



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030

September 23, 2011

The Honorable Edmund G. Brown
Governor of California
State Capitol Building, Suite 1173
Sacramento, California 95814

Re: AB 144 (Portantino) – Open Carry Ban of an Unloaded Handgun

Dear Governor Brown,

On behalf of the tens of thousands of National Rifle Association members in California, I respectfully urge you to veto Assembly Bill 144. This legislation would expressly ban the open carrying of an unloaded handgun in most public areas throughout California.

If AB 144 is enacted, the unlicensed, open carrying of firearms in public for defensive purposes will be essentially banned. This means that the only remaining alternative, the discretionary concealed carry licensing process, will undoubtedly come under renewed attack and will be increasingly vulnerable to constitutional challenges. By banning the open carrying of firearms, California may ironically be inviting judicial decisions limiting or eliminating the discretion with which licenses to carry loaded, concealed firearms are issued. As one legal scholar opined, “Absent an open carry policy ... future courts could have a much harder time upholding concealed carry restrictions,” and while “[b]anning open carry might be a comfort to people who are terrified by the sight of guns,” the policy could result in these same gun-shy Californians being “surrounded by people with hidden, possibly loaded guns every time [they] go out on the street”.¹

What this scholar neglects to mention is that this is often already the plight of many Californians who are daily faced by criminals who carry concealed firearms for nefarious purposes in total disregard of the voluminous gun control measures that California already has on its books. As with many of these measures, AB 144 would affect law-abiding persons almost exclusively. This would be especially true of AB 144, given the bill’s bizarrely specific focus on openly carried and unloaded firearms. Few violent criminals are so bold as to carry their crime guns openly or so foolhardy as to carry their guns unloaded.

¹ Adam Winkler, “Gun Control that Won’t,” *Los Angeles Times*, May 24, 2011, available at <http://www.latimes.com/news/opinion/commentary/la-oe-winkler-guns-20110524,0,1560358.story> (last visited May 24, 2011).

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According to California case law, “in the context of statutes concerned with firearms, ‘carry’ or ‘carrying’ has been said to be used in the sense of holding or bearing arms.”² Thus, merely holding an unloaded firearm off one’s own premises and outside a vehicle would be a crime if this bill were enacted. The extreme nature of this prohibition is illustrated by the bill itself, which follows the prohibition with dozens of exceptions, all of which merely reflect the fact that firearms are a normal and integral part of American culture and are handled or carried in a variety of perfectly innocent and legitimate contexts. This bill, however, follows the unfortunate tendency of California law to treat any contact with firearms as presumptively criminal, subject to exceptions that can be raised as affirmative defenses. The result is that criminals go on committing crime, while legitimate firearm owners exercising their constitutionally-guaranteed rights are marginalized, persecuted and sometimes prosecuted.

For all the foregoing reasons, the NRA respectfully urges you to veto AB 144 and to allow Californians to continue to pursue the defensive options most available and suitable for their own needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck G.", with a stylized flourish at the end.

Charles H. Cunningham
Director of State and Local Affairs

² *People v. Overturf*, 134 Cal.Rptr. 769, 772 (Cal. App. Dep’t Super. Ct. 1976) (citing cases).