parties' comments, the court ORDERED the following pre-trial case schedule: fact discovery is reopened and shall be completed by 5/12/2023; expert disclosures shall be completed by 6/9/2023; rebuttal expert witnesses shall be exchanged by 7/14/2023; all expert discovery shall be completed by 8/4/2023; and all dispositive motions, except for motions for continuances, temporary restraining orders or other emergency applications, shall be <u>heard</u> by 9/22/2023. Motions regarding discovery shall be noticed before the Magistrate Judge, as provided by Local Rule 302(c). This case schedule will become final without further order of the court unless objections are filed within fourteen (14) calendar days of this order. The schedule, once final, shall not be modified except by leave of court upon showing of good cause. All provisions of the court's standing scheduling order for Civil Cases filed concurrently herewith are incorporated therein. SO ORDERED. Court Reporter: Maryann Velanoti. (Text Only Entry) (Schultz, C) (Entered: 11/04/2022)
11/04/2022	<a href="#">78</a>	STANDING SCHEDULING ORDER issued by Courtroom Deputy C. Schultz for Chief Judge Kimberly J. Mueller on 11/4/2022. (Schultz, C) (Entered: 11/04/2022)
11/08/2022	<a href="#">79</a>	TRANSCRIPT REQUEST by Mark Baird, Richard Gallardo for proceedings held on 11/4/2022 before Judge Hon. Kimberly J. Mueller. Court Reporter Maryann Valenoti. (Bellantoni, Amy) (Entered: 11/08/2022)
11/16/2022	<a href="#">80</a>	TRANSCRIPT of Plaintiffs' Third Motion for Preliminary Injunction held on November 4, 2022, before Chief District Judge Kimberly J. Mueller, filed by Court Reporter Maryann Valenoti, Phone number 916-930-4275 E-mail mvalenotirmcrr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 12/8/2022. Redacted Transcript Deadline set for 12/19/2022. Release of Transcript Restriction set for 2/16/2023. (Valenoti, Maryann) (Entered: 11/16/2022)
11/18/2022	<a href="#">81</a>	OBJECTIONS by Plaintiffs Mark Baird, Richard Gallardo to 77 Order on Motion for Preliminary Injunction. (Attachments: # <a href="#">1</a> Exhibit)(Bellantoni, Amy) Modified on 11/21/2022 (Rodriguez, E). (Entered: 11/18/2022)
11/23/2022	<a href="#">82</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 11/22/22 ORDERING that Objections <a href="#">81</a> are overruled. (Kaminski, H) (Entered: 11/23/2022)
12/08/2022	<a href="#">83</a>	ORDER signed by Chief District Judge Kimberly J. Mueller on 12/7/2022 DENYING <a href="#">65</a> Third Motion for Preliminary Injunction and DISMISSING IN PART <a href="#">68</a> Second Amended Complaint. The parties are ORDERED to SHOW CAUSE within 30 days why the court should not appoint its own expert witness to collect and survey evidence. (Perdue, C.) (Entered: 12/08/2022)
01/03/2023	<a href="#">84</a>	NOTICE of INTERLOCUTORY APPEAL by Mark Baird, Richard Gallardo as to <a href="#">83</a> Order,. (Filing fee \$ 505, receipt number ACAEDC-10623589) (Bellantoni, Amy) (Entered: 01/03/2023)
01/04/2023	<a href="#">85</a>	APPEAL PROCESSED to Ninth Circuit re <a href="#">84</a> Notice of Interlocutory Appeal filed by Mark Baird, Richard Gallardo. Notice of Appeal filed *1/3/2023*, Complaint filed *4/9/2019* and Appealed Order / Judgment filed *12/8/2022*. ** *Fee Status: Paid on

		1/3/2023 in the amount of \$505.00* (Attachments: # <a href="#">1</a> Appeal Information) (Kastilahn, A) (Entered: 01/04/2023)
01/06/2023	<a href="#">86</a>	USCA CASE NUMBER 23-15016 for <a href="#">84</a> Notice of Interlocutory Appeal filed by Mark Baird, Richard Gallardo. (Licea Chavez, V) (Entered: 01/06/2023)
01/09/2023	<a href="#">87</a>	RESPONSE to <a href="#">83</a> ORDER to SHOW CAUSE by Rob Bonta. (Davis, Ryan) (Entered: 01/09/2023)
01/09/2023	<a href="#">88</a>	RESPONSE to <a href="#">83</a> ORDER to SHOW CAUSE by Mark Baird, Richard Gallardo. (Attachments: # <a href="#">1</a> Exhibit Mark Smith article, # <a href="#">2</a> Exhibit US v Bullock, government response, # <a href="#">3</a> Exhibit US v Bullock, defendant response)(Bellantoni, Amy) Modified on 1/11/2023 (Benson, A.). (Entered: 01/09/2023)

<b>PACER Service Center</b>			
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<b>Billable Pages:</b>	9	<b>Cost:</b>	0.90