

1 Further, Plaintiffs have never claimed that *District of Columbia v. Heller*, 128 S. Ct. 2783
 2 (2008), “provides that everyone has a constitutional right to carry a *concealed* weapon in public.” (8:25-
 3 26) (emphasis added).) Nor do Plaintiffs assert that there is necessarily a right to carry a firearm *in any*
 4 *manner*. (Opp. 9:11-12.) Rather, Plaintiffs assert that the Second Amendment protects a fundamental
 5 right to carry a firearm ready to use for self-defense *in some manner*. To a degree, the legislature can
 6 constitutionally dictate that manner. In California, the legislative preference is for licensed, discrete
 7 concealed carry instead of open carry. (Pls.’ Mem. Supp. Mot. Partial Summ. J. 23:6-8). Licenses can
 8 constitutionally be required, but a license or permit cannot be denied to individuals of “good moral
 9 character” (as required by section 12050) who seek a CCW permit for self-defense but cannot prove a
 10 special need beyond self-defense.²

11 In light of the Second Amendment’s protections, Penal Code § 12050 cannot grant local Sheriffs
 12 unbridled discretion to decide, as a matter of policy, that the fundamental right to self-defense does not
 13 constitute “good cause,” nor to impose a heightened “special needs” test for CCW issuance. But that is
 14 what the County’s policy does. The question in this case is under what circumstances *must* a CCW
 15 permit be issued under California’s existing statutory scheme, *not* whether the state can choose to
 16 structure a regulatory scheme that prohibits people from bearing an arm without one.

17 When considered in that proper context, the County’s arguments are misdirected. The County’s
 18 efforts to establish that because sections 12025(a) and 12031(a) are constitutional there thus is no right
 19 to carry arms, are irrelevant because Plaintiffs do not question their constitutionality. The two
 20 California Court of Appeal cases the County cites for this proposition, *People v. Yarbrough*, 169 Cal.
 21 App. 4th 303 (Ct. App. 2008), and *People v. Flores*, 169 Cal. App. 4th 568 (Ct. App. 2008), do not
 22 address the issue presented here: whether the Second Amendment protects a fundamental right to carry
 23 a firearm ready to use for self-defense *in some manner*.

24 Plaintiffs’ challenge is not inconsistent with *Yarbrough*’s holding. *Heller* approves of bans on
 25

26 ² An illustrative analogy is the state’s scheme for issuing driver’s licenses. Requiring a license to
 27 operate a vehicle is not an unconstitutional infringement on the right to travel. *See Miller v. Reed*, 176
 28 F.3d 1202, 1205-1206 (9th Cir. 1999) (quoting *Monarch Travel Servs., Inc. v. Associated Cultural
 Clubs, Inc.*, 466 F.2d 552, 554 (9th Cir. 1972) (“We have previously held that burdens on a single mode
 of transportation do not implicate the right to interstate travel. Whereas requiring people to prove they
 have a *need* to drive somewhere, which *need* separates them from the general public, likely would be
 unconstitutional and certainly would be if the “right to drive cars” was enshrined in the Bill of Rights.

1 carrying *concealed* firearms *when the law allows for an alternative method of carrying*. And carrying a
 2 firearm pursuant to a valid CCW is *not* a violation of either section 12025(a) or section 12031(a). *See*
 3 Cal. Penal Code § 12050.³

4 The same goes for *Flores*, in which, as the County acknowledges (Opp. 7:18-20), the court
 5 explains that the “wealth of exceptions” provided in California Penal Code § 12031 – one of which is
 6 carrying pursuant to a valid CCW – distinguishes it from the holding in *Heller*.⁴ *Flores*, 169 Cal. App.
 7 4th at 576. This hardly articulates the proposition that there is no right to carry a firearm at all. There is
 8 no legal authority nor logical nexus for making that argumentative leap.

9 **II. THE RIGHT TO BEAR ARMS DOES NOT END AT ONE’S THRESHOLD**

10 *McDonald* held that the Second Amendment right to keep and to bear arms is fundamental, not
 11 merely that some subset of that right is fundamental. *McDonald v. Chicago*, 130 S. Ct. 3020, 3049-50
 12 (2010). There is no basis to subdivide the right to keep arms from the right to bear arms, nor to
 13 designate bearing arms as a “non-core” part of the Second Amendment right having second-class status.
 14 *McDonald* expressly and emphatically rejected the notion that the Second Amendment right, or any part
 15 of it, is somehow second-class. *Id.* at 3044. There is no support for the proposition that bearing arms
 16 outside the home is any less fundamental than keeping arms in the home.

17 **A. “Bear Arms” Means Carry, Including in Public**

18 The County ignores the inevitable ramifications of *Heller*’s definition of “bear” as adopted from
 19 *Muscarello v. United States*, 524 U.S. 125 (1998), which, as already recognized by this Court, is
 20 controlling, and *not* mere dicta.⁵ *See* Order Denying Defendant’s Motion to Dismiss, *Peruta v. County*
 21 *of San Diego*, 678 F. Supp. 2d 1046, 1055 (S.D. Cal. 2010) (No. 09-2371) (citing *Heller*, 128 S. Ct. at
 22 2793). Nor does the County distinguish *Heller*’s repeated references to the right to “carry” firearms.

23
 24 ³ Two other cases cited by the County, *People v. Hale*, 43 Cal. App. 3d 353, 356 (Ct. App. 1974), and
 25 *People v. Hodges*, 70 Cal. App. 4th 1348, 1357 (Ct. App. 1999), are irrelevant for the same reasons, and
 additionally because they pre-date both the *Heller* and *McDonald* decisions.

26 ⁴ The *Flores* court even states “section 12031 is narrowly tailored to reduce the incidence of unlawful
 27 public shootings, while at the same time respecting the need for persons to have access to firearms for
 lawful purposes, *including self-defense* . . . (emphasis added).” *Flores*, 169 Cal. App. 4th at 576

28 ⁵ In deciding *Heller*, the Supreme Court had to decide whether, as the government argued, “bear
 arms” meant militia-use. In doing so, the Court had to define “bear,” which it did. Thus, that definition
 is not dicta, but was *required* to support the Court’s decision to reject the government’s argument.

1 See *Heller*, 128 S. Ct. at 2793 (“At the time of the founding, as now, to ‘bear’ meant to ‘carry’ ”); 128
 2 S. Ct. at 2804 (“the Second Amendment right, protecting only individuals’ liberty to keep *and carry*
 3 arms . . .”); 128 S. Ct. at 2817 (“the right to keep *and carry* arms”) (emphasis added); and 128 S. Ct. at
 4 2796 (“bear arms means . . . simply the carrying of arms . . .”).

5 This very Court has already explained “*Heller* does not preclude Second Amendment challenges
 6 to laws regulating firearm possession outside of home.” Order Denying Defendant’s Motion to
 7 Dismiss, *Peruta*, 678 F. Supp. 2d at 1051 (No. 09-2371). Nonetheless, both the County and Amicus
 8 desperately attempt to support their position by pointing to the Supreme Court’s holding that “the
 9 District’s ban on handgun possession *in the home* violates the Second Amendment, as does its
 10 prohibition against rendering any lawful firearm *in the home* operable for the purpose of immediate self-
 11 defense.” (Opp. 9:1-6; Brady Center Amicus Br. 5:19-6:5 (citing *Heller*, 128 S. Ct. at 2821-22
 12 (emphasis added).) Amicus insists that “Plaintiffs cannot explain why Justice Scalia would be so
 13 explicit about the fact that the Second Amendment was ‘not unlimited’ and that a (non-exhaustive) host
 14 of gun laws remained ‘presumptively lawful,’ yet leave this supposed ruling that the Second
 15 Amendment protected a right to carry guns in public hidden, implicit, leaving courts to expand on its
 16 ‘confrontation’ reference, if they wished.”⁶ (Brady Center Amicus Br. 6:7- 11). But Justice Scalia and
 17 the majority did not hide anything. *Heller* (and *McDonald*) focused on the scope of the right to keep
 18 arms in the home because the ordinances at issue and the specific question that the Supreme Court was
 19 answering concerned restrictions on firearms *in the home*. The opinion simply did not address every
 20 aspect of the Second Amendment’s protections outside the home because it was not called for given that
 21 limited context.⁷

22 Neither the County nor Amicus can explain *Heller*’s repeated references to the right to Arms
 23 *outside* the home. See *Heller*, 128 S. Ct. at 2801 (“Americans valued the ancient right [to keep and bear
 24

25 ⁶ This argument cuts both ways. Knowing the very foreseeable question of public carry would arise,
 26 the Court could have cleared up any confusion by *expressly* declaring that a right to carry does *not* exist.
 27 Neither *Heller* nor *McDonald* did so. This is the same reason Amicus’s reliance on *People v. Dawson*,
 223 Ill. 2d 645 (2007) (Opp. 7:5-16), is inappropriate.

28 ⁷ Further, this Court has already rejected the County’s argument that banning the public carry of
 firearms is sanctioned by *Heller*’s “presumptively valid” language. Order Denying Defendant’s Motion
 to Dismiss, *Peruta*, 678 F. Supp. 2d at 1052, 1054 (No. 09-2371).

1 arms] . . . for self-defense *and hunting*.” (emphasis added)); 128 S. Ct. at 2812 (“ ‘No doubt, a citizen
2 who keeps a gun or pistol under judicious precautions, *practices in safe places the use of it*, and in due
3 time teaches his sons to do the same, *exercises his individual right.*’ ” (citation omitted) (emphasis
4 added). Hunting and practicing firearm use are hardly indoor activities. Even *Heller*’s dissenters
5 acknowledge the decision protected the *public* carrying of arms:

6 Given the presumption that most citizens are law abiding, and the reality that the need to
7 defend oneself may suddenly arise in a host of locations outside the home, I fear that the
8 District’s policy choice may well be just the first of an unknown number of dominoes to
9 be knocked off the table.

10 *Id.* at 2846 (Stevens, J., dissenting).

11 *Heller* describes the right to arms as “most acute” when defending hearth and home. *Id.* at 2817.
12 *McDonald* holds that the Second Amendment applies “*most notably* for self-defense within the home.”
13 *McDonald*, 130 S. Ct. at 3044 (plurality op.) (emphasis added). The Supreme Court’s word choice
14 shows that the Second Amendment applies to places outside one’s home (albeit perhaps less “*notably*”
15 or less “*acutely*”). Construing the language in *Heller* otherwise is simply wishful thinking.

16 **B. The County Confuses Cases That Ban All Forms of Carry with Cases That Ban
17 Some Form of Carry**

18 Rather than cite cases upholding bans on *both open and concealed* carry,⁸ the County cites
19 unhelpful, pre-*Heller* cases that uphold limited restrictions on some manner of *concealed* carry.
20 *Nordyke v. King*, 563 F.3d 439, 460 (9th Cir. 2009), is both unhelpful and unciteable.⁹ And in any
21 event, the ordinance at issue in *Nordyke* exempts from its ban (of firearms on county-controlled
22 property) carrying concealed pursuant to a valid CCW. (*See* Ex. “A.”) *Nordyke* does not address
23 whether a government can outright ban bearing arms by withholding the permits required to do so
24 absent proof of some special need.

25 ⁸ This is why the County’s and Amicus’s reliance on *Robertson v. Baldwin*, 165 U.S. 275, 281-82
26 (1897) (“the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the
27 carrying of *concealed* weapons (emphasis added)”), *U.S. v. Hall*, No. 2:08-00006, 2008 U.S. Dist.
28 LEXIS 59641 (S.D.W. Va., Aug. 4, 2008) (Prohibitions “on the carrying of a concealed weapon *without*
a permit, continues to be a lawful exercise by the state of its regulatory authority notwithstanding the
Second Amendment”), and *People v. Dykes*, 46 Cal. 4th 731 (2009), is *not* instructive. The relief
Plaintiffs seek is *not inconsistent* with any of those cases.

⁹ The panel opinion was vacated. “*The three-judge panel opinion shall not be cited as precedent by or*
to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc
court.” Ninth Cir. Adv. Comm. Notes to Circuit Rules 35-3. (Rev. 1/1/00)

1 Almost all the cases Amicus cites as upholding bans on carrying firearms (*see* Brady Center
 2 Amicus Br. 7:5-9:11) are equally irrelevant. The cases either expressly leave open some form of carry¹⁰
 3 and/or involve a criminal defendant challenging a conviction for *unlicensed* carry.¹¹ *One* post-*Heller*,
 4 but pre-*McDonald* decision from a state trial court in New York, *In re Bastiani*, 881 N.Y.S.2d 591
 5 (N.Y. Supp. 2008), upheld New York's "special need" requirement for firearm carry permits. *Id.* at
 6 593. But *Bastiani* did not discuss the authorities cited in *Heller*,¹² was decided before *McDonald*
 7 confirmed the right to keep and bear arms is itself a fundamental individual right, and failed to grasp the
 8 distinction between banning concealed *or* open carry, and banning concealed *and* open carry. This
 9 Court, unlike the Court in *Bastiani*, has already recognized *Heller*'s distinction between presumptively
 10 lawful restrictions, like *concealed* carry bans when alternative methods of carry are allowed, and
 11 unconstitutional *total bans* on carrying firearms outside the home for self-defense. Order Denying
 12 Defendant's Motion to Dismiss, *Peruta*, 678 F. Supp. 2d at 1053-54 (No. 09-2371).¹³ The County and
 13 Amicus simply ignore this distinction. The County also ignores the multitude of state constitutional
 14 right to arms provisions that have likewise been interpreted as securing the right to carry firearms for
 15 defense in public.¹⁴

16 _____
 17 ¹⁰ *See, e.g., State v. Buzzard*, 4 Ark. 18 (1842) (wherein concealed carry of pistols was restricted, but
 18 the open carry of rifles, muskets, etc. was left as an option); *State v. Jumel*, 13 La. Ann. 399 (1858)
 19 (same); *Aymette v. State*, 21 Tenn. (2 Hum.)154 (1840) (same); *State v. Workman*, 35 W. Va. 367
 20 (1891) (same). These cases were overruled by *Heller*. *See, e.g., Fife v. State*, 31 Ark. 455 (1876)
 21 (where the court found the Second Amendment was a restraint on federal *not state* legislation).

22 ¹¹ *See, e.g., Riddick v. United States*, 995 A.2d 212 (D.C. App. 2010); *see also Sims v. United States*,
 23 963 A.2d 147, 148 (D.C. App. 2008).

24 ¹² *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850); *Nunn v. State*, 1 Ga. 243, 251 (1846); James
 25 Kent, Commentaries on American Law 340 n. 2 (Oliver Wendell Holmes ed., 1873); William
 26 Blackstone, *The American Students' Blackstone: Commentaries on the Laws of England*, in Four Books
 27 84 n. 11 (George Chase ed., 1884).

28 ¹³ Unlike this Court, the court in *Bastiani* performed no analysis of *State v. Chandler*, 5 La. Ann. at
 489-90 (1850), *Nunn v. State*, 1 Ga. at 251 (1846), Kent, *supra* n. 11, 340 n. 2, or Blackstone, *supra* n.
 11, 84 n. 11. *Bastiani*'s lack of precedential value is underscored by the fact a Second Amendment challenge
 to that *same statute* is currently being litigated in New York in *Kachalsky v. Cacace*, No. 10-05143 (S.D.N.Y.
 filed July 15, 2010).

¹⁴ *See, e.g., Wilson v. State*, 33 Ark. 557 (1878) (struck down pistol carrying statute as too restrictive);
City of Lakewood v. Pillow, 501 P.2d 744 (Colo. 1972) (struck down law on sale, possession, and
 carrying of guns as too broad); *Junction City v. Mevis*, 601 P.2d 1145 (Kan. 1979) (struck down gun

1 To be sure, there may be cases where a law burdens the keeping and bearing of arms only
 2 tangentially, or where the restriction targets conduct that has never been thought protected by the
 3 Second Amendment. In those cases, courts may have to grapple with questions about the exact
 4 contours of the Second Amendment right. But this is not one of those cases. This case is about a
 5 blanket ban on the majority of law-abiding adults from carrying firearms outside the home by denying
 6 them a CCW absent a demonstration of a special need.

7 **III. STRICT SCRUTINY IS THE APPROPRIATE STANDARD OF JUDICIAL REVIEW**

8 Because self-defense is the “central component” of the Second Amendment right, *McDonald*,
 9 130 S. Ct. at 3036 (quoting *Heller*, 128 S. Ct. at 2783), the County’s policy of denying permits to
 10 Plaintiffs and others seeking to exercise the right to bear arms for that very purpose must be reviewed
 11 under a strict scrutiny standard. As Plaintiffs’ motion explains, *Heller* and *McDonald* together make
 12 clear that strict scrutiny judicial review applies. (Pls.’ Mem. Supp. Mot. Partial Summ. J. 8:23-14:23.)
 13 *McDonald* also emphatically rejected the argument that Second Amendment rights are somehow less
 14 fundamental than other enumerated individual rights and can be given second-class treatment. *See* 130
 15 S. Ct. at 3042. There is no legitimate basis to depart from the rule that restrictions on fundamental
 16 rights require strict scrutiny.

17 **A. The “Presumptively Lawful” Language in *Heller* Does Not Preclude** 18 **Strict Scrutiny Judicial Review**

19 While ignoring the points raised in Plaintiffs’ Motion, the County argues that *Heller*’s
 20 categorical approach of listing “presumptively lawful” regulatory measures’ is inconsistent with strict
 21 scrutiny review. (Opp. 13:8-9.) But the Supreme Court’s “presumptively lawful” language suggested
 22 only that some fact patterns were likely to survive strict scrutiny.

23 The “presumptively lawful” phrase seems best read as a predictive judgment about which
 24 regulations are subject to but likely to survive strict scrutiny. In its recent Second Amendment cases,

25 carrying ordinance as too broad); *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822) (struck down
 26 concealed carrying statute as infringement on right to arms; the constitution was later amended to allow
 27 regulation of concealed carrying of arms); *State v. Kerner*, 107 S.E. 222 (N.C. 1921)(struck down pistol
 28 carrying license and bond requirement law as too restrictive); *Glasscock v. City of Chattanooga*, 157
 Tenn. 518 (1928) (struck down gun carrying ordinance as too restrictive); *Kellogg v. City of Gary*, 562
 N.E.2d 685 (Ind. 1990); *State v. Rosenthal*, 55 A. 610 (Vt. 1903) (struck down pistol carrying ordinance
 as too restrictive); *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139 (W. Va.1988) (struck
 down gun carrying law as too restrictive).

1 the Supreme Court has frequently cited the First Amendment as a helpful analog, and the First
2 Amendment has categorical exclusions. *See Heller*, 128 S. Ct. at 2821; *see also McDonald*, 130 S. Ct.
3 at 3040, 3050. For example, the freedom of speech protected by the First Amendment has never been
4 understood to include things like obscenity. The Supreme Court may eventually interpret the Second
5 Amendment in that fashion as well. If that is the case, though, then it is even more important to insist
6 on narrowly tailored, thoroughly justified, carefully drawn distinctions to limit prohibitions on carrying
7 firearms. A State likely has a compelling interest in prohibiting firearm possession by violent felons
8 and the insane, as it may in keeping private firearms out of certain *truly* “sensitive” places. Thus, it is of
9 no great significance that the *Heller* Court suggested that in future cases the government might easily
10 prove that laws prohibiting firearm possession by convicted felons, or possession in sensitive places like
11 courthouses or prisons, satisfy strict scrutiny. Because “[t]he fact that strict scrutiny applies ‘says
12 nothing about the ultimate validity of any particular law,’” predicting that such restrictions will be
13 upheld is in no way inconsistent with requiring strict scrutiny. *Johnson v. California*, 543 U.S. 499, 515
14 (2005) (citation omitted); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 390 n.6 (1992) (stating in
15 First Amendment context that “presumptive invalidity does not mean invariable invalidity”). This
16 Court need not read more into the “presumptively lawful” dictum than that.

17 **B. Intermediate Scrutiny Is Inappropriate, Especially after *McDonald***

18 Amicus rely on a ruling in a new case brought by Mr. Heller, *Heller v. District of Columbia*
19 (*Heller II*), 698 F. Supp.2d 179 (D.D.C. 2010), to advocate for no more than intermediate scrutiny
20 review. (Brady Center Amicus Br. 15:22-16:6, 15 n. 5.) In adopting that standard, the *Heller II* court
21 assumed that the right to keep and bear arms was *not* fundamental “[i]f the Supreme Court had wanted
22 to declare the Second Amendment right a fundamental right, it would have done so explicitly.” *Id.* at
23 187. Since then, *McDonald* has done so explicitly, putting that issue to rest.¹⁵

24 Some other courts, like *Heller II*, also adopted intermediate scrutiny before *McDonald* was
25 decided. They did so based on the misunderstanding that, although self-defense is a fundamental right
26 under *Heller*, Second Amendment rights themselves were not fundamental, or at least are not as
27 fundamental as other enumerated rights. (Pls.’ Mem. Supp. Mot. Partial Summ. J. 11:17-27.) But
28

¹⁵ Even *Heller II* rejected a “reasonableness” test, as it “subjects firearms laws to only a *marginally* more heightened form of review than rational-basis review.” *Id.* at 186 (emphasis added).

1 *McDonald* clarifies that the right to keep and bear arms is itself fundamental, and no less so than other
2 rights like the freedom of speech. And it is black-letter law that infringements upon core conduct of
3 fundamental rights receive strict scrutiny.

4 Even before *McDonald*, *Heller* itself effectively rejected an intermediate scrutiny standard.
5 Justice Breyer’s dissenting “interest-balancing inquiry,” *Heller*, 128 S. Ct. at 2852 (Breyer, J.,
6 dissenting), is effectively intermediate scrutiny by another name, and the Court rejected it, *Id.* at 2821.
7 Justice Breyer based his proposed standard extensively on intermediate scrutiny cases, even invoking
8 *Burdick v. Takushi*, 504 U.S. 428 (1976), the case the United States principally relied on in advocating
9 intermediate scrutiny. *Id.* at 2852 (Breyer, J., dissenting). Since *Heller* rejected Justice Breyer’s test
10—and *McDonald* reaffirmed the rejection—intermediate scrutiny cannot be the appropriate standard.

11 **C. Undue Burden / Reasonable Regulation Review is Also Inappropriate**

12 The County claims that since its policy does not affect firearms in the home (Opp. 14:15-16), it
13 survives the “undue burden” test¹⁶ usually associated with restrictions on abortions. But the Supreme
14 Court, and this Court, have already rejected lesser standards of review such as the County’s and
15 Amicus’ proposed “reasonable regulation” or “undue burden” tests.

16 Adopting a reasonable regulation or undue burden standard is simply not a course that is open to
17 this Court after *Heller* and *McDonald*. *Heller* rejected both rational basis and Justice Breyer’s “interest-
18 balancing” approach. *Heller*, 128 S. Ct. at 2821. It is not clear that a “reasonableness” test is any
19 different from rational basis,¹⁷ but it is, if anything, a less rigorous standard than the “interest-balancing”
20 approach advocated by Justice Breyer. The Court in *Heller* could not have been clearer that they were
21 rejecting that proposed approach. Reasonableness review is also foreclosed by *McDonald*.

22 The argument for “reasonableness” review stems from the assertion that the right is not
23 fundamental, an assertion put to rest by *McDonald*. The County nonetheless here adopts the same
24 arguments made by Chicago and Amicus in *McDonald*, even relying on the same law review article.

26
27 ¹⁶ A regulation constitutes an “undue burden” where it has the “purpose or effect [of] plac[ing] a
28 substantial obstacle in the path” of the individual seeking to engage in constitutionally protected
conduct. *Gonzalez v. Carhart*, 550 U.S. 124, 146 (2007).

¹⁷ The term “reasonable” is a synonym of “rational.” *Webster’s New World Dictionary* 1118 (3rd
College Ed. 1991).

1 See Brief for Respondents City of Chicago, et al. at 8, *McDonald v. Chicago*, 130 S. Ct. 3020 (2010)
2 (No. 08-1521) (right to arms not among “fundamental rights included in the Bill of Rights that are
3 ‘implicit in the concept of ordered liberty’”); Brief for Respondents City of Chicago, et al., *supra*, at 24
4 (arguing for a “reasonable regulation” standard and citing Adam Winkler, *Scrutinizing the Second*
5 *Amendment*, 105 Mich. L. Rev. 683, 686, 716-17 (2007), and the Amicus Brief of the Brady Center).
6 See also Brief for Petitioners D.C., et al. at 48, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008)
7 (No. 07-290) (“The District’s Gun Regulations Satisfy the Reasonableness Standard”).

8 The County and Amicus cite various cases that either adjudged whether state firearm statutes
9 were “reasonable” regulations, or which made use of the term “reasonable” in their analysis. (Opp.
10 13:6-15:10; Brady Center Amicus Br.14:6-15:11.) Plaintiffs note, as an initial matter, the mere use of
11 the word “reasonable” by many of these courts did not constitute an adoption of the broad
12 “reasonableness” standard of review.¹⁸ Regardless, reliance on these cases is unpersuasive. *Every* case
13 the County and Amicus cite involving a “reasonableness” approach for determining infringements of
14 states’ right to arms guarantees was decided *prior* to *McDonald*’s express statement that the Second
15 Amendment guarantees a *fundamental* right. Moreover, “reasonableness” approaches applied by state
16 courts pre-*Heller* varied widely among jurisdictions. See David Kopel, *State Court Standards of*
17 *Review for the Right to Keep and Bear Arms*, 50 Santa Clara L. Rev. 1113, 1215-1218. The only cases
18 cited to by the County and Amicus in the wake of *Heller* and *McDonald* are cases that apply either
19 intermediate or strict scrutiny. (Opp.13:6-15:10; Brady Center Amicus Br. 14:6-15:11.)

20 Moreover, adoption of a “reasonable regulation” standard would mean First Amendment and
21 other fundamental rights qualify for strict scrutiny while the right to keep and bear arms receives lesser
22 protection. *McDonald* specifically rejected allowing “state and local governments to enact any gun
23 control law that they deem to be reasonable . . .” 130 S.Ct. at 3046. The County’s and Amicus’s
24 argument is really “that the Second Amendment should be singled out for special - and specially
25 unfavorable - treatment.” *Id.* at 3043. But the Supreme Court already rejected that idea. *Id.* at 3044.

26
27 ¹⁸ See, e.g., *Parker v. District of Columbia*, 478 F.3d 370, 399 (D.C. Cir. 2007), which *Heller*
28 affirmed, that stated: “The protections of the Second Amendment are subject to the same sort of
reasonable restrictions that have been recognized as limiting, for instance, the First Amendment.” *Id.*
(citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). The court went on to elaborate that
restrictions must not “impair the core conduct upon which the right was premised.” *Id.*