Nos. 10-56971 & 11-16255

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD PERUTA, et. al., Plaintiffs-Appellants, **v.** **COUNTY OF SAN DIEGO, et al.,** Defendants-Appellees, **STATE OF CALIFORNIA,** Intervenor-Pending.	No. 10-56971 D.C. No. 3:09-cv-02371-IEG-BGS Southern District of California Hon. Irma E. Gonzalez District Judge
ADAM RICHARDS, et al., Plaintiffs-Appellants, **v.** **ED PRIETO, et al.,** Defendants-Appellees.	No. 11-16255 D.C. No. 2:09-cv-01235-MCE-DAD Eastern District of California Hon. Morrison C. England District Judge

PROPOSED INTERVENOR STATE OF CALIFORNIA'S BRIEF ON THE MERITS OR, ALTERNATIVELY, BRIEF OF AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES

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INTEREST OF THE STATE OF CALIFORNIA AS PROPOSED INTERVENOR OR AMICUS CURIAE

The State of California has a clear interest in upholding the police powers of the State and its cities and counties to protect public safety by placing reasonable restrictions on the carrying of concealed firearms by individuals in public places. The California Legislature has decided that local officials are best situated to determine what applicants must show to satisfy the "good cause" requirement for concealed-carry permits. This is based in part on a determination that public safety, crime prevention, and other concerns relevant to concealed-carry restrictions are not uniform in all areas, and may vary significantly between, for example, urban and rural areas. The rule adopted by the panel decisions in these cases would sharply constrain state and local discretion to regulate the concealed carrying of guns in public, preventing the state Legislature and designated local officials from making important policy decisions affecting public safety. The State accordingly has a strong interest in the determination of the questions presented in these consolidated cases.

The State has filed a motion to intervene in *Peruta*, and that motion is currently pending before the Court in these en banc proceedings. Accordingly, concurrently with this brief, the State is filing a motion for

leave to file this brief as an Intervenor's Brief on the Merits if its motion to intervene is granted. Alternatively, the Attorney General submits this brief on behalf of the State as amicus curiae in support of defendants-appellees pursuant to Federal Rule of Appellate Procedure 29(a).

JURISDICTIONAL STATEMENT

These consolidated appeals arise from actions raising constitutional claims under 42 U.S.C. § 1983, and the district courts had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. Each appeal is from a final judgment, and thus this Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE CASE

1. Handguns are firearms that are capable of being concealed on a person. Cal. Penal Code § 16640. A California resident who is over 18 and not prohibited from possessing a firearm may keep a loaded handgun in his or her home or business, and transport the gun in a vehicle provided it is unloaded and in a locked container. *Id.* §§ 25505, 25525, 25605, 25610. Under appropriate circumstances, an individual may carry a loaded firearm when he or she reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. *Id.* § 26045. For reasons of public safety, however, state law generally prohibits the carrying

of a loaded or unloaded handgun on the person, whether open or concealed, in public places in the State's incorporated cities and in unincorporated areas where discharging a firearm is prohibited. *Id.* §§ 25400, 25850, 26350, 17030.[1] Still, State law recognizes that some persons, based on their particular circumstances, may have a need to carry a concealed weapon for self-defense. State law therefore also permits any resident of good moral character to seek a permit to carry a concealed handgun, even in an urban or residential area, for "[g]ood cause." *Id.* §§ 26150, 26155.

The California Legislature has delegated to local licensing authorities (generally, county sheriffs or city police chiefs) the authority to make determinations concerning what constitutes "good cause" for obtaining a "concealed carry weapon," or "CCW," permit. *Id.* §§ 26150, 26155, 26160. San Diego County's written guidance requires a permit applicant to demonstrate "a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way" in some manner that goes beyond a generalized assertion of concern for personal

[1] There are exceptions for persons holding particular types of positions, such as peace officers, military personnel, and persons in private security. *Id.* §§ 25450, 25620, 25630, 25650, 25900, 26030. There are also exceptions for persons engaged in particular activities, such as hunting. *Id.* § 25640.

safety. *Peruta* ER 128, 400. Yolo County's written guidance requires the applicant to demonstrate "valid reasons," which may include, but are not limited to, applications by "[v]ictims of violent crime and/or documented threats of violence," and "business owners who carry large sums of cash or valuable items" or "who work all hours in remote areas and are likely to encounter dangerous people and situations." *Richards* ER 20. In Yolo County, examples of "invalid reasons" for a CCW permit include "[h]unting," "fishing," and self-defense "without credible threats of violence." *Richards* ER 21. Good cause requirements strike a permissible balance between enabling private individuals to carry concealed handguns on the person, even in urban or residential areas, if they can establish some particular need to do so for purposes of self-defense, and a legislative judgment that allowing the essentially unrestricted carrying of handguns in such areas makes the public, on balance, *less* safe.

2. The individual plaintiffs are residents of San Diego and Yolo Counties who assert a desire to carry concealed handguns in public for self-defense, but cannot meet the "good cause" standard of state law as implemented by their respective Counties' written guidance. *Peruta* ER 1104-11; *Richards* ER 69-70.

Plaintiffs filed their respective suits in the district courts challenging their Counties' policies governing CCW permits under the Second Amendment, in addition to other claims. Both district courts granted summary judgment for the defendants, holding that these two county Sheriffs' policies do not violate the Second Amendment. *Peruta* ER 1-17; *Richards* ER 2-17. Plaintiffs appealed, and a divided three-judge panel of this Court reversed in each case, holding that the Second Amendment provides an individual right to carry a firearm in public for self-defense, and that each Sheriff's policy, when considered in light of California's other restrictions on public carrying, "destroys" that right and thus violates the Second Amendment under any standard of review. *Peruta* Dkt. 116; *Richards* Dkt. 70.

Following the three-judge panel's decision in *Peruta*, Sheriff Gore announced that he would not petition for rehearing en banc, and the State of California filed a motion to intervene and a provisional petition for rehearing en banc. *Peruta* Dkt. 122. In a divided decision, the three-judge panel denied the State's motion to intervene, *Peruta* Dkt. 156, and the State petitioned for rehearing en banc of that order, *Peruta* Dkt 157.

In *Richards*, Sheriff Prieto filed a petition for rehearing en banc, *Richards* Dkt. 72, and the State of California filed an amicus brief in support

of that petition, *Richards* Dkt. 80. On May 1, 2014, the Court stayed consideration of the petition for rehearing en banc in *Richards* pending the Court's resolution of post-opinion matters in *Peruta*. *Richards* Dkt. 87.

On December 3, 2014, the Court announced that a judge of the Court had made a *sua sponte* call for a vote on whether *Peruta* should be reheard en banc, *Peruta* Dkt. 161, and on February 2, 2015 the Court lifted the stay in *Richards*, *Richards* Dkt. 89. On March 26, 2015, the Court granted rehearing en banc on the merits in both cases and with respect to the State's motion to intervene in *Peruta*. *Peruta* Dkt. 193; *Richards* Dkt. 90. On April 1, 2015, the Court consolidated the appeals for rehearing en banc. *Peruta* Dkt. 200.

SUMMARY OF ARGUMENT

California's licensing scheme regulating the carrying of concealed handguns and the Counties' "good cause" requirements under that scheme are constitutionally valid and do not violate the Second Amendment.

This Court has adopted a two-step Second Amendment inquiry that asks (1) whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny. *See United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). Here, plaintiffs' claims fail at the first step because the regulation, or

even prohibition, of carrying *concealed* firearms in public does not burden conduct protected by the Second Amendment. *See Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897).

Further, even if the challenged concealed-carry regulations implicate the Second Amendment, they are constitutional under intermediate scrutiny. Intermediate scrutiny applies because these regulations do not burden the "core" Second Amendment right to use arms in defense of hearth and home, *see District of Columbia v. Heller*, 554 U.S. 570, 635; *Chovan*, 735 F.3d at 1138, and also because they do not place a substantial burden on Second Amendment rights given the numerous avenues for otherwise qualified citizens to possess and carry handguns for self-defense under state law. The challenged laws are valid under intermediate scrutiny because they reasonably advance the important government interests in protecting public safety and preventing crime. *See Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015). Accordingly, the judgments of the district courts should be affirmed.

ARGUMENT

As a threshold matter, plaintiffs in both cases challenge only California's concealed-carry restrictions, as applied by the Counties, and not the State's open-carry restrictions or overall scheme governing the carrying

of handguns in public places. The specific relief sought by both sets of plaintiffs is the invalidation of these two Counties' application of the "good cause" requirements for concealed-carry permits to otherwise qualified applicants who seek to carry a handgun in public for self-defense. *Peruta* ER 1124; *Richards* ER 71. Neither case challenges California's current open-carry restrictions—some of which were not even enacted until these cases were on appeal. *See* Cal. Penal Code § 26350. Nor does either case squarely challenge California's overall public-carrying scheme. Indeed, on appeal the Peruta plaintiffs expressly disavowed any challenge to "the State's statutory regime in full," and clarified that they have sued only "to have [the] County's [concealed-carry licensing] policy declared constitutionally invalid." Appellants' Reply Brief at 2 (*Peruta* Dkt. 66). And the Richards plaintiffs declined to challenge California's current restrictions on open carrying. Reply Brief at 7 (*Richards* Dkt. 37). Accordingly, the conduct at issue is plaintiffs' desire to carry concealed weapons in public, and the question properly presented in these cases is whether San Diego's and Yolo's "good cause" requirements for issuing permits to carry concealed handguns violate the Second Amendment.

Nevertheless, and regardless of how plaintiffs' claims are characterized, California's licensing scheme regulating the carrying of concealed handguns

strikes a permissible balance between allowing carrying in certain places and under certain circumstances, and protecting the public from the dangers posed by the proliferation of concealed weapons in public places.[2] Central to California's scheme is the delegation of authority to local law enforcement officials to determine what constitutes "good cause" for a permit to carry a concealed weapon in that particular jurisdiction. This delegation recognizes that public safety, crime prevention, and other concerns relating to concealed-carry restrictions are not uniform in all areas, and may vary significantly based on, for example, population size and density, proximity to other areas, and other factors of which only local authorities may be aware.

[2] If plaintiffs' claims are construed as challenges to California's overall statutory scheme governing the carrying of guns in public, then the remedy that they seek—licenses to carry *concealed* weapons in public—is inappropriate. Should the State's scheme be determined to violate the Second Amendment, the Court should not direct a specific remedy but instead should allow the Legislature to decide how to comply with the constitutional limitations identified by the Court. *See Moore v. Madigan*, 702 F.3d 933 942 (7th Cir. 2012) (staying the mandate for 180 days "to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public").

Thus, any facial challenge to the concealed-carry licensing scheme in these proceedings lacks merit. California's restrictions on carrying concealed handguns in public do not burden conduct protected by the Second Amendment. And even if they do impose some cognizable burden, the state statutory requirements are constitutional because there is a reasonable fit between those requirements and the important public interests in protecting public safety and reducing crime.

I. THIS COURT HAS ADOPTED A TWO-STEP INQUIRY APPLICABLE TO SECOND AMENDMENT CHALLENGES.

Following the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court has adopted a "two-step Second Amendment inquiry" that "(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny." *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). This two-part test "reflects the Supreme Court's holding in *Heller* that, while the Second Amendment protects an individual right to keep and bear arms, the scope of that right is not unlimited." *Id.* (citing *Heller*, 554 U.S. at 626-27). The Court also explained that the two-step inquiry is "consistent with the approach taken by other circuits considering various firearms restrictions post-*Heller*." *Id*. (citing cases); *see*

also Jackson v. City & County of San Francisco, 746 F.3d 953, 960 (9th Cir. 2014) (applying two-step inquiry and upholding regulations governing handgun storage and prohibiting certain ammunition sales). Accordingly, this Court should engage in the *Chovan* two-step inquiry in these proceedings.

A. California's Concealed-Carry Licensing Scheme Does Not Burden Conduct Protected by the Second Amendment.

As a threshold matter, whether the Second Amendment right recognized in *Heller* applies outside the home remains an open question. The Supreme Court has not addressed this issue, and the circuit courts have generally declined to reach it. *See*, *e.g.*, *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J.) (application beyond the home is "a vast *terra incognita* that courts should enter only upon necessity and only then by small degree"); *Drake v. Filko*, 724 F.3d 426, 431 (3d Cir. 2013); *Woolard v. Gallagher*, 712 F.3d 865, 875-76 (4th Cir. 2013); *but see Moore*, 702 F.3d at 935-36; *cf. Kachalsky v. County of Westchester*, 701 F.3d 81, 89-93 (2d Cir. 2012). If the Second Amendment does not extend to the public carrying of handguns at all, then California's concealed-carry laws of course do not burden any Second Amendment right.

As in the cases cited, it is unnecessary to reach that larger question here, because in any event the Second Amendment permits restrictions on, or even prohibition of, the public carrying of *concealed* weapons. In 1897 the Supreme Court endorsed the view that "the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons." *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897). No subsequent Supreme Court decision, including those in *Heller*, 554 U.S. 570, and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), has ever questioned this view. Indeed, *Heller* specifically recognized that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *Heller*, 554 U.S. at 626. Regulation and even prohibition of the carrying of concealed weapons is longstanding. And, as *Heller* cautioned, nothing in that opinion "should be taken to cast doubt on longstanding prohibitions" on the possession, carrying, or sale of firearms, which are "presumptively lawful." *Id.* at 626-27 & n.26; *see also Peterson v. Martinez*, 707 F.3d 1197, 1210-11 (10th Cir. 2013) (noting that "bans on the concealed carrying of firearms are longstanding" and that "the Second Amendment does not confer a right to carry concealed weapons");

United States v. Vongxay, 594 F.3d 1111, 1115 (9th Cir. 2010) (upholding federal felon-in-possession statute because it is "presumptively lawful").

Accordingly, the specific question presented in these cases has a straightforward answer: California's *concealed*-carry rules do not burden any conduct protected by the Second Amendment. This Court's analysis should therefore end at step one of the *Chovan* inquiry.

B. California's Concealed-Carry Licensing Scheme Is Constitutional.

Assuming that restrictions on carrying concealed handguns implicate the Second Amendment, California's restrictions are constitutional.

1. Intermediate scrutiny applies.

If a regulation imposes some burden on Second Amendment rights, the level of scrutiny it receives is determined by "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.'" *Chovan*, 735 F.3d at 1138 (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011)). "Intermediate scrutiny is appropriate if the regulation at issue does not implicate the core Second Amendment right *or* does not place a substantial burden on that right." *Fyock v. Sunnyvale*, 779 F.3d 991, 998-99 (9th Cir. 2015). Here, California's concealed-carrying restrictions, if they implicate the Second

Amendment at all, should be reviewed under intermediate scrutiny because they do not infringe the "core" Second Amendment "right of law-abiding, responsible citizens to use arms in defense of hearth and home," *Heller*, 554 U.S. at 635, and also because they do not completely ban the public carrying of firearms, but allow responsible citizens a number of avenues to have access to a handgun for self-defense.

Following *Heller*, this Court has held that "the core of the Second Amendment is 'the right of law-abiding, responsible citizens to use arms *in defense of hearth and home*.'" *Chovan*, 735 F.3d at 1138 (emphasis added) (quoting *Heller*, 554 U.S. at 635). The distinction between Second Amendment rights in the home and in public places is recognized by the majority of circuits to address the issue. For example, the Third Circuit has recognized that "[f]irearms have always been more heavily regulated in the public sphere so, undoubtedly, if the right articulated in *Heller* does 'extend beyond the home,' it most certainly operates in a different manner" and "is not part of the core of the [Second] Amendment." *Drake*, 724 F.3d at 430 n.5, 436 (holding that New Jersey's public carrying restrictions are subject to intermediate scrutiny).

Similarly, the Second Circuit has held that here is a "critical difference" between regulating the carrying of firearms "only *in public*," on the one

hand, and "*in the home* 'where the need for defense of self, family, and property is most acute.'" *Kachalsky*, 701 F.3d at 94 (quoting *Heller*, 554 U.S. at 628) (holding that New York's public carrying restrictions are subject to intermediate scrutiny). "The state's ability to regulate firearms and, for that matter, conduct, is qualitatively different in public than in the home. . . . Treating the home as special and subject to limited state regulation is not unique to firearm regulation; it permeates individual rights jurisprudence." *Id.* And the Fourth Circuit has recognized that the "core right" is "self-defense in the home" and "as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *Masciandaro*, 638 F.3d at 470; *see also Woolard*, 712 F.3d at 876 (holding that Maryland's public carry restrictions are subject to intermediate scrutiny). Most other circuits to address this issue are in accord. *See, e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1255 (D.C. Cir. 2011) (*Heller II*) ("the 'core lawful purpose' protected by the Second Amendment" is the right to possess a gun "for the purpose of self-defense in the home"); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 195 (5th Cir. 2012) ("the core of the Second Amendment" includes "the right of a law-abiding, responsible adult to possess and use a handgun to defend his

or her home and family"); *United States v. Greeno*, 679 F.3d 510, 517 (6th Cir. 2012) ("The core right recognized in *Heller* is 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'"); *but cf. Moore*, 702 F.3d at 941 (disagreeing with the "suggestion that the Second Amendment should have much greater scope inside the home than outside"). California's concealed-carry law does not apply to the possession of handguns inside the home or on one's own property, and thus does not implicate the core of the Second Amendment right.

California's restrictions on carrying a concealed firearm on one's person also warrant at most intermediate scrutiny because they do not impose a substantial burden on the right, particularly when viewed in the context of what is permitted by other provisions of state law for those persons who wish to have use of a handgun for self-defense. In California, any U.S. citizen over 18 years of age who is not prohibited from owning a firearm may:

- Possess a loaded or unloaded firearm at his or her place of residence, temporary residence, campsite or on private property owned or lawfully possessed by the person, or within the person's place of business, Cal. Penal Code §§ 25605, 26035, 26055;

- Transport or carry any pistol, revolver, or other firearm capable of being concealed upon the person within a motor vehicle, unloaded and locked in the vehicle's trunk or in a locked container in the vehicle, and carry the firearm directly to or from any motor vehicle within a locked container, *id.* §§ 25505, 25610, 25850;[3]
- Carry a loaded or unloaded firearm in some unincorporated areas, *id.* §§ 25850(a), 26350(a); and
- Carry a loaded firearm, where the person reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property, *id.* § 26045.[4]

If an individual desires to have a handgun available for self-defense but, because of his or her own particular circumstances, does not feel that these measures provide adequate protection, he or she can seek a concealed-carry

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[3] *See also id.* §§ 25505-25595 (governing the lawful transportation of firearms in numerous situations). Based on the type of storage selected, firearms lawfully transported pursuant to these and similar provisions can be readily accessed and loaded should the need for self-defense arise.

[4] Other exceptions allow retired peace officers and appropriately licensed and trained private security personnel, among others, to carry handguns in public. *See, e.g.*, *id.* §§ 25450, 25630, 25650, 25900, 26030.

weapon permit under state law and the relevant guidelines established by local law enforcement. *Id.* §§ 26150, 26155, 26160. Given the numerous avenues available for otherwise qualified citizens to possess, transport, and carry handguns outside the home, the burden of California's overall scheme on public carrying is not sufficiently severe to warrant anything more than intermediate scrutiny.

2. California's concealed-carry rules reasonably advance important public interests.

"In the context of Second Amendment challenges, intermediate scrutiny requires '(1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective.'" *Fyock*, 779 F.3d at 1000 (quoting *Chovan*, 735 F.3d at 1139).

First, it is "self-evident" that the State's and Counties' objectives in regulating the carrying of concealed handguns in public—protecting public safety and preventing crime—are "substantial and important government interests." *Fyock*, 779 F.3d at 1000; *see also Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 376 (1997) (public safety is a significant government interest); *United States v. Salerno*, 481 U.S. 739, 750 (1987) (prevention of crime is a compelling government interest). As the Counties

have shown, their good cause restrictions for CCW permits reduce the number of concealed firearms circulating in public. *See* Appellee's Brief at 25-27 (*Peruta* Dkt. 49); Appellees' Answering Brief at 33-42 (*Richards* Dkt. 24). This advances public safety by, among other things, limiting the lethality of violent crimes, limiting the ability of criminals to take advantage of stealth and surprise, protecting police officers, limiting the danger to other members of the public, and limiting the likelihood that minor altercations in public will escalate into fatal shootings. *See* Appellee's Brief at 25-27 (*Peruta* Dkt. 49); Appellees' Answering Brief at 33-42 (*Richards* Dkt. 24).

Second, the fit between California's regulatory scheme and these objectives is reasonable. The State must show only that its regulation "promotes a 'substantial government interest that would be achieved less effectively absent the regulation,'" not that its regulation is the "least restrictive means" of achieving the State's interest. *Fyock*, 779 F.3d at 1000 (quoting *Colacurcio v. City of Kent*, 163 F.3d 545, 553 (9th Cir. 1998)); *see also United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010) (fit need only "be reasonable, not perfect"). In making these determinations, courts "must accord substantial deference to the predictive judgments" of legislative bodies, *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997), and the State must be given "'a reasonable opportunity to

experiment with solutions to admittedly serious problems.'" *Jackson*, 746 F.3d at 966 (quoting *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52 (1986)).

Here, California has delegated decisions concerning the standards for carrying concealed weapons to local law enforcement officials, allowing those officials to make appropriate judgments concerning the appropriate level of "good cause" required to carry a concealed handgun in public. As permitted under State law, San Diego and Yolo Counties limit CCW permits issued in their jurisdictions to those who can show that their particular circumstances warrant carrying a concealed handgun as they move about in public areas. In these Counties, simply stating that one has a general desire to carry a gun in public for self-protection is not sufficient.

At the same time, these requirements allow individuals who can demonstrate a particularized need for self-protection to carry concealed weapons in public.[5] For example, a business owner who routinely carries large amounts of cash or valuables, or a person who can show a particularized threat of robbery or assault, might be able to obtain a permit to

[5] As noted above, state law also allows individuals to have access to handguns for self-defense through other means that do not involve carrying the gun concealed on one's person in public areas.

carry a concealed weapon. *See Peruta* ER 128, 400; *Richards* ER 20-21. As the Second, Third, and Fourth Circuits have recognized in upholding similar restrictions under intermediate scrutiny, these standards strike a permissible balance between "granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets." *Woolard*, 712 F.3d at 881; *see also Drake*, 724 F.3d at 439; *Kachalsky*, 701 F.3d at 97 & n.22.

Here, the efficacy of various gun restrictions in protecting public safety is the subject of a robust and ongoing public policy debate throughout the country. Experts on each side have marshaled empirical evidence that they contend supports their view, making this precisely the type of policy-laden determination that is the province of legislatures and accordingly warrants a high degree of deference. Thus, in upholding New Jersey's "justifiable need" public carry requirement against a Second Amendment challenge, the Third Circuit recognized that "[e]ven accepting that there may be conflicting empirical evidence as to the relationship between public handgun carrying and public safety, this does not suggest, let alone compel, a conclusion that the 'fit' between New Jersey's individualized, tailored approach and public safety is not 'reasonable.'" *Drake*, 724 F.3d at 439. Similarly, the Second Circuit gave a high level of deference to the New York Legislature's policy

judgments in finding a reasonable fit between New York's "proper cause" requirement for public carrying and public safety, stating that "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Kachalsky*, 701 F.3d at 97 (quoting *Turner*, 512 U.S. at 665). And the Fourth Circuit similarly recognized that "we cannot substitute [our] views for the considered judgment of the General Assembly that the good-and-substantial-reason requirement strikes an appropriate balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets of Maryland." *Woolard*, 712 F.3d at 881. The policy judgments of the California Legislature and the Sheriffs of San Diego and Yolo Counties should be afforded similar deference here.

Indeed, no circuit court has invalidated similar restrictions on public carrying. The Seventh Circuit's decision in *Moore* is distinguishable, as the Illinois law at issue there was a "blanket prohibition" on public carrying, 702 F.3d at 940, not a permit-based restriction such as California's. The Seventh Circuit acknowledged this distinction, noting that "Illinois is the *only* state that maintains a flat ban on carrying ready-to-use guns outside the home,"

and distinguishing *Kachalsky* on the ground that New York's law "is less restrictive than Illinois's law." *Moore*, 702 F.3d at 940, 941. The Third and Fourth Circuits also distinguished *Moore* on this basis. *See Drake*, 724 F.3d at 430 n.6 (noting that *Moore* "impl[ies] that some restrictions on the right to carry outside the home would be permissible, while holding that the challenged law containing a flat ban on carrying a handgun in public was unconstitutional"); *Woolard*, 712 F.3d at 881 n.10 (discussing the "contrast between New York's (and Maryland's) 'moderate approach'" and Illinois' "wholesale ban on the public carrying of firearms").

There is a reasonable fit between California's licensing scheme governing the public carrying of concealed handguns, as implemented at the local level by San Diego and Yolo Counties, and the important public interests in protecting public safety and preventing crime. Accordingly, California's concealed carry restrictions are valid under the Second Amendment.

CONCLUSION

The district court judgments in these consolidated appeals should be affirmed.

Dated: April 30, 2015

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STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: April 30, 2015

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CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR 10-56971

I certify that: (check (x) appropriate option(s))

[X] 1. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached **proposed intervenor's brief** is

[X] Proportionately spaced, has a typeface of 14 points or more and contains **4,884** words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words)

or is

[ ] Monospaced, has 10.5 or fewer characters per inch and contains ____ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

[ ] 2. The attached brief is **not** subject to the type-volume limitations of Fed.R.App.P. 32(a(7)(B) because

[ ] This brief complies with Fed.R.App.P 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages.

or

[ ] This brief complies with a page or size-volume limitation established by separate court order dated _____ and is

[ ] Proportionately spaced, has a typeface of 14 points or more and contains _____ words,

or is

[ ] Monospaced, has 10.5 or fewer characters per inch and contains __ pages or __ words or __ lines of text.

[ ] 3. Briefs in **Capital Cases**.
This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is

[ ] Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words; reply briefs must not exceed 9,800 words).

or is

[ ] Monospaced, has 10.5 or fewer characters per inch and contains __ words or __ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

[X] 4. **Amicus Briefs**.

[X] Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

or is

[ ] Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,

or is

[ ] Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

April 30, 2015
Dated

/s/ Gregory D. Brown
Gregory D. Brown
Deputy Solicitor General

9th Circuit Case Number(s) 10-56971 & 11-16255

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CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

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 (date) April 30, 2015 .

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

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Nos. 10-56971 & 11-16255

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD PERUTA, et. al., Plaintiffs-Appellants, **v.** **COUNTY OF SAN DIEGO, et al.,** Defendants-Appellees, **STATE OF CALIFORNIA,** Intervenor-Pending.	No. 10-56971 D.C. No. 3:09-cv-02371-IEG-BGS Southern District of California Hon. Irma E. Gonzalez District Judge
ADAM RICHARDS, et al., Plaintiffs-Appellants, **v.** **ED PRIETO, et al.,** Defendants-Appellees.	No. 11-16255 D.C. No. 2:09-cv-01235-MCE-DAD Eastern District of California Hon. Morrison C. England District Judge

PROPOSED INTERVENOR STATE OF CALIFORNIA'S MOTION FOR LEAVE TO FILE A BRIEF ON THE MERITS

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PROPOSED INTERVENOR STATE OF CALIFORNIA'S MOTION FOR LEAVE TO FILE A BRIEF ON THE MERITS

Proposed Intervenor State of California respectfully moves for leave to file a brief on the merits in these consolidated en banc appeals. The State has moved to intervene in *Peruta*, and that motion is currently pending before the Court in these en banc proceedings. Because the State's status in these appeals has not yet been resolved, the State is unsure whether its brief—submitted concurrently with this motion—is properly considered an intervenor's brief on the merits, or an amicus brief. Accordingly, in the event that the State's motion to intervene is granted, the State seeks leave to file its brief as an intervenor's brief on the merits.

Good cause exists for granting the State's request to file an intervenor's brief on the merits. The State has not yet filed a merits brief in these proceedings. As set forth in the State's motion to intervene, these appeals present issues of exceptional importance to the State because plaintiffs' claims arguably call into question the validity of the State's statutory scheme regulating the public carrying of firearms. Accordingly, the State requests that it be permitted to participate in these proceedings as an intervening party, including the submission of a party brief on the merits.

Alternatively, if the Court denies this motion, the State respectfully requests that its brief be filed as an amicus curiae brief pursuant to Federal Rule of Appellate Procedure 29(a).[1]

Dated: April 30, 2015

Respectfully Submitted,

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/s/ Gregory D. Brown

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[1] Plaintiffs-Appellants have informed the State that they consent to the filing of the State's brief as an amicus brief, but oppose the State's request for leave to file its brief as an intervenor's merits brief. *See* 9th Cir. R. 27-1 advisory committee note, § 5.

9th Circuit Case Number(s) 10-56971 & 11-16255

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