

No. 16-56125

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

ULISES GARCIA, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney General of California,
Defendant-Appellee.

On Appeal from the United States District Court
Central District of California
The Honorable Beverly Reid O'Connell
Case 2:16-cv-02572-BRO-AFM

APPELLANTS' EXCERPTS OF RECORD

Bradley A. Benbrook
Stephen M. Duvernay
BENBROOK LAW GROUP, PC
400 Capitol Mall, Suite 1610
Sacramento, CA 95814
(916) 447-4900

Attorneys for Plaintiffs-Appellants

Pursuant to Ninth Circuit Rule 30-1, Plaintiffs-Appellants Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns Foundation, by and through their counsel of record, hereby submit their Excerpts of Record.

Dated: April 3, 2017

s/ Bradley A. Benbrook
Attorney for Plaintiff-Appellants
Ulises Garcia, et al.

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BENBROOK LAW GROUP, PC
BRADLEY A. BENBROOK (SBN 177786)
STEPHEN M. DUVERNAY (SBN 250957)
400 Capitol Mall, Suite 1610
Sacramento, CA 95814
Telephone: (916) 447-4900
Facsimile: (916) 447-4904
brad@benbrooklawgroup.com
steve@benbrooklawgroup.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ULISES GARCIA; JORDAN
GALLINGER; BRIAN HILL; BROOKE
HILL; CRAIG DELUZ; SCOTT
DIPMAN; ALBERT DUNCAN;
TRACEY GRAHAM; LISA JANG;
DENNIS SERBU; MICHAEL
VEREDAS; FIREARMS POLICY
FOUNDATION; FIREARMS POLICY
COALITION; MADISON SOCIETY
FOUNDATION; and THE CALGUNS
FOUNDATION,

Plaintiffs,

v.

KAMALA D. HARRIS, in her official
capacity as Attorney General of
California,

Defendant.

Case No.: 2:16-cv-02572-BRO-AFM

**PLAINTIFFS' NOTICE OF
APPEAL AND REPRESENTATION
STATEMENT**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiffs Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns Foundation, plaintiffs in the above-captioned case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from an order granting Defendant's Motion to Dismiss Plaintiffs' Complaint entered in this action on August 5, 2016 (Docket 20), attached as Exhibit A.

Plaintiffs' Representation Statement is attached to this Notice as required by Ninth Circuit Rule 3-2(b).

Dated: August 8, 2016

BENBROOK LAW GROUP, PC

By /s Bradley A. Benbrook
BRADLEY A. BENBROOK
Attorneys for Plaintiffs

REPRESENTATION STATEMENT

The undersigned represents Plaintiffs-Appellants Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns Foundation, and no other party. Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Circuit Rule 3-2(b), Plaintiffs-Appellants submit this Representation Statement. The following list identifies all parties to the action, and it identifies their respective counsel by name, firm, address, telephone number, and email, where appropriate.

PARTIES	COUNSEL OF RECORD
Plaintiffs-Appellants Appellants Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns Foundation	BENBROOK LAW GROUP, PC Bradley A. Benbrook (SBN 177786) Stephen M. Duvernay (SBN 250957) 400 Capitol Mall, Suite 1610 Sacramento, CA 95814 Telephone: (916) 447-4900 Facsimile: (916) 447-4904 brad@benbrooklawgroup.com steve@benbrooklawgrou.com
Defendant-Appellee Kamala D. Harris, in her official capacity as Attorney General of California	Kamala D. Harris (SBN 146672) Attorney General of California Mark R. Beckington (SBN 126009) Supervising Deputy Attorney General John D. Echeverria (SBN 268843) Deputy Attorney General 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-4902 Facsimile: (213) 897-5775 John.Echeverria@doj.ca.gov

1 Dated: August 8, 2016

BENBROOK LAW GROUP, PC

2
3 By /s/ Bradley A. Benbrook
4 BRADLEY A. BENBROOK
Attorneys for Plaintiffs
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No.	CV 16-02572-BRO (AFMx)	Date	August 5, 2016
Title	ULISES GARCIA ET AL. V. KAMALA HARRIS		

Present: The Honorable	BEVERLY REID O’CONNELL, United States District Judge	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)

**ORDER RE DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S COMPLAINT [14]**

I. INTRODUCTION

Pending before the Court is Kamala D. Harris’s (“Defendant”) Motion to Dismiss Plaintiffs’¹ Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkt. No. 14 (hereinafter, “Mot.”) at 2–3.) After considering the papers filed in support of and in opposition to the instant Motion, the Court deems this matter appropriate for resolution without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. For the following reasons, the Court **GRANTS** Defendant’s Motion.

II. BACKGROUND

A. Factual Background

The Complaint alleges that Individual Plaintiffs are “responsible, law abiding citizens” with licenses to carry concealed weapons, and that each has a reason to be present in a school zone. (Compl. ¶ 33; *see also* Compl. ¶¶ 10–19.) Each Individual

¹ The Plaintiffs in this case are: Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms Policy Foundation (“FPF”), Firearms Policy Coalition (“FPC”), Madison Society Foundation (“Madison Society”), and The Calguns Foundation (“CGF”). The Court will refer to Garcia, Gallinger, Brian Hill, Brooke Hill, DeLuz, Dipman, Duncan, Graham, Jang, Serbu, and Veredas collectively as the “Individual Plaintiffs” and will refer to FPF, FPC, Madison Society, and CGF collectively as “the Organizational Plaintiffs.” All Plaintiffs collectively will be referred to as “Plaintiffs.”

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Plaintiff has had to demonstrate good moral character and good cause to obtain a concealed carry license. (Compl. ¶ 33.) The Organizational Plaintiffs all contend that their purpose is to advance constitutional rights and that all the organizations have a particular focus on the Second Amendment. All the Organizational Plaintiffs allege they have spent funds and other resources to address questions, concerns, and complaints about the amendments to SB 707. (See Compl. ¶¶ 20–23.) Defendant is the Attorney General of California and has an office in Los Angeles, California. (Compl. ¶ 24.) Plaintiffs have sued Defendant in her official capacity. (*Id.*)

Plaintiffs challenge the constitutional validity of amendments to the Gun Free School Zone Act of 1995 (the “Act”) passed in 2015 as Senate Bill 707, 2014–15 Reg. Sess. (Cal. 2015) (“SB 707”). (Dkt. No. 1 (hereinafter, “Compl.”) ¶ 1.) The Act prohibits the possession of a firearm within a school zone, which includes any area on the grounds of, or within 1,000 feet of, a public or private school. (Compl. ¶ 25); see Cal. Penal Code § 626.9(b), (e)(4). Violation of the Act is a misdemeanor or a felony. (*Id.*) As originally enacted, the Act created two exemptions: (1) anyone who was licensed to carry a concealed firearm pursuant to California Penal Code section 26150 could carry a firearm on school property; and, (2) any “honorably retired peace officer authorized to carry a concealed or loaded firearm” (the “Retired Peace Officer Exemption”) could also carry a firearm on school grounds. (Compl. ¶ 29; Mot. at 1 (citation omitted).) In 2015, the California Legislature initially intended to amend the Act to remove all exemptions, but ultimately retained the Retired Peace Officer Exemption. (Compl. ¶ 29; Mot. at 2); see Cal. Penal Code § 626.9(o). According to Plaintiffs, section 626.9(o) treats two groups of “similarly situated” citizens differently as it allows these retired peace officers a right not afforded to the general public. (See Compl. ¶ 6.) As a result, eleven individuals and four organizations have brought a challenge pursuant to 42 U.S.C. § 1983 alleging the Retired Peace Officer Exemption violates the Equal Protection Clause of the Fourteenth Amendment. (See Compl.)

Under California law, retired peace officers are not subject to a moral character check and are not required to establish good cause unlike most citizens (including the Individual Plaintiffs). (Compl. ¶ 34.) Rather, any retired peace officer who carried a gun during their service will be issued an identification certificate by the law enforcement agency for which they worked that allows them to carry a concealed weapon. (*Id.*) This exemption applies to retired employees of the Department of Fish and Game, retired

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employees of the Department of Parks and Recreation, retired employees of the Department of Forestry and Fire Protection, and retired marshals whose primary assignment duties included enforcing California Food and Agricultural Code section 3332. (*Id.*) The retirees must reapply every five years to their former agency to maintain their eligibility, and the agency must find “good cause” to deny the renewal. (*Id.*) Additionally, the Retired Peace Officer Exemption also includes any honorably retired federal officer or agent of a federal law enforcement agency regardless of whether they ever carried a gun during their service. (Compl. ¶ 35.) For these officers, the officer or agent must have been assigned to duty within California for at least one year or retired from active service in the state. (*Id.*) The officer must provide the local sheriff or police chief with a “concurrence” from the agency for whom the officer or agent worked stating that the retiree should be able to carry a concealed weapon. (*Id.*)

B. Procedural History

Plaintiffs filed this action on April 14, 2016, seeking declaratory, injunctive, or other relief for an alleged violation of the Equal Protection Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983. (*See generally* Compl.) On May 11, 2016, the Parties stipulated to an extension of the deadline for Defendant to file an Answer to the Complaint. (Dkt. No. 13.) Accordingly, on June 10, 2016, Defendant answered Plaintiffs’ Complaint by filing the instant Motion to Dismiss, (Dkt. No. 14), and a Request for Judicial Notice, (Dkt. No. 15 (hereinafter, “RJN”)). On July 18, 2016, Plaintiffs timely opposed the Motion, (Dkt. No. 16 (hereinafter, “Opp’n”)), and objected to the Request for Judicial Notice, (Dkt. No. 17 (hereinafter, “Obj. to RJN”)). On July 25, 2016, Defendant replied to Plaintiffs’ Opposition. (Dkt. No. 19 (hereinafter, “Reply”).)

III. REQUEST FOR JUDICIAL NOTICE

Accompanying Defendant’s Motion is a Request for Judicial Notice. (*See* RJN.) Defendant requests that the Court take judicial notice of (1) an order from the Eastern District of California filed in *Mehl v. Blanas*, No. CIV. S 03-2682 MCE KJM (E.D. Cal. Sept. 3, 2004) (Dkt. No. 17) (hereinafter, “*Mehl* Order”), and (2) two Committee Analyses of SB 707 dated April 14, 2015 and July 14, 2015 respectively. (RJN ¶¶ 1–3, Exs. A–C.)

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A court may properly take judicial notice of (1) material which is included as part of the complaint or relied upon by the complaint, and, (2) matters in the public record. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). A court may also take judicial notice pursuant to Federal Rule of Evidence 201(b). Under the rule, a judicially noticed fact must be one that is “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or, (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *See* Fed. R. Evid. 201(c)(2); *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014).

Plaintiffs do not object to the Court taking judicial notice of the *Mehl* Order, (*see generally* Obj. to RJN), and it is appropriate for a court to take judicial notice of another court’s order, *see Walker v. Metro Life Ins. Co.*, No. CV 09-1178 PSG (AGR), 2009 WL 2048328, at *2 n.2 (C.D. Cal. July 9, 2009) (“The Court may take judicial notice of orders by other courts”) (citing *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995), *rev’d on other grounds* by 520 U.S. 548 (1997)). Therefore, the Court **GRANTS** Defendant’s Request for Judicial Notice as to the *Mehl* Order.

Plaintiffs do object to the Court taking judicial notice of portions of the SB 707’s Committee Analyses, specifically letters from entities opposing the proposed removal of the Retired Peace Officer Exemption from the Act. (Obj. to RJN ¶¶ 1–2.) “Legislative history is properly a subject of judicial notice.” *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012) (citing *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005)). Judicial notice is appropriate because “[l]egislative history is a source whose accuracy cannot reasonably be questioned.” *See Snyder v. Unum Life Ins. Co. of Am.*, No. CV 13-07522 BRO (RZx), 2014 WL 7734715, at *5 (C.D. Cal. Oct. 28, 2014) (citing *Chaker*, 428 F.3d at 1223 n.8). However, Plaintiffs contend that the Court cannot take judicial notice of statements made in opposition to SB 707, as they “are not a valid source of legislative history.” (Obj. to RJN ¶¶ 1–2.) Plaintiffs contend that courts do not take judicial notice of legislative history that is not indicative of the *collective intent* of the Legislature, such as letters opposing the bill. (*Id.*) To support their contention, Plaintiffs rely on several California appellate court decisions that have denied judicial notice of legislative history. (*Id.*) However, federal courts have taken judicial notice of legislative

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history that includes statements and papers that are not the collective intent of the Legislature. *See Rocky Mountain Farmers Union v. Goldstone*, 719 F. Supp. 2d 1170, 1186 (E.D. Cal. 2010) (taking judicial notice of a variety of legislative history, including statements, reports, and white papers). Moreover, this comports with Federal Rule of Evidence 201(b), as the Committee Analyses are part of the public record, and their accuracy cannot be questioned. Therefore, the Court **GRANTS** Defendant's request to take judicial notice of SB 707's legislative history.

IV. LEGAL STANDARD

Under Rule 8(a) a complaint must contain a “short and plain statement of the claim showing that the [plaintiff] is entitled to relief.” Fed. R. Civ. P. 8(a). Otherwise, the defendant may move to dismiss it under Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, there must be “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility’” that the plaintiff is entitled to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557). In ruling on a motion to dismiss for failure to state a claim, a court should consider the contents of the complaint and its attached exhibits, documents incorporated into the complaint by reference, and matters properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322–23 (2007); *Lee*, 250 F.3d at 688.

Where a district court grants a motion to dismiss, it should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (“Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.”). Leave to amend, however, “is properly denied . . . if amendment would be futile.” *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

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V. DISCUSSION

The Equal Protection Clause of the Fourteenth Amendment ensures “that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To sufficiently plead a violation of the Equal Protection Clause, a plaintiff must show that similarly situated groups have been treated disparately. *See Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1064 (9th Cir. 2014). Further, a plaintiff must demonstrate that the legislative classification does not survive the appropriate standard of scrutiny. *See City of Cleburne*, 473 U.S. at 440–41.

A. Plaintiffs Have Established That Plaintiffs and Retired Peace Officers Are Similarly Situated Groups

“The first step in equal protection analysis is to identify the defendants’ classification of groups.” *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995) (alteration and citation omitted). The plaintiff can do this by showing the law applies differently to different classes of people. *Id.* “Once the plaintiff establishes governmental classification, it is necessary to identify a ‘similarly situated’ class against which the plaintiff’s class can be compared.” *Id.* “The groups must be comprised of similarly situated persons so that the factor motivating the alleged discrimination can be identified.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005). “The similarly situated group is the control group.” *Freeman*, 68 F.3d at 1187 (internal quotation marks omitted). However, “[t]he groups need not be similar in all respects, but they must be similar in those respects relevant to the Defendants’ policy.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1064 (9th Cir. 2014).

Plaintiffs have established that the group they allege is subject to government classification is retired peace officers. (Compl. ¶ 3.) Defendant argues that Plaintiffs have failed to establish a “control group,” i.e., a similarly situated class against which the Court may measure the treatment of retired peace officers. (Mot. at 10–11.) The Court disagrees. In the Complaint, Individual Plaintiffs allege that they are private citizens who have been issued a concealed carry license pursuant to California’s licensing scheme. (*See Opp’n* at 7–8; Compl. ¶¶ 33, 40.) Both Plaintiffs and retired peace officers may

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lawfully carry a concealed firearm for self-defense purposes, and neither group are active members of law enforcement that are required to carry concealed weapons for their occupation or for public safety. (*See* Compl. ¶¶ 33–36.) And yet the Act creates an exemption that allows retired peace officers to carry a concealed weapon on school property but does not create an exemption for Individual Plaintiffs. (*Id.*) This is a sufficient “control group.”

Further, Defendant argues that the groups are not similarly situated because retired peace officers are not required to meet the same “good cause” standard as private citizens before being granted a concealed carry license. (*See* Reply at 9.) The standard they had to meet to obtain a concealed carry license, however, is not relevant to the determination and not enough to make the two classes dissimilar. *See Ariz. Dream Act Coal.*, 757 F.3d at 1064. Rather, the relevant distinction under the Act is that both groups are licensed to carry concealed weapons but are treated differently based on the retired peace officers’ status as former members of law enforcement. Thus, the Court finds that the two groups are sufficiently similarly situated to establish an equal protection claim.

B. Rational Basis Scrutiny Applies

Next, the Court must determine what level of constitutional scrutiny to apply when analyzing the Retired Peace Officers Exemption. If a statute treats individuals differently based on a protected class (such as race or national origin) or infringes on a fundamental right, the statute must pass strict scrutiny; that is, it must be “suitably tailored to serve a compelling state interest.” *City of Cleburne*, 473 U.S. at 440; *see also Zablocki v. Redhail*, 434 U.S. 374, 388 (1978) (“When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”). But “if a legislative act neither affects the exercise of a fundamental right, nor classifies persons based on protected characteristics, then the statute will be upheld ‘if the classification drawn by the statute is rationally related to a legitimate state interest.’” *Silveira v. Lockyer*, 312 F.3d 1052, 1088 (9th Cir. 2002) (quoting *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981), *abrogated on other grounds by District of Columbia v. Heller*, 554 U.S. 570 (2008)). This is commonly referred to as rational basis scrutiny.

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Review of the Retired Peace Officer Exemption does not trigger heightened scrutiny. The only group the Act treats differently is retired peace officers based on their status as former law enforcements officers. Occupational status (former or current) is not a protected class. Additionally, the Act does not affect the exercise of a fundamental right.² Accordingly, the law need only be “rationally related to a legitimate state interest.” *Id.* Rational basis scrutiny is a forgiving standard. “Under rational basis review, [Plaintiff’s] claim must be rejected as long as ‘there is any reasonably conceivable state of facts that could provide a rational basis’ for the challenged law.” *Merrifield v. Lockyer*, 547 F.3d 978, 989 (9th Cir. 2008) (quoting *FCC v. Beach Commcn’s, Inc.*, 508 U.S. 307, 313 (1993)). Generally, under rational basis review, “legislation is presumed to be valid.” *City of Cleburne*, 473 U.S. at 439. The party challenging the statute bears the burden of establishing that there is no rational basis for the challenged distinction and to “negative every conceivable basis which might support it.” *Heller v. Doe*, 509 U.S. 312, 320 (1993) (internal quotation marks omitted).

C. Defendant Has Proffered a Legitimate Government Interest

Defendant argues that the Retired Peace Officer Exemption is reasonably related to a legitimate government interest: the protection and safety of retired peace officers.³

² To be clear, Plaintiffs’ challenge to the Retired Peace Officer Exemption does not implicate the Second Amendment. The Act prevents the carrying of concealed weapons only on school property. (Compl. ¶ 25); see Cal. Penal Code § 626.9(b). As the United States Supreme Court explained in *Heller*, 554 U.S. at 626, the Second Amendment does not prevent “forbidding the carrying of firearms in sensitive places such as schools and government buildings.” See also *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (“We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as . . . ‘laws forbidding the carrying of firearms in sensitive places such as schools . . .’”). Therefore, the Act does not implicate the Second Amendment by forbidding members of the general public from carrying a firearm on school property.

³ This is indicated by a letter from the Sacramento County Sheriff’s Association sent to the California Legislature which explained that the removal of the Retired Peace Officer Exemption from the Act would jeopardize the safety of retired peace officers. (Mot. at 15.) Plaintiffs argue that because this letter was not part of the Legislature’s collective intent and represents only the opinion of one entity it is not subject to judicial notice. (Obj. to RJN ¶¶ 1–2.) However, the Court found the entire legislative history of SB 707 was properly subject to judicial notice. (See *supra* Section III.) Further, the Court “must attempt to identify *any* hypothetical rational basis for the exception, whether or not that reason is in the legislative record.” *Silveira*, 312 F.3d at 1090. The letter from the Sacramento County Sheriff’s

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(Mot. at 15.) Other courts have noted that the protection and safety of retired peace officers may be considered a rational reason on which to differentiate for purposes of carrying a firearm. *See Nichols v. Brown*, No. CV 11-09916 SJO (SS), 2013 WL 3368922, at *6 (C.D. Cal. July 3, 2013) (addressing a challenge to a California statute which treated retired peace officers differently than other citizens and noting that “the California Legislature could have reasonably believed that certain groups, such as retired police officers, were in greater need of self-protection and thus should be allowed to openly carry a firearm”); *see also Mehl* Order at 11 (explaining that allowing retired peace officers to carry a concealed weapon is rationally related to a legitimate government interest, namely “to protect themselves from the enemies they have made in performing their duties”). Accordingly, the Court finds that the protection of retired peace officers is a legitimate government interest.

D. The Retired Peace Officer Exemption is Rationally Related to Defendant’s Proffered Legitimate State Interest

Next, the Court must determine whether the Retired Peace Officer Exemption is rationally related to Defendant’s proffered government interest. Plaintiffs argue that the Ninth Circuit’s decision in *Silveira* controls the Court’s decision and establishes that there is no rational relation. (*See* Opp’n at 14.) The Court disagrees, however, and finds that *Silveira* is inapposite.

In *Silveira*, the Ninth Circuit addressed California’s Roberti-Roos Assault Weapons Control Act (the “ACWA”) which effectively created a ban on the possession of assault weapons by private individuals. *See Silveira*, 312 F.3d at 1059. But the ACWA created (among other various exceptions) two exceptions for peace officers: first, it allowed active peace officers to possess assault weapons while off-duty; and second, it permitted retired peace officers to purchase and possess assault weapons if they acquired them from their employers at the time of their retirement. *See id.* The court upheld the exception for off-duty active peace officers, but found that the exception for retired peace

Association makes clear that the safety of retired peace officers was at the very least a possible consideration behind keeping the Retired Peace Office Exemption in the Act. Accordingly, the Court could consider whether retired peace officers’ need for self-defense is a legitimate interest, even if the letter was not properly subject to judicial notice.

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officers violated the Equal Protection Clause. *Id.* at 1089–90. The court explained that the statutory purpose of the ACWA was to protect public safety, and thus the exception for allowing off-duty peace officers to carry assault weapons was reasonable, as “off-duty officers may find themselves compelled to perform law enforcement functions in various circumstances” that would require them to “have their weapons readily available.” *Id.* at 1089. But for retired peace officers, there was no expectation that they would be required to act to protect the public, and so there was “no legitimate state interest in permitting retired peace officers to possess and use for their personal pleasure military-style weapons.” *Id.* at 1090–91. Even after examining whether “any reasonable theory could support the legislative classification,” the court found the retired officer exception did not pass rational basis scrutiny. *Id.* at 1091.

Plaintiffs argue that *Silveira* indicates that to pass rational basis scrutiny, the government’s classification must be rationally related not only to a legitimate government interest, but also to the purpose of the underlying statute. (See Opp’n at 10–11.) Plaintiffs reading of *Silveira* is overbroad. Rational basis does not require the government’s purpose for the classification have a connection to the underlying statute, though a court may take any such connection (or lack thereof) into consideration. See *Romer v. Evans*, 517 U.S. 620, 631–32 (1996) (explaining that the court will uphold a statute under rational basis review so long as a classification “bears a rational relation to some legitimate end,” but that searching for the relation “between the classification adopted and the object to be obtained” can give “substance to the Equal Protection Clause” and provide “guidance and discipline for the legislature”). In *Silveira*, the court noted that it is the court’s “duty to scrutinize the connection, if any, between the goal of a legislative act and the way in which individuals are classified in order to achieve that goal.” *Silveira*, 312 F.3d at 1088. But the “general rule” is that legislation will be sustained so long as “the classification drawn by the statute is rationally related to a legitimate state interest.” *City of Cleburne*, 473 U.S. at 439. Thus, while in *Silveira* the court observed that allowing retired peace officers access to assault weapons was “wholly contrary to the legislature’s stated reasons for enacting restrictions on assault weapons,” this observation was not dispositive; rather, the court found that the ACWA’s retired officer exception was unconstitutional because there was not even a “hypothetical rational basis” for granting retired peace officers access to assault weapons. See *Silveira*, 312 F.3d at 1090–91. In this case, the Court need not scrutinize the connection between

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the purpose of the Act and the Retired Peace Officer Exemption, because it finds that the Exemption is rationally related to a legitimate state interest.

Further, *Silveira*'s holding that there is no rational basis for permitting retired peace officers access to assault weapons does not control the outcome here. *Silveira* regarded the possession and use of assault weapons for personal and recreational purposes, not the right to carry a lawful concealed weapon for self-defense. There is a distinct difference between allowing access to assault weapons and allowing the carrying of otherwise lawful concealed weapons. *See Mehl* Order, at 11 ("Therefore, there is a rational basis for allowing a retired officer to continue to carry a concealed weapon, even though there was no rational basis for allowing the same officer to keep an assault weapon."). Thus, there is a distinct difference in finding a rational basis for allowing retired peace officers to carry concealed weapons than to find a basis for granting them access to assault weapons.

Unlike in *Silveira*, where the proffered government interest was one of public protection, the government interest here is one of private protection and self-defense. Retired peace officers have a unique role in our society as they, as members of law enforcement, dealt with a wide array of people and participated in situations in which they may create enemies or interact with those who wish them harm. Because of these interactions, retired peace officers have an interest in protecting themselves by carrying a concealed weapon for self-defense even after their public service has ended. This need for self-protection does not disappear simply because the retired peace officer is within 1,000 feet of a school. Therefore, allowing retired peace officers an exemption from the general ban of carrying concealed weapons on school property is rationally related to the legitimate state interest of ensuring their protection.

Accordingly, Defendant has established that the Retired Peace Officer Exemption is reasonably related to a legitimate state interest.

E. Plaintiffs Do Not Establish a Valid Claim for Equal Protection Based on Improper Treatment of a Politically Unpopular Class

Plaintiffs also argue that the Retired Peace Officer Exemption violates the Equal Protection Clause because the California Legislature only created the Exemption "for the

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improper purpose of favoring a politically powerful group and to disfavor a politically unpopular one.” (Opp’n at 16.) According to Plaintiffs, the Retired Peace Officers Exemption is the result of significant lobbying efforts by retired peace officers seeking deferential treatment for their constituents. (Opp’n at 16–17.) Plaintiffs contend that “civilian gun owners are unpopular with the California Legislature” and that because the Act favors a more powerful political group (i.e., retired peace officers), they have established a valid equal protection claim. (Opp’n at 18.)

The Court disagrees. In the case on which Plaintiffs rely, *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973), there was evidence in the legislative history that there was “a bare congressional desire to harm a politically unpopular group.” In that case, Congress had created a statutory classification that households comprised of only related persons versus households comprised of one or more unrelated persons would be treated differently under the food stamp program. *Moreno*, 413 U.S. at 533–34. The legislative history explicitly indicated that the purpose behind this classification was “to prevent so-called ‘hippies’ and ‘hippie communes’ from participating.” *Id.* at 534. The legislative history of the Act here does not indicate that the California Legislature was trying to prejudice civilian firearm owners when it retained the Retired Peace Officers Exemption. Absent evidence of explicit legislative intent to cause harm to civilian gun owners, Plaintiffs cannot establish a violation of the Equal Protection Clause under this theory.

Thus, Plaintiffs have failed to state a viable claim for a violation of the Equal Protection Clause and the Court need not address Defendant’s argument regarding the Organizational Plaintiffs’ standing.

VI. CONCLUSION

Plaintiffs’ claim that the Retired Peace Officer Exemption is unconstitutional under the Equal Protection Clause cannot be cured by amendment because so long as the government has an interest in protecting retired peace officers, it will survive rational basis scrutiny. Further, as the legislative history of the Act has already been judicially noticed and it includes no evidence of legislative intent to harm civilian California firearm owners, it appears that allowing Plaintiffs to amend the Complaint regarding its claim of improper treatment of a politically unpopular class would also be futile.

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Accordingly, for the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED with prejudice**. The hearing scheduled for August 8, 2016, is hereby **VACATED**.

IT IS SO ORDERED.

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1 firearms and noting that “[t]he court in *Heller* was careful to limit the scope of its
2 holding”).¹²

3 Indeed, the Act has been upheld under the Second Amendment. *See Hall v.*
4 *Garcia*, No. C 10-03799 RS, 2011 WL 995933, at *4-*5 (N.D. Cal. Mar. 17, 2011)
5 (granting motion for judgment on the pleadings because, “[u]nder any of the
6 potentially applicable levels of scrutiny . . . , the Gun-Free School Zone Act
7 constitutes a constitutionally permissible regulation of firearms in public areas in or
8 near schools”); *c.f. United States v. Lewis*, Criminal No. 2008-45, 2008 WL
9 5412013, at *2 (D.V.I. Dec. 24, 2008) (noting that “[i]t is beyond peradventure that
10 a school zone, where [defendant] is alleged to have possessed a firearm, is precisely
11 the type of location of which *Heller* spoke” and “*Heller* unambiguously forecloses
12 a Second Amendment challenge to that offense [for violation of the federal Gun-
13 Free School Zone Act] under any level of scrutiny”). Because Plaintiffs do not, and
14 cannot, allege that the Act violates the Second Amendment, rational basis scrutiny
15 applies.

16 **2. The Retired Officer Exemption Satisfies Rational Basis** 17 **Scrutiny.**

18 Under rational basis review, “the general rule is that legislation is presumed to
19 be valid and will be sustained if the classification drawn by the statute is rationally
20 related to a legitimate state interest.” *City of Cleburne*, 473 U.S. at 439. The party
21 attacking the classification bears the burden of demonstrating that there is no
22 reasonable basis for the challenged distinction and to “negative every conceivable
23 basis which might support it.” *Heller v. Doe*, 509 U.S. 312, 320 (1993) (citation

24 ¹² Even if Plaintiffs were to challenge the Act on Second Amendment
25 grounds, such a challenge would not be cognizable as an equal protection claim.
26 *See Teixeira*, 2016 WL 2849245, at *3 (“Because [plaintiff’s] equal protection
27 challenge is ‘no more than a [Second] Amendment claim dressed in equal
28 protection clothing,’ it is ‘subsumed by, and coextensive with’ the former, and
therefore is not cognizable under the Equal Protection Clause.” (quoting *Orin v.*
Barclay, 272 F.3d 1207, 1213 n.3 (9th Cir. 2001)) (second alteration in original)).

1 KAMALA D. HARRIS
Attorney General of California
2 MARK R. BECKINGTON
Supervising Deputy Attorney General
3 JOHN D. ECHEVERRIA
Deputy Attorney General
4 State Bar No. 268843
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4902
6 Fax: (213) 897-5775
E-mail: John.Echeverria@doj.ca.gov
7 *Attorneys for Defendant Kamala D. Harris,*
California Attorney General
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION (LOS ANGELES)
12

13 **ULISES GARCIA; JORDAN**
14 **GALLINGER; BRIAN HILL;**
15 **BROOKE HILL; CRAIG DeLUZ;**
16 **SCOTT DIPMAN; ALBERT**
17 **DUNCAN; TRACEY GRAHAM;**
18 **LISA JANG; DENNIS SERBU;**
19 **MICHAEL VEREDAS; FIREARMS**
POLICY FOUNDATION;
FIREARMS POLICY COALITION;
MADISON SOCIETY
FOUNDATION; and THE
CALGUNS FOUNDATION,

20 Plaintiffs,

21 v.

22 **KAMALA D. HARRIS, in her official**
23 **capacity as Attorney General of**
24 **California,**

25 Defendant.
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27
28

Case No.: 2:16-cv-02572-BRO-AFM

**REQUEST FOR JUDICIAL
NOTICE FILED IN SUPPORT OF
MOTION TO DISMISS
COMPLAINT BY CALIFORNIA
ATTORNEY GENERAL KAMALA
D. HARRIS**

Date: August 8, 2016
Time: 1:30 p.m.
Courtroom: 14
Judge: The Honorable Beverly
Reid O'Connell
Acton Filed: April 14, 2016

1 Pursuant to Rule 201 of the Federal Rules of Evidence (“FRE”), California
2 Attorney General Kamala D. Harris hereby respectfully requests that this Court take
3 judicial notice of the following documents:

4 1. The committee analysis of Senate Bill 707 of the California Senate
5 Committee on Public Safety (2014-2015 Reg. Sess.), dated April 14, 2015 (the
6 “April 14 Committee Analysis”). A true and correct copy of the April 14
7 Committee Analysis is annexed hereto as Exhibit A.

8 2. The committee analysis of Senate Bill 707 of the California Senate
9 Committee on Public Safety (2014-2015 Reg. Sess.), dated July 14, 2015 (the
10 “July 14 Committee Analysis”). A true and correct copy of the July 14 Committee
11 Analysis is annexed hereto as Exhibit B.

12 3. The memorandum and order of the Honorable Morrison C. England,
13 United States District Judge for the Eastern District of California, filed on
14 September 3, 2004, in *Mehl, et al. v. Blanas, et al.*, No. CIV. S 03-2682 MCE KJM
15 (E.D. Cal. Sept. 3, 2004) (Dkt. No. 17) (the “*Mehl* Dismissal Order”). The *Mehl*
16 Dismissal Order was not published and is not available on an electronic database.
17 A true and correct copy of the *Mehl* Dismissal Order is annexed hereto as
18 Exhibit C.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 This Court “‘may take judicial notice of ‘matters of public record’ without
21 converting a motion to dismiss into a motion for summary judgment,’ as long as the
22 facts noticed are not ‘subject to reasonable dispute.’” *Intri-Plex Technologies, Inc.*
23 *v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007) (quoting *Lee v. City of Los*
24 *Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)); *see also Mack v. S. Bay Beer*
25 *Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (“[O]n a motion to dismiss a
26 court may properly look beyond the complaint to matters of public record and doing
27 so does not convert a Rule 12(b)(6) motion to one for summary judgment.”),
28

1 *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501
2 U.S. 104, 107 (1991).

3 The Court may properly take judicial notice of the annexed exhibits. Exhibits
4 A and B are part of the legislative history of Senate Bill 707 to amend the Gun-Free
5 School Zones Act of 1995. *See Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th
6 Cir. 2012) (“Legislative history is properly a subject of judicial notice.” (citing
7 *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005))); *Snyder v. Unum Life*
8 *Ins. Co. of Am.*, No. CV 13-07522 BRO (RZx), 2014 WL 7734715, at *5 (C.D. Cal.
9 Oct. 28, 2014) (finding that state statute’s “legislative history is a source whose
10 accuracy cannot reasonably be questioned and a proper subject for judicial notice”
11 (citing *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005))). Exhibit C is
12 an order of the United States District Court for the Eastern District of California.
13 *See Walker v. Metro. Life Ins. Co.*, No. CV 09-1178 PSG (AGRx), 2009 WL
14 2048328, at *2 n.2 (C.D. Cal. July 9, 2009) (“The Court may take judicial notice of
15 orders by other courts” (citing *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203,
16 207 n.5 (9th Cir. 1995), *rev’d on other grounds*, 520 U.S. 548)). Accordingly, the
17 annexed exhibits are the proper subjects of judicial notice and may be considered in
18 conjunction with the concurrently filed motion to dismiss.

19 CONCLUSION

20 For the reasons set forth above, the Request for Judicial Notice should be
21 granted.
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1 Dated: June 10, 2016

Respectfully submitted,

2 KAMALA D. HARRIS
3 Attorney General of California
4 MARK R. BECKINGTON
5 Supervising Deputy Attorney General

6 /s/ John D. Echeverria

7 JOHN D. ECHEVERRIA
8 Deputy Attorney General
9 *Attorneys for Defendant Kamala D.*
10 *Harris, California Attorney General*

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EXHIBIT A

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 707 **Hearing Date:** April 14, 2015
Author: Wolk
Version: February 27, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Gun-free School Zone*

HISTORY

Source: Author

Prior Legislation: AB 624 (Allen) – Chap. 659, Stats. 1995
AB 2609 (Lampert) – Chap. 115, Stats. 1998

Support: California Chapters of the Brady Campaign to Prevent Violence; California Public Defenders Association; Friends Committee on Legislation of California; Law Center to Prevent Gun Violence; Physicians for Social Responsibility, Sacramento Chapter; Violence Prevention Coalition; Women Against Gun Violence

Opposition: Sacramento County Deputy Sheriffs' Association; California Correctional Supervisors Organization; California Narcotics Officers; California Rifle and Pistol Association, Inc.; Fraternal Order of Police, California State Lodge; Long Beach Police Officers Association; Los Angeles County Professional Peace Officers Association; Retired & Disabled Police of America; Santa Ana Police Officers Association; California College and University Police Chiefs Association (unless amended); 1 individual

PURPOSE

The purpose of this legislation is to: (1) allow a person holding a valid license to carry a concealed firearm, and a retired peace officer authorized to carry a concealed or loaded firearm, to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12; and, (2) delete the exemption that allows a person holding a valid license to carry a concealed firearm, and a retired peace officer authorized to carry a concealed or loaded firearm, to possess a firearm on the campus of a university or college.

Existing law creates the Gun-Free School Zone Act of 1995. (Penal Code § 626.9(a).)

Existing law defines a “school zone” to mean an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Penal Code § 626.9(e).)

Under existing law any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows:

- Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.
- Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:
 - Imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years; or,
 - Imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:
 - If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.
 - If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.
 - If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.
- Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.
- Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.
- Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college

authority, must be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

- Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(Penal Code § 626.9(f)-(i).)

Existing laws states that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances:

- Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.
- When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.
- The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.
- When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.
- When the person is exempt from the prohibition against carrying a concealed firearm, as specified.

(Penal Code § 626.9(c).)

Existing law states that the Gun-Free School Zone Act of 1995 does not apply to:

- A duly appointed peace officer;
- A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;
- Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
- A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;

- A person holding a valid license to carry a concealed firearm;
- An armored vehicle guard, engaged in the performance of his or her duties, as specified;
- A security guard authorized to carry a loaded firearm;
- An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,
- An existing shooting range at a public or private school or university or college campus.

(Penal Code § 626.9(l).)

This bill would allow a person holding a valid license to carry a concealed firearm, and a retired peace officer authorized to carry a concealed or loaded firearm, to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12.

This bill would delete the exemption that allows a person holding a valid license to carry a concealed firearm, and a retired peace officer authorized to carry a concealed or loaded firearm, to possess a firearm on the campus of a university or college.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the Author:

In recent years there has been a disturbing increase in the number of active shooter incidents on school, college, and university campuses across the country, with 42 such incidents in 2014. There have also been an alarming number of sexual assaults on college and university campuses. Recently, some gun rights proponents in other states have sponsored legislation to increase the opportunity for students and teachers to bring firearms on school campuses with CCWs, claiming this will deter sexual assaults and defend against active shooters. These efforts have been vigorously opposed by school public safety officials, school administrators, and public safety advocates. Research also indicates that bringing more firearms on campus will lead to more campus violence and increase the danger to students and others on campus.

California law provides that the authority over school safety belongs with school/campus authorities. SB 707 maintains that authority and allows school officials to prohibit or allow a firearm on campus as they deem appropriate. Closing the CCW exemption in California law is consistent with efforts to maintain school and college campuses as safe, gun free, environments for students. SB 707 will ensure that students and parents who expect a campus to be safe and “gun free” can be confident that their expectation is being met and that school officials remain in charge of who, if anyone, is allowed to bring a firearm on their campus.

2. Effect of the Legislation

Honorably retired peace officers authorized to carry a concealed or loaded firearm and individuals who possess a valid concealed carry permit, are currently allowed to carry a firearm on school campuses, including grade schools, high schools and college campuses. This legislation would, instead, prohibit these two groups from carrying firearms on school grounds, but would allow them to carry firearms within 1,000 feet of a school.

SB 707 (Wolk)

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California College and University Police Chiefs Association, who were the original sponsors of this legislation and now have an oppose unless amended position, request:

... that SB 707 be amended to remove the provisions impacting honorably retired peace officers. If those provisions are amended, we will support the bill because the bill's focus will then properly be on addressing unrestricted campus access of persons who possess concealed weapons permits pursuant Penal Code Section 26150.

We believe that honorably retired peace officers represent a public safety asset and that it is a mistake not to have the ready availability of those officers. They are subject to stringent standards in determining if they are to be given a firearms endorsement upon retirement, must adhere to the same standards as the active officers employed by their agency in order to retain that endorsement, are subject to ongoing training requirements, and have demonstrated an ability to take positive public safety action when the occasion calls for that action. As officers sworn to protect school campuses, we consider the presence of an honorably retired peace officer – with their decades of training and professionalism – to be a distinct asset in our ability to carry out our mission. The sad reality is that active shooter incidents take place disproportionately on our campuses and an honorably retired peace officer can play a role in helping to keep such incidents in check.

SHOULD PERSONS WITH A CONCEALED CARRY PERMIT BE ALLOWED TO CARRY FIREARMS ON SCHOOL CAMPUSES, WITHOUT THE PERMISSION OF THE SCHOOL AUTHORITY?

SHOULD RETIRED PEACE OFFICERS AUTHORIZED TO CARRY A CONCEALED OR LOADED FIREARM, BE ALLOWED TO CARRY FIREARMS ON SCHOOL CAMPUSES, WITHOUT THE PERMISSION OF THE SCHOOL AUTHORITY?

3. Argument in Support

According to the California Chapters of the Brady Campaign to Prevent Violence:

Existing law prohibits a person from possessing a firearm in a school zone without the written permission of certain school district officials. A school zone includes school grounds and a distance within 1,000 feet of a public or private K-12 school. Additionally, existing law prohibits a person from possessing a firearm upon the grounds of a public or private university or college campus without the written permission of specified university or college officials. Persons holding a valid license to carry a concealed and loaded weapon (CCW) and retired peace officers authorized to carry concealed and loaded firearms are exempt from the school zone and university or college prohibitions. SB 707 would allow CCW license holders to carry a concealed firearm within 1,000 feet but not on the grounds of a K-12 school and not on the campus of a university or college. Firearms, including concealed loaded handguns, could still be allowed on school grounds or campuses with the permission of school officials.

The Brady Campaign strongly believes that the discretion to allow concealed, loaded guns on a school grounds and college or university campuses must lie with school authorities, who bear the responsibility for the wellbeing and safety of their students. Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. This creates the opportunity for a 21 year old from a rural county to obtain a CCW permit and carry a loaded, hidden handgun in a dormitory on an urban campus.

This is one area of firearm law in which California lags behind many other states. According to the Law Center to Prevent Gun Violence, which tracks state firearm laws, 39 states and the District of Columbia prohibit those with CCW permits from possessing concealed firearms within school zones and 23 states specify that CCW permit holders may not carry concealed firearms on college and university campuses. California is not one of these states.

The national trend on this issue is disturbing as legislation has been introduced in at least 16 states that would force guns onto college and university campuses. Proponents are even suggesting that more guns on campuses would stop student rape. Additionally, legislation is being pushed in 20 states to allow people to carry hidden, loaded handguns in public without a permit. Moreover, federal reciprocity legislation (H.R. 402 and S. 498) has been introduced that would require states to recognize CCW permits from other states, including those with reprehensibly low standards. States that use law enforcement discretion, such as California, would be forced to recognize CCW permits from other states, even if the permit holder would not pass a background check in the state. The threat of national CCW reciprocity heightens the importance of SB 707 and the need to remove the exemption that allows CCW license holders to carry guns on school grounds and campuses in California. . .

Under SB 707, the number of hidden, loaded firearms legally brought onto school grounds and college campuses will be reduced and the safety of students and others will increase.

4. Argument in Opposition

According to Sacramento County Deputy Sheriffs' Association:

SB 707 would make criminals out of our retired peace officer members who visit a school campus. This bill would delete the exemption in current law that allows a retired peace officer who is authorized to carry a concealed or loaded firearm, to possess a firearm on a school campus. Although the bill allows school officials to determine whether or not an exception to this prohibition should ever be made, the safety of our retired members should not rest on the whim of a school official.

Retired peace officers protected and served the public while earning the enmity of those in society who ran afoul of the law. Retired officers carry their weapons as a means of personal protection. Recent attacks demonstrate the need for peace officers—even retired peace officers—to be able to defend themselves if necessary.

SB 707 (Wolk)

Page **8** of **8**

Forcing our retired members to choose between picking up their children or grandchildren from school or attending school events and ensuring their own ability to protect themselves or their loved ones is a decision they should not be required to make. Neither should retired officers be forced to jeopardize their safety in order to take college classes.

-- END --

EXHIBIT B

Date of Hearing: July 14, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 707 (Wolk) – As Amended July 2, 2015

SUMMARY: Specifies that persons who possess a concealed weapons permit may not possess that firearm on school grounds as specified. Specifically, **this bill:**

- 1) Deletes the exemption that allows a person holding a valid license to carry a concealed firearm to possess a firearm on the campus of a university or college.
- 2) Permits a person holding a valid license to carry a concealed firearm to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12.
- 3) Specifies further exceptions to the prohibition on carrying ammunition on school grounds:
 - a) Exempts specified active and honorably retired peace officers from the prohibition;
 - b) Exempts persons carrying ammunition onto school ground that is in a motor vehicle which is in a locked container within the trunk of the vehicle; and,
 - c) Deletes an existing exemption permitting persons who possess a concealed weapons permit.

EXISTING LAW:

- 1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)
- 2) Defines a “school zone” to means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)
- 3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)
 - a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years.

- b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:
 - i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,
 - ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:
 - (1) If the person previously has been convicted of any felony, or of any specified crime.
 - (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.
 - (3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.
- c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years.
- d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.
- e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years.
- h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.

- 4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)
 - a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.
 - b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.
 - c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.
 - d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.
 - e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.
- 5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (l).)
 - a) A duly appointed peace officer;
 - b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;
 - c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
 - d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;
 - e) A person holding a valid license to carry a concealed firearm;
 - f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;
 - g) A security guard authorized to carry a loaded firearm;
 - h) An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,
 - i) An existing shooting range at a public or private school or university or college campus.
- 6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting

within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons:

- a) A duly appointed peace officer as defined.
- b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
- c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.
- d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.
- e) A person holding a valid license to carry the firearm.
- f) An armored vehicle guard, who is engaged in the performance of that person's duties.

FISCAL EFFECT:

COMMENTS:

- 1) **Author's Statement:** According to the author, "The California Gun Free School Act prohibits bringing a firearm on any school, college, or university campus, but exempts those who carry a concealed weapons permit. SB 707 repeals this exemption, yet retains the authority of campus officials to allow firearms, including concealed ones, on campus as they see deem appropriate. Closing the CCW school grounds exemption in California is consistent with efforts to maintain school and college campuses as safe, gun free, environments. SB 707 will ensure that students and parents who expect a campus to be safe and 'gun free' can be confident that their expectation is being met and that school officials are fully in charge of who is allowed to bring a firearm on their campus."
- 2) **Gun-Free School Zone Act of 1995:** Enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, the Gun-Free School Zone Act, hereafter referred to as the "Act," generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is within a distance of 1,000 feet from the grounds of any public or private school, kindergarten or Grades 1 to 12, (a "school zone"), without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or Grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

- 3) **Effect of this Bill and the Honorably Retired Peace Officer Amendments:** Honorably retired peace officers authorized to carry a concealed or loaded firearm and individuals who possess a valid concealed carry permit, are currently allowed to carry a firearm on school campuses, including grade schools, high schools and college campuses. This legislation would, instead, prohibit CCW permit holders from carrying firearms on school grounds, but would allow them to carry firearms within 1,000 feet of a school. The bill as originally drafted also prohibited honorably retired peace officers from carrying firearms on school campuses. The July 2, 2015 amendments to the bill exempt honorably retired peace officers from the prohibition.

Opposition groups argue that because the bill now exempts honorably retired peace officers, the bill is not in violation of the Equal Protection Clause of the 14th Amendment. The *Firearms Policy Coalition* cites *Silveira v. Lockyer* (9th Cir. 2002) 312 F.3d 1052; which struck down a provision exempting retired peace officers from the prohibitions of the California Assault Weapons Control Act on Equal Protection grounds, holding that there was no rational basis to treat retired officers differently from similarly situated members of the general public. The constitutional question for this bill would be whether there is a rational basis for exempting honorably retired peace officers from the prohibitions of the Gun-Free School Zone Act of 1995.

- 4) **Argument in Support:** According to *The California Chapters of the Brady Campaign to Prevent Gun Violence*, "Existing law prohibits a person from possessing a firearm in a school zone without the written permission of certain school district officials. A school zone includes school grounds and a distance within 1,000 feet of a public or private K-12 school. Additionally, existing law prohibits a person from possessing a firearm upon the grounds of a public or private university or college campus without the written permission of specified university or college officials. Persons holding a valid license to carry a concealed and loaded weapon (CCW) and retired peace officers authorized to carry concealed and loaded firearms are exempt from the school zone and university or college prohibitions. SB 707 would allow persons holding a CCW license to carry a concealed firearm within 1,000 feet but not on the grounds of a K-12 school and not on the campus of a university or college. Firearms, including concealed, loaded handguns, could still be allowed on school grounds or campuses with the permission of school officials.

"The Brady Campaign strongly believes that the discretion to allow hidden, loaded guns on a school grounds and college or university campuses must lie with school authorities, who bear the responsibility for the wellbeing and safety of their students. Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. This creates the opportunity for a 21 year old from a rural county to obtain a CCW permit and carry a loaded, hidden handgun in a dormitory on an urban campus.

"This is one area of firearm law in which California lags behind many other states. According to the Law Center to Prevent Gun Violence, which tracks state firearm laws, 39 states and the District of Columbia prohibit those with CCW permits from possessing concealed firearms within school zones and 23 states specify that CCW permit holders may not carry concealed firearms on college and university campuses. California is not one of these states.

"The national trend on this issue is disturbing as legislation has been introduced in at least 16 states that would force guns onto college and university campuses. Proponents are even suggesting that more guns on campuses would stop student rape. Additionally, legislation is being pushed in 20 states to allow people to carry hidden, loaded handguns in public without a permit. Moreover, federal reciprocity legislation (H.R. 402 and S. 498) has been introduced that would require states to recognize CCW permits from other states, including those with reprehensibly low standards. States that use law enforcement discretion, such as California, would be forced to recognize CCW permits from other states, even if the permit holder would not pass a background check in the state where they are carrying. The threat of national CCW reciprocity heightens the importance of SB 707 and the need to remove the exemption that allows CCW license holders to carry guns on school grounds and campuses in California.

"In *Peruta v. County of San Diego*, the Ninth Circuit Court of Appeals found, in February 2014, that California's CCW standard, which requires the applicant to show good cause and gives discretion to local law enforcement, was unconstitutional. After the ruling, several counties in California began to issue more CCW permits. Although the 9th Circuit vacated and reheard *Peruta en banc* in June, the recent increase in CCW permits allows for more guns to be carried in school zones and college and university campuses.

"College aged students may engage in risky or impulsive behavior, be under the influence of alcohol or drugs, or suffer from pressure or depression and be at risk of suicide. Allowing a student CCW license holder to carry guns on college and university campuses means that more students will have access to firearms. Furthermore, the Violence Policy Center has documented homicides, suicides, accidental shootings and at least 29 mass shootings (since May 2007) committed by CCW license holders.

"Under SB 707, the number of hidden, loaded firearms legally brought onto school grounds and college campuses will be reduced and the safety of students and others will increase. The California Brady Campaign Chapters urge your AYE vote on this important measure."

- 5) **Argument in Opposition:** According to the *National Rifle Association of America*, "This bill was introduced in the wake of an incident involving vice principal Kent Williams of Tevis Junior High School, who was arrested in 2014 for bringing a firearm onto school property despite possessing a valid CCW license. All criminal charges against him were dropped, and he is now suing the city and police department for wrongful arrest. *Williams v. Bakersfield*, No. 14-01955 (E.D.Cal. filed Dec. 8, 2014).

"Senate Bill 707 would effectively prohibit CCW holders from possessing firearms on any properties that make up the grounds of a K-12 school or university, including many parking lots, common areas that may not be readily identifiable as school grounds, and student apartment buildings. Due to imprecise language used in current penal code section 626.9, SB 707 will further promote inadvertent violations and unjust prosecutions of otherwise law-abiding firearm owners. This legislation raises significant concerns under the Second Amendment by further infringing the rights of law-abiding—and properly licensed and trained individuals—to possess a firearm for self-defense. From a practical perspective, SB 707 improperly expands prohibitions on the possession of firearms by persons who pose no threat to public safety. In doing so, this legislation would leave these individuals, and all other persons on California campuses, defenseless against violent criminals that target

California schools and universities without regard for these restrictions, barring what a majority of law enforcement officers believe to be the most effective line of defense against mass shootings."

6) Prior Legislation:

- a) AB 2609 (Lampert), Chapter 115, Statutes of 1998, clarified the Gun Free School Zone Act (Act) to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. Exempts specified law enforcement and security personnel.
- b) AB 624 (Allen), Chapter 659, Statutes of 1995, passed the Gun-Free School Zone Act of 1995.

REGISTERED SUPPORT / OPPOSITION:

Support

California College and University Police Chiefs Association (Sponsor)
Association for California School Administrators
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Chapters of the Brady Campaign
California Correctional Supervisors Organization
California Narcotic Officers Association
California Police Chiefs Association
California School Boards Association
California School Employees Association
California State PTA
California State University System
Courage Campaign
Davis College Democrats
Davis Joint Unified School District
Fraternal Order of Police
L.A. County Probation Officers Union
Law Center to Prevent Gun Violence
Long Beach Police Officers Association
Los Angeles County Democratic Party
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Los Angeles Unified School District
Peace Officers Research Association of California
Physicians for Social Responsibility, Sacramento Chapter
Retired and Disabled Police of America
Riverside Sheriffs' Association
Sacramento Deputy Sheriffs' Association

Santa Ana Police Officers Association
South County Citizens Against Gun Violence
Violence Prevention Coalition
Women Against Gun Violence
Youth Alive

1 private individual

Opposition

California Association of Licensed Investigators
California Rifle and Pistol Association
Firearms Policy Coalition
Gun Owners of California
National Rifle Association of America

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

1 BENBROOK LAW GROUP, PC
2 BRADLEY A. BENBROOK (SBN 177786)
3 STEPHEN M. DUVERNAY (SBN 250957)
4 400 Capitol Mall, Suite 1610
5 Sacramento, CA 95814
6 Telephone: (916) 447-4900
7 Facsimile: (916) 447-4904
8 brad@benbrooklawgroup.com
9 steve@benbrooklawgroup.com

10 Attorneys for Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 ULISES GARCIA; JORDAN GALLINGER;
16 BRIAN HILL; BROOKE HILL; CRAIG
17 DeLUZ; SCOTT DIPMAN; ALBERT
18 DUNCAN; TRACEY GRAHAM; LISA JANG;
19 DENNIS SERBU; MICHAEL VEREDAS;
20 FIREARMS POLICY FOUNDATION;
21 FIREARMS POLICY COALITION;
22 MADISON SOCIETY FOUNDATION; and
23 THE CALGUNS FOUNDATION,

24 Plaintiffs,

25 v.

26 KAMALA D. HARRIS, in her official capacity
27 as Attorney General of California.

28 Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

1 Plaintiffs Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott
 2 Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms
 3 Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns
 4 Foundation complain of Defendant and allege:

5 INTRODUCTION

6 1. Plaintiffs bring this suit to challenge the constitutionality of California Penal Code
 7 section 626.9, subdivision (o), which exempts “honorably retired peace officers” from the Gun-
 8 Free School Zone Act’s prohibition against possessing a firearm in a school zone. The purpose of
 9 the Gun-Free School Zone Act (the “Act”) is, as the name demonstrates, to make schools “free”
 10 from guns, except in the case of individuals authorized to perform military, law enforcement, and
 11 contracted security duties. The Act exempts individuals employed as “peace officers,” members
 12 of the military, private security guards, and others actually employed to provide statutorily
 13 authorized security or law-enforcement services.

14 2. Private citizens who possess a California license to carry a concealed weapon
 15 (“CCW”)—issued only after passage of a rigorous background check, and only then on approval
 16 by the person’s county sheriff or the chief of their municipal police department pursuant to
 17 California law—were previously exempt from the Act’s prohibitions. But the California
 18 Legislature removed that exemption in 2015.

19 3. Despite this, the Act contains an extraordinarily broad exemption for “honorably
 20 retired peace officer[s] authorized to carry a concealed or loaded firearm” under separate
 21 provisions of the Penal Code. As shown below, this exemption spreads far beyond retired police
 22 officers and sheriff’s deputies to cover a broadly defined group of “law enforcement” agents,
 23 including, for example, retired employees of the California Department of Fish and Game who
 24 enforced the California Fish and Game Code, and retired marshals appointed “to keep order and
 25 preserve peace at the California Exposition and State Fair.” Cal. Penal Code §§ 830.2, 25450; Cal.
 26 Food & Agric. Code § 3332(j). The exemption is so broad that it even applies to retirees from
 27 “any federal law enforcement agency” authorized to carry a concealed weapon, regardless of
 28 whether they ever used a weapon in their pre-retirement duties. Thus, for instance, retired Internal

1 Revenue Service agents and other federal agents are exempt simply by virtue of retiring in
2 California or working for the agency in California for more than a year. Cal. Penal Code §
3 25650(a).

4 4. In *Silveira v. Lockyer*, 312 F.3d 1052, 1088 (9th Cir. 2002), the Ninth Circuit struck
5 down a provision exempting retired peace officers from the prohibitions of the California Assault
6 Weapons Control Act when all other private citizens were subject to its prohibitions. The Ninth
7 Circuit held that this unequal treatment violated the Equal Protection Clause of the Fourteenth
8 Amendment to the Constitution, as there was no rational basis to treat retired peace officers
9 differently than similarly situated members of the general public. 312 F.3d at 1089–92.

10 5. *Silveira*'s rationale applies with equal, if not greater, force here. Individual
11 Plaintiffs are responsible, law-abiding citizens who also possess a license to carry a handgun for
12 self-defense under California law and are statutorily required to maintain their background check
13 and proficiency with firearms. *Silveira* establishes that an *active* peace officer's role *as a law*
14 *enforcement agent* provides a rational basis for distinguishing between a duly sworn and
15 authorized peace officer and a private citizen for the purpose of the carrying of firearms in
16 otherwise proscribed areas such as school zones. Because retired officers are not authorized to
17 engage in law enforcement activities any more than other private citizens, however, there is no
18 rational reason to treat them differently than Plaintiffs.

19 6. The purpose of this lawsuit is not to engineer a restoration of the exemption to the
20 Act for "mere" private citizens with a license to carry. Rather, the purpose is to obtain a ruling
21 that the preferential treatment given to retired peace officers over similarly-situated private citizens
22 violates the Equal Protection Clause. "The Equal Protection Clause of the Fourteenth Amendment
23 commands that no State shall 'deny to any person within its jurisdiction the equal protection of the
24 laws,' which is essentially a direction that all persons similarly situated should be treated alike."
25 *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citation omitted).

26 7. Because Section 626.9(o)'s exemption violates the Equal Protection Clause,
27 Plaintiffs seek declaratory and injunctive relief to invalidate it and enjoin its enforcement or
28 application.

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JURISDICTION AND VENUE

8. This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983 and this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331.

9. Venue is proper under 28 U.S.C. § 1391(b).

THE PARTIES

10. Plaintiff Ulises Garcia, M.D. is a California resident who possesses a license to carry a concealed weapon issued by the Los Angeles County Sheriff's Department pursuant to California Penal Code section 26150, et seq. Dr. Garcia is a Board Certified Emergency Medicine specialist practicing in the San Fernando Valley of Southern California. Dr. Garcia is married and has three school-age children. He sought and obtained a carry license to protect himself and his family in response to multiple threats of violence from a former patient.

11. Plaintiff Jordan Gallinger is a California resident who possesses a license to carry a concealed weapon issued by the San Bernardino County Sheriff's Department pursuant to California Penal Code section 26150, et seq. Gallinger is a veteran of the United States Marine Corps who served in the war in Afghanistan and qualified as an expert in the Marine Corps Combat Marksmanship Program. He is currently enrolled as a full-time student at California State University, San Bernardino.

12. Plaintiffs Brian and Brooke Hill are California residents who each possess a license to carry a concealed weapon issued by the Ventura County Sheriff's Department pursuant to California Penal Code section 26150, et seq. The Hills have two school-age children, and both regularly carried concealed weapons at their children's respective schools before Senate Bill 707 went into effect on January 1, 2016.

13. Plaintiff Craig DeLuz is a California resident who possesses a license to carry a concealed weapon issued by the Sacramento County Sheriff's Department pursuant to California Penal Code section 26150, et seq. DeLuz serves as the President of the Robla School District Board of Trustees. He also serves as a coach for the cross country and track and field teams at Rio Linda High School.

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1 14. Plaintiff Scott Dipman is a California resident who possesses a license to carry a
2 concealed weapon issued by San Mateo County Sheriff's Department pursuant to California Penal
3 Code section 26150, et seq. Dipman is the father of two school-age sons with special needs who
4 must be accompanied to their classrooms each morning.

5 15. Plaintiff Albert Duncan is a California resident who possesses a license to carry a
6 concealed weapon issued by San Joaquin County Sheriff's Department pursuant to California
7 Penal Code section 26150, et seq. Duncan served as a flight medic in the United States Army, and
8 currently works as a firefighter-paramedic for the Oakland Fire Department. Duncan has a school-
9 age son.

10 16. Plaintiff Tracey Graham is a California resident who possesses a license to carry a
11 concealed weapon issued by San Bernardino County Sheriff's Department pursuant to California
12 Penal Code section 26150, et seq. Graham is a veteran of the United States Air Force. Graham's
13 partner has school-age children.

14 17. Plaintiff Lisa Jang is a California resident who possesses a license to carry a
15 concealed weapon issued by the Sacramento County Sheriff's Department pursuant to California
16 Penal Code section 26150, et seq. Jang is currently enrolled as a full-time student at California
17 State University, Sacramento. She obtained her carry license for personal protection, in response
18 to multiple reports of crime on and near the campus, including armed robbery, rape, and sexual
19 assault.

20 18. Plaintiff Dennis Serbu is a California resident who possesses a license to carry a
21 concealed weapon issued by the Placer County Sheriff's Department pursuant to California Penal
22 Code section 26150, et seq. Serbu is a veteran of the Vietnam war and served ten years as a
23 reserve police officer for the Cottonwood, Arizona police department. Now retired, he has twelve
24 grandchildren and is involved with their school activities.

25 19. Plaintiff Michael Veredas is a California resident who possesses a license to carry a
26 concealed weapon issued by the Fresno County Sheriff's Department pursuant to California Penal
27 Code section 26150, et seq. Veredas served as a hospital corpsman in the United States Navy and
28 served three combat deployments with the United States Marine Corps before his honorable

1 discharge in 2005. He has two children.

2 20. Plaintiff Firearms Policy Foundation (“FPF”) is a non-profit organization that
3 serves the public through charitable and educational purposes, with a focus on advancing
4 constitutional rights with a particular focus on laws relating to firearms and affecting the
5 fundamental right to keep and bear arms. FPF believes Penal Code section 626.9(o) is
6 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
7 bill’s constitutionality, educate the public about the bill, address its members’ concerns and
8 complaints about the bill, advocate to the Legislature against SB 707’s passage, and urge the
9 Governor’s veto. Many of FPF’s members are CCW holders who have been directly affected by
10 the change in the law, and FPF has spent funds and resources addressing its members’ questions,
11 concerns, and complaints about Penal Code section 626.9(o).

12 21. Plaintiff Firearms Policy Coalition (“FPC”) is a non-profit organization that serves
13 its members and the public through direct and grassroots advocacy, legal efforts, and education.
14 The purposes of FPC include defending the United States Constitution and the People’s rights,
15 privileges and immunities deeply rooted in the Nation’s history and tradition, especially the
16 fundamental right to keep and bear arms. FPC believes Penal Code section 626.9(o) is
17 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
18 bill’s constitutionality, educate the public about the bill, address its members’ concerns and
19 complaints about the bill, advocate to the Legislature against SB 707’s passage, and urge the
20 Governor’s veto. Many of FPC’s members are CCW holders who have been directly affected by
21 the change in the law, and FPC has spent funds and resources addressing its members’ questions,
22 concerns, and complaints about Penal Code section 626.9(o).

23 22. Plaintiff Madison Society Foundation is a membership-based non-profit
24 organization whose purpose is preserving and protecting the legal and constitutional right to keep
25 and bear arms for its members and all responsible law-abiding citizens. The organization spends
26 time and resources on outreach, education and training related to assisting its members—and the
27 law-abiding public in general—in obtaining and maintaining licenses to carry firearms for self-
28 defense and for other Second Amendment purposes. The Madison Society believes Penal Code

1 section 626.9(o) is unconstitutional. Many of the organization's members are CCW holders who
 2 have been directly affected by the change in the law, and FPC has spent funds and resources
 3 addressing its members' questions, concerns, and complaints about SB 707 and Penal Code section
 4 626.9(o).

5 23. Plaintiff The Calguns Foundation ("CGF") is a non-profit organization that serves
 6 its members, supporters, and the public through educational, cultural, and judicial efforts to
 7 advance Second Amendment and related civil rights. CGF believes Penal Code section 626.9(o) is
 8 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
 9 bill's constitutionality, educate the public about the bill, address its members' concerns and
 10 complaints about the bill, and advocate to the Legislature against SB 707's passage. Many of
 11 CGF's members are CCW holders who have been directly affected by the change in the law, and
 12 CGF has spent funds and resources addressing its members' questions, concerns, and complaints
 13 about Penal Code section 626.9(o).

14 24. Defendant Kamala Harris is the Attorney General of the State of California. The
 15 Attorney General is the chief law enforcement officer of the state, and it is her duty to ensure that
 16 California's laws are uniformly and adequately enforced. Attorney General Harris is sued in her
 17 official capacity. The Attorney General maintains an office in Los Angeles.

18 **CALIFORNIA ALLOWS AN EXTREMELY BROAD GROUP OF RETIRED**
 19 **"PEACE OFFICERS" TO CARRY CONCEALED WEAPONS ON SCHOOL GROUNDS,**
 20 **BUT NOT OTHER, SIMILARLY SITUATED PRIVATE CITIZENS**

21 25. The Gun-Free School Zone Act of 1995, California Penal Code section 626.9,
 22 prohibits persons from possessing a firearm in a school zone, which is defined as "an area in, or on
 23 the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12,
 24 inclusive, or within a distance of 1,000 feet from the grounds of the public or private school."
 25 Penal Code § 626.9(e)(4). Violation of the Act is a misdemeanor or felony. *See id.*, subd. (f).

26 26. The Act contains an exemption for "duly appointed peace officer[s]" who remain in
 27 service. Penal Code § 626.9(l). The Act's prohibition likewise does not apply to a few classes of
 28 people who are licensed to carry a firearm as part of their professional duties so long as they are on

1 the job:

2 [A] full-time paid peace officer of another state or the federal government who is
3 carrying out official duties while in California, any person summoned by any of
4 these officers to assist in making arrests or preserving the peace while he or she is
5 actually engaged in assisting the officer, a member of the military forces of this state
6 or of the United States who is engaged in the performance of his or her duties, or an
7 armored vehicle guard, engaged in the performance of his or her duties, as defined in
8 subdivision (d) of Section 7582.1 of the Business and Professions Code.

9 Penal Code § 626.9(l); *see also id.*, subd. (m) (exempting certain security guards authorized to
10 carry a loaded firearm, while acting within the course and scope of their employment).

11 27. The purpose of the Gun-Free School Zone Act is, as the name demonstrates, to
12 make schools “free” from guns, except in the case of peace officers and security personnel who are
13 performing their duties.

14 28. Yet the Act also contains a sweeping exemption for “honorably retired peace
15 officer[s] authorized to carry a concealed or loaded firearm” under several different Penal Code
16 sections. *Id.*, subd. (o) (listing separate statutory authorizations).

17 29. As originally enacted, the Act contained a blanket exemption for all private citizens
18 who are licensed to carry a concealed firearm pursuant to Penal Code section 26150. In 2015, the
19 Legislature amended the statute to remove the exemption for carry licensees on school grounds,
20 and it added a provision authorizing carry licensees to carry a firearm “within a distance of 1,000
21 feet from the grounds of the public or private school.” Senate Bill 707 (2014–2015 Reg. Sess.,
22 Wolk). *See* Penal Code § 626.9(c)(5). While the Bill sought to eliminate both the CCW and
23 retired law enforcement exemptions during its initial form, it was later amended to restore the
24 retired “peace officer” exemption.

25 30. In *Silveira v. Lockyer*, the Ninth Circuit struck down a provision exempting retired
26 peace officers from the prohibitions of the California Assault Weapons Control Act on Equal
27 Protection grounds, holding that “the retired officers exception arbitrarily and unreasonably affords
28 a privilege to one group of individuals that is denied to others” 312 F.3d at 1091. Rejecting
the argument that “some peace officers receive more extensive training regarding the use of
firearms than do members of the public,” the Court stressed that this purported justification “bears
no reasonable relationship to the stated legislative purpose of banning the possession and use of

1 assault weapons in California, except for certain law enforcement purposes.” *Id.* Retired peace
 2 officers are, by definition, no longer engaging in law enforcement purposes—just like their fellow
 3 private citizens.

4 31. The California Attorney General reached a similar conclusion in 2010, when asked
 5 whether “a peace officer who purchases and registers an assault weapon in order to use the weapon
 6 for law enforcement purposes [would be] permitted to continue to possess [it] after retirement.”
 7 Att’y Gen. Op. No. 09-901, 93 Ops. Cal. Atty. Gen. 130 (2010). Relying on *Silveira*, then-
 8 Attorney General Edmund G. Brown, Jr., explained why the answer was “No”:

9 *Silveira* teaches that it is the a [sic] peace officer’s role *as a law enforcement agent*
 10 that provides a rational basis for distinguishing between a peace officer and a
 11 private citizen for purposes of possessing and using assault weapons. A retired
 officer is not authorized to engage in law enforcement activities.

12 *Id.* at *8 (emphasis in original).

13 32. Likewise, Section 626.9(o) arbitrarily and irrationally subjects Plaintiffs to unequal
 14 treatment in violation of the Equal Protection Clause of the Fourteenth Amendment to the
 15 Constitution.

16 33. Individual plaintiffs are responsible, law-abiding citizens who possess licenses to
 17 carry concealed weapons under California law. In order to obtain a carry license, Plaintiffs were
 18 required to demonstrate “good moral character,” complete a firearms training course, and establish
 19 “good cause,” Cal. Penal Code §§ 26150, 26155. In applying these standards, several counties
 20 have interpreted the “good cause” requirement to require that an applicant demonstrate an elevated
 21 need for self-defense due to a specific threats or previous attacks against them. The Los Angeles
 22 County Sheriff’s Department Concealed Weapon Licensing Policy, for example, states:

23 [G]ood cause shall exist only if there is convincing evidence of a clear and present
 24 danger to life, or of great bodily harm to the applicant, his spouse, or dependent
 25 child, which cannot be adequately dealt with by existing law enforcement
 26 resources, and which danger cannot be reasonably avoided by alternative measures,
and which danger would be significantly mitigated by the applicant’s carrying of a
concealed firearm.

27 Los Angeles County Sheriff’s Department, *Concealed Weapon Licensing Policy* at 2
 28 (emphasis in original).

1 34. Retired “peace officers,” by stark contrast, are not subject to these same screening
 2 requirements but rather appear to be eligible to carry firearms as a matter of course. California
 3 Penal Code section 25455, for instance, provides that retired California peace officers who *ever*
 4 carried a gun during their service “shall be issued an identification certificate by the law
 5 enforcement agency from which the officer retired” and “shall have an endorsement on the
 6 identification certificate stating that the issuing agency approves the officer’s carrying of a
 7 concealed firearm.” Cal. Penal Code § 25455(a), (c); *id.*, § 25450(d). And the exemption under
 8 section 626.9(o) extends far beyond retired police officers and deputy sheriffs. It applies, for
 9 example, to:

- 10 • Retired employees of the Department of Fish and Game who enforced the Fish and
 11 Game Code (§ 830.2(e));
- 12 • Retired employees of the Department of Parks and Recreation who enforced the
 13 Public Resources Code (§ 830.2(f));
- 14 • Retired employees of the Department of Forestry and Fire Protection who enforced
 15 the Public Resources Code (§ 830.2(g)); and
- 16 • Retired marshals “appointed by the Board of Directors of the California Exposition
 17 and State Fair” whose primary duty was enforcing Section 3332 of the Food and
 18 Agricultural Code, which establishes the powers of the board of the State Fair (§
 19 830.2(i)).

20 These retirees need only re-apply every five years to their former agency to keep the special
 21 treatment, *id.* § 25465, and the former agency needs “good cause” to not renew it. *Id.* § 25470.

22 35. Similarly, and perhaps even more broadly, Section 626.9(o) exempts “any
 23 honorably retired federal officer or agent of any federal law enforcement agency” covered by
 24 Penal Code section 25650 (which exempts retired federal officers from the Penal Code’s ban on
 25 carrying a concealed weapon), regardless of whether that retired federal officer or agent ever
 26 carried a gun in their federal “peace officer” duties. Cal. Penal Code § 25650(a). It is sufficient if
 27 the “officer or agent” was simply “assigned to duty within the state for a period of not less than
 28 one year” or “retired from active service in the state.” *Id.* Under this exemption, a covered federal

1 officer simply provides their local sheriff or chief of police with their agency's "concurrence" that
 2 the retiree "should be afforded the privilege of carrying a concealed firearm." *Id.*, subd. (b). This
 3 exemption covers agents that include, but are not limited to, retired agents from the United States
 4 Customs Service or "any officer or agent of the Internal Revenue Service." *Id.*, § 25650(a).

5 36. The net result is that the Act bars law-abiding citizens who maintain a government-
 6 issued CCW from possessing a firearm "in or on" school grounds, but it grants a blanket
 7 exemption to a broadly defined group of retired "peace officers," none of whom have continuing
 8 authority to engage in "peace officer" activities: by definition, they are retired, they have returned
 9 to the ranks of private citizens, and they are no longer authorized to engage in law enforcement
 10 activities. *See Silveira*, 312 F.3d at 1090–92. They simply have potent political and lobbying
 11 operations that convinced the Legislature that retired "peace officers" should be granted favorable
 12 treatment over mere private citizens for the rest of their lives. There is no rational reason to treat
 13 them differently than Plaintiffs.

14 37. An actual and judicially cognizable controversy exists between Plaintiffs and
 15 Defendant regarding whether Section 626.9(o) violates the Equal Protection Clause. Plaintiffs
 16 desire a judicial declaration of their rights and Defendant's duties regarding the constitutionality
 17 and continued enforcement of the statute.

18 **CLAIM FOR RELIEF**

19 **VIOLATION OF 42 U.S.C. § 1983 (EQUAL PROTECTION)**

20 38. Plaintiffs incorporate here by reference paragraphs 1 through 37, *supra*, as if fully
 21 set forth herein.

22 39. Penal Code section 626.9(o) violates the Equal Protection Clause of the Fourteenth
 23 Amendment to the Constitution, both on its face and as applied to Plaintiffs.

24 40. Plaintiffs are responsible, law-abiding citizens who possess licenses to carry
 25 handguns for self-defense under California law. Because section 626.9(o)'s exemption irrationally
 26 favors a broad class of retired "peace officers" authorized to carry concealed weapons over
 27 Plaintiffs, it violates the Equal Protection Clause.

28 ///

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, construe Penal Code section 626.9(o) and enter a declaratory judgment stating that it violates the Equal Protection Clause of the Fourteenth Amendment.
2. Plaintiffs respectfully request that this Court enter a preliminary and permanent injunction enjoining enforcement or application of Penal Code section 626.9(o).
3. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable law, and all further relief to which Plaintiffs may be justly entitled.

Dated: April 14, 2016

BENBROOK LAW GROUP, PC

By /s/ Bradley A. Benbrook
BRADLEY A. BENBROOK
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:16-cv-02572-BRO-AFM

Ulises Garcia et al v. Kamala Harris
Assigned to: Judge Beverly Reid O'Connell
Referred to: Magistrate Judge Alexander F. MacKinnon
Case in other court: 9th Circuit, 16-56125
Cause: 28:1331 Fed. Question

Date Filed: 04/14/2016
Date Terminated: 08/05/2016
Jury Demand: None
Nature of Suit: 950 Constitutional - State
Statute
Jurisdiction: Federal Question

Plaintiff

Ulises Garcia

represented by **Bradley A Benbrook**
Benbrook Law Group
400 Capital Mall Suite 1610
Sacramento, CA 95814
916-447-4900
Fax: 916-447-4904
Email: brad@benbrooklawgroup.com
ATTORNEY TO BE NOTICED

Plaintiff

Jordan Gallinger

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Brian Hill

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Brooke Hill

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Craig DeLuz

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Scott Dipman

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Albert Duncan

represented by **Bradley A Benbrook**

(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Tracey Graham

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Lisa Jang

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Dennis Serbu

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Michael Veredas

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Firearms Policy Foundation

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Firearms Policy Coalition

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Madison Society Foundation

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

The Calguns Foundation

represented by **Bradley A Benbrook**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Kamala D. Harris

*in her official capacity as Attorney General
of California*

represented by **John D Echeverria**
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
213-897-4902
Fax: 213-897-5775

Email: John.Echeverria@doj.ca.gov

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/14/2016	<u>1</u>	COMPLAINT Receipt No: 0973-17646810 - Fee: \$400, filed by Plaintiff Michael Veredas, Albert Duncan, Jordan Gallinger, Ulises Garcia, Firearms Policy Coalition, Scott Dipman, Brian Hill, Lisa Jang, Firearms Policy Foundation, Madison Society Foundation, The Calguns Foundation, Tracey Graham, Brooke Hill, Dennis Serbu, Craig DeLuz. (Attorney Bradley A Benbrook added to party Craig DeLuz(pty:pla), Attorney Bradley A Benbrook added to party Scott Dipman(pty:pla), Attorney Bradley A Benbrook added to party Albert Duncan(pty:pla), Attorney Bradley A Benbrook added to party Firearms Policy Coalition(pty:pla), Attorney Bradley A Benbrook added to party Firearms Policy Foundation(pty:pla), Attorney Bradley A Benbrook added to party Jordan Gallinger(pty:pla), Attorney Bradley A Benbrook added to party Ulises Garcia(pty:pla), Attorney Bradley A Benbrook added to party Tracey Graham(pty:bkmov), Attorney Bradley A Benbrook added to party Brian Hill(pty:pla), Attorney Bradley A Benbrook added to party Brooke Hill(pty:pla), Attorney Bradley A Benbrook added to party Lisa Jang(pty:pla), Attorney Bradley A Benbrook added to party Madison Society Foundation(pty:pla), Attorney Bradley A Benbrook added to party Dennis Serbu(pty:pla), Attorney Bradley A Benbrook added to party The Calguns Foundation(pty:pla), Attorney Bradley A Benbrook added to party Michael Veredas(pty:pla))(Benbrook, Bradley) (Entered: 04/14/2016)
04/14/2016	<u>2</u>	CIVIL COVER SHEET filed by Plaintiffs Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas, Movant Tracey Graham. (Benbrook, Bradley) (Entered: 04/14/2016)
04/14/2016	<u>3</u>	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening),,,,, <u>1</u> , Civil Cover Sheet (CV-71), <u>2</u> filed by Plaintiff Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas. (Benbrook, Bradley) (Entered: 04/14/2016)
04/18/2016	<u>4</u>	NOTICE OF ASSIGNMENT to District Judge Beverly Reid OConnell and Magistrate Judge Alexander F. MacKinnon. (jtil) (Entered: 04/18/2016)
04/18/2016	<u>5</u>	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (jtil) (Entered: 04/18/2016)
04/18/2016	<u>6</u>	STANDING ORDER REGARDING NEWLY ASSIGNED CASES upon filing of the complaint by Judge Beverly Reid O'Connell. (rfi) (Entered: 04/18/2016)
04/18/2016	<u>7</u>	NOTICE OF DEFICIENCIES in Request to Issue Summons RE: Summons Request, <u>3</u> . The following error(s) was found: The caption of the summons must match the caption of the complaint verbatim. If the caption is too large to fit in the space provided, enter the name of the first party and then write see attached.Next, attach a face page of the complaint or a second page addendum to the Summons. The summons cannot be issued until this defect has been corrected. Please correct the defect and re-file your request. (jtil) (Entered: 04/18/2016)
04/18/2016	<u>8</u>	NOTICE OF DEFICIENCIES in Attorney Case Opening. The following error(s) was found: No Notice of Interested Parties has been filed. A Notice of Interested Parties must

ER55

		be filed with every party's first appearance. See Local Rule 7.1-1. Counsel must file a Notice of Interested Parties immediately. Failure to do so may be addressed by judicial action, including sanctions. See Local Rule 83-7. (jtil) (Entered: 04/18/2016)
04/18/2016	9	NOTICE of Interested Parties filed by Plaintiff Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas, (Benbrook, Bradley) (Entered: 04/18/2016)
04/18/2016	10	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening),,,,, 1 filed by Plaintiff Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas. (Benbrook, Bradley) (Entered: 04/18/2016)
04/20/2016	11	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 as to defendant Kamala D. Harris. (jp) (Entered: 04/20/2016)
04/27/2016	12	PROOF OF SERVICE Executed by Plaintiff Michael Veredas, Albert Duncan, Jordan Gallinger, Ulises Garcia, Firearms Policy Coalition, Scott Dipman, Brian Hill, Lisa Jang, Firearms Policy Foundation, Madison Society Foundation, The Calguns Foundation, Tracey Graham, Brooke Hill, Dennis Serbu, Craig DeLuz, upon Defendant All Defendants. Service of the Summons and Complaint were executed upon Christina Hurtado, Person Auth to Accept Service of Process in compliance with Federal Rules of Civil Procedure by personal service. Original Summons returned. (Benbrook, Bradley) (Entered: 04/27/2016)
05/11/2016	13	STIPULATION Extending Time to Answer the complaint as to Kamala D. Harris answer now due 6/10/2016, filed by Defendant Kamala D. Harris.(Attorney John D Echeverria added to party Kamala D. Harris(pty:dft))(Echeverria, John) (Entered: 05/11/2016)
06/10/2016	14	NOTICE OF MOTION AND MOTION to Dismiss Complaint filed by Defendant Kamala D. Harris. Motion set for hearing on 8/8/2016 at 01:30 PM before Judge Beverly Reid O'Connell. (Attachments: # 1 Proposed Order) (Echeverria, John) (Entered: 06/10/2016)
06/10/2016	15	REQUEST FOR JUDICIAL NOTICE re NOTICE OF MOTION AND MOTION to Dismiss Complaint 14 filed by Defendant Kamala D. Harris. (Echeverria, John) (Entered: 06/10/2016)
07/18/2016	16	PLAINTIFFS' OPPOSITION To Motion To Dismiss re: NOTICE OF MOTION AND MOTION to Dismiss Complaint 14 filed by Plaintiffs Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas. (Benbrook, Bradley) (Entered: 07/18/2016)
07/18/2016	17	PLAINTIFFS' OBJECTION To Defendant's Request For Judicial Notice In Support Of Motion To Dismiss re: NOTICE OF MOTION AND MOTION to Dismiss Complaint 14 filed by Plaintiffs Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas. (Benbrook, Bradley) (Entered: 07/18/2016)
07/18/2016	18	CERTIFICATE OF SERVICE filed by Plaintiff Craig DeLuz, Scott Dipman, Albert Duncan, Firearms Policy Coalition, Firearms Policy Foundation, Jordan Gallinger, Ulises Garcia, Tracey Graham, Brian Hill, Brooke Hill, Lisa Jang, Madison Society Foundation, Dennis Serbu, The Calguns Foundation, Michael Veredas, re Objection/Opposition (Motion related), 16 served on 7/18/2016. (Benbrook, Bradley) (Entered: 07/18/2016)

07/25/2016	<u>19</u>	REPLY in Further Support of NOTICE OF MOTION AND MOTION to Dismiss Complaint <u>14</u> filed by Defendant Kamala D. Harris. (Echeverria, John) (Entered: 07/25/2016)
08/05/2016	<u>20</u>	ORDER RE DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT <u>14</u> by Judge Beverly Reid O'Connell: Plaintiffs' claim that the Retired Peace Officer Exemption is unconstitutional under the Equal Protection Clause cannot be cured by amendment because so long as the government has an interest in protecting retired peace officers, it will survive rational basis scrutiny. Further, as the legislative history of the Act has already been judicially noticed and it includes no evidence of legislative intent to harm civilian California firearm owners, it appears that allowing Plaintiffs to amend the Complaint regarding its claim of improper treatment of a politically unpopular class would also be futile. Accordingly, for the foregoing reasons, Defendant's Motion to Dismiss is GRANTED with prejudice. The hearing scheduled for August 8, 2016, is hereby VACATED. IT IS SO ORDERED. (MD JS-6. Case Terminated) (jlz) (Entered: 08/05/2016)
08/08/2016	<u>21</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiff Ulises Garcia. Appeal of Order on Motion to Dismiss,, <u>20</u> . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-18325219.) (Benbrook, Bradley) (Entered: 08/08/2016)
08/09/2016	<u>22</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 16-56125, 9th Circuit regarding Notice of Appeal to 9th Circuit Court of Appeals <u>21</u> as to plaintiffs Ulises Garcia, et., al. (mat) (Entered: 08/09/2016)

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 3, 2017.

All participants in the case are registered CM/ECF users, and will be served by the appellate CM/ECF system.

s/ Kelly Rosenbery