No. 16-56125

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JORDAN GALLINGER, et al.,

Plaintiffs and Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney General of California,

Defendant and Appellee.

On Appeal from the United States District Court
for the Central District of California

No. 2:16-cv-02572-BRO-AFM
The Honorable Beverly Reid O'Connell, Judge

APPELLEE'S ANSWERING BRIEF

XAVIER BECERRA
Attorney General of California
MARC LEFORESTIER
Acting Senior Assistant
Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

JOHN D. ECHEVERRIA
Deputy Attorney General
State Bar No. 268843
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4902
Fax: (213) 897-5775
Email: John.Echeverria@doj.ca.gov
Attorneys for Defendant and Appellee Xavier Becerra, Attorney General of California

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

INTRODUCTION

California's Gun-Free School Zone Act of 1995 (the "Act") prohibits any person from knowingly possessing a firearm on the grounds of a college or university, or within a "school zone" (on the grounds of, or within 1,000 feet of, a public or private school providing instruction in kindergarten through grade 12), without the prior written permission of school officials. Cal. Penal Code §§ 626.9(b), (e)(4), (h), (i) (2016).[1] The Act provides numerous exceptions, *see, e.g.*, *id.* §§ 626.9(c), (*l*), (m), (n), including an exemption for honorably retired peace officers, *id.* § 626.9(o) (the "Retired Officer Exemption"). Individuals licensed to carry a concealed weapon ("CCW permit holders") are permitted to carry firearms within the 1,000-foot "school zone," but not on school grounds. *Id.* § 626.9(c)(5).

Plaintiffs and appellants (Plaintiffs)—CCW permit holders and non-profit organizations—claim that the Retired Officer Exemption violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and seek to eliminate the exemption so that neither CCW

[1] Unless otherwise noted, citations are to the current version of the Act, effective January 1, 2016. In accordance with Circuit Rule 28-2.7 of the Rules of the United States Court of Appeals for the Ninth Circuit, a statutory addendum providing the text of the current and prior versions of the Act is appended to this brief.

permit holders nor honorably retired peace officers would be permitted under the Act to possess firearms on school grounds. (ER52 (Prayer for Relief).)[2]

The district court properly granted the Attorney General's motion to dismiss the complaint with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6). (ER05-17 (Order re Defendant's Motion to Dismiss Plaintiff's Complaint ("Order")).) Although finding that CCW permit holders are similarly situated to honorably retired peace officers, the district court held that the Retired Officer Exemption satisfies rational basis scrutiny and does not improperly discriminate against a politically unpopular class of individuals. (ER15-16 (Order at 11-12).)

While the Attorney General maintains that Plaintiffs have failed, as a threshold matter, to establish that CCW permit holders are similarly situated to honorably retired peace officers, the district court correctly determined that the Retired Officer Exemption is rationally related to the legitimate government interest of protecting honorably retired peace officers. Moreover, Plaintiffs cannot plausibly allege that the Legislature exhibited

[2] Citations to pages designated as ER__ are to Appellants' Excerpts of Record (Dkt. No. 9), which was filed with Appellants' Opening Brief ("Opening Br.") (Dkt. No. 8).

animus towards CCW permit holders or improperly benefitted honorably retired peace officers. This Court should affirm the district court's order dismissing Plaintiffs' complaint with prejudice.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 because Plaintiffs' equal protection claim involved a federal question. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because Plaintiffs are appealing the final decision of the district court, which dismissed their complaint with prejudice and thus disposed of all of Plaintiffs' claims. (ER05-17 (Order).) The district court's order was entered on August 5, 2016, and Plaintiffs' notice of appeal was timely filed on August 8, 2016. Fed. R. App. P. 4(a)(1).

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The issue presented in this case is whether the exemption for honorably retired peace officers to the Gun-Free School Zone Act of 1995, Cal. Penal Code § 626.9(o), satisfies the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

I. OVERVIEW OF THE GUN-FREE SCHOOL ZONE ACT OF 1995.

The California Legislature enacted the Gun-Free School Zone Act of 1995 to prohibit the possession of "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, his or her designee, or equivalent school authority." Cal. Penal Code § 626.9(b); *People v. Mejia*, 72 Cal. App. 4th 1269, 1271-72 (1999) ("Former section 626.9 prohibited, with certain exceptions, gun possession on school grounds. In 1994, the Legislature enacted the 'Gun-Free School Zone Act of 1995' to expand the scope of section 626.9 to include gun possession within a 'school zone.'"); *People v. Tapia*, 129 Cal. App. 4th 1153, 1163 (2005). The Act defines "school zone" as "an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school." Cal. Penal Code § 626.9(e)(4).

In addition to prohibiting the possession of firearms in the school zone of a K-12 school, the Act prohibits the possession of firearms "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, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority." Cal. Penal Code § 626.9(h), (i). Violation of the Act is a misdemeanor or a felony. *Id.* § 626.9(f)-(i).

A. Original Exemptions to the Act for CCW Permit Holders and Honorably Retired Peace Officers.

Prior to 2016, the Act included several exemptions, including an exemption for CCW permit holders. Cal. Penal Code § 626.9(*l*) (2012) ("This section does not apply to . . . a person holding a valid license to carry the firearm pursuant to [California Penal Code section 26150 *et seq.*] . . . .").)[3] The Act also exempted, in a separate subsection, "honorably retired peace officer[s] authorized to carry a concealed or loaded firearm." *Id.* § 626.9(o)(1)-(4) (2012); *see also* Cal. Penal Code §§ 25450, 25650, 25900-25910, 26020.

[3] California Penal Code section 26150 *et seq.* sets forth the State of California's concealed carry permitting process, whereby an individual may obtain a "a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person" upon proof that "[t]he applicant is of good moral character," "[g]ood cause exists for issuance of the license," and "[t]he applicant has completed a course of training as described in [Penal Code section] 26165." Cal. Penal Code §§ 26150(a), 26155(a).

Honorably retired peace officers are exempted from California's prohibition on the carrying of concealed weapons. Cal. Penal Code §§ 25400, 25450, 25650. In order to be authorized to carry a concealed firearm, a retired peace officer must be honorably retired from service and obtain an endorsement that the officer should be permitted to carry a concealed weapon. *Id.* § 25455(c) (an honorably retired state peace officer must obtain an identification certificate with an "endorsement . . . stating that the issuing agency approves the officer's carrying of a concealed firearm"); *see also id.* § 25650(a), (b) (an honorably retired federal officer must obtain "approval of the sheriff of the county in which the retiree resides" and "provide the sheriff with certification from the agency from which the officer or agent retired . . . indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a concealed firearm").

The officer must renew the endorsement every five years, which can be revoked at any time for good cause. Cal. Penal Code §§ 25465 ("Every five years, a retired [state] peace officer . . . shall petition the issuing agency for renewal of the officer's privilege to carry a concealed firearm."), 25470(a) ("The agency from which a [state] peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent

thereto, deny or revoke for good cause the retired officer's privilege to carry a concealed firearm."); *see also id.* § 25650(c) ("The permit [for honorably retired federal officers] shall be valid for a period not exceeding five years . . . and may be revoked for good cause."). These same exceptions and requirements apply to California's prohibition on the carrying of a loaded weapon in public. *Id*. §§ 25850, 25900, 25905, 25910, 25915, 26020.

B. The Current Version of the Act as Amended in 2015.

In 2015, the Legislature enacted Senate Bill 707, 2014-2015 Reg. Sess. (Cal. 2015) ("SB 707"), to modify the exemption for CCW permit holders so that CCW permit holders would still be allowed to possess a firearm within a "school zone," but not on the grounds of a school. Cal. Pen. Code § 626.9(c)(5).[4] As initially proposed by State Senator Lois Wolk, SB 707 would have also modified the Retired Officer Exemption to allow possession of firearms within a "school zone," but not on the grounds of a school. (ER28 (S. Comm. on Pub. Safety, Analysis of S.B. 707, 2014-2015 Reg. Sess., at 5 (2015) ("Senate Committee Analysis")).) In proposing SB 707, Senator Wolk stressed the need to reduce the prevalence of firearms on school grounds: "Research also indicates that bringing more firearms on

[4] The amended version of SB 707 also added retired reserve officers to the Retired Officer Exemption. *See* Cal. Penal Code § 626.9(o)(5).

campus will lead to more campus violence and increase danger to students and others on campus." (*Id.* (quoting Sen. Wolk's comments regarding the need for SB 707).) Senator Wolk stated that "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." (*Id.*)

Several law enforcement organizations opposed this initial version of SB 707 due to the proposed modification of the Retired Officer Exemption. For example, the Sacramento County Deputy Sheriffs' Association argued that SB 707 would jeopardize the safety of retired peace officers and their families:

> SB 707 would make criminals out of our retired peace officer members who visit a school campus. . . . 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.

(ER30-31 (Senate Committee Analysis at 7-8) (quoting Sacramento County Deputy Sheriffs' Association's statement in opposition to SB 707).)

On July 2, 2015, SB 707 was amended to preserve the Retired Officer Exemption as originally enacted. (ER37 (Assemb. Comm. on Pub. Safety, Analysis of S.B. 707, 2014-2015 Reg. Sess., at 5 (2015) ("Assembly Committee Analysis")) ("The bill as originally drafted also prohibited honorably retired peace officers from carrying firearms o[n] school campuses. The July 2, 2015 amendments to the bill exempt honorably retired peace officers from the prohibition.").) Along with other organizations, the Sacramento County Deputy Sheriffs' Association withdrew its opposition to SB 707 and registered support for the revised bill. (ER39 (Assembly Committee Analysis at 7).)[5]

[5] Plaintiffs have filed a Motion to Take Judicial Notice ("MJN (Dkt. No. 10)) of, *inter alia*, selected letters from Senator Wolk's file on SB 707 (MJN, Exs. 2-31). The Attorney General filed an opposition to Plaintiffs' motion because this material was never submitted to the district court. *Lowry v. Barnart*, 329 F.3d 1019, 1024 (9th Cir. 2003) ("Save in unusual circumstances, we consider only the district court record on appeal." (citation omitted)). Even if the Court were to consider these extra-record materials, the letters from law enforcement organizations support the Attorney General's argument because the letters confirm that law enforcement was concerned about the safety of retired peace officers. (MJN, Exs. 21, 22, 26, 30, 31 ("The amended version of SB 707 will not impact the rights of our retired members and *will ensure that they will continue to be able to protect themselves* . . . ." (emphasis added)).)

The California Legislature passed the revised version of SB 707, and it was approved by the Governor on October 10, 2015. The Gun-Free School Zone Act, as amended by SB 707, took effect on January 1, 2016.

II. PROCEDURAL HISTORY OF THE CASE

On April 14, 2016, Plaintiffs filed their complaint asserting a single claim, pursuant to 42 U.S.C. § 1983, that the Retired Officer Exemption violates the Equal Protection Clause. The individual Plaintiffs are allegedly CCW permit holders who are "responsible, law-abiding citizens." (ER49 (Complaint) ¶ 33.)[6] In order to obtain their CCW permits, these Plaintiffs were required to "demonstrate 'good moral character,' complete a firearms training course, and establish 'good cause.'" (*Id.*) Plaintiffs allege that "several counties have interpreted the 'good cause' requirement to require that an applicant demonstrate an elevated need for self-defense due to . . . specific threats or previous attacks against them." (*Id.*) Plaintiffs further allege that "[r]etired 'peace officers,' by stark contrast, are not subject to these same screening requirements but rather appear to be eligible to carry firearms as a matter of course." (ER50 ¶ 34.)

[6] In addition to the CCW permit holders, four non-profit organizations are named Plaintiffs in this action: the Firearms Policy Coalition, the Firearms Policy Foundation, the Madison Society Foundation, and The Calguns Foundation. (ER41.)

Plaintiffs allege that the "net result is that the Act bars law-abiding citizens who maintain a government-issued CCW from possessing a firearm 'in or on' school grounds, but it grants a blanket exemption to a broadly defined group of retired 'peace officers,' none of whom have continuing authority to engage in 'peace officer' activities." (ER51 ¶ 36.) Among other relief, Plaintiffs ask for a declaratory judgment pursuant to 28 U.S.C. § 2201 that the Retired Officer Exemption violates the Equal Protection Clause. (ER52 at 11:1-10 (Prayer for Relief).)

The Attorney General moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[7] (ER56 (Trial Court Docket), Dkt. No. 14.) Concurrently, the Attorney General filed a request for the district court to take judicial notice of certain committee analyses of SB 707. (*Id.*, Dkt. No. 15; ER19-40 (Request for Judicial Notice).) Plaintiffs opposed dismissal and objected to the Attorney General's request for judicial notice. (ER56 (Trial Court Docket), Dkt. Nos. 16-17.) The

[7] The Attorney General moved to dismiss the claims of the four organizational Plaintiffs for lack of standing, pursuant to Federal Rule of Civil Procedure 12(b)(1), on the ground that their equal protection claims are not germane to the purposes of the organizations. *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1104 (9th Cir. 2005). In dismissing the complaint with prejudice, the district court did not address standing. The Attorney General does not challenge the standing of the organizations in this appeal.

Attorney General replied in further support of the motion to dismiss. (ER57 (Trial Court Docket), Dkt. No. 19.)

On August 5, 2016, the district court issued an order granting the Attorney General's motion to dismiss with prejudice. (ER57 (Trial Court Docket), Dkt. No. 20; ER05-17 (Order).) Plaintiffs filed a notice of appeal on August 8, 2016. (ER57 (Trial Court Docket), Dkt. No. 21; ER01-02 (Notice of Appeal).)

STANDARD OF REVIEW

This Court reviews de novo a district court's grant of a motion to dismiss. *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1159 (9th Cir. 2012). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citation omitted). This Court may affirm the district court's order of dismissal on any ground supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008).

A district court's decision to dismiss with prejudice is reviewed for abuse of discretion. *Okwu v. McKim*, 682 F.3d 841, 844 (9th Cir. 2012). The district court does not abuse its discretion in denying leave to amend where the deficiencies of the complaint cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

SUMMARY OF THE ARGUMENT

The Retired Officer Exemption does not violate the Equal Protection Clause, and this Court should affirm the district court's dismissal of the complaint with prejudice.

First, as a threshold issue, CCW permit holders and honorably retired peace officers are not similarly situated. The district court found that they are similarly situated by relying on *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014) (*ADAC II*)—an opinion of this Court that was later clarified by a subsequent opinion—and focusing incorrectly on the mere fact that both groups are civilians authorized to possess concealed firearms. These groups are not similarly situated because honorably retired peace officers face elevated and unique safety concerns not shared by CCW permit holders by virtue of their prior service in law enforcement. Retired peace officers also, generally, have more extensive training in situational awareness and firearms safety.

Second, even if CCW permit holders were similarly situated to honorably retired peace officers, the Retired Officer Exemption satisfies rational basis scrutiny, the applicable standard of scrutiny in this case. The exemption is rationally related to the legitimate government purpose of protecting honorably retired peace officers. The exemption is also consistent with the goal of promoting safe campuses in light of the extensive training retired peace officers have in the safe handling and storage of firearms. Plaintiffs' equal protection claim rests on an overly restrictive view of rational basis scrutiny. Relying principally on this Court's fifteen-year-old decision in *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *abrogated on other grounds by District of Columbia v. Heller*, 554 U.S. 570 (2008), Plaintiffs argue that the Retired Officer Exemption cannot satisfy rational basis scrutiny because the exemption is contrary to the Act's purported purpose of making schools "gun free." The legitimate government purpose proffered here—the safety of honorably retired peace officers—was not considered in *Silveira*. *Silveira* concerned an exemption for retired peace officers to the California Assault Weapons Control Act, not an exemption for retired peace officers to possess handguns used for self-defense. In stark contrast to the "high-powered, military-style weapons" at issue in *Silveira*, *id.* at 1090, the Retired Officer Exemption concerns the possession of

handguns, which the Supreme Court has characterized as "the quintessential self-defense weapon," *Heller*, 554 U.S. at 629.

Third, the appellate record confirms that the 2015 amendment to the Act was simply the product of normal legislative compromise and did not improperly discriminate against CCW permit holders. Unlike the cases cited by Plaintiffs, there is no evidence in the record of any improper legislative motive. Plaintiffs' dissatisfaction with the outcome of the legislative process, alone, is insufficient to state an equal protection claim where the Retired Officer Exemption is otherwise supported by a rational basis.

Fourth, dismissal with prejudice is appropriate in this case. Plaintiffs do not appear to challenge the district court's refusal to allow amendment, and, in any event, they cannot cure their complaint's deficiencies.

For these reasons, and those discussed in more detail herein, the Court should affirm the order of the district court dismissing Plaintiffs' complaint with prejudice.

ARGUMENT

I. CCW PERMIT HOLDERS ARE NOT SIMILARLY SITUATED TO HONORABLY RETIRED PEACE OFFICERS.

Under the Equal Protection Clause of the Fourteenth Amendment, no state shall "deny to any person within its jurisdiction the equal protection of

the laws," U.S. Const. amend. XIV, § 1, which is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)).

"'The first step in equal protection analysis is to identify the [government's] classification of groups'" and, "[o]nce the plaintiff establishes governmental classification, it is necessary to identify a 'similarly situated' class against which the plaintiff's class can be compared." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995) (citation omitted); *see also id.* ("The similarly situated group is the control group.") (quoting *United States v. Aguilar*, 883 F.2d 662, 706 (9th Cir. 1989)).[8]

The district court determined that CCW permit holders and retired peace officers are functionally similar: "Both Plaintiffs and retired peace officers may lawfully carry a concealed firearm for self-defense purposes, and neither group are active members of law enforcement that are required to carry concealed weapons for their occupation or for public safety." (ER10-11 (Order at 6-7).) While the two groups are superficially similar in certain respects, honorably retired peace officers face materially different

[8] In this case, the Act "classif[ies] persons for different treatment" "on its face." *United States v. Pitts*, 908 F.2d 458, 459 (9th Cir. 1990).

circumstances than do CCW permit holders. The Court may dispose of this appeal on this ground alone.

In concluding that Plaintiffs' have adequately established a "control group" for their equal protection claim, the district court relied upon this Court's decision in *ADAC II*, 757 F.3d 1053 (ER11 (Order at 7)), which Plaintiffs also cite in their opening brief (Opening Br. at 16). In *ADAC II*, the Court observed that, in order to be similarly situated, "[t]he groups need not be similar in all respects, but they must be similar in those respects relevant to the Defendants' policy." 757 F.3d at 1064. The Court held that recipients of Deferred Action for Childhood Arrivals ("DACA") were similarly situated to other noncitizens who were permitted to use Employment Authorization Documents to obtain driver's licenses because both groups comprise of noncitizens who may never receive formal immigration status. *Id.* But, in a subsequent decision, *Arizona Dream Act Coalition v. Brewer*, 855 F.3d 957 (9th Cir. 2017) (*ADAC III*), *petition for cert. filed*, 85 U.S.L.W. 3471 (U.S. Mar. 31, 2017) (No. 16-1180), this Court clarified and expanded upon its reasoning for concluding that these groups were similarly situated. *Id.* at 966 ("[W]e again hold that in all relevant aspects DACA recipients are similarly situated to noncitizens eligible for

drivers' licenses under Arizona's policy. Nonetheless, for clarity and completeness, we address once more Defendants' arguments.").

In *ADAC III*, the Court explained that the state's proffered distinction—that DACA recipients' presence in the United States is the result of the Executive's discretionary decision not to enforce federal immigration law and not due to any benefit conferred under law by Congress—was not sufficient because the Court observed that the federal government "holds exclusive authority concerning direct matters of immigration law." 855 F.3d at 966 (citation omitted). "In other words, the 'similarly situated' analysis must focus on factors of similarity and distinction pertinent to the state's policy, *not factors outside the realm of its authority and concern*." *Id.* at 967 (emphasis added). Here, in contrast with *ADAC III*, retired peace officers and CCW permit holders are not similarly situated with respect to the safety concerns and training of retired peace officers, issues that are well within the realm of the State of California's authority and concern.

As a general matter, retired peace officers face unique and heightened safety risks in comparison with the general public, including individuals with CCW permits, due to their prior service in law enforcement. *See Nichols v. Brown*, No. CV 11-09916 SJO, 2013 WL 3368922, at *6 (C.D. Cal. July 3, 2013) ("[T]he California Legislature could have reasonably

believed that certain groups, such as retired police officers, were in greater need of self-protection and thus should be allowed to openly carry a firearm."); *Williams v. Puerto Rico*, 910 F. Supp. 2d 386, 399 (D.P.R. 2012) (noting that current and former government officials have a greater need for firearms because "[t]he sensitive nature of many of their jobs . . . subjects them to additional risks of danger"); *id.* (noting that the Law Enforcement Officers Safety Act, 18 U.S.C. § 926, "allows certain current and retired government officials to carry concealed weapons throughout the United States *in the interest of safety*" (emphasis added) (citing H.R. Rep. 108-560, at 4 (2004))).

To the extent Plaintiffs contend that some CCW permit holders may also face threats to their safety—beyond the safety concerns shared by public at large—most of the Plaintiffs in this action do not allege that they face any such threats. (*See, e.g.*, Opening Br. at 9-10 (summarizing the alleged safety concerns of two of the ten individual plaintiffs); ER44-45 ¶¶ 10, 17 (allegations in the complaint).)[9] The mere possession of a CCW

[9] One of the plaintiffs who allegedly obtained a CCW permit due to safety concerns, Ulises Garcia, has been dismissed from this appeal. The other plaintiff, Lisa Jang, allegedly obtained a CCW permit in Sacramento County in response to "multiple reports of crime on and near the campus" of the university that she attended (ER45 ¶ 17). Such a localized threat,

(continued…)

permit does not imply a government finding of a threat to one's safety. Indeed, the Penal Code does not define what "good cause" is required in order to qualify for a CCW permit. Cal. Penal Code §§ 26150(a), 26155(a). "Good cause" is defined at the county level. *See Peruta v. Cnty. of San Diego*, 824 F.3d 919, 926-27 (9th Cir. 2016) (en banc) (noting that "California law authorizes county sheriffs to establish and publish policies defining good cause" and discussing the definitions of "good cause" employed by San Diego and Yolo Counties that require applicants to demonstrate an actual threat to their safety), *petition for cert. filed*, 85 U.S.L.W. 3363 (U.S. Jan. 17, 2017) (No. 16-894). While "*several counties* have interpreted the 'good cause' requirement to require that an applicant demonstrate an elevated need for self-defense" (Opening Br. at 11 (emphasis added)), that is not the case in all counties throughout the State of California. At a general level, CCW permit holders and honorably retired peace officers are not similarly situated with respect the threats retired officers face as a result of their service in law enforcement.

(…continued)
however, would not extend to other campuses or to K-12 "school zones" and, thus, would not be similar to the type of generalized threat faced by retired law enforcement personnel. In any event, the relief that Plaintiffs seek in this action—the elimination of the Retired Officer Exemption—would not address any safety concerns they may have.

Additionally, CCW permit holders generally do not have the same degree of training as retired peace officers, in terms of the safe handling, storage, and operation of firearms and situational awareness. *See Kolbe v. Hogan*, 849 F.3d 114, 147 (4th Cir. 2017) (en banc) ("[R]etired officers are better equipped to safely handle and store [assault] weapons and magazines and to prevent them from falling into the wrong hands. Accordingly, we reject the plaintiffs' equal protection challenge for lack of an initial showing that the [challenged statute] treats similarly situated persons differently.").

Accordingly, this appeal can, and should, be disposed of at the first step of the Court's equal protection analysis because Plaintiffs have failed to demonstrate that, as a class, CCW permit holders are similarly situated to honorably retired peace officers.[10]

[10] *Silveira* is not to the contrary. Although the *Silveira* court held that the exemption for honorably retired peace officers to the California Assault Weapons Control Act violated the Equal Protection Clause, the opinion did not discuss whether honorably retired peace officers were similarly situated to members of the general public. *See Kolbe*, 849 F.3d at 147 n.18 (en banc) (noting that *Silveira* "did not analyze whether there was differential treatment of similarly situated persons"). In any event, *Silveira* is distinguished from this case and, thus, is not controlling authority. (*See infra* Section II.D.)

II. THE RETIRED OFFICER EXEMPTION SATISFIES RATIONAL BASIS SCRUTINY.

Even if this Court accepts that CCW permit holders and honorably retired peace officers are similarly situated, Plaintiffs' claim fails. The "next step" is to determine and apply the appropriate level of scrutiny to the Retired Officer Exemption. *Country Classic Dairies, Inc. v. State of Mont., Dep't of Commerce Milk Control Bureau*, 847 F.2d 593, 596 (9th Cir. 1988). Rational basis scrutiny applies in this case, and the Retired Officer Exemption satisfies that deferential standard of scrutiny.

A. Rational Basis Scrutiny Applies in this Case.

Rational basis is the appropriate level of scrutiny for examining the Retired Officer Exemption because the Act neither interferes with the exercise of a fundamental right nor employs a suspect classification.[11] *See*

[11] Although the United States Supreme Court has found that the Second Amendment protects a fundamental right to keep and bear arms under some circumstances, *McDonald v. City of Chi.*, 561 U.S. 742, 786 (2010), the Court has made it clear that this right does not extend to a right to possess firearms on school grounds, *Heller*, 554 U.S. at 626 (acknowledging that laws "forbidding the carrying of firearms in sensitive places such as schools" are presumptively lawful); *McDonald*, 561 U.S. at 786 ("We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as . . . 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of

(continued…)

Nordyke v. King, 681 F.3d 1041, 1043 n.2 (9th Cir. 2012) ("As to the [plaintiffs'] equal protection claim, because the ordinance does not classify . . . on the basis of a suspect class, and because we hold that the ordinance does not violate either the First or Second Amendments, rational basis scrutiny applies." (citations omitted)). As plaintiffs appear to concede, rational basis is the appropriate level of scrutiny in this case. (*See, e.g.*, Opening Br. at 17-18 (discussing "rational basis analysis"); *id.* at 30 (claiming that the Retired Officer Exemption "is not a rational classification, and it therefore violates the Equal Protection Clause").)

In a footnote, Plaintiffs appear to suggest that some form of heightened scrutiny may apply, by asking this Court to defer consideration of this case if the United States Supreme Court were to grant the petition for a writ of certiorari in *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc). (Opening Br. at 16 n.6.) This case should not be deferred. Plaintiffs cannot seek such relief in a footnote in their brief, and deferral is not warranted because *Peruta* does not concern whether the carrying of concealed weapons on school grounds is a fundamental right. In *Heller* and

(…continued)
arms.'" (citation omitted)). Because the Act prohibits the possession of firearms on school grounds, it does not implicate any fundamental right.

McDonald, the Supreme Court made clear that the Second Amendment does not protect a right to carry firearms on school grounds. (*See supra* note 11.) Regardless of the ultimate outcome of *Peruta*, rational basis applies in this case because Plaintiffs' equal protection claim does not implicate any Second Amendment rights.

B. Plaintiffs Mischaracterize Rational Basis Scrutiny.

Under rational basis review, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne*, 473 U.S. at 440 (citations omitted). And when social or economic legislation like the Act is at issue, "the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *Id.* (internal and external citations omitted). The party attacking the classification bears the burden of demonstrating that there is no reasonable basis for the challenged distinction and to "negative every conceivable basis which might support it." *Heller v. Doe*, 509 U.S. 312, 320 (1993) (citation omitted). "[T]he Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually

articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992).

Plaintiffs argue that, under rational basis scrutiny, the Retired Officer Exemption cannot be upheld if it is contrary to the purpose of the Gun-Free School Zone Act. (Opening Br. at 25-26 (citing *Silveira*, 312 F.3d at 1090).) Plaintiffs seize upon a quotation from Senator Wolk, the author of SB 707, to claim that the only purposes of SB 707 were to "ensure [1] that students and parents who expect a campus to be safe and 'gun free' can be confident that their expectation is being met and [2] that school officials are fully in charge of who is being allowed to bring a firearm on their campus." (Opening Br. at 23 (numbers added in opening brief) (quoting ER 36 (Assembly Committee Analysis at 4)).)[12] Asserting that the exemption "runs

[12] The numerous exemptions built into the Act demonstrate that its purpose was not to establish that campuses are wholly "free" of guns or to ensure that school officials would be "fully in charge" of who may carry firearms on campus, without limitation. *See, e.g.*, Cal. Penal Code § 626.9(c)(3) (individuals with restraining orders); *id.* § 626.9(m) (security guards); *id.* § 626.9(n) (shooting ranges on school grounds). In this sense, Senator Wolk's generalized comments should not be taken out of their rhetorical or political context. In any event, Senator Wolk's comments about SB 707 do not necessarily reflect what the Legislature intended in enacting the bill. *See Consumer Prod. Safety Comm. v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980) ("[O]rdinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history.").

directly contrary to both of th[ese] stated purposes," Plaintiffs argue that the Retired Officer Exemption cannot satisfy rational basis scrutiny. (*Id.* at 24.) Plaintiffs are wrong.

Plaintiffs' overly restrictive view of rational basis scrutiny is based on an overreading of dicta from *Silveira*, which noted that the retired officer exemption in that case was "wholly contrary to the legislature's stated reasons for enacting" the Assault Weapons Control Act. (Opening Br. at 25 (quoting *Silveira*, 312 F.3d at 1090).) By its very nature, however, an exemption to a statute will often run counter to the purpose of the statute because it has the effect of reducing the range of instances in which the statute will apply. But that alone will not render an exemption unconstitutional. *See, e.g.*, *Nordlinger*, 505 U.S. at 15 (holding that exemptions to the acquisition-value tax scheme in Article XIIIA of the California Constitution "rationally further legitimate purposes," such as not discouraging older property owners from moving to new principal residences or transferring property to children, which were different purposes than those underlying Article XIIIA); *Taylor v. Rancho Santa Barbara*, 206 F.3d 932, 936 (9th Cir. 2000) (holding that the "housing-for-older-persons exemption" to the Fair Housing Act "bears a rational relationship to the government's legitimate interest in preserving and

promoting housing for older persons" and "might rationally promote enhanced services" for senior housing, even though the purpose of the Fair Housing Act was to "prohibit[] housing discrimination on the basis of familial status"). Further, *Silveira* itself observed that an exception to the Assault Weapons Ban can be inconsistent with the purpose of the statute while still complying with the Equal Protection Clause. *Silveira*, 312 F.3d at 1090 n.57 (noting that the grandfather clause in the Assault Weapons Control Act "may also appear to be inconsistent with th[e] legislative intent [of the statute]," but "the argument that a rational basis for the grandfather clause exists is entirely different from, and likely more substantial than, those put forward to justify the off-duty exception").

Plaintiffs' view of rational basis scrutiny is incompatible with "the 'strong presumption' in favor of the constitutionality of laws and the 'extremely deferential' posture toward government action that are the marks of rational basis review." *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014) (citation omitted). This Court should apply rational basis scrutiny as it is traditionally applied in cases not involving suspect classifications or fundamental rights and uphold the Retired Officer Exemption if it can "identify *any* hypothetical rational basis for the exception." *Silveira*, 312 F.3d at 1090.

C. The Retired Officer Exemption Is Rationally Related to a Legitimate Government Interest.

The Retired Officer Exemption is rationally related to a legitimate government interest: the protection and safety of retired peace officers. While it is not necessary to delve into legislative history to uphold the exemption under rational basis scrutiny, this rationale is in fact reflected in the legislative history of SB 707. In initially opposing SB 707, the Sacramento County Deputy Sheriffs' Association argued that the amendment would jeopardize the safety of retired peace officers: "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." (ER30 (Senate Committee Analysis at 7) (quoting Sacramento County Deputy Sheriffs' Association's statement in opposition to SB 707).)

The Retired Officer Exemption is also rationally related to a different legitimate government purpose—public safety—due to the extensive training that law enforcement personnel receive regarding the safe storage and operation of firearms. The Legislature could have concluded that retired

peace officers are "better equipped to safely handle and store [firearms] and to prevent them from falling into the wrong hands." *See Kolbe*, 849 F.3d at 147.[13] This conclusion would be consistent with the safety interests underlying the Act.

Plaintiffs argue that exemption is overinclusive because the exemption covers categories of retired peace officers who, according to Plaintiffs, do not have a sufficient self-defense interest (*e.g.*, retired officers of the California Department of Fish and Game and retired marshals and police appointed "to keep order and preserve peace at the California Exposition and State Fair"). (Opening Br. at 28-29 (citing Cal. Penal Code § 830.2).) Plaintiffs' argument minimizes the potential risks to these officers, who are sometimes required to engage with the public in confrontational situations and have the power to arrest members of the public. Plaintiffs also argue that the Retired Officer Exemption is underinclusive because it does not cover individuals, including certain active or retired peace officers from

[13] Although the *Silveira* court rejected the training of retired peace officers as a rational basis for exempting them from the California Assault Weapons Control Act, the Court did so because it determined that "[t]his justification is basically inconsistent with the legislative purpose of the [statute]." *Silveira*, 312 F.3d at 1091. Here, in contrast to *Silveira*, ensuring that individuals with the most skill in the safe handling of firearms is not inconsistent with the purposes of the Act. (*See* Section II.D (distinguishing *Silveira* on the ground that the Act provides numerous exemptions).)

different states, who may have a self-defense interest arising out of their service in law enforcement. (*Id.* at 29-30.) Both of these arguments fail because, under rational basis scrutiny, the Retired Officer Exemption will not be invalidated simply because the "fit" between the exemption and the legitimate government interest is imperfect. *See Vance v. Bradley*, 440 U.S. 93,108 (1979) ("Even if the classification involved here is to some extent both underinclusive and overinclusive, and hence the line drawn by [the Legislature] imperfect, it is nevertheless the rule that in a case like this 'perfection is by no means required.'" (quoting *Phillips Chem. Co. v. Dumas Sch. Dist.*, 361 U.S. 376, 385 (1960))); *see also United States v. Thornton*, 901 F.2d 738, 740 (9th Cir. 1990) ("'[E]qual protection of the laws does not require [the Legislature] in every instance to order evils hierarchically according to their magnitude and to legislate against the greater before the lesser.'" (citation omitted)). It is well within the province of the Legislature to determine which peace officers should be covered by the Retired Officer Exemption.

Plaintiffs also suggest that SB 707 represented a departure from past treatment of CCW permit holders and that this change in policy may undermine the rationality of the Retired Officer Exemption. (Opening Br. at 18 ("[P]rior to SB 707, civilians authorized to carry firearms in California

were treated identically for 48 years.").) The Legislature, however, is free to experiment with different regulations and adjust to changing prerogatives over time, so long as there exists a rational basis for the adjustments (as was the case here). *Cf. Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985) ("'The science of government . . . is the science of experiment'" (citation omitted)).

D. *Silveira* Is Not Controlling Authority in this Case.

Plaintiffs base their equal protection claim principally on this Court's decision in *Silveira*, which invalidated under rational basis scrutiny an exemption for retired peace officers to California's Assault Weapons Control Act.[14] (*See* Opening Br. at 19-28.) But the exemption for retired peace officers struck down in *Silveira* bears little resemblance to the Retired Officer Exemption at issue in this case.

Silveira concerned an exemption for retired peace officers—even those who may not have been honorably retired—to possess assault weapons that

[14] *Silveira* also held that the Second Amendment protects only a collective right to own or possess firearms. *Silveira*, 312 F.3d at 1092. The United States Supreme Court abrogated this holding in *Heller*, which held that the Second Amendment protects an individual right to bear arms.

they received or purchased upon their retirement.[15] After observing that the Court "must attempt to identify *any* hypothetical rational basis for the exception, whether or not that reason is in the legislative record," *Silveira*, 312 F.3d at 1090, the Court proceeded to reject several potential justifications for the exemption. *Id.* at 1090-91. The Court held that the exemption "bears no reasonable relationship to the stated legislative purpose of banning the possession and use of assault weapons in California, except for certain law enforcement purposes." *Id.* at 1091.

The Court in *Silveira* did not address any self-defense justification for the exemption, even though, according to Plaintiffs, "[i]t goes without saying that possessing more powerful weapons enhances one's self defense." (Opening Br. at 27.) This should not be surprising. Even under rational basis, the Court must "scrutinize the connection, if any, between the goal of a legislative act and the way in which individuals are classified in order to achieve that goal." *Silveira*, 312 F.3d at 1088. The Court held that the

[15] *See* Cal. Penal Code § 12280(h) (2002) (the assault weapons ban "shall not prohibit the sale or transfer of assault weapons by an entity . . . to a person, upon retirement, who retired as a sworn officer from that entity"); *id.* § 12280(i) (2002) (the assault weapons ban "shall not apply to the possession of an assault weapon by a retired peace officer who received that assault weapon pursuant to subdivision (h)").

relationship between the exemption for retired officers to possess assault weapons and "*any* legitimate state goal 'is so attenuated as to render the distinction arbitrary or irrational.'" *Id.* at 1091 (quoting *City of Cleburne*, 473 U.S. at 446). Here, in contrast to the "high-powered, military-style weapons" at issue in *Silveira*, *id.* at 1090, the Retired Officer Exemption concerns the possession of handguns, which the Supreme Court has characterized as "the quintessential self-defense weapon," *Heller*, 554 U.S. at 629.[16]

Silveira is further distinguished from this case because, contrary to the comprehensive ban at issue in *Silveira*, the Act recognizes several exemptions that allow individuals, in addition to honorably retired peace officers, to possess firearms on school grounds. *See, e.g.*, Cal. Penal Code § 626.9(b) (exempting an individual who has "the written permission of the school district superintendent, his or her designee, or equivalent school

[16] In a footnote, Plaintiffs cite an opinion of the Attorney General addressing whether "a peace officer who purchases and registers an assault weapon in order to use the weapon for law enforcement purposes [would be] permitted to continue to possess [it] after retirement." (Opening Br. at 22 n.8 (quoting Att'y Gen. Op. No. 09-901, 93 Ops. Cal. Atty. Gen. 130 (2010)).) Relying on *Silveira*, that opinion concluded that peace officers are not permitted to possess assault weapons after retirement. (*Id.*) The opinion did not address whether retired peace officers should be exempted from the Gun-Free School Zone Act.

authority"); *id.* § 626.9(c)(3) (exempting an individual who "reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order"). In contrast, the Court determined that the purpose of the California Assault Weapons Control Act was "to *eliminate* the availability of [assault] weapons generally." *Silveira*, 312 F.3d at 1091 (emphasis added). Notwithstanding the title of the Act,[17] the goal of the Gun-Free School Zone Act was to reduce the number of guns on campuses and within school zones while recognizing legitimate and suitably tailored exceptions. Accordingly, the Retired Officer Exemption is not "wholly inconsistent" with the purposes of the Act.

III. THE RETIRED OFFICER EXEMPTION DOES NOT IMPROPERLY CONFER A BENEFIT ON A POLITICALLY POWERFUL CLASS OR DISCRIMINATE AGAINST A POLITICALLY UNPOPULAR CLASS.

In a final attempt to invalidate the Retired Officer Exemption, Plaintiffs and *Amicus curiae* Cato Institute (Cato) argue that the Legislature enacted SB 707 to "favor[] a politically powerful group and to disfavor a politically unpopular one" in preserving the Retired Officer Exemption while limiting the exemption for CCW permit holders by prohibiting their possession of

[17] The title of a statute can aid in the interpretation of a statute only when it "shed[s] light on some ambiguous word or phrase" in the statute, *Carter v. United States*, 530 U.S. 255, 267 (2000) (quoting *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998)), which is not the case here.

firearms on the grounds of a school. (Opening Br. at 30-31; Brief of *Amicus Curiae* Cato Institute in Support of Appellants ("Cato Br.") at 17.)[18] Plaintiffs' claim of animus towards CCW Permit Holders is implausible and their claim that honorably retired peace officers received preferential treatment in SB 707 due to political lobbying is insufficient to invalidate the Retired Officer Exemption on equal protection grounds.

A. SB 707 Was Not Enacted Out of Animus Towards CCW Permit Holders.

As discussed above, the Retired Officer Exemption satisfies rational basis scrutiny. (*See supra* Section II.) Likewise, the Legislature's decision in 2015 to modify the exemption for CCW permit holders in enacting SB 707 is also supported by a rational basis. Public safety is a legitimate government interest, *see United States v. Navarro*, 800 F.3d 1104, 1113-14 (9th Cir. 2015) (noting that the "protect[ion] of public safety" "clearly constitute[s a] legitimate government interest[]"), and reducing the number

[18] Cato's argument appears to be based on a misreading of SB 707: "Now, no concealed-carry license holder can carry his or her weapon within 1000 feet of a school; retired peace officers, on the other hand, retain that right." (Cato Br. at 2; *see also id.* at 17 (contending that "even those concealed-carry holders who had acquired their licenses in response to specific and credible threats would be unable to traverse *school zones* with their weapon" (emphasis added)).) As discussed, under California Penal Code section 626.9(c)(5), CCW permit holders are allowed to carry within a "school zone," so long as they do not carry a firearm on school grounds.

of firearms on school grounds is rationally related to that interest, *see Peruta*, 824 F.3d at 943 (Graber, J., concurring) (discussing statistics of incidents in which CCW permit holders committed acts of violence notwithstanding their prior status as "law-abiding citizens"). While the Legislature *might have* furthered that interest to an even greater extent by also eliminating the Retired Officer Exemption, and any of the other exemptions to the Act, nothing precludes the Legislature from making the Act underinclusive (or overinclusive) while still satisfying rational basis scrutiny. (*See supra* Section II.C.)

In contrast to the authorities relied upon by Plaintiffs, there is no evidence of animus towards CCW permit holders in the record. *See U.S. Dep't of Ag. v. Moreno*, 413 U.S. 528, 534 (1973) (noting that "[t]he legislative history . . . indicates that [the amendment to the food stamp program] was intended to prevent socalled 'hippies' and 'hippie communes' from participating in the food stamp program" and that "a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest"); *City of Cleburne*, 473 U.S. at 448 (noting that, although "the [City] Council was concerned with the negative attitude of the majority of property owners" living near the facility, "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable

in a zoning proceeding, are not permissible bases for treating a home for the [intellectually disabled] differently"); *Romer v. Evans*, 517 U.S. 620, 635 (1996) (concluding "that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else" in light of the lack of any rational basis for the classification).[19]

In this case, CCW permit holders are not a "discrete and insular minorit[y]" worthy of special protection under the Equal Protection Clause. *See United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938). Even if they were, Plaintiffs have failed to identify any evidence of animus towards CCW permit holders, even if the Court were to consider the supplemental materials submitted with their Motion to Take Judicial Notice; at most, these materials show that law enforcement groups at first opposed the legislation, then supported it once it was amended. Nor can animus be

[19] Cato argues that the district court was required to engage in a "searching inquiry of 'the totality of the relevant facts'" in determining the legislative intent of SB 707. (Cato Br. at 3.) But Cato does not identify what part of the record substantiates its claim that SB 707 was enacted out of animus towards CCW permit holders. Moreover, the cases cited by Cato involving disparate effects without direct evidence of animus are not applicable here because they involved suspect classifications that are subject to heightened scrutiny. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Wash. v. Davis*, 426 U.S. 229 (1976); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); *Rogers v. Lodge*, 458 U.S. 613 (1982).

inferred from the record because the differential treatment is supported by a rational basis: to reduce the number of guns on school grounds while accommodating the special safety concerns of retired peace officers and their heightened training in firearm safety.

Contrary to Plaintiffs' claim that CCW permit holders are a "politically-unpopular group" (*e.g.*, Opening Br. at 31), the fact remains that CCW permit holders are recipients of a special privilege not afforded to other civilians—permits exempting them from the Penal Code's concealed carry prohibitions. *See* Cal. Penal Code § 26150 *et seq.* In addition to receiving special treatment under California's concealed carry laws, CCW permit holders enjoy their own exemption to the Act. Unlike all other individuals who are not exempted from the Act, CCW permit holders are authorized under the Act to possess firearms within "school zones" (*i.e.*, within 1,000 feet of a K-12 school), provided that they do not possess firearms on the grounds of a school. Cal. Penal Code § 626.9(c)(5). With this unique exemption, CCW permit holders can, for example, carry concealed firearms while taking their children to school; they just cannot carry those firearms onto the campus. While CCW permit holders may not be able to carry firearms on school grounds like other exempt categories, their limited exemption affords them greater freedom than the rest of the

public. Plaintiffs cannot plausibly allege that SB 707 improperly discriminated against them.

B. The Enactment of SB 707 Did Not Improperly Confer a Benefit on Honorably Retired Peace Officers.

Plaintiffs also argue that SB 707 was irrational because, they contend, SB 707 was amended to restore the original Retired Officer Exemption due to political lobbying. (Opening Br. at 30.) Plaintiffs base this argument on certain letters from law enforcement organizations and a newspaper editorial, which surmised that Senator Wolk amended SB 707 "to win police lobby support to help push the bill through the Senate." (*Id.* at 33 (quoting L.A. Times Editorial Bd., *Making the Gun Free School Zone Act Better*, L.A. Times, Aug. 30, 2015); *see also* MJN, Ex. 39.)[20]

This editorial reflects the opinions of the Los Angeles Times' editorial board, and not necessarily the opinion of Senator Wolk.[21] Even so, Senator Wolk's views as to why SB 707 was amended would not be controlling as to

[20] As discussed in the Attorney General's opposition to Plaintiffs' Motion to Take Judicial Notice, the Court should not judicially notice this editorial because (i) it is not part of the appellate record and (ii) is not part of the legislative history of SB 707.

[21] Although Plaintiffs cite this editorial to claim that Senator Wolk "*admitted* that the decision to retain the retired peace officer exemption was the result of this political pressure" (Opening Br. at 33 (emphasis added)), the editorial contains no such admission. (MJN, Ex. 39.)

why *the Legislature* passed the bill. *See Consumer Prod. Safety Comm.*, 447 U.S. at 118 ("[O]rdinarily even the contemporaneous remarks of a single legislature who sponsors a bill are not controlling in analyzing legislative history."). And, even if the reason for amending SB 707 had been "partly political" (Opening Br. at 33), that alone does not render legislation unconstitutional.

Moreover, there is nothing unusual—let alone unconstitutional—for a "lobby" to advocate on behalf of its members for a statutory change that would benefit its members. *See James v. Valtierra*, 402 U.S. 137, 142 (1971) ("Of course a lawmaking procedure that 'disadvantages' a particular group does not always deny equal protection."); *Wash. v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 496 (1982) (Powell, J., dissenting) ("Any time a State chooses to address a major issue some persons or groups may be disadvantaged. In a democratic system there are winners and losers. But there is no inherent unfairness in this and certainly no constitutional violation."). If Plaintiffs believe that the Legislature's distinction between CCW permit holders and retired officers is unfair, their remedy lies in the political process.

IV. DISMISSAL WITH PREJUDICE IS APPROPRIATE BECAUSE PLAINTIFFS CANNOT CURE THE DEFICIENCIES OF THEIR CLAIM.

Plaintiffs challenge the district court's decision to dismiss the complaint, but they do not challenge the district court's decision to dismiss the complaint with prejudice in the event that they have failed to state a claim. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived." (citation omitted)). Dismissal without leave to amend is appropriate when the deficiencies in the complaint cannot be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *see also Watison v. Carter*, 668 F.3d 1108, 1117 (9th Cir. 2012) (dismissal with prejudice is appropriate if the district court "determines that the pleading could not possibly be cured by the allegation of other facts" (citation omitted)).

As demonstrated above, as a matter of law, the Retired Officer Exemption satisfies rational basis scrutiny, and any claim that SB 707 was enacted out of animus towards CCW permit holders or to improperly benefit honorably retired peace officers is implausible at best. The district court properly determined that the Retired Officer Exemption does not violate the Equal Protection Clause, and there is nothing that Plaintiffs could allege in an amended pleading to cure the deficiencies in the complaint.

CONCLUSION

For these reasons, the Court should affirm the order of the district court dismissing Plaintiffs' complaint with prejudice.

Dated: June 2, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARC LEFORESTIER
Acting Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

S/ John D. Echeverria
JOHN D. ECHEVERRIA
Deputy Attorney General
Attorneys for Defendant and Appellee Xavier Becerra, Attorney General of California

NO. 16-56125

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JORDAN GALLINGER, et al.,

Plaintiffs and Appellants,

v.

XAVIER BECERRA, in his official capacity as Attorney General of California,

Defendant and Appellee.

On Appeal from the United States District Court
for the Central District of California

No. 2:16-cv-02572-BRO-AFM
The Honorable Beverly Reid O'Connell, Judge

STATEMENT OF RELATED CASES

XAVIER BECERRA
Attorney General of California
MARC LEFORESTIER
Acting Senior Assistant
Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

JOHN D. ECHEVERRIA
Deputy Attorney General
State Bar No. 268843
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-4902
Fax: (213) 897-5775
Email: John.Echeverria@doj.ca.gov
Attorneys for Defendant and Appellee Xavier Becerra, Attorney General of California

Pursuant to Circuit Rule 28-2.6 of the Rules of the United States Court of Appeals for the Ninth Circuit, to the best of our knowledge, there are no related cases.

Dated: June 2, 2017

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
MARC LEFORESTIER
Acting Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

S/ John D. Echeverria
JOHN D. ECHEVERRIA
Deputy Attorney General
Attorneys for Defendant and Appellee Xavier Becerra, Attorney General of California

SA2016103210
52508733 (2).docx

STATUTORY ADDENDUM

TABLE OF CONTENTS

Page

STATUTES

Cal. Penal Code § 626.9 (2016) (Current Version)

PENAL CODE
Part 1. Of Crimes and Punishments
Title 15. Miscellaneous Crimes
Chapter 1. Schools

§ 626.9. Gun-Free School Zone Act

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) 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.

(2) 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.

This section does not prohibit or limit the otherwise 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.

(3) 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. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the

trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625, 25630, or 25645.

(5) When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is not in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but within a distance of 1,000 feet from the grounds of the public or private school.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) 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 pursuant to Section 25400.

(B) By 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, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g)(1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, 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, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, 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, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be

deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(l) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, 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, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (d) of Section 7582.1 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

(5) Paragraph (2) of subdivision (c) of Section 26300.

(p) This section does not apply to a peace officer appointed pursuant to Section 830.6 who is authorized to carry a firearm by the appointing agency.

Cal. Penal Code § 626.9 (2012) (Prior Version)

PENAL CODE
Part 1. Of Crimes and Punishments
Title 15. Miscellaneous Crimes
Chapter 1. Schools

§ 626.9. Gun-Free School Zone Act

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) 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.

(2) 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.

This section does not prohibit or limit the otherwise 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.

(3) 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. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the

trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625, 25630, or 25645.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) 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 pursuant to Section 25400.

(B) By 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, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g)(1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the

execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, 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, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, 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, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(l) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, 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 the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-1.1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 16-56125

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28-1.1.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☒ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1.
The brief is [9399] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the longer length limit authorized by court order dated [ ]
The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R .App. P. 32(a)(5) and (6).

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4.
The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant: s/ John D. Echeverria

Date: June 2, 2017

("s/" plus typed name is acceptable for electronically-filed documents)

CERTIFICATE OF SERVICE

Case Name: **Jordan Gallinger, et al. v. Xavier Becerra (APPEAL)** Case No. **16-56125**

I hereby certify that on June 2, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEE'S ANSWERING BRIEF

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 2, 2017, at Los Angeles, California.

Colby Luong	s/ Colby Luong
Declarant	Signature

SA2016103210
52509546.doc