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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.”),
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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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Dated: June 10, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ John D. Echeverria
JOHN D. ECHEVERRIA
Deputy Attorney General
*Attorneys for Defendant Kamala D.
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.

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.

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 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. (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. (I).)
 - 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

EXHIBIT C

FILED

SEP 03 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

DAVID K. MEHL; LOK T. LAU;
FRANK FLORES,

Plaintiffs,

v.

NO. CIV. S 03-2682 MCE KJM

MEMORANDUM AND ORDER

clmce

LOU BLANAS, individually and
in his official capacity as
SHERIFF OF COUNTY OF
SACRAMENTO; COUNTY OF
SACRAMENTO, SHERIFF'S
DEPARTMENT; COUNTY OF
SACRAMENTO; BILL LOCKYER,
Attorney General, State of
California; RANDI ROSSI, State
Firearms Director and
Custodian of Records,

Defendants.

-----oo0oo-----

Defendants Bill Lockyer ("Lockyer") and Randi Rossi
("Rossi") (collectively "Defendants") filed this motion to
dismiss Plaintiffs' first amended complaint. Defendants contend
first that they are not proper defendants because they do not

1 have the authority to issue Carry Concealed Weapons ("CCW")
2 permits, and therefore no controversy exists between Plaintiffs
3 and Defendants as needed for subject matter jurisdiction. Fed.
4 R. Civ. P. 12(b)(1).¹ Alternatively, Defendants claim that
5 Plaintiffs' complaint fails to state a claim upon which relief
6 may be granted pursuant to Rule 12(b)(6). For the reasons
7 explained below, Defendants motion to dismiss is GRANTED.

8
9 **BACKGROUND**

10
11 In California, it is against the law to carry a concealed
12 firearm. Cal. Penal Code § 12025. Carrying a concealed weapon
13 in violation of this statute can be either a misdemeanor or
14 felony. If a California resident wishes to carry a concealed
15 firearm, he or she must apply for a permit allowing him or her to
16 do so. Permits to carry concealed weapons are issued by the
17 chief of police or the county sheriff, and require the applicant
18 to complete the application form, complete a course of training
19 on firearm safety, and demonstrate that good cause exists for
20 issuance. Cal. Penal Code § 12050.

21 An exception to the statute governing the carrying of
22 concealed firearms exists such that certain law enforcement
23 officers and honorably retired law enforcement officers need not
24 demonstrate good cause to receive a permit. Cal. Penal Code §
25 12027.

26 Plaintiffs are California residents who have applied for
27

28 ¹ Unless otherwise stated, all further references to a
"Rule" or "Rules" are to the Federal Rules of Civil Procedure.

1 permits to carry concealed weapons and had their applications
2 denied. On December 30, 2003, Plaintiffs filed their complaint
3 in this matter, alleging several 42 U.S.C. § 1983 claims based on
4 various constitutional violations. Defendants filed a motion to
5 dismiss the complaint that is virtually identical to the present
6 motion. Plaintiffs did not oppose that motion, but requested
7 leave to amend to correct the deficiencies. By order dated March
8 25, 2004, this Court granted Defendants' first motion to dismiss,
9 and granted leave to amend. On April 23, 2004, Plaintiffs filed
10 their first amended complaint. Defendants again moved to
11 dismiss, claiming the first amended complaint, like the original
12 complaint, fails to state a claim upon which relief may be
13 granted, and claiming that there is no present case or
14 controversy between Plaintiffs and Defendants. Oral argument on
15 this second motion to dismiss was held on June 28, 2004.²

16
17 **STANDARD**
18

19 On a motion to dismiss for failure to state a claim under
20 Rule 12(b)(6), all allegations of material fact must be accepted
21 as true and construed in the light most favorable to the
22 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
23 337-38 (9th Cir. 1996). A complaint will not be dismissed for
24 failure to state a claim "unless it appears beyond doubt that
25 plaintiff can prove no set of facts in support of her claim that
26 would entitle her to relief." Yamauchi v. Dep't of the Air

27
28 ² Defendants' counsel was not present at oral argument
due to unforeseen military commitments.

1 Force, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting Lewis v. Tel.
2 Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996).

3 "Generally, a district court may not consider any material
4 beyond the pleadings in ruling on a Rule 12(b)(6) motion." Hal
5 Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555
6 n.19 (9th Cir.1990); see also Arpin v. Santa Clara Valley Transp.
7 Agency, 261 F.3d 912, 925 (9th Cir. 2001). However, the court
8 may "consider material which has been properly submitted as part
9 of the complaint" when deciding a Rule 12(b)(6) motion. Hal
10 Roach Studios, 896 F.2d at 1555 n.19.

11 If the court grants a motion to dismiss a complaint, it must
12 then decide whether to grant leave to amend. The Court should
13 "freely give[]" leave to amend when there is no "undue delay, bad
14 faith[,] dilatory motive on the part of the movant, . . . undue
15 prejudice to the opposing party by virtue of . . . the amendment,
16 [or] futility of the amendment. . . ." Fed. R. Civ. P. 15(a);
17 Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to
18 amend is denied when it is clear that the deficiencies of the
19 complaint cannot be cured by amendment. DeSoto v. Yellow Freight
20 Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

21
22 **ANALYSIS**

23
24 **1. Proper Defendants - Case or Controversy Requirement**

25
26 Defendants first contend that there is no case or
27 controversy between themselves and Plaintiffs because Defendants
28 have no authority to issue, or to influence the issuance of, a

1 CCW. CCWs may only be issued by a sheriff or police chief, not
2 the attorney general or state firearms director. Cal. Penal Code
3 § 12050. As such, Defendants contend that they could not have
4 violated Plaintiffs' constitutional rights as alleged in the
5 complaint.

6 Plaintiffs contend that both Lockyer and Rossi are proper
7 defendants. Plaintiffs rely on the fact that under the
8 California Constitution, Lockyer, as the Attorney General, is the
9 "chief law officer of the State." Cal. Const. Art. 5 ¶ 13.
10 Additionally, the "Attorney General shall have direct supervision
11 over every district attorney and sheriff . . . in all matters
12 pertaining to the duties of their respective offices. . . ." *Id.*
13 Thus, Plaintiffs contend that Lockyer is responsible for the acts
14 of the Sheriff.

15 Neither party presented the Court with any authority
16 regarding this issue, however. On its own, the Court has found
17 conflicting authority regarding the ability to pass liability
18 from the sheriff to the Attorney General based upon the provision
19 of California's Constitution Plaintiffs rely upon. The Ninth
20 Circuit has twice held that the sheriff acts for the county
21 rather than the state when performing law enforcement duties, and
22 therefore liability does not pass to the state. Bishop Paiute
23 Tribe v. County of Inyo, 291 F.3d 549 (9th Cir. 2002), vacated on
24 other grounds and remanded, Inyo County v. Bishop-Shoshone
25 Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701
26 (2003); Brewster v. Shasta County, 275 F.3d 803 (9th Cir. 2001).
27 "That the Attorney General has authority to supervise state law
28 enforcement officers does not transform sheriffs into state

1 actors because, taken to its logical extreme, this provision
2 would immunize all law enforcement agencies in the State and
3 'thereby render[] meaningless the decision in Monell [v. N.Y.
4 Dep't of Soc. Servs., 436 U.S. 658, 690-91 (1978)], which
5 preserves § 1983 actions against local governments.'" Cortez v.
6 County of Los Angeles, 294 F.3d 1186, 1191-92 (9th Cir. 2002)
7 (quoting Bishop Paiute Tribe, 275 F.3d at 908). The California
8 Supreme Court, however, has held that a California Sheriff acts
9 for the state when performing law enforcement duties, and
10 therefore liability does pass from the sheriff to the Attorney
11 General. Venegas v. County of Los Angeles, 32 Cal. 4th 820
12 (2004).³

13 Neither party has addressed the question of whether the
14 issuance of CCWs constitutes law enforcement activities, or
15 whether a sheriff acts as an agent of the state or the county
16 when issuing a CCW. It is established that in order to "hold a
17 local government liable for an official's conduct, a plaintiff
18 must first establish that the official (1) had final policymaking
19 authority 'concerning the action alleged to have caused the
20 particular constitutional or statutory violation at issue' and
21 (2) was the policymaker for the local governing body for the
22 purposes of the particular act." Weiner v. San Diego County, 210
23 F.3d 1025, 1028 (9th Cir. 2000) (quoting McMillian v. Monroe

24
25 ³ Each of these cases concerned claims brought against a
26 sheriff, and the sheriff's subsequent attempt to escape liability
27 by claiming that the sheriff acts as an agent of the state.
28 Therefore, the argument followed, the sheriff would be immune
from liability under the Eleventh Amendment. The Court was
unable to find, and the parties did not provide, a case in which
the plaintiff filed suit against the Attorney General. These
cases are, however, instructive.

1 County, 520 U.S. 781, 785 (1997)). In this case, the Court
2 elects to follow the holdings of the Ninth Circuit and determine
3 that the sheriff acts as the final policymaker for the county
4 when issuing CCWs. Accordingly, Plaintiffs have failed to
5 establish any connection between the Attorney General and a
6 county sheriff insofar as the issuance of CCWs is concerned.
7 Defendants' motion to dismiss as to Defendant Lockyer is GRANTED.

8 Plaintiffs do not, however, offer any basis for their claim
9 against Defendant Rossi, the State Firearms Director and
10 Custodian of Records. There is no constitutional or statutory
11 basis cited for imposition of liability upon him for the acts of
12 the sheriff. Because Rossi lacks the power to issue CCWs on his
13 own, and cannot be held responsible for those that have the
14 power, either the sheriff or chief of police, Plaintiffs have not
15 pled any valid claims against Rossi. Accordingly, Defendants'
16 motion to dismiss as to Defendant Rossi is GRANTED.

17
18 **2. Fourteenth Amendment Equal Protection Clause**

19
20 The Court realizes that finding that Lockyer and Rossi are
21 not proper defendants effectively ends the inquiry. However,
22 even if Lockyer could be considered a proper defendant,
23 Plaintiffs' complaint would still fail to state a claim.

24 Furthermore, the Court chooses to address, briefly, several of
25 the arguments Plaintiffs make in support of their claim.

26 Plaintiffs claim two separate violations of their rights
27 under the Fourteenth Amendment's Equal Protection Clause. First,
28 they claim that the application of the laws requiring CCW permits

1 discriminates based on race and nationality. Second, Plaintiffs
2 claim that retired police officers are given unfair preferential
3 treatment.

4
5 **A. Race and National Origin Discrimination**

6
7 Plaintiffs begin their argument that Lockyer is liable for
8 discrimination with the observation that there is no place for
9 the applicant to indicate his/her race on the application for a
10 CCW. Plaintiffs next cite People v. Rappard, 28 Cal. App. 3d
11 302, a 32 year old California Court of Appeal decision, for the
12 proposition that "California courts have already determined that
13 a racially biased purpose existed in establishing" the law that
14 created the CCW system. Opp'n, at 5; Compl., ¶ 77. Due to this
15 racially biased purpose, Plaintiffs contend that Lockyer has a
16 duty to monitor the state laws concerning CCW issuance to ensure
17 that they are applied fairly.

18 Contrary to Plaintiffs' position, however, Rappard had
19 nothing to do with racial discrimination; the decision does not
20 even mention racial discrimination. Rather, the decision held
21 invalid California Penal Code section 12021, a statute that
22 prohibited possession of a firearm capable of being concealed by
23 "any person who is not a citizen of the United States. . . ."
24 Thus, this statute discriminated against aliens, not races.
25 Furthermore, the language "is not a citizen of the United
26 States", which was held discriminatory by Rappard, was deleted in
27 the 1974 Amendment to the statute, thereby correcting the
28 unconstitutionality. Therefore, contrary to Plaintiffs'

1 argument, Rappard does not establish any affirmative duty on the
2 Attorney General to monitor state law to guard against the
3 possibility of discriminatory application.

4 The only direct act on Lockyer's part that Plaintiffs claim
5 support their discrimination claim was drafting an application
6 for CCW permits that omits any mention of race or national
7 origin.⁴ Compl. ¶¶ 82-91. Plaintiffs claim that in doing so,
8 Lockyer tacitly allows the other defendants to discriminate based
9 on race and national origin. Compl. ¶ 83. Any argument that the
10 failure to provide a means for the use of race as a factor in
11 considering the application amounts to racial discrimination must
12 fail as a matter of law. Racial discrimination occurs when an
13 action is taken because of a person's race. Therefore, taking an
14 action without considering, or even knowing, the person's race
15 cannot be racial discrimination.⁵

16 The Court finds this argument to be ridiculous and totally
17 without merit, and declines to give it any legitimacy by further
18 discussion. Defendants' motion to dismiss is GRANTED with
19 prejudice.

21
22 ⁴ Plaintiffs contend that race must be used as a factor
23 in considering the application because "a young black male in
24 California under the age of 25 has a exceedingly [sic] far
25 greater chance of being murdered than all law enforcement
officers combined throughout the entire United States." Compl. ¶
97; Opp'n at 13. Not surprisingly, Plaintiffs offer no support
for this baseless contention.

26 ⁵ The Court emphasizes that the only action Lockyer is
27 alleged to have taken is drafting an application that does not
28 contain a place for the applicant to mark his or her race. The
Court does not hold that there is no discrimination in the actual
issuance of CCWs, but rather holds that merely drafting the
application was not discriminatory.

1 **B. Preferential Treatment - Retired Peace Officers**

2
3 Plaintiffs next contend that the challenged statutes are
4 unconstitutional because they grant retired law enforcement
5 officers special treatment in allowing them to carry concealed
6 weapons without having to show good cause for a permit.
7 Specifically, California Penal Code sections 12027 and 12031(b)
8 state that the statutes prohibiting the carrying of concealed
9 weapons, section 12025, and loaded weapons, section 12031(a), do
10 not apply to peace officers or to honorably retired peace
11 officers.

12 Plaintiffs contend that Silveira v. Lockyer compels judgment
13 on the pleadings in their favor. 312 F.3d 1062 (9th Cir. 2002)
14 reh'g en banc denied, 328 F.3d 567, cert. denied, 124 S. Ct. 803
15 (2003). It does not. Silveira concerned California's ban on
16 assault rifles, and the court upheld the statute in every respect
17 save one. The court found no rational basis for allowing retired
18 peace officers to possess assault weapons without any restriction
19 on use when active peace officers were permitted to possess and
20 use such weapons when off-duty only for law enforcement purposes.
21 Id. at 1090-92. The basis for allowing active off-duty officers
22 to possess and use assault weapons was that a peace officer is on
23 call 24 hours a day, and may be called upon at any time to
24 respond to a call for help. The same is not true of retired
25 officers. Because they are not on call at all after retirement,
26 there was no rational basis in allowing retired officers to keep
27 assault weapons. Id.

28 The justification and rationale for exempting retired peace

1 officers from the CCW is not the same as for the exception to the
2 assault weapon ban in Silveira. The justification for a CCW is
3 personal protection, not public protection. Peace officers were
4 entitled to carry assault weapons so that they would not be
5 inadequately armed to confront criminals while protecting the
6 public. On the other hand, they are entitled to carry concealed
7 weapons to protect themselves from the enemies they have made in
8 performing their duties. While an officer's duty to respond to
9 the public's calls for help stops when he retires, the threat of
10 danger from enemies he might have made during his service does
11 not. Therefore, there is a rational basis for allowing a retired
12 officer to continue to carry a concealed weapon, even though
13 there was no rational basis for allowing the same officer to keep
14 an assault weapon. Because "[P]laintiffs have no constitutional
15 right to own or possess weapons, heightened scrutiny does not
16 apply" and the statute need meet only rational basis review.
17 Silveira, 312 F.3d at 1088. Therefore, Plaintiffs are not
18 entitled to judgment on the pleadings on their second claim, and
19 their motion is DENIED.

20 Having concluded that the statutory exception allowing
21 retired officers to carry concealed weapons is rationally related
22 to a legitimate governmental interest, protecting retired law
23 enforcement officers, it follows that the second claim fails to
24 state a claim upon which relief may be granted. Plaintiffs'
25 arguments to the contrary are without merit.

26 Plaintiffs contend that all one must do is "join the club",
27 that is, become a law enforcement officer and quit the following
28 day, to secure the right to carry a concealed weapon. Becoming a

1 law enforcement officer is not a club one joins, however.
2 Furthermore, the statute gives preference only to those officers
3 "who have qualified for, and accepted a service or disability
4 retirement." Cal. Penal Code § 12027(a)(1)(A). Thus, one who
5 works for one day as a law enforcement officer and quits would
6 not become exempt from the requirement to apply for a permit to
7 carry a concealed weapon.

8 Plaintiffs also contend that there is no rational basis for
9 the statutory scheme requiring CCW permits because it allows
10 officers that are forced to retire due to a mental breakdown or
11 alcoholism to carry a concealed weapon, even though the agencies
12 they retire from no longer trust them to carry weapons.

13 Plaintiffs quote at length from California Penal Code section
14 12027.1, specifically subsections (b), (c), and (d). They
15 neglect to quote section 12027.1(e), however, which states that
16 "[n]o peace officer who is retired after January 1, 1989, because
17 of a psychological disability shall be issued an endorsement to
18 carry a concealed and loaded firearm pursuant to this section."
19 Thus, Plaintiffs' concerns about mentally unstable retired
20 officers swarming the streets with concealed weapons is without
21 merit.

22 In sum, it is clear that the statutory scheme allowing
23 retired officers to carry concealed weapons passes a rational
24 basis review. Therefore, Defendants' motion to dismiss the
25 second claim is GRANTED.

26 //

27 //

28 //

1 **3. Fourteenth Amendment Privileges and Immunities Clause**

2
3 Plaintiffs, in their fifth claim, allege that the denial of
4 their CCW applications violates their rights under the Fourteenth
5 Amendment's Privileges and Immunities Clause. In their
6 opposition, Plaintiffs assert that their claim represents a
7 "cutting edge position justifying careful judicial scrutiny".
8 Opp'n at 2. Plaintiffs then spend 21 pages taking the Court on a
9 rambling history lesson starting at the Slaughter House Cases and
10 the Freedmen's Bureau Act, and ending at Saenz v. Roe, 526 U.S.
11 489 (1999). Along the way, Plaintiffs offer a full page
12 bibliography which represents the "manageable number of cases,
13 books, articles, and other authorities [that] outline this
14 important debate", seemingly expecting the Court to study each
15 and discern the relevant material from each on its own. Opp'n at
16 22-23. All this is in an apparent attempt to convince the Court
17 that the Fourteenth Amendment's Privileges and Immunities Clause
18 is not dead, and therefore can be the basis of a claim for
19 relief. What Plaintiffs do not do anywhere in these 21 pages,
20 however, is explain how the denial of their CCW applications
21 would lead to a violation of that clause.

22 At the end of this long trail, Plaintiffs proclaim that
23 "[f]or the first time, this Court, and the Ninth Circuit, will be
24 asked to define whether the [Fourteenth Amendment's Privileges
25 and Immunities] Clause includes the fundamental right to keep and
26 bear arms" Opp'n at 35. Thus, it is finally clear to
27 the Court that Plaintiffs' errors are two-fold. First,
28 Plaintiffs equate the right to keep and bear arms with the right

1 to carry firearms concealed, without ever analyzing, or even
2 acknowledging, a possible difference between the two. In their
3 opposition, Plaintiffs do not even address the particular subject
4 of their lawsuit, which is the denial of a permit to carry
5 concealed weapons. Even if the Court were to assume that if
6 Plaintiffs were prevented from possessing firearms a Privileges
7 and Immunities violation would be found, it does not follow that
8 merely being denied a permit to carry those firearms concealed
9 amounts to such a violation. Plaintiffs have done nothing to
10 persuade, indeed, they have not attempted to persuade, the Court
11 that possession of a firearm equates to carrying that firearm
12 concealed.

13 Second, Plaintiffs label the right to keep and bear arms as
14 a fundamental right. In doing so, Plaintiffs claim support from
15 some 35 Supreme Court cases, while only citing "strong dictum"
16 from one case, that being Scott v. Sanford, 60 U.S. 393 (1856).
17 Opp'n at 35. Furthermore, Plaintiffs completely ignore the clear
18 holding of Silveira v. Lockyer, 312 F.3d 1052, a 2002 Ninth
19 Circuit case, which represents binding authority on this Court.
20 In Silveira the court analyzed rights guaranteed under the Second
21 Amendment and held that the Second Amendment right to keep and
22 bear arms is a collective right that "guarantees the right of the
23 people to maintain effective state militias, but does not provide
24 any type of individual right to own or possess weapons." Id. at
25 1060-61. The court went on to say that "the federal and state
26 governments have the full authority to enact prohibitions and
27 restrictions on the use and possession of firearms, subject only
28 to generally applicable constitutional constraints, such as due

1 process, equal protection, and the like." Id. at 1060.

2 Plaintiffs' failure to confront Silveira is even more egregious
3 when the Court considers that Mehl was a plaintiff in Silveira,
4 and Gary Gorski, Plaintiffs' current counsel, represented the
5 plaintiffs in Silveira.

6 Denying Plaintiffs the right to carry a concealed firearm
7 does not constitute a violation of the Privileges and Immunities
8 Clause. Accordingly, Defendants' motion to dismiss the fifth
9 claim is GRANTED with prejudice.

10
11 **4. Second and Ninth Amendments**

12
13 In their opposition, Plaintiffs admit that the Ninth Circuit
14 does not recognize Plaintiffs' claims brought under the Second or
15 Ninth Amendments. Plaintiffs state they brought these claims to
16 preserve an appeal. As Plaintiffs do not oppose the motion to
17 dismiss as to the fourth and sixth claims, the motion is GRANTED
18 with prejudice as to those claims.

19
20 **5. 7th Claim - Preliminary Injunction and Declaratory Relief**

21
22 Plaintiffs' first amended complaint contains a seventh claim
23 seeking a preliminary injunction. This claim contains two
24 paragraphs. The first incorporates by reference all 138 prior
25 paragraphs. The second states, in its entirety, "Plaintiff seeks
26 a declaration from the court regarding the constitutionality of
27 the CCW statutes and policies enforced and promulgated by
28 Defendants." Compl. ¶ 140. This is not a separate claim for

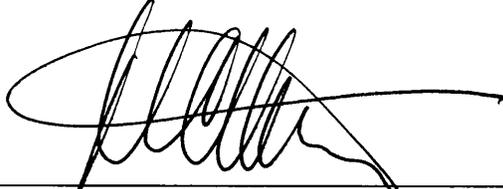
1 relief upon which relief may be based, but rather consists of
2 nothing more than a request for a remedy based upon a favorable
3 finding on the first six claims. Therefore, this seventh claim
4 for relief is DISMISSED.

5
6 **CONCLUSION**

7
8 For the reasons explained above, Plaintiffs' First Amended
9 Complaint against Defendants Lockyer and Rossi is DISMISSED.

10
11 IT IS SO ORDERED.

12
13 DATED: 9/2/04


14 _____
15 MORRISON C. ENGLAND, Jr.
16 UNITED STATES DISTRICT JUDGE
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United States District Court
for the
Eastern District of California
September 3, 2004

* * CERTIFICATE OF SERVICE * *

2:03-cv-02682

Mehl

v.

Blanas

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on September 3, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Gary William Gorski
Law Offices of Gary W Gorski
8549 Nephi Way
Fair Oaks, CA 95628

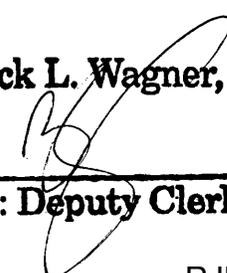
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Jack L. Wagner, Clerk


by: Deputy Clerk

CERTIFICATE OF SERVICE

Case Name: **Ulises Garcia, et al. v. Kamala
D. Harris** No. **2:16-cv-02572-BRO-AFM**

I hereby certify that on June 10, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

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

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

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 10, 2016, at Los Angeles, California.

Angela Artiga
Declarant

/s/ Angela Artiga
Signature