

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

EDWARD PERUTA, <i>ET AL.</i> ,)	<u>09CV2371-IEG</u>
PLAINTIFFS,)	
)	
VS.)	SAN DIEGO, CA
)	NOVEMBER 15, 2010
COUNTY OF SAN DIEGO, <i>ET AL.</i> ,)	10:30 A.M.
DEFENDANTS.)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE IRMA E. GONZALEZ
UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MICHEL & ASSOCIATES, P.C.
BY: C. D. MICHEL, ESQ.
CLINT B. MONFORT, ESQ.
SEAN A. BRADY, ESQ.
180 E. OCEAN BLVD., SUITE 200
LONG BEACH, CA 90802
AND
PAUL H. NEUHARTH, JR., APC
BY: PAUL H. NEUHARTH, JR., ESQ.
1140 UNION STREET, SUITE 102
SAN DIEGO, CA 92101

FOR THE DEFENDANTS: COUNTY OF SAN DIEGO
OFFICE OF COUNTY COUNSEL
BY: JAMES M. CHAPIN, ESQ.
1600 PACIFIC HIGHWAY, RM. 355
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(APPEARANCES CONTINUED)

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1 THE DEPUTY CLERK: NUMBER FIVE ON CALENDAR, CASE
2 09CV2371, PERUTA VS. COUNTY OF SAN DIEGO, *ET AL.*, FOR A MOTION
3 HEARING.

4 THE COURT: YOUR APPEARANCES, PLEASE.

5 MR. MICHEL: GOOD MORNING, YOUR HONOR.

6 CHUCK MICHEL APPEARING FOR PLAINTIFFS.

7 WITH ME IS SEAN BRADY AND PAUL NEUHARTH.

8 THE COURT: I'M SORRY. I DIDN'T HEAR THE LAST THING.
9 WHO'S WITH YOU?

10 MR. MICHEL: SEAN BRADY AND PAUL NEUHARTH.

11 THE COURT: LET ME JUST MAKE SURE I HAVE THAT DOWN
12 HERE.

13 OKAY, THANK YOU.

14 MR. CHAPIN: GOOD MORNING, YOUR HONOR.

15 JAMES CHAPIN FOR DEFENDANT SHERIFF WILLIAM GORE.

16 THE COURT: GOOD MORNING, GENTLEMEN.

17 OKAY, THIS IS THE PLAINTIFFS' MOTION FOR SUMMARY
18 JUDGMENT ON TWO OF THE CLAIMS, AND THEN THE DEFENDANTS' MOTION
19 FOR SUMMARY JUDGMENT ON ALL CLAIMS.

20 CORRECT, MR. CHAPIN?

21 MR. CHAPIN: YES, YOUR HONOR.

22 THE COURT: OKAY. I DON'T KNOW WHO -- I THINK I
23 SHOULD HAVE THE PLAINTIFFS FIRST ARGUE AT THIS TIME.

24 AND SO, MR. MICHEL, ARE YOU GOING TO ARGUE THE CASE
25 FOR YOUR CLIENTS?

1 MR. MICHEL: YES, YOUR HONOR.

2 THANK YOU.

3 THE COURT: AND I AM GOING TO ALLOT A SUBSTANTIAL
4 AMOUNT OF TIME TO BOTH SIDES TO ARGUE THE CASE. THERE ARE A
5 LOT OF ISSUES THAT WE NEED TO ATTEMPT TO RESOLVE, IF WE CAN.
6 I'M NOT GOING TO RULE FROM THE BENCH. I'M GOING TO ISSUE A
7 WRITTEN ORDER AFTER ARGUMENT, OBVIOUSLY, AND BASED ON YOUR
8 PAPERS. I BELIEVE I'M FAMILIAR WITH ALL THE ISSUES, BUT THE
9 ISSUES ARE FAIRLY COMPLICATED, AND CERTAINLY SOME ARE ISSUES
10 OF FIRST IMPRESSION.

11 I'LL LET YOU START, MR. MICHEL. I HAVE QUESTIONS.
12 I'LL PROBABLY INTERRUPT YOU, BUT YOU CAN START.

13 MR. MICHEL: OBVIOUSLY, THE COURT'S QUESTIONS ARE
14 WELCOME, YOUR HONOR.

15 I THINK, FROM MY PERSPECTIVE, I'D JUST LIKE TO SORT
16 OF PUT THE CASE IN ITS PROPER CONTEXT PROCEDURALLY AND
17 SUBSTANTIVELY WHERE IT IS RIGHT NOW. THE COURT RULED, IN
18 DENYING THE COUNTY'S MOTION TO DISMISS BACK IN JANUARY, ON A
19 NUMBER OF THE ISSUES WHICH HAVE BEEN, TO SOME EXTENT,
20 REBRIEFED IN THE MOTIONS AND THE BRIEFS GOING BACK AND FORTH
21 ON THE CROSS-MOTIONS.

22 THE COURT HAS PREVIOUSLY SAID THAT THE SECOND
23 AMENDMENT DOES APPLY OUTSIDE THE HOME AND THAT BEARING ARMS
24 MEANS CARRYING ARMS OUTSIDE THE HOME. THE COURT HAS RULED
25 THAT YOU CAN'T BAN ALL FORMS OF CARRY CONSTITUTIONALLY, YOU

1 CAN'T BAN ALL FORMS OF CARRYING FIREARMS. IT DID THE NUNN,
2 CHANDLER, ANDREWS, AND REID ANALYSIS IN ITS MOTION TO DISMISS
3 AND RECOGNIZED THAT, WHILE A GOVERNMENT HAS A CERTAIN AMOUNT
4 OF DISCRETION, LEEWAY, IN CHOOSING A WAY TO REGULATE FIREARMS
5 IN PUBLIC, IT CAN'T OUTRIGHT BAN THEM, AND IN CALIFORNIA THE
6 CHOICE IS, ESSENTIALLY, CONCEALED CARRY WITH A LICENSE.

7 IT ALSO RECOGNIZED IN ITS RULING THAT CERTAIN, THAT
8 THERE ARE INFRINGEMENTS, AND THAT THOSE TYPES OF INFRINGEMENTS
9 WOULD BE SUBJECT TO SOME KIND OF HEIGHTENED SCRUTINY, EITHER
10 INTERMEDIATE OR STRICT, AT THAT POINT IN TIME, AND THAT RULING
11 CAME DOWN BEFORE McDONALD, BEFORE THE McDONALD DECISION.

12 IT ALSO RECOGNIZED THAT THE SPECIAL-NEEDS POLICY THE
13 COUNTY HAS IN PLACE -- IN OTHER WORDS, BASICALLY, IT'S A SHALL
14 NOT ISSUE UNLESS YOU DEMONSTRATE A SPECIAL NEED -- INFRINGES
15 ON THE SECOND AMENDMENT RIGHT TO KEEP AND BEAR ARMS, AND
16 THROUGH THE FOURTEENTH AMENDMENT, AND THAT THE COUNTY HAD THE
17 BURDEN TO JUSTIFY THAT INFRINGEMENT. THE COURT STOPPED SHORT
18 OF RULING WHETHER OR NOT THAT INFRINGEMENT WAS
19 UNCONSTITUTIONAL OR NOT IN THE CONTEXT OF THAT MOTION.

20 AFTER THAT, WE AMENDED THE COMPLAINT BECAUSE WE
21 DECIDED THAT THE APPROPRIATE APPROACH HERE WAS NOT REALLY TO
22 CHALLENGE PENAL CODE SECTION 12050, THE LICENSING STATUTE, ON
23 ITS FACE, BECAUSE THAT STATUTE ALLOWS A LICENSE TO BE ISSUED
24 IF A SHERIFF DECIDES THAT THERE IS GOOD CAUSE.

25 THE COURT: BUT LET ME STOP YOU THERE.

1 I MEAN, I KNOW YOU SAY THAT YOU'RE NOT ATTACKING THE
2 CONSTITUTIONALITY OF THE CALIFORNIA STATUTE, BUT AREN'T YOU
3 REALLY ATTACKING IT? I MEAN, AREN'T YOU GOING AROUND ABOUT IT
4 THROUGH THE BACK DOOR, BASICALLY?

5 MR. MICHEL: WELL --

6 THE COURT: IN THE WAY THAT IT'S ENFORCED.

7 MR. MICHEL: WELL, I THINK, AND I UNDERSTAND THE
8 COURT'S CONCERN, BECAUSE IT CONFUSED ME FOR A WHILE, TOO, AND
9 WE'VE GONE AROUND AND AROUND ON THIS. I THINK, REALLY, IF THE
10 COURT'S OBLIGATION IS TO INTERPRET A STATUTE CONSTITUTIONALLY,
11 YOU KNOW, UNDER THE DOCTRINE OF CONSTITUTIONAL AVOIDANCE, YOU
12 HAVE TO TRY AND CONSTRUE A STATUTE CONSTITUTIONALLY. WELL,
13 GOOD CAUSE CAN BE CONSTRUED CONSTITUTIONALLY IF GOOD CAUSE
14 INCLUDES A RECOGNITION OF THE FUNDAMENTAL RIGHT TO
15 SELF-DEFENSE.

16 THE COURT: ISN'T GOOD CAUSE THE ROOT OF THE ISSUE
17 THAT THE, THE ISSUES THAT THE PLAINTIFF IS ARGUING IN THIS
18 CASE, WHAT CONSTITUTES GOOD CAUSE AND WHAT KIND OF (PAUSE),
19 WHAT LEVEL OF SCRUTINY DO WE USE IN DETERMINING WHAT GOOD
20 CAUSE IS, FOR GOOD CAUSE IS?

21 MR. MICHEL: ESSENTIALLY, YES, AND WHAT WE'RE SAYING
22 IS THAT THERE IS A STATE STATUTE THAT IS BEING APPLIED TO
23 ARTICULATE GOOD CAUSE AS REQUIRING A SPECIAL NEED, AND IT'S
24 BEING APPLIED THROUGH A POLICY THAT THE COUNTY HAS THAT'S
25 UNCONSTITUTIONAL ON ITS FACE BECAUSE IT EXCLUDES SELF-DEFENSE.

1 IT REQUIRES A DEMONSTRATION OF A SPECIAL NEED.

2 SO, INSTEAD OF A SHALL ISSUE, UNLESS THERE'S A REASON
3 NOT TO ISSUE, IT'S A SHALL NOT ISSUE UNLESS YOU AS AN
4 INDIVIDUAL PROVE SOME SPECIAL NEED BEYOND THE GENERAL POPULACE
5 AND BEYOND JUST SELF-DEFENSE, WHICH HELLER RECOGNIZES A
6 FUNDAMENTAL RIGHT. SO WE AMENDED THE COMPLAINT JUST TO TRY TO
7 CLARIFY THAT. I THINK IT CAUSED SOME CONFUSION IN THE
8 COUNTY'S BRIEFS, AND WE TRIED TO ADDRESS THAT IN OUR PAPERS.
9 BUT THE LAW OF THE CASE, IT SEEMS TO ME, IS IT GETS UP TO
10 WHETHER OR NOT THE COUNTY HAD JUSTIFIED, HAD CARRIED ITS
11 BURDEN OF JUSTIFICATION, ITS *SHALL NOT ISSUE UNLESS* POLICY,
12 ITS SPECIAL-NEEDS POLICY, WHERE SOMEONE, IN ORDER TO EXERCISE
13 THEIR FUNDAMENTAL RIGHT TO SELF DEFENSE IN PUBLIC, HAS TO
14 ESTABLISH SOMETHING BEYOND SELF-DEFENSE, SOME ARTICULABLE
15 THREAT.

16 THE COURT: OKAY, THERE'S THE CALIFORNIA PENAL CODE
17 SECTION 12031.

18 MR. MICHEL: YES.

19 THE COURT: IT PROHIBITS THE OPEN CARRY OF A LOADED
20 FIREARM, BUT NOT UNLOADED. I MEAN, YOU CAN CARRY AN UNLOADED
21 FIREARM UNDER THAT STATUTE.

22 MR. MICHEL: AS LONG AS IT'S ALSO UNCONCEALED.

23 THE COURT: AS LONG AS IT'S UNCONCEALED, AND IT
24 ALLOWS A PERSON TO CARRY THE CLIP NEXT TO THE UNLOADED
25 FIREARM.

1 MR. MICHEL: THE TERM OF ART IS MAGAZINE.

2 THE COURT: MAGAZINE.

3 MR. MICHEL: AND YES, IT ALLOWS YOU TO CARRY A
4 MAGAZINE, OR, DEPENDING ON WHAT TYPE OF FIREARM, YOU CAN CARRY
5 THE AMMUNITION, BUT THAT OPENS A WHOLE SORT OF A QUAGMIRE
6 ABOUT WHETHER THAT'S A PRACTICAL MATTER OF CARRYING FOR
7 IMMEDIATE SELF-DEFENSE, WHICH IS WHAT HELLER PROTECTS.

8 THE COURT: I UNDERSTAND THAT, AND WE'LL GET TO THAT.

9 SO, THEN, 12025, THE STATUTE YOU JUST REFERRED TO, IS
10 THE STATUTE THAT PROHIBITS THE CARRYING OF CONCEALED FIREARMS,
11 BUT THERE ARE THESE EXCEPTIONS --

12 MR. MICHEL: RIGHT.

13 THE COURT: -- AND ONE OF THEM IS GOOD CAUSE.

14 MR. MICHEL: ONE OF THEM IS HAVING A LICENSE.

15 THE COURT: YES, THE EXCEPTION IS HAVING A LICENSE.
16 CORRECT?

17 MR. MICHEL: FOR BOTH THE CONCEALED AND THE
18 LOADED-CARRY BAN. 12025 BANS CONCEALED; THE OTHER BANS
19 LOADED. FOR BOTH OF THOSE STATUTES, THERE'S AN EXCEPTION IF
20 YOU HAVE A CCW, IF YOU HAVE A PERMIT TO CARRY A CONCEALED AND
21 LOADED FIREARM.

22 NOW, 12031 ALSO CARRIES SORT OF AN EXTREME-EMERGENCY
23 EXCEPTION WHERE, IF YOU'RE IN IMMEDIATE GRAVE DANGER AND
24 YOU'VE CALLED THE POLICE, YOU CAN ACTUALLY CARRY A LOADED
25 FIREARM WITHOUT A PERMIT IN THAT SHORT PERIOD OF TIME, AND

1 THEN THERE ARE STATUTORY EXCEPTIONS TO 12031. THERE'S THE
2 PEOPLE VS. KING CASE WHICH SAYS EVEN IF YOU'RE A FELON, IF YOU
3 ARE, IF YOU NEED TO POSSESS A FIREARM FOR SELF-DEFENSE, EVEN
4 IF YOU'RE PROHIBITED, YOU CAN POSSESS THE FIREARM LOADED
5 DURING THE PERIOD OF TIME THAT YOU NEED IT TO DEFEND YOURSELF.

6 SO THOSE STATUTES SORT OF SET UP THE DEFAULT
7 POSITION. IF YOU GO OUT ACROSS THE THRESHOLD OF YOUR HOME IN
8 PUBLIC, YOU CAN'T CARRY A GUN CONCEALED, YOU CAN'T CARRY A GUN
9 LOADED UNLESS HAVE YOU A PERMIT OR UNLESS ONE OF THE OTHER
10 EXCEPTIONS APPLIES, AND MOST OF THOSE EXCEPTIONS ARE DESIGNED
11 TO GET YOU FROM YOUR HOUSE TO A RANGE, OR YOUR HOUSE TO A
12 BUSINESS, OR SOMEPLACE ELSE WHILE YOU TRANSPORT THE FIREARM.

13 THE COURT: GO AHEAD.

14 MR. MICHEL: THERE'S A HELPFUL LITTLE BOOK, BY THE
15 WAY, WHICH I'M SORT OF EMBARRASSED TO CITE, BUT I USE IT ALL
16 THE TIME. IT'S CALLED *HOW TO OWN A GUN & STAY OUT OF JAIL*, BY
17 JOHN MACHTINGER. IT LAYS OUT ALL THE EXCEPTIONS TO 12025 AND
18 12031, AND IT GETS VERY, IT'S VERY CONVOLUTED, BECAUSE IT'S SO
19 HARD TO UNDERSTAND WHAT THOSE STATUTES DO AND DO NOT DO.

20 BUT IN ANY EVENT, IT COMES DOWN TO, WE'RE NOT
21 CHALLENGING THOSE STATUTES. YOU CAN HAVE A BAN ON CONCEALED
22 CARRY, YOU CAN HAVE A BAN ON LOADED CARRY, AS LONG AS YOU HAVE
23 A PERMITTING SYSTEM, A LICENSING SYSTEM, IN PLACE THAT IS
24 ITSELF CONSTITUTIONAL. SO THE CASES THAT DEAL WITH THOSE, IN
25 FACT NOT JUST 12025 OR 12031, BUT ANY OF THE CONCEALED OR

1 LOADED-CARRY BANS ACROSS THE COUNTRY REALLY DON'T MEAN
2 ANYTHING UNLESS THERE WAS NO LICENSING SYSTEM IN PLACE OR NO
3 ALTERNATIVE METHOD OF CARRYING, ALTHOUGH THOSE CASES DON'T
4 REALLY, ARE INSIGNIFICANT IN TERMS OF THE ANALYSIS THAT WE
5 NEED TO DO HERE, AND THE ANALYSIS THAT WE --

6 THE COURT: OKAY, LET ME STOP YOU THERE.

7 NOW, THERE'S 12031(j). THAT PERMITS OPEN CARRY FOR
8 SELF-DEFENSE PURPOSES. CORRECT?

9 MR. MICHEL: WITH SOME VERY LIMITED REQUIREMENTS ON
10 TOP OF THAT, YES. GENERALLY, IT ALLOWS IT FOR SELF-DEFENSE.
11 BUT IF I'M NOT MISTAKEN, AND I DON'T REMEMBER THE (j)
12 SUBSECTION, BUT IT'S IMMEDIATE GRAVE DANGER BETWEEN THE TIME
13 THAT YOU CALL THE POLICE AND THE POLICE ARRIVE, I THINK, ARE
14 THE RESTRICTIONS ON THAT. SO IT'S DESIGNED FOR THAT
15 IMMINENT-CRISIS TYPE OF A SITUATION, WHICH I THINK IS ENTIRELY
16 CONSISTENT WITH A LICENSING SCHEME. WE'RE NOT TALKING
17 ABOUT --

18 THE COURT: DOES THAT UNDERMINE YOUR ARGUMENT AT ALL,
19 THEN, YOUR GENERAL ARGUMENT?

20 MR. MICHEL: I DON'T THINK SO, BECAUSE WE'RE NOT
21 TALKING ABOUT SELF-DEFENSE IN THE FACE OF AN UPHELD KNIFE OR A
22 BURGLAR IN YOUR FACE SAYING, GIVE ME YOUR WALLET, A ROBBER IN
23 YOUR FACE SAYING, GIVE ME YOUR WALLET. WE'RE TALKING ABOUT
24 THE ANTICIPATION OF A POSSIBLE NEED FOR SELF-DEFENSE. HELLER
25 NEVER SAID YOUR RIGHT TO SELF-DEFENSE OR McDONALD NEVER SAID

1 YOUR RIGHT TO SELF-DEFENSE OR CARRY ARMS ONLY SPRING INTO
2 BEING WHEN YOU'RE ABOUT TO BE ATTACKED. YOUR RIGHT TO
3 SELF-DEFENSE IS, IN MANY RESPECTS, A DETERRENT TO FOLKS
4 THINKING THAT YOU'RE GOING TO, THAT YOU, THAT THEY MIGHT BE
5 ABLE TO ATTACK YOU.

6 SO, BUT I THINK 12031 ACTUALLY COMPLEMENTS THE
7 CONSTITUTIONAL LICENSING SCHEME, PROVIDED THE LICENSING SCHEME
8 IS CONSTITUTIONAL BY ALSO RECOGNIZING THAT EVEN IF YOU CHOOSE
9 NOT TO GO GET THAT PERMIT BECAUSE YOU WANT TO BE EQUIPPED IN
10 THE EVENT YOU NEED TO EXERCISE YOUR RIGHT TO SELF-DEFENSE, IT
11 SAYS, EVEN WITHOUT THAT PERMIT, IF YOU FIND YOURSELF IN THE
12 UNENVIABLE POSITION OF HAVING TO IMMEDIATELY EXERCISE YOUR
13 RIGHT TO SELF-DEFENSE, YOU CAN DO IT WITHOUT A PERMIT AND NOT
14 BREAK THE LAW.

15 THE COURT: IS IT YOUR POSITION THAT SELF-DEFENSE
16 GENERALLY IS GOOD CAUSE? IS THAT WHAT YOU'RE ARGUING?

17 MR. MICHEL: ESSENTIALLY, YES, SELF-DEFENSE, IN
18 ADDITION TO OTHER THINGS. SO GOOD CAUSE DOESN'T MEAN YOU
19 MIGHT HAVE GOOD CAUSE, BUT NOT GET A PERMIT. THERE ARE OTHER
20 OBJECTIVE FACTORS. THERE'S A NUMBER OF HOOPS THAT YOU'RE
21 GOING TO HAVE TO JUMP THROUGH, AN APPLICANT WILL HAVE TO JUMP
22 THROUGH TO GET A PERMIT. THE ONLY ONES WE'RE REALLY FOCUSING
23 ON ARE THE GOOD CAUSE.

24 BUT THAT DOESN'T MEAN THAT, JUST BECAUSE YOU HAVE
25 GOOD CAUSE, YOU NECESSARILY GET A PERMIT. BUT, ESSENTIALLY,

1 IF YOU SAY GOOD CAUSE, THEN THIS IS THE GOVERNMENT'S BURDEN,
2 THE COUNTY'S BURDEN, TO SAY THAT'S NOT GOOD ENOUGH, FOR SOME
3 REASON. THEY'LL HAVE TO DECIDE, ARE YOU TELLING THE TRUTH?
4 IS THIS REALLY FOR GOOD CAUSE, OR IS THIS BECAUSE YOU WANT TO
5 GO COMMIT A CRIME, OR IS THERE SOME OTHER, YOU KNOW,
6 JUSTIFICATION FOR THIS, FOR GETTING GOOD CAUSE, FOR SECURITY
7 PURPOSES, OR BUSINESS PURPOSES, OR SOME KIND OF A CEREMONY, OR
8 A 21-GUN SALUTE, OR SOMETHING?

9 I MEAN, THERE ARE OTHER POTENTIAL REASONS WHY YOU
10 MIGHT HAVE SO-CALLED GOOD CAUSE, BUT ONE OF THE REASONS THAT
11 WE BELIEVE THE HELLER AND McDONALD CASES DEMAND AND ESTABLISH
12 GOOD CAUSE IS SELF-DEFENSE, THE RIGHT TO POSSESS, THE DESIRE
13 TO EXERCISE YOUR RIGHT TO POSSESS A FIREARM, TO CARRY A
14 FIREARM, TO BEAR ARMS IN PUBLIC FOR, IN THE EVENT OF, IN THE
15 EVENT OF CONFRONTATION. I THINK THOSE WERE THE WORDS OUT OF
16 HELLER.

17 THE COURT: AND BY *IN PUBLIC*, YOU'RE TALKING ABOUT
18 WALKING DOWN THE STREET, BASICALLY, BECAUSE, I MEAN, THERE ARE
19 CASES THAT TALK ABOUT OTHER KINDS OF PROPERTY THAT ARE OWNED
20 BY GOVERNMENT ENTITIES, BUT YOU'RE TALKING ABOUT -- I MEAN,
21 WE'RE NOT DEALING WITH THAT RIGHT NOW, ARE WE?

22 MR. MICHEL: THERE ARE VERY DEFINITELY GOING TO BE
23 SOME PLACES WHERE YOU CANNOT CARRY. SO *PUBLIC*, THAT'S ANOTHER
24 TERM OF ART WHICH I DON'T THINK WE -- LEGAL ART -- WHICH I
25 DON'T THINK WE NEED TO DISSECT RIGHT NOW --

1 THE COURT: RIGHT.

2 MR. MICHEL: -- BECAUSE I'M NOT ASKING THE COURT TO
3 SAY THAT YOU CAN CARRY IT ON A SCHOOL GROUND, OR IN A
4 COURTHOUSE, OR, YOU KNOW, THOSE TYPES OF SENSITIVE PLACES ARE
5 THINGS THAT HELLER RECOGNIZED AS LEGITIMATE RESTRICTIONS THAT
6 THE GOVERNMENT CAN IMPOSE ON THE RIGHT TO CARRY A GUN IN
7 PUBLIC.

8 THE COURT: OKAY.

9 MR. MICHEL: AND THOSE TYPES OF, AND THOSE SENSITIVE
10 PLACES AND ALL THE PRESUMPTIVELY-VALID REGULATIONS THAT HELLER
11 RECOGNIZES, THOSE ARE ALL CONSISTENT WITH FUNDAMENTAL-RIGHT
12 JURISPRUDENCE. IT'S THE EQUIVALENT RIGHT OF OBSCENITY, OR
13 FIGHTING WORDS, OR, YOU KNOW, THE OTHER LESSER-PROTECTED MODES
14 OF SPEECH THAT DON'T NECESSARILY TRIGGER THE SAME LEVEL OF
15 SCRUTINY AND THE SAME LEVEL OF REVIEW IN THE FIRST AMENDMENT
16 CONTEXT.

17 BUT HERE WHAT WE'RE BEING ASKED TO LOOK AT IS, WHAT'S
18 THE STANDARD? AND THE COURT POSTURED IT AS STRICT OR
19 INTERMEDIATE, BUT I SUBMIT THAT, REALLY, IN THIS CASE THIS IS
20 NOT A REGULATION. THIS IS A BAN. IF YOU WALK INTO THE
21 SHERIFF'S DEPARTMENT AND WANT TO FILL OUT AN APPLICATION TO
22 GET A CONCEALED-WEAPON PERMIT, FIRST OF ALL, THEY DO AN
23 INITIAL, SORT OF AN INFORMAL SCREENING, AND IF YOU SAY, MY
24 REASON IS SELF-DEFENSE, THEY'LL SAY, SAVE YOUR MONEY. BUT IF
25 YOU INSIST ON FILING THAT APPLICATION, YOU NEED TO ESTABLISH A

1 SPECIAL NEED.

2 SO IT'S, THE DEFAULT POSITION IS, YOU DO NOT GET THE
3 LICENSE THAT YOU NEED IN ORDER TO EXERCISE YOUR FUNDAMENTAL
4 RIGHT TO SELF-DEFENSE. THAT'S THE PRESUMPTION. THAT'S
5 CONSTITUTIONALLY BACKWARD. IT NEEDS TO BE, WHEN YOU WALK IN,
6 YOU HAVE THE RIGHT TO GET A LICENSE, ASSUMING YOU MEET THE
7 OTHER, JUMP THROUGH THE OTHER HOOPS FOR SELF-DEFENSE, UNLESS
8 THE GOVERNMENT COMES UP WITH A REASON WHY YOU'RE NOT GOING TO
9 BE ALLOWED TO EXERCISE YOUR RIGHT.

10 BUT IN THIS CASE IT'S NOT EVEN A REGULATION. WE
11 WOULD BE GOING THROUGH, AND NEED TO GO THROUGH, AND THIS WAS,
12 I THINK, PRETTY MUCH ARGUED QUITE ADEQUATELY IN THE AMICUS
13 BRIEFS SUBMITTED BY DAVID KOPEL AND JOHN EASTMAN, YOU DON'T
14 NEED TO GET INTO A STANDARD REVIEW AT ALL, BECAUSE THIS IS NOT
15 REALLY A REGULATION. IT'S SPECIAL PERMISSION FROM THE
16 GOVERNMENT TO EXERCISE A FUNDAMENTAL RIGHT THAT THE GOVERNMENT
17 IS NOT ALLOWED TO REQUIRE.

18 THEY CAN DEPRIVE CERTAIN PEOPLE IN CERTAIN PLACES
19 FROM, PERHAPS, POSSESSING CERTAIN TYPES OF FIREARMS IN CERTAIN
20 CONTEXTS. THEY CAN PUT THOSE TYPES OF REGULATIONS IN PLACE,
21 AND WE'RE NOT, AND ALSO THEY CAN REQUIRE GOOD MORAL CHARACTER
22 SO THAT THE PEOPLE WHO GET THIS LICENSE ARE TRUSTWORTHY, NOT,
23 YOU KNOW, GETTING THEM TO GO COMMIT A CRIME, OR A MEMBER OF A
24 GANG, OR SOMETHING LIKE THAT, BUT THEY CAN'T JUST SAY, AS A
25 MATTER OF POLICY, THAT YOU HAVE TO ARTICULATE A NEED ABOVE AND