

1 See *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). Since the County cannot provide a
2 “compelling interest,” for dissuading applicants, it violated Plaintiffs’ Due Process rights.

3 VII. FACIAL CHALLENGE AND QUALIFIED IMMUNITY ISSUES

4 The County argues Plaintiffs’ facial challenge must fail because their statement that the County
5 *may* exercise its discretion under § 12050 in a constitutional manner precludes Plaintiffs from
6 establishing there are “ ‘no set of circumstances . . . under which’ Penal Code § 12050 would be
7 constitutionally valid.” (Opp. 19:12-16). Once again, the County fundamentally misunderstands
8 Plaintiffs’ claim. Plaintiffs do *not* make a facial challenge *to* § 12050, rather, they challenge *the*
9 *County’s stated “good cause” policy both facially and as applied*. Government policies are subject to
10 facial challenges. See *Santa Fe Indep. Sch. Dist. v Doe*, 530 U.S. 290 (2000).

11 Finally, County’s qualified immunity argument is unpersuasive. This is an action for
12 declaratory relief only. Qualified immunity “is an affirmative defense to *damage liability*; it does *not*
13 bar actions for *declaratory or injunctive* relief.” *Presbyterian Church (U.S.A.) v. U.S.*, 870 F.2d 518,
14 527 (9th Cir. 1989) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982) (emphasis added)).

15 VIII. CONCLUSION

16 *Heller* and *McDonald* left questions unanswered, but provide sufficient guidance for *this* Court
17 to hold the right to Arms includes a right to carry a firearm in public for self-defense, and that such right
18 may be subjected to a licensing requirement such as Cal. Pen. Code § 12050, but not a “good cause”
19 requirement that allows a local Sheriff the discretion to decide who can and who cannot exercise the
20 right to bear Arms. Accordingly, the Court should grant Plaintiffs’ Motion for Partial Summary
21 Judgment and deny Defendants’ Cross Motion for Summary Judgment.

22 **Date:** October 18, 2010

23 **MICHEL & ASSOCIATES, P.C.**

23 **PAUL NEUHARTH, JR., A.P.C.**

24
25 / s /C. D. Michel

24
25 / s /Paul Neuharth, Jr. *as authorized on 10/18/10*

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDWARD PERUTA, MICHELLE)
LAXSON, JAMES DODD, DR.) CASE NO. 09-CV-2371 IEG (BGS)
LESLIE BUNCHER, MARK CLEARY,) CERTIFICATE OF SERVICE
and CALIFORNIA RIFLE AND)
PISTOL ASSOCIATION)
FOUNDATION)

Plaintiffs,

v.

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

Defendants.

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 18, 2010.

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