

1 BEYOND WHAT THE GENERAL PUBLIC CAN SAY FOR SELF-DEFENSE. THEY
2 CAN'T SAY YOU HAVE TO HAVE A DEATH THREAT, OR YOU HAVE TO BE
3 BEING STALKED, OR YOU HAVE TO BE ABLE TO ARTICULATE A SPECIFIC
4 RISK IN ORDER TO BE ABLE TO EXERCISE YOUR FUNDAMENTAL RIGHT TO
5 SELF-DEFENSE.

6 THE COURT: AND RIGHT NOW, THE GOOD-CAUSE REQUIREMENT
7 MANDATES DOCUMENTATION. CORRECT? TO PROVE THAT A PERSON IS
8 SUBJECT TO SOME KIND OF THREAT IN ORDER TO ESTABLISH
9 SELF-DEFENSE. CORRECT?

10 MR. MICHEL: HAS SOME KIND OF A SPECIAL NEED, AND
11 THAT'S EITHER, AND I DON'T WANT TO PUT WORDS IN OPPOSING
12 COUNSEL'S ARGUMENT, BUT IT SEEMS THAT, AND THIS KIND OF GOES
13 INTO OUR EQUAL-PROTECTION POSITION. RIGHT NOW, THE COUNTY
14 WILL DEEM YOU TO HAVE A SPECIAL NEED IF YOU ARE A CERTAIN TYPE
15 OF BUSINESS OWNER. I GUESS THE COUNTY THINKS YOU ARE AT MORE
16 RISK THERE, ALTHOUGH THERE MIGHT NOT BE AN ARTICULABLE THREAT.
17 IN OTHER WORDS, YOU'RE NOT BEING ROBBED OR ABOUT TO BE ROBBED,
18 OR SOMEONE IS NOT CLAIMING TO ROB YOU, OR YOU HAVE A T.R.O. OR
19 SOMETHING THAT DOES PROVE OR ESTABLISH THAT YOU ARE SUBJECT TO
20 SOME TYPE OF PARTICULAR HIGHER RISK THAN OTHERS, OR YOU'RE A
21 MEMBER OF THE SPECIAL RESERVE, WHICH SEEMS TO OPEN SOME DOORS
22 JUST BY VIRTUE OF BEING A MEMBER OF THAT.

23 THE COURT: HAVEN'T THEY CHANGED THEIR POLICY A
24 LITTLE BIT NOW?

25 MR. MICHEL: I WOULDN'T BE SURPRISED IF THEY TRY. I

1 KNOW THAT THAT'S SORT OF TYPICAL, AND I DON'T KNOW THAT THAT'S
2 REALLY THE CRUX OF, I DON'T KNOW -- I'M NOT TRYING TO TAKE ANY
3 PERMITS AWAY FROM THE PEOPLE IN THE SPECIAL RESERVE. THEY
4 SHOULD ALL HAVE THEIR PERMITS. GOD BLESS THEM. BUT THEY'RE
5 NOT ANY MORE ENTITLED THAN THE AVERAGE CITIZEN IS TO EXERCISE
6 THEIR FUNDAMENTAL RIGHT TO SELF-DEFENSE. EVERYONE HAS THAT
7 RIGHT EQUALLY. IF YOU GIVE SOMEONE THAT RIGHT OVER AND ABOVE
8 SOMEONE WHO CAN'T, WHO ISN'T A MEMBER OF THAT CLUB, THEN
9 THAT'S AN EQUAL-PROTECTION VIOLATION.

10 AND FURTHERMORE, JUST REQUIRING THAT SPECIAL NEED,
11 EVEN IF IT'S NOT RELATED TO THE PARTICULAR SPECIAL RESERVE
12 ORGANIZATION, JUST REQUIRING SOMEONE TO DEMONSTRATE, I'M A
13 BUSINESS OWNER, SO I CARRY MONEY TO THE BANK, OR I JUST, I
14 HAVE, YOU KNOW, MY EX-BOYFRIEND IS STALKING ME, OR WHATEVER
15 THE PARTICULARIZED, SPECIFIC NEED MAY BE, THOSE PEOPLE ARE NOT
16 ENTITLED TO PREFERENTIAL TREATMENT IN EXERCISING THEIR
17 FUNDAMENTAL RIGHT, EITHER. THAT'S AN EQUAL-PROTECTION
18 VIOLATION AS WELL.

19 THE COURT: WHAT IF DOCUMENTATION WASN'T REQUIRED AND
20 ALL YOU HAD TO DO WAS PRESENT AN AFFIDAVIT THAT YOU WANTED
21 THIS FOR SELF-DEFENSE? WOULD THAT BE CONSTITUTIONAL IN YOUR
22 VIEW?

23 MR. MICHEL: YES. I HAVEN'T REALLY THOUGHT ABOUT
24 WHETHER OR NOT REQUIRING THAT AFFIDAVIT -- I DON'T SEE WHY
25 THAT WOULD BE A PROBLEM, REQUIRING AN AFFIDAVIT UNDER PENALTY

1 OF PERJURY THAT YOU WANT THIS LICENSE --

2 THE COURT: CORRECT.

3 MR. MICHEL: -- FOR SELF-DEFENSE PURPOSES. I DON'T,
4 OFFHAND, SEE A PROBLEM WITH THAT.

5 THE COURT: OKAY.

6 MR. MICHEL: IT'S JUST A WAY OF PROVING IT. SURE, I
7 SUPPOSE THEY CAN REQUIRE PROOF.

8 THE COURT: RIGHT, OTHER THAN WHAT THEY SAY THEY NEED
9 RIGHT NOW, A RESTRAINING ORDER, OR SOME OTHER DOCUMENTATION.
10 CORRECT?

11 MR. MICHEL: RIGHT, AND IF THAT PERSON LIES, I MEAN,
12 I CAN'T REALLY IMAGINE THE SCENARIO UNLESS MAYBE (PAUSE) -- I
13 DON'T KNOW WHAT KIND OF A WORLD IT WOULD BE WHERE YOU --

14 THE COURT: ANYBODY CAN SAY THAT, COULDN'T THEY, AND
15 SAY THIS IS UNDER PENALTY OF PERJURY?

16 MR. MICHEL: YES, AND BE SUBJECT TO PERJURY, I
17 SUPPOSE. BUT I CAN'T IMAGINE A WORLD WHERE NO ONE WOULD
18 ACTUALLY HAVE A LEGITIMATE NEED FOR SELF-DEFENSE, UNLESS YOU
19 LIVED IN AN IRON BOX, OR SOMETHING, AND PEOPLE COULDN'T GET TO
20 YOU. I MEAN, I CAN'T THINK OF AN ACADEMIC EXAMPLE WHERE
21 SELF-DEFENSE WOULDN'T BE A LEGITIMATE REASON TO GET THE
22 LICENSE, NOT IN AND OF ITSELF, JUST THAT HOOP, YOU GET THROUGH
23 THAT HOOP.

24 THE COURT: RIGHT, BECAUSE THERE STILL HAS TO BE A
25 CRIMINAL BACKGROUND CHECK DONE AND THESE OTHER HOOPS --

1 MR. MICHEL: RIGHT.

2 THE COURT: -- THAT YOU MENTIONED, OR THAT THEY
3 PROBABLY WOULD HAVE TO JUMP THROUGH.

4 MR. MICHEL: ABSOLUTELY, AND WE'RE NOT CHALLENGING
5 ANY OF THOSE. AND, YOU KNOW, I DON'T HAVE A CRYSTAL BALL, BUT
6 I THINK WE CAN ALL IMAGINE THAT IF THE LAW IS, IN LIGHT OF
7 HELLER AND McDONALD, THE LAW IS NOW SEEN FOR WHAT IT NEEDS TO
8 BE IN ORDER TO BE CONSTITUTIONAL, YOU KNOW, THERE WILL BE SOME
9 NEW HOOPS ENTERTAINED IN SACRAMENTO THIS SESSION IN ORDER TO
10 KIND OF TIGHTEN UP THAT PROCESS, AND THAT'S PART OF THE,
11 THAT'S THE WAY IT WORKS. I WOULDN'T BE SURPRISED AT ALL. I'D
12 EXPECT THAT.

13 THE COURT: OKAY. GO ON.

14 MR. MICHEL: WELL, I THINK, ACTUALLY -- WELL, THERE'S
15 ONE THING I DID WANT TO POINT OUT, BECAUSE WE DIDN'T SEE THIS
16 WHEN WE FIRST, WHEN WE LAST SUBMITTED OUR BRIEF. THERE IS A
17 NEW CASE OUT OF NEVADA, DISTRICT COURT, THAT DEALS WITH THE
18 STANDARD OF REVIEW. IT'S U.S. V. LIGON, AND I ONLY HAVE A
19 LEXIS CITE. IT'S 116272, 15-17 -- I GUESS THAT'S THE PAGE
20 PINPOINT CITE -- OCTOBER 20TH, 2010, AND I THINK THAT NEW CASE
21 GIVES SOME MORE GUIDANCE ABOUT --

22 THE COURT: WHAT DOES THAT SAY? WHAT DOES IT SAY
23 GENERALLY?

24 MR. MICHEL: IT SAYS A LAW THAT BURDENS THE EXERCISE
25 OF A FUNDAMENTAL RIGHT IS SUBJECT TO STRICT SCRUTINY, WHICH IS

1 NOT PARTICULARLY SURPRISING, BY THE WAY, IN THIS CASE.

2 THE COURT: WAS THAT A SECOND AMENDMENT?

3 MR. MICHEL: OH, YES. THE DEFENDANT WAS ASKING THE
4 COURT TO VACATE HIS JUDGMENT OF CONVICTION FOR FELON IN
5 POSSESSION OF A FIREARM, IN VIOLATION OF 18 U.S.C. 922(g)(1).
6 THE DEFENDANT ASSERTED THE STATUTE WAS UNCONSTITUTIONAL AS
7 APPLIED TO HIM, OR, IN THE ALTERNATIVE, TO DECLARE THE
8 CONTINUING APPLICATION OF THAT SECTION, DISQUALIFICATION, WAS
9 UNCONSTITUTIONAL BECAUSE IT VIOLATES THE SECOND AMENDMENT
10 RIGHT TO BEAR ARMS.

11 THE COURT: AREN'T THOSE CASES DISTINGUISHABLE? I
12 MEAN, THERE ARE A LOT OF CASES OUT THERE IN THE CRIMINAL
13 CONTEXT THAT HAVE BEEN CITED. IS IT DIFFERENT THAN WHAT WE'RE
14 DEALING WITH HERE?

15 MR. MICHEL: NOT REALLY. I THINK IT'S FROM THE NINTH
16 CIRCUIT, WHICH IS A LITTLE MORE HELPFUL FOR ANOTHER NINTH
17 CIRCUIT COURT. BUT OTHER THAN THAT, I DON'T THINK IT IS. ALL
18 OF THOSE LINES OF CASES, IF THEY'RE BEFORE McDONALD, THERE'S
19 SORT OF A DISTINCTION BETWEEN THE FUNDAMENTAL RIGHT TO
20 SELF-DEFENSE, WHICH HELLER EXPRESSLY RECOGNIZED, BUT IT DIDN'T
21 GO SO FAR AS RECOGNIZING A FUNDAMENTAL INDIVIDUAL RIGHT TO
22 KEEP AND BEAR ARMS, OR AT LEAST SOME COURTS FOUND THAT IT
23 DIDN'T, AND SO WHEN THE McDONALD DECISION COMES DOWN, THAT
24 CHANGES THAT. THAT WIPES OUT THAT ENTIRE LINE OF CASES THAT
25 DREW THAT DISTINCTION BETWEEN THE FUNDAMENTAL RIGHT TO

1 SELF-DEFENSE AND THE FUNDAMENTAL RIGHT TO KEEP AND BEAR ARMS.

2 THE OTHER CASES IN THE CRIMINAL CONTEXT UPHOLDING A
3 STATUTE THAT BANS CONCEALED OR LOADED, THEY DIDN'T GET INTO
4 LICENSING, AND I SUPPOSE IT'S AN INTERESTING KIND OF ACADEMIC
5 QUESTION, WHETHER OR NOT YOU CAN CHALLENGE A 12025 OR 12031
6 CHARGE BASED ON THE FACT THAT YOU COULDN'T GET A PERMIT AND
7 YOU WERE UNCONSTITUTIONALLY DENIED A PERMIT. THAT WAS NEVER
8 BROUGHT UP IN THOSE CASES. IT WAS A CHALLENGE TO THE STATUTE
9 ITSELF, AND ALL THOSE CASES RECOGNIZED EITHER THAT THERE'S A
10 PERMITTING SYSTEM IN PLACE OR THERE'S AN ALTERNATIVE METHOD OF
11 CARRY. THEY'RE ALL DISTINGUISHABLE ON ONE OF THOSE GROUNDS OR
12 OTHER.

13 THE COURT: ARE YOU SAYING THAT I DON'T EVEN HAVE TO
14 REACH THE STANDARD THAT HAS TO BE APPLIED IN THIS TYPE OF A
15 CASE, EITHER STRICT SCRUTINY OR INTERMEDIATE SCRUTINY?

16 MR. MICHEL: I DON'T THINK YOU DO. IF YOU WANT TO
17 GET, TO UNDERSTAND THE -- JUST BEFORE I LEAVE THAT POINT,
18 BRIEFLY, THE SUPREME COURT SAID THAT THE NUNN CASE PERFECTLY
19 CHARACTERIZES THE APPROPRIATE STANDARD FOR THE SECOND
20 AMENDMENT REVIEWS OF CONCEALED CARRY LAWS, CONCEALED OR LOADED
21 CARRY LAWS.

22 THE COURT: THE SUPREME COURT IN WHICH CASE?

23 MR. MICHEL: IN HELLER.

24 THE COURT: IN HELLER.

25 MR. MICHEL: SO THAT'S NUNN, CHANDLER, ANDREWS, AND

1 REID, AND THE BLACKSTONE AND HOLMES COMMENTARIES, WHICH THE
2 COURT ACTUALLY ADDRESSED IN ITS DENIAL OF THE MOTION TO
3 DISMISS. SO I THINK THIS COURT GOT IT SPOT-ON AND THAT IT
4 UNDERSTOOD EXACTLY WHAT NUNN WAS AND THE SUPREME COURT WAS
5 SAYING BY ADOPTING NUNN.

6 SO, I'M SORRY, YOUR HONOR. I LOST MY TRAIN OF
7 THOUGHT.

8 THE COURT: I'M SORRY.

9 MR. MICHEL: ON YOUR LAST QUESTION.

10 THE COURT: THE STANDARD.

11 MR. MICHEL: OH, YES. I DON'T THINK YOU NEED TO GET
12 TO THE STANDARD, AND AGAIN IT'S FOR THE REASONS LAID OUT IN
13 THE AMICUS BRIEF. THIS IS NOT A REGULATION. THE GOVERNMENT
14 HAS THE BURDEN OF PROOF, AND YOU HAVE TO SUPPLY SOME KIND OF A
15 STANDARD OF REVIEW WHEN THERE IS A REGULATION. IN OTHER
16 WORDS, IF SOMEONE WANTED TO CHALLENGE THE GOOD-MORAL-CHARACTER
17 REQUIREMENT, THAT WOULD BE A RESTRICTION. WE'RE SAYING YOU
18 CAN'T EXERCISE YOUR FUNDAMENTAL RIGHT TO SELF-DEFENSE UNLESS
19 YOU ESTABLISH OR UNLESS YOU HAVE GOOD MORAL CHARACTER.

20 NOW, IS THAT AN INFRINGEMENT ON SORT OF THE CENTRAL
21 RIGHT TO CARRY A FIREARM IN PUBLIC? YES. IS IT
22 UNCONSTITUTIONAL INFRINGEMENT? NOW, YOU'RE JUMPING INTO
23 STANDARD OF REVIEW, AND THERE WAS A CASE THAT SAID YOU, A LAW
24 THAT REQUIRES YOU TO HAVE A SERIAL NUMBER, PROHIBITS YOU FROM
25 SCRATCHING THE SERIAL NUMBERS OFF YOUR GUN. YOU DON'T GET

1 TO -- IT'S, AGAIN, IT'S LIKE THE FIRST AMENDMENT. THE CLOSER
2 YOU GET TO THAT POLITICAL SPEECH, THAT -- I DON'T WANT TO USE
3 THE WORD CORE -- BUT SORT OF THE FUNDAMENTAL PROTECTED,
4 FUNDAMENTAL CONDUCT OR SPEECH, THE HIGHER THE STANDARD GETS.

5 AT A CERTAIN POINT, THOUGH, THERE'S NO NEED TO IMPOSE
6 THE STANDARD, BECAUSE IT'S LIKE HELLER. THERE WAS A BAN ON
7 FIREARMS IN THE HOME. THE COURT NEVER NEEDED TO GET TO, AND
8 McDONALD AS WELL, NEVER NEEDED TO GET TO A STANDARD OF REVIEW.
9 IT WAS A CATEGORICAL SECOND AMENDMENT VIOLATION BECAUSE,
10 UNLESS YOU JUMPED THROUGH IMPOSSIBLE-TO-JUMP-THROUGH HOOPS
11 THAT ONLY A VERY SMALL SEGMENT OF THE POPULATION -- ACTUALLY,
12 I DON'T THINK ANY COULD GET THROUGH. IT WAS BASICALLY AN
13 ILLUSORY ABILITY TO GET A PERMIT TO HAVE A GUN IN YOUR HOME OR
14 TO HAVE A GUN IN YOUR HOME FOR IMMEDIATE SELF-DEFENSE. YOU
15 DON'T NEED TO DO A STANDARD OF REVIEW. IT'S A COMPLETE BAN ON
16 THE EXERCISE OF A FUNDAMENTAL RIGHT.

17 THE COURT: WELL, LET'S TALK ABOUT THAT. IF YOUR
18 POSITION IS THAT THE SECOND AMENDMENT ENCOMPASSES THE RIGHT TO
19 CARRY A WEAPON IN PUBLIC FOR SELF-DEFENSE PURPOSES, AND
20 ASSUMING THE GOVERNMENT HAS -- I MEAN, I CAN'T IGNORE THE
21 INTEREST THAT THE GOVERNMENT IS ARGUING THAT IT HAS IN
22 PROTECTING THE PUBLIC FROM UNKNOWN PERSONS CARRYING CONCEALED,
23 LOADED FIREARMS FOR PURPOSES OTHER THAN SELF-DEFENSE. WHY
24 ISN'T SOME KIND OF VERIFICATION, WHY CAN'T SOME KIND OF
25 VERIFICATION BE NARROWLY TAILORED, I MEAN, THAT THE INDIVIDUAL

1 HAS TO SHOW TO GET THE LICENSE?

2 MR. MICHEL: WELL, IF THE COURT IS INCLINED -- I
3 MEAN, OBVIOUSLY, THE COURT GETS TO DO THAT IF IT WANTS, IF THE
4 COURT IS INCLINED TO IMPOSE A STANDARD OF REVIEW.

5 THE COURT: YES. I MEAN, I'VE BEEN WORKING UNDER
6 THAT THEORY, BUT I'LL CERTAINLY TAKE INTO CONSIDERATION WHAT
7 YOU'VE ARGUED HERE TODAY, THAT I DON'T EVEN NEED TO REACH
8 THAT, IF I DO.

9 BUT GO AHEAD.

10 MR. MICHEL: IT SHOULD BE, ASSUMING THAT THERE'S NOT
11 THIS CATEGORICAL PROTECTION, THEN THERE HAS, IT'S A
12 FUNDAMENTAL RIGHT. ALL FUNDAMENTAL RIGHTS ARE SUBJECT TO
13 STRICT SCRUTINY, BUT NOT ALL FUNDAMENTAL RIGHTS IN ALL
14 CIRCUMSTANCES ARE SUBJECT TO STRICT SCRUTINY. SO THERE MAY BE
15 LESSER INFRINGEMENTS WHICH DON'T GET THAT SAME KIND OF
16 SCRUTINY. BUT BY THE SAME ARGUMENT THAT THIS IS SUCH A
17 BLANKET PROHIBITION, THAT YOU DON'T EVEN NEED TO GET TO STRICT
18 SCRUTINY, IF THIS IS NOT AN INFRINGEMENT ON A FUNDAMENTAL
19 RIGHT, I MEAN, IT'S THE RIGHT TO KEEP AND BEAR, AND BEAR MEANS
20 CARRY IN PUBLIC. SO IF THIS IS NOT AN INFRINGEMENT ON THAT
21 FUNDAMENTAL EXERCISE, ON THAT PRINCIPAL WAY OF EXERCISING YOUR
22 FUNDAMENTAL RIGHT TO SELF-DEFENSE BY CARRYING A FIREARM, THEN
23 WHAT IS?

24 THIS IS NOT A SERIAL NUMBER. THIS IS NOT A, YOU
25 KNOW, SOME KIND OF INCREMENTAL OR INCIDENTAL REGULATION THAT

1 MAKES IT HARDER FOR YOU OR MAY DISQUALIFY SOME PEOPLE. THIS
2 IS EVERYBODY WHO GOES IN CAN'T GET A PERMIT UNLESS THEY
3 DEMONSTRATE A PARTICULARIZED NEED. SO THAT'S STRICT SCRUTINY,
4 AND ONCE YOU GET TO STRICT SCRUTINY, NOW YOU'RE AT, WHAT'S THE
5 COMPELLING GOVERNMENTAL INTEREST, AND IS THIS NARROWLY
6 TAILORED?

7 AND THERE MAY BE -- I MEAN, I COULDN'T REALLY -- I'M
8 NOT SURE I CAN ACCURATELY ARTICULATE WHAT THE COUNTY'S
9 POSITION IS WITH RESPECT TO WHAT THEIR -- I KNOW THEIR
10 COMPELLING GOVERNMENT INTEREST IS PUBLIC SAFETY AND STOPPING
11 PEOPLE FROM SHOOTING EACH OTHER, WHICH I DON'T THINK I HAVE A
12 WHOLE LOT OF QUARREL WITH, EXCEPT WE HAVE TO BE CAREFUL. BUT
13 YOU CAN'T USE PUBLIC SAFETY JUST TO JUSTIFY EVERYBODY, AND THE
14 LICENSING STATUTE IS THE NARROW TAILORING THAT GETS PAST THE
15 CONSTITUTIONAL PROBLEMS. YOU COULD HAVE THE LICENSING SYSTEMS
16 IN PLACE IF THE LEGISLATURE CHOOSES NOT TO GO SOME OTHER ROUTE
17 FOR ALLOWING POSSESSION OF FIREARMS OR THE CARRYING OF
18 FIREARMS IN PUBLIC FOR SELF-DEFENSE, AND THAT'S WHAT
19 CALIFORNIA HAS OPTED TO DO. THEY'VE CHOSEN THEIR LICENSING
20 SYSTEM. SO THEY'VE NARROWLY TAILORED THE APPROACH TO
21 LICENSING THE RIGHT TO KEEP, TO CARRY A FIREARM FOR
22 SELF-DEFENSE BY IMPOSING A CCW REQUIREMENT. THAT IS THEIR
23 NARROW TAILORING.

24 BUT GOING BEYOND THAT, IN ELIMINATING THE LICENSE,
25 THAT'S NOT NARROWLY TAILORING. THAT'S ELIMINATING THE ABILITY

1 TO EXERCISE THAT RIGHT. IT WOULD BE, YOU KNOW, IT'S THE
2 EQUIVALENT OF YOU WANT TO GET A PERMIT TO HOLD A PUBLIC
3 GATHERING TO HAVE A POLITICAL DEBATE. YOU CAN'T WITHHOLD THAT
4 LICENSE. IT'S PART OF THE RIGHT. YOU CAN REQUIRE THE LICENSE
5 AND ALL THE JURISPRUDENCE THAT THERE IS AVAILABLE, WHAT TYPE
6 OF FEES CAN BE CHARGED, AND TYPE, PLACE, AND MANNER
7 RESTRICTIONS CAN BE IMPOSED, AND ALL OF THAT STUFF, ALL WIDE
8 OPEN, YOU KNOW.

9 THOSE ARE ALL ISSUES THAT WILL PROBABLY NEED TO BE
10 DECIDED AT SOME POINT OR ANOTHER IN THE CONTEXT OF A LICENSE
11 TO CARRY A CONCEALED FIREARM IN PUBLIC, BUT, AND WHERE AND
12 WHEN, BUT TO SAY THAT REQUIRING ONE IN ORDER TO GET THAT
13 LICENSE TO PROVE A SPECIAL NEED, AN ARTICULABLE THREAT, RATHER
14 THAN JUST THE RIGHT TO BE PREPARED TO DEFEND YOURSELF, THAT
15 DOESN'T PASS ANY LEVEL OF SCRUTINY.

16 THE COURT: OKAY. SO, UNDER YOUR SECOND AMENDMENT
17 ARGUMENT, IN THE BEST, YOUR BEST-CASE SCENARIO, WHAT WOULD YOU
18 WANT ME TO DO?

19 MR. MICHEL: FORGIVE ME, YOUR HONOR.

20 THE COURT: I KNOW THERE'S AN EQUAL-PROTECTION
21 ARGUMENT, TOO, AN ALTERNATIVE ARGUMENT, BUT WHAT IS YOUR
22 SECOND AMENDMENT, THE BOTTOM LINE?

23 MR. MICHEL: WE'RE NOT CHALLENGING THE FACIAL
24 APPLICATION OF 12025. IN ORDER TO UPHOLD 12025 AS APPLIED
25 THROUGH THE COUNTY'S POLICY, THE COUNTY'S POLICY MUST ACCEPT,

1 THROUGH WHATEVER DOCUMENTATION, THAT THE RIGHT TO, THE DESIRE
2 TO EXERCISE THE FUNDAMENTAL RIGHT TO SELF-DEFENSE BY
3 EXERCISING THE FUNDAMENTAL INDIVIDUAL RIGHT TO KEEP AND BEAR
4 ARMS IS GOOD CAUSE. THAT'S THE DECLARATORY RELIEF THAT,
5 BASICALLY, WE'RE SEEKING.

6 AND THE ONLY OTHER THING THAT I'D REALLY ASK THE
7 COURT TO DO, BECAUSE I REALLY HOPE TO AVOID, FRANKLY, HAVING
8 TO LITIGATE, NOT TO PRESUME THAT WE'RE GOING TO WIN OR
9 ANYTHING ON THE EQUAL-PROTECTION MOTION, BUT I THINK, AT BEST,
10 THERE MAY BE MATERIAL FACTS IN DISPUTE ABOUT SOME OF THE
11 EQUAL-PROTECTION ISSUES. BUT IF THE COURT CLARIFIES THAT THAT
12 EQUAL-PROTECTION CHALLENGE INFRINGES ON A FUNDAMENTAL
13 INDIVIDUAL RIGHT AND SO REQUIRES STRICT-SCRUTINY ANALYSIS AS
14 WELL, AND THAT THE BURDEN IS ON THE GOVERNMENT IN BOTH OF
15 THOSE CONTEXTS TO PROVE THEIR COMPELLING INTEREST OR WHATEVER
16 STANDARD TO PROVE THAT THEIR LAW IS CONSTITUTIONAL, THEIR
17 POLICY, I SHOULD SAY, IS CONSTITUTIONAL, AS OPPOSED TO THE
18 PLAINTIFFS' BURDEN TO PROVE THAT IT'S NOT.

19 I'LL BE HAPPY --

20 THE COURT: OKAY. SO, LET'S TALK ABOUT EQUAL
21 PROTECTION. ANYTHING ELSE YOU WANT TO SAY ABOUT EQUAL, THE
22 EQUAL-PROTECTION ARGUMENT?

23 MR. MICHEL: WELL, NOT REALLY. I MEAN, THE
24 EQUAL-PROTECTION ARGUMENTS, BOTH OF THEM, THE SECOND AMENDMENT
25 THROUGH THE DUE PROCESS AND THE EQUAL-PROTECTION ARGUMENT,

1 BOTH COME OUT OF THE FOURTEENTH AMENDMENT. BOTH OF THEM,
2 THEY'RE SIMILAR IN SOME RESPECTS BECAUSE THE SPECIAL NEEDS
3 SETS UP A SPECIAL CLASS, AND SO IF THERE'S A SECOND AMENDMENT
4 VIOLATION, THEN THE EQUAL-PROTECTION VIOLATION IMPLICATES A
5 FUNDAMENTAL RIGHT, AND THE STANDARD OF REVIEW IS RAISED ON
6 THAT ONE AS WELL.

7 THE COURT: LET'S TALK ABOUT THE RIGHT TO TRAVEL.
8 THERE IS THIS SECOND CIRCUIT CASE, BACH VS. PATAKI. I MEAN,
9 ISN'T THAT DISPOSITIVE OF YOUR, I MEAN, DISPOSITIVE OF THE
10 RIGHT TO TRAVEL? IN OTHER WORDS, IN A CASE THAT'S SOMEWHAT
11 SIMILAR TO THIS, THERE WAS A REJECTION OF THE RIGHT-TO-TRAVEL
12 VIOLATION DUE TO THE REQUIREMENTS THAT WERE, THAT HAD TO BE
13 MET IN THAT PARTICULAR CASE.

14 ARE YOU FAMILIAR WITH THAT CASE?

15 MR. MICHEL: I'M NOT, YOUR HONOR.

16 CAN I HAVE A MOMENT?

17 THE COURT: YES.

18 I CAN LET YOU REPLY TO THAT AFTER MR. CHAPIN.

19 MR. MICHEL: THAT MIGHT BE HELPFUL, BUT I'LL PUT THE
20 RIGHT-TO-TRAVEL CLAIM INTO CONTEXT. WE WERE IN DISCUSSIONS
21 WITH OPPOSING COUNSEL ABOUT WHETHER OR NOT THERE WAS, IN FACT,
22 A RESIDENCY REQUIREMENT OR WHETHER OR NOT THEY WOULD ISSUE
23 PERMITS TO PART-TIME RESIDENTS, AND REALLY WHAT THE --

24 THE COURT: MR. PERUTA IS THE ONLY PERSON -- I'M
25 SORRY TO INTERRUPT -- THE ONLY PLAINTIFF IN THIS CASE THAT

1 EVEN RAISES THIS ISSUE.

2 MR. MICHEL: THAT RAISES THIS ISSUE, RIGHT, BECAUSE
3 HIS DECLARATION SAYS THAT HE WAS TOLD THAT HE COULDN'T HAVE A
4 PERMIT BECAUSE HE WASN'T A FULL-TIME RESIDENT, WHICH WOULD,
5 AND THAT'S WHAT RAISES THE RIGHT TO TRAVEL AND THE RESIDENCY,
6 CONSTITUTIONALITY OF THE RESIDENCY REQUIREMENT IN THE FIRST
7 PLACE. BUT NOW THE COUNTY IS SAYING THAT THEY DON'T REQUIRE
8 THAT, AND WE HAD SOME DISCUSSIONS ABOUT WHETHER OR NOT THE
9 COUNTY COULD JUST ARTICULATE THAT, AND WE DROPPED THAT CLAIM.
10 I'M NOT INTERESTED IN FIGHTING OVER SOMETHING THAT'S NOT AN
11 ISSUE --

12 THE COURT: RIGHT.

13 MR. MICHEL: -- AND THE COUNTY IS SAYING IN ITS
14 MOTION FOR SUMMARY JUDGMENT THAT THEY'LL ACCEPT PART-TIME
15 RESIDENCY ON A CASE-BY-CASE BASIS. IF THAT'S THE CASE, I HAVE
16 NOTHING TO FIGHT ABOUT.

17 THE COURT: OKAY. THAT'S FINE.

18 THANK YOU.

19 MR. MICHEL: THANK YOU, YOUR HONOR.

20 THE COURT: MR. CHAPIN.

21 MR. CHAPIN: THANK YOU, YOUR HONOR.

22 JAMES CHAPIN FOR DEFENDANT WILLIAM GORE.

23 YOUR HONOR, WE ARE ON THE CUTTING EDGE OF
24 CONSTITUTIONAL LAW, AND YOU'RE RIGHT. THIS IS A CASE OF FIRST
25 IMPRESSION, BECAUSE THE PLAINTIFFS ARE ASKING FOR AN EXPANSION

1 OF A CONSTITUTIONAL RIGHT THAT'S BEEN VERY CAREFULLY AND
2 NARROWLY DEFINED BY HELLER, AND IF THE COURT DOESN'T MIND ME
3 GOING BACK TO ISSUES WHICH YOU'VE ALREADY DEALT WITH IN THE
4 MOTION TO DISMISS, AND AS YOU KNOW, I DIDN'T GET A CHANCE TO
5 ARGUE THAT. I'M NOT GOING TO WAIVE THOSE ISSUES, AS YOU MIGHT
6 IMAGINE.

7 THE HELLER CASE VERY CAREFULLY DEFINES THAT THE
8 CONSTITUTIONAL RIGHT THAT HAS BEEN IDENTIFIED AND THE SCOPE OF
9 IT IS A CONSTITUTIONAL RIGHT TO KEEP AND BEAR ARMS IN THE HOME
10 FOR THE PURPOSE OF SELF-DEFENSE. THE FINAL PARAGRAPH IN THE
11 MAJORITY OPINION IN McDONALD CAPTURES THE HOLDINGS OF BOTH
12 HELLER AND McDONALD, AND IT SAYS THE RIGHT THAT WE HAVE
13 IDENTIFIED IS THE RIGHT TO KEEP AND BEAR ARMS IN THE HOME FOR
14 SELF-DEFENSE, AND THAT IS THE FUNDAMENTAL RIGHT THAT WE ARE
15 IDENTIFYING THAT IS PROTECTED BY THE 14TH AMENDMENT IN
16 McDONALD.

17 SECTION THREE OF THE HELLER CASE, AFTER JUSTICE
18 SCALIA GOES THROUGH THE PREFATORY CLAUSE AND REACHES HIS
19 ULTIMATE CONCLUSION THERE, SECTION THREE IS NOT *DICTA*.
20 SECTION THREE IS THE PORTION OF THE OPINION THAT IDENTIFIES
21 THIS SCOPE OF THE RIGHT, AND SECTION THREE STARTS OFF WITH A
22 COMMENT THAT THE RIGHT IS NOT UNLIMITED. THAT'S THE VERY
23 BEGINNING, AND IN THE NEXT, TWO LINES LATER, HE SAYS, LET'S
24 LOOK BACK AT THE HISTORY OF CONCEALED-WEAPON REGULATIONS,
25 BECAUSE THOSE ARE PRESUMED TO BE CONSTITUTIONAL.