No. 15-15428

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRY BAUER, et al.,
Plaintiffs-Appellants,

v.

KAMALA D. HARRIS
in her official capacity as Attorney General of the State of California, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of California
(1:11-cv-01440-LJO-MJS)

BRIEF OF AMICUS CURIAE LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the Law Center to Prevent Gun Violence states that it has no parent corporations. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

/s/ Efrain Staino
Efrain Staino

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae Law Center to Prevent Gun Violence (the "Law Center") is a non-profit, national law center dedicated to reducing gun violence and the devastating impact it has on communities. Founded after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides legal and technical assistance in support of gun violence prevention. The Law Center focuses on providing comprehensive legal expertise to promote smart gun laws at the federal, state, and local level. These efforts include tracking all Second Amendment litigation nationwide and giving support to jurisdictions facing legal challenges. The Law Center has provided informed analysis as an amicus in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Armed Prohibited Persons System (APPS) is a vital tool in California's fight against the epidemic of gun violence. Through the enforcement mechanisms provided by APPS, California seizes thousands of firearms every year from

[1] No party's counsel authored this brief in whole or in part. No party, party's counsel, or other person contributed any money to fund the preparation or submission of this brief other than amicus curiae and its counsel. All parties have consented to the filing of this brief.

dangerous individuals who become legally prohibited from continuing to possess them. In doing so, California reduces gun violence and improves public safety.

Appellants do not challenge APPS, and they concede that California has a legitimate interest in enforcing APPS. *See* Appellants' Opening Brief (AOB) 40. Instead, Appellants challenge the nominal, one-time $19 Dealer Record of Sale (DROS) fee on firearm transactions that funds this critical program. This challenge was rejected by the district court and should also be rejected by this Court because, under the first step of this Court's two-step inquiry, the DROS fee does not implicate rights protected by the Second Amendment. *See Jackson v. City & Cty. of S.F.*, 746 F.3d 953 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2799 (2015). Even if the DROS fee does implicate the Second Amendment, it is constitutionally permissible under either the Supreme Court's fee jurisprudence or heightened constitutional scrutiny under the second step of this Court's two-step Second Amendment inquiry.

This Court should reject Appellants' challenge under the first step of the two-step inquiry because the DROS fee satisfies both of the alternative tests *Jackson* provided for determining whether a regulation falls outside the scope of the Second Amendment. *Id.* at 960. First, the fee is a "presumptively lawful regulatory measure[]" under *Heller* because it is a "law[] imposing conditions and

qualifications on the commercial sale of arms."[2] *Heller*, 554 U.S. at 626-27. Second, the longstanding tradition in the United States of imposing reasonable fees and taxes on firearm transactions and ownership provides persuasive evidence that the DROS fee falls outside the historical scope of the Second Amendment. *Jackson*, 746 F.3d at 960.

Even if this Court were to find that the DROS fee implicates the Second Amendment, Appellants' challenge fails for two alternative reasons. First, the use of the DROS fee to defray costs associated with administering and enforcing APPS is constitutionally permissible under the Supreme Court's established fee jurisprudence. *See Cox v. New Hampshire*, 312 U.S. 569, 577 (1941); *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943). While this Court has not yet applied fee jurisprudence to the Second Amendment context, other appellate courts have done so, and it would be appropriate for this Court to do so in this case. Second, Appellants' challenge should alternatively be rejected under the second step of this Court's two-step inquiry because the DROS fee passes constitutional muster under any level of heightened scrutiny.

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[2] The *Heller* Court's reference to "commercial sale" extends logically also to firearm transactions that are not strictly "commercial." *See, e.g.*, *Colorado Outfitters Ass'n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1074 (D. Colo. 2014) ("Logically, if the government can lawfully regulate the ability of persons to obtain firearms from commercial dealers, that same power to regulate should extend to non-commercial transactions, lest the loophole swallow the regulatory purpose.").

BACKGROUND

In 2013, gun violence in California claimed 2,900 lives and left another 6,035 people injured seriously enough to require hospitalization, including 251 children and teens killed and 1,275 injured.[3] This gun violence is horrific, as is the emotional and financial damage that it inflicts.[4]

Although the current level of gun violence in California is intolerable, it is dramatically less than it was two decades ago.[5] California has made significant progress by implementing one of the nation's most intelligent and comprehensive systems of firearm regulation, which includes more than 30 significant gun safety laws. California's success in this area is a benchmark nationally: In 2010, California had the ninth-lowest gun death rate in the nation, whereas twenty years

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[3] Cal. Dep't Pub. Health, *Safe and Active Communities Branch Rep.*, generated from http://epicenter.cdph.ca.gov/ReportMenus/InjuryDataByTopic.aspx (last visited Oct. 20, 2015) (at "Injury Topic" select "Firearm/All Intents"; select "Outcome"; at "County" select "California"; at "Data Table" select "By Age and Year"; choose "Output Format"; and submit).

[4] The cost of hospital bills to treat firearm assault injuries in California totaled $87.4 million in 2010. More than $50 million, or 65%, of these costs were borne directly by California taxpayers. *See* Embry M. Howell et al., *State Variation in Hospital Use and Cost of Firearm Assault Injury, 2010*, 1 (Urban Inst. 2014), http://www.urban.org/research/publication/state-variation-hospital-use-and-cost-firearm-assault-injury-2010.

[5] For example, 5,322 Californians died as a result of gun violence in 1993. *See* Cal. Dep't Pub. Health, *Safe and Active Communities Branch Rep.*, *supra*, note 2.

before, California ranked thirty-fifth.[6] APPS, which is funded by the $19 DROS fee at issue in this case, is a critical component of California's approach to firearm safety. An understanding of the DROS fee and the functioning of APPS is crucial to the proper resolution of this case.

APPS is a firearm-related enforcement program specifically focused on identifying and disarming individuals who lawfully purchased firearms but later became ineligible to possess guns because of a felony conviction, involuntary commitment to a mental health facility, or other prohibiting event. *See* Cal. Penal Code § 30005. The program uses an electronic system that allows California Department of Justice (DOJ) agents to cross-reference firearm purchasers with a database of individuals who are prohibited by law from possessing firearms. *Id.* § 30000. DOJ's Bureau of Firearms has a dedicated APPS team that investigates these cases. DOJ also makes APPS data available to local California law enforcement officials so that they may carry out their own investigations. *See id.* §§ 30000(b), 30010.

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[6] *See* Law Center to Prevent Gun Violence, *The California Model: Twenty Years of Putting Safety First* 3 (2013), http://smartgunlaws.org/wp-content/uploads/2013/07/20YearsofSuccess_ForWebFINAL3.pdf (citing U.S. Ctrs. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting Sys., *1981-1998 Fatal Injury Report*, http://webappa.cdc.gov/sasweb/ncipc/mortrate9.html (accessed on July 11, 2013)).

APPS was established by the California Legislature in 2001 and went into full effect in 2006. It was originally funded with money appropriated from the State's General Fund, but the Legislature clarified in 2011 that APPS could be funded with DROS fees deposited into the DROS Special Account. Cal. S.B. No. 140 (Leno), 2013 Cal. Stats., ch. 2, § 1.

DROS fees are collected when a person purchases guns from a licensed firearm dealer in California. A prospective purchaser is required to provide certain personal information on a DROS form, which the dealer then submits to DOJ. Cal. Penal Code §§ 28100, 28155, 28160, 28205. This information: (1) allows DOJ to conduct a background check to ensure that the prospective purchaser is not prohibited from possessing firearms; and (2) creates an electronic record of the sale. The prospective purchaser also pays the $19 DROS fee, which is intended to help reimburse DOJ for costs associated with, among other things, conducting the background check and engaging in "enforcement activities related to the sale, purchase, *possession*, loan, or transfer of firearms." *See id.* § 28225 (emphasis added); Cal. Code Regs. tit. 11, § 4001; *see also* Cal. Penal Code §§ 28230, 28235, 28240.

APPS is a vital complement to the life-saving policy of implementing universal background checks for gun purchases. A significant number of gun owners become prohibited from firearm ownership only after they have legally

purchased firearms; in the last three years alone, APPS has led to the seizure of more than 8,000 illegally possessed firearms statewide. Excerpts of Record (ER) 475. APPS is one of the only enforcement programs in the country that focuses on disarming persons known to law enforcement to be prohibited from possessing firearms and is all the more critical given that federal law does not provide any mechanism to do so.[7]

Unfortunately, the list of armed and prohibited persons in California grows by about 15 to 20 per day, and in January 2015 APPS listed more than 17,000 prohibited persons associated with 34,689 firearms and 1,441 registered assault weapons statewide. ER474. As the California Legislature has declared, this backlog of illegally possessed weapons presents "a substantial danger to public safety." Cal. S.B. No. 140 (Leno), 2013 Cal. Stats., ch. 2, § 1. Thus, APPS continues to be essential to California's ability to make continued progress in reducing gun violence.

[7] *See* Law Center to Prevent Gun Violence, *Categories of Prohibited People Policy Summary* (2013), http://smartgunlaws.org/prohibited-people-gun-purchaser-policy-summary.

ARGUMENT

I. CALIFORNIA'S DROS FEE DOES NOT IMPLICATE THE SECOND AMENDMENT.

California's nominal, one-time $19 DROS fee does not implicate the Second Amendment under the two-step inquiry adopted by this Court. *Jackson*, 746 F.3d 960-61. The first step of the analysis asks "whether the challenged law burdens conduct protected by the Second Amendment." *Id.* at 960 (internal quotation marks omitted). The challenged DROS fee does not, as shown below.

In *Jackson*, this Court identified two alternative tests to determine in step one whether a challenged law falls outside the scope of the Second Amendment. *Id*. at 960. The first asks "whether the regulation is one of the 'presumptively lawful regulatory measures' identified in *Heller*." *Id.* (quoting *Heller*, 554 U.S. at 627 n.26). The second asks "whether the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions that fall outside the historical scope of the Second Amendment." *Id.* (citing *United States v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 187 (2014)).

If a court determines in step one that the challenged law falls outside the historical scope of the Second Amendment under either of these tests, the inquiry ends, and the challenged law stands. *See, e.g., id.* at 960 (courts reach step two only if the challenged regulation "falls within the historical scope of the Second

Amendment"); *accord Peña v. Lindley*, No. 2:09-CV-01185-KJM, 2015 WL 854684, at *13-14 (E.D. Cal. Feb. 26, 2015) ("Because [California's Unsafe Handgun Act] does not burden the Second Amendment at the first step, the court need not proceed to the second step. Heightened scrutiny is not triggered."), *appeal docketed*, No. 15-15449 (9th Cir. Mar. 11, 2015).

As explained below, the DROS fee at issue satisfies both of the alternative *Jackson* tests for step one of this Court's two-part Second Amendment inquiry, each of which is independently sufficient to uphold the DROS fee without further analysis.

A. The DROS Fee Falls Outside the Scope of the Second Amendment Because It Is a Presumptively Lawful Regulatory Measure Identified in *Heller*.

In *Heller*, the Supreme Court held that the Second Amendment protects an individual right to possess an operable handgun in the home for the purpose of self-defense, and that a "total[] ban[on] handgun possession in the home" and a "require[ment] that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable," violated that right. 554 U.S. at 628, 635. The Court emphasized, however, that this right "is not unlimited." *Id.* at 626. To underscore this point, the Court declared that nothing in its opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or 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 arms." *Id*. at 626-27; *see also McDonald*, 561 U.S. at 750, 786 ("We repeat those assurances here."). The Court further clarified that these "presumptively lawful regulatory measures" were "examples" and that its "list does not purport to be exhaustive." *Heller*, 554 U.S. at 627 n.26.[8] In *Jackson*, the Ninth Circuit held that if a challenged law is one of the 'presumptively lawful regulatory measures' identified in *Heller*, then it falls outside the scope of the Second Amendment. *Jackson*, 746 F.3d at 960. The DROS fee is both a "condition and qualification" on the commercial sale of arms and is used to enforce the prohibition on the possession of firearms by felons and the mentally ill, and therefore falls outside the scope of the Second Amendment.

1. The DROS Fee Is a Presumptively Lawful Condition and Qualification on the Commercial Sale of Firearms.

As the district court correctly held, the DROS fee is a presumptively lawful "condition on the sale of firearms" and, as such, "'falls outside the historical scope of the Second Amendment'" under the first alternative test of step one in *Jackson*. ER8 (citing *Jackson*, 746 F.3d at 960).

[8] Contrary to Bauer's characterization, AOB42, this Court has specifically rejected the argument that *Heller*'s list of presumptively lawful restrictions is "dicta, and therefore not binding." *United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010).

Conditions and qualifications on the commercial sale of firearms—like the DROS fee—that do not act as a ban on firearm possession by law-abiding individuals are presumptively lawful under *Heller*, 554 U.S. at 626-27 & n.26. Applying this aspect of *Heller*, courts have upheld regulations imposing various conditions on gun sales as presumptively lawful. *See Draper v. Healey*, No. 14-12471-NMG, 2015 WL 997424, at *7 (D. Mass. Mar. 5, 2015) (state statute requiring commercially sold handguns to be equipped with certain safety features), *appeal docketed*, No. 15-1429 (1st Cir. Apr. 14, 2015); *Peña*, 2015 WL 854684, at *13-14 (same); *Teixeira v. Cty. of Alameda*, No. 12-CV-03288-WHO, 2013 WL 4804756, at *6 (N.D. Cal. Sept. 9, 2013) (ordinance imposing conditions on gun stores), *appeal docketed*, No. 13-17132 (9th Cir. Oct. 23, 2013).

California's lawful conditions and qualifications on firearm transactions require, among other things, that a prospective purchaser pay the one-time $19 DROS fee. That fee, in part, funds an extensive background check at the time of sale, which ensures that a prospective purchaser is not prohibited from possessing firearms. Cal. Penal Code §§ 28220, 28225. Part of the DROS fee also funds APPS, which achieves the same objective post-sale. If all conditions and qualifications are satisfied, including payment of the DROS fee and clearing the background check, the firearm may be transferred to the purchaser. *Id.* § 26815. The nominal DROS fee therefore does not impose any ban on a law-abiding gun

purchaser's right to keep a handgun in the home for the lawful purpose of self-defense. Appellants do not suggest otherwise. *See, e.g.*, AOB18.

Moreover, Appellants make no effort to rebut the presumption that the DROS fee is lawful. For example, Appellants do not claim that the DROS fee itself imposes a burden on their Second Amendment right, or that it cannot be used to fund background checks. *See, e.g.*, AOB32. To the contrary, Appellants admit that background checks and the fees to fund them are presumptively lawful conditions and qualifications on the Second Amendment right. *See* AOB45 (including background checks as presumptively lawful conditions and qualifications identified in *Heller*). Nor do Appellants object to California's enforcing its laws prohibiting criminals and the mentally ill from possessing firearms. *See, e.g.*, AOB53. What Appellants do object to is the use of a portion of the nominal DROS fee to fund APPS—a program functionally indistinguishable from the background checks Appellants admit may lawfully be funded with DROS fees.

Rather than identify any burden in connection with California's use of the DROS fee, Appellants posit a hypothetical $1 million DROS fee. *See, e.g.*, AOB42. That hypothetical, however, points out the flaw in Appellants' argument. A fee of that size might amount, as a practical matter, to a prohibition—rather than a condition or qualification—on law-abiding individuals' ability to acquire

firearms, unlike the $19 DROS fee at issue here. *See Heller*, 554 U.S. at 628, 635. Appellants do not even suggest that the nominal DROS fee prevents or has prevented any law-abiding person from acquiring a firearm—in fact, Appellants admit themselves to having purchased numerous firearms. *See* AOB18. Nor is there any question that the fee is miniscule in comparison to the lawful programs that it funds. Appellants' hypothetical offers no basis for this Court to conclude that the DROS fee is anything other than a presumptively lawful condition on firearm transactions that falls outside the scope of the Second Amendment.

2. The Use of DROS Fees to Fund California's Enforcement of Laws Prohibiting Possession of Firearms by Felons and the Mentally Ill is Presumptively Lawful.

The DROS fee is presumptively lawful whether it is used to fund background checks at the time of sale or APPS thereafter. California uses both programs to enforce what *Heller* identified as presumptively lawful "prohibitions on the possession of firearms by felons and the mentally ill." 554 U.S. at 626; *see also Vongxay*, 594 F.3d at 1115 (upholding statute prohibiting felons from possessing firearms); *United States v. Dugan*, 657 F.3d 998, 999 (9th Cir. 2011) (noting that Congress may deprive felons and mentally ill people of the right to possess firearms).

There is no meaningful distinction therefore between the background check conducted at the time of acquisition, which Appellants concede may be funded

with the DROS fee, and APPS. The former is a regulatory measure that enforces the lawful prohibitions against possession at the time of the sale; the latter enforces those same lawful prohibitions if and when the purchaser becomes prohibited from keeping the firearm acquired through that same transaction.[9] The initial background check and APPS are both funded by all DROS fee payers seeking to acquire a firearm, whether or not they are ultimately successful. Some prospective purchasers pay the DROS fee, but are prohibited from taking possession at the time of the sale and are thus prevented from acquiring a firearm. Others pass the background check and take possession of a firearm, but later become prohibited from continued lawful possession due to, e.g., a felony conviction or mental illness. APPS ensures that California can enforce its lawful firearm prohibitions against those DROS fee payers as well.

Because the DROS fee qualifies as a presumptively lawful regulatory measure under *Heller*, and Appellants have failed to rebut that presumption, the fee satisfies the first alternative test in *Jackson*. The challenged DROS fee therefore

[9] California law makes it a felony for a prohibited person to possess a firearm. Cal. Penal Code § 29800. The background check enforces this law at the time of the sale. After the transaction, the purchaser's right to possess the acquired firearm(s) remains conditioned on his or her not falling into a prohibited category. If the purchaser becomes prohibited from possessing a firearm, he or she commits a felony by not relinquishing possession. *See id.* California relies on APPS to identify those gun purchasers who have become prohibited so that DOJ can remove any firearms that remain in their possession. *Id.* § 30000.

falls outside the scope of the Second Amendment, and this Court should affirm the district court's decision on this basis alone.

B. The DROS Fee Also Falls Outside the Scope of the Second Amendment Because It Is Part of a Longstanding Tradition of Imposing Taxes and Fees on Firearm Possession.

The DROS fee is part of a longstanding tradition in the United States of imposing fees and taxes on firearm transactions, ownership, and possession. It therefore also falls outside the historical scope of the Second Amendment under *Jackson*'s second alternative test, which covers "prohibitions that fall outside the historical scope of the Second Amendment." 746 F.3d at 960.

As the Fifth Circuit has recognized, "a longstanding, presumptively lawful regulatory measure—*whether or not it is specified on Heller's illustrative list*—would likely fall outside the ambit of the Second Amendment." *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012) (emphasis added), *cert. denied*, 134 S. Ct. 1364 (2014). A "longstanding" regulation is one that has long been accepted by the public and therefore is "not likely to burden a constitutional right." *Heller v. Dist. of Columbia* ("*Heller II*"), 670 F.3d 1244, 1253 (D.C. Cir. 2011) (relying on early 20th-century state statutes); *accord Nat'l Rifle Ass'n of Am.*, 700 F.3d at 196 ("a regulation can be deemed 'longstanding' even if it cannot boast a precise founding-era analogue"). As a result, "activities covered by a longstanding regulation are

presumptively not protected from regulation by the Second Amendment." *Heller II*, 670 F.3d at 1253.

There is abundant historical evidence of taxes and fees on firearm transactions, ownership, and possession. To highlight a few examples, in the 19th century, states regularly imposed taxes on the possession of firearms, ranging from $2 to $15 or more (roughly $30 to $250 in today's value).[10] In 1867, Mississippi required "a tax of not less than five dollars or more than fifteen dollars . . . annually . . . upon every gun and pistol which may be in the possession of any person in said county."[11] Alabama required a yearly tax of $2 each "[o]n all pistols or revolvers in the possession of private persons not regular dealers holding them for sale," and Georgia authorized lower courts to levy a tax of "one dollar a piece on every gun or pistol, musket or rifle over the number of three kept or owned on any plantation."[12] North Carolina, Florida, and Virginia had similar laws requiring yearly taxes on possession of firearms in the 19th and early 20th centuries.[13]

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[10] *See, e.g.*, Fed. Reserve Bank of Minn., *Consumer Price Index (Estimate) 1800-*, (last visited Oct. 22, 2015), https://www.minneapolisfed.org/community/teaching-aids/cpi-calculator-information/consumer-price-index-1800.

[11] 1867 Miss. Laws 327, *An Act to tax Guns and Pistols in the county of Washington*, § 1.

[12] Ala. Taxation, § 434(10), *Subjects and rates of assessment by assessors*, 1A.J. Walker, *The Revised Code of Ala.*, 167, 169 (1867); 1866 Ga. Law 27, *An Act to authorize the Justices of the Inferior Courts of Camden, Glynn and Effingham*

(Footnote continues on next page.)

The prevalence of these taxes on gun ownership, transactions, and possession more than a century ago is evidence of the public's acceptance of the conditions and qualifications they impose on the Second Amendment right. As such, these longstanding regulations demonstrate that one-time fees on firearm transactions—like the DROS fee—fall outside the historical scope of the Second Amendment under the second alternative test in *Jackson*.

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In summary, this Court may rely on either or both independent grounds identified in *Jackson* to conclude that the DROS fee does not implicate the Second Amendment and affirm the district court's decision without reaching the second step of the two-step inquiry.

II. EVEN IF THE SECOND AMENDMENT WERE IMPLICATED, THE DROS FEE WOULD STILL BE CONSTITUTIONAL.

If this Court were to find that the DROS fee implicates the Second Amendment, it should still uphold the DROS fee for two alternative reasons. First, California's use of the DROS fee to fund APPS is constitutionally permissible

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(Footnote continued from previous page.)

counties to levy a special tax for county purposes, and to regulate the same, §§ 3, 4.

[13] 1858 N.C. Sess. Laws 34, *An Act Entitled Revenue*, ch. 25, § 27, pt. 15; 1893 Fla. Laws 71, *An Act to Regulate the Carrying of Firearms*, ch. 4147, § 1; 1926 Va. Acts of Assemb., ch. 158, *An Act to improve a license tax on pistols and revolvers*, § 1.

under the Supreme Court's fee jurisprudence. Second, the DROS fee separately survives constitutional review under any level of heightened scrutiny under the second step of this Court's two-step inquiry.

A. Use of the DROS Fee to Defray the Costs of Administrating and Enforcing APPS Is Constitutionally Permissible Under the Supreme Court's Fee Jurisprudence.

1. It Is Proper to Apply the Supreme Court's Fee Jurisprudence.

This Court may review the challenged DROS fee under the Supreme Court's fee jurisprudence because it provides an appropriate framework for determining the constitutionality of the regulation.[14]

The fee jurisprudence was first articulated by the Supreme Court in *Cox* and *Murdock*, both of which involved the First Amendment. *Cox*, 312 U.S. at 577; *Murdock*, 319 U.S. at 113. Although it has principally been applied to challenges under the First Amendment, district and appellate courts across the country have concluded that the fee jurisprudence also "provides the appropriate foundation for addressing . . . fee claims under the Second Amendment." *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2d Cir. 2013), *cert. denied sub nom. Kwong v. de Blasio*, 134 S. Ct. 2696 (2014); *accord Justice v. Town of Cicero*, 827 F. Supp. 2d 835, 842-43 (N.D. Ill. 2011) (reviewing $25 non-refundable application fee for registration of

[14] The parties agree that the Supreme Court's fee jurisprudence may be applied in the Second Amendment context. *See* AOB25-41; State Answering Br. 33-40.

firearms under fee jurisprudence); *Heller v. Dist. of Columbia*, 698 F. Supp. 2d 179, 192 (D.D.C. 2010) (reviewing $60 firearm registration fee under fee jurisprudence), *rev'd in part on other grounds*, *Heller II*, 670 F.3d 1244.

While this Court has not applied fee jurisprudence in the Second Amendment context, it has relied on certain other aspects of First Amendment case law in resolving challenges under the Second Amendment. For example, this Court noted in *Jackson* that the two-step Second Amendment inquiry "bears strong analogies to the Supreme Court's free-speech caselaw" and that the analysis in the second step is "guided by First Amendment principles." 746 F.3d at 960-61; *see also Chovan*, 735 F.3d at 1138.

2. Fee Jurisprudence Permits a Fee That Defrays the Costs of Administrating and Enforcing a Regulatory Regime.

Under the Court's fee jurisprudence, a state may defray the cost associated with the exercise of a constitutional right, including the expense incident to the administration and policing of the act in question. In *Cox*, the Court explained that a fee relating to the exercise of a constitutional right would not offend the Constitution if the fee were designed "to meet the expense incident to the administration of the act and to *the maintenance of public order* in the matter licensed." 312 U.S. at 577 (emphasis added). In *Murdock*, the Court explained that a state may impose a fee "as a regulatory measure to defray the expenses of *policing* the activities in question." 319 U.S. at 113-14 (emphasis added).

The Second Circuit has applied this fee jurisprudence in the Second Amendment context to uphold a $340 fee imposed every three years for a residential handgun license. *Kwong*, 723 F.3d at 161, 165-67. The court concluded that "imposing fees on the exercise of constitutional rights is permissible when the fees are designed to defray (and do not exceed) the administrative costs of regulating the protected activity." *Id.* at 165.

In the First Amendment context, courts have likewise relied on the Supreme Court's fee jurisprudence to hold that "enforcement costs may be considered in assessing the constitutionality of a licensing fee." *Nat'l Awareness Found. v. Abrams* ("*Abrams*"), 50 F.3d 1159, 1165 (2d Cir. 1995). In *Abrams*, the Second Circuit upheld an $80 licensing fee imposed on professional solicitors, recognizing that "[a] certain degree of enforcement power is necessary to ensure that the purposes [of the registration system] are served." *Id*. at 1166. The court held that costs for "actions, investigations, litigation, and compliance efforts with respect to registered and delinquent professional solicitors" were properly defrayed by the fee. *Id*. (internal quotation marks omitted).

Similarly, the Sixth Circuit upheld an ordinance imposing licensing and permitting fees on adult entertainment businesses, in part because the cost of conducting background checks and enforcing compliance with the ordinance exceeded the yearly revenues collected from the fees. *Deja Vu of Nashville*

v. Metro. Gov't of Nashville, 274 F.3d 377, 395-96 (6th Cir. 2001); *see also Keepers, Inc. v. City of Milford*, 944 F. Supp. 2d 129, 164-65 (D. Conn. 2013) (upholding fee for adult entertainment business licensing, which was used to defray cost of conducting annual inspections of each business); *Lauder, Inc. v. City of Hous.*, 751 F. Supp. 2d 920 (S.D. Tex. 2010) (considering cost of seizing noncompliant newsracks in upholding $300 application fee for placing newsracks in public locations), *aff'd*, 670 F.3d 664 (5th Cir. 2012).

This Court also has suggested that an annual license fee for adult entertainment establishments in an amount approximating law enforcement costs would be constitutional. *See BSA, Inc. v. King Cty.*, 804 F.2d 1104, 1109 (9th Cir. 1986) (noting that license fees may be one alternative means available to the county to reduce any additional burden on law enforcement caused by adult entertainment).

3. The DROS Fee Satisfies Fee Jurisprudence Standards for a Constitutionally Permissible Fee.

The nominal $19 DROS fee is constitutional under the Supreme Court's fee jurisprudence because it defrays the costs associated with the administration and enforcement of California regulations specifically designed to keep firearms out of the hands of DROS fee payers who subsequently fall into a prohibited category.

a. The DROS Fee Defrays the Costs of APPS—an Integral Part of the Administration and Enforcement of California's Regulatory Framework.

As discussed above, the DROS fee defrays, among other things, the costs of conducting background checks and administering APPS. Both enforcement mechanisms target all DROS fee payers to ensure that they are qualified to acquire a firearm at the time of purchase and remain qualified to possess a firearm thereafter. And both enforce, among other things, California's "presumptively lawful" prohibition "on the possession of firearms by felons and the mentally ill." *Heller*, 554 U.S. at 626. As such, APPS and the background check share not only the same funding source but also the same purpose—enforcement of California's gun laws designed to keep firearms out of the hands of prohibited persons.

Appellants do not dispute that the DROS fee may properly be used to defray the enforcement costs of determining whether a prospective gun purchaser may legally exercise the protected activity, i.e., take possession of a firearm. *See, e.g.*, AOB36. It follows logically that the same DROS fee may properly be used to defray the continued enforcement costs of APPS to ensure that the same purchaser does not remain in possession of the acquired gun if he or she later becomes prohibited from lawfully possessing firearms. *See Abrams*, 50 F.3d at 1165 ("[E]nforcement costs may be considered in assessing the constitutionality of a licensing fee . . . ."); *Lauder*, 751 F. Supp. 2d at 944 (considering after-the-fact

enforcement costs, including inspection of licensees and seizure of non-complaint property, in challenge to one-time $300 fee for placing news racks in public).

Under established fee jurisprudence, the cost of policing possession of firearms—like the cost of seizing noncompliant newsracks,[15] investigating the criminal background of employees of adult entertainment establishments seeking a license to operate,[16] conducting annual inspections of adult entertainment establishments,[17] or enforcing continued compliance with ordinance regulating professional solicitors[18]—may be defrayed by imposing a fee on those who seek to purchase firearms without running afoul of the Constitution. Especially where the fee, as in this case, is fixed by law and applied evenly to all prospective gun purchasers without the possibility of discrimination by state officials. *See, e.g.*, *S. Or. Barter Fair v. Jackson Cty.*, 372 F.3d 1128, 1139 (9th Cir. 2004) ("[T]he regulation must provide objective standards that do not leave the amount of the fee to the whim of the official . . . ."). This is true both for costs incurred at the time of purchase to ensure the prospective purchaser is not prohibited from possessing a

[15] *Lauder*, 751 F. Supp. 2d at 944.

[16] *Deja Vu*, 274 F.3d at 395-96.

[17] *Keepers*, 944 F. Supp. 2d at 164-65.

[18] *Abrams*, 50 F.3d at 1166.

gun and for costs after the sale to identify and disarm those buyers who later become prohibited persons.

b. APPS Is Not a "General Law Enforcement Program" Because It Is Specifically Directed to DROS Fee Payers.

Appellants contend that the DROS fee may not be used to defray the cost of APPS because, they claim, APPS is a "general law-enforcement program that benefits the public as a whole." *See, e.g.*, AOB50. But the question is not whether APPS benefits the public as a whole. Indeed, Appellants do not dispute that the costs of background checks may be defrayed by the DROS fee despite their providing the same benefit to the public as APPS does: keeping firearms away from DROS fee payers who are prohibited from possessing them. Rather, the question is whether the DROS fee is "designed to defray (and do[es] not exceed) the administrative costs of regulating the protected activity"—here, the acquisition and possession of firearms by those who pay the DROS fee. *Kwong*, 723 F.3d at 165. As discussed above in Section I.A.2, the DROS fee is designed precisely for that purpose by funding both APPS and the initial background checks, both of which regulate the protected activity.

Appellants rely heavily on two cases that are easily distinguishable. *See* AOB29-30. *Boynton v. Kusper*, 494 N.E.2d 135, 140 (Ill. 1986), struck down a marriage license fee used to fund domestic violence shelters and services that were

available to *anyone*, not just married couples. The court concluded that the relationship between the purchase of a marriage license and the funding of domestic violence services for *everyone* was too remote. *Id.* at 139. That holding is inapposite here, because the DROS fee is used to defray the enforcement costs of gun laws only as to fee payers and, even more specifically, those fee payers who have become prohibited from firearm possession.

Appellants' challenge is more analogous to a post-*Boynton* case, *Jacobsen v. King*, 971 N.E.2d 620 (Ill. App. Ct. 2012), which upheld a marriage license fee that funded domestic violence services solely for victims of *marital* domestic violence. The *Jacobsen* court distinguished *Boynton*, emphasizing that "[h]ere, in contrast, the tax at issue, while imposed only on people who are marrying, *benefits only married and formerly married people* who need services because of *marital* domestic violence." *Id.* at 626 (emphasis added). In sharp contrast with the broad domestic violence services at issue in *Boynton*, APPS—like the marital divorce services funded in *Jacobsen*—is specifically directed to the fee payers. That is, APPS seeks to identify and confiscate firearms only from *DROS fee payers* who become prohibited persons, not from *everyone* who unlawfully possesses a firearm. APPS activities are thus focused on DROS fee payers subsequently barred from firearm possession.

Appellants' reliance on *Wendling v. City of Duluth*, 495 F. Supp. 1380 (D. Minn. 1980) is equally misplaced. In *Wendling*, the court held that a license fee for operating adult bookstores could not cover the administrative cost and enforcement of an *unrelated* obscenity ordinance. *Id.* at 1385. The court noted that the obscenity ordinance was entirely unrelated to the license fee in part because past violations of the ordinance could not be used as a ground to deny a license. *Id*. In contrast, the DROS fee, the initial background check, and APPS are all related and in place to enforce California's law prohibiting certain potentially dangerous individuals, such as convicted felons, from possessing firearms. And because falling into a prohibited category would have prevented an individual from receiving a firearm in the first place, there is a direct nexus between APPS and the DROS fee. *Wendling* is therefore inapplicable to the facts here.

Because it is specifically designed to defray the cost of regulating the DROS fee payers' activity—acquisition and continued possession of firearms—the DROS fee does not violate established fee jurisprudence.

B. The DROS Fee Also Would Survive Scrutiny Under Traditional Second Amendment Jurisprudence.

If this Court were to find that the DROS fee implicates the Second Amendment, the fee should be evaluated under fee jurisprudence as discussed above. Alternatively, the DROS fee should be upheld if evaluated under heightened scrutiny in step two of this Court's two-step inquiry.

1. Intermediate Scrutiny Would Apply.

Under the second step of the inquiry, this Court determines the level of scrutiny by considering the proximity of the challenged law to the core of the Second Amendment and the severity of the burden on the right. *See Jackson*, 746 F.3d at 960-61. The core of the Second Amendment right is "to allow 'law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Chovan*, 735 F.3d at 1133 (quoting *Heller*, 554 U.S. at 635).

This Court applies no more than intermediate scrutiny to regulations that fall short of imposing a severe burden on the core of the Second Amendment right, such as a complete ban on the right to keep and bear arms. *Jackson*, 746 F.3d at 961 (concluding that intermediate scrutiny is appropriate where the "challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right"). For example, in *Jackson*, this Court applied intermediate scrutiny to a law that required law-abiding gun owners to securely store firearms in their homes. *Id.* at 963-65. This Court concluded that the law "does not substantially prevent law-abiding citizens from using firearms to defend themselves in the home" and instead burdens only the "'*manner* in which persons may exercise their Second Amendment rights'" and therefore "does not impose the sort of severe burden" that would require a "higher level of scrutiny." *Id.* at 964 (quoting *Chovan*, 735 F.3d at 1138). The Court also

applied intermediate scrutiny to a law banning sales of hollow-point ammunition because the ban "does not prevent the use of handguns or other weapons in self-defense." *Id*. at 968.

Other courts are overwhelmingly in accord. *See, e.g.*, *Kwong*, 723 F.3d at 166 n.16 ($340 fee for three-year residential handgun license not subject to strict scrutiny because it "does not ban the right to keep and bear arms but only imposes a burden on the right"); *Heller II*, 670 F.3d at 1257 (rejecting strict scrutiny of gun registration laws because they "do not severely limit the possession of firearms" (internal quotation marks omitted)); *United States v. Marzzarella*, 614 F.3d 85, 99 (3d Cir. 2010) (holding that statute criminalizing possession of a handgun with an obliterated serial number should be reviewed under intermediate scrutiny).

The nominal, one-time, $19 DROS fee—which Appellants do not contend is prohibitively expensive or has deterred anyone from purchasing firearms—comes nowhere close to imposing the type of severe burden on the core of the Second Amendment that warrants strict scrutiny. Accordingly, intermediate scrutiny applies.

2. The DROS Fee Would Survive Intermediate Scrutiny.

Intermediate scrutiny requires a law to be substantially related, i.e., have a reasonable fit, to a substantial or important government interest. *See Chovan*, 735 F.3d at 1139. There can be no serious dispute that California has a substantial or

important—indeed a compelling—interest in prohibiting criminals and the mentally ill from possessing firearms. This Court declared in *Jackson* that "[i]t is self-evident that public safety is an important government interest." 746 F.3d at 965 (internal quotation marks omitted); *see id.* at 969 (the government's "interest in reducing the fatality of shootings is substantial"). More generally, the government's interest in preventing crime "is both legitimate and compelling." *United States v. Salerno*, 481 U.S. 739, 749 (1987); *see Schall v. Martin*, 467 U.S. 253, 264 (1984) ("The legitimate and compelling state interest in protecting the community from crime cannot be doubted." (internal citation omitted)).

APPS, like the background check that precedes the prospective firearm purchase, provides an essential tool through which California enforces its laws prohibiting felons and the mentally ill from possessing firearms and thereby protects public safety. The program allows the State to identify gun purchasers who paid the DROS fee when they lawfully acquired their guns—but who subsequently became prohibited from possessing them—and to remove the guns from their possession. The $19 fee that funds the background check at the time of purchase and APPS's continuous operation thereafter is therefore substantially related to achieving California's important interest of protecting public safety. The DROS fee would accordingly survive intermediate scrutiny. *See, e.g.*, *Jackson*, 746 F.3d at 965-70 (upholding laws requiring law-abiding gun owners to securely

store firearms in their homes and banning sales of hollow-point ammunition under intermediate scrutiny); *Chovan*, 735 F.3d at 1138 (upholding law prohibiting gun possession by domestic violence misdemeanants under intermediate scrutiny); *Kwong*, 723 F.3d at 167-68 (upholding $340 fee for three-year residential handgun license under intermediate scrutiny); *Heller II*, 670 F.3d at 1257 (upholding prohibition on semiautomatic rifles and magazines holding more than ten rounds under intermediate scrutiny).

Indeed, the relationship between APPS that the DROS fee funds and California's compelling interest in prohibiting criminals and the mentally ill from possessing firearms is so strong that the challenged fee would also survive strict scrutiny, which requires that a law "be narrowly tailored to serve a compelling state interest." *Marzzarella*, 614 F.3d at 99 (internal quotation marks omitted). The Supreme Court has concluded that protecting the public from crime is a compelling government interest. *See, e.g.*, *Salerno*, 481 U.S. at 749. Using the DROS fee to fund a program that identifies and disarms those fee payers who have become prohibited persons is narrowly tailored to serve that interest. APPS therefore would survive even strict scrutiny.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the district court.

Respectfully submitted,

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October 22, 2015

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because: This brief contains 6978 words, excluding the parts of the brief exempted by Fed. R. App. P .32(a)(7)(B)(iii).
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October 22, 2015

APPENDIX OF HISTORICAL STATE STATUTES

Page(s)

rendered on oath to the sheriffs, as per schedule B; thirdly, to the clerks of courts, and to the treasurer of the State, as per schedule C.

SCHEDULE A.

27. The following subjects shall be annually listed, and be taxed the amounts specified:

Land. (1) Real property, with the improvements thereon, (including entries of land,) twenty cents on every hundred dollars of its value.

Polls. (2) Every taxable poll eighty cents; *Provided*, That the county court may exempt from poll tax such poor and infirm persons, and disabled and insane slaves as they may declare and record fit objects of exemption.

Gates, &c. (3) Every toll gate on a turnpike road, and every toll bridge, five per cent. on the gross receipts, and every gate permitted by the county court to be erected across a highway, fifteen dollars.

Ferries. (4) Every ferry one per cent. on the total receipts of tolls during the year.

Studhorses, &c. (5) Every studhorse or jackass, let to mares for a price, belonging to a resident of the State, six dollars, unless the highest price demanded for the season for one mare shall exceed that sum, in which case the amount thus demanded shall be paid as tax. The subject shall be listed, and the tax paid in the county in which the owner resides.

Interest, &c. (6) Every dollar of net interest, not previously listed, received or accrued, (whether demandable or not,) on or before the first day of July of every year, on bonds or certificates of debt of the United States, of this State, (unless exempt by chapter 90 of the Revised Code, entitled "Public Debt,") or of any other State or government, or of any county or corporation, municipal or private, or on any bond, note, contract, account, or other claim or demand against solvent debtors, wherever they may reside, four cents.

Dividend and profit. (7) Every dollar of net dividend or profit, not previously listed, declared, received, or due on or before the first day of July in each year, upon money, or capital invested in steam vessels of twenty tons burden or upwards, or in shares in any bank or other incorporation or trading company, four cents.

How ascertained.

(8) Such net interest, dividend and profit shall be ascertained by deducting from the aggregate amount of interest, dividends and profits accrued in favor of the person listing, the amount of interest accrued against him during the year ending on the first day of July.

Note shavers.

(9) Every note shaver, or person who buys any note or notes, bond or bonds made by individuals, shall list the profits made and received or secured on all such purchases made by him during the year ending on the first day of July, whether made for cash or in exchange for other notes or bonds, and pay a tax of ten per cent. on the aggregate amount of such profits, in addition to the tax imposed by this act on the interest he may receive on such notes or bonds; *Provided*, There shall be no deduction made from the profits in consequence of any losses sustained.

Negro traders.

(10) Every person resident in this State, engaged in the business of buying and selling slaves, whether the purchases or sales be made in or out of the State, for cash or on a credit, one-half of one per cent. on the total amount of all his purchases, during the twelve months ending on the first day of July of each year.

Not regular traders.

(11) Every person resident in this State, not a regular trader in slaves, who may buy a slave or slaves to sell again, whether such purchase or sale be made in or out of the State, for cash or on credit, one-half of one per cent. on the total amount of his purchases during the twelve months ending on the first day of July of each year.

Carriages, &c.

(12) Every carriage, buggy or other vehicle kept for pleasure or for the conveyance of persons, of the value of fifty dollars or upwards, one per cent. on its value.

Plate, &c.

(13) All gold and silver plate, and gold and silver plated ware, and jewelry worn by males, including watch-chains, seals and keys, when collectively of greater value than twenty-five dollars, one per cent on their entire value.

Watches.

(14) Every watch in use one per cent. on the value; *Provided*, That all watches worn by ladies shall be exempt from taxation. Every harp in use, $2.50; every piano in use, $1.50.

Dirks, &c.

(15) Every dirk, bowie-knife, pistol, sword-cane, dirk-cane and rifle cane, used or worn about the person of any one

at any time during the year, one dollar and twenty-five cents. Arms used for mustering shall be exempt from taxation.

Dentists, physicians, &c.

(16) Every resident surgeon-dentist, physician, lawyer, portrait or miniature painter, daguerrian artist, or other person taking likenesses of the human face; every commission merchant, factor, produce broker, and auctioneer; every State and county officer, and every person in the employment of incorporated or private companies, societies, institutions or individuals, and every other person, (except ministers of the gospel and judges of the superior and supreme courts) whose annual total receipts and income, (whether in money or otherwise) in the way of practice, salary, fees, wages, perquisites and emoluments, amount to, or are worth five hundred dollars or upwards, one per cent. on such total receipts and income.

Liquors, &c.

(17) Every resident of the State that brings into this State, or buys from a non-resident, whether by sample or otherwise, spirituous liquors, wines or cordials for the purpose of sale, ten per cent. on the amount of his purchases. Every person that buys to sell again, spirituous liquors, wines or cordials from the maker in this State, his agent, factor or commission merchant, five per cent. on his purchases.

Collateral descent.

(18) Upon all real and personal estate, whether legal or equitable, above the value of one hundred dollars, situated within this State, which shall descend, or be devised or bequeathed to any collateral relation, or person, other than a lineal ancestor or descendant, or the husband or wife of the deceased, or husband or wife of such ancestor or descendant, or to which such collateral relation may become entitled under the law for the distribution of intestates' estates, and which real and personal estate may not be required in payment of debts and other liabilities, the following per centum tax upon the value thereof, shall be paid:

(*Class* 1) If such collateral relation be a brother or sister, a tax of one per cent.

(*Class* 2) If such collateral relation be a brother or sister of the father or mother of the deceased, or child of such brother or sister, a tax of two per cent.

(*Class* 3) If such collateral relation be a more remote re-

lation, or the devisee or legatee be a stranger, a tax of three per cent.

(19) The real estate liable to taxation shall be listed by the devisee or heir in a separate column, designating its proper per cent. tax. Who to list.

(20) The personal estate shall be liable to the tax, in the hands of the executor or administrator, and shall be paid by him before his administration account is audited, or the estate settled, to the sheriff of the county. Personal estate liable.

(21) If the real estate descended or devised, shall not be the entire inheritance, the heir or devisee shall pay a *pro rata* tax corresponding with the relative value of his estate or interest.

(22) If the legacy or distributive share to be received shall not be the entire property, such legatee or distributee shall, in like manner, pay a *pro rata* part of the tax, according to the value of his interest.

(23) Whenever the personal property in the hands of such executor or administrator (the same not being needed to be converted into money in the course of the administration) shall be of uncertain value, he shall apply to the county court, to appoint three impartial men of probity to assess the value thereof; and such assessment being returned to court, and confirmed, shall be conclusive of the value.

28. Every person shall at such time and place as shall be designated by the persons appointed to take the list of taxables, list all the real and personal estate, and other taxable subjects enumerated in Schedule A of this act, which were his property, or in his possession, or were the subjects of taxation on the first day of July, of that year. Real and personal estate to be listed.

29. Lists of taxables of testators, intestates, minors, lunatics, insane persons, absentees, and other estates held in trust, shall be rendered by the executor, administrator, guardian, agent, trustee, or *cestui que trust* as the case may be. Estates held in trust, &c.

30. Real estate shall be listed in the county where situated, and where a tract of land is divided by a county line, shall be listed in the county in which the larger portion shall be situated; except when the owner resides in one of the counties in which a portion of the tract is situated, in which case he shall list in the county in which he resides. Where Where to be listed.

TITLE VI.

COUNTY BONDS, TAXES, ETC.

(No. 40.)

An Act to authorize the Inferior Court of Bibb county to issue their bonds for the purpose of raising funds to build a new Court House and Jail.

1. SECTION I. *The General Assembly of the State of Georgia do enact,* That the Inferior Court of Bibb county shall have power and authority to issue their bonds in such sums as they may deem proper, and having not longer than ten years to run, bearing seven per cent. interest; such bonds to amount, in the aggregate, to not more than fifty thousand dollars, for the purpose of raising funds to build a new Court House and Jail for the county of Bibb. Amount of bonds.

2. SEC. II. The bonds authorized by this act shall be approved and signed by all the Justices of the Inferior Court in their official capacity, and may be sold in the market or at public outcry, as the Inferior Court may direct; at any rate not less than ninety per cent. of their nominal value, and when so issued and sold shall be valid and binding on the county of Bibb, and for the payment of which and the interest thereon, the Inferior Court shall provide by taxation. How sold. Payment, how provided for.

SEC. III. Repeals conflicting laws.

Assented to 13th of December, 1866.

(No. 41.)

An Act to authorize the Justices of the Inferior Courts of Camden, Glynn and Effingham counties to levy a special tax for county purposes, and to regulate the same.

3. SECTION I. *The General Assembly of the State of Georgia do enact,* That the Justices of the Inferior Courts of Camden, Glynn and Effingham counties be and they are hereby authorized to levy and Justices of Inf'r Court authorized to levy tax.

collect a tax of two dollars per head on each and every dog over the number of three, and one dollar a piece on every gun or pistol, musket or rifle over the number of three kept or owned on any plantation in the counties aforesaid; the said tax to be applied to such county purposes as the said courts shall direct.

Planters required to render full return upon oath.

4. SEC. II. That the owner of every plantation in said counties shall be required to render, upon oath, a full return of every dog, gun, pistol, musket, or rifle so held or kept as aforesaid, and shall be held responsible for the tax imposed upon them, which tax the said Inferior Courts are hereby authorized and empowered to enforce, as in other cases.

SEC. III. Repeals conflicting laws.

Approved 7th of December, 1866.

(No. 42.)

An Act to compensate Grand and Petit Jurors of the Superior, Inferior and County Courts in the county of Decatur, in this State, and to authorize the levy of an extra tax for said purpose.

Compensation of Jurors.

5. SECTION I. *The General Assembly of the State of Georgia do enact*, That from and immediately after the passage of this act Grand and Petit Jurors who may serve in the Superior or County Courts in the county of Decatur shall be entitled to receive for each and every day they may serve as such jurors, two dollars; *provided* he shall produce the certificate of the sheriff, countersigned by the presiding Judge or Justice, of the time he has served, which certificate shall be a warrant for the sum allowed, and a voucher to the treasurer of the county for paying the same.

Proviso.

Inf'r Court may collect Jury tax.

6. SEC. II. That the Inferior Court of Decatur county is authorized and required to levy and have collected an extra tax, to be styled the "Jury Tax," of sufficient amount to pay all jurors in said county as provided for in the first section of this act.

Act shall be of force.

SEC. III. That this act shall be of force immediately after its passage, and all conflicting laws are repealed.

Assented to 12th of December, 1866.

(No. 43.)

An Act to authorize the Justices of the Inferior Court of Decatur County to issue Bonds for the payment of erecting a Bridge over Flint River, within the limits of Bainbridge, or for the payment of stock in a corporate company for that purpose.

Bonds.

7. SECTION I. *The General Assembly of the State of Georgia do enact*, That a majority of the Justices of the Inferior Court of Decatur county may issue bonds, payable in two, three, four, five, six, seven, eight, nine and ten years, and if in their judgment it would be better, up to twenty years, with a rate of interest not greater than that rate fixed by law; which bonds, so issued, shall be signed by

4. All property of literary, scientific, and benevolent institutions, actually used for the purposes for which said institutions were created, not exempting, however, any of such property when employed in any other than the regular business of such institutions. Societies.

5. Houses of religious worship, and their appurtenances. Houses of worship

6. Places and monuments of the dead, and implements of burial. Burial places.

7. All tools and implements in actual use of any calling, occupation or trade, to the value of one hundred dollars. Tools of trade.

8. All insane persons and their property, to the value of one thousand dollars. Insane persons.

9. All disabled or crippled persons, whose taxable property does not exceed five hundred dollars, from any poll tax. Crippled.

10. All lands donated by acts of congress to railroads in this state remaining unsold and uncultivated. Railroad lands.

ARTICLE II.

Subjects and rates of assessment by assessors as to property and persons.

§ 434. *Subjects and rates of assessment by assessors.*—[a]Taxes must be assessed by the assessor in each county on and from the following subjects, and at the following rates, to-wit: a. 19 Feb'y, 67, p. 260. § 2.

1. On every male inhabitant between the ages of eighteen and and fifty, (except those persons between the ages of eighteen and twenty-one, the emoluments of whose labor go to parents or masters) the sum of two dollars; and to insure the payment of such tax, all partnerships, associations, corporations, officers or individuals must return to the assessor the number and names of persons in their employment on the first day of February of each year, as clerks, book-keepers, overseers, deputies, agents, workmen, journeymen, or laborers subject to such tax, which tax the assessor shall assess against such employers, by them to be deducted out of the hire, wages or salary of such employees as before enumerated; and upon the failure of any employer to make return of such employees when called upon by the assessor to do so, the assessor must proceed to ascertain the number of such employees from the best sources of information practicable, and such employer so failing shall be held liable in double the amount of the tax. Polls.

2. On all real estate, to be estimated at its market value in money, according to the best judgment the assessor can form by information, inspection or otherwise, taking into consideration its location, whether in town, city or the country, its proximity to local advantages, its quality of soil, growth of timber, mines, minerals, quarries, or coal beds, and the amount and character of improvements, three-tenths of one per cent. *ad valorem.* 3-10 of 1 per ct. Real Estate.

3. On all mills, foundries, forges, mining establishments, quarries, lime or marble works, gin and carriage making shops, tanneries, and other manufacturing establishments; Mills.

On all wharves and wharf boats, toll bridges and ferries, turnpikes, and all passes, channels or canals, where tolls are charged; Wharves, &c.

On all stocks of goods, wares and merchandise on hand to be assessed upon not less than the largest amount on hand at any one Merchandise.

time during the preceding year, and this shall include all merchandise kept on plantations for sale, or to be dealt out to laborers; but any goods, wares or merchandise offered for sale by any dealer or person, commencing business subsequent to the first day of January of the current tax year, shall become at once liable to the tax levied by this act, and must be estimated by the maximum amount thereof;

Horses. On all horses and mules not used strictly for agricultural purposes, except studs, jacks and race horses;

Cattle. On all cattle on the excess over five head;

Furniture. On all household furniture, on the excess over three hundred dollars;

Libraries. On all libraries not exempted by law, on the excess over three hundred dollars;

Clocks. On all clocks kept for use; and

Other property. On all other property, real, personal, or mixed, not otherwise specified and taxed herein, or exempted therefrom—and this shall not be construed to tax the crops produced upon lands within the state taxed under the second subdivision of this section, as real estate—three-tenths of one per cent. *ad valorem;* but no hogs, sheep, goats, or poultry, kept or raised for the use of any family, or work oxen, or animals used for agricultural purposes exclusively, and no farming tools and implements of husbandry necessary on the farm, shall be taxed by this act.

½ of 1 per cent. Vehicles. Jewelry, &c. 4. On all vehicles not exclusively used for agricultural purposes; On all jewelry, plate and silver ware, ornaments and articles of taste, pianos and other musical instruments, and paintings, except family portraits;

Cotton presses. On all cotton presses and pickeries;

Studs, &c. On all studs, jacks, and race horses;

Watches, &c. On all gold and silver watches, and gold safety chains;

Money hoarded On all money hoarded, or kept on deposit subject to order, either in or out of the state, except funds held subject to draft in the prosecution of a regular exchange business, and except also money kept on hand to defray current family expenses, for a period not exceeding one year;

Money loaned. On all money loaned, and solvent credits bearing interest, from which credits the indebtedness of the tax payer shall be deducted, and the excess only shall be taxed;

Money employed. On all money employed in buying or trading in paper, or in a regular exchange business, or invested in paper, whether by individuals or corporations, except where the money so employed or invested is otherwise taxed as capital;

Stock of corporations. On the capital stock, actually paid in, of all incorporated companies, created under any law of the state, whether general or special, (except railroads,) and not exempted by their charter from such tax, except any portion that may be invested in property and taxed otherwise as property, one-half of one per cent. *ad valorem.*

½ of 1 per cent. Auction sales. 5. On the gross amount of all sales at auction, made in or during the tax year preceding the assessment, except those made by or under the direction of executors, administrators and guardians, as such, by order of court or under legal process, and under any deed, will or mortgage, at the rate of one-fourth of one per cent.

1 per cent. 6. On the gross amount of premiums, (after deducting therefrom all return premiums,) received from their business in this state during such tax year, by any insurance company not chartered by this

Foreign insurance companies on premium. state, and doing business herein by agents or otherwise, at the rate of one per cent.

Gross commissions, &c. 7. On the gross amount of commissions or sums charged or re-

ceived in or during such tax year, by any factor, commission merchant, or auctioneer, in buying, selling, or any other act done in the course of their business;

On the gross receipts, during such tax year, of all cotton pickeries, and from the storage of cotton, or other merchandise, or produce, at the rate of one per cent. Cotton.

8. On every pack, or part of a pack of playing cards, sold by wholesale, retail, or otherwise disposed of, during such tax year, fifty cents. Cards, 50 cents.

9. On every legacy, where letters testamentary have not been taken out in this state, received by any person other than the child, adopted child, grandchild, brother, sister, father, mother, husband, or wife, and on all property given by deed or otherwise, to any such person, on the amount or value thereof, to be assessed to the beneficiary, guardian, trustee, or legal representative, at the rate of three per cent. Legacies, 3 per cent.

10. On all pistols or revolvers in the possession of private persons not regular dealers holding them for sale, a tax of two dollars each; and on all bowie knives, or knives of the like description, held by persons not regular dealers, as aforesaid, a tax of three dollars each; and such tax must be collected by the assessor when assessing the same, on which a special receipt shall be given to the tax payer therefor, showing that such tax has been paid for the year, and in default of such payment when demanded by the assessor, such pistols, revolvers, bowie knives, or knives of like description, must be seized by him, and unless redeemed by payment in ten days thereafter, with such tax, with an additional penalty of fifty per cent., the same must be sold at public outcry before the court house door, after five days notice; and the overplus remaining, if any, after deducting the tax and penalty aforesaid, must be paid over to the person from whom the said pistol, revolver, bowie knife, or knife of like description, was taken, and the net amount collected by him must be paid over to the collector every month, from which, for each such assessment and collection, the assessor shall be entitled to fifty cents, and when the additional penalty is collected, he shall receive fifty per cent. additional thereto. Pistols, knives.

11. On all steamboats, vessels, and other water crafts plying in the navigable waters of the state, at the rate of one dollar per ton of the registered tonnage thereof, which must be assessed and collected at the port where such vessels are registered, if practicable; otherwise, at any other port or landing within the state where such vessels may be; but this does not include flat-bottom sail boats, or other like craft, employed exclusively in the transportation of wood, lumber, or coal, which shall only be assessed at the rate of twenty-five cents per ton. Steamboats. Other boats.

12. On the gross profits of all banking associations, created under the laws of the United States, at the rate of two per cent. Banking companies.

13. On all acts of incorporation granted by the general assembly, other than acts incorporating cities or towns, and acts incorporating manufacturing companies, an *ad valorem* tax of one tenth of one per cent. on the estimated value of the interest involved, or capital authorized as a bonus, to be due and payable to the tax collector of the county in which the office of such incorporation may be located, whenever such corporation shall commence actual operation; and this shall apply to all such acts passed by the general assembly of 1866–7. Acts of incorporation.

14. On all dividends declared or earned and not divided by incorporated companies created under the laws of this state, (except rail- Dividends.

roads,) to be assessed to and paid by the companies earning or declaring the same, a tax of one per cent.

Gross receipts of railroads.

15. On the gross receipts of all railroads and horse railroad companies, for freight and passengers, within the limits of this state, a tax of one half of one per cent.; but upon any railroad extending beyond the limits of this state, this tax shall only be assessed upon such *pro rata* portion of the receipts of such company, as the length of the road within the state may bear to the entire length of the road upon which the earnings accrue.

Petroleum

16. On the gross receipts of all petroleum and oil companies, or distillers of coal oil, a tax of one per cent.

b. 19 Feb'y, 67, p. 264, § 4.

§ 435. *Assessment of incomes, salaries, &c.*—[b]There must be assessed and collected upon the annual gains, profits, or incomes, of every person residing within the state, from whatever sources derived, and upon all salaries and fees of public officers, and upon the salaries of all other persons, upon the excess of such gains, profits, incomes, fees, or salaries, over five hundred dollars, at the rate of one per cent. In estimating the annual gains, profits, or income, of any person, all national, state, county and municipal taxes assessed to and paid by such person within the year, except the tax assessed under this section, must be deducted therefrom; also, all income derived from dividends, or on shares in the capital stock of any incorporated company, (where such tax has been assessed and paid by such incorporated company;) also, the amount paid by any person for the rent of the homestead used, or the rental value of the same, if owned by himself or his family; also, when any person rents buildings, lands, or other property, or hires labor to cultivate such lands, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest, or the rental value of any lands cultivated as above, if owned by the occupant thereof, must be deducted; also, the amount paid out for usual ordinary repairs, not including any new buildings or permanent improvements, must be deducted; *Provided*, That any person shall be exempted from the operations of this section, upon whose gross receipts, commissions, or profits, taxes are assessed under the provisions of the preceding section.

ARTICLE III.

Licenses and taxes to be collected by the probate judge.

a. 19 Feb'y, 67, p. 265, § 4.

§ 436. *Taxes collected by the probate judge.*—[a]Taxes must be assessed and collected by the judge of probate, as follows, to-wit:

Legacy.

1. On every legacy subject to assesment, left by any will on which letters testamentary are taken out in this state, there must be assessed and collected by the judge of probate of the county in which such letters are taken out, a tax of one-half of one per cent. *ad valorem*, and if not paid on the receipt of such legacy, such judge must issue execution for the amount of such assessment, against the exec-

ander R. Richmon, minors of Pike county, and John S. Roberts, minor of Monroe county, be, and the same are hereby removed; that they may contract and be contracted with, sue and be sued, plead and be impleaded and enjoy all other privileges of citizenship the same as though they had attained the full age of majority, except the right to vote and hold office.

SEC. 2. *Be it further enacted*, That this take effect and be in force from and after its passage.

Approved Feb. 7, 1867.

CHAPTER CCXLIX.

AN ACT to tax Guns and Pistols in the county of Washington.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That a tax of not less than five dollars or more than fifteen dollars shall be levied and assessed annually by the Board of Police of Washington county upon every gun and pistol which may be in the possession of any person in said county, which tax shall be payable at any time on demand, by the Sheriff, and if not so paid, it shall be the duty of the Sheriff to forthwith distrain and seize such gun or pistol, and sell the same for cash at the door of the Court House, after giving ten days notice by advertisement, posted in front of said Court House, and out of the proceeds of such sale, there shall be paid the amount of such tax and the cost of sale, and if any surplus remains, it shall be paid to the owner of such

Extent of tax

Notice to be given.

gun or pistol. The amount of the tax so assessed and collected, shall be paid to the county Treasurer, and shall constitute a part of the bridge fund of said county.

SEC. 2. *Be it further enacted*, That this act take effect and be in force from and after its passage.

Approved Feb. 7, 1867.

CHAPTER CCL.

AN ACT for the relief of Martha B. Pittman, of Coahama county.

WHEREAS, Martha Pittman became the executrix, in the county of Choctaw, in this State, of the estate of the late M. B. Pittman, of said county, deceased, and whereas, the estate of the said deceased consists chiefly of land which is situated in the county of Coahoma, where the said Martha Pittman resides: and whereas, it is attended with great inconvenience to said Martha Pittman to attend the Probate Court of said county of Choctaw, and would be to the advantage of said estate to have the same administered in the county of Coahoma; therefore,

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Judge of Probate in and for the county of Choctaw, be, and is hereby authorized and required, at the cost and charges of the said estate of M. B. Pittman, to transfer and transmit to the Judge of Probate of the county of Coahoma, a full and complete copy of the

Records to be transferred.

SEC. 3. That any person violating the provisions of this Act shall be fined not exceeding five hundred dollars for each violation thereof. Penalty.

SEC. 4. This Act shall go into effect immediately upon its approval by the Governor. Effect.

Approved May 31, 1893.

CHAPTER 4146—[No. 32.]

AN ACT Preventing the Shipment of Partridges and Quails Killed or Entrapped in the State of Florida.

Be it enacted by the Legislature of the State of Florida:

SECTION 1. That no partridges or quails killed or entrapped in the State of Florida, shall be shipped or transported outside of the county in which such partridges or quails have been killed or entrapped. Preventing shipping partridges, quail, &c.

SEC. 2. Any person or any agent of any transportation company, or common carrier violating the provisions of this Act shall pay a fine of not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned for a period of not less than sixty days nor more than one year in the county jail. Penalty.

SEC. 3. That all laws in conflict with the provisions of this Act are hereby repealed. Repeal.

SEC. 4. That this act shall take effect upon its passage and approval by the Governor. Effect.

Approved June 2, 1893.

CHAPTER 4147—[No. 33.]

AN ACT to Regulate the Carrying of Firearms.

Be it enacted by the Legislature of the State of Florida:

SECTION 1. That in each and every county in this State, it shall be unlawful to carry or own a Winchester or other repeating rifle or without first taking out a license from the County Commissioners of the respective counties, before such person shall be at liberty to carry around with him on his person and in his manual possession such Winchester rifle or other repeating rifle. License for carrying rifle.

1893.

Who to grant.

SEC. 2. The County Commissioners of the respective counties in this State may grant such license at any regular or special meeting.

Bond.

SEC. 3. The person taking out such license shall give a bond running to the Governor of the State in the sum of one hundred dollars, conditioned on the proper and legitimate use of the gun with sureties to be approved by the County Commissioners, and at the same time there shall be kept by the County Commissioners granting the same a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same.

Penalty.

SEC. 4. All persons violating the provisions of Section 1 of this Act shall be guilty of a misdemeanor, and on conviction shall be fined not exceeding one hundred dollars or imprisonment in the county jail not exceeding sixty days.

Effect.

SEC. 5. That this Act shall go into effect 30 days after its passage and approval by the Governor.

Approved June 2, 1893

CHAPTER 4148—[NO. 34.]

AN ACT Prescribing that a Scrawl or Scroll, Printed or Written, shall be as Effectual as a Seal.

Be it enacted by the Legislature of the State of Florida:

Use of scrawl as seal.

SECTION 1. That a scrawl or scroll, printed or written, affixed as a seal to any written instrument shall be as effectual as a seal.

Prior use valid.

SEC. 2. That all written instruments heretofore or hereafter made with a scrawl or scroll, printed or written, affixed as a seal are declared to be sealed instruments, and shall be construed and received in evidence as such in all the courts of this State.

Effect.

SEC. 3. That this Act shall take effect immediately upon its passage and approval by the Governor.

Approved April 28, 1893.

CHAP. 158.—An ACT to improve a license tax on pistols and revolvers; to regulate the sale thereof and of ammunition therefor; and to provide that the proceeds of such tax shall be used for the establishment of a diseased and crippled children's hospital. [S B 44]

Approved March 17, 1926.

1. Be it enacted by the general assembly of Virginia, That it shall be the duty of every person residing in this State and owning a pistol or revolver therein, to pay on or before the first day of January of each year a license tax of one dollar on each pistol or revolver so owned, or in the event that such pistol or revolver shall be acquired by any such person on or after the first day of Feburary, such license tax shall be forthwith paid thereon. The application for the license shall give the name of the owner, and the number, make and calibre of such pistol or revolver, which shall be set forth in the license. All pistol or revolver licenses shall run from the first day of January to the first day of the following January. Such license taxes shall be paid to the treasurer of the city or county wherein the said owner resides, and the said treasurer shall not receive more for handling the funds arising from the tax imposed by this act than he receives for handling other State funds. The treasurers shall not receive compensation for their services in issuing the license cards herein provided for. Upon payment of the tax provided for in this section the person paying the same shall be entitled to a license card therefor, showing the year for which the license is paid, the county or city issuing the card, the serial number of the license, and the number, calibre, make and owner of the pistol or revolver. When the license card is issued the treasurer shall record the name of the owner of the pistol or revolver, and the number, calibre and make thereof with the number of the license, in a book prepared for the purpose. The license cards and book shall be furnished by the boards herein provided and shall be paid out of the funds derived from the pistol and revolver licenses. If any such card should be lost the owner of the card shall pay to the treasurer twenty-five cents for a duplicate card.

2. It shall be the duty of every retailer selling a pistol or revolver in this State, at the time of such sale, to keep a record of the name and address of the purchaser and the number, make and calibre of the pistol or revolver, and to report once a month to the treasurer of his county or city the names of such purchasers, if any, together with the number, make and calibre of each pistol or revolver purchased; and all persons receiving or having in their possession a pistol or revolver for the purpose of repairing the same shall report to the treasurer of his county or city once a month giving the name and address of the owner and the calibre, make and serial number of such pistol or revolver.

3. It shall be unlawful for any retailer in this State to sell ammunition for any pistol or revolver to any person unless the person desiring to make such purchase displays the license card for the current year provided for in this act.

4. Any person violating any provision of this act or using a li-

cense card not issued to him, for the purpose of purchasing ammunition, or using a license card for the purchase of pistol or revolver ammunition unless the ammunition is intended to be used for the weapon mentioned in the license card shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or sentenced to the State convict road force for not less than thirty or not more than sixty days, or both, in the discretion of the tribunal trying the case.

5. The provisions of this act shall not apply to any officer authorized by law to carry a pistol or revolver nor to the pistol or revolver of such officer when such pistol or revolver is carried in discharge of his official duty, except that every officer shall list his pistol or revolver with the treasurer of his county or city annually by January first; nor to a pistol of an obsolete type kept as a souvenir, memento or relic, such as cap and ball type, etcetera, or souvenir used or captured by any person or relative in any war. But such pistol shall be registered as herein provided, upon satisfactory proof to the officer issuing such license that the pistol in question comes properly within this exception, in which case, no license tax shall be charged.

6. The tax hereby imposed shall be in lieu of all other taxes on such pistols and revolvers; but nothing in this act shall be construed to apply to such weapons in the stocks of licensed wholesaler or retailers.

7. All funds arising from pistol and revolver licenses, except as hereinbefore provided, shall be kept separate from other funds and shall be paid into the State treasury to establish a fund known as the diseased and crippled children's hospital fund, which shall be used for the purpose of establishing and maintaining within the State at such place or places as may be selected by the board hereinafter provided for, a hospital or hospitals for the care, treatment and vocational training of diseased and crippled children resident in Virginia, or for any such rehabilitation work that the board may deem wise.

Each treasurer shall between the first and fifteenth of July and between the first and fifteenth of January report to the auditor of public accounts collections, which he is required to make by this act, and shall at the same time pay into the State treasury the amount collected less the commissions which he is authorized to retain for collecting same as provided for in this act, and the auditor of public accounts shall keep said funds separate from other funds to be designated and known as "the diseased and cripple children's hospital fund."

8. The administration of the aid fund shall be under the direction of a board of seven physicians to be appointed by the governor, subject to approval by the senate; one member of the board shall be appointed from or on recommendation of the faculty of the medical department of the University of Virginia and one from or on recommendation of the faculty of the Medical College of Virginia at Richmond, of the other five members, one shall be appointed from each of the five geographical divisions of the State. Appointments to the said board shall be made on July first, nineteen hundred and twenty-six,

and shall be so arranged that the term of one member shall expire on each July first from one to seven years thereafter; the successors of the original appointees shall be appointed for seven year terms. The governor shall have the right to remove any member of the board for cause, and shall fill for the unexpired term any vacancy occuring on the board. When the term of a member expires, he may succeed himself when reappointed by the governor and confirmed by the senate.

The board shall hold its original meeting on the call of the governor, shall select its chairman and secretary, and shall hold future meetings as it may provide, but not less than twice a year. The members of the board shall serve without compensation, but shall be entitled to their actual hotel and traveling expenses while in attendance on the meetings of the board.

The board herein provided for shall be styled "the board of trustees of the Virginia State diseased and crippled children's hospital," and shall have power in such name to take, hold and subject to the approval of the governor, convey property, to contract and be contracted with, and to sue and be sued.

The said board shall have the power to purchase and take such land, to purchase or build such building or buildings, to manufacture, buy or otherwise obtain such equipment, to employ such persons, and to do all such other things as may be necessary to carry out the purpose for which it is created as hereinabove set out. Provided, however, that no purchase of land or buildings shall be made before approval of the governor. It may take and hold gifts and donations from private sources for the furtherance of the said purposes. But the said board shall not withdraw any money from the State treasury, or obligate itself to pay out any money until the fund to its credit from the proceeds of pistol and revolver licenses or from private donation shall have reached the sum of fifty thousand dollars.

9. The State treasurer shall make payments from the fund hereinabove created on warrants from the auditor of pubilc accounts, issued on vouchers certified by the chairman of the board hereinabove created on authority of the board.

10. All acts and parts of acts inconsistent with this act are hereby repealed to the extent of such inconsistency.

CHAP. 159.—An ACT to amend the Code of Virginia by adding thereto a new section to be numbered section 2850-a, in relation to notaries public for the State at large. [S B 184]

Approved March 17, 1926.

1. Be it enacted by the general assembly of Virginia, That the Code of Virginia be amended by adding thereto a new section to be numbered section twenty-eight hundred and fifty-a, which new section shall read as follows:

Section 2850a. Notaries public for the State at large.—The governor may appoint in and for the State of Virginia at large as many

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF OF AMICUS CURIAE LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF APPELLEES with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 22, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Efrain Staino

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October 22, 2015