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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 ROBERT M. BLANK, an individual, ANTONIO  
13 RAMOS RODRIGUEZ, an individual, KYLE  
14 HOANG TRUONG, an individual, CHARLES  
15 KOON CHIU YOUNG, an individual,  
16 JONATHAN YOUNG, an individual,  
17 CALIFORNIA RIFLE & PISTOL  
18 ASSOCIATION, INCORPORATED; and THE  
19 SECOND AMENDMENT FOUNDATION,

17 Plaintiffs,

18 v.

19 SANTA CLARA COUNTY SHERIFF'S  
20 DEPARTMENT; SHERIFF ROBERT JONSEN,  
21 in his official capacity; and DOES 1-10,

21 Defendants.

No. 25CV08027 EJD

**DEFENDANTS' CORRECTED MOTION  
TO DISMISS [F.R.C.P. 12(b)(6) and  
12(b)(7)]; MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: TBD  
Time: 9:00 a.m.  
Dept. 4  
Judge: The Honorable Edward J. Davila

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**NOTICE OF MOTION**

TO THE COURT AND ALL PARTIES:

NOTICE IS HEREBY GIVEN that on a date to be determined, at 9:00 a.m. or as soon thereafter as the Court permits, Defendants COUNTY OF SANTA CLARA and SHERIFF ROBERT JONSEN will move the Court for an order on their Motion to Dismiss. This motion is based on this notice, the Memorandum of Points and Authorities in Support of the motion, the Notice of Claim of Constitutionality, and on such oral argument that might be presented at the hearing.

Defendants file this motion to dismiss without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(7) on the ground that the California Attorney General is a party without whom complete relief cannot be granted because the First Amended Complaint raises a constitutional question and Plaintiff failed to give the required notice pursuant to 28 U.S.C. section 2403. The County’s motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) of the Second Claim is filed on the grounds that the claim alleging a violation of Plaintiffs First Amendment right to political speech fails to state a claim. Defendants further request that the Court find that the “Sheriff’s Department” is not a party subject to suit in this matter.

Dated: December 30, 2025

Respectfully submitted,

TONY LOPRESTI  
COUNTY COUNSEL

By: /s/ Aryn Paige Harris  
ARYN PAIGE HARRIS  
Deputy County Counsel

Attorneys for Defendants  
COUNTY OF SANTA CLARA and SHERIFF  
ROBERT JONSEN

## I. INTRODUCTION

1  
2 Plaintiffs claim that this action challenges the constitutionality of the County of Santa Clara  
3 (erroneously also sued as the “Santa Clara County Sheriff’s Department<sup>1</sup>”) and Sheriff Robert  
4 Jonsen’s (“Defendants”) concealed carry weapon (“CCW”) permit issuance policies and practices.  
5 In fact, this lawsuit challenges California Senate Bill 2 (“SB 2”). Following the Supreme Court’s  
6 decision in *New York Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022) (“*Bruen*”), California passed  
7 SB 2, which amended its Concealed Carry Weapons statutory scheme under Penal Code § 26150, et  
8 seq. SB 2, which became effective January 1, 2024, removed the unconstitutional “good cause”  
9 requirement and replaced it with the requirement that licensing authorities determine whether a  
10 CCW applicant is a “disqualified person” before issuing a CCW license. Penal Code § 26202 sets  
11 forth considerations for determining whether an applicant is deemed a “disqualified person” based  
12 on factors such as criminal history, mental health, substance abuse, and restraining orders. As part  
13 of conducting this analysis, public entities can seek cost recovery and require applicants to undergo a  
14 psychological test: the features of the statute at issue in this matter.

15 One of the co-plaintiffs here brought a legal challenge to SB 2’s sensitive places  
16 restrictions—the portion of SB 2 that limits where concealed weapons can be carried—by filing a  
17 lawsuit against the State, thereby involving the California Attorney General, in *Wolford v. Lopez*,  
18 116 F.4th 959 (2024), a case that consolidated challenges to both California’s and Hawaii’s sensitive  
19 places laws enacted after *Bruen*. Now, Plaintiffs claim Defendants’ implementation of SB 2 violates  
20 the Second and Fourteenth Amendments because Defendants’ cost recovery is too high—albeit  
21 authorized—and that the psychological test is unconstitutional. Because both cost recovery and  
22 psychological testing are permitted under SB 2, a challenge to Defendants’ use of the discretion  
23

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24  
25 <sup>1</sup> Plaintiffs name the “Sheriff’s Department.” The actual name is the “Office of the Sheriff.” For  
26 reasons discussed below, Defendants take the position that the Sheriff’s Office is not a separate legal  
27 entity subject to suit. The term Defendants used throughout is collective of all properly named  
28 Defendants.

1 authorized by SB 2 is merely a claim that the State authorizes unconstitutional conduct misdirected  
 2 at Defendants. For this reason, the Court should certify the case for the California Attorney General  
 3 and/or wait for 60 days to allow the Attorney General to intervene so as not to prematurely decide  
 4 the constitutional questions presented by this lawsuit. On this ground, Defendants bring a motion to  
 5 dismiss (without prejudice) pursuant to Federal Rule of Civil Procedure 12(b)(7) for failure to notify  
 6 the Attorney General, who is an absent party without whom complete relief cannot be granted in this  
 7 dispute.

8 Plaintiffs also claim that Defendants’ inclusion of a notice on its website landing page to  
 9 CCW applicants—that applicants for CCWs may be required to disclose any campaign contributions  
 10 they make to Sheriff Jonsen under the Levine Act (Cal. Gov’t Code § 84308), a disclosure law  
 11 designed to improve transparency—is an impermissible regulation of political speech under the First  
 12 Amendment. Plaintiffs claim that Defendants misinterpret the Levine Act’s applicability to CCW  
 13 licenses, which is an argument that does not draw into question the constitutionality of the Levine  
 14 Act. But Plaintiffs also claim that, if the Levine Act applies to CCW licenses, it constitutes an  
 15 unconstitutional regulation of protected speech in violation of the First Amendment. The Levine Act  
 16 is, however, only a disclosure statute and, thus, Plaintiffs’ allegations lack merit because disclosure  
 17 requirements are constitutionally permissible under the First Amendment. Thus, a motion to dismiss  
 18 for failure to state a claim is warranted.

## 19 II. PARTIES

20 Three individual Plaintiffs—Kyle Truong, Antonio Rodriquez, and Robert Blank—are  
 21 residents of Santa Clara County who desire to carry a firearm in public and would apply for CCW  
 22 permits but for the expense of doing so, or already have a CCW permit issued by the Sheriff’s Office  
 23 and seek a refund or will face expenses to renew those permits. First Amended Complaint (“FAC”)  
 24 ¶¶ 14-16. California Rifle & Pistol Association and the Second Amendment Foundation are non-  
 25 profit organizations dedicated to the preservation of the Second Amendment. *Id.* ¶¶ 34-25. The  
 26 Complaint names the County, the Sheriff’s Office, and Sheriff Jonsen. *Id.* ¶¶ 38-39.

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28 //

1 **III. LEGAL BACKGROUND ON CCWs**

2 **A. THE *BRUEN* DECISION**

3 The 2022 United States Supreme Court decision in *Bruen* established a new legal test for  
 4 Second Amendment cases, holding that current firearm regulations must be consistent with the  
 5 nation’s historical tradition of firearm regulation. *Bruen*, 597 U.S. at 24-29; FAC ¶¶ 46-49. The  
 6 decision struck down New York’s discretionary “proper cause” requirement for concealed carry  
 7 permits, affirming an individual’s right to carry a handgun in public for self-defense without  
 8 demonstrating a special need. *Id.* at 71. This new historical-based test replaced previous two-step  
 9 frameworks that balanced current public safety interests with constitutional rights. *Id.* at 19. At the  
 10 same time, the Court made clear that various gun regulation laws would withstand scrutiny under  
 11 this newly announced test. *Id.* at 30, fn. 9. The ruling did not invalidate “shall-issue” states, where  
 12 permits are granted if an applicant meets objective, statutorily imposed criteria. *Id.*

13 **B. SENATE BILL 2 WAS PASSED TO COMPLY WITH *BRUEN***

14 1. SB 2 Legislation is Expansive and, as Anticipated, Costly to Administer

15 Senate Bill 2 (Cal. Penal Code §§ 26150, 26155, and 26170) was California’s legislative  
 16 response to *Bruen*. SB 2 created new requirements for evaluating CCW applications, including  
 17 additional background and verifications checks, additional interviews, an investigation to determine  
 18 whether the applicant is a disqualified person, and additional status notifications to the applicant.  
 19 These new requirements were in addition to existing requirements, such as background checks,  
 20 psychological assessments, and training courses. Cal. Pen. Code § 26150 et. seq. In issuing  
 21 regulations to implement SB 2, the California Department of Justice (DOJ) recognized that the new  
 22 SB 2 requirements may increase local costs to process applications for CCW licenses. *See*, CA DOJ  
 23 Economic and Fiscal Impact Statement (STD 399).

24 2. CCW Licensing Requirements (Cal. Penal Code § 26150)

25 Consistent with *Bruen*, SB 2 removed the general “good cause” and “good moral character”  
 26 requirements from CCW application assessments. Under the new law, a sheriff must issue or renew  
 27 a CCW license if the applicant provides proof of **all of the following**:

28 ///

- 1 1. The applicant is not a “disqualified person” to receive a CCW license under Penal Code § 26202;
- 2 2. The applicant is at least 21 years old;
- 3 3. The applicant presents clear evidence of the applicant’s identity and age as defined in Penal Code § 16400 (i.e., a valid California driver’s license or valid California identification card issued by the California Department of Motor Vehicles);
- 4 4. The applicant is either (1) a resident (as detailed in the statute) of the county or a city within the county, or (2) their principal place of employment or business is in the county and they spend a substantial period of time in that place of employment or business;
- 5 5. The applicant has completed a qualifying training course as described in Penal Code § 26165; and
- 6 6. The applicant is the recorded owner with the California DOJ of the specific firearm for which the license will be issued.

8 Cal. Penal Code §§ 26150, 26155, 26170; *see also* FAC ¶ 57.

9 3. CCW Application Form (Cal. Penal Code § 26175)

10 Licensing authorities must use a standard statewide application form. Cal. Penal Code § 26175; FAC ¶ 58 & Exh. A. The standard application must include the following new information  
11 that was not required before the enactment of SB 2:

- 13 1. Prior detentions, arrests, and criminal convictions;
- 14 2. Whether the applicant has been the subject of either:
  - 15 a. A court order listed in Cal. Penal Code § 26202(a)(3) (see below), unless that order expired, was vacated, or was canceled more than five years ago; or
  - 16 b. A valid restraining, protective, or stay-away order issued by an out-of-state jurisdiction pursuant to laws concerning domestic violence, family law, protection of children or elderly persons, stalking, harassment, witness intimidation, or firearm possession;
- 17 3. Whether the applicant has previously been subject to the LPS Act (Cal. Welf. & Inst. Code § 5150 et. seq.);
- 18 4. Prior denials or revocations of CCW licenses;
- 19 5. Names and contacts of three references (at least one must be a cohabitant and one a person described in Cal. Penal Code § 273.5, if applicable); and
- 20 6. Other information sufficient to determine whether the applicant is a disqualified person under Cal. Penal Code § 26202.

21 Cal. Penal Code § 26175; FAC ¶ 59. An application is considered “completed” if it is filed in  
22 writing, signed by the applicant, and contains all information required by the application, as  
23 determined by the licensing authority. *Id.*

24 4. CCW Licenses (Cal. Penal Code § 26175)

25 Effective March 1, 2024, a CCW license must set forth the following information: licensee’s  
26 full name; driver’s license or identification number; Criminal Identification and Information (CII)  
27 number; occupation; residence and business address; date of birth, height, weight, eye and hair color;  
28 type of license issued under Cal. Penal Code § 26220; license issuance and expiration dates;

1 fingerprints; photo of the licensee (which would be added by SB 918); and the weapon's  
2 manufacturer, model, serial number, and caliber. Cal. Penal Code § 26175.

3 5. CCW License Fees and Psychological Assessment (Cal. Penal Code § 26190)

4 SB 2 has a detailed fee recovery statute that allows the licensing authority to collect 50% (up  
5 from 20%) of the processing fee upon the filing of a new or renewal application. Cal. Penal Code §  
6 26190. In addition, it eliminates the not-to-exceed caps on the processing fees for renewal and  
7 amended license applications (previously \$25 and \$10, respectively), instead allowing licensing  
8 authorities to charge their "reasonable costs" of processing these applications. *Id.* § 26190(b)(1);  
9 *compare* 2019 Cal. Legis. Serv. Ch. 732 (A.B. 1297). The licensing authority may also now  
10 increase its fees to reflect increases in the reasonable costs in issuing the licenses and enforcing the  
11 licenses, including any required notices. *Id.* § 26190(b)(1).

12 SB 2 also eliminates the previous not-to-exceed fee cap for initial and additional  
13 psychological assessments. *Id.* § 26190(e)(1); *compare* 2019 Cal. Legis. Serv. Ch. 732 (A.B. 1297).  
14 The applicant may now be charged for the actual cost of the assessments. *Id.* § 26190(e)(1). The  
15 licensing authority may not charge more than the reasonable costs incurred by the licensing authority  
16 for obtaining these assessments. *Id.* In addition, if the licensing authority requires a psychological  
17 assessment with the initial application, the licensing authority must refer the applicant to a licensed  
18 psychologist that is acceptable to the licensing authority. *Id.*

19 6. California DOJ Background Checks (Cal. Penal Code §§ 26185, 26202)

20 Penal Code § 26185 requires the licensing authority to submit the applicant's fingerprints to  
21 the California DOJ after the licensing authority makes its initial determination that the applicant is  
22 not a disqualified person under Penal Code § 26202 (described below), along with other information  
23 required by the California DOJ.

24 After the applicant's fingerprints and/or renewal notification are forwarded to the California  
25 DOJ, the California DOJ must promptly provide all information pertaining to whether the applicant  
26 is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.  
27 Cal. Penal Code § 26185. A licensing authority may issue or renew a CCW license only if the

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1 California DOJ report confirms the applicant's eligibility to possess, receive, own, or purchase a  
2 firearm. *Id.*

3 7. Recorded Owner of the Licensed Firearm (Cal. Penal Code § 26162)

4 Before issuing, renewing, or amending a CCW license, the licensing authority must  
5 determine, using the designated California DOJ system, if the applicant is the recorded owner of the  
6 firearm for which they are seeking the CCW license. Cal. Penal Code § 26162. The agency must  
7 confirm the applicant's information with firearm ownership information maintained in the system.  
8 *Id.*

9 8. Training Courses (Cal. Penal Code § 26165)

10 SB 2 revises the minimum training requirements applicable to CCW license applicants,  
11 including requirements relating to the length, topics, instructors, and assessments for training  
12 courses. Except for the mental health component, the course must be taught and supervised by  
13 firearms instructors certified by the California DOJ under Penal Code § 31635 or in a manner  
14 prescribed by regulation.

15 The course must require participants to pass a written exam demonstrating their  
16 understanding of the covered topics. The applicant cannot be required to pay for any training  
17 courses prior to the initial determination of whether the applicant is a qualified person under Penal  
18 Code § 26202(d)(1).

19 9. Disqualified Person Investigation (Cal. Penal Code § 26202)

20 To determine if a CCW applicant is a disqualified person who cannot receive or renew a CCW  
21 license, the licensing authority must complete the following minimum requirements:

- 22 1. An in-person applicant for initial (and optional for renewal) interview.
- 23 2. In-person, virtual, or telephonic interviews with at least three character references from  
24 specific demographics (e.g., former/current spouse, cohabitant) for initial application  
25 (and optional for renewal). The licensing authority may elect to forgo this requirement  
26 for renewal applications, but not for initial applications.
- 27 3. A review of publicly available information about the applicant, including publicly  
28 available statements published or posted by the applicant.
4. A review of all information provided in the application for a license.
5. A review of all information provided by the California DOJ after the licensing authority  
submits the applicant's fingerprints, as well as any firearms eligibility notices or any  
other information provided by the California DOJ.
6. A review of the California Restraining and Protective Order System (CARPOS) through  
the California Law Enforcement Telecommunications System (CLETS).

1 The licensing authority may engage in investigative efforts beyond these minimum requirements.  
2 Cal. Penal Code § 26202.

3 10. Disqualified Person Determination (Cal. Penal Code § 26202)

4 Absent a contrary determination by a court (pursuant to Penal Code § 26206, as described  
5 below), an applicant is a disqualified person who cannot receive or renew a CCW license if any of  
6 the following apply:

- 7 1. The applicant has been subject to any restraining order, protective order, or other types of  
8 court order;
- 9 2. In the 10 years prior, the applicant has been charged with or convicted of certain criminal  
10 offenses;
- 11 3. The applicant has engaged in an unlawful or reckless use, display, or brandishing of a  
12 firearm;
- 13 4. In the five years prior to the licensing authority receiving a completed application, the  
14 applicant has been committed to or incarcerated in a county jail or state prison for, or on  
15 probation, parole, post-release community supervision, or mandatory supervision as a  
16 result of, a conviction of an offense an element of which involves controlled substances  
17 or alcohol;
- 18 5. The applicant is currently abusing controlled substances or alcohol;
- 19 6. In the 10 years prior to the licensing authority receiving a completed application, the  
20 applicant has experienced the loss or theft of multiple firearms due to the applicant's lack  
21 of compliance with federal, state, or local law regarding storing, transporting, or securing  
22 the firearm;
- 23 7. The applicant failed to report the loss of a firearm as required by Penal Code § 25250 or  
24 any other state, federal, or local law requiring the reporting of the loss of a firearm;
- 25 8. The applicant has been or is reasonably likely to be a danger to self, others, or the  
26 community at large, as shown by an indication from the results of any psychological  
27 testing, including but not limited to testing under Penal Code § 26190; or
- 28 9. The applicant has been convicted of contempt of court under Penal Code § 166.

19 Cal. Penal Code § 26202.

20 11. Initial Notice to Applicant (Cal. Penal Code §§ 26202, 26205, 26206)

21 Within 90 days of receiving the completed application for a new or renewal license, the  
22 licensing authority must provide the applicant with written notice as follows:

- 23 1. If the licensing authority determines that the applicant is a disqualified person, the notice  
24 must inform the applicant that the request for a license has been denied. The notice  
25 must also include the information listed below for notices of denial based on a  
26 determination that the applicant is a disqualified person.
- 27 2. If the licensing authority makes an initial determination, based on its investigation thus  
28 far, that the applicant is not a disqualified person, the notice must tell the applicant to  
proceed with the training requirements in Penal Code § 26165 (described above).

27 Cal. Penal Code § 26205. The licensing authority must issue a written notice to the applicant  
28 indicating whether the license has been approved or denied within specified time frames. *Id.* If the

1 licensing authority denies a license, the notice must state which requirement was not satisfied. In  
 2 addition, if the license is denied or revoked because the applicant is a disqualified person, the written  
 3 notice must provide a description of the reason the determination was made; inform the applicant of  
 4 their rights to court review; and provide the applicant with specific information used in the analysis.

5 *Id.*

6 The statutory scheme also sets forth a statutory process for appealing license denials and  
 7 revocations. Cal. Penal Code §§ 26206, 26195. Like the process for application and approval, that  
 8 process is equally detailed but not at issue in this matter. *Id.*

9 12. Prohibited Activities (Cal. Penal Code §§ 26200, 26230)

10 The statutory scheme also sets forth limitations on those carrying a firearm subject to a CCW  
 11 license (e.g., prohibition on being under the influence) and identifies “sensitive locations” into which  
 12 firearms may not be carried by those granted a CCW license. Cal. Penal Code §§ 26200, 26230.

13 These restrictions have been challenged in *Wolford*, 116 F.4th 959, where the court partially upheld  
 14 a preliminary injunction against those portions of California’s SB 2, determining that firearm bans  
 15 on parks, bars, and restaurants are constitutional, but bans on financial institutions and places of  
 16 worship are likely unconstitutional. *Id.* at 983-1000. The Supreme Court has granted a writ of  
 17 certiorari. *Wolford v. Lopez*, --- S.Ct. ---, 2025 WEL 2808808 (Mem), 222 L. Ed. 2d 1241 (Oct. 3,  
 18 2025) (certiorari granted in part).

19 **IV. DEFENDANTS’ CCW PROCESS IS DICTATED BY STATE LAWS**

20 **A. PLAINTIFFS ALLEGE DEFENDANTS’ FEES ARE HIGH BUT DO NOT DISPUTE**  
 21 **THAT THE FEES REFLECT COST RECOVERY AUTHORIZED BY LAW**

22 Plaintiffs allege that *Bruen* forced all state actors to issue permits to regular citizens using  
 23 objective criteria. FAC ¶ 78. According to Plaintiffs, “Santa Clara’s fee structure frustrates the right  
 24 to carry as much as possible by erecting financial burdens and other hurdles to its exercise.” *Id.* ¶  
 25 78. Defendants charge \$1,996 for a two-year concealed carry permit. *Id.* ¶ 5. Renewal permits cost  
 26 \$447 and an application fee of \$976. *Id.* ¶ 2. As detailed in the FAC, these costs are based on fees  
 27 tethered to application and renewal processes detailed in SB 2. *Id.* ¶¶ 2-5.

28 Plaintiffs allege that Defendants are an outlier when considering the fees charged in other

1 states. FAC ¶¶ 82-91. Plaintiffs further allege that Defendants’ costs are higher than the costs  
2 charged by other counties within California. *Id.* ¶ 92. Some counties charge less than Defendants.  
3 *Id.* ¶¶ 93-99. Some jurisdictions also have high fees, like the City of San José. *Id.* ¶ 100. But  
4 nowhere do Plaintiffs allege that the County charges fees for costs not associated with the CCW  
5 application and renewal process. *See*, FAC.

#### 6 **B. A PSYCHOLOGICAL TEST IS AUTHORIZED BY LAW**

7 Consistent with the statutory authority in SB 2, Defendants require CCW applicants to  
8 submit to a psychological examination. FAC ¶ 3. Plaintiffs allege that there is no statutory authority  
9 (nor any constitutional authority) for conditioning the exercise of a fundamental right on submission  
10 to psychological testing for every applicant without evidence and good cause. *Id.* ¶ 3. Plaintiffs then  
11 allege that Defendants’ policies and procedures are improper because they require a psychological  
12 test for all applicants “without an individual finding of the need for such an invasive and intrusive  
13 procedure.” *Id.* ¶ 103.

#### 14 **C. LEVINE ACT NOTICE**

15 Applicants can access the Office of the Sheriff’s website to apply for a CCW permit. FAC,  
16 Exh. B. At the bottom of the webpage, there is a notice entitled, “Disclosure of campaign  
17 contributions,” wherein the disclosure explains that the Levine Act applies to government  
18 proceedings involving licenses and describing that local elected officials—like the Sheriff—are not  
19 permitted to accept or solicit a contribution of more than \$250 from a party while a proceeding  
20 involving a license is pending or for 12 months after a decision. *Id.*, Exh. B. Where the elected  
21 official has received a donation in the past 12 months, they must disclose and refrain from  
22 participating in the decision. *Id.* Plaintiffs allege that the presence of this language is “hinting that  
23 public disclosure of politically protected speech is required to exercise a fundamental right” and is  
24 therefore unconstitutional. *Id.* ¶ 9.

25 Plaintiffs thus allege that “the Levine Act requirements on the CCW introductory webpage  
26 strongly implies that campaign finance disclosures are part of the CCW application process.” FAC ¶  
27 72. Plaintiffs further claim that it is doubtful that CCW permits are triggered by the Levine Act. *Id.*  
28 ¶¶ 73-75. Plaintiffs request that the language be stricken from the website. *Id.* ¶ 74.

## V. CLAIMS FOR RELIEF

1  
2 Plaintiffs bring three claims for relief pursuant to 42 U.S.C § 1983. Plaintiffs’ first claim  
3 alleges that Defendants have violated the Second Amendment, and as incorporated to the states  
4 through the Fourteenth Amendment, the right to bear arms in three ways. FAC ¶ 115. First,  
5 Plaintiffs claim that Defendants have violated and continued to violate the rights of gun owners by  
6 charging nearly \$1,000 in fees, in addition to the cost of training, live scan, and psychological  
7 testing, in order to obtain CCW a permit. *Id.* Second, Plaintiffs assert that psychological testing  
8 without good cause is unconstitutional “on its face and as applied to any applicant without a history  
9 of mental illness.” *Id.* ¶ 118. Third, Plaintiffs claim that Defendants’ suggestion that “campaign  
10 finance disclosures are a perpetual requirement of the CCW application process to exercise Second  
11 Amendment rights is unconstitutional both on its face and as applied to plaintiffs.” *Id.* ¶ 119.

12 Plaintiffs’ second claim alleges that “Defendants’ policy, practice, and custom of imposing  
13 campaign finance disclosure requirements, as an implied condition of exercising Second  
14 Amendment rights, violates the First Amendment.” FAC ¶¶ 124-127.

15 Plaintiffs’ third claim alleges a violation of the Fourteenth Amendment procedural due  
16 process right. Specifically, Plaintiffs claim that Defendants’ mandatory requirement of  
17 psychological testing for all CCW applicants without good cause is unconstitutional, both facially  
18 and as applied, to any applicant without a history of mental illness. FAC ¶¶ 128-131. Plaintiffs  
19 assert that to mandate psychological testing, there must be an individualized showing supported by  
20 probable cause, admissible evidence, notice, opportunity to be heard, right to counsel, right to cross  
21 examine a witness, and appellate rights before psychological testing should be authorized. *Id.* ¶ 130.

## VI. LEGAL ARGUMENT

### A. THE SHERIFF’S OFFICE IS NOT A PARTY

23  
24 Plaintiffs name the Sheriff’s Office as well as the County of Santa Clara. Recent Ninth  
25 Circuit case law indicates that whether a local law enforcement agency is a separate suable entity  
26 depends on state law. *Silva v. San Pablo Police Dep’t*, 805 F. App’x 482, 484 (9th Cir. 2020)  
27 (citations omitted); Fed. R. Civ. P. 17(b)(3) (for parties other than individuals or corporations, the  
28 capacity to be sued is determined “by the law of the state where the court is located”). The law of

1 the state here is California, which has determined that departments are not independent from the  
2 entity. In *Vann v. City and Cnty. of San Francisco*, 97 Cal. App. 5th 1013, 1022 (2023), the court  
3 explained that subsidiary entities, such as boards or departments, are not independent and cannot be  
4 sued separately from the parent entity. Pre-*Vann* decisions by the Ninth Circuit, interpreting state  
5 law, have held that police departments can be sued separately, but those decisions acknowledged that  
6 holding is true provided there is no contrary state court decision. *Streit v. Cnty. of Los Angeles*, 236  
7 F.3d 552, 563 (2001); *but see Garcia v. City of Merced*, 637 F. Supp. 2d 731, 760 (E.D. Cal. 2008)  
8 (sheriff’s departments are not separate municipal entities).

9 In this matter, Plaintiffs sue the Sheriff’s Office. Post-*Vann*, California courts have made it  
10 generally clear that the Sheriff’s Office is not a separate legal entity from the County subject to suit.

11 **B. PLAINTIFFS CHALLENGE THE CONSTITUTIONALITY OF SB 2.**

12 1. Dismissal with Leave to Amend is Warranted.

13 Defendants note that the case law setting forth the procedure to challenge the failure to join  
14 the Attorney General in a lawsuit challenging the constitutionality of a state statute is not clear.  
15 Defendants have filed a Notice of Claim of Constitutionality, as required by Local Rule,  
16 concurrently with this motion, but the procedure for challenging this defect in the complaint is not  
17 specified. Defendants acknowledge this defect can be cured and dismissal with prejudice is not  
18 warranted.

19 This case should not proceed with the constitutionality of SB 2 or the Levine Act decided  
20 without the involvement of the California Attorney General. Federal Rule of Civil Procedure  
21 12(b)(7) permits a defendant to challenge the complaint’s failure to join “persons whose presence is  
22 needed for a just adjudication” under Federal Rule of Civil Procedure 9. To that end, the California  
23 Attorney General has the right to defend a challenge to the constitutionality of a California state  
24 statute. 28 U.S.C. § 2403(b).

25 Federal Rule of Civil Procedure 5.1(a)(1) requires “[a] party that files a . . . paper drawing  
26 into question the constitutionality of a . . . state statute [to] promptly . . . file a notice of constitutional  
27 question stating the question and identifying the paper that raises it . . . and serve the notice and  
28 paper on the . . . state attorney general . . . .” In addition, under Rule 5.1(b), the Court also must

1 “certify to the appropriate attorney general that a statute has been questioned” pursuant to 28 U.S.C.  
 2 § 2403(b). The attorney general may then intervene within 60 days after the notice or certification.  
 3 Fed. R. Civ. Proc. 5.1(c). The court “may not enter final judgment holding the statute  
 4 unconstitutional” before the time to intervene expires, and “may reject the constitutional challenge”  
 5 prior to expiration of the period. *Id.* Thus, at this time, the presence of the Attorney General is  
 6 needed and a Rule 12(b)(7) motion should be granted, but without prejudice, given that under Rule  
 7 5.1(d), “[a] party’s failure to file and serve the notice, or the court’s failure to certify, does not forfeit  
 8 a constitutional claim or defense that is otherwise timely asserted.” Fed. R. Civ. Proc. 5.1(d).

9 2. The Attorney General Must Be Notified Where the Constitutionality of a State Statute  
 10 is “Drawn In Question.”

11 By law, the Attorney General of California must be notified where the constitutionality of a  
 12 state statute is “drawn in question”:

13 In any action, suit, or proceeding in a court of the United States to which  
 14 a State or any agency, officer, or employee thereof is not a  
 15 party, *wherein the constitutionality of any statute of that State* affecting  
 16 the public interest *is drawn in question*, the court shall certify such fact  
 17 to the attorney general of the State, and shall permit the State to  
 18 intervene for presentation of evidence, if evidence is otherwise  
 19 admissible in the case, and for argument on the question of  
 constitutionality. The State shall, subject to the applicable provisions of  
 law, have all the rights of a party and be subject to all liabilities of a  
 party as to court costs to the extent necessary for a proper presentation  
 of the facts and law relating to the question of constitutionality.

20 28 U.S.C. § 2403(b) (emphasis added). To “draw in question” the constitutionality of a statute  
 21 requires more than “the mere objection to an exercise of authority under a statute, whose validity is  
 22 not attacked.” *Jett Bros. Distilling Co. v. City of Carrollton*, 252 U.S. 1, 6, (1920); *see also Wilson*  
 23 *v. Cook*, 327 U.S. 474, 480–82 (1946) (explaining that suit challenging official’s interpretation of  
 24 state statute as applying to timber collected from U.S. land did not challenge the validity of the  
 25 statute and thus the statute’s constitutionality was not “drawn in question”) (citing *Jett Brothers*); *see*  
 26 *also Ariz. Libertarian Party, Inc. v. Bd. of Supervisors of Pima Cnty.*, 216 F. Supp. 2d 1007, 1009  
 27 (D. Ariz. 2002) (county not a proper party to a facial challenge to the open primary election law)  
 28 (district court decision reversed and remanded on other grounds).

1           3.       Plaintiffs’ Claims “Draw In Question” SB 2’s Authorization for Cost Recovery and  
2                   Psychological Tests.

3           As Plaintiffs note, the Supreme Court in *Bruen* confirmed and reiterated *Heller’s* approach to  
4 analyzing Second Amendment questions: “[w]hen the Second Amendment’s plain text covers an  
5 individual’s conduct, the Constitution presumptively protects that conduct. The government must  
6 then justify *its* regulation by demonstrating that it is consistent with the Nation’s historical tradition  
7 of firearm regulation.” *Bruen*, 597 U.S. at 24 (emphasis added), FAC ¶ 49. Here, there can be no  
8 dispute that Defendants are following SB 2.

9           Defendants explicitly do not attempt to argue the constitutionality of fee recovery or the  
10 psychological assessment under SB 2 (or generally) at this juncture in light of the request to wait for  
11 the Attorney General to be notified of the case. Notably, cases since *Bruen* addressing cost recovery  
12 for concealed carry permits underscore that statutory challenges of this nature should include the  
13 attorney general. *See e.g., Koons v. Att’y General New Jersey*, 156 F.4th 210, 2477-48 (2025)  
14 (finding that state residents and firearm advocacy organizations were likely to succeed on their claim  
15 that a New Jersey statute requiring handgun carry permit applicants to pay a \$50 fee to the Victims  
16 of Crime Compensation account violated First and Second Amendment principles because that fee  
17 did not connect to either administration of the permitting scheme itself or maintenance of public  
18 order created by licensed conduct, and thus charged applicants for costs neither incidental to nor  
19 necessarily caused by their bearing arms) (vacated en banc on other grounds by *Koons v. Att’y*  
20 *General of New Jersey*, 156 F.4th 210 (2025)).

21           As the case law supports, post-*Bruen* CCW statutory schemes are being challenged across the  
22 country but with the knowledge and involvement of the respective states’ attorneys general. The  
23 most directly relevant case is *California Rifle & Pistol Ass’n, Inc. v. Los Angeles County Sheriff’s*  
24 *Department*, where a federal district court in California held that firearms advocacy organizations,  
25 challenging a psychological exam requirement for CCW licenses, were not likely to succeed on their  
26 Second Amendment claim. *California Rifle & Pistol Ass’n, Inc. v. Los Angeles Cnty. Sheriff’s*  
27 *Dep’t*, 745 F. Supp. 3d 1037, 1044 (C.D. Cal. 2024). In that case, the California Attorney General  
28 has appeared in the matter. The same is true for other cases in California where the Attorney

1 General is defending the law before the district court. *See e.g., Brownstein v. Orange Cnty. Sheriff's*  
2 *Dep't* (C.D. Cal., Case No. 8:24-cv-00970) (plaintiff alleges that the denial of his CCW license  
3 application based on Penal Code § 26202, subdivision (a)(3) (subject to restraining, protective, or  
4 other specified order), amounts to constitutional violations); *Hoffman v. Bonta* (S.D. Cal., Case No.  
5 3:24-cv-00664) (out-of-state residents challenge the constitutionality of California's prohibition on  
6 concealed carry by non-residents). The same is true in other jurisdictions. *See, Antonyuk v. James,*  
7 120 F.4th 941, 951 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1900, 221 L. Ed. 2d 646 (2025)  
8 (appearance of attorney general in case finding and summarizing other jurisdictions' finding that  
9 many "shall-issue" jurisdictions approved in *Bruen* include provisions allowing licensing authorities  
10 to deny permits based on mental health concerns or dangerousness assessments); *People v.*  
11 *Thompson*, --- N.E.3d ---- (2025) (attorney general party to decision challenging mental health  
12 checks where Illinois Supreme Court found that mental health checks to ensure applicants do not  
13 pose threats to themselves or others are permitted under *Bruen*, so long as they do not require  
14 applicants to show a special need for armed self-defense); *People v. Alexander*, 91 Cal. App. 5th 469  
15 (2023), *review denied* (July 26, 2023) (State Attorney General defended constitutional challenge  
16 following a criminal conviction for possession of firearm and ammunition in public).

17 a. *Challenge to Defendants' Cost Recovery is a Challenge to the Constitutionality of SB 2*  
18 As detailed above, Cal. Penal Code § 26190 governs the application and processing fees for  
19 CCW permits. The statute explicitly provides that "the licensing authority of any city, city and  
20 county, or county may charge a fee" for processing applications. Cal. Penal Code § 26190. This  
21 permissive and detailed authorization to charge on a cost recovery basis for various elements of the  
22 licensing authority's processing efforts appears throughout the fee provisions, including subdivision  
23 (d)(1), which states that "the licensing authority of any city, city and county, or county may charge a  
24 fee" for amended licenses. *Id.* Section 26190 provides that fees "may be increased to reflect  
25 increases in the licensing authority's reasonable costs" but explicitly states that "in no case shall the  
26 local fees exceed the reasonable costs to the licensing authority." Cal. Penal Code § 26190. The fee  
27 structure for psychological testing is also permitted by SB 2. Section 26190(e)(1) states that "the  
28 applicant may be charged for the actual cost of the assessment" when a psychological assessment is

1 required on the initial application. Cal. Penal Code § 26190. Similarly, subdivision (e)(2) provides  
2 that for renewal applications requiring additional psychological assessment, “the applicant may be  
3 charged for the actual cost of the assessment.” The statute similarly imposes the5 same cost  
4 limitation on psychological assessment fees as it does for other permit fees, explicitly providing that  
5 “in no case shall the amount charged to the applicant for the psychological assessment exceed the  
6 reasonable costs to the licensing authority.” Cal. Penal Code § 26190.

7 SB 2 specifically eliminated the not-to-exceed caps on the processing fees for renewal and  
8 amended license applications in favor of cost recovery. These provisions establish that while  
9 charging fees are optional, any fees that are charged must be reasonable and based on actual costs to  
10 the licensing authority. It makes no difference that fees and the psychological test are permissive.  
11 The statute requires certification when “the constitutionality of any statute of that State affecting the  
12 public interest is drawn in question.” 28 U.S.C. § 2403; *see also Fordyce v. City of Seattle*, 55 F.3d  
13 436, 442 (9th Cir. 1995) (failure to allow state attorney general “to participate fully” where  
14 constitutionality of state statute was challenged was abuse of discretion).

15 The language in § 2403 focuses on whether a constitutional challenge has been raised, not  
16 whether the statute uses mandatory or permissive terms. Courts apply § 2403(b) whenever a party  
17 files a pleading or motion challenging a statute’s constitutionality, regardless of the statute’s internal  
18 language structure. *Peruta v. Cnty. of San Diego*, 771 F.3d 570, 574 (9th Cir. 2014) (the Attorney  
19 General sought to intervene in a lawsuit against the County of San Diego for its County-specific  
20 requirements surrounding a good cause requirement for issuance, which the court denied noting that  
21 no “law or regulation other than the county-specific good cause requirement was in jeopardy.”)  
22 (rehearing en banc granted but not decided); *Merrill v. Town of Addison*, 763 F.2d 80, 82 (2d Cir.  
23 1985) (New York statute permitting local governmental units to use either partial or full value  
24 assessment for real property taxation implicated 28 U.S.C. § 2403(b)).

25 The fact that other states, counties, or cities subsidize the cost of CCW licensing is of no  
26 relevance to whether Defendants are engaging in cost-recovery authorized by SB 2, nor should it be  
27 surprising that costs in Santa Clara County—one of the most expensive places in the United States to  
28 live—are higher than other jurisdictions. Here, there is no allegation that Defendants’ costs are not

1 based on statutorily authorized cost-recovery, and although Plaintiffs claim they are high, they are  
2 still permitted by SB 2. Importantly, SB 2 specifically departed from fee caps, which is essentially  
3 what Plaintiffs suggest are required to not run afoul of the Second Amendment. If there is a  
4 constitutional fee cap to CCW charges—an approach SB 2 ended—and a jurisdiction must subsidize  
5 individuals’ exercise of their Second Amendment rights or run afoul of the Constitution, that  
6 position would be contrary to the authorization of SB 2. Thus, Plaintiffs’ position is a direct  
7 challenge to the constitutionality of SB 2.

8 b. *Psychological Tests on Initial Application is Authorized by SB 2*

9 Plaintiffs assert that psychological testing is not statutorily authorized. FAC ¶ 3. Plaintiffs  
10 further assert that psychological testing without good cause is unconstitutional “*on its face* and as  
11 applied to any applicant without a history of mental illness.” FAC ¶ 115 (emphasis added). On its  
12 face, Penal Code § 26190(e)(1) explicitly authorizes licensing authorities to require psychological  
13 assessments for initial applications, stating that “*if a psychological assessment on the initial*  
14 *application is required by the licensing authority*, the license applicant shall be referred to a  
15 licensed psychologist” acceptable to the licensing authority. Cal. Penal Code § 26190, subd. (e)(1)  
16 (emphasis added). And SB 2 considered when good cause should be required finding it necessary  
17 for license renewals only: “[a]dditional psychological assessment of an applicant seeking license  
18 renewal shall be required only if there is compelling evidence of a public safety concern to indicate  
19 that . . . an assessment is necessary.” Cal. Penal Code § 26190(e)(2). Thus, SB 2—not  
20 Defendants—authorized different thresholds for requiring psychological testing upon renewal  
21 compared to initial applications. Plaintiffs’ claim that good cause is required for both is contrary to  
22 the text of SB 2 and, thus, constitutes a direct attack on that state statute.

23 California Penal Code § 26202(a)(1) establishes how psychological assessment results factor  
24 into licensing decisions: an applicant “shall be deemed to be a disqualified person and cannot receive  
25 or renew a license” based on the “results of any psychological assessment, including, but not limited  
26 to, the assessment described in subdivision (e) of Section 26190.” Cal. Penal Code § 26202. This  
27 provision makes clear that psychological assessment results constitute one basis upon which a  
28 licensing authority may determine if an applicant poses a danger and is therefore a disqualified

1 person ineligible for a CCW permit. In sum, SB 2 specifically authorizes licensing authorities to  
2 require psychological assessments for initial CCW applications and establishes that such  
3 assessments may be required for renewals only when compelling public safety concerns exist, with  
4 the results serving as potential grounds for disqualification if they demonstrate the applicant poses a  
5 danger. If Plaintiffs’ constitutional challenge on good cause were successful, it would invalidate SB  
6 2’s language establishing different thresholds.

7 c. *Summary of Legal Position*

8 To summarize, Plaintiffs do not concede that SB 2 is otherwise constitutional (e.g., cost-  
9 based fee recovery and no psychological testing). And Plaintiffs are not alleging that Defendants  
10 abused their discretion under the statute, acted arbitrarily, or made bad policy choices—within a  
11 concededly constitutional statute—but rather, that Defendants acted within that discretion (by  
12 charging cost recovery or implementing psychological testing). Accordingly, Plaintiffs are claiming  
13 that SB 2 authorizes unconstitutional outcomes or is facially invalid because of the discretion it  
14 grants to local governments. That argument squarely “draws in question” the constitutionality of the  
15 statute.

16 4. Plaintiffs Also Challenge the Constitutionality of the Levine Act

17 Plaintiffs also seek declaratory relief that the Levine Act is not triggered by the CCW license  
18 process and, thus, it should be removed from the Sheriff’s webpage on CCW applications. FAC ¶  
19 127. While *this* allegation does not challenge the constitutionality of the Levine Act, Plaintiffs also  
20 allege that “because political campaign contributions are protected speech under the First  
21 Amendment,” Defendants’ “policy, practice, and custom of **imposing campaign finance disclosure**  
22 **requirements**, as an implied condition of exercising Second Amendment rights, violates the First  
23 Amendment.” FAC ¶ 125 (emphasis added). This allegation is a direct attack on the Levine Act  
24 because Plaintiffs’ claim is that, even if the Levine Act is applicable to CCW licenses, simply  
25 *notifying* applicants of the disclosure requirements under the Levine Act infringes on the exercise of  
26 Second Amendment rights. Thus, Plaintiffs argue, the Levine Act’s disclosure requirements violate  
27 the Second Amendment. For this reason, notice to the Attorney General under 28 U.S.C. § 2403(b)  
28 is required on this issue as well.

1 **C. PLAINTIFFS’ SECOND CLAIM, ALLEGEING THAT A LEVINE ACT NOTICE ON**  
 2 **THE CCW APPLICATION PAGE VIOLATES THE FIRST AMENDMENT, FAILS**  
 3 **AS A MATTER OF LAW**

4 The standard on a motion to dismiss for failure to state a claim under Rule 12(b)(6) is the  
 5 plausibility standard established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and  
 6 *Ashcroft v. Iqbal*, 556 U.S. 544, 561-62 (2009). Under this standard, a complaint must contain  
 7 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Iqbal*,  
 8 556 U.S. at 676. A claim has facial plausibility when the plaintiff pleads factual content that allows  
 9 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*  
 10 at 664.

11 Plaintiffs claim that the placement of a Levine Act notice on the CCW application page  
 12 violates First Amendment protections of political speech. FAC ¶ 125. The Levine Act establishes  
 13 comprehensive requirements governing campaign contributions and disclosure obligations when a  
 14 person has a pending application for a license, permit, or other entitlement for use before an agency.  
 15 Cal. Gov’t Code § 84308. To establish a First Amendment violation based on discouraged political  
 16 speech, a plaintiff must provide evidence showing that the defendant deterred or chilled the  
 17 plaintiff’s political speech and such deterrence was a substantial or motivating factor in (the  
 18 defendant’s) conduct. *Mendocino Env’t Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300 (1999). Here,  
 19 however, Plaintiffs’ concern with the Levine Act language on the CCW application page is merely  
 20 an issue of disclosure: “As described previously, and because political campaign contributions are  
 21 protected speech under the First Amendment, **Defendants’ policy, practice, and custom of**  
 22 **imposing campaign finance disclosure requirements**, as an implied condition of exercising  
 23 Second Amendment rights, violates the First Amendment.” FAC ¶ 125 (emphasis added).<sup>2</sup>

24 \_\_\_\_\_  
 25 <sup>2</sup> Plaintiffs’ contention that the Levine Act and/or Defendants’ online notice of its requirements  
 26 constitute “a broad daylight constitutionally corrupt gift” and “strongly imply that campaign  
 27 contribution disclosures are part of the licensing process”, FAC ¶ 7, are patently absurd; the Levine  
 28 Act and Defendants’ notice are intended to *prevent* elected officials like the Sheriff from engaging in

1 To that end, courts have consistently upheld disclosure and notification requirements in  
2 campaign finance contexts under the framework established in *Buckley v. Valeo*, 424 U.S. 1, 13  
3 (1976), which recognizes that to the extent such requirements might burden speech, they serve  
4 compelling governmental interests and are substantially less restrictive than outright bans on  
5 contributions or expenditures. The Supreme Court in *Citizens United v. Fed. Election Comm'n*, 558  
6 U.S. 310, 366-67 (2010) also distinguished between contribution limits and disclosure requirements,  
7 noting that disclosure requirements “may burden the ability to speak, but they impose no ceiling on  
8 campaign-related activities” and “do not prevent anyone from speaking.” The Court emphasized  
9 that disclosure requirements can be justified based on the governmental interest in providing the  
10 electorate with information about the sources of election-related spending. *Id.* Similarly,  
11 in *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 223 (2014), the Court determined that  
12 disclosure requirements represent a less restrictive alternative to flat bans on certain types or  
13 quantities of speech because they burden speech without imposing a ceiling on it.

14 The Ninth Circuit has repeatedly upheld disclosure requirements for campaign contributions  
15 against First Amendment challenges. In *Yamada v. Snipes*, 786 F.3d 1182, 1194 (2015), the court  
16 sustained Hawaii’s ban on political contributions by government contractors and various disclosure  
17 requirements, finding them constitutional even as applied to contributions to legislators. The Ninth  
18 Circuit in *Family PAC v. McKenna*, 685 F.3d 800, 806 (2012) upheld Washington’s disclosure  
19 requirements for contributions to ballot measure committees, finding that while disclosure  
20 requirements have some deterrent effect on contributions, the burden was not substantial enough to  
21 outweigh the state’s important interests in informing the electorate. The Ninth Circuit further held  
22 in *Nat’l Ass’n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1116 (2019) that once electioneering  
23 reporting requirements are triggered, states may constitutionally mandate disclosure of even small

24 ///

25  
26 \_\_\_\_\_  
27 political favoritism. *See, e.g.*, Cal. Gov’t Code § 84308(b)(1), (c)(1), (d) (imposing strict  
28 prohibitions on elected officers).

1 contributions because knowing the source of donations is informative in the aggregate and prevents  
2 evasion of disclosure.

3 For the reasons stated above, it is unnecessary to determine if the Levine Act applies to CCW  
4 permits or if the disclosures required by the Levine Act raises a constitutional issue requiring notice  
5 to the Attorney General because there is no viable constitutional claim in the first place.

6 **VII. CONCLUSION**

7 For the reasons stated above, the Court should certify that this matter “draws in question” the  
8 constitutionality of SB 2. Further, the Court should also certify that, in part, the matter “draws in  
9 question” the Levine Act’s alleged impact on political speech, unless the Court determines that the  
10 issue is moot because the constitutional challenge lacks merit.

11  
12 Dated: December 30, 2025

Respectfully submitted,

13 TONY LOPRESTI  
14 COUNTY COUNSEL

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16 ARYN PAIGE HARRIS  
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