

1 THAT'S WHAT JUSTICE SCALIA IS TELLING US, AND THAT'S
2 HOW HE GOT FIVE VOTES. THAT'S ONE OF THE WAYS HE GOT FIVE
3 VOTES, WAS MAKING SURE THAT THOSE LAWS ARE PRESERVED, AND HE
4 GOES BACK 150 YEARS TO TALK ABOUT THE TRADITION AND HISTORY OF
5 CONCEALED-WEAPONS REGULATION, WHICH IS SOME OF THE MOST COMMON
6 AND CONSISTENT REGULATION OF FIREARMS IN THE NATION, AND HE
7 CITES (PAUSE) -- IT'S INTERESTING THAT COUNSEL COMMENTS AGAIN
8 ON THE NUNN AND CHANDLER CASES.

9 IN CHANDLER, THE SUPREME COURT OF LOUISIANA SAYS THIS
10 IS A CONCEALED-WEAPONS LAW THAT WAS ABSOLUTELY NECESSARY TO
11 COUNTERACT A VICIOUS STATE OF SOCIETY GROWING OUT OF THE HABIT
12 OF CARRYING CONCEALED WEAPONS AND TO PREVENT BLOODSHED AND
13 ASSASSINATIONS COMMITTED UPON UNSUSPECTING PERSONS. JUSTICE
14 SCALIA IS TELLING US THAT IT IS UNDISPUTABLE THAT THERE IS A
15 COMPELLING GOVERNMENTAL INTEREST IN CONCEALED-WEAPONS
16 REGULATION, AND THAT'S THE FIRST PART OF SECTION THREE. I
17 DON'T KNOW HOW YOU CAN IGNORE THAT PORTION OF SECTION THREE,
18 AND McDONALD AGAIN MENTIONS SECTION THREE IN ITS OPINION,
19 REITERATING THE REASSURANCES FROM SECTION THREE OF HELLER.

20 SO I'D LIKE THE COURT TO REVISIT WHAT REALLY IS THE
21 FUNDAMENTAL RIGHT HERE. SHERIFF GORE IS NOT INTERESTED IN
22 VIOLATING ANYONE'S CONSTITUTIONAL RIGHTS. HE IS PROBABLY, TO
23 HIS DISMAY, OBLIGATED BY STATUTE TO ADMINISTER THIS
24 CONCEALED-WEAPONS LICENSING PROGRAM. HE IS BOUND BY STATE
25 STATUTE, BY CASE LAW, BY ATTORNEY GENERAL REGULATIONS, AND

1 HE'S BOUND BY THE PENAL CODE PROVISIONS THAT HE IS OBLIGATED
2 TO ENFORCE, AND HE'S BOUND BY THE DECISION OF THE UNITED
3 STATES SUPREME COURT THAT HE READS IS LIMITED. WHAT THE
4 PLAINTIFFS WANT THIS COURT TO DO IS TO GO WHERE NO COURT HAS
5 YET GONE, AND --

6 THE COURT: SO, DO YOU AGREE THAT THEY'RE NOT REALLY
7 ATTACKING THE STATUTE, THAT THEY WANT THE COUNTY'S APPLICATION
8 OF THAT STATUTE REVISITED, OR VISITED, AND TO CERTAINLY DEFINE
9 IT IN A WAY THAT WOULD ALLOW THE PUBLIC TO CARRY FIREARMS?

10 MR. CHAPIN: THAT'S A NICE WAY TO ARTICULATE A
11 POSITION THAT IS TRULY A FACIAL CHALLENGE TO 12050, BECAUSE
12 THE LEGISLATURE HAS INSERTED A GOOD-CAUSE PROVISION. COUNSEL
13 JUST SAID THE REMEDY HE WANTS IS FOR THE COURT TO FIND GOOD
14 CAUSE MEANS I HAVE A SECOND AMENDMENT RIGHT TO BEAR ARMS. SO
15 IF THAT'S WHAT THEY WANT, THEN THE COURT WOULD HAVE TO STRIKE
16 OUT THE GOOD-CAUSE LANGUAGE OF 12050 THAT THE LEGISLATURE HAS
17 HAD THERE SINCE 1917.

18 GOOD CAUSE HAS TO MEAN SOMETHING. IT HAS TO MEAN
19 SOMETHING BEYOND JUST A SECOND AMENDMENT RIGHT, A GENERAL NEED
20 FOR SELF-DEFENSE. THE LEGISLATURE REQUIRES IT. THE SHERIFF
21 IS OBLIGATED TO ENFORCE IT, AND STATE CASE LAW HAS
22 CONSISTENTLY, AND EVEN NINTH CIRCUIT CASE LAW, THE ERDELYI
23 CASE, HAS GIVEN THE SHERIFF THE DISCRETION AND OBLIGATED HIM
24 TO MAKE A DETERMINATION ON A CASE-BY-CASE BASIS -- THAT'S WHAT
25 THE STATE CASES SAY -- AS TO WHETHER THERE'S GOOD CAUSE,

1 SOMETHING JUST BEYOND A GENERAL NEED FOR SELF-DEFENSE. SO
2 HE'S GOT TO DO SOMETHING; HE'S GOT TO HAVE SOMETHING.

3 THE COURT COMMENTED WHETHER DOCUMENTATION WAS
4 REQUIRED OR MANDATORY. IT'S NOT MANDATORY. IF YOUR HONOR
5 CAME IN AND PRODUCED AN IDENTIFICATION, YOU WOULDN'T NEED TO
6 PRODUCE DOCUMENTATION THAT YOU HAVE A SPECIAL NEED FOR
7 SELF-DEFENSE BECAUSE OF YOUR POSITION. THERE ARE CERTAIN
8 PUBLIC FIGURES THAT IT'S ASSUMED YOU DON'T HAVE TO PRODUCE
9 DOCUMENTATION.

10 GENERALLY, DOCUMENTATION IS REQUIRED, AND THAT'S WHAT
11 THE STAFF ASKS FOR, BECAUSE WE DON'T KNOW WHO PEOPLE ARE. WE
12 WANT PEOPLE TO IDENTIFY WHAT THEIR NEED IS. SO, GENERALLY,
13 DOCUMENTATION IS REQUIRED. THAT'S THE PROCESS.

14 BUT YOU'RE RIGHT. SOMEBODY COULD SIGN A DECLARATION
15 SAYING, I HAVE A SPECIAL NEED. IN FACT, MARK CLEARY, ONE OF
16 THE PLAINTIFFS, IS A GOOD EXAMPLE OF THAT. HE COULDN'T
17 PROVIDE DOCUMENTATION TO THE STAFF THAT HE WAS STILL EMPLOYED
18 BY THE HOSPITAL. HE REFUSED TO FOR SOME REASON. HE FOLLOWED
19 THROUGH ON OUR APPEAL PROCESS. THE HEARING OFFICER BELIEVED
20 HIS COMPELLING STORY AND DIRECTED THE STAFF TO GRANT HIM THE
21 PERMIT, THE RENEWAL OF THE PERMIT. SO HE NOT ONLY PROVED THAT
22 OUR APPEAL PROCESS WORKS, BUT THAT A NON-HDSA MEMBER STILL
23 GETS A PERMIT, AND HE DID IT WITHOUT HAVING SPECIAL
24 DOCUMENTATION. SO IT'S NOT MANDATORY.

25 THE COURT: ARE YOU FAMILIAR WITH THIS PENAL CODE

1 SECTION 12031(j)?

2 MR. CHAPIN: YES. THAT'S THE -- I THINK COUNSEL
3 DESCRIBED IT AS THE EMERGENCY EXCEPTION.

4 THE COURT: RIGHT.

5 MR. CHAPIN: THAT ALLOWS (PAUSE) --

6 THE COURT: IS THAT RELEVANT HERE IN THIS CASE?

7 MR. CHAPIN: YES, IT IS, BECAUSE IT ALLOWS YOU TO
8 LOAD YOUR FIREARM IF YOU'RE CARRYING IT AND BE PREPARED FOR
9 ANY -- IF YOU'RE BEING STALKED IN AN ALLEYWAY AT NIGHT AND YOU
10 FEAR YOU'RE IN DANGER, YOU CAN LOAD YOUR FIREARM AND BE READY.
11 THE IDEA IS THAT IT'S BETTER TO HAVE LAW ENFORCEMENT DEAL WITH
12 THESE ISSUES. SO THE GOAL IS TO CONTACT LAW ENFORCEMENT
13 BEFORE YOU START FIRING AWAY AT SOME UNSUSPECTING PERSON.
14 LAW-ENFORCEMENT OFFICERS ARE TRAINED. THEY HAVE AN ESCALATION
15 OF FORCE THAT I'M SURE YOU'RE FAMILIAR WITH BECAUSE THE CASES
16 ARE LITIGATED IN FRONT OF THE COURT, THEY HAVE TO GO THROUGH
17 AFTER YEARS AND YEARS OF TRAINING TO DO THAT, RATHER THAN
18 HAVING SOME CITIZEN STARTING TO FIRE AWAY AT SOME UNSUSPECTING
19 PERSON WITHOUT HAVING A PARTICULAR MEANS TO DO IT. IT ALLOWS
20 FOR A REASONABLE PERSON UNDER REASONABLE ANTICIPATION OF A
21 DANGER TO LOAD THEIR FIREARM AND BE PREPARED FOR SELF-DEFENSE.

22 THE COURT: BUT THAT PERSON ALREADY HAS A LICENSE.
23 CORRECT?

24 MR. CHAPIN: NO. THIS IS A PERSON WHO CAN CARRY
25 THEIR GUN OPENLY.

1 THE COURT: ANYBODY CAN CARRY (PAUSE) --

2 MR. CHAPIN: CARRY A GUN.

3 THE COURT: -- A FIREARM UNLOADED.

4 MR. CHAPIN: ON YOUR HIP --

5 THE COURT: ON YOUR HIP.

6 MR. CHAPIN: -- WITH YOUR MAGAZINE IN YOUR POCKET.

7 AND IT'S INTERESTING IN THE SURREPLY THAT THE
8 PLAINTIFFS FILED THAT WHAT THIS CASE BOILS DOWN TO IS,
9 ACCORDING TO THE DECLARATION OF THEIR EXPERT, IT TAKES THREE
10 SECONDS TO LOAD YOUR FIREARM. SO, ASSUMING IT TAKES ONE
11 SECOND TO PULL IT OUT OF THE HOLSTER AND PREPARE IT, THIS
12 ENTIRE CASE BOILS DOWN TO THE IMPRACTICAL ABILITY OF HAVING TO
13 TAKE TWO SECONDS TO LOAD YOUR FIREARM FOR SELF-DEFENSE.
14 THAT'S WHAT THIS CASE BOILS DOWN TO. THEY WANT YOU TO THROW
15 OUT CONCEALED-WEAPONS LAWS IN CALIFORNIA BECAUSE THEY CAN'T
16 GET THE LEGISLATURE TO MAKE THIS A *MAY ISSUE* -- A *SHALL ISSUE*
17 STATE. THEY WANT YOU TO GO THERE WHEN THE SUPREME COURT HAS
18 SAID CONCEALED-WEAPONS LAWS HAVE HISTORICALLY BEEN A
19 COMPELLING GOVERNMENTAL INTEREST.

20 THE COURT: TELL ME, DO YOU BELIEVE THAT -- WELL,
21 LET'S ASSUME I GET OVER YOUR HELLER ARGUMENT AND THE RIGHT
22 THAT'S INVOLVED, BUT THAT I HAVE TO REACH THIS STANDARD. WHAT
23 IS THE COUNTY'S POSITION?

24 MR. CHAPIN: I WENT THROUGH, IN MY BRIEF, ALL THE
25 CASES I COULD FIND, AND EVERY CASE WHERE THERE WAS A

1 HEIGHTENED-SCRUTINY STANDARD APPLIED WAS A CASE INVOLVING, I
2 THINK ONE OF THE LAST ONES COUNSEL MENTIONED, HE CAME UP WITH
3 WAS POSSESSION BY A FELON, THAT IMPLICATES A POSITION IN A
4 HOME BECAUSE IT'S POSSESSION ANYWHERE. SO EVERY REGULATION
5 THAT AFFECTS, SOMEHOW AFFECTS A PERSON IN THEIR HOME HAS BEEN
6 GIVEN A HEIGHTENED-SCRUTINY STANDARD.

7 I COULDN'T FIND A CASE WHERE THERE WAS A REGULATION
8 OUTSIDE THE HOME LIKE CONCEALED CARRY. WE'VE HAD TWO CASES, I
9 BELIEVE, IN CALIFORNIA, YARBROUGH AND FLORES, WHICH HAVE HELD
10 THAT HELLER DOESN'T APPLY TO THAT, AND BOTH OF THOSE CASES GO
11 INTO THE COMPELLING GOVERNMENTAL INTEREST FOR CONCEALED-CARRY
12 REGULATION.

13 TRULY, WHAT THIS IS IS A CHALLENGE TO 12031. IF
14 PLAINTIFFS' POSITION IS WE HAVE A CONSTITUTIONAL RIGHT TO BEAR
15 LOADED FIREARMS IN PUBLIC, THEY SHOULD BE CHALLENGING 12031.
16 THERE IS NO CASE THAT HOLDS THAT THERE IS, CONCEALED-WEAPONS
17 REGULATIONS ARE CONDITIONAL UPON LOADED OPEN-CARRY LAWS.
18 JUSTICE SCALIA DOESN'T SAY THAT IN HIS OPINION. THERE'S NO
19 CASE THAT I CAN FIND THAT SAYS THAT THEY'RE CONDITIONAL.

20 CALIFORNIA HAS VERY CAREFULLY REGULATED CONCEALED
21 WEAPONS FOR YEARS. MOST STATES DO. CALIFORNIA GETS TO MAKE A
22 CHOICE AND ITS LEGISLATURE GETS TO MAKE THESE DECISIONS BY
23 CAREFULLY WEIGHING ALL OF THIS EVIDENCE THAT YOUR HONOR HAS
24 THROWN AT YOU IN THE FORM OF DECLARATIONS AND WEBSITES AND LAW
25 REVIEW ARTICLES.

1 THE PLAINTIFFS WANT YOU TO OVERTURN 12050 BASED UPON,
2 I COUNTED, NINE PAGES OF DECLARATIONS, WITHOUT HAVING THEM,
3 THESE ISSUES WEIGHED AND EVALUATED BY THE LEGISLATURE BASED
4 UPON INDIVIDUAL STATE NEEDS AND NEEDS IN THE CITY OF SAN
5 DIEGO, WHICH IS DIFFERENT FROM MIDDLE WISCONSIN, WHICH IS ONE
6 OF THE CASES THEY CITE FROM THE CIRCUIT COURT IN MIDDLE
7 WISCONSIN. SAN DIEGO NEEDS IS BORDER TOWN. WE NEED TO HAVE
8 CONCEALED-WEAPONS REGULATION.

9 FRANK ZIMRING'S DECLARATION -- I'M NOT GOING TO READ
10 IT AGAIN -- TALKS ABOUT WHAT A HIGH PRIORITY THIS IS FOR LAW
11 ENFORCEMENT, AND IT'S NOT ABOUT HOMICIDE RATE. IT'S ABOUT THE
12 USE OF A HANDGUN AS A WEAPON OF CHOICE FOR CRIMINALS.

13 THE COURT: LET ME JUST STOP YOU THERE.

14 LET'S GO BACK TO THE, WHAT NEEDS TO BE, THE THREATS.
15 IN OTHER WORDS, A PERSON WHO APPLIES FOR A LICENSE AND IT'S
16 FOR SELF-DEFENSE HAS TO DOCUMENT THAT THEY'RE IN, THERE
17 BASICALLY HAS BEEN A THREAT IN THE PAST, AND SO, THEREFORE,
18 AND BECAUSE OF THE TYPE OF THREAT, THERE PERHAPS WILL BE SOME
19 THREATS IN THE FUTURE, BUT THERE'S NOTHING OTHER THAN THE
20 PERSON CARRYING THE UNLOADED FIREARM TO ASSIST A PERSON WHO
21 SPONTANEOUSLY NEEDS TO DEFEND HIMSELF OR HERSELF. CORRECT?

22 MR. CHAPIN: EXCEPT THE EMERGENCY EXCEPTION AND ALL
23 THE OTHER EXCEPTIONS IN 12031.

24 THE COURT: IN YOUR HOME.

25 MR. CHAPIN: IN YOUR HOME, IN YOUR BUSINESS, IN YOUR

1 CAMPSITE.

2 THE COURT: I'M TALKING ABOUT THE PUBLIC, IN PUBLIC.

3 MR. CHAPIN: IN PUBLIC.

4 THE COURT: THE EMERGENCY EXCEPTION BEING THAT YOU
5 CARRY AN UNLOADED FIREARM.

6 MR. CHAPIN: AND YOU CAN LOAD IT --

7 THE COURT: LOAD IT.

8 MR. CHAPIN: -- ANYTIME YOU REASONABLY BELIEVE YOU'RE
9 IN DANGER.

10 THE COURT: SO, OTHER THAN THAT, THAT'S WHAT
11 BASICALLY ALLOWS YOU TO DEFEND YOURSELF IN AN INSTANT, OR
12 THREE SECONDS, I GUESS.

13 MR. CHAPIN: WELL, THERE ARE OTHER MEANS OF DEFENDING
14 YOURSELF OTHER THAN USING A FIREARM.

15 THE COURT: CORRECT, CORRECT.

16 MR. CHAPIN: MOST PEOPLE DON'T DO THAT.

17 THE COURT: BUT ASSUMING A FIREARM IS USED.

18 MR. CHAPIN: AND I HAVEN'T SEEN ANY EVIDENCE OF WHAT
19 TYPE OF THREAT THAT THE PLAINTIFFS ARE TALKING ABOUT. WHAT
20 KIND OF CIRCUMSTANCES WOULD YOU NEED TO BE ABLE TO DRAW YOUR
21 FIREARM IMMEDIATELY AND FIRE IT? I DON'T HAVE AN EXAMPLE. I
22 GUESS I COULD IMAGINE SOME. BUT IF YOU'RE WEARING A FIREARM
23 OPENLY ON YOUR HIP, I DOUBT THAT A CRIMINAL IS GOING TO COME
24 UP TO YOU AND TAKE YOU ON.

25 IT'S INTERESTING AND I WANTED TO POINT OUT TO THE

1 COURT HOW FAR THE PLAINTIFFS WANT TO GO WITH THIS. IN THEIR
2 SURREPLY, AT PAGE THREE, THEY HAPPEN TO MENTION CALIFORNIA
3 PENAL CODE AND FEDERAL LAW WHICH MAKES IT ILLEGAL TO CARRY A
4 FIREARM WITHIN A THOUSAND FEET OF A PUBLIC OR PRIVATE SCHOOL.
5 WITH A CONCEALED-WEAPONS LICENSE, THEY CAN GO WHEREVER THEY
6 WANT. SO THEY CAN GO WITHIN A THOUSAND YARDS OF A SCHOOL.
7 THAT'S WHERE THEY WANT TO GO. SOME STATES REGULATE CARRYING
8 FIREARMS IN PUBLIC PARKS. WITH A CONCEALED-WEAPONS LICENSE,
9 THEY DON'T HAVE TO ABIDE BY THAT. THEY CAN GO CARRY THEIR
10 CONCEALED LOADED FIREARM IN A PUBLIC PARK.

11 I'M WONDERING ABOUT THE CONSEQUENCES FOR BUSINESSES,
12 BARS IN THE GASLAMP, INSURANCE COVERAGE, IF THE LAW CHANGES.
13 I DON'T KNOW ABOUT THAT, AND THERE'S NO EVIDENCE OF THAT
14 BEFORE THE COURT, BUT I THINK THAT'S SOMETHING THAT YOU HAVE
15 TO THINK ABOUT IF WE'RE GOING TO GO THAT DIRECTION. SAN DIEGO
16 IS A LARGE CITY. IT'S A METROPOLITAN AREA. WE HAVE CRIMINAL
17 GANGS. I DO DEFENSE. I WAS A PROSECUTOR AS WELL, AND GANGS
18 USE THE NEWBY WHO DOESN'T HAVE A GANG IDENTIFICATION AND A
19 CRIMINAL HISTORY TO CARRY THE FIREARM WHEN THEY'RE DRIVING
20 AROUND IN A CAR, LOOKING FOR SOMEBODY TO SHOOT.

21 THE COURT: BUT AREN'T THEY GOING TO GET FIREARMS
22 ANYWAY WHETHER OR NOT THEY'RE LICENSED?

23 MR. CHAPIN: THAT'S A GREAT ARGUMENT, AND I'M SURE
24 THEY'RE GOING TO MAKE THAT ARGUMENT. WHY BOTHER TO HAVE
25 TRAFFIC LAWS AND SPEED LIMITS BECAUSE PEOPLE ARE GOING TO

1 SPEED ANYWAY AND JUST LET THEM ALL GO. PEOPLE DO ABIDE BY THE
2 LAW, AND THAT'S WHY WE DON'T HAVE STATISTICS IN CALIFORNIA
3 THAT HELP US IDENTIFY SPECIFICALLY THE COMPELLING GOVERNMENTAL
4 INTEREST. IT DATES BACK TO THE 1800s. WE KNOW FROM
5 TRADITIONAL AND HISTORICAL CONCEALED-WEAPONS REGULATIONS THAT
6 JUSTICE SCALIA TELLS US ABOUT.

7 THE COURT: WHAT IF A PERSON WHO'S REALLY HONEST
8 APPLIES FOR A PERMIT, LET'S SAY, AND REALLY FEARS FOR HIS OR
9 HER SAFETY, FOR WHATEVER REASON, BUT DOESN'T HAVE THE
10 DOCUMENTATION TO SHOW IT? THAT PERSON PROBABLY CAN'T SHOW
11 GOOD CAUSE. CORRECT?

12 MR. CHAPIN: HE WOULD HAVE TO BE ABLE TO ARTICULATE
13 IT, AS MR. CLEARY DID. HE WORKS IN A PSYCHIATRIC WARD AND WAS
14 ABLE TO ARTICULATE, BOTH INITIALLY AND LATER ON WITH THE
15 RENEWAL, THE FEAR HE HAD WORKING IN A PSYCHIATRIC WARD WITH
16 PATIENTS WHO EVENTUALLY GET OUT OR ARE RELEASED AFTER A
17 72-HOUR HOLD AND KNOW WHO HE IS. SO YOU COULD, UNDER CERTAIN
18 CIRCUMSTANCES, GET A PERMIT WITH BEING ABLE TO ARTICULATE
19 UNDER OATH, OF COURSE, UNDER PAIN AND PENALTY OF PERJURY, THAT
20 THESE ARE ACTUALLY TRUE.

21 THE COURT: WITHOUT DOCUMENTATION.

22 MR. CHAPIN: WITHOUT DOCUMENTATION, AND THAT'S WHY WE
23 HAVE A HEARING PROCESS. THE STAFF HAS THEIR MARCHING ORDERS.

24 THE COURT: RIGHT. THEY SAID NO INITIALLY, YOU DON'T
25 HAVE THE DOCUMENTATION.

1 MR. CHAPIN: THE HEARING OFFICER, LIKE YOU, WHO'S
2 LOOKING AT IT AND SAYING, WELL, YOU KNOW, I THINK THE STAFF,
3 YOU'VE DONE YOUR JOB, BUT THIS KIND OF PERSON NEEDS IT. AND,
4 YOU KNOW, THE POLICY OF THE DEPARTMENT IS ACTUALLY TO GRANT
5 THE LICENSES, NOT TO DENY THEM. WE DENY VERY FEW, AND THE
6 PLAINTIFFS KNOW THAT, I THINK, IN THE LAST FOUR YEARS WE'VE
7 DENIED 16. MOST PEOPLE WHO COME TO THE DEPARTMENT HAVE A
8 SPECIFIC NEED. THEY HAVE A BUSINESS. THE JEWELRY BUSINESS IS
9 THE CLASSIC EXAMPLE. THEY CARRY LARGE AMOUNTS OF CASH, LARGE
10 NUMBERS OF JEWELRY. THAT'S THE CLASSIC EXAMPLE, AND THERE
11 ARE, TYPICALLY, HOLDUPS IN THE JEWELRY BUSINESS AND THEIR
12 PROPRIETORS AROUND THE NATION REGULARLY. THAT'S JUST THE
13 TYPICAL EXAMPLE.

14 THE COURT: HAVE ANY, SINCE THIS LAWSUIT WAS FILED,
15 HAVE ANY CHANGES BEEN MADE?

16 MR. CHAPIN: NO.

17 THE COURT: IN HOW THE COUNTY IS ENFORCING THIS OR
18 (PAUSE) --

19 MR. CHAPIN: NO. ONE OF THE ADVANTAGES THAT WE HAVE
20 IS THAT BLANCA PELOWITZ HAS BEEN THE MANAGER OF THE LICENSING
21 DIVISION FOR, SINCE AT LEAST 2002, AND WE HAVE THE ADVANTAGE
22 IN THIS CASE OF HAVING CONSISTENT APPLICATION OF OUR POLICIES
23 SINCE THEN, AND SHE REVIEWS EVERY INITIAL APPLICATION AND
24 MAKES A DETERMINATION AND MAKES THE RECOMMENDATION TO HER
25 SUPERVISOR, WHO THEN EITHER APPROVES IT OR THERE'S A HEARING

1 INVOLVED.

2 THE COURT: OKAY.

3 MR. CHAPIN: HER POLICIES ARE VERY CONSISTENT. IN
4 FACT, IF SHE HAS TO COME IN HERE AND TESTIFY, YOU WILL HEAR
5 SHE'S QUITE FAMILIAR WITH EVERY ONE OF THESE FILES. THERE
6 WERE 1,243 OF THEM, I THINK, AS OF TODAY, AND I COULD PULL TEN
7 OF THEM RANDOMLY AND SHE'D BE ABLE TO TELL YOU EVERYTHING
8 ABOUT EVERY ONE OF THEM, HOW THEY GOT STARTED AND WHERE THEY
9 ARE NOW.

10 THE COURT: ON THE EQUAL-PROTECTION CLAIM, IS IT YOUR
11 POSITION, YOUR CLIENTS' POSITION, THAT THE SAME LEVEL OF
12 SCRUTINY APPLIES? THAT IS, STRICT SCRUTINY.

13 MR. CHAPIN: WELL, I WOULDN'T SAY THAT STRICT
14 SCRUTINY APPLIES BECAUSE I DON'T BELIEVE THAT A FUNDAMENTAL
15 RIGHT IS INVOLVED IN A CONCEALED-WEAPONS REGULATION.

16 THE COURT: I KNOW, BUT ASSUMING A FUNDAMENTAL RIGHT
17 APPLIES.

18 MR. CHAPIN: IF I'M ASSUMING A FUNDAMENTAL RIGHT
19 APPLIES, THEN, BASED UPON THE CASES I'VE READ, INTERMEDIATE
20 SCRUTINY IS THE MOST COMMONLY APPLIED STANDARD I'VE SEEN, AND
21 I'M NOT GOING TO TRY TO REARGUE ALL THE SCRUTINY STANDARDS
22 BEFORE YOUR HONOR. YOU'VE GOT A LOT OF INFORMATION ABOUT
23 IT --

24 THE COURT: YES.

25 MR. CHAPIN: -- AND I CONCEDED, BASICALLY, THAT

1 INTERMEDIATE SCRUTINY IS THE MOST COMMONLY USED AND BY FAR THE
2 MOST COMMONLY USED STANDARD, AND I THINK THAT WE'VE MET THAT
3 STANDARD WITH ALL OF THE CASES THAT WE'VE CITED HISTORICALLY,
4 INCLUDING NUNN AND CHANDLER, WHICH THE SUPREME COURT CITES TO,
5 A STATE OF CALIFORNIA CASE, I BELIEVE ONE FROM OUR DISTRICT
6 HERE, TALKING ABOUT THE COMPELLING GOVERNMENTAL INTEREST IN
7 CONCEALED-WEAPONS REGULATION.

8 THE COURT: ANYTHING ELSE THAT YOU WOULD LIKE TO
9 ARGUE? I MEAN, I'LL LET YOU REPLY.

10 MR. CHAPIN: WELL, I THINK WE'VE DISCUSSED SOME OF
11 THE OTHER ISSUES THAT I RAISED IN MY MOTION.

12 THE COURT: BASICALLY, YOU WANT ME TO GRANT -- YOU
13 SAY THERE'S NO MATERIAL ISSUES OF FACT THAT ARE IN DISPUTE,
14 AND THEREFORE I SHOULD GRANT THE MOTION OF THE DEFENDANTS.
15 CORRECT?

16 MR. CHAPIN: YES, AND THE DUE-PROCESS ISSUE, I THINK
17 YOUR HONOR HAS DEALT WITH THOSE. I DON'T THINK THERE'S A
18 DUE-PROCESS ISSUE. I'M WILLING TO STIPULATE RIGHT HERE, AND
19 I'VE TOLD COUNSEL AND MR. PERUTA, AND EVEN BLANCA HAS IT IN
20 HER DECLARATION, THAT MR. PERUTA WAS NOT DENIED BECAUSE OF A
21 LACK OF RESIDENCY. IF YOU CAN ESTABLISH GOOD CAUSE, YOU CAN
22 GET A PERMIT AS A PART-TIME RESIDENT. I'LL STIPULATE TO THAT
23 RIGHT NOW. I DON'T KNOW WHAT MR. PERUTA'S CURRENT RESIDENCY
24 STATUS IS, BUT AT THE TIME OF HIS APPLICATION HE WOULD HAVE
25 GOTTEN IT.

1 THE RIGHT TO TRAVEL, I THINK YOUR HONOR HAS DEALT
2 WITH THAT.

3 THE EQUAL PROTECTION IS THE ONLY ONE THAT IS
4 FACTUALLY BASED, AND MISS PELOWITZ'S DECLARATION COVERS IT
5 ALL. THERE ISN'T SPECIAL TREATMENT FOR HDSA MEMBERS. IN
6 FACT, IF SHE WERE HERE TO TESTIFY, SHE WOULD TELL YOU THAT,
7 BECAUSE SHE'S HEARD RUMORS ABOUT THIS, THAT WHEN SHE GETS AN
8 HDSA FILE, SHE PAYS SPECIAL ATTENTION TO IT TO MAKE SURE THAT
9 THEY MEET THE GOOD-CAUSE REQUIREMENT. AND IF ANYBODY COMES IN
10 AND SAYS, HEY, I'M AN HDSA MEMBER, THEY'RE TOLD AT THE COUNTER
11 THAT THAT DOESN'T GET YOU THERE.

12 THE PLAINTIFFS HAVE HAD ACCESS TO EVERY ONE OF OUR
13 FILES. THEY HAVE PULLED ONLY RENEWAL APPLICATIONS AND A
14 RANDOM HANDFUL OF PAGES FROM RENEWAL APPLICATIONS THAT TELL
15 THIS COURT THAT THERE'S AN EQUAL-PROTECTION VIOLATION. IT
16 ISN'T HAPPENING. IT'S BEEN APPLIED CONSISTENTLY, AND THE
17 DECLARATION STANDS FOR ITSELF. THERE IS NO DECLARATION FROM
18 AN HDSA MEMBER THAT SAYS, I GOT SPECIAL TREATMENT. THE ONLY
19 DECLARATION IS FROM MR. CLEARY, WHO WASN'T AN HDSA MEMBER WHEN
20 HIS APPEAL WAS HEARD.

21 THE COURT: THANK YOU.

22 MR. CHAPIN: ANY OTHER QUESTIONS, YOUR HONOR?

23 THE COURT: THAT'S IT FOR NOW.

24 MR. CHAPIN: THANK YOU.

25 THE COURT: OKAY. THE COUNTY SAYS THIS ISN'T EVEN A

1 RIGHT THAT'S GUARANTEED BY THE SECOND AMENDMENT, TO CARRY
2 FIREARMS IN PUBLIC.

3 MR. MICHEL: WELL --

4 THE COURT: I MEAN, AND THERE'S BEEN CITES TO JUSTICE
5 SCALIA'S, I GUESS, STATEMENTS IN HELLER AND THE LAST PARAGRAPH
6 IN HELLER.

7 MR. MICHEL: THAT SAME ARGUMENT WAS MADE AT THE
8 MOTION TO DISMISS AND REJECTED BY THIS VERY COURT. I MEAN, TO
9 TRY AND CLAIM THAT THE SECOND AMENDMENT, THAT (PAUSE) -- I
10 THINK IT'S WISHFUL THINKING. THE COURT, THE SUPREME COURT
11 CONTEMPLATED, AS WE MENTIONED IN OUR BRIEFS, THE SUPREME COURT
12 CONTEMPLATED MANY SITUATIONS WHERE THE FIREARM WAS OUTSIDE THE
13 HOME. THE RIGHT TO SELF-DEFENSE DOESN'T END AT THE THRESHOLD
14 OF YOUR HOME. THE RIGHT TO SELF-DEFENSE INCLUDES, AND THE
15 RIGHT TO KEEP AND BEAR, BEAR MEANS CARRY, ACCORDING TO THE
16 SUPREME COURT, ARMS, INCLUDES CARRY IN PUBLIC.

17 SO THERE IS THE FUNDAMENTAL RIGHT. THIS CASE IS THE
18 FIRST CASE THAT'S GOING TO ADDRESS THE RIGHT TO CARRY AS
19 OPPOSED TO THE RIGHT TO KEEP, THE RIGHT TO BEAR AND CARRY AS
20 OPPOSED TO THE RIGHT TO KEEP. THAT'S, THE ONLY REASON THAT
21 THAT'S THE CASE IS BECAUSE CARRY AND BEAR WAS NOT RAISED IN
22 HELLER OR McDONALD, BECAUSE THOSE CASES WERE CHOSEN SO THAT IT
23 WOULDN'T, THEY WOULDN'T HAVE TO ADDRESS THOSE OTHER SECONDARY,
24 YOU KNOW, THE SECOND HALF OF THE AMENDMENT.

25 THE HELLER CASE WAS, FIRST, WHETHER OR NOT IT WAS A