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Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT, Plaintiff, vs. CHARLIE BECK, LEE BACA, THE LOS ANGELES POLICE DEPARTMENT and THE LOS ANGELES COUNTY SHERIFFS DEPARTMENT, DOES 1 to 50, Defendants.	CASE NO. 2:10-CV-08377-JAK (JEM) **PLAINTIFF'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; DECLARATIONS OF LAWRENCE MUDGETT AND JONATHAN W. BIRDT IN SUPPORT THEREOF**

Plaintiff submits this supplemental reply to bring to the Courts attention the Ninth Circuit opinion issued in On May 2, 2011 the 9th Circuit issued its' opinion in *Nordyke v. King*, Opinion No. 07-15763, filed May 2, 2011, addressing the level of scrutiny to be applied in the instant action. First and foremost, is the recognition by the Ninth Circuit that the Second Amendment was not limited to the home, whereas

in this case it dealt with County Fairgrounds, and applied a substantial relationship test to the regulation in directing District Courts to:

> When deciding whether a restriction on gun sales substantially burdens Second Amendment rights, to ask whether the restric-tion leaves law-abiding citizens with reasonable alternative means for obtaining firearms sufficient for self-defense purposes.
>
> Id. at 5650.

The Ninth Circuit found:

> Where, as here, government restricts the distribution of a constitutionally protected good or service, courts typically ask whether the restriction leaves open sufficient alternative avenues for obtaining the good or service. For instance, courts reviewing a restriction on the time, place, or manner of protected speech will ask whether the restriction "leave[s] open ample alternative channels for communication of the information." Ward, 491 U.S. at 791. Thus, the Supreme Court upheld an ordinance that prohibited "picketing before or about the residence . . . of any individual" because protestors were not barred from residential neighborhoods generally, but rather could "enter such neighborhoods, alone or in groups, even marching," go "door-to-door to proselytize their views," "distribute literature," and "contact residents by telephone." Frisby v. Schultz, 487 U.S. 474, 477, 483-84 (1988).
>
> Likewise, the Supreme Court recently held that a ban on one particular method of performing an abortion did not constitute an "undue burden" on the right to an abortion in part because "[a]lternatives [were] available to the prohibited procedure." Carhart, 550 U.S. at 164; see also id. at 165 ("[T]he Act allows . . . a commonly used and generally accepted [abortion] method, so it does not construct a substantial obstacle to the abortion right."). Id. at 5645

In this case, there is no dispute that the only lawful way for Plaintiff to exercise his Second Amendment right outside of the home is with a Concealed Weapons Permit, and as such, with no other viable alternative, Defendants practices can not pass constitutional muster.

May 2, 2011 _____/s/_____
Jonathan W. Birdt, Plaintiff