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**No.: 14-55873 [DC 2:11-cv-09916-SJO-SS]**

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

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**Charles Nichols,**

*Plaintiff-Appellant,*

**v.**

**EDMUND G. BROWN JR., in his official capacity as Governor of California**

**and**

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

*Defendants-Appellees.*

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
[DC 2:11-cv-09916-SJO-SS]**

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**PLAINTIFF-APPELLANT NICHOLS' NOTICE OF AMENDMENT TO  
CALIFORNIA PENAL CODE SECTION 26400**

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In Pro Per**

PLEASE TAKE NOTICE than on January 1, 2018, Assembly Bill 7 (2017-2018 Reg. Sess.) (“AB 7”) went into effect.

The legislation extended California’s ban on openly carrying unloaded long guns from incorporated cities to include “A public place or a public street in a prohibited area of an unincorporated area of a county.” PC 26400(a)(2).

This does not raise a new issue on appeal. *Nichols*’ operative complaint, which seeks prospective injunctive and prospective declaratory relief against California Penal Code section 26400, is not limited to incorporated cities.

Such relief also falls within the four corners of *Nichols*’ operative complaint such as, but not limited to, his Prayer for Relief at page 39 “X. Such other and further relief as this Court may deem appropriate.”

As in *Wrenn v. District of Columbia*, 864 F.3d 650 (2017) at 667, this court has the “power to dispose [of it] `as may be just under the circumstances,” *Gross v. United States*, 390 U.S. 62, 71, 88 S.Ct. 709, 19 L.Ed.2d 906 (1968) (quoting 28 U.S.C. § 2106), and should do so "to obviate further and entirely unnecessary proceedings below," *id.* at 72, 88 S.Ct. 709...”

A copy of the bill, AB 7, is attached.

Date: January 8, 2018

Respectfully submitted,

/s/ Charles Nichols  
CHARLES NICHOLS  
Plaintiff-Appellant In Pro Per



## Assembly Bill No. 7

### CHAPTER 734

An act to amend Section 26400 of, to amend the heading of Article 1 (commencing with Section 26400) of Chapter 7 of Division 5 of Title 4 of Part 6 of, and to amend the heading of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6 of, the Penal Code, relating to firearms.

[Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 7, Gipson. Firearms: open carry.

Existing law prohibits, with certain exceptions, openly carrying an unloaded handgun outside a vehicle while in or upon a public place or public street of an incorporated city or city and county or while in or upon a public place or public street within a prohibited area, being defined as any area in which it is unlawful to discharge a firearm.

Existing law also prohibits, with certain exceptions, carrying an unloaded firearm that is not a handgun, such as a shotgun or rifle, while in an incorporated city or city and county but does not prohibit the carrying of an unloaded firearm other than a handgun in unincorporated areas of a county.

This bill would prohibit the carrying of, and make it a crime to carry, an unloaded firearm other than a handgun while in or upon a public place or public street within a prohibited area located within the unincorporated area of a county.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 7 (commencing with Section 26400) of Division 5 of Title 4 of Part 6 of the Penal Code is amended to read:

CHAPTER 7. CARRYING AN UNLOADED FIREARM THAT IS NOT A HANDGUN

SEC. 2. The heading of Article 1 (commencing with Section 26400) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code is amended to read:

Article 1. Crime of Carrying an Unloaded Firearm that is not a Handgun

SEC. 3. Section 26400 of the Penal Code is amended to read:

26400. (a) A person is guilty of carrying an unloaded firearm that is not a handgun when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in any of the following areas:

(1) An incorporated city or city and county.

(2) A public place or a public street in a prohibited area of an unincorporated area of a county.

(b) (1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

(c) (1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term “an unloaded firearm that is not a handgun” is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

9th Circuit Case Number(s)

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