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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 EDWARD PERUTA, MICHELLE
15 LAXSON, JAMES DODD, DR. LESLIE
16 BUNCHER, MARK CLEARY, and
CALIFORNIA RIFLE AND PISTOL
ASSOCIATION FOUNDATION

17 Plaintiffs,

18 v.

19 COUNTY OF SAN DIEGO, WILLIAM D.
20 GORE, INDIVIDUALLY AND IN HIS
CAPACITY AS SHERIFF,

21 Defendants.
22

) **CASE NO: 09-CV-2371 IEG (BGS)**
)
) **CONSOLIDATED**
) **OPPOSITION TO DEFENDANT’S MOTION**
) **FOR SUMMARY JUDGMENT AND;**
)
) **REPLY TO DEFENDANT’S OPPOSITION**
) **TO PLAINTIFFS’ MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**

) Date: November 15, 2010
) Time: 10:30 a.m.
) Location: Courtroom 1
) Judge: Hon. Irma E. Gonzalez
) Date Action Filed: October 23, 2009

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ARGUMENT

I. PLAINTIFFS SEEK TO HAVE THIS COURT CONSTRUE PENAL CODE § 12050 IN A CONSTITUTIONAL MANNER, *NOT* TO HAVE IT OVERTURNED

Defendants William Gore and County of San Diego (collectively “the County”) misstate Plaintiffs’ claim as a request “to strike the ‘good cause’ language” from California Penal Code § 12050 and to advocate “the theory that *Heller* provides that everyone has a constitutional right to carry a concealed weapon in public.” (Defs.’ Mem. Opp. to Mot. Partial Summ. J. 8:24-26). The County builds its case on this flawed foundation, suggesting Plaintiffs should challenge Cal. Pen. Code §§ 12025(a) and 12031(a) instead of, or concurrently with, challenging the County’s policy of requiring proof of a special need for issuance of a license issued pursuant to Cal. Pen. Code §§ 12050 *et seq.* (a “CCW”).

But Plaintiffs are only challenging the *County’s policy* in implementing section 12050’s “good cause” requirement. This approach is consistent with the doctrine of constitutional avoidance,¹ under which the Court should *uphold* section 12050’s licensing scheme, as well as sections 12025 and 12031 (to the extent these need to be considered at all), by construing the existing state statutes in a constitutional manner. This means holding section 12050’s “good cause” criterion to be satisfied where CCW applicants of good moral character assert “self-defense as their basis.”

This is the approach taken in *Schubert v. DeBard*, 398 N.E.2d 1339, 1341 (Ind. Ct. App.1980), which construed the “proper reason” requirement (virtually identical to “good cause”) in Indiana’s provision for licensing concealed handguns consistent with the right to bear arms as follows:

[T]he superintendent decided the application on the basis that the statutory reference to “a proper reason” vested in him the power and duty to subjectively evaluate an assignment of “self-defense” as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant “needed” to defend himself.

Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the organized military and police forces even where defense of the individual citizen is involved.

¹ The canon of constitutional avoidance provides “when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is [the court’s] plain duty to adopt that construction which will save the statute from constitutional infirmity.” *United States ex rel. Attorney Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 407 (1909);