

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DOROTHY McKAY, DIANA KILGORE,)	Case No. 12-57049
PHILLIP WILLMS, FRED KOGEN,)	
DAVID WEISS, and THE CRPA)	DC No. 8:12-cv-01458 JVS-JPR
FOUNDATION,)	
)	
Plaintiffs-Appellant,)	
)	
v.)	
)	
SHERIFF SANDRA HUTCHENS,)	
individually and in her official capacity as)	
Sheriff of Orange County; ORANGE)	
COUNTY SHERIFF-CORONER)	
DEPARTMENT; COUNTY OF ORANGE;)	
and DOES 1-10,)	
)	
Defendants-Appellees.)	

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HONORABLE JAMES V. SELNA, JUDGE PRESIDING**

**APPELLEES' SUPPLEMENTAL EXCERPT OF RECORD
VOLUME III**

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Attorneys for Defendants-Appellees, Sheriff Sandra Hutchens,
and Orange County Sheriff-Coroner Department

Pursuant to Ninth Circuit Rule 30-1.8, Appellees Sheriff Sandra Hutchens and Orange County Sheriff-Coroner Department, by and through their counsel of record, hereby confirm to the contents and form of Appellees' Supplemental Excerpts of Record, Volume III on appeal.

DATED: January 17, 2013 Respectfully submitted,

NICHOLAS S. CHRISOS, COUNTY COUNSEL
MARIANNE VAN RIPER, SUPERVISING DEPUTY
and ELIZABETH A. PEJEAU, DEPUTY

By 

ELIZABETH A. PEJEAU, Deputy

Attorneys for Respondents, Sheriff Sandra Hutchens,
and Orange County Sheriff-Coroner Department

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EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

DOROTHY MCKAY, et al.,
Plaintiffs, SACV-12-01458-JVS

SHERIFF SANDRA HUTCHENS,
etc., et al.,
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

October 29, 2012

SHARON A. SEFFENS, RPR
United States District Courthouse
411 West 4th Street, Suite 1-1053
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SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

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SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

1 SANTA ANA, CALIFORNIA; MONDAY, OCTOBER 29, 2012: 1:30 P.M.

2 THE CLERK: Item No. 24, SACV-12-1458-JVS,
3 Dorothy McKay, et al., versus Sheriff Sandra Hutchens,
4 etc., et al.

5 Counsel, please step forward and state your
6 appearances.

7 MS. VAN RIPER: Good afternoon, Your Honor.
8 Marianne Van Riper on behalf of the O.C. Sheriff's
9 Department and Sandra Hutchens.

10 MS. WALSH: Good afternoon, Your Honor. Nicole
11 Walsh, Deputy County Counsel, on behalf of O.C. Sheriff
12 Sandra Hutchens and the Orange County Sheriff's Department.

13 MR. MICHEL: Good afternoon, Your Honor. Chuck
14 Michel on behalf of plaintiffs.

15 MR. BRADY: Good afternoon, Your Honor. Sean
16 Brady on behalf of plaintiffs.

17 THE COURT: Good afternoon.

18 I trust you have all seen the tentative.

19 MS. VAN RIPER: Yes, Your Honor.

20 MR. MICHEL: Yes, Your Honor.

21 THE COURT: Mr. Michel.

22 MR. MICHEL: Just a couple of things. I don't
23 think that I am frankly going to change the Court's mind,
24 but I think that I do get from the Court's tentative sort of
25 an acknowledgment that there are some issues here that need

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1 to be resolved probably by a higher court. I think that's
2 sort of the consensus -- I don't want to speak for my
3 colleagues, but I think that's sort of the consensus among
4 the litigants as well. So what I would simply ask is
5 that -- I will call your attention to a couple of things in
6 the tentative which maybe the Court might like to put a
7 little finer point on perhaps.

8 First of all, I think I need to preserve -- make
9 sure I am preserving my equal protection argument. I want
10 to make clear that that's not waived.

11 THE COURT: Well, I am simply denying the
12 injunction. I am not ruling as a matter of law that any of
13 the claims aren't sufficiently pled.

14 MR. MICHEL: But if our equal protection argument
15 is correct, if the Court accepted it, then the Court
16 would have to -- for that matter, this other argument this
17 afternoon -- I understand the Court would be granting the
18 injunction, right?

19 THE COURT: I'm simply holding -- you know, the
20 preliminary injunction standard is the likelihood of
21 prevailing. Simply because I hold there is no likelihood to
22 prevail, I haven't ruled as a matter of law that the claim
23 is invalid.

24 MR. MICHEL: Right, but you didn't rule that there
25 is no likelihood -- the tentative doesn't address whether or

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1 not there is a likelihood of prevailing on any of the equal
2 protection claims, which could also be grounds for an
3 injunction. So I just need to make sure that there is not
4 some kind of an implied waiver or something --

5 THE COURT: No, there isn't.

6 MR. MICHEL: Okay. The other thing is I guess
7 sort of getting to that substantial question -- well,
8 first let me just clarify one thing in the last paragraph
9 of the Court's tentative. It says, "Neither California or
10 the Orange County Sheriff's Department categorically ban
11 the public carrying of a handgun." I think the Court
12 probably understands this, but I want to make sure that
13 that -- that phrase is a bit -- could be construed as a bit
14 confusing.

15 The reason that this case is different from
16 Richards and Peruta is -- and the Richards and Peruta
17 decisions both sort of relied on the ability to carry an
18 unloaded, unconcealed handgun in public pretty much at any
19 time, not just in those specific instances listed in the
20 opposition where you go from one place to another. You are
21 taking it to a gun store to be repaired or sold or taking it
22 to a campsite or something like that. There was an ability
23 to carry an unloaded, unconcealed handgun in public anywhere
24 essentially other than sensitive places, a courthouse or
25 whatever. And because of that ability, the Richards court

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1 and the Peruta court said the Second Amendment was not
2 infringed because you could have this unloaded, unconcealed
3 gun for self-defense. That was one of the reasons for their
4 -- part of their rationale.

5 The reason this case is different is because as of
6 January 1 of this year the law changed so that you can no
7 longer carry an unloaded, unconcealed handgun in public.
8 You only have those specific limited exceptions where you
9 can take it to or from a specific place or whatever the
10 Penal Code lays out. So that takes away one of the bases
11 for the Richards and Peruta holdings, which is why this case
12 became more important to litigate.

13 So to the extent that -- while the Court uses the
14 phrase "categorically," it's mischaracterizing that
15 distinction. I just think the Court may want to take a look
16 at whether or not it wants to say it a little bit
17 differently.

18 THE COURT: I'm not sure I do.

19 MR. MICHEL: The point is that it is not -- there
20 is no -- the State does now categorically ban the public
21 carrying of a handgun unless you are going to or from a
22 specific place in a locked container, so you can't carry it
23 unloaded, unconcealed in a holster for self-defense for what
24 it's worth.

25 THE COURT: Well, it seems to me that this is an

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1 issue that for a lot of reasons really needs to be decided
2 on a full record. Whether that can be made on cross-motions
3 for summary judgment or whether we actually have to have a
4 trial -- I would be very reluctant to make a substantive
5 ruling without a full record, and it seems to me -- I deny
6 the motion for other reasons, but it seems to me that this
7 type of a motion -- this issue requires a full hearing given
8 the ramifications of the relief sought, and before I would
9 grant that relief either on an interim basis or on a full
10 basis, I really think we need to have a full evidentiary
11 hearing.

12 MR. MICHEL: May I ask -- with all due respect,
13 from our perspective, this is a purely legal question. What
14 factual issues would there be to explore? I mean, the
15 Second Amendment protects the fundamental individual right
16 to bear arms in public, and there is a policy that says
17 unless you have a special need -- I don't think there is any
18 disagreement with those facts.

19 THE COURT: I can't parse out the case today as I
20 sit here. But that's my sense, that before I decide this
21 issue, I want a full record. You suggest there is nothing
22 more to present. Perhaps so, but I suspect there is more to
23 present.

24 Okay, the tentative will be the order of the
25 Court. Thank you, and thank you for your patience this

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afternoon.

(Whereupon, the proceedings were concluded.)

* * *

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: November 28, 2012

/s/ Sharon A. Seffens 11/28/12

SHARON A. SEFFENS, U.S. COURT REPORTER

SHARON SEFFENS, U.S. DISTRICT COURT REPORTER

9th Circuit Case Number: 12-57049

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Appellees' Supplemental Excerpt of Record, Volume III 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 January 17, 2013.

The following participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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I further certified that I mailed a copy of Appellees' Supplemental Excerpt of Record, Volume III via United States Postal Service to the following:

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Executed this 17th day of January, 2013, in Santa Ana, California.



Marzette L. Lair

CERTIFICATE OF SERVICE RE:

APPELLEES' SUPPLEMENTAL EXCERPT OF RECORD, VOLUME III

I, Marzette L. Lair, pursuant to Ninth Circuit Rule 30-1.7, I certify that I mailed 4 copies of Appellees' Supplemental Excerpt of Record, Volume III via United States Postal Service to the United States Court of Appeals For The Ninth Circuit as follows: Office of the Clerk, James R. Browning Courthouse, U.S. Court of Appeals, P.O. Box 193939, San Francisco, CA 94119-3939.

I further certify that Appellees' Supplemental Excerpt Of Record, Volume III is identical to the version submitted electronically on January 17, 2013.

Executed this 17th day of January, 2013, in Santa Ana, California.



Marzette L. Lair