No. 12-55115

IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

JONATHAN BIRDT,
Plaintiff and Appellant,

vs.

CHARLIE BECK, et al.,
Defendants and Appellees.

On Appeal from the United States District Court
For the Central District of California
Honorable JOHN A. KRONSTADT, Judge Presiding
District Court Case No. CV-10- 08377 JAK (JEMx)

APPELLEES' ANSWERING BRIEF

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INTRODUCTION AND SUMMARY OF ARGUMENT

Pro Se Plaintiff and Appellant Jonathan Birdt claims his application to carry a concealed firearm (CCW) was improperly denied by Defendants and Appellees the Los Angeles Police Department ("LAPD") and Police Chief Charlie Beck. Birdt alleges that LAPD's definition of good cause – which must be met pursuant to California Penal Code § 26155[1] before a CCW permit will be issued - violates the Second Amendment of the United States Constitution. LAPD defines good cause as requiring convincing evidence of a clear and present danger to the applicant or his/her family that cannot adequately be dealt with by law enforcement; and, the California Legislature provides city police chiefs with discretion to issue CCW permits to qualified applicants that demonstrate good cause. The trial court properly granted summary judgment and dismissed Birdt's claims because there exists no constitutional right to carry a concealed firearm in public and LAPD's CCW permit policy withstands constitutional scrutiny.

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[1] Penal Code §§ 26150-26190 set forth the general requirements that applicants must meet in California to obtain a CCW permit. These licensing statutes were previously codified in Penal Code § 12050, et. seq. As of January 1, 2012, the sections were re-numbered though the language of the sections relevant to this appeal remains unchanged.

ISSUES PRESENTED

1. Does the Second Amendment provide individuals with the right to carry concealed firearms in public?
2. Does LAPD's good cause policy withstand Birdt's constitutional challenge under the Second Amendment?

STATEMENT OF FACTS AND PROCEDURE

1. Birdt Fails To Establish Good Cause For A CCW Permit And LAPD Denied His Application

In 2010, Birdt applied to LAPD and the Los Angeles Sheriff's Department (LASD) for a CCW permit. (Appellant's Excerpts of Record Volume I, pages 84, 92; Volume II, pages 76, 84.) Each department denied his application. (AER I, 84; Vol II 76, 103.) LASD and LAPD issue CCW permits on the basis of "good cause" as required by California Penal Code sections 26150 and 26155. (AER I, 81-82; Vol. II, 68-69.)

Under LAPD's policies, concerns regarding self-defense or fear for one's personal safety do not constitute sufficient justification to establish good cause for the purpose of securing a CCW permit. (AER II, 69, 76.) Instead, an applicant must show "convincing evidence of a clear and present danger to life or of great bodily harm to the applicant, his spouse or dependent child, which cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a

concealed firearm." (AER II, 68.) LASD maintains a similar good cause policy. (AER I, 82.)

In his application submitted to LAPD, Birdt stated his reasons why he sought a CCW permit:

> Volunteer Judge, Los Angeles Superior Court. Juvenile dependency court tort referral panel. Representation of high profile civil plaintiffs where plaintiff or counsel have been threatened. Actual threat against employees justifying LASD CCW permit. No office security or parking. Frequent travel throughout state and Nevada weekly. Carry large amounts of cash and danger just transferring firearm at state line and/or entering + exiting office which is in a remote area with a ten minute LAPD response time. Multiple disturbance within office, by visitors and disgruntled clients. (AER II, 94.)

LAPD individually reviewed Birdt's application and determined that he failed to show good cause as required by California law and LAPD policy. (AER II, 76.) Specifically, LAPD denied Birdt's application because:

> Convincing evidence was not established of a clear and present danger to life or of great bodily injury to yourself, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures. You did not provide satisfactory proof that your work is such a nature that it requires the carrying of a concealed weapon. (AER II, 103; see also AER II 76-77.)

On October 10, 2010, Birdt sent a letter to the LAPD in which he stated that if he were not issued a CCW permit by LAPD, he would file a lawsuit. (AER II, 77.) This letter was forwarded by LAPD to the independent Citizen's Advisory Review Board which reviews CCW permit applications denied by LAPD. (AER

II, 72, 77.) The Review Board reviewed Birdt's application and also determined he failed to establish good cause for a CCW permit. (AER II, 104-105.)

2. Birdt Sues The LAPD and LASD Claiming A Violation Of His Second Amendment Rights.

After his applications for a CCW permit was denied, Birdt filed the instant lawsuit pursuant to 42 U.S.C. §1983 against LAPD, Los Angeles Chief of Police Charlie Beck, LASD, and Los Angeles County Sheriff Lee Baca. (AER I, 12.) He claimed that the LAPD and LASD policies requiring applicants to provide evidence of good cause for a CCW permit violated his rights under the Second Amendment to the United States Constitution. (AER I, 16.)

The parties filed cross-motions for summary judgment and stipulated that there were no disputed issues of material fact. (AER I, 1,) On January 13, 2012, the district court denied Birdt's motion for summary judgment and granted the motions for summary judgment filed by LAPD and LASD. (AER I, 10.) Without awaiting entry of judgment, Birdt filed notice of appeal the following day on January 14, 2012. (AER I, 11.)

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STATEMENT OF JURISDICTION

Birdt brought his action under 42 U.S.C. §1983, therefore the district court had jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343. Though a judgment was neither prepared nor entered after the district court's January 13, 2012 Order dismissing Birdt's claims, Birdt's January 14, 2012, notice of appeal was nevertheless timely. See *Banker's Trust Co. Mallis*, 435 U.S. 381, 387-388 (1978) (appellate courts properly assume jurisdiction where the district court clearly evidenced its intent that the order appealed from was the final decision in the case). Consequently, this Court jurisdiction under 28 U.S.C. §1291.

STANDARD OF REVIEW

De novo review applies on appeal of a district court's decision to grant summary judgment. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 830 (9th Cir. 2000). The reviewing court "must determine, viewing the evidence in the light most favorable to . . . the non-moving party, whether there are any genuine issues of material fact and whether the district court correctly applied the substantive law." *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004).

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ARGUMENT

1. The Second Amendment Does Not Provide Individuals with the Right to Carry Concealed Firearms in Public

A. The Supreme Court Does Not Recognize the Right to Carry a Concealed Weapon in Public

While the Second Amendment protects the "individual right to possess and carry weapons in case of confrontation" (*District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), the Supreme Court has described this individual right as a "personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3044 (2010). The Supreme Court has recognized that this right is not absolute and the prohibition against carrying concealed weapons does not violate the Second Amendment. See *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (U.S. 1897) ("the right of the people to keep and bear arms . . . is not infringed by laws prohibiting the carrying of concealed weapons."). While the *Heller* decision did not directly address the issue of concealed weapons in public, the Court did clearly state – consistent with *Robertson v. Baldwin* – that the right to bear arms does have limits:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner

> whatsoever and for whatever purpose. *For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues*. *Heller*, 554 U.S. at 626. (Emphasis added.)

B. California Courts Have Upheld the Constitutionality of Prohibitions Against Carrying Concealed Weapons

California state courts have upheld, against Second Amendment challenges, statutory prohibitions against carrying concealed weapons in public. See *People v. Yarbrough*, 169 Cal.App.4th 303, 312-314 (2008); *People v. Flores*, 169 Cal.App.4th 568, 575-576 (2008); and, *People v. Ellison*, 196 Cal.App.4th 1342 (2011)

In *People v. Yarbrough*, Yarbrough was convicted of carrying a concealed weapon in violation of former California Penal Code § 12025(a)(2). On appeal he sought to overturn his conviction by arguing § 12025(a)(2) was unconstitutional under the Second Amendment. In finding that *Helle*r had "specifically expressed constitutional approval of the accepted statutory proscriptions against carrying concealed weapons," the court in *Yarbrough* held:

> "[W]e find nothing in Penal Code section 12025, subdivision (a), that violates the limited right of the individual established in *Heller* to possess and carry weapons in case of confrontation. Section 12025, subdivision (a), does not broadly prohibit or even regulate the possession of a gun in the home for lawful purposes of confrontation or self-defense, as did the law declared constitutionally infirmed in

> *Heller*. Rather, section 12025, subdivision (a), in much more limited fashion, specifically defines as unlawful carrying concealed within a vehicle or 'concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.' Further, carrying a firearm concealed on the person or in a vehicle in violation of section 12025, subdivision (a), is not in the nature of a common use of a gun for lawful purposes which the court declared to be protected by the Second Amendment in *Heller*. [Citation]" *People v. Yarbrough*, 169 Cal.App.4th at 312-314

The court further held that:

> "[C]arrying a concealed firearm in public presents a recognized 'threat to public order,' and is 'prohibited as a means of preventing physical harm to persons other than the offender.' [citation] A person who carries a concealed firearm on his person or in a vehicle, which permits the individual immediate access to the firearm but impedes others from detecting its presence, poses an 'imminent threat to public safety . . . . [citation]" *Id*. at 313-314.

In *People v. Flores*, Flores was convicted of three firearm violations including former California Penal Code § 12025 (a). Although Flores sought to challenge his convictions as violating the Second Amendment, his efforts were likewise unsuccessful. The court specifically quoted from *Heller* that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. [Citation]" *People v. Flores*, 169 Cal. App. 4th at 575. The *Flores* court went on to hold:

> "Given this implicit approval of concealed firearm prohibitions, we cannot read *Heller* to have altered the courts' longstanding

> understanding that such prohibitions are constitutional. (See also *Robertson v. Baldwin* (1897) 165 U.S. 275, 281–282 [41 L. Ed. 715, 17 S. Ct. 326] [stating in dicta, "the right of the people to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons …"].) Consequently, we conclude Heller does not invalidate Flores's section 12025 conviction." *Id*. at 575-576.

The defendant in *People v. Ellison*, likewise sought to overturn his conviction of carrying concealed firearm arguing California Penal Code § 12025 (a) violated the Second Amendment. The court did not find this argument persuasive:

> "The Second Amendment protects the right of law-abiding, responsible citizens to use arms in defense of hearth and home. (*Heller*, *supra*, 554 U.S. at p. 635.) But Penal Code section 12025, subdivision (a), does not impair the ability of a person to defend "hearth or home" because it does not prohibit the possession of loaded firearms in the home. Nor does it constitute a blanket prohibition against carrying a firearm for self-defense because it exempts from prosecution the carrying of a concealable firearm with a permit, and the carrying of a firearm in a locked trunk or other locked container, among other exceptions. The statute is narrowly tailored to protect the public by prohibiting only the unregistered carrying of concealable firearms in a vehicle. Because of its narrow focus, it is not overbroad. Penal Code section 12025, subdivision (a), does not substantially burden defendant's exercise of his Second Amendment right, and is constitutional." *People v. Ellison*, 196 Cal. at 1350-1351.

In light of federal and state case authority regarding concealed firearms, it comes as no surprise that Birdt fails to cite any case which extends the holdings in *Heller* or *McDonald* to recognize a constitutional right to carry a concealed weapon in public. Consequently, he has no legal basis to argue his

Second Amendment rights were violated when LAPD denied his application to carry a concealed firearm and the district court properly granted summary judgment and dismissed Birdt's 42 U.S.C. § 1983 claims. See *American Mfrs. Mutual Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999) (to state a claim under section 1983, a plaintiff must allege he or she was deprived of some right guaranteed by the United States Constitution or by federal law).

2. LAPD's Policy, Which Restricts Carrying Concealed Firearms, Withstands Constitutional Scrutiny

Despite overwhelming and uncontradicted legal authority that the Second Amendment does not protect the right to carry a concealed firearm in public, Birdt nevertheless argues LAPD has violated his "fundamental rights." (AOB 18.) Assuming for the purposes of appeal that LAPD's good cause policy does impact Birdt's Second Amendment rights, LAPD's policy still survives constitutional scrutiny.

A. Strict Scrutiny Does Not Apply to LAPD's CCW Permit Policy

The right at issue here - the right to carry a concealed firearm in public – does not implicate the right to keep and bear arms for self-defense in the home. See *Heller*, 554 U,S, at 635 (the ability to maintain "arms in defense of hearth and

home" are identified as "core" Second Amendment rights). Nor does LAPD use its good cause policy pursuant to California Penal Code section 26155 to implement a complete ban on firearm ownership or concealed firearms. It is undisputed that on April 18, 2011 - the filing date of LAPD's Motion for Summary Judgment - there were 24 active CCW permits issued by the Los Angeles Police Department. (AER II, 75.) Accordingly, strict scrutiny is not the applicable standard of constitutional review of LAPD's CCW permit policy and Birdt concedes as much in his brief. (AOB 15.). See also *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106 (S.D. Cal. 2010) (applying intermediate scrutiny in assessing San Diego County's good cause CCW permit policy). However, LAPD and Chief Beck, like the district court in the present case, do not take a position as to whether intermediate scrutiny or rational review is the appropriate level of review since LAPD's CCW permit policy satisfies the more demanding standard of intermediate scrutiny.

B. LAPD's Good Cause Policy Satisfies Intermediate Scrutiny

As the court observed in *Peruta*:

> "In contrast with strict scrutiny, intermediate scrutiny, 'by definition, allows [the government] to paint with a broader brush.' *United States v. Miller*, 604 F. Supp.2d 1162, 1172 (W.D. Tenn. 2009). In *United States v. Marzzarella*, 614 F.3d 85, 98 (3rd Cir. 2010), the Third Circuit crafted an intermediate scrutiny standard for the Second Amendment based on the various intermediate scrutiny standards

> utilized in the First Amendment context. Pursuant to that standard, intermediate scrutiny requires the asserted governmental end to be more than just legitimate; it must be either 'significant,' 'substantial,' or 'important,' and it requires the 'fit between the challenged regulation and the asserted objective be reasonable, not perfect.'" *Id*. (citations omitted).

1. Public Safety Is an Important Government Objective

LAPD's objective in regulating concealed firearms is public safety and the government interest in public safety is not only important, it is compelling:

> "[A]lmost every gun-control regulation will seek to advance (as the one here does) a primary concern of every government - a concern for the safety and indeed the lives of its citizens. The Court has deemed that interest, as well as the Government's general interest in preventing crime, to be compelling, and the Court has in a wide variety of constitutional contexts found such public-safety concerns sufficiently forceful to justify restrictions on individual liberties." *Heller*, 554 U.S. at 689 (internal quotation marks omitted).

Since the government has a compelling interest in protecting and promoting public safety, LAPD has met its burden of demonstrating an important governmental objective in regulating concealed weapons.

2. There Is a Substantial Relationship Between Public Safety and Regulating Concealed Weapons

In contrast to possessing a gun for protection within a residence, carrying a concealed firearm in public presents a recognized "threat to public order," and is

"'prohibited as a means of preventing physical harm to persons other than the offender.' [Citation.]" *People v. Hale*, 43 Cal.App.3d 353, 356 (1974). A person who carries a concealed firearm on his or her person or in a vehicle, "which permits him immediate access to the firearm but impedes others from detecting its presence, poses an 'imminent threat to public safety ….' [Citation.]" *People v. Hodges*, 70 Cal.App.4th 1348, 1357 (1999).

LAPD seeks to address this danger to public safety through its CCW permit policy that significantly restricts the number of persons who arm themselves with concealed weapons. (AER II, 113.) LAPD also seeks to address the danger to public safety by screening CCW permit applicants to insure they will not misuse the firearms they carry should they be granted a permit. (AER II, 115.) As stated in the declaration of Franklin E. Zimring, submitted in support of LAPD's motion for summary judgment: "limiting the number of persons licensed to carry weapons hidden on their persons in public places is substantially related to reducing the volume and deadliness of street robberies and assaults." (AER II, 108, lines 123-15.) In addition, private citizens are not the only ones who have their safety compromised by concealed firearms:

> "The special danger of a hidden handgun is that it can be used against persons in public robbery and assault. The concealment of a handgun means that other citizens and police don't know it is in their shared space until it is brandished. Concealed handguns are a special problem

> for police because an armed police officer has no warning that persons carrying concealed handguns are doing so. A police officer will be vulnerable to an element of surprise that will not be present if a person is openly carrying a firearm." (AER II, 111.)

3. The Fit Between LAPD's CCW Permit Policy and Public Safety Is Reasonable

There is a reasonable fit between LAPD's CCW permit policy and the compelling public interest in protecting public safety since the scope of the restrictions imposed by LAPD's policy is narrow and the exceptions to California's restrictions on carrying firearms are numerous. The California Penal Code provides Birdt with the following options to legally carry a firearm and defend himself:

- Penal Code § 12031(g) permits the open-carry of ammunition and an unloaded firearm that is ready for loading;
- Penal Code § 26045(a) provides: "Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property.");

- California Penal Code § 25605 permits individuals to keep and bear loaded, otherwise lawful, weapons in their private residences, on private property, or at their place of business;
- Penal Code § 26050 provides: "Nothing in Section 25850 is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest."; and,
- Penal Code § 26055 permits individuals to keep and bear loaded, otherwise lawful, weapons in their private residences.

4. The Parties' Competing Declarations in Support of Summary Judgment Do Not Create Disputed Questions of Fact

Birdt submitted a declaration by Lawrence Mudgett in support of his motion for summary judgment in which Mudgett states: "armed and trained citizens reduce crime by their very existence, as criminals do not know which citizens are in fact armed." (AER III, 11, lines 13-15.) This declaration is in contrast to the declaration of Franklin E. Zimring, submitted by LAPD, which takes the contrary position: "limiting the number of persons licensed to carry weapons hidden on

their persons in public places is substantially related to reducing the volume and deadliness of street robberies and assaults." (AER II, 108, lines 123-15.)

These competing declarations do not, however, create a disputed question of fact because the parties stipulated there were no genuine issues of material presented by their motions for summary judgment. (AER I, 1,) More importantly, to withstand intermediate scrutiny, LAPD does not need establish that its approach to concealed weapons is correct and Mudgett's approach is wrong. Instead, LAPD needs only to establish a "reasonable fit" between public safety and regulating concealed weapons, which they have done:

> "What our decisions require is a "fit" between the legislature's ends and the means chosen to accomplish those ends -- a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served; that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective. Within those bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed." *Board of Trustees of the State University of New York v. Fox*, 492 U.S. 469, 480 (1989) (applying intermediate scrutiny in the context of the First Amendment).

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5. Recent District Court Decisions Have Held Similar Good Cause Policies Regarding Concealed Weapons Withstand Constitutional Scrutiny

In *Thompson v. Torrance Police Department and the Los Angeles County Sheriff's Department*, CV11-6154-SJO (JCx), currently on appeal in the Ninth Circuit, case number 12-56236, plaintiff Thompson applied for a CCW permit from the *Torrance* Police Department and the Los Angeles Sheriff's Department (LASD) stating he was a California bail agent and often carried large amounts of money, the combination of which often placed him in danger. When his application was denied for failure to demonstrate good cause, he filed suit under 42 U.S.C. § 1983. He claimed his permit denial was an unconstitutional infringement of his Second Amendment rights because the Sheriff's policy required more justification for a permit than the simple assertion of self-defense. On July 2, 2012, the court granted the motion for summary judgment filed by Torrance PD and LASD and concluded their policies - that an applicant cannot show good cause merely by stating that a permit is necessary for self-defense - withstands intermediate constitutional scrutiny. (Docket number 70.) LASD's good cause CCW permit policy was also found to withstand constitutional scrutiny in *Sigitas*

Raulinaitis, et al. v. Los Angeles County Sheriff's Department, CV11-8026-MWF (JCGx), currently on appeal in the Ninth Circuit, case number 12-56508.

In *Richards v. County of Yolo*, 821 F. Supp. 2d 1169 (E.D. Cal. 2011) the district court considered a challenge to Yolo County's concealed weapon policy which required – like LAPD – that an applicant demonstrate good cause before a permit to carry a concealed weapon would be issued. The court held "the Second Amendment does not create a fundamental right to carry a concealed weapon in public." *Id.* at 1174. The court also found Yolo County's policy did not substantially burden the plaintiffs' Second Amendment rights given the adequate opportunity under California law to possess and carry loaded firearms in self-defense. *Id.*

In *Peruta*, 758 F. Supp. 2d at 1106, plaintiffs' CCW applications were denied by San Diego County for failure to demonstrate good cause. They argued that the County's CCW policy - which did not recognize self-defense as sufficient to establish good cause for a CCW permit – violated their rights under the Second Amendment. The district court disagreed and granted the County's motion for summary judgment. In holding that the County's CCW permit policy withstood intermediate scrutiny, the district court noted:

> "In this case, Defendant has an important and substantial interest in public safety and in reducing the rate of gun use in crime. In

> particular, the government has an important interest in reducing the number of concealed weapons in public in order to reduce the risks to other members of the public who use the streets and go to public accommodations. [Citation.]" *Peruta*, 758 F. Supp. 2d at 1117.

The court went on to add:

> "The government also has an important interest in reducing the number of concealed handguns in public because of their disproportionate involvement in life-threatening crimes of violence, particularly in streets and other public places. Id. Defendant's policy relates reasonably to those interests. Requiring documentation enables Defendant to effectively differentiate between individuals who have a bona fide need to carry a concealed handgun for self-defense and individuals who do not." *Id*.

6. LAPD's Good Cause Policy Was Properly Applied to Birdt's CCW Permit Application

Birdt argues: "Appellant contends that Appellees' interpretation of the statutory scheme is so oppressive and discretionary that it amounts to a complete abrogation of his ability to exercise his Fundamental Constitutional Right." (AOB 6.) The California Legislature provides LAPD with broad discretion under Penal Code section 26155 whether to issue CCW permits to qualified individuals who can demonstrate good cause. See *Gifford v. City of Los Angeles*, 88 Cal.App. 4th 801, 805 (2001) (former Penal Code § 12050, re-numbered as § 26150, gives "extremely broad discretion to the sheriff concerning the issuance of concealed weapons licenses and explicitly grants discretion to the issuing officer to issue or

not issue a license to applicants meeting the minimum statutory requirements." *Id.* at 805.) In exercising it discretion, LAPD does not use Penal Code section 26155 or its good cause policy to create a complete ban on concealed weapons as demonstrated by the undisputed fact that on April 18, 2011 - the filing date of LAPD's Motion for Summary Judgment - there were 24 active CCW permits issued by the Los Angeles Police Department. (AER II, 75.)

Further, LAPD did not abuse its discretion when it applied its good cause policy to Birdt's application in a fair and consistent manner. It is undisputed that it is the LAPD's policy to deny CCW permit applications where the stated justification, like Birdt's, is merely one of self-defense. (AER II, 69, 74, 76, 94.) Birdt did not offer evidence at the time he applied for a permit of any specific threat and admitted as much during his deposition. (AER I, 71, 83, 184-194.) It is also undisputed that the LAPD reviews each CCW permit application individually for good cause, and the LAPD conducted such a review on Birdt's CCW permit application. (AER II, 69, 73, 76.) Accordingly, Birdt lacked good cause for a CCW permit under LAPD's constitutionally permissible policy, and LAPD's denial of Birdt's application did not constitute a violation of his Second Amendment rights.

CONCLUSION

Based on the foregoing, the Appellees respectfully request this Court affirm the district court judgment in their favor.

DATED: October 30, 2012

CARMEN A. TRUTANICH, City Attorney
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By: /s/ Kjehl T. Johansen_____
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STATEMENT OF RELATED CASES

There are two related cases on appeal before the Ninth circuit where Appellee LASD denied CCW permits based upon its good cause policy:

Thompson v. Torrance Police Department and the Los Angeles County Sheriff's Department, CV11-6154-SJO (JCx), Ninth Circuit, case number 12-56236.

Sigitas Raulinaitis, et al. v. Los Angeles County Sheriff's Department, CV11-8026-MWF (JCGx), Ninth Circuit, case number 12-56508.

Dated: October 30, 2012

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached Appellees' brief is: Proportionately spaced, has a typeface of 14 points or more and contains 4,542 words.

Dated: October 30, 2011

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Kjehl T. Johansen, Deputy City Attorney

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KJEHL T. JOHANSEN, Deputy City Attorney
Attorneys for Defendants and Appellees, Los Angeles Police Chief Charlie Beck and the Los Angeles Police Department

9th Circuit Case Number(s) 12-55115

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CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Oct 30, 2012 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/Kjehl T. Johansen

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