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May 21, 2015

Clerk
Ninth Circuit Court of Appeals
James R. Browning U.S. Courthouse
95 Seventh Street
San Francisco, CA 94103

Re: *Richards v. Prieto, et al.*
Ninth Circuit Case No.: 11-16255
Set for Rehearing En Banc June 16, 2015
Response to Plaintiffs/Appellants' FRAP Rule 28(j) & Circuit Rule 28-6 Supp.
Authority dated May 20, 2015

Dear Clerk:

Wrenn v. District of Columbia, a preliminary injunction decision not yet final, is largely inapposite and otherwise damaging to Plaintiffs. For its premise that the Second Amendment confers the right to carry “outside the home,” the district court primarily cited its *own* analysis from another case (*Palmer*) as well as the vacated panel decision in *Peruta* (on which *Palmer* also heavily relied). Putting aside this precedential dearth, the issue in *Richards* isn't carry outside the home *per se* but rather carry in public areas of cities. *Wrenn* doesn't differentiate public carry in rural areas from in cities, likely because D.C. lacks the former. In contrast, Yolo County is 95% rural and California permits open carry to a great degree in rural areas, and to a more limited, yet still significant, degree in urban areas.

Furthermore, *Wrenn* says nothing about whether a right to concealed public carry can exist by itself or, if not, how it arises where the right to openly carry arms is not recognized by the state (as argued by Plaintiffs here). *Wrenn* also left unaddressed the ability to open carry in D.C., simply noting that its law long ago became unclear. (Order at 11, fn. 5.) Because the availability of open carry is a major issue in *Richards* and *Peruta*, *Wrenn's* generalized “right to concealed carry” premise is largely unhelpful. And *Wrenn* bases its conclusion on the history of D.C.'s gun control laws, which sheds no light on California's past regulation of concealed weapons or weapons in urban areas. (Order, p. 10, fn. 4. See Dkt. # 257, pp. 24–25.)

To: Clerk, Ninth Circuit Court of Appeals
Re: *Richards v. Prieto, et al.*
Page 2
May 21, 2015

Regarding *Wrenn*'s use of intermediate scrutiny (which ironically contradicts the *Peruta* majority's "destruction" v. burden analysis), its refusal to distinguish between "high crime risk" citizens and average citizens as impacting public safety does not avail Plaintiffs because they never advanced a corresponding argument below.

More useful is *Wrenn*'s express endorsement of the notion that government may place "appropriate time, place and manner restrictions on carrying of handguns in public" (p. 17), which concept reflects both California's laws and Defendants' position on urban public carry.

Very truly yours,

ANGELO, KILDAY & KILDUFF, LLP

/s/ John A. Whitesides

By: JOHN A. WHITESIDES

The body of this letter contains 345 words.

cc: All Counsel of Record (via CM/ECF)