No. 10-56971 [DC# CV 09-02371-IEG]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD PERUTA, et. al.,

Plaintiffs-Appellants,

v.

COUNTY OF SAN DIEGO, et. al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

APPELLANTS' OPPOSITION TO MOTIONS FOR LEAVE TO INTERVENE BY THE STATE OF CALIFORNIA PURSUANT TO FRCP 24(a)(1) AND BY THE BRADY CAMPAIGN TO PREVENT GUN VIOLENCE; AND OPPOSITION TO CALIFORNIA POLICE CHIEFS ASSOCIATION AND CALIFORNIA PEACE OFFICERS ASSOCIATION FOOTNOTE REQUEST TO INTERVENE

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INTRODUCTION

This case involves a vindicated constitutional challenge to San Diego Sheriff William Gore's policy for issuing licenses to publicly carry a handgun ("Carry Licenses"). Specifically, the Sheriff does *not* recognize a general desire to carry arms for defense of one's self or family as "good cause" for issuance of such a license to otherwise qualified applicants; rather, under the Sheriff's policy, an applicant must prove an extraordinary need for armed self-defense. ER, Vol. V, Tab 37 at 848-50. Because Mr. Peruta and his fellow Plaintiffs-Appellants ("Peruta") satisfy all other requirements for a Carry License, but could not show an extraordinary need for one that Sheriff Gore found acceptable, they challenged as prohibited by the Second Amendment and sought to prohibit enforcement of this aspect of Sheriff Gore's policy. In short, Pertua suffered a constitutional injury—the denial of his Second Amendment right to bear arms—because of Sheriff Gore's selected "good cause" policy, and he sued to prohibit the Sheriff from enforcing that unconstitutional policy.

A panel of this Court has now agreed that this policy is unconstitutional and has remanded for the district court to remedy Peruta's injury. Although the Sheriff has announced that he does not intend to seek rehearing of that decision en banc, he also has announced that he intends to remedy Peruta's injury only if and when

he is required by court order to do so. Thus, it is clear that Peruta and Sheriff Gore remain proper parties to this case, and that their dispute continues to constitute a "case or controversy" properly before the federal court. But because Sheriff Gore has decided not to pursue rehearing en banc or certiorari, and has stated publicly that he will refrain from enforcing his unconstitutional policy once this case becomes final, various entities–the State of California ("State"), the Brady Campaign to Prevent Gun Violence ("Campaign"), and the California Police Chiefs Association ("CPCA") with the California Peace Officers Associates ("CPOA")–now seek to intervene to seek rehearing en banc or certiorari to challenge the panel's opinion on the merits.

The State seeks to intervene on three different theories: as of right under Rules 24(a)(1) or (a)(2) of the Federal Rules of Civil Procedure, or also on a permissive basis under Rule 24(b). Rule 24(a)(1) permits a state to intervene only when it has an unconditional statutory right to do so. The state does not have any such right in this case, as the statute it relies upon—28 U.S.C. § 2403—permits intervention only where no representative of the state is a party, which is not and never has been the case here. Nonetheless, under the limited and specific facts as they have now developed, Peruta does not object to this Court exercising its discretion under either Rule 24(a)(2) or 24(b) to permit the state to intervene for

the purpose of filing a petition for rehearing en banc. Of course, whether the Court should grant that petition is an entirely separate matter, and one Peruta is prepared to address should the Court entertain the petition and call for a response.

On the other hand, there is no doubt that the Campaign's motion to intervene should be denied, as neither the Campaign nor its members can establish Article III standing. The Campaign does not allege that any of its members has been denied Carry Licenses in San Diego County; nor is the Campaign responsible for Sheriff Gore's Carry License policies. And the harms that its members allege that they may suffer as a result of the panel's decision are not remotely concrete and particularized, let alone actual or imminent. To the contrary, they are precisely the kind of generalized allegations that are insufficient to demonstrate injury in fact for standing purposes. Moreover, the relief the Campaign seeks is illusory. Even if it were allowed to intervene and prevailed, neither the Campaign nor the courts would have authority to force the Sheriff to enact or implement any particular "good cause" policy. And, unlike Peruta, neither the Campaign nor its members has any right to vindicate, as there is no constitutional right to live in a county where law-abiding adults are prohibited from carrying arms pursuant to a license. The Campaign therefore has no legally cognizable injury. It merely has a policy dispute with Peruta, not a case against him. Consequently, the Court should deny

the Campaign's motion to intervene for lack of standing.

Nor should the CPCA or CPOA be allowed to intervene. While their theory of standing is impossible to discern from their manifestly inadequate request to intervene, which consists of a solitary footnote found in their petition for en banc review, there is no apparent basis upon which they would have the requisite standing to intervene in this action. In any event, their offhanded request to intervene fails to comply with even the most basic procedural requirements for a proper motion, as it explains neither why they believe they have standing nor the grounds upon which they believe they may intervene. Thus, they should not be allowed to intervene.

I. LEGAL STANDARDS GOVERNING INTERVENTION

Federal Rule of Civil Procedure 24(a) provides two avenues for intervention as of right. Under Rule 24(a)(1), an applicant has the right to intervene if: (1) the motion is timely; and (2) the applicant "is given an unconditional right to intervene by a federal statute." Under Rule 24(a)(2), an applicant has the right to intervene if: (1) the motion is timely; (2) the applicant has a "significantly protectable" interest relating to the property or transaction that is the subject of the litigation; (3) the applicant is situated in a way that the disposition of the action may, as a practical matter, impair or impede that interest; and (4) the applicant's interest is not

adequately represented by the existing parties in the lawsuit. *DBSI/TRI IV P'ship v. United States*, 465 F.3d 1031, 1037 (9th Cir. 2006) (citing *Sw. Ctr. For Biological Diversity*, 268 F.3d 810, 817 (9th Cir. 2001)). While Rule 24(a) is liberally construed at the trial court level, intervention on appeal is "unusual and should ordinarily be allowed only for 'imperative reasons.' " *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997).

Federal Rule 24(b), which governs permissive intervention, allows a party to intervene in an action when the party has "(1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992); Fed. R. Civ. Proc. 24(b)(1). A government officer or agency may intervene if a claim or defense is based on a statute or executive order administered by the proposed-intervenor or a "regulation, order, requirement, or agreement issued or made under" that statute or executive order. Fed. R. Civ. Proc. 24(b)(2).

Under either intervention as of right or permissive intervention, a proposed-intervenor who seeks to pursue an appeal abandoned by the original defendant must have standing to invoke the jurisdiction of the courts. As the Supreme Court has held, "[a]n intervenor cannot step into the shoes of the original party unless the

intervenor independently 'fulfills the requirements of Article III" standing. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 65 (1997) (quoting *Diamond v. Charles*, 476 U.S. 54, 68 (1986)). It is well-settled that Article III standing requires a party to establish "that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61(1992). Absent those elements for standing, even "[a]n interest strong enough to permit intervention is not . . . a sufficient basis to pursue an appeal abandoned by the other parties.' " *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 482 (9th Cir. 2010) (quoting *Didrikson v. U.S. Dep't of the Interior*, 982 F.2d 1332, 1338 (9th Cir. 1992)).

II. THE STATE HAS NO RIGHT TO INTERVENE UNDER FRCP 24(a)(1), BUT PERUTA DOES NOT OPPOSE THIS COURT EXERCISING ITS DISCRETION TO PERMIT THE STATE TO INTERVENE UNDER FRCP 24(a)(2) OR 24(b)

California seeks to intervene in this case pursuant to subsections (a)(1), (a)(2), and (b) of Rule 24. Peruta does not believe that the state may intervene as of right pursuant to Rule 24(a)(1) because the statute on which the state relies in asserting that right, 28 U.S.C. § 2403(b), does not authorize intervention by the state on these facts. Nonetheless, under the limited and specific circumstances at

hand, Peruta does not object to this Court exercising its discretion to permit the state to intervene pursuant to subsections (a)(2) or (b) of Rule 24 to seek rehearing en banc and/or certiorari.

Section 2403(b) provides, in pertinent part:

> In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court . . . shall permit the State to intervene . . . for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. § 2403(b). Thus, by its plain terms, the statute grants a state the right to intervene only when neither the state nor "any agency, officer, or employee thereof" is a party to the litigation. *Id.* Because both the County of San Diego and Sheriff Gore, who are and always have been parties to this case, should be considered agencies, officers, or employees of the state for purposes of the function at issue, that requirement is not satisfied here.

Consistent with the Supreme Court's guidance in interpreting 18 U.S.C. § 1983, whether a sheriff is a representative of the state generally depends on the particular function at issue. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 785-86 (1997); see also, e.g., S. Rep. No. 94-1379, at 5 (1976), *reprinted in* 1976

U.S.C.C.A.N. 1988, 1992 (section 2403(b)"does not apply to suits against a State officer performing acts of purely local concern, but it does apply to local officers performing a State function"); *Speilman Motor Co. v. Dodge*, 295 U.S. 89 (1935). Consistent with the Supreme Court's guidance in interpreting 18 U.S.C. § 1983, whether a sheriff is a representative of the state generally depends on the particular function at issue. *See McMillian v. Monroe County, Ala.*, 520 U.S. 781, 785-86 (1997). In other words, it is a fact-specific inquiry.

Assessing the relevant facts, the Northern District of California has concluded that, in the specific context of issuing Carry Licenses under state law, sheriffs should be considered state actors for purposes of section 1983. *See Scocca v. Smith*, 912 F. Supp. 2d 875 (N.D. Cal. 2012) (holding that a "Sheriff [], when making decisions on granting or denying [Carry] licenses acts as a representative of the state, and not of the county"). Not only do the relevant state law provisions "clearly delineate a role for the state with respect to administration and oversight" of such licensing, but "the sheriff has the power to grant a license which conveys a right exercisable throughout the state and thus has a statewide effect." *Id.* at 883. Accordingly, here, too, Sheriff Gore is best understood as a state representative for

purposes of the functions at issue.[1]

Because section 2304(b) gives the state a right to intervene only when no representative of the state is a party to the action, the state has no statutory right to intervene in this case, under it or Rule 24(a)(1) either. Peruta does not object, however, to this Court exercising its discretion to permit the state to intervene under subsection (a)(2) or (b) of Rule 24. Because the Sheriff has not granted the license sought either by Peruta or agreed to do so absent this case becoming final, there remains a live case or controversy in which the constitutionality of a particular application of a state statute has been called into question. *Cf. INS v. Chadha*, 462 U.S. 919 (1983). And under the specific and limited circumstances at

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[1] To be sure, both this Court and the California courts have reached varying results on whether a sheriff is a state or a county actor under section 1983 depending on the particular function at hand, but these divergences are consistent with the very fact-specific nature of the inquiry. *Compare Streit v. County of Los Angeles*, 236 F.3d 552, 560 (9th Cir. 2001) (sheriff acts for the county "when administering the County's [jail] release policy); *Brewster v. Shasta County*, 275 F.3d 803, 811-12 (9th Cir. 2001) (sheriff acts for the county when investigating crimes); *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1192 (9th Cir. 2002) (sheriff is a local, rather than a state, actor when administering county jail), *with Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma*, C 08-4220 RS, 2010 WL 2465030 (N.D. Cal. June 11, 2010) (sheriff is a state actor when detaining and arresting individuals for immigration violations); *Venegas v. Cnty. of Los Angeles*, 32 Cal.4th 820, 11 Cal.Rptr.3d 692, 87 P.3d 1 (2004) (sheriff is a state actor when performing law enforcement functions). As the *Scocca* court correctly concluded, in the circumstances of this case, the facts confirm that the specific function at issue, i.e., Carry License Issuance, is a state function, not a county one.

hand—namely, a situation in which the state representatives in the case have only recently announced that they do not intend to pursue rehearing en banc or certiorari—Peruta does not dispute that, under this Court's precedent, the Court has discretion to permit the state to intervene to pursue rehearing en banc and/or certiorari and litigate the merits of the constitutional issue. *See Day v. Apoliona*, 505 F.3d 963 (9th Cir. 2007). Accordingly, Peruta does not object should the Court be inclined to permit the state to intervene under subsections (a)(2) or (b)(1) of Rule 24.[2]

III. THE BRADY CAMPAIGN'S MOTION SHOULD BE DENIED BECAUSE THE ORGANIZATION DOES NOT HAVE STANDING TO INTERVENE

The Brady Campaign's motion to intervene should be denied for lack of standing. To establish associational standing on behalf of its members, the Campaign must establish that "[1] its members would otherwise have standing to sue [or intervene] in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the*

[2] To be clear, Peruta does not concede that the Court should grant the state's petition for rehearing en banc. Pursuant to the Court's March 5, 2014 Order, this response is intended to address only the limited question of whether the Court should grant the state's motion to intervene and permit it to file a petition for rehearing en banc. Should the Court do so, Peruta is prepared to permit a response to that petition if and when the Court requests one.

Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000) (bracketed numbers added). To satisfy the first of these requirements, the Campaign must establish that the panel's opinion "causes [its] members a concrete and particularized injury that is actual or imminent and is likely to be redressed by a favorable decision." *W. Watersheds Project*, 632 F.3d at 482. Nothing in the Campaign's conclusory motion comes close to demonstrating either.

A. Neither the Brady Campaign nor Its Members Have a Concrete and Particularized Harm that Is Actual or Imminent

While an organization may assert the standing of its members, to do so, it must provide "specific allegations establishing that at least one identified member [has] suffered or would suffer harm." *W. Watersheds Project*, 632 F.3d at 483 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009)). "Generalized harm . . . will not alone support standing." *Id.* To the contrary, where the allegations demonstrate that the alleged " 'impact on [the party] is plainly undifferentiated and 'common to all members of the public,' " allowing the party to proceed would be "inconsistent with 'the framework of Article III.' " *Lujan*, 504 U.S. at 575 (quoting *United States v. Richardson* 418 U.S. 166, 171, 176-77 (1974)). Because the declarations the Campaign has submitted to establish its members' standing rely solely on the kind of generalized and undifferentiated

harms that are inconsistent with Article III, the Campaign does not have standing to intervene in this matter.

The Campaign offers five declarations from members residing in San Diego. The declarations, more or less, complain of a perceived "increased risk of grave injury" and worries about "being subject to future gun violence because of the Court's decision." Mot. to Intervene 7. These vague and speculative "fears" are neither "concrete and particularized" nor "actual or imminent"; they instead involve precisely the kind of "abstract questions of wide public significance which amount to generalized grievances." *Carroll v. Nakatani*, 342 F.3d 934, 940 (9th Cir. 2003). In short, the Campaign's members assert only the most generalized fears of potential, future violence—the sort of purely speculative, nonconcrete injuries any member of the public who fears gun violence could raise. That is manifestly insufficient to establish a *particularized* injury. *See Lujan*, 504 U.S. at 562-567.

Indeed, the Campaign's claimed interest is much like that rejected in *Diamond v. Charles*, 476 U.S. 54 (1986), where a pediatrician sought to intervene in a challenge to the constitutionality of an abortion law. There, the doctor maintained that he had standing to intervene because if abortion procedures were limited, his "pool of potential fee-paying patients would be enlarged" and his

practice would benefit financially. *Id.* at 66. The Court readily rejected this argument as pure speculation, explaining that the possibility "that such fetuses would survive and then find their way as patients to Diamond" was so tenuous as to be no connection at all. *Id.*

Here, too, the Campaign members' professed fears of falling victim to public gun violence as a result of this Court's decision are purely conjectural. Their concerns are based on such a long and tenuous chain of events that hardly a link can be made. For the injury they have alleged to materialize, at least the following would need to occur: (1) Striking Sheriff Gore's "good cause" requirement in fact encourages more people to apply for Carry Licenses; (2) those applicants are not denied a license for other reasons; (3) they actually carry their firearms in public pursuant to their license; (4) they engage in public gun violence; and (5) actually injure Campaign members, either accidentally or intentionally. Even if all of those things were to happen, moreover, the Campaign has identified nothing to suggest that the resulting violence would not have occurred but for the panel's decision. Such a speculative fear of injury is hardly "concrete," "particularized," "actual," or "imminent."

None of the cases the Campaign has cited suggests otherwise. For instance, the Campaign relies on *Duke Power Co. v. Carolina Environmental Study Group,*

Inc., 438 U.S. 59 (1978), for the general proposition that a "governmental decision that increases the potential risk to future health and safety has been found to be sufficient to establish the standing inquiry." Mot. to Intervene 9. But the holding of *Duke Power* is not nearly so broad as the Campaign suggests. The case considered whether individuals who lived near the site of a proposed nuclear power plant had standing to challenge a statute relating to limitations on liability for nuclear accidents. Although the individuals presented a wide variety of allegations in their efforts to demonstrate standing, the Court accepted only a very narrow subset—namely, those relating to "immediate effects" that would result from the operation of a nuclear power plant in "proximity to [their] living and working environment." *Id.* at 72-73. The Court expressly declined to consider whether the individuals' more generalized and tenuous allegations of harm—i.e., harms that might result if some future nuclear accident were to occur—were "sufficiently concrete to satisfy" Article III. *Id.*

To the extent the Campaign members' fears resemble those raised in *Duke Power* at all, they clearly resemble those that the Court *declined* to consider. Like the appellants in *Duke Power*, they cannot say if or when the injury they fear is likely to materialize. Indeed, if anything, the allegations the Court declined to consider in *Duke Power* were *stronger* than those presented here, as the individuals

in *Duke Power* could at least establish that *if* another meltdown occurred, they were likely to be harmed because of the proximity of their homes to the plant. *Id.* at 72-74. By contrast, the Campaign cannot identify what (if any) harm might arise, when it might happen, who might directly cause that harm, if they themselves would be injured, or even whether that harm could be traced to the striking of Sheriff Gore's "good cause" policy.

The Campaign also seeks to analogize this case to *Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754 (2004), *see* Mot. to Intervene 8, but, once again, the Campaign misconstrues the case on which it relies. There, the plaintiffs introduced evidence that they relied on a county health care system that was facing cutbacks, closing one hospital and reducing beds at another. *Id.* at 757, 762. They had also demonstrated that the county already had difficulty providing plaintiffs themselves with access to timely care. *Id.* at 762. The link between the proposed cuts and the harm was easily identifiable, actual, and imminent—nothing like the vague, generalized claims of potential harm the Campaign makes.

The Campaign fares no better with its alternative contention that its members face "a risk of potential future *property damage* that can be traced to potential, future conduct" resulting from this case. Mot. to Intervene 9 (citing *Covington v. Jefferson Co.*, 358 F.3d 626, 638 (9th Cir. 2004); *C. Delta Water*

Agency v. United States, 306 F.3d 938, 947-50 (9th Cir. 2002) (emphasis added)). Once again, the cases the Campaign cites are hardly helpful to its cause.

The plaintiffs in *Covington v. Jefferson Co.* had standing to pursue claims under the Resource Conservation and Recovery Act and the Clean Air Act against "a landfill directly across the street" from their home. 358 F.3d at 633. As to their RCRA claims, the Covingtons established "a *concrete* risk of harm" because they made a "factual showing of fires, of excessive animals, insects, and other scavengers attracted to uncovered garbage, and of groundwater contamination" that threatened real harm to the plaintiffs and their property. *Id.* at 638. And regarding their CAA claims, the Covingtons submitted actual evidence of the "leakage of white goods" from the landfill, posing a "credible threat of risks to their home." *Id.* at 641. In both cases, the Covingtons established a concrete risk to their property based on *actual evidence* of harms caused by the landfill's actions.

In *Central Delta Water Agency*, the individual plaintiffs had standing to challenge a government plan to discharge reservoir water, increasing the salinity of local river water and harming the plaintiffs' crops. 306 F.3d 938, 943, 947 (9th Cir. 2002). There, the plaintiffs pointed to the government's own prediction that it would regularly violate approved water salinity standards during peak-irrigation months. *Id.* at 948-49. They also cited a neutral report documenting the effects of

over-salinated water on various crops and evidence that their own harvests had been damaged due to increased salinity. *Id.* at 949. Like the *Covington* plaintiffs, they could establish a "significant likelihood" that *their property* would be injured if the challenged action continued unabated. And they could identify the actual harm that would befall them.

Here, by contrast, the Campaign makes no showing that striking Sheriff Gore's restrictive "good cause" policy poses a "concrete risk" to its members. The Campaign has identified nothing whatsoever to suggest that *those particular individuals* would face any increased risk of injury as a result of a more liberal policy for issuing Carry Licenses. To the contrary, the Campaign has alleged nothing more than that its members share the same generalized interests as all members of the public in the outcome of this case. Accordingly, there is simply no identifiable harm to the Campaign, its members, or their property that can be credibly traced to the Court's decision in this case.

In any event, even if the kind of generalized public harm allegations on which the Campaign relies were sufficient to establish standing (and they are not), there is nothing to establish that a change in Sheriff Gore's Carry License issuing scheme will increase the potential for public gun violence. The Campaign's one verifiable claim—that "[o]verturning the San Diego CCW policy will lead to more

San Diegans carrying concealed and loaded firearms in public," Mot. to Intervene 9-10—does not establish that there will be a greater chance of public violence. Any such assertion is contrary to the record, which establishes that the liberalized issuance of Carry Licenses has either no effect or a reducing effect on the crime rate. Reply Br. at 20-21. As Professor Carlisle E. Moody declared:

> [T]hirty-seven states have enacted laws entitling responsible adults to have gun carry permits. . . .Gun ban advocates . . . predicted that those states would have vastly higher murder rates as a result of these laws. It is unnecessary to examine these predictions beyond noting that they have been proven false by subsequent crime statistics. To date, those statistics have shown . . . homicide as further fallen, not risen, in the states that adopted such laws. The liberalization of gun carrying laws may or may not be the cause for the decline . . . , but what is certain is it *did not cause* widespread or even minor increases in crime.

ER, Vol. II, Tab 22 at 249:18-250:1; *see also* ER, Vol. II, Tab 23 at 260:2-7; Vol. III, Tab 26 at 340:2-16. "Indeed, years of statewide data gathered from Minnesota, Michigan, Ohio, Louisiana, Texas, and Florida—all of which treat self-defense to be a good cause for [Carry Licenses]—shows that people with such permits are *much more law-abiding* than the general population." ER, Vol. III, Tab 26 at 340:2-6. And studies have shown that broad concealed carry licensing does not cause widespread or even minor increases in crime. *See* ER, Vol. II, Tab 22 at 249:22-250:21. That evidence was not refuted by Sheriff Gore.

The Campaign deceptively alleges that "[f]rom May 2007 to the present,

there have been 465 incidents of non-self defense killing by CCW holders in 33 states and the District of Columbia[3] resulting in 622 deaths." Mot. to Intervene 2 n.2. But this report was already discredited by Peruta and his amici as it amounts to nothing more than "write-ups of Google searches, omit[s] crucial details---such as the fact that the licensee was determined to have acted in lawful self-defense, or (in the rare case of licensee misconduct) the misconduct had nothing to do with the carry permit, but took place in the home." ER, Vol. III, Tab 26 at 340:8-11. Simply put, the Campaign has not (and cannot) make an actual showing of a credible threat to public safety—let alone such a threat sufficiently specific to its own members to establish the concrete, particularized, and imminent injury in fact that Article III requires.

B. Reversal of the Court's Decision Will Not Redress the Brady Campaign's Alleged Injury

Even assuming that the generalized affidavits the Campaign has submitted established injury in fact, that injury would not be redressed by reversal of the panel's decision because reversal would merely reinstate Sheriff Gore's "broad discretion" to require (or not to require) a showing of enhanced "good cause" for

[3] Interestingly, "[i]t is common knowledge . . . that with very rare exceptions licenses to carry pistols have not been issued in the District of Columbia for many years and are virtually unobtainable." *Bsharah v. United States*, 646 A.2d 993, 996 n.12 (D.C. Cir. 1994).

the issuance of a Carry License. Accordingly, whether the Campaign's alleged "harm" would be redressed would depend entirely on whether Sheriff Gore were to decide to continue to require that applicants show more than a desire to exercise their right to self-defense to obtain a Carry License—a decision the sheriff is not required to make. Moreover, even if Sheriff Gore were to restore his enhanced "good cause" requirement, any of his successors could eliminate it. And neither the Campaign nor any of its members could bring suit to compel the sheriff to exercise his or her discretion to enact or implement any particular "good cause" policy.

For all of these reasons, the Campaign lacks standing to intervene in this matter, and its motion should accordingly be denied.

III. CPCA/CPOA'S FOOTNOTE SUGGESTIONS THAT THE COURT TREAT ITS IMPROPER EN BANC PETITION AS A REQUEST TO INTERVENE DOES NOT CONSTITUTE A TIMELY MOTION; IF IT IS ENTERTAINED, IT SHOULD BE DENIED

Peruta opposes CPCA/CPOA's suggestion that the Court should treat its improper en banc petition as a "request to intervene as parties." Pet. for Rehr'g En Banc, Dkt. 121-1, at 2 n.2. "A motion to intervene must be served on the parties as provided in Rule 5 of the Federal Rules of Civil Procedure. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. Rules Civ. Proc. 24(c). It

is error for a court to permit a stranger to the action to participate in the action absent a formal motion for intervention. *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). CPCA/CPOA's footnote request to intervene fails to meet even minimum motion requirements, and thus intervention should be denied.

First, Peruta is not aware of any attempt by either CPCA/CPOA or its counsel to notify him of their intention to file a motion to intervene. Second, CPCA/CPOA's request does not inform the Court of Peruta's position or even provide an explanation regarding any efforts made to contact him, as required by this Court's rules. *See* Cir. Advisory Comm. Note to Rule 27-1. And third, the footnote request describes the grounds for intervention with hardly enough particularity for Peruta to weigh CPCA/CPOA's request and to determine whether and how to support or oppose it. Fed. Rules App. Proc. 27(a)(2)(A).

Even if a request for intervention inserted by way of footnote into an en banc petition is sufficient, the CPCA/CPOA's "motion" should be denied because it barely mentions the requirements of permissive intervention—and it comes far from meeting them. In its entirety, the request to intervene reads:

> To the extent the Court finds that CPCA and CPOA must be a party in order to submit this petition, CPCA and CPOA request that this Court construe this petition to also be a request to intervene as parties. See,

> e.g., Fed. Rules Civ. Proc., Rule 24 (permissive intervention may be permitted to "a federal or state governmental officer or agency" when there is "(A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order." The members of CPCA and CPOA include Police Chiefs and some Sheriffs within the State, who are charged with the statutory duty to evaluate and issue permits to carry concealed weapons pursuant to California law. Therefore, these Associations are directly affected in their administration and implementation of applicable State regulations, and intervention is justified.

Pet. for Rehr'g En Banc, Dkt. 121-1, at 2, n.2.

Neither CPCA nor CPOA are "federal or state governmental officer[s] or agenc[ies]" permitted to intervene under Rule 24(b)(2).[4] As private professional associations, they are not tasked with the "administration and implementation of applicable State regulations" as they claim. *See* Fed. R. Civ. Proc. 24(b)(2). They provide no authority that such organizations may seek permissive intervention on behalf of governmental officers or agencies that are so tasked. And they do not even argue that they have standing to take the place of a party to pursue an appeal. *Arizonans for Official English*, 520 U.S. at 65. Nor is there any readily obvious

[4] While neither organization filed a Corporate Disclosure Statement, Peruta understands that both are private, professional organizations. The CPCA/CPOA's motion does not suggest otherwise. And the organizations' descriptions of their purposes, membership, and Board of Directors suggest they are not government agencies, but private associations. *See California Police Chiefs Association* (Mar. 25, 2014), californiapolicechiefs.org; *California Peace Officers Association* (Mar. 25, 2014), cpoa.org.

theory under which they would; to the contrary, any attempt to allege standing likely would suffer from all the same flaws as the Campaign's vague and generalized allegations. In short, the CPCA/CPOA's request to intervene as a party falls far short of establishing that its intervention is appropriate in this case. It should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Brady Campaign's motion to intervene, and either declare deficient or deny CPCA's and CPOA's *attempt* to intervene. Although the Court should deny the State of California's motion insofar as it seeks to intervene as of right under Federal Rule 24(a)(1), Peruta does not object to the Court exercising its discretion to permit the State to intervene under Rule 24(a)(2) or 24(b).

Date: March 26, 2014

MICHEL & ASSOCIATES, P.C.

s/ C.D. Michel
C.D. Michel
Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that **APPELLANTS' OPPOSITION TO MOTIONS FOR LEAVE TO INTERVENE BY THE STATE OF CALIFORNIA PURSUANT TO FRCP 24(a)(1) AND BY THE BRADY CAMPAIGN TO PREVENT GUN VIOLENCE; AND OPPOSITION TO CALIFORNIA POLICE CHIEFS ASSOCIATION AND CALIFORNIA PEACE OFFICERS ASSOCIATION FOOTNOTE REQUEST TO INTERVENE** complies with this Court's order of March 5, 2014, limiting the parties to 6,000 words to respond to motions to intervene. According to the word count feature of the word-processing system used to prepare the brief, it contains 5647 words, exclusive of the table of contents, table of authorities, and any attached certificates of counsel.

I further certify that the attached brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6). It was prepared in a proportionately spaced typeface using 14-point Times New Roman font in WordPerfect X5.

Date: March 26, 2014

MICHEL & ASSOCIATES, P.C.

s/ C.D. Michel
C.D. Michel
Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2014, an electronic PDF of **APPELLANTS' OPPOSITION TO MOTIONS FOR LEAVE TO INTERVENE BY THE STATE OF CALIFORNIA PURSUANT TO FRCP 24(a)(1) AND BY THE BRADY CAMPAIGN TO PREVENT GUN VIOLENCE; AND OPPOSITION TO CALIFORNIA POLICE CHIEFS ASSOCIATION AND CALIFORNIA PEACE OFFICERS ASSOCIATION FOOTNOTE REQUEST TO INTERVENE** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: March 26, 2014

MICHEL & ASSOCIATES, P.C.

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