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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 ULISES GARCIA; JORDAN GALLINGER;
16 BRIAN HILL; BROOKE HILL; CRAIG
17 DELUZ; SCOTT DIPMAN; ALBERT
18 DUNCAN; TRACEY GRAHAM; LISA JANG;
19 DENNIS SERBU; MICHAEL VEREDAS;
20 FIREARMS POLICY FOUNDATION;
21 FIREARMS POLICY COALITION;
22 MADISON SOCIETY FOUNDATION; and
23 THE CALGUNS FOUNDATION,

24 Plaintiffs,

25 v.

26 KAMALA D. HARRIS, in her official capacity
27 as Attorney General of California,

28 Defendant.

Case No.:

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

1 Plaintiffs Ulises Garcia, Jordan Gallinger, Brian Hill, Brooke Hill, Craig DeLuz, Scott
 2 Dipman, Albert Duncan, Tracey Graham, Lisa Jang, Dennis Serbu, Michael Veredas, Firearms
 3 Policy Foundation, Firearms Policy Coalition, Madison Society Foundation, and The Calguns
 4 Foundation complain of Defendant and allege:

5 INTRODUCTION

6 1. Plaintiffs bring this suit to challenge the constitutionality of California Penal Code
 7 section 626.9, subdivision (o), which exempts “honorably retired peace officers” from the Gun-
 8 Free School Zone Act’s prohibition against possessing a firearm in a school zone. The purpose of
 9 the Gun-Free School Zone Act (the “Act”) is, as the name demonstrates, to make schools “free”
 10 from guns, except in the case of individuals authorized to perform military, law enforcement, and
 11 contracted security duties. The Act exempts individuals employed as “peace officers,” members
 12 of the military, private security guards, and others actually employed to provide statutorily
 13 authorized security or law-enforcement services.

14 2. Private citizens who possess a California license to carry a concealed weapon
 15 (“CCW”)—issued only after passage of a rigorous background check, and only then on approval
 16 by the person’s county sheriff or the chief of their municipal police department pursuant to
 17 California law—were previously exempt from the Act’s prohibitions. But the California
 18 Legislature removed that exemption in 2015.

19 3. Despite this, the Act contains an extraordinarily broad exemption for “honorably
 20 retired peace officer[s] authorized to carry a concealed or loaded firearm” under separate
 21 provisions of the Penal Code. As shown below, this exemption spreads far beyond retired police
 22 officers and sheriff’s deputies to cover a broadly defined group of “law enforcement” agents,
 23 including, for example, retired employees of the California Department of Fish and Game who
 24 enforced the California Fish and Game Code, and retired marshals appointed “to keep order and
 25 preserve peace at the California Exposition and State Fair.” Cal. Penal Code §§ 830.2, 25450; Cal.
 26 Food & Agric. Code § 3332(j). The exemption is so broad that it even applies to retirees from
 27 “any federal law enforcement agency” authorized to carry a concealed weapon, regardless of
 28 whether they ever used a weapon in their pre-retirement duties. Thus, for instance, retired Internal

1 Revenue Service agents and other federal agents are exempt simply by virtue of retiring in
2 California or working for the agency in California for more than a year. Cal. Penal Code §
3 25650(a).

4 4. In *Silveira v. Lockyer*, 312 F.3d 1052, 1088 (9th Cir. 2002), the Ninth Circuit struck
5 down a provision exempting retired peace officers from the prohibitions of the California Assault
6 Weapons Control Act when all other private citizens were subject to its prohibitions. The Ninth
7 Circuit held that this unequal treatment violated the Equal Protection Clause of the Fourteenth
8 Amendment to the Constitution, as there was no rational basis to treat retired peace officers
9 differently than similarly situated members of the general public. 312 F.3d at 1089–92.

10 5. *Silveira*'s rationale applies with equal, if not greater, force here. Individual
11 Plaintiffs are responsible, law-abiding citizens who also possess a license to carry a handgun for
12 self-defense under California law and are statutorily required to maintain their background check
13 and proficiency with firearms. *Silveira* establishes that an *active* peace officer's role *as a law*
14 *enforcement agent* provides a rational basis for distinguishing between a duly sworn and
15 authorized peace officer and a private citizen for the purpose of the carrying of firearms in
16 otherwise proscribed areas such as school zones. Because retired officers are not authorized to
17 engage in law enforcement activities any more than other private citizens, however, there is no
18 rational reason to treat them differently than Plaintiffs.

19 6. The purpose of this lawsuit is not to engineer a restoration of the exemption to the
20 Act for "mere" private citizens with a license to carry. Rather, the purpose is to obtain a ruling
21 that the preferential treatment given to retired peace officers over similarly-situated private citizens
22 violates the Equal Protection Clause. "The Equal Protection Clause of the Fourteenth Amendment
23 commands that no State shall 'deny to any person within its jurisdiction the equal protection of the
24 laws,' which is essentially a direction that all persons similarly situated should be treated alike."
25 *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citation omitted).

26 7. Because Section 626.9(o)'s exemption violates the Equal Protection Clause,
27 Plaintiffs seek declaratory and injunctive relief to invalidate it and enjoin its enforcement or
28 application.

JURISDICTION AND VENUE

8. This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983 and this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331.

9. Venue is proper under 28 U.S.C. § 1391(b).

THE PARTIES

10. Plaintiff Ulises Garcia, M.D. is a California resident who possesses a license to carry a concealed weapon issued by the Los Angeles County Sheriff's Department pursuant to California Penal Code section 26150, et seq. Dr. Garcia is a Board Certified Emergency Medicine specialist practicing in the San Fernando Valley of Southern California. Dr. Garcia is married and has three school-age children. He sought and obtained a carry license to protect himself and his family in response to multiple threats of violence from a former patient.

11. Plaintiff Jordan Gallinger is a California resident who possesses a license to carry a concealed weapon issued by the San Bernardino County Sheriff's Department pursuant to California Penal Code section 26150, et seq. Gallinger is a veteran of the United States Marine Corps who served in the war in Afghanistan and qualified as an expert in the Marine Corps Combat Marksmanship Program. He is currently enrolled as a full-time student at California State University, San Bernardino.

12. Plaintiffs Brian and Brooke Hill are California residents who each possess a license to carry a concealed weapon issued by the Ventura County Sheriff's Department pursuant to California Penal Code section 26150, et seq. The Hills have two school-age children, and both regularly carried concealed weapons at their children's respective schools before Senate Bill 707 went into effect on January 1, 2016.

13. Plaintiff Craig DeLuz is a California resident who possesses a license to carry a concealed weapon issued by the Sacramento County Sheriff's Department pursuant to California Penal Code section 26150, et seq. DeLuz serves as the President of the Robla School District Board of Trustees. He also serves as a coach for the cross country and track and field teams at Rio Linda High School.

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1 14. Plaintiff Scott Dipman is a California resident who possesses a license to carry a
2 concealed weapon issued by San Mateo County Sheriff's Department pursuant to California Penal
3 Code section 26150, et seq. Dipman is the father of two school-age sons with special needs who
4 must be accompanied to their classrooms each morning.

5 15. Plaintiff Albert Duncan is a California resident who possesses a license to carry a
6 concealed weapon issued by San Joaquin County Sheriff's Department pursuant to California
7 Penal Code section 26150, et seq. Duncan served as a flight medic in the United States Army, and
8 currently works as a firefighter-paramedic for the Oakland Fire Department. Duncan has a school-
9 age son.

10 16. Plaintiff Tracey Graham is a California resident who possesses a license to carry a
11 concealed weapon issued by San Bernardino County Sheriff's Department pursuant to California
12 Penal Code section 26150, et seq. Graham is a veteran of the United States Air Force. Graham's
13 partner has school-age children.

14 17. Plaintiff Lisa Jang is a California resident who possesses a license to carry a
15 concealed weapon issued by the Sacramento County Sheriff's Department pursuant to California
16 Penal Code section 26150, et seq. Jang is currently enrolled as a full-time student at California
17 State University, Sacramento. She obtained her carry license for personal protection, in response
18 to multiple reports of crime on and near the campus, including armed robbery, rape, and sexual
19 assault.

20 18. Plaintiff Dennis Serbu is a California resident who possesses a license to carry a
21 concealed weapon issued by the Placer County Sheriff's Department pursuant to California Penal
22 Code section 26150, et seq. Serbu is a veteran of the Vietnam war and served ten years as a
23 reserve police officer for the Cottonwood, Arizona police department. Now retired, he has twelve
24 grandchildren and is involved with their school activities.

25 19. Plaintiff Michael Veredas is a California resident who possesses a license to carry a
26 concealed weapon issued by the Fresno County Sheriff's Department pursuant to California Penal
27 Code section 26150, et seq. Veredas served as a hospital corpsman in the United States Navy and
28 served three combat deployments with the United States Marine Corps before his honorable

1 discharge in 2005. He has two children.

2 20. Plaintiff Firearms Policy Foundation (“FPF”) is a non-profit organization that
3 serves the public through charitable and educational purposes, with a focus on advancing
4 constitutional rights with a particular focus on laws relating to firearms and affecting the
5 fundamental right to keep and bear arms. FPF believes Penal Code section 626.9(o) is
6 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
7 bill’s constitutionality, educate the public about the bill, address its members’ concerns and
8 complaints about the bill, advocate to the Legislature against SB 707’s passage, and urge the
9 Governor’s veto. Many of FPF’s members are CCW holders who have been directly affected by
10 the change in the law, and FPF has spent funds and resources addressing its members’ questions,
11 concerns, and complaints about Penal Code section 626.9(o).

12 21. Plaintiff Firearms Policy Coalition (“FPC”) is a non-profit organization that serves
13 its members and the public through direct and grassroots advocacy, legal efforts, and education.
14 The purposes of FPC include defending the United States Constitution and the People’s rights,
15 privileges and immunities deeply rooted in the Nation’s history and tradition, especially the
16 fundamental right to keep and bear arms. FPC believes Penal Code section 626.9(o) is
17 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
18 bill’s constitutionality, educate the public about the bill, address its members’ concerns and
19 complaints about the bill, advocate to the Legislature against SB 707’s passage, and urge the
20 Governor’s veto. Many of FPC’s members are CCW holders who have been directly affected by
21 the change in the law, and FPC has spent funds and resources addressing its members’ questions,
22 concerns, and complaints about Penal Code section 626.9(o).

23 22. Plaintiff Madison Society Foundation is a membership-based non-profit
24 organization whose purpose is preserving and protecting the legal and constitutional right to keep
25 and bear arms for its members and all responsible law-abiding citizens. The organization spends
26 time and resources on outreach, education and training related to assisting its members—and the
27 law-abiding public in general—in obtaining and maintaining licenses to carry firearms for self-
28 defense and for other Second Amendment purposes. The Madison Society believes Penal Code

1 section 626.9(o) is unconstitutional. Many of the organization’s members are CCW holders who
 2 have been directly affected by the change in the law, and FPC has spent funds and resources
 3 addressing its members’ questions, concerns, and complaints about SB 707 and Penal Code section
 4 626.9(o).

5 23. Plaintiff The Calguns Foundation (“CGF”) is a non-profit organization that serves
 6 its members, supporters, and the public through educational, cultural, and judicial efforts to
 7 advance Second Amendment and related civil rights. CGF believes Penal Code section 626.9(o) is
 8 unconstitutional. Before SB 707 passed, the organization spent funds and resources to research the
 9 bill’s constitutionality, educate the public about the bill, address its members’ concerns and
 10 complaints about the bill, and advocate to the Legislature against SB 707’s passage. Many of
 11 CGF’s members are CCW holders who have been directly affected by the change in the law, and
 12 CGF has spent funds and resources addressing its members’ questions, concerns, and complaints
 13 about Penal Code section 626.9(o).

14 24. Defendant Kamala Harris is the Attorney General of the State of California. The
 15 Attorney General is the chief law enforcement officer of the state, and it is her duty to ensure that
 16 California’s laws are uniformly and adequately enforced. Attorney General Harris is sued in her
 17 official capacity. The Attorney General maintains an office in Los Angeles.

18 **CALIFORNIA ALLOWS AN EXTREMELY BROAD GROUP OF RETIRED**
 19 **“PEACE OFFICERS” TO CARRY CONCEALED WEAPONS ON SCHOOL GROUNDS,**
 20 **BUT NOT OTHER, SIMILARLY SITUATED PRIVATE CITIZENS**

21 25. The Gun-Free School Zone Act of 1995, California Penal Code section 626.9,
 22 prohibits persons from possessing a firearm in a school zone, which is defined as “an area in, or on
 23 the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12,
 24 inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.”
 25 Penal Code § 626.9(e)(4). Violation of the Act is a misdemeanor or felony. *See id.*, subd. (f).

26 26. The Act contains an exemption for “duly appointed peace officer[s]” who remain in
 27 service. Penal Code § 626.9(l). The Act’s prohibition likewise does not apply to a few classes of
 28 people who are licensed to carry a firearm as part of their professional duties so long as they are on

1 the job:

2 [A] full-time paid peace officer of another state or the federal government who is
 3 carrying out official duties while in California, any person summoned by any of
 4 these officers to assist in making arrests or preserving the peace while he or she is
 5 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.

6 Penal Code § 626.9(l); *see also id.*, subd. (m) (exempting certain security guards authorized to
 7 carry a loaded firearm, while acting within the course and scope of their employment).

8 27. The purpose of the Gun-Free School Zone Act is, as the name demonstrates, to
 9 make schools “free” from guns, except in the case of peace officers and security personnel who are
 10 performing their duties.

11 28. Yet the Act also contains a sweeping exemption for “honorably retired peace
 12 officer[s] authorized to carry a concealed or loaded firearm” under several different Penal Code
 13 sections. *Id.*, subd. (o) (listing separate statutory authorizations).

14 29. As originally enacted, the Act contained a blanket exemption for all private citizens
 15 who are licensed to carry a concealed firearm pursuant to Penal Code section 26150. In 2015, the
 16 Legislature amended the statute to remove the exemption for carry licensees on school grounds,
 17 and it added a provision authorizing carry licensees to carry a firearm “within a distance of 1,000
 18 feet from the grounds of the public or private school.” Senate Bill 707 (2014–2015 Reg. Sess.,
 19 Wolk). *See* Penal Code § 626.9(c)(5). While the Bill sought to eliminate both the CCW and
 20 retired law enforcement exemptions during its initial form, it was later amended to restore the
 21 retired “peace officer” exemption.

22 30. In *Silveira v. Lockyer*, the Ninth Circuit struck down a provision exempting retired
 23 peace officers from the prohibitions of the California Assault Weapons Control Act on Equal
 24 Protection grounds, holding that “the retired officers exception arbitrarily and unreasonably affords
 25 a privilege to one group of individuals that is denied to others” 312 F.3d at 1091. Rejecting
 26 the argument that “some peace officers receive more extensive training regarding the use of
 27 firearms than do members of the public,” the Court stressed that this purported justification “bears
 28 no reasonable relationship to the stated legislative purpose of banning the possession and use of

1 assault weapons in California, except for certain law enforcement purposes.” *Id.* Retired peace
 2 officers are, by definition, no longer engaging in law enforcement purposes—just like their fellow
 3 private citizens.

4 31. The California Attorney General reached a similar conclusion in 2010, when asked
 5 whether “a peace officer who purchases and registers an assault weapon in order to use the weapon
 6 for law enforcement purposes [would be] permitted to continue to possess [it] after retirement.”
 7 Att’y Gen. Op. No. 09-901, 93 Ops. Cal. Atty. Gen. 130 (2010). Relying on *Silveira*, then-
 8 Attorney General Edmund G. Brown, Jr., explained why the answer was “No”:

9 *Silveira* teaches that it is the a [sic] peace officer’s role *as a law enforcement agent*
 10 that provides a rational basis for distinguishing between a peace officer and a
 11 private citizen for purposes of possessing and using assault weapons. A retired
 officer is not authorized to engage in law enforcement activities.

12 *Id.* at *8 (emphasis in original).

13 32. Likewise, Section 626.9(o) arbitrarily and irrationally subjects Plaintiffs to unequal
 14 treatment in violation of the Equal Protection Clause of the Fourteenth Amendment to the
 15 Constitution.

16 33. Individual plaintiffs are responsible, law-abiding citizens who possess licenses to
 17 carry concealed weapons under California law. In order to obtain a carry license, Plaintiffs were
 18 required to demonstrate “good moral character,” complete a firearms training course, and establish
 19 “good cause.” Cal. Penal Code §§ 26150, 26155. In applying these standards, several counties
 20 have interpreted the “good cause” requirement to require that an applicant demonstrate an elevated
 21 need for self-defense due to a specific threats or previous attacks against them. The Los Angeles
 22 County Sheriff’s Department Concealed Weapon Licensing Policy, for example, states:

23 [G]ood cause shall exist only if there is convincing evidence of a clear and present
 24 danger to life, or of great bodily harm to the applicant, his spouse, or dependent
 25 child, which cannot be adequately dealt with by existing law enforcement
 26 resources, and which danger cannot be reasonably avoided by alternative measures,
 and which danger would be significantly mitigated by the applicant’s carrying of a
 concealed firearm.

27 Los Angeles County Sheriff’s Department, *Concealed Weapon Licensing Policy* at 2
 28 (emphasis in original).

1 34. Retired “peace officers,” by stark contrast, are not subject to these same screening
 2 requirements but rather appear to be eligible to carry firearms as a matter of course. California
 3 Penal Code section 25455, for instance, provides that retired California peace officers who *ever*
 4 carried a gun during their service “shall be issued an identification certificate by the law
 5 enforcement agency from which the officer retired” and “shall have an endorsement on the
 6 identification certificate stating that the issuing agency approves the officer’s carrying of a
 7 concealed firearm.” Cal. Penal Code § 25455(a), (c); *id.*, § 25450(d). And the exemption under
 8 section 626.9(o) extends far beyond retired police officers and deputy sheriffs. It applies, for
 9 example, to:

- 10 • Retired employees of the Department of Fish and Game who enforced the Fish and
 11 Game Code (§ 830.2(e));
- 12 • Retired employees of the Department of Parks and Recreation who enforced the
 13 Public Resources Code (§ 830.2(f));
- 14 • Retired employees of the Department of Forestry and Fire Protection who enforced
 15 the Public Resources Code (§ 830.2(g)); and
- 16 • Retired marshals “appointed by the Board of Directors of the California Exposition
 17 and State Fair” whose primary duty was enforcing Section 3332 of the Food and
 18 Agricultural Code, which establishes the powers of the board of the State Fair (§
 19 830.2(i)).

20 These retirees need only re-apply every five years to their former agency to keep the special
 21 treatment, *id.* § 25465, and the former agency needs “good cause” to not renew it. *Id.* § 25470.

22 35. Similarly, and perhaps even more broadly, Section 626.9(o) exempts “any
 23 honorably retired federal officer or agent of any federal law enforcement agency” covered by
 24 Penal Code section 25650 (which exempts retired federal officers from the Penal Code’s ban on
 25 carrying a concealed weapon), regardless of whether that retired federal officer or agent ever
 26 carried a gun in their federal “peace officer” duties. Cal. Penal Code § 25650(a). It is sufficient if
 27 the “officer or agent” was simply “assigned to duty within the state for a period of not less than
 28 one year” or “retired from active service in the state.” *Id.* Under this exemption, a covered federal

1 officer simply provides their local sheriff or chief of police with their agency's "concurrence" that
 2 the retiree "should be afforded the privilege of carrying a concealed firearm." *Id.*, subd. (b). This
 3 exemption covers agents that include, but are not limited to, retired agents from the United States
 4 Customs Service or "any officer or agent of the Internal Revenue Service." *Id.*, § 25650(a).

5 36. The net result is that the Act bars law-abiding citizens who maintain a government-
 6 issued CCW from possessing a firearm "in or on" school grounds, but it grants a blanket
 7 exemption to a broadly defined group of retired "peace officers," none of whom have continuing
 8 authority to engage in "peace officer" activities: by definition, they are retired, they have returned
 9 to the ranks of private citizens, and they are no longer authorized to engage in law enforcement
 10 activities. *See Silveira*, 312 F.3d at 1090–92. They simply have potent political and lobbying
 11 operations that convinced the Legislature that retired "peace officers" should be granted favorable
 12 treatment over mere private citizens for the rest of their lives. There is no rational reason to treat
 13 them differently than Plaintiffs.

14 37. An actual and judicially cognizable controversy exists between Plaintiffs and
 15 Defendant regarding whether Section 626.9(o) violates the Equal Protection Clause. Plaintiffs
 16 desire a judicial declaration of their rights and Defendant's duties regarding the constitutionality
 17 and continued enforcement of the statute.

18 **CLAIM FOR RELIEF**

19 **VIOLATION OF 42 U.S.C. § 1983 (EQUAL PROTECTION)**

20 38. Plaintiffs incorporate here by reference paragraphs 1 through 37, *supra*, as if fully
 21 set forth herein.

22 39. Penal Code section 626.9(o) violates the Equal Protection Clause of the Fourteenth
 23 Amendment to the Constitution, both on its face and as applied to Plaintiffs.

24 40. Plaintiffs are responsible, law-abiding citizens who possess licenses to carry
 25 handguns for self-defense under California law. Because section 626.9(o)'s exemption irrationally
 26 favors a broad class of retired "peace officers" authorized to carry concealed weapons over
 27 Plaintiffs, it violates the Equal Protection Clause.

28 ///

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, construe Penal Code section 626.9(o) and enter a declaratory judgment stating that it violates the Equal Protection Clause of the Fourteenth Amendment.
2. Plaintiffs respectfully request that this Court enter a preliminary and permanent injunction enjoining enforcement or application of Penal Code section 626.9(o).
3. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988 and any other applicable law, and all further relief to which Plaintiffs may be justly entitled.

Dated: April 14, 2016

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