

1 Alan Gura (Calif. Bar No. 178221)
2 Gura & Possessky, PLLC
3 101 N. Columbus St., Suite 405
4 Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

5 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
6 Law Offices of Donald Kilmer, A.P.C.
7 1645 Willow Street, Suite 150
San Jose, CA 95125
408.264.8489/Fax 408.264.8487

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

11	Adam Richards, et al.,	)	Case No. 2:09-cv-01235-MCE-DAD (TEMP)
)	
12	Plaintiffs,	)	NOTICE OF MOTION AND MOTION FOR
		)	SUMMARY JUDGMENT
13	v.)	
		)	[Fed. R. Civ. Proc. 56]
14	Ed Prieto, et al.,)	
)	
15	Defendants.	)	Date: February 10, 2011
		)	Time: 2:00 p.m.
16		)	Dept: 7, 14 th Floor
		)	Judge: Morrison C. England, Jr.
17		)	Trial Date: None
		)	Action Filed: May 5, 2009

19 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on Thursday, February 10, 2011, at 2:00 p.m. or as soon
21 thereafter as the matter may be heard, in Courtroom 7 of the United States District Court for
22 the Eastern District of California, 501 I Street, Sacramento, California 95814 Plaintiffs Adam
23 Richards, Brett Stewart, Second Amendment Foundation, Inc. and The Calguns Foundation,
24 Inc., by and through undersigned counsel, will move this Honorable Court to enter a summary
25 judgment in their favor and against Defendants pursuant to Fed. R. Civ. Proc. 56.
26
27

1 Plaintiffs move for entry of summary judgment on all claims as the material facts in
2 this case are not in dispute, and Defendants' challenged policies violate Plaintiffs' rights under
3 the Second and Fourteenth Amendments to the United States Constitution.
4

5 This motion is based upon this notice of motion and motion, the attached
6 memorandum of points and authorities, exhibits, declarations, separate statement of
7 undisputed facts, any material in the Court's files, and any other relevant matter to be
8 considered by the Court.
9

10 Dated: January 13, 2011

Respectfully submitted,

11 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
12 Law Offices of Donald Kilmer, A.P.C.
13 1645 Willow Street, Suite 150
14 San Jose, CA 95125
408.264.8489/Fax 408.264.8487
E-Mail: Don@DKLawOffice.com

Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

15 By: /s/Donald E.J. Kilmer, Jr./
16 Donald E.J. Kilmer, Jr.

By: /s/Alan Gura/
Alan Gura

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

On this, the 13th day of January, 2011, I caused to be served a copy of the foregoing Notice of Motion and Motion for Summary Judgment, and attached Exhibits and Declarations, by PERSONAL DELIVERY on the following:

Bruce A. Kilday
Serena M. Sanders
Angelo, Kilday & Kilduff
601 University Avenue, Suite 150
Sacramento, CA 95825

I further certify that on this, the 13th day of January, 2011, the foregoing was filed using the Court's CM/ECF system, which would automatically generate electronic service on all counsel in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 13th day of January, 2011

/s/ Alan Gura
Alan Gura

1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 Adam Richards, et al.,) Case No. 2:09-cv-01235-MCE-DAD (TEMP)
11 Plaintiffs,)
12 v.) MEMORANDUM OF POINTS
13 Ed Prieto, et al.,) AND AUTHORITIES IN SUPPORT
14 Defendants.) OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
Date: February 10, 2011
Time: 2:00 p.m.
Courtroom 7

15
16 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

17 COME NOW the Plaintiffs, Adam Richards, Brett Stewart, Second Amendment
18 Foundation, Inc., and The Calguns Foundation, Inc., by and through undersigned counsel, and
19 submit their Memorandum of Points and Authorities in Support of their Motion for Summary
20 Judgment.

21 Dated: January 13, 2011

Respectfully submitted,

22 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
23 1645 Willow Street, Suite 150
San Jose, CA 95125
24 408.264.8489/Fax 408.264.8487
E-Mail: Don@DKLawOffice.com

Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

25 By: /s/ Donald E.J. Kilmer, Jr.
26 Donald E.J. Kilmer, Jr.

By: /s/ Alan Gura
Alan Gura

Attorneys for Plaintiffs

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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
2 PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

3 PRELIMINARY STATEMENT

4 When individuals enjoy a constitutional "right" to engage in some activity, a license to
5 engage in that activity cannot be conditioned on the government's determination of their "good
6 moral character" or "good cause" to exercise that right. Defendants must be enjoined from
7 imposing this classic form of unconstitutional prior restraint against the fundamental individual
8 right to keep and bear arms. Where fundamental rights are concerned, a system of prior restraint
9 cannot employ unbridled discretion.

10 Of course, Defendants have an interest in regulating firearms in the interest of public
11 safety, just as Defendants have an interest in regulating the time, place, or manner of speech or
12 public assemblies. Nor do Plaintiffs challenge the idea that the state may license the carrying of
13 firearms, just as the state might license parades or demonstrations.

14 But the regulatory interest here is not absolute. Whatever else the state may do, it cannot
15 reserve for itself the power to arbitrarily decide, in all cases, whether individuals deserve to carry
16 guns for self-defense. That decision has already been made in the federal constitution, which
17 guarantees law-abiding individuals their right to carry handguns for self-defense.

18 STATEMENT OF FACTS

19 California law generally bars the open carrying of functional firearms, allowing the
20 practice only in unincorporated areas or, with a special license, in select sparsely populated
21 counties. SUF 1. California law also prohibits the concealed carrying of functional firearms
22 without a license. SUF 2. Accordingly, for most people and throughout most of the state, a
23 license to carry a concealed weapon provides the only legal option available to those who wish to
24 carry functional firearms for self-defense. SUF 3.

25 Applicants seeking a license to carry a handgun must pass a criminal background check,
26 and successfully complete a course of training in the proper use of handguns. SUF 4.
27 Applications for a permit to carry a handgun are made to the Sheriff of the county in which the
28 applicant either resides or spends a substantial period of time in owing to the applicant's

1 principal place of employment or business being located in that county. SUF 5. Alternatively,
2 application may be made to the chief or other head of a municipal police department of any city
3 or city and county in which the applicant resides. SUF 6.

4 In addition to the successful completion of a background check and training, the issuance
5 of a permit to carry a handgun is left to the discretion of the issuing authority, based upon that
6 authority's determination that an applicant "is of good moral character, [and] that good cause
7 exists for the issuance" of the permit. SUF 7. Issuing authorities must publish policies regarding
8 the issuance of handgun carry permits. SUF 8.

9 Defendant Ed Prieto is the Sheriff of Yolo County. SUF 9. Prieto's "Concealed Weapons
10 License Policy" provides that applicants "Be of good moral character," "Show good cause for the
11 issuance of the license," and "Provide at least three letters of character reference" from non-
12 relatives. SUF 10. The application requires disclosure of "substantial personal information [that]
13 may be subject public access under the Public Records Act." SUF 11.

14 Prieto and Yolo County reject self-defense, without more, as a reason to even apply for a
15 permit. Defendant Prieto's written policy regarding the issuance of gun carry permits includes
16 among "examples of invalid reasons to request a permit" "self-protection and protection of
17 family (without credible threats of violence)." SUF 12. Applicants are not scheduled for
18 fingerprinting and background checks unless "the Sheriff or his designee feels there is sufficient
19 reason to grant the license." SUF 13. Even if issued, Prieto reserves the right to impose "any and
20 all reasonable restrictions and conditions" that he "has deemed warranted," the violation of
21 which can lead to summary revocation of the permit. SUF 14. Prieto maintains that "the issuance,
22 amendment or revocation" of a gun carry license "remains exclusively within the discretion of
23 the Sheriff." SUF 15. Gun licenses may be renewed "[i]f the Sheriff or his designee feels there is
24 sufficient reason to renew the license." SUF 16.

25 Plaintiffs Adam Richards and Brett Stewart are law-abiding residents of Yolo County,
26 fully qualified under federal and California law to purchase and possess firearms. SUF 17. In
27 March, 2009, Plaintiff Adam Richards contacted Defendant Prieto's office to inquire about the
28 process for obtaining a permit to carry a handgun. Defendant Prieto's office advised Plaintiff

1 Richards that the desire to have a gun available for self-defense would not constitute “good
2 cause” for the issuance of the permit, and that he should not apply because doing so would be a
3 futile act. SUF 18. Plaintiff Richards was further advised that as a matter of policy, his
4 application would also not be considered unless he first applied to the Chief of Police in the City
5 of Davis, where he resides. SUF 19.

6 Richards subsequently applied to Davis Police Chief Lanny Black for a permit to carry a
7 handgun. On April 1, 2009, Police Chief Black denied Plaintiff Richards’ application for a
8 permit to carry a handgun, stating that for budgetary reasons his department no longer processes
9 handgun carry permit applications, and suggesting that Richards seek a permit from Prieto. SUF
10 20. Plaintiff Richards seeks to exercise his Second Amendment right to carry a handgun for
11 personal protection. SUF 21. He seeks a handgun carry permit so that he might protect himself
12 and his family. However, Richards has received no threats of violence and is unaware of any
13 specific threat to him or his family. SUF 22.

14 Richards has read Defendant Prieto’s written policy declaring that “self-protection and
15 protection of family (without credible threats of violence)” is among “examples of invalid
16 reasons to request a permit,” which is consistent with his experience in unsuccessfully seeking a
17 handgun carry permit. SUF 23. Richards thus understands that he lacks “good cause” to obtain a
18 permit as that term is defined and implemented by Defendants Prieto and Yolo County. SUF 24.
19 Richards fears arrest, prosecution, fines and imprisonment were he to carry a handgun without a
20 permit. But for the lack of a handgun carry permit and fear of prosecution, Richards would carry
21 a handgun in public for self-defense. SUF 25.

22 On or about March 17, 2010, Stewart applied to Davis Police Chief Lanny Black for a
23 permit to carry a handgun. On March 18, 2010, Police Chief Black denied Plaintiff Stewart’s
24 application for a permit to carry a handgun, stating that for budgetary reasons his department no
25 longer processes handgun carry permit applications, but suggested that Stewart seek a permit
26 from Prieto. SUF 26. On or about March 23, 2010, Plaintiff Stewart applied to Defendant Prieto
27 for a permit to carry a handgun. On April 27, 2010, Stewart was informed that his application
28 was denied, because “the reasons listed in your application do not meet the criteria in our policy.”

1 SUF 27. Plaintiff Stewart seeks to exercise his Second Amendment right to carry a handgun for
2 personal protection. He seeks a handgun carry permit so that he might protect himself and his
3 family. However, Stewart has received no threats of violence and is unaware of any specific
4 threat to him or his family. SUF 28. Stewart fears arrest, prosecution, fines and imprisonment
5 were he to carry a handgun without a permit. But for the lack of a permit to do so, Stewart would
6 carry a handgun in public for self-defense. SUF 29.

7 Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a non-profit membership
8 organization incorporated under the laws of Washington with its principal place of business in
9 Bellevue, Washington. SUF 30. SAF has over 650,000 members and supporters nationwide,
10 including many in California. SUF 31. The purposes of SAF include education, research,
11 publishing and legal action focusing on the Constitutional right to privately own and possess
12 firearms, and the consequences of gun control. SUF 32.

13 Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated under the
14 laws of California with its principal place of business in Redwood City, California. SUF 33. The
15 purposes of Calguns include supporting the California firearms community by promoting
16 education for all stakeholders about firearm laws, rights and privileges, and securing the civil
17 rights of California gun owners, who are among its members and supporters. SUF 34.

18 SAF and Calguns expend their resources encouraging exercise of the right to bear arms,
19 and advising and educating their members, supporters, and the general public about the varying
20 policies with respect to the public carrying of handguns in California, including in Yolo County.
21 Defendants’ policies regularly cause the expenditure of resources by SAF and Calguns as people
22 turn to these organizations for advice and information. The issues raised by, and consequences
23 of, Defendants’ policies, are of great interest to SAF and Calguns’ constituencies. SUF 35.
24 Defendants’ policies bar the members and supporters of SAF and Calguns from obtaining
25 permits to carry handguns. SUF 36.

26 SUMMARY OF ARGUMENT

27 The Second Amendment plainly guarantees Plaintiffs a fundamental, individual right to
28 carry handguns for self-defense. Although the state may regulate the right to bear arms in the

1 interest of public safety, the fact that such regulations touch upon a fundamental right has long
2 confirmed a distinction between regulation and prohibition.

3 California law expresses a preference that individuals carrying handguns for self-defense
4 do so in a concealed manner, subject to a licensing regime administered by local law enforcement
5 officials. This is a constitutionally permissible legislative choice. Open and concealed carrying of
6 handguns both satisfy the personal interest in self-defense, and precedent confirms that either
7 may be preferred by government officials for various reasons. But a blanket prohibition on all
8 handgun carrying for self-defense is unconstitutional.

9 Having been charged with the task of implementing California’s licensing regime for the
10 carrying of handguns, Defendants may not refuse to do so. *Salute v. Pitchess*, 61 Cal. App. 3d.
11 557 (1976). Nor may Defendants exercise that discretion in a manner that deprives individuals of
12 a fundamental constitutional right. This case is not difficult. The Second Amendment secures a
13 right to carry arms for self-defense. Defendants refuse to acknowledge that carrying arms is a
14 right, and instead demand that applicants prove their need to do so.

15 There is no such thing as a “right” that can be denied unless people prove a special need
16 to exercise it. Prior restraints on constitutionally-protected conduct cannot allow regulators
17 unbridled discretion in choosing who may exercise the right, nor can regulators substitute their
18 own judgment for that of the Constitution as to whether the exercise of a particular right is a
19 good idea. The challenged provision, or at least its implementation, violates basic prior restraint
20 standards. And because the challenged practice arbitrarily classifies individuals in the exercise of a
21 fundamental right, it also violates the Equal Protection Clause.

22 ARGUMENT

23 I. THE SECOND AMENDMENT PROTECTS THE RIGHT
24 TO CARRY FUNCTIONAL HANDGUNS FOR SELF-DEFENSE.

25 The Second Amendment protects the right “to keep and bear arms.” U.S. Const. amend.

26 II. This syntax is not unique within the Bill of Rights. For example, the Sixth Amendment
27 guarantees the right to a “speedy and public trial,” U.S. CONST. amend. VI, while the Eighth
28 Amendment secures individuals from “cruel and unusual” punishment. U.S. CONST. amend. VIII.

1 Just as the Sixth Amendment does not sanction secret, speedy trials or public, slow trials, and the
2 Eighth Amendment does not allow the usual practice of torture, the Second Amendment's
3 reference to "keep and bear" refers to two distinct concepts.

4 The Supreme Court confirmed as much, rejecting the argument that "keep and bear arms"
5 was a unitary concept referring only to a right to possess weapons in the context of military duty.
6 To "bear arms," as used in the Second Amendment, is to "wear, bear, or carry . . . upon the
7 person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for
8 offensive or defensive action in a case of conflict with another person." *District of Columbia v.*
9 *Heller*, 128 S. Ct. 2783, 2793 (2008) (quoting *Muscarello v. United States*, 524 U.S. 125, 143
10 (1998) (Ginsburg, J., dissenting); BLACK'S LAW DICTIONARY 214 (6th Ed. 1998)); *see also*
11 *Heller*, 128 S. Ct. at 2804 ("the Second Amendment right, protecting only individuals' liberty to
12 keep *and carry* arms . . ."), at 2817 ("the right to keep *and carry* arms") (emphasis added).
13 "[T]he core right identified in *Heller* [is] the right of a *law-abiding, responsible* citizen to
14 possess *and carry* a weapon for self-defense." *United States v. Chester*, __ F.3d __, 2010 U.S.
15 App. LEXIS 26508 at *26 (4th Cir. Dec. 30, 2010).

16 Having defined the Second Amendment's language as including a right to "carry" guns
17 for self-defense, the Supreme Court helpfully noted several exceptions that prove the rule.
18 Explaining that this right is "not unlimited," in that there is no right to "carry any weapon
19 whatsoever in any manner whatsoever and for whatever purpose," *Heller*, 128 S. Ct. at 2816
20 (citations omitted), the Court confirmed that there is a right to carry at least some weapons, in
21 some manner, for some purpose. The Supreme Court then listed as "presumptively lawful,"
22 *Heller*, 128 S. Ct. at 2817 n.26, "laws forbidding the carrying of firearms in sensitive places," *id.*,
23 at 2817, confirming both that such "presumptions" may be overcome in appropriate
24 circumstances, and that carrying bans are *not* presumptively lawful in non-sensitive places.

25 In upholding the right to carry a handgun under the Second Amendment, the *Heller* court
26 broke no new ground. As early as 1846, Georgia's Supreme Court, applying the Second
27 Amendment, quashed an indictment for the carrying of a handgun that failed to allege whether
28 the handgun was being carried in a constitutionally-protected manner. *Nunn v. State*, 1 Ga. 243,

1 251 (1846); *see also In re Brickey*, 70 P. 609 (Idaho 1902) (Second Amendment right to carry
 2 handgun). Numerous state constitutional right to arms provision have likewise been interpreted
 3 as securing the right to carry a gun in public, albeit often, to be sure, subject to some regulation.
 4 *See, e.g. Kellogg v. City of Gary*, 562 N.E.2d 685 (Ind. 1990); *State ex rel. City of Princeton v.*
 5 *Buckner*, 377 S.E.2d 139 (W. Va. 1988); *City of Las Vegas v. Moberg*, 485 P.2d 737 (N.M. Ct.
 6 App. 1971); *State v. Kerner*, 107 S.E. 222 (N.C. 1921); *State v. Rosenthal*, 55 A. 610 (Vt. 1903)
 7 (striking down ban on concealed carry); *Andrews v. State*, 50 Tenn. 165 (1871); *see also State v.*
 8 *Delgado*, 692 P.2d 210 (Or. 1984) (right to carry a switchblade knife).

9 Plaintiffs thus enjoy an individual Second Amendment right to carry a handgun for
 10 purposes of self-defense. The Second Amendment applies as against Defendants by operation of
 11 the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

12 II. CALIFORNIA HAS SELECTED CONCEALED CARRYING AS
 13 THE PERMISSIBLE MODE OF EXERCISING THE RIGHT TO BEAR ARMS.

14 As discussed *supra*, *Heller* confirms that states enjoy meaningful leeway in proscribing
 15 the manner in which guns are carried. Traditionally, “the right of the people to keep and bear
 16 arms (Article 2) is not infringed by laws prohibiting the carrying of *concealed* weapons”
 17 *Robertson v. Baldwin*, 165 U.S. 275, 281-82 (1897) (emphasis added). But more recently, the
 18 Supreme Court has suggested that such bans are only “presumptively” constitutional. *Heller*, 128
 19 S. Ct. at 2817 n.26 (emphasis added).

20 Surveying the history of concealed carry prohibitions, it appears time and again that such
 21 laws have always been upheld as mere regulations of the manner in which arms are carried – with
 22 the understanding that a complete ban on the carrying of handguns is unconstitutional.

23 *Heller* discussed, with approval, four state supreme court opinions that referenced this
 24 conditional rule. *See Heller*, 128 S. Ct. at 2818 (discussing *Nunn, supra*, 1 Ga. 243; *Andrews,*
 25 *supra*, 50 Tenn. 165; and *State v. Reid*, 1 Ala. 612, 616-17 (1840)) and 128 S. Ct. at 2809 (citing
 26 *State v. Chandler*, 5 La. Ann. 489, 490 (1850)). In *Reid*, upholding a ban on the carrying of
 27 concealed weapons, Alabama’s high court explained:

28 We do not desire to be understood as maintaining, that in regulating the manner of
 bearing arms, the authority of the Legislature has no other limit than its own discretion. A

1 statute which, under the pretence of regulating, amounts to a destruction of the right, or
2 which requires arms to be so borne as to render them wholly useless for the purpose of
3 defense, would be clearly unconstitutional. But a law which is merely intended to
4 promote personal security, and to put down lawless aggression and violence, and to this
end prohibits the wearing of certain weapons in such a manner as is calculated to exert an
unhappy influence upon the moral feelings of the wearer, by making him less regardful of
the personal security of others, does not come in collision with the Constitution.

5 *Reid*, 1 Ala. at 616-17.

6 The *Nunn* court followed *Reid*, and quashed an indictment for publicly carrying a pistol
7 for failing to specify how the weapon was carried:

8 so far as the act . . . seeks to suppress the practice of carrying certain weapons *secretly*,
9 that it is valid, inasmuch as it does not deprive the citizen of his *natural* right of self-
10 defence, or of his constitutional right to keep and bear arms. But that so much of it, as
contains a prohibition against bearing arms *openly*, is in conflict with the Constitution,
and *void*.

11 *Nunn*, 1 Ga. at 251 (emphasis original).

12 *Andrews* presaged *Heller* by finding that a revolver was a protected arm under the state
13 constitution's Second Amendment analog. It therefore struck down as unconstitutional the
14 application of a ban on the carrying of weapons to a man carrying a revolver, declaring:

15 If the Legislature think proper, they may by a proper law regulate the carrying of this
16 weapon publicly, or abroad, in such a manner as may be deemed most conducive to the
public peace, and the protection and safety of the community from lawless violence. We
only hold that, as to this weapon, the prohibition is too broad to be sustained.

17 *Andrews*, 165 Tenn. at 187-88.¹

18 Finally, in *Chandler*,

19 the Louisiana Supreme Court held that citizens had a right to carry arms openly: "This is
20 the right guaranteed by the Constitution of the United States, and which is calculated to
21 incite men to a manly and noble defence of themselves, if necessary, and of their country,
without any tendency to secret advantages and unmanly assassinations."

22 *Heller*, 128 S. Ct. at 2809 (quoting *Chandler*, 5 La. Ann. at 490).

23 The legal treatises relied upon by the *Heller* court explained the rule succinctly. For
24 supporting the notion that concealed carrying may be banned, *Heller* further cites to THE
25 AMERICAN STUDENTS' BLACKSTONE, 84 n.11 (G. Chase ed. 1884). *Heller*, 128 S. Ct. at 2816.

26
27 ¹*Andrews* appeared to abrogate in large part *Aymette v. State*, 21 Tenn. 154 (1840),
28 upholding the prohibition on the concealed carry of daggers. But even *Aymette*, which found a
state right to bear arms limited by a military purpose, deduced from that interpretation that the
right to bear arms protected the open carrying of arms. *Aymette*, 21 Tenn. at 160-61.

1 That source provides:

2 [I]t is generally held that statutes prohibiting the carrying of *concealed* weapons are not in
3 conflict with these constitutional provisions, since they merely forbid the carrying of arms
4 in a particular manner, which is likely to lead to breaches of the peace and provoke to the
commission of crime, rather than contribute to public or personal defence. In some States,
however, a contrary doctrine is maintained.

5 Exh. E, AMERICAN STUDENTS' BLACKSTONE, 84 n.11 (emphasis original). This understanding
6 survives today. *See, e.g. In re Application of McIntyre*, 552 A.2d 500, 501 n.1 (Del. Super. 1988)
7 (“the right to keep and bear arms’ does not of necessity require that such arms may be kept
8 concealed”).

9 It is important, then, to recall that (1) the Supreme Court’s definition of “bear arms” as
10 that language is used in the Second Amendment includes the concealed carrying of handguns:
11 “wear, bear, or carry . . . *in the clothing or in a pocket . . .*” *Heller*, 128 S. Ct. at 2793 (citations
12 omitted) (emphasis added); (2) the legality of bans on concealed carrying is only “presumptive,”
13 *Heller*, 128 S. Ct. at 2817 n.26, and (3) the cases supporting concealed carry prohibition explain
14 that no abrogation of the right to carry arms is effected because open carrying is still permitted.

15 Legislatures might well prefer one form of carrying over another. Precedent relied upon
16 by *Heller* reveals an ancient suspicion of weapons concealment where social norms viewed the
17 wearing of arms as virtuous. But today, the open carrying of a handgun may be mistakenly
18 viewed as provocative or alarming by segments of the population unfamiliar with firearms. *See*
19 Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytic*
20 *Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1523 (2009).²

21 California’s mode of regulating the carrying of handguns thus makes perfect sense. In
22 rural, sparsely populated areas, Sheriffs are allowed to issue permits to carry handguns openly.
23 But in more populous areas, the state deprives Sheriffs of this ability, and specifies that permits
24 to carry must be limited to concealed handguns. This manner of regulation is not unusual, and
25 has been adopted by some jurisdictions where the public acceptance of gun rights is relatively

26
27 ²California law permits individuals to openly carry *unloaded* firearms, subject to
28 warrantless search and seizure. Cal. Penal Code § 12031(e). But the right to arms is a right to
functional firearms. *Heller*, 128 S. Ct. at 2818; *contra Peruta v. County of San Diego*, ___ F.
Supp. 2d ___, 2010 U.S. Dist. LEXIS 130878 (S.D. Cal. Dec. 10, 2010).

1 high. For example, in Texas, where concealed handgun permits are readily available on a “shall
2 issue” basis, Tex. Gov’t Code § 411.177(a), a permit holder who “intentionally fails to conceal
3 the handgun” commits a misdemeanor. Tex. Penal Code § 46.035(a).

4 *Heller’s* recognition of a right to carry a handgun does not force states such as California
5 and Texas to allow the carrying of handguns in a manner they understandably perceive may cause
6 needless public alarm, so long as a more socially-conducive option exists to allow people to
7 exercise the right to bear arms. But *Heller* confirms that once a choice has been made by the
8 legislature as to which manner of carrying will be permitted, that choice must be honored.

9 Support for this view comes not merely from the plain language of *Heller* and other
10 precedent, but also from the California Legislature’s Legislative Analyst. In 1999 and again in
11 2001, efforts were made to qualify for the California ballot an initiative constitutional
12 amendment securing a “right to keep and bear arms.” Pursuant to Cal. Elections Code § 9005, the
13 proposed amendment was submitted for review by the Joint Budget Committee. Each time, the
14 Legislative Analyst concluded that if the state were to adopt a right to keep and bear arms
15 constitutional amendment, existing state law regulating the carrying of guns would not likely be
16 impacted save for limiting discretion in issuing permits:

17 While individuals may possess and carry firearms, many of the state’s existing systems
18 for . . . weapons permits . . . would likely not change . . . However, local jurisdictions
19 would not be able to limit who obtains concealed weapons permits unless the applicant
20 does not meet federal or state criteria.

21 Exh. F, Cal. Joint Budget Committee Analysis, SA 2001-RF0041, Dec. 13, 2001, p. 2; Exh. G,
22 Cal. Joint Budget Committee Analysis, SA 1999-RF0053, Dec. 22, 1999, p. 2.

23 The Legislature did not express the view that adoption of a state right to bear arms would
24 render unconstitutional the general prohibition on open carrying, nor did the Legislature believe
25 that local officials could continue to take a parsimonious approach to the issuance of concealed
26 carry permits. Rather, the view was that which would years later be implicit in *Heller*: the state
27 can continue to prefer concealed to open carry, and regulate the carrying of concealed handguns,
28

1 so long as the right to carry is not completely abrogated. This is all that Plaintiffs request, and it
2 is very limited relief.³

3 III. THE SECOND AMENDMENT FORBIDS CONDITIONING GUN CARRY LICENSES
4 ON DEMONSTRATION OF “GOOD CAUSE” OR “GOOD MORAL CHARACTER.”

5 Because the practice of bearing arms is secured by the Second Amendment, the decision
6 to issue a license to bear arms cannot be left to the government’s unbridled discretion.

7 It is settled by a long line of recent decisions of this Court that an ordinance which . . .
8 makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent
9 upon the uncontrolled will of an official -- as by requiring a permit or license which may
10 be granted or withheld in the discretion of such official -- is an unconstitutional
11 censorship or prior restraint upon the enjoyment of those freedoms.

12 *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958) (citations omitted); *see also FW/PBS v. City of*
13 *Dallas*, 493 U.S. 215, 226 (1990) (plurality opinion); *Shuttlesworth v. Birmingham*, 394 U.S.
14 147, 151 (1969). “Rules that grant licensing officials undue discretion are not constitutional.”
15 *Berger v. City of Seattle*, 569 F.3d 1029, 1042 n.9 (9th Cir. 2009) (en banc).

16 “While prior restraints are not unconstitutional per se, any system of prior restraint comes
17 to the courts bearing a heavy presumption against its constitutional validity.” *Clark v. City of*
18 *Lakewood*, 259 F.3d 996, 1009 (9th Cir. 2001) (citations omitted); *Baby Tam & Co. v. City of*
19 *Las Vegas*, 154 F.3d 1097, 1100 (9th Cir. 1998).

20 The law of prior restraint, well-developed in the First Amendment context, supplies
21 useful guidance here. *Cf. Chester*, 2010 U.S. App. LEXIS 26508 at *24 (“we agree with those
22 who advocate looking to the First Amendment as a guide in developing a standard of review for
23 the Second Amendment”) (citations omitted); *United States v. Marzzarella*, 614 F.3d 85, 89 n.4
24 (3d Cir. 2010) (“the structure of First Amendment doctrine should inform our analysis of the
25 Second Amendment”); *Parker v. District of Columbia*, 478 F.3d 370, 399 (D.C. Cir. 2007), *aff’d*
26 *sub nom Heller* (“The protections of the Second Amendment are subject to the same sort of

26 ³Although the Ninth Circuit once held that there is no liberty interest in obtaining a
27 concealed carry permit, *Erdelyi v. O’Brien*, 680 F.2d 61 (9th Cir. 1982), the Second Amendment
28 was not considered in that case. *Erdelyi* does not mention, let alone discuss, the Second
Amendment, and was decided long before the Second Amendment was clarified to protect a
fundamental right.

1 reasonable restrictions that have been recognized as limiting, for instance, the First
 2 Amendment.”) (citation omitted). This is especially so, considering that in *Staub* and its progeny,
 3 the Supreme Court did not limit its disapproval of prior restraints to First Amendment freedoms,
 4 but spoke more generally of “freedoms which the Constitution guarantees.” *Staub*, 355 U.S. at
 5 322. As discussed *infra*, *Heller* itself summarily applied established prior restraint principles in a
 6 Second Amendment context.⁴

7 In *Staub*, the Supreme Court struck down an ordinance authorizing a mayor and city
 8 council “uncontrolled discretion,” *Staub*, 355 U.S. at 325, to grant or refuse a permit required for
 9 soliciting memberships in organizations. Such a permit, held the Court,

10 makes enjoyment of speech contingent upon the will of the Mayor and Council of the
 11 City, although that fundamental right is made free from congressional abridgment by the
 12 First Amendment and is protected by the Fourteenth from invasion by state action. For
 13 these reasons, the ordinance, on its face, imposes an unconstitutional prior restraint upon
 14 the enjoyment of First Amendment freedoms and lays “a forbidden burden upon the
 15 exercise of liberty protected by the Constitution.”

16 *Staub*, 355 U.S. at 325 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940)); *see also*
 17 *Largent v. Texas*, 318 U.S. 418, 422 (1943) (striking down ordinance allowing speech permit
 18 where mayor “deems it proper or advisable.”); *Louisiana v. United States*, 380 U.S. 145, 153
 19 (1965) (“The cherished right of people in a country like ours to vote cannot be obliterated by the
 20 use of laws . . . which leave the voting fate of a citizen to the passing whim or impulse of an
 21 individual registrar.”).

22 “Traditionally, unconstitutional prior restraints are found in the context of judicial
 23 injunctions or a licensing scheme that places ‘unbridled discretion in the hands of a government
 24 official or agency.’” *Nat’l Fed’n of the Blind v. FTC*, 420 F.3d 331, 350 n. 8 (4th Cir. 2005)
 25 (quoting *FW/PBS*, 493 U.S. at 225-26). “Unbridled discretion naturally exists when a licensing

26 ⁴Concerns regarding the abuse of First and Second Amendment protected activities have
 27 long been viewed as similar. *See Commonwealth v. Blanding*, 20 Mass. 304, 314 (1825) (“The
 28 liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its
 abuse; like the right to keep fire arms, which does not protect him who uses them for annoyance
 or destruction.”); *Respublica v. Oswald*, 1 U.S. (1 Dall.) 319, 330 n.* (Pa. 1788) (“The right of
 publication, like every other right, has its natural and necessary boundary; for, though the law
 allows a man the free use of his arm, or the possession of a weapon, yet it does not authorize him
 to plunge a dagger in the breast of an inoffensive neighbour.”).

1 scheme does not impose adequate standards to guide the licensor's discretion." *Chesapeake B &*
2 *M, Inc. v. Harford County*, 58 F.3d 1005, 1009 (4th Cir. 1995) (en banc). "Regulations must
3 contain narrow, objective, and definite standards to guide the licensing authority, and must
4 require the official to provide an explanation for his decision. The standards must be sufficient to
5 render the official's decision subject to effective judicial review." *Long Beach Area Peace*
6 *Network v. City of Long Beach*, 574 F.3d 1011, 1025 (9th Cir. 2009) (citations and internal
7 punctuation marks omitted).

8 Penal Code § 12050's "good moral character" and "good cause" easily meet the test for
9 unbridled discretion. For example, in *Gaudiya Vaishnava Society v. City of San Francisco*, 952
10 F.2d 1059, 1065 (9th Cir. 1990), the Ninth Circuit considered the constitutionality of a permitting
11 system under which "the Chief of Police *may* issue a permit . . ." to peddle constitutionally-
12 protected articles (emphasis supplied by opinion). "Because the Chief of Police is granted
13 complete discretion in denying or granting such permits, we hold that the City's ordinance is not
14 saved from constitutional infirmity by its commercial peddler's permit system." *Id.* at 1066. In
15 the First Amendment context, the presumption against prior restraints is not aimed exclusively at
16 preventing content-based decision-making. "[W]hether or not the review is based upon content, a
17 prior restraint arises where administrative discretion involves judgment over and beyond
18 applying classifying definitions." *Mom N Pops, Inc. v. City of Charlotte*, 979 F. Supp. 372, 387
19 (W.D.N.C. 1997) (citations omitted); *Beal v. Stern*, 184 F.3 117, 124 (2d Cir. 1999).
20 Accordingly, standards governing prior restraints must be "narrow, objective and definite."
21 *Shuttlesworth*, 394 U.S. at 151. Standards involving "appraisal of facts, the exercise of judgment,
22 [or] the formation of an opinion" are unacceptable. *Forsyth County v. Nationalist Movement*, 505
23 U.S. 123, 131 (1992) (quoting *Cantwell*, 310 U.S. at 305).

24 Public safety is invoked to justify most laws, but where a fundamental right is concerned,
25 a mere incantation of a public safety rationale does not save arbitrary licensing schemes. In the
26 First Amendment arena, where the concept has been developed extensively,

27 [W]e have consistently condemned licensing systems which vest in an administrative
28 official discretion to grant or withhold a permit upon broad criteria unrelated to proper

1 regulation of public places . . . There are appropriate public remedies to protect the peace
2 and order of the community if appellant’s speeches should result in disorder or violence.
3 *Kunz v. New York*, 340 U.S. 290, 294 (1951); *Shuttlesworth*, 394 U.S. at 153. “But uncontrolled
4 official suppression of the privilege cannot be made a substitute for the duty to maintain order in
5 connection with the exercise of the right.” *Hague v. Committee for Indus. Org.*, 307 U.S. 496,
6 516 (1937) (plurality opinion).

7 Even when the use of its public streets and sidewalks is involved, therefore, a
8 municipality may not empower its licensing officials to roam essentially at will,
9 dispensing or withholding permission to speak, assemble, picket, or parade, according to
10 their own opinions regarding the potential effect of the activity in question on the
11 “welfare,” “decency,” or “morals” of the community.
12 *Shuttlesworth*, 394 U.S. at 153. Accordingly, the Ninth Circuit rejects alleged public health and
13 safety concerns as a substitute for objective standards and due process. *Desert Outdoor*
14 *Advertising v. City of Moreno Valley*, 103 F.3d 814, 819 (9th Cir. 1996).

15 For an example of these prior restraint principles applied in the Second Amendment
16 context, the Court need look no further than *Heller*. Among other provisions, *Heller* challenged
17 application of the District of Columbia’s requirement that handgun registrants obtain a
18 discretionary (but never issued) permit to carry a gun inside the home.⁵ The Supreme Court held
19 that the city had no discretion to refuse issuance of the permit: “Assuming that *Heller* is not
20 disqualified from the exercise of Second Amendment rights, the District must permit him to
21 register his handgun and must issue him a license to carry it in the home.” *Heller*, 128 S. Ct. at
22 2822. In other words, the city could deny *Heller* a permit if it could demonstrate there was some
23 constitutionally valid reason for denying him Second Amendment rights. But the city could not
24 otherwise refuse to issue the permit. The city repealed its home carry permit requirement.⁶

25 ⁵Former D.C. Code § 22-4504(a) (2008) provided that carrying a gun in one’s home
26 without a permit constituted a misdemeanor offense. Former D.C. Code § 22-4506 (2008)
27 provided for a license to carry issued at the police chief’s discretion, although licenses were
28 never issued. *Heller* did not seek a permit to carry a handgun in public. *Parker*, 478 F.3d at 400.

⁶The city also adopted a complete ban on carrying handguns in public, prompting
additional litigation. *Palmer v. District of Columbia*, U.S. Dist. Ct. D.C. No. 09-CV-1482-HHK.

1 The same logic governs this case. California's "good moral character" and "good cause"
2 requirement for issuance of a handgun carry permit, Cal. Penal Code §12050 fails constitutional
3 scrutiny as an impermissible prior restraint. The right to carry a firearm for self-defense is plainly
4 among the "freedoms which the Constitution guarantees." *Staub*, 355 U.S. at 322. Accordingly,
5 the government bears the burden of proving that the an applicant may not have a permit, for some
6 constitutionally-compelling reason defined by application of standards that are "narrow, objective
7 and definite." *Shuttlesworth*, 394 U.S. at 151.

8 "Good cause" is plainly among the impermissible "illusory 'constraints'" amounting to
9 "little more than a high-sounding ideal." *City of Lakewood v. Plain Dealer Publishing Co.*, 486
10 U.S. 750, 769-70 (1988); *see, e.g. Largent*, 318 U.S. at 422 ("proper or advisable"); *Diamond v.*
11 *City of Taft*, 29 F. Supp. 2d 633, 650 (C.D. Cal. 1998) (rejecting condition that license be
12 "essential or desirable to the public convenience or welfare"), *aff'd*, 215 F.3d 1052 (9th Cir.
13 2000). Even less defensible is the requirement of "good moral character." The Supreme Court
14 long ago rejected the constitutionality of an ordinance demanding "good character" as a
15 prerequisite for a canvassing license. *Schneider v. New Jersey (Town of Irvington)*, 308 U.S. 147,
16 158 (1939). Absent further definition, courts typically reject all forms of "moral character"
17 standards for the licensing of fundamental rights. *MD II Entertainment v. City of Dallas*, 28 F.3d
18 492, 494 (5th Cir. 1994); *Genusa v. Peoria*, 619 F.2d 1203, 1217 (7th Cir. 1980); *N.J. Envtl.*
19 *Fed'n v. Wayne Twp.*, 310 F. Supp. 2d 681, 699 (D.N.J. 2004); *Ohio Citizen Action v. City of*
20 *Mentor-On-The-Lake*, 272 F. Supp. 2d 671, 682 (N.D. Ohio 2003); *Tom T., Inc. v. City of*
21 *Eveleth*, 2003 U.S. Dist. LEXIS 3718 at *14-15 (D. Minn. March 11, 2003); *R.W.B. of*
22 *Riverview, Inc. v. Stemple*, 111 F. Supp. 2d 748, 757 (S.D.W.Va. 2000); *Elam v. Bolling*, 53 F.
23 Supp. 2d 854, 862 (W.D.Va. 1999); *Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d
24 575, 579 (N.D. Ohio 1999); *Broadway Books, Inc. v. Roberts*, 642 F. Supp. 486, 494-95
25 (E.D.Tenn. 1986); *Bayside Enterprises, Inc. v. Carson*, 450 F. Supp. 696, 707 (M.D. Fla. 1978).

26 An argument may be advanced that because Penal Code § 12050 permits Sheriffs to
27 define further their licensing standards, the provision can only be challenged in light of such
28 actual policies and practices. But it is not enough to claim that the licensing official will not act

1 arbitrarily. “A presumption that a city official ‘will act in good faith and adhere to standards
2 absent from the ordinance’s face . . . is the very presumption that the doctrine forbidding
3 unbridled discretion disallows.” *Long Beach*, 574 F.3d at 1044 (quoting *Lakewood*, 486 U.S. at
4 770).

5 And Prieto cannot reasonably claim that his policy cabins his discretion in any sort of
6 meaningful, constitutionally-acceptable way. To the contrary, Prieto’s written policy repeatedly
7 confirms his exclusive and absolute discretion to adjudicate applicants’ moral character and good
8 cause, and even goes so far as to declare that gun carry permits will be issued or renewed only
9 when “the Sheriff or his designee *feels*” like it. Exh. A (emphasis added). Worse still, the
10 Sheriff’s written policy provides that “self-protection and protection of family (without credible
11 threats of violence)” are “invalid reasons to request a permit.” *Id.* This position categorically
12 violates the Second Amendment. As the Supreme Court has made clear, self-defense is at the
13 core of the Second Amendment right to bear arms.

14 “[T]he inherent right of self-defense has been central to the Second Amendment right.”
15 *Heller*, 128 S. Ct. at 2817. Self-defense “was the *central component* of the right itself.” *Heller*,
16 128 S. Ct. at 2801 (emphasis original) (citation omitted). The English right to arms “has long
17 been understood to be the predecessor to our Second Amendment It was, [Blackstone] said,
18 ‘the natural right of resistance and self-preservation,’ and ‘the right of having and using arms for
19 self-preservation and defence.” *Id.*, at 2798 (citations omitted). “[T]he right secured in 1689 as a
20 result of the Stuarts’ abuses was by the time of the founding understood to be an individual right
21 protecting against both public and private violence.” *Heller*, 128 S. Ct. at 2798-99.

22 It bears recalling here that the various cases discussed by *Heller* with respect to carrying
23 guns approved of the practice *for the purpose of self-defense*. See *Heller*, 128 S. Ct. at 2809
24 (“citizens had a right to carry arms openly [for] ‘manly and noble defence of themselves’”)
25 (quoting *Chandler*, 5 La. App. at 490); *Heller*, 128 S. Ct. at 2818 (“A statute which, under the
26 pretence of regulating, amounts to a destruction of the right, or which requires arms to be so
27 borne as to render them wholly useless for the purpose of defense, would be clearly
28 unconstitutional.”) (quoting *Reid*, 1 Ala. at 616-17); *Nunn*, 1 Ga. at 251 (carrying restriction

1 “valid, inasmuch as it does not deprive the citizen of his *natural* right of self-defence, or of his
2 constitutional right to keep and bear arms”) (emphasis original). In rejecting self-defense as good
3 cause for a carry license, Defendants’ policy all but confirms its unconstitutionality.

4 The good moral character and good cause provisions of Penal Code § 12050, and
5 Defendants’ manner of implementing these requirements, vest unbridled discretion in the
6 Sheriff’s ability to license exercise of fundamental rights. They must be enjoined.

7 IV. “GOOD CAUSE” AND “GOOD MORAL CHARACTER” REQUIREMENTS
8 VIOLATE THE RIGHT TO EQUAL PROTECTION.

9 The Equal Protection Clause “is essentially a direction that all person similarly situated
10 should be treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)
11 (citation omitted). Strict scrutiny applies to government classifications that “impinge on personal
12 rights protected by the Constitution.” *Id.*, 473 U.S. at 440 (citations omitted).

13 The Second Amendment secures a fundamental right. *McDonald*, 130 S. Ct. at 3042
14 (plurality opinion) & 3059 (Thomas, J., concurring).

15 The phrase [fundamental personal rights and liberties] is not an empty one and was not
16 lightly used. It reflects the belief of the framers of the Constitution that exercise of the
17 rights lies at the foundation of free government by free men. It stresses, as do many
18 opinions of this court, the importance of preventing the restriction of enjoyment of these
19 liberties.

20 *Schneider*, 308 U.S. at 161. “[C]lassifications affecting fundamental rights are given the most
21 exacting scrutiny.” *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (citation omitted). “Where
22 fundamental rights and liberties are asserted under the Equal Protection Clause, classifications
23 which might invade or restrain them must be closely scrutinized.” *Hussey v. City of Portland*, 64
24 F.3d 1260, 1265 (9th Cir. 1995) (quoting *Harper v. Virginia Board of Elections*, 383 U.S. 663,
25 670 (1966)).

26 Under this analysis, the government carries the burden of proving the law “furthering a
27 compelling interest and is narrowly tailored to achieve that interest,” *Citizens United v. FEC*, 130
28 S. Ct. 876, 898 (2010) (citation omitted), a burden that cannot be met where less restrictive
alternatives are available to achieve the same purpose. *Ashcroft v. ACLU*, 542 U.S. 656, 666
(2004); *see also United States v. Engstrum*, 609 F. Supp. 2d 1227, 1331-32 (D. Utah 2009)

1 (applying strict scrutiny in Second Amendment analysis). “The right to equal protection of the
2 laws, in the exercise of those freedoms of speech and religion protected by the First and
3 Fourteenth Amendments, has a firmer foundation than the whims or personal opinions of a local
4 governing body.” *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951). Likewise, with the exercise
5 of fundamental Second Amendment freedoms. Defendants’ whims and personal opinions as to
6 who should enjoy Second Amendment rights impermissibly classifies individuals in the exercise
7 of these rights in a completely arbitrary, standardless fashion.

8 Of course, the nature of the restriction or violation may impact the standard of review.
9 For example, Plaintiffs would contend that some carrying restrictions (e.g., restrictions on the
10 carrying of guns in “sensitive places”) inherently call for time, place, and manner review. Cases
11 addressing categorical prohibitions on a type of arm are adjudicated under *Heller*’s “common
12 use” test for protected arms. And at least two appellate courts apply intermediate scrutiny in
13 Second Amendment cases questioning laws of the type *Heller* identified as presumptively lawful.
14 *Chester*, 2010 U.S. App. LEXIS 26508 at *26-27; *United States v. Skoien*, 614 F.3d 638, 641
15 (7th Cir. 2010) (en banc).

16 But these courts have not reserved for peaceful, law-abiding people a *lower* level of
17 review than is employed for violent felons, drug abusers, and other dangerous individuals
18 arguably covered by a presumptive exception. To the contrary, the Fourth Circuit applied
19 intermediate, rather than strict scrutiny, to a domestic violence misdemeanor only because it
20 viewed the Second Amendment’s core as reaching “*law-abiding, responsible citizen[s]*,”
21 *Chester*, 2010 U.S. App. LEXIS 26508 at *26 (emphasis original). The Seventh Circuit has
22 suggested overbreadth is a possible alternative mode of analysis. *United States v. Williams*, 616
23 F.3d 685, 693 (7th Cir. 2010); *cf. United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010)
24 (“felon-in-possession laws could be criticized as ‘wildly overinclusive’”).

25 The Supreme Court has made clear that the rational basis test “could not be used to
26 evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the
27 freedom of speech, the guarantee against double jeopardy, the right to counsel, *or the right to*
28 *keep and bear arms.*” *Heller*, 128 S. Ct. at 2818 n.27 (citing *United States v. Carolene Products*

1 *Co.*, 304 U.S. 144, 152, n. 4 (1938)) (emphasis added). “If a rational basis were enough, the
2 Second Amendment would not do anything.” *Skoien*, 614 F.3d at 641. “[I]t remains certain that
3 the federal government may not restrain the freedom to bear arms based on mere whimsy or
4 convenience.” *United States v. Everist*, 368 F.3d 517, 519 n.1 (5th Cir. 2004).⁷ Intermediate
5 scrutiny is also inapplicable in the Second Amendment as a general matter, as that test applies to
6 an enumerated right under circumstances where the right’s exercise is “of less constitutional
7 moment.” *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm’n*, 447 U.S. 557, 563 n.5
8 (1980).

9 But this Court need not resolve the standard-of-review question. Where a classification
10 plainly fails rational basis review, the Court’s analysis need go no further. *Zobel v. Williams*, 457
11 U.S. 55, 60-61 (1982). And even absent a Second Amendment right, the Ninth Circuit held that a
12 California Sheriff’s policies regarding the issuance of handgun carry permits may be restrained
13 by the Equal Protection Clause. *Guillory v. County of Orange*, 731 F.2d 1379 (9th Cir. 1984).

14 There is no state interest in depriving people of the means of self-defense. The state may
15 have an interest in reducing gun violence and accidents, but it cannot presume that the exercise of
16 a constitutional right will cause the sort of harm it is allowed to curtail. Defendants cannot point
17 to the impact of their practice – the deprivation of constitutional rights – as their interest. *Simon*
18 *& Schuster, Inc. v. N.Y. State Crime Victims Bd.*, 502 U.S. 105, 120 (1991).

19 Nor is the arbitrary licensing practice even rationally tailored to any interest in public
20 safety. Defendants are plainly incapable of predicting crime. Defendants cannot predict who will
21 face, much less when or where, a situation in which the right to self-defense would be
22 desperately needed. Crime is largely random and unpredictable. Individuals victimized once may
23 never be victimized again, while an individual’s first encounter with a violent criminal often
24

25
26 ⁷The Fifth Circuit utilizes a version of strict scrutiny to evaluate gun laws under the
27 Second Amendment, permitting regulations that are “limited, narrowly tailored specific
28 exceptions or restrictions for particular cases that are reasonable and not inconsistent with the
right of Americans generally to individually keep and bear their private arms as historically
understood in this country.” *United States v. Emerson*, 270 F.3d 203, 261 (5th Cir. 2001).

CERTIFICATE OF SERVICE

On this, the 13th day of January, 2011, I caused to be served a copy of the foregoing Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment by PERSONAL DELIVERY on the following:

Bruce A. Kilday
Serena M. Sanders
Angelo, Kilday & Kilduff
601 University Avenue, Suite 150
Sacramento, CA 95825

I further certify that on this, the 13th day of January, 2011, the foregoing was filed using the Court's CM/ECF system, which would automatically generate electronic service on all counsel in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 13th day of January, 2011

/s/ Alan Gura
Alan Gura

1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 Adam Richards, et al.,) Case No. 2:09-cv-01235-MCE-DAD (TEMP)
11 Plaintiffs,)
12 v.) STATEMENT OF UNDISPUTED
13 Ed Prieto, et al.,) FACTS IN SUPPORT OF
14 Defendants.) PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

15 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF
16 PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

17 As require by Local Rule 56-260, Plaintiffs contend there is no genuine issue about the
18 following material facts:

19 <u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
20 1. California law generally prohibits the 21 open carrying of loaded, functioning 22 firearms in any public place or on any 23 public street in an incorporated city or in 24 any public place or on any public street in a prohibited area of unincorporated territory, with licensed exceptions for residents of sparsely populated counties.	1. Cal. Penal Code § 12031 <i>et seq.</i>
25 2. California law generally prohibits the 26 unlicensed concealed carrying of handgun.	2. Cal. Penal Code § 12025 <i>et seq.</i>

Undisputed Fact

Support for Undisputed Fact

- | | |
|--|---|
| <p>3. The license available under Cal. Penal Code § 12050 is the only legal option available to ordinary citizens who wish to carry firearms for self defense.</p> | <p>3. Cal. Penal Code §§ 12025 (banning unlicensed concealed carry), 12031 (banning unlicensed open carrying); 12050 (restricting open carry licenses to counties with fewer than 200,000 inhabitants).</p> |
| <p>4. Applicants for a license to carry a loaded concealable firearms must pass a criminal background check, and complete training in the proper use of handguns.</p> | <p>4. Cal. Penal Code §§ 12050(a)(1)(E), 12052 et seq.</p> |
| <p>5. Application for a CCW Permit is made to the Sheriff of the county in which the applicant resides or spends a substantial period of time at a principal place of business and/or employment.</p> | <p>5. Cal. Penal Code §§ 12050(a)(1)(A), 12050(a)(1)(D)(I), 12050(a)(1)(D)(ii)</p> |
| <p>6. Application for a CCW Permit may also be made to the Chief or other head of a municipal police department, within a county in which the applicant resides or spends a substantial period of time at a principal place of business and/or employment.</p> | <p>6. Cal. Penal Code §§ 12050(a)(1)(B), 12050(a)(1)(D)(I), 12050(a)(1)(D)(ii)</p> |
| <p>7. A Sheriff and/or the chief of a municipal police department has discretion to determine whether an applicant “is of good moral character, [and] that good cause exists for the issuance” of a CCW permit.</p> | <p>7. Cal. Penal Code §§ 12050(a)(1)(A), 12050(a)(1)(B)</p> |
| <p>8. A Sheriff and/or the chief of a municipal police department is required to publish and make available a written policy summarizing the provisions of Cal. Penal Code §§ 12050(a)(1)(A) and (B).</p> | <p>8. Cal. Penal Code § 12050.2.</p> |
| <p>9. Defendant Ed Prieto is the Sheriff of Yolo County.</p> | <p>9. Answer to First Am. Complaint ¶ 5
Answer to Scnd. Am. Complaint ¶ 3</p> |
| <p>10. Defendant Prieto’s “Concealed Weapons License Policy” provides that applicants “Be of good moral character,” “Show good cause for the issuance of the license,” and “Provide at least three letters of character reference” from non-relatives.</p> | <p>10. Exh. A</p> |
| <p>11. Defendant Prieto’s application for a license to carry a handgun requires disclosure of “substantial personal information [that] may be subject public access under the Public Records Act.”</p> | <p>11. Exh. A</p> |

1	<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
2	12. Defendant Prieto’s policy regarding the issuance of gun carry permits includes among “examples of invalid reasons to request a permit” “self-protection and protection of family (without credible threats of violence).”	12. Exh. A
3		
4		
5		
6	13. Defendant Prieto does not schedule gun carry permit applicants for fingerprinting and background checks unless “the Sheriff or his designee feels there is sufficient reason to grant the license.”	13. Exh. A
7		
8		
9	14. Even where he issues gun carry permits, Prieto reserves the right to impose “any and all reasonable restrictions and conditions” that he “has deemed warranted,” violations of which can lead to summary revocation of the permit.	14. Exh. A
10		
11		
12	15. Defendant Prieto maintains that “the issuance, amendment or revocation” of a gun carry license “remains exclusively within the discretion of the Sheriff.”	15. Exh. A
13		
14		
15	16. Gun carry licenses in Yolo County may be renewed “[i]f the Sheriff or his designee feels there is sufficient reason to renew the license.”	16. Exh. A
16		
17	17. Plaintiffs Adam Richards and Brett Stewart are law abiding residents of Yolo County, fully qualified to possess firearms under state and federal law.	17. Richards Decl., ¶¶ 1, 2; Stewart Decl., ¶¶ 1,2
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19		
20	18. In March, 2009, Richards contacted Defendant Prieto’s office to inquire about the process for obtaining a permit to carry a handgun. Defendant Prieto’s office advised Richards that the desire to have a gun available for self-defense would not constitute “good cause” for the issuance of the permit, and that he should not apply because doing so would be a futile act.	18. Richards Decl., ¶ 4
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25	19. Richards was further advised that as a matter of policy, his application would also not be considered unless he first applied to the Chief of Police in the City of Davis, where he resides.	19. Richards Decl., ¶ 4
26		
27		
28		

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
20. Richards subsequently applied to Davis Police Chief Lanny Black for a permit to carry a handgun. On April 1, 2009, Black denied Plaintiff Richards' application for a gun carry permit, stating in writing that for budgetary reasons his department no longer process handgun carry permit applications, and suggesting that Richards seek a permit from Defendant Prieto.	20. Richards Decl., ¶ 5
21. Plaintiff Richards seeks to exercise his Second Amendment right to carry a handgun for personal protection.	21. Richards Decl., ¶ 3
22. Plaintiff Richards seeks a handgun carry permit so that he might protect himself and his family. However, Richards has received no threats of violence and is unaware of any specific threat to him or his family.	22. Richards Decl., ¶ 3
23. Plaintiff Richards has read Defendant Prieto's written policy declaring that "self-protection and protection of family (without credible threats of violence)" is among "examples of invalid reasons to request a permit," which is consistent with his experience in unsuccessfully seeking a permit application.	23. Richards Decl., ¶¶ 6, 7
24. Plaintiff Richards thus understands that he lacks "good cause" to obtain a permit as that term is defined and implemented by Defendants Prieto and Yolo County.	24. Richards Decl., ¶ 8
25. Plaintiff Richards fears arrest, prosecution, fines and imprisonment were he to carry a handgun without a permit. But for the lack of a permit to do so, Richards would carry a handgun in public for self-defense.	25. Richards Decl., ¶ 10
26. On March 17, 2010, Stewart applied to Davis Police Chief Lanny Black for a permit to carry a handgun. On March 18, 2010, Black denied Plaintiff Stewart's application for a permit to carry a handgun, stating that for budgetary reasons his department no longer processes handgun carry permit applications, and suggested that Stewart seek a permit from Prieto.	26. Stewart Decl., ¶ 5

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
27. On March 23, 2010, Stewart applied to Defendant Prieto for a permit to carry a handgun. On April 27, 2010, Stewart was informed that his application was denied, because “the reasons listed in your application do not meet the criteria in our policy.”	27. Stewart Decl., ¶ 6; Exh. D
28. Plaintiff Stewart seeks to exercise his Second Amendment right to carry a handgun for personal protection. He seeks a handgun carry permit so that he might protect himself and his family. However, Stewart has received no threats of violence and is unaware of any specific threat to him or his family.	28. Stewart Decl., ¶ 3
29. Plaintiff Stewart fears arrest, prosecution, fines and imprisonment were he to carry a handgun without a permit. But for the lack of a permit to do so, Stewart would carry a handgun in public for self-defense.	29. Stewart Decl., ¶ 7
30. Second Amendment Foundation, Inc. (“SAF”) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington.	30. Versnel Decl., ¶ 2
31. SAF has over 650,000 members and supporters nationwide, including many in California.	31. Versnel Decl., ¶ 2
32. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.	32. Versnel Decl., ¶ 2
33. The Calguns Foundation, Inc. is a non-profit organization incorporated under the laws of California with its principal place of business in Redwood City, California.	33. Hoffman Decl., ¶ 2
34. The purposes of Calguns include supporting the California firearms community by promoting education for all stakeholders about firearm laws, rights and privileges, and securing the civil rights of California gun owners, who are among its members and supporters.	34. Hoffman Decl., ¶ 2

1 **Undisputed Fact**

Support for Undisputed Fact

2 35. SAF and Calguns expend their resources
3 encouraging exercise of the right to bear
4 arms, and advising and educating their
5 members, supporters, and the general
6 public about the varying policies with
7 respect to the public carrying of handguns
8 in California, including in Yolo County.
9 Defendants' policies regularly cause the
10 expenditure of resources by SAF and
11 Calguns as people turn to these
12 organizations for advice and information.
13 The issues raised by, and consequences of,
14 Defendants' policies, are of great interest
15 to SAF and Calguns' constituencies.

35. Versnel Decl., ¶ 3
Hoffman Decl., ¶ 3

16 36. Defendants' policies bar the members and
17 supporters of SAF and Calguns from
18 obtaining permits to carry handguns.

36. Versnel Decl., ¶¶ 4, 5.
Hoffman Decl., ¶¶ 4, 5.

19 Respectfully Submitted,

Date: January 13, 2010

20 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
21 Law Offices of Donald Kilmer, A.P.C.
22 1645 Willow Street, Suite 150
23 San Jose, CA 95125
24 408.264.8489/Fax 408.264.8487
25 E-Mail: Don@DKLawOffice.com

Alan Gura (Calif. Bar No. 178221)
Gura & Possesky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

By: /s/ Alan Gura
Alan Gura

Attorneys for Plaintiffs

1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 Adam Richards, et al.,) Case No. 2:09-CV-01235-MCE-KJM
12 Plaintiffs,)
13 v.) DECLARATION OF PLAINTIFF
14 Ed Prieto, et al.,) ADAM RICHARDS IN SUPPORT OF
15 Defendants.) MOTION FOR SUMMARY
16) JUDGMENT
17) Fed. R. Civ. Proc. 56

17 I, Adam Richards, am competent to state, and declare the following based on my personal
18 knowledge:

- 19 1. I am a law abiding resident of Yolo County.
20 2. I am authorized and qualified under Federal and State law to purchase and possess
21 firearms.
22 3. I seek to exercise my Second Amendment right to carry a handgun for personal
23 protection. I seek a handgun carry permit so that I might protect myself and my family.
24 However, I have received no threats of violence and I'm unaware of any specific threat to
25 me or my family.
26 4. In March, 2009, I contacted Sheriff Prieto's office to inquire about the process for
27 obtaining a permit to carry a handgun. Sheriff Prieto's office advised me that the desire to
28 have a gun available for self-defense would not constitute "good cause" for the issuance

1 of the permit, and that I should not apply because doing so would be a futile act. I was
2 further advised that as a matter of policy, my application would also not be considered
3 unless I first applied to the Chief of Police in the City of Davis, where I reside.

4 5. Subsequently, I applied to Davis Police Chief Lanny Black for a permit to carry a
5 handgun. On April 1, 2009, Black denied my application for a permit to carry a handgun,
6 stating that for budgetary reasons his department no longer processes handgun
7 carry permit applications, and suggested that I seek a permit from Sheriff Prieto.

8 6. In May, 2009, I contacted the Yolo County Sheriff's Department and asked for a copy of
9 the Sheriff's CCW policy. Exhibit A is a true and correct copy of the fax I received from
10 Sheriff Prieto's office.

11 7. I have read Sheriff Prieto's written policy declaring that "self-protection and protection of
12 family (without credible threats of violence)" is among "examples of invalid reasons to
13 request a permit," which is consistent with my experience in unsuccessfully seeking
14 a permit application.

15 8. I understand that I lack "good cause" to obtain a permit as that term is defined and
16 implemented by Sheriff Prieto and Yolo County.

17 9. I had completed the basic course required to obtain a concealed handgun carry permit on
18 April 25, 2009. Exhibit B is a true and correct copy of my training certificate.

19 10. I fear arrest, prosecution, fines and imprisonment were I to carry a handgun without a
20 permit. But for the lack of a permit to do so, I would carry a handgun in public for self-
21 defense.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 13th day of January, 2011

24
25 
26 Adam Richards

27
28

1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

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IN THE UNITED STATES DISTRICT COURT

9

FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11

Adam Richards, et al.,

) Case No. 2:09-CV-01235-MCE-KJM

12

Plaintiffs,

) DECLARATION OF PLAINTIFF

13

v.

) BRETT STEWART IN SUPPORT OF

) MOTION FOR SUMMARY

14

Ed Prieto, et al.,

) JUDGMENT

15

Defendants.

) Fed. R. Civ. Proc. 56

16

17

I, Brett Stewart, am competent to state, and declare the following based on my personal

18

knowledge:

19

1. I am a law abiding resident of Yolo County.

20

2. I am authorized and qualified under Federal and State law to purchase and possess

21

firearms.

22

3. I seek to exercise my Second Amendment right to carry a handgun for personal

23

protection. I seek a handgun carry permit so that I might protect myself and my family.

24

However, I have received no threats of violence and I'm unaware of any specific threat to

25

me or my family.

26

4. On January 31, 2010, I completed the basic course required to obtain a concealed

27

handgun carry permit. Exhibit C is a true and correct copy of my training certificate.

28

1 5. On March 17, 2010, I applied to Davis Police Chief Lanny Black for a permit to carry a
2 handgun. On March 18, 2010, Black denied my application for a permit to carry a
3 handgun, stating that for budgetary reasons his department no longer processes handgun
4 carry permit applications, and suggested that I seek a permit from Sheriff Prieto.

5 6. On March 23, 2010, I applied to Sheriff Prieto for a permit to carry a handgun. On April
6 27, 2010, I was informed that my application was denied, because "the reasons listed in
7 your application do not meet the criteria in our policy." Exhibit D is a true and correct
8 copy of the letter I received from Sheriff Prieto denying my application for a handgun
9 carry license.

10 7. I fear arrest, prosecution, fines and imprisonment were I to carry a handgun without a
11 permit. But for the lack of a permit to do so, I would carry a handgun in public for self-
12 defense.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 12th day of January, 2011

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16 _____
17 Brett Stewart

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1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 Adam Richards, et al.,) Case No. 2:09-CV-01235-MCE-KJM
12 Plaintiffs,)
13 v.) DECLARATION OF JULIANNE VERSNEL
14 Ed Prieto, et al.,) IN SUPPORT OF MOTION FOR SUMMARY
15 Defendants.) JUDGMENT
16) Fed. R. Civ. Proc. 56

17 I, Julianne Versnel, am competent to state, and declare the following based on my
18 personal knowledge:

19 1. I am the Director of Operations for the Second Amendment Foundation, Inc.
20 (“SAF”).

21 2. SAF is a non-profit membership organization incorporated under the laws of
22 Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000
23 members and supporters nationwide, including many in California. The purposes of SAF include
24 promoting the exercise of the right to keep and bear arms; and education, research, publishing
25 and legal action focusing on the Constitutional right to privately own and possess firearms, and
26 the consequences of gun control.

27
28


1 3. SAF expends its resources encouraging exercise of the right to bear arms, and
2 advising and educating their members, supporters, and the general public about the policies with
3 respect to the public carrying of handguns in California, including in Yolo County. The issues
4 raised by, and consequences of, Defendants' policies, are of great interest to SAF's constituency.
5 Defendants' policies regularly cause the expenditure of resources by SAF as people turn to it for
6 advice and information.

7 4. Defendants' policies bar SAF's members and supporters from obtaining permits
8 to carry handguns.

9 5. SAF's members and supporters regularly carry functional handguns in public for
10 self-defense where allowed. SAF's members and supporters in Yolo County would do so, but
11 refrain from doing so because they fear arrest, prosecution, fine, and imprisonment for lack of a
12 license to carry a handgun.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this the 13 day of January, 2011.

15 
16 _____
17 Julianne Versnel

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1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 Adam Richards, et al.,) Case No. 2:09-CV-01235-MCE-KJM
12 Plaintiffs,)
13 v.) DECLARATION OF GENE HOFFMAN, JR.
14 Ed Prieto, et al.,) IN SUPPORT OF MOTION FOR SUMMARY
15 Defendants.) JUDGMENT
Fed. R. Civ. Proc. 56

16
17 I, Gene Hoffman, Jr., am competent to state, and declare the following based on my
18 personal knowledge:

- 19
20 1. I am the Chairman of the Calguns Foundation, Inc. ("CGF").
21 2. The Calguns Foundation, Inc. is a non-profit organization incorporated under the
22 laws of California with its principal place of business in Redwood City,
23 California. The purposes of CGF include supporting the California firearms
24 community by promoting education for all stakeholders about firearm laws, rights
25 and privileges, and securing the civil rights of California gun owners, who are
26 among its members and supporters.

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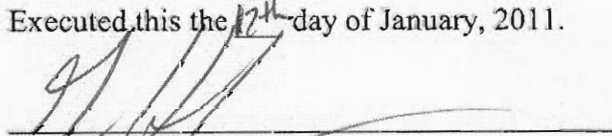
3. CGF expends its resources encouraging exercise of the right to bear arms, and advising and educating their members, supporters, and the general public about the policies with respect to the public carrying of handguns in California, including in Yolo County. The issues raised by, and consequences of, Defendants' policies, are of great interest to CGF's constituency. Defendants' policies regularly cause the expenditure of resources by CGF as people turn to it for advice and information.

4. Defendants' policies bar CGF's members and supporters from obtaining permits to carry handguns.

5. CGF's members and supporters regularly carry functional handguns in public for self-defense where allowed. CGF's members and supporters in Yolo County would do so, but refrain from doing so because they fear arrest, prosecution, fine, and imprisonment for lack of a license to carry a handgun.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12th day of January, 2011.


Gene Hoffman, Jr.



Fax Transmission

Yolo County Sheriff's Department

2500 E. Gibson Road, Woodland, CA 95776

(530) 668-5280

Fax: (530) 668-5238

To: Adam
Fax #: 916-444-2768
From: Courtney
Subject: CWL

Date: 5/4/09
Pages: 8 incl. cover

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CHAPTER 11 CONCEALED WEAPON LICENSE POLICY

11-1 PURPOSE AND SCOPE

The Sheriff is given the statutory discretion to issue a license to carry a concealed firearm to residents within Yolo County. This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code 12050.2, this policy shall be made accessible to the public.

11-2 QUALIFIED APPLICANTS

In order to apply for a license to carry a concealed weapon, the applicant must:

- a. Be a resident of Yolo County.
- b. Be at least 21 years of age.
- c. Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.
- d. Be free from criminal convictions that would disqualify the applicant from carrying a concealed weapon. Fingerprints will be required and a complete criminal background check will be conducted.
- e. Be of good moral character.
- f. Show good cause for the issuance of the license.
- g. Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.
- h. Provide proof of ownership and registration of any weapon to be licensed for concealment.
- i. Provide at least three letters of character reference.
- j. Be free from any medical and psychological conditions that might make the applicant unsuitable for carrying a concealed weapon.
- k. Complete required training.

11-3 CRITERIA

Examples of valid reasons to request a permit include, but are not limited to:

- Victims of violent crime and/or documented threats of violence.
- Business owners who carry large sums of cash or valuable items.
- Business owners who work all hours in remote areas and are likely to encounter dangerous people and situations.

Examples on invalid reasons to request a permit include, but are not limited to:

- Recreation in remote areas.
- Hunting or fishing
- Self protection and protection of family (without credible threats of violence).
- Employment in the security field, i.e. security guard, body guard, VIP protection.
- Personal safety due to job conditions or duties placed on the applicant by their employer.

11-4 APPLICATION PROCESS

The application process for a license to carry a concealed weapon shall consist of several steps. Upon completion of each step, the applicant will advance to the next step until the process is completed or the application is denied.

- a. Applicants shall demonstrate his/her knowledge of firearms safety and proficiency in the handling of the firearm intended to be licensed. This is accomplished by providing a certificate showing they have successfully completed a concealed weapons firearms course recognized and approved by the Yolo County Sheriff's Department.
- b. After completing the firearms course, the individual applying for a license shall fully complete a Concealed Weapons License Application to be signed under penalty of perjury. It is against the law to knowingly make any false statements on such an application. Penal Code 12051 (b) & (c). False statements will be cause for denial of the application.
- c. At the time the completed application is submitted, the applicant shall provide the course certificate of proficiency and pay the non-refundable department fee to cover administrative and investigative costs. The applicants shall also submit at least three signed letters of character reference from individuals other than relatives.
- d. The application will be processed and reviewed for completeness and validity. If the application meets the criteria to proceed, an interview with the Sheriff or his designee will be scheduled. If the application does not meet the criteria, the applicant will be notified in writing that it is denied.
- e. If the Sheriff or his designee feels there is sufficient reason to grant the license, the applicant will be scheduled for a Livescan fingerprint and photo appointment. At the time of the fingerprinting and photographing appointment, the applicant shall pay the remainder of the non-refundable application fee. Payment of related fees may be waived, if the applicant is a duly appointed reserve peace officer as defined in Penal Code 830.6(a) or (b) or Penal Code 12050(a)(1)(C).

- f. The fingerprints are then sent electronically to the Department of Justice and the Federal Bureau of Investigation for criminal background checks. Persons determined to fall within a prohibited class described in Penal Code 12021 or 12021.1 or Welfare and Institutions Code 8100 or 8103 will not be issued a license to carry a concealed weapon.
- g. Upon return of the criminal history checks, the Sheriff or his designee shall approve or deny the application. If approved, an appointment will be made to verify the weapons and issue the license.
- h. At the time of issuance, the applicant shall submit proof of ownership and registration of each weapon to be licensed for concealment. Upon request, the applicant shall provide the weapon to a Department Firearms Instructor or Armorer for a full safety inspection.

In the event that an application is denied at the conclusion of or during the application process, the applicant shall be notified in writing within ninety (90) days of the initial application or within thirty (30) days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later. Penal Code 12052.5.

11-5 ISSUED CONCEALED WEAPONS PERMITS

In the event a license to carry a concealed weapon is issued by the Sheriff, the following shall apply:

- a. The license will not be valid outside the state of California;
- b. The license will be subject to any and all reasonable restrictions or conditions the Sheriff has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the concealed firearm.
 1. All such restrictions or conditions shall be conspicuously noted on any license issued. (Penal Code 12050(c))
 2. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.
- c. The expiration date, type of weapon, restrictions and other pertinent information shall be clearly printed and visible on the license. Each license shall be numbered and clearly identify the licensee.

- d. All licenses shall be subject to inspection at any time by the Sheriff or any law enforcement officer and shall be surrendered to any peace officer upon demand.
- e. The license will be valid for a period not to exceed two years from the date of issuance.
 - 1. A license issued to a state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
 - 2. A license issued to any reserve peace officer as defined in Penal Code 830.6 (a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer or custodial officer.
- f. The licensee shall notify this department in writing within ten (10) days of any change of residency. If the licensee moves out of the county of issuance, the license shall expire ninety (90) days after the licensee has moved.

11-6 LICENSE RESTRICTIONS

- a. The Sheriff may place special restrictions in writing limiting time, place and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from any of the following:
 - 1. Consuming any alcoholic beverage while armed.
 - 2. Falsely representing him or herself as a peace officer.
 - 3. Unjustified or unreasonable displaying of weapon.
 - 4. Committing any crime.
 - 5. Being under the influence of any medication or drug while armed.
 - 6. Interfering with any law enforcement officer's duties.
 - 7. Refusing to display his/her license or weapon for inspection upon demand of any peace officer.
- b. The alteration of any previously approved weapon including, but not limited to adjusting trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

11-7 AMENDMENTS TO LICENSES

Any licensee may apply to amend a license at any time during the period of validity by completing and submitting a written application for license amendment along with the current processing fee to the Department in order to accomplish one or more of the following:

- a. Add or delete authority to carry a firearm listed on the license.
- b. Change restrictions or conditions previously placed on the license.
- c. Change the address or other personal information of the licensee.

In the event that any amendment to a valid license is approved by the Sheriff, a new license will be issued reflecting the amendment(s). An amendment to any license will not serve to extend the original expiration date and an application for an amendment will not constitute an application for renewal of the license.

11-8 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Sheriff or his designee for any of the following reasons:

- a. If the licensee has violated any of the restrictions or conditions placed upon the license.
- b. If the licensee becomes medically or psychologically unsuitable to carry a concealed weapon.
- c. If the licensee is determined to be within a prohibited class described in Penal Code 12021 or 12021 (a) or Welfare and Institutions Code 8100 or 8103.
- d. If the licensee engages in any conduct which involves a lack of good moral character or might otherwise remove the good cause for the original issuance of the license.
- e. If the licensee establishes residency outside of Yolo County.

The issuance of a license by the Sheriff shall not entitle the holder to either a property or liberty interest as the issuance, amendment or revocation of such license remains exclusively within the discretion of the Sheriff as set forth herein.

If the license is revoked, the Department will immediately notify the licensee and the Department of Justice pursuant to Penal Code 12053.

11-9 LICENSE RENEWAL

Prior to the expiration of any valid license to carry a concealed weapon, the licensee may apply to the Sheriff for a renewal by completing the following process:

- a. Complete a department authorized concealed weapons training course of no less than four hours including firearms safety and the laws regarding the permissible use of a firearm. Applicants must provide a certificate showing proficiency with the firearm listed on the application.
- b. Complete the department renewal application under penalty of perjury.
- c. Applicant will be interviewed to verify the on-going need for the license and to clarify any questions about the application.

- d. If the Sheriff or his designee feels there is sufficient reason to renew the license, an appointment will be made to verify the weapons and issue the license.
- e. If the applicant submitted manual ink fingerprints and has not since submitted Livescan automated fingerprints, the applicant will be scheduled for a Livescan fingerprint appointment. At the time of the fingerprinting, the applicant shall pay the non-refundable renewal application fee and Livescan processing fee. Upon return of the Livescan criminal history checks if applicable, the Sheriff or his designee shall approve or deny the application.
- f. At the time of issuance, the applicant shall submit proof of ownership and registration of each new weapon to be licensed for concealment. Upon request, the applicant shall provide the weapon to a Department Firearms Instructor or Armorer for a full safety inspection.

The applicant must apply no later than thirty (30) days prior to the expiration of his or her license. A grace period of 60 days after the expiration may be granted as long as valid reasons exist and the applicant notifies the department prior to the expiration. A grace period does not extend the license expiration date. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within ninety (90) days of the renewal application or within thirty (30) days after receipt of the applicant's criminal background check from DOJ, whichever is later (Penal Code 12052.5).

11-10 DEPARTMENT REPORTING AND RECORDS

Pursuant to Penal Code 12053, the Sheriff shall maintain a record of the following information and immediately provide copies of each to the Department of Justice:

- a. The denial of a license.
- b. The denial of an amendment to a license.
- c. The issuance of a license.
- d. The amendment of a license.
- e. The revocation of a license.

The Sheriff shall annually submit to the State Attorney General the total number of licenses to carry concealed weapons issued to reserve peace officers and judges.

11-11 CONFIDENTIAL RECORDS

The home addresses and telephone numbers of any peace officer, magistrate, commissioner or judge contained in any application or license shall not be considered public record (Government Code 6254 (u) (2)).

Any information in any application or license which tends to indicate when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code 6254 (u)(1)).

CERTIFICATE OF COMPLETION

This certifies that

Adam Richards

has successfully completed the eight hour Yolo County

CCW Legal Update Class & Range Qualification

at

CORDOVA SHOOTING CENTER

11551 Douglas Road, Rancho Cordova, CA 95742



Instructor

April 25, 2009

Date

Make: SPRINGFIELD ARMY
Model: 1911-A1
Caliber: .45 ACP
S/N: A:R16495
Score: 293/300

Make: GAUCH 23
Model: 23
Caliber: 40
S/N: CMLE922115
Score: 295/300

Make: Ruger
Model: SP101
Caliber: .38 S&W
S/N: 570-35004
Score: 290/300

California Security Training Academy

6130 Freeport Boulevard, Suite 202; Sacramento, California 95822 (916) 399-2010

Certificate of Completion

This is to certify that

BRETT R. STEWART

Has successfully completed the

CONCEALED WEAPONS COURSE (16 HOURS)

MAKE: Glock CALIBER: .45 MODEL: 21 Lugar SERIAL NUMBER: LET285

Date of Completion: January 31, 2010

Academy Administrator: [Signature] Instructor: [Signature]

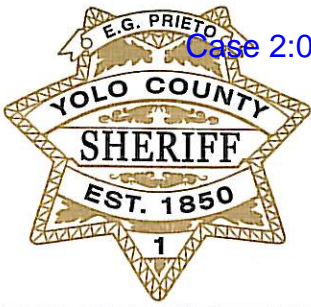
BUREAU FOR PRIVATE POSTSECONDARY & VOCATIONAL EDUCATION SCHOOL #3402941

STATE OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES (B.S.I.S. # 348)

CERTIFICATION # FQ1001-040





Yolo County Sheriff's Department

2500 East Gibson Road, Woodland, CA 95776

(530) 668-5280

Fax (530) 668-5238

(916) 375-6493

E. G. Prieto
Sheriff - Coroner

Tom A. Lopez
Undersheriff

Administration
(530) 668-5280
Finance
Personnel
Planning & Research

Cameron Training Facility
Commissary
Inmate Education
Inmate Programs
Inmate Training

Coroner's Section
(530) 668-5292

Field Operations
(530) 668-5280
Civil

Community Resources
Crime Prevention
Department Training
Investigations
Marine Patrol
Patrol
Search & Rescue
Aero Squadron
Cadets
Posse
Reserves
STARS

Animal Services
(530) 668-5287

Leinberger Detention
(530) 668-5254
Corrections
Inmate Work Programs

Monroe Detention
(530) 668-5245
Court Services
Corrections
Food Services
Records
Transportation

April 27, 2010

Brett R. Stewart
4200 San Jeronimo Terrace
Davis, CA 95618

Re: Concealed Weapon Application

Dear Mr. Stewart,

Your request for a concealed Weapons License from the Yolo County Sheriff's Department has been **denied**.

Recent events have caused the department to review and update our policy regarding issuing licenses to carry a concealed weapon (CCW). The new policy better defines the criteria needed to obtain and carry such a license. After reviewing your application, it is determined that the reasons listed on your application do not meet the criteria in our policy.

If your circumstances change and you wish to re-apply you may do so.

Sincerely,

E. G. PRIETO
SHERIFF/CORONER

Kurt Zeiler
Sergeant

KZ:am

"Service Without Limitations"

THE AMERICAN STUDENTS' BLACKSTONE.

COMMENTARIES
ON
THE LAWS OF ENGLAND:
IN FOUR BOOKS,

BY
SIR WILLIAM BLACKSTONE, KNIGHT,

ONE OF THE JUSTICES OF THE COURT OF COMMON PLEAS.

SO ARRANGED AS TO RETAIN ALL PORTIONS OF THE ORIGINAL WORK WHICH ARE OF HISTORICAL
OR PRACTICAL VALUE.

WITH NOTES, AND REFERENCES TO AMERICAN DECISIONS:
FOR THE USE OF AMERICAN STUDENTS.

BY
GEORGE CHASE, LL. B.,
PROFESSOR OF LAW IN THE LAW SCHOOL OF COLUMBIA COLLEGE

SECOND EDITION.

NEW YORK:
BANKS & BROTHERS, LAW PUBLISHERS,
111 NASSAU STREET.
ALBANY: 475 BROADWAY.

1884.

RIGHTS OF INDIVIDUALS.

81

extorted without a real and voluntary consent, it was made an article in the petition of right 3 Car. I., that no man shall be compelled to yield any gift, loan, or benevolence, tax, or such like charge, without common consent by act of parliament. And, lastly, by the statute 1 W. and M. st. 2, c. 2, it is declared, that levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, or for longer time, or in other manner, than the same is or shall be granted, is illegal.

In the three preceding articles we have taken a short view of the principal absolute rights which appertain to every Englishman. But in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment. It has therefore established certain other auxiliary subordinate rights of the subject, which serve principally as outworks or barriers to protect and maintain inviolate the three great and primary rights, of personal security, personal liberty, and private property. These are:

1. The constitution, powers, and privileges of parliament; of which I shall treat at large in the ensuing chapter.

2. The limitation of the king's prerogative, by bounds so certain and notorious, that it is impossible he should either mistake or legally exceed them without the consent of the people. Of this, also, I shall treat in its proper place. The former of these keeps the legislative power in due health and vigor, so as to make it improbable that laws should be enacted destructive of general liberty: the latter is a guard upon the executive power by restraining it from acting either beyond or in contradiction to the laws, that are framed and established by the other.

3. A third subordinate right of every Englishman is that of applying to the courts of justice for redress of injuries. Since the law is in England the supreme arbiter of every man's life, liberty, and property, courts of justice must at all times be open to the subject, and the law be duly administered therein. The emphatical words of *magna charta*, spoken in the person of the king, who in judgment of law (says Sir Edward Coke), is ever present and repeating them in all his courts, are these; *nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam*: "and therefore every subject," continues the same learned

author, "for injury done to him *in bonis, in terris, vel persona*, by any other subject, be he ecclesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay." It were endless to enumerate all the *affirmative* acts of [142* parliament, "wherem justice is directed to be done according to the law of the land; and what that law is every subject knows, or may know, if he pleases; for it depends not upon the arbitrary will of any judge, but is permanent, fixed, and unchangeable, unless by authority of parliament. I shall, however, just mention a few *negative* statutes, whereby abuses, perversions, or delays of justice, especially by the prerogative, are restrained. It is ordained by *magna charta* that no freeman shall be outlawed, that is, put out of the protection and benefit of the laws, but according to the law of the land. By 2 Edw. III. c. 8, and 11 Ric. II. c. 10, it is enacted, that no commands or letters shall be sent under the great seal, or the little seal, the signet, or privy seal, in disturbance of the law; or to disturb or delay common right; and, though such commandments should come, the judges shall not cease to do right; which is also made a part of their oath by statute 18 Edw. III. st. 4. And by 1 W. and M. st. 2, c. 2, it is declared that the pretended power of suspending, or dispensing with laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament; for, if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself. The king, it is true, may erect new courts of justice; but then they must proceed according to the old established forms of the common law. For which reason it is declared, in the statute 16 Car. I. c. 10, upon the dissolution of the court of starchamber, that neither his majesty, nor his privy counsel, have any jurisdiction, power or authority, by English bill petition, articles, libel, (which were the course of proceeding in the starchamber, borrowed from the civil law,) or by any other arbitrary way whatsoever, to examine, or draw into question, determine, or dispose of the lands or goods of any subjects of this kingdom; but that the same ought to be tried and

determined in the ordinary courts of justice, and by *course of law*.

4. * If there should happen any uncommon injury, or [*143 infringement of the rights before mentioned, which the ordinary course of law is too defective to reach, there still remains a fourth subordinate right, appertaining to every individual, namely, the right of petitioning the king, or either house of parliament, for the redress of grievances.²⁰ In Russia we are told that the czar Peter established a law, that no subject might petition the throne till he had first petitioned to different ministers of state. In case he obtained justice from neither, he might then present a third petition to the prince; but upon pain of death, if found to be in the wrong: the consequence of which was, that no one dared to offer such third petition; and grievances seldom falling under the notice of the sovereign, he had little opportunity to redress them. The restrictions, for some there are, which are laid upon petitioning in England, are of a nature extremely different: and, while they promote the spirit of peace, they are no check upon that of liberty. Care only must be taken, lest, under the pretence of petitioning, the subject be guilty of any riot or tumult, as happened in the opening of the memorable parliament of 1640: and, to prevent this, it is provided by the statute 13 Car. II. st. 1, c. 5, that no petition to the king, or either house of parliament, for any alteration in church or state, shall be signed by above twenty persons, unless the matter thereof be approved by three justices of the peace, or the major part of the grand jury in the country; and in London by the lord mayor, aldermen and common council: nor shall any petition be presented by more than ten persons at a time. But, under these regulations, it is declared by the statute 1 W. and M. st. 2, c. 2, that the subject hath a right to petition; and that all commitments and prosecutions for such petitioning are illegal.

5. The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are

²⁰ "Congress shall make no law abridging the right of the people, peaceably to assemble, and to petition the government for a redress of grievances." (U.S. Constitution, Am'ts, Art. I.) Similar provisions are contained in the State Constitutions. (See N. Y. Rev. Statutes, l. p. 83; *U. S. v. Cruikshank*, 92 U. S. 542.)

144*] allowed by law.¹¹ Which is also declared by the same statute, I W. and M. st. 2, c. 2, and is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.

In these several articles consist the rights, or, as they are frequently termed, the liberties of Englishmen: liberties more generally talked of, than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank and property, lest his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pusillanimous indifference and criminal submission on the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, it is necessary that the constitution of parliament be supported in its full vigor; and limits, certainly known, be set to the royal prerogative. And, lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and, lastly, to the right of having and using arms for self-preservation and defence. And all these rights and liberties it is our birthright to enjoy entire; unless where the laws of our country have laid them under necessary restraints; restraints in themselves so gentle and moderate, as will appear, upon farther inquiry, that no man of

¹¹It is declared in the U. S. Constitution that, "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." (Am'ts, Art. 2.) Similar provisions are contained in the constitutions of a number of the States. But it is generally held that statutes prohibiting the carrying of *concealed* weapons are not in conflict with these constitutional provisions, since they merely forbid the carrying of arms in a particular manner, which is likely to lead to breaches of the peace and provoke to the commission of crime, rather than contribute to public or personal defence. In some States, however, a contrary doctrine is maintained.

sense or probity would wish to see them slackened. For all of us have it in our choice to do every thing that a good man would desire to do; and are restrained from nothing but what would be pernicious either to ourselves or our fellow-citizens. So that this review * of our situation may fully justify the observation [* 145 of a learned French author, who indeed generally both thought and wrote in the spirit of genuine freedom (a), and who hath not scrupled to profess, even in the very bosom of his native country, that the English is the only nation in the world where political and civil liberty is the direct end of its constitution. Recommending, therefore, to the student of our laws a farther and more accurate search into this extensive and important title, I shall close my remarks upon it with the expiring wish of the famous Father Paul to his country, "ESTO PERPETUA."

CHAPTER II.

[BL. COMM.—BOOK I. CHAP. IX.]

Of Subordinate Magistrates.

In a former chapter of these Commentaries we distinguished magistrates into two kinds: supreme, or those in whom the sovereign power of the state resides; and subordinate, or those who act in an inferior secondary sphere. We have hitherto considered the former kind only; namely, the supreme legislative power or parliament, and the supreme executive power, which is the king;* and are now to proceed to inquire into the rights and duties of the principal subordinate magistrates.

And herein we are not to investigate the powers and duties of his majesty's great officers of state, the lord treasurer, lord chamberlain, the principal secretaries, or the like: because I do not know that they are in that capacity in any considerable degree the objects of our laws, or have any very important share of

(a) Montesquieu, Spirit of Laws, xl. l.

* The chapters upon these topics have been omitted, as relating exclusively to the English system of government, and therefore not practically important to the American student.



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555

Facsimile: (916) 324-8835
(916) 324-5490

December 28, 2001

FILED
In the office of the Secretary of State
of the State of California

DEC 28 2001

BILL JONES, Secretary of State
By Tricia Knight
Deputy Secretary of State

Bill Jones
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

RE: Initiative Title and Summary
SUBJECT: RIGHT TO KEEP AND BEAR ARMS.
INITIATIVE CONSTITUTIONAL AMENDMENT.
FILE NO: SA2001RF0041

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponents of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of service.

Sincerely,

TRICIA KNIGHT
Initiative Coordinator

For **BILL LOCKYER**
Attorney General

TK:cw
Enclosures

Date: December 28, 2001
File No.: SA2001RF0041

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

RIGHT TO KEEP AND BEAR ARMS. INITIATIVE CONSTITUTIONAL AMENDMENT.

Amends the California Constitution to add a personal right to keep and bear arms for defense of self, family, and home. Requires state to prove a compelling government interest for any action regulating the keeping and bearing of arms. Provides that this amendment, and such state laws as it allows, take precedence over county, city, and local government regulations on this subject.

Allows the state to continue regulating the acquisition or possession of arms by felons, minors, mentally incompetent persons, or persons subject to restraining orders based on their violent conduct. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in unknown, potential costs to the state and unknown net fiscal effects on local governments.

SH200 RF0041

1261 Lincoln Avenue, Suite 108
San Jose, California 95125-3030
Phone: 408/998-8489
Fax: 408/998-8487

October 3, 2001

Via: U.S. Mail

Attorney General Bill Lockyer
ATTN: INITIATIVE COORDINATOR
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

NOV 05 2001

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

SUBJECT: California Constitutional Amendment

Dear Attorney General Lockyer:

Attached please find the referral for a California Constitutional Amendment. We understand "If signed by the required number of electors and filed with the Secretary of State by a date to be specified" this petition will qualify as a ballot initiative in the November 2002 election.

Also enclosed are the Title and Summary from our last attempt to qualify the exact same amendment, and the budget analysis performed by the Joint Legislative Budget Committee for that previous attempt. As there should be no changes to analysis, we sincerely hope that this process can be expedited. Thank you.

As registered California voters, we hereby request title and summary in order to prepare petitions for circulation to collect signatures.

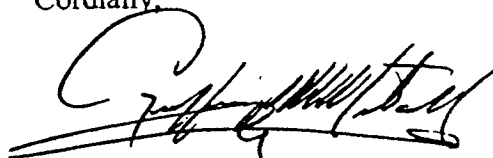
Proponents of this Initiative are:

Geoffrey M. Metcalf

Donald J. Kilmer
1261 Lincoln Avenue, Suite 108
San Jose, CA 95125-3030

Thank you for your courtesy and cooperation.

Cordially,



Geoffrey M. Metcalf



Donald E. J. Kilmer, Jr.
Attorney at Law

Amendment to California Constitution

The Self-defense Initiative

The inalienable right to defend life and liberty as set forth in Article I, Section 1 of the California Constitution includes the fundamental right of each person to keep and bear arms for the defense of self, family and home. This right shall not be infringed.

- A. All State government action regulating the right of law-abiding persons to acquire and possess arms for the defense of self, family and home, shall be subject to strict scrutiny, in the same respect as the freedoms of speech and of the press. All county, city and local government action on this subject is preempted by state law and this Amendment.

- B. This Amendment does not limit the State from regulating the acquisition and possession of arms by: felons, minors, the mentally incompetent, and any person subject to restraining orders based upon their own violent conduct.

DECLARATION OF SERVICE

RE: Initiative Title and Summary

FILE NO: SA2001RF0041

I declare:

I am employed in the Office of the Attorney General located at 1300 I Street, Post Office Box 944255, Sacramento, California 94244-2550. I am over the age of eighteen years and not a party to the within entitled matter.

On December 28, 2001, I served the within correspondence, title and summary, and text of the following measure by mail.

**RIGHT TO KEEP AND BEAR ARMS.
INITIATIVE CONSTITUTIONAL AMENDMENT.**

I placed the above documents in a sealed envelope, with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, for deposit in the United States Postal Service this same day in the ordinary course of business, addressed as follows:

**Donald J. Kilmer, Esq.
Geoffrey M. Metcalf
Law Office of Donald Kilmer
1261 Lincoln Avenue, Suite 108
San Jose, CA 95125-3030**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 28, 2001 at Sacramento, California.


CHRISTINE WEIN

Joint Legislative Budget Committee

CHAIR
STEVE PEACE

VICE CHAIR
TONY CARDENAS

SENATE

DICK ACKERMAN
DEDE ALPERT
JIM BATTIN
K. MAURICE JOHANNESSEN
JACK O'CONNELL
RICHARD G. POLANCO
JOHN VASCONCELLOS

GOVERNMENT CODE SECTIONS 9140-9143

CALIFORNIA LEGISLATURE

LEGISLATIVE ANALYST
ELIZABETH G. HILL

925 L STREET, SUITE 1000
SACRAMENTO, CALIFORNIA 95814
(916) 445-4656

ASSEMBLY

ROY ASHBURN
PATRICIA C. BATES
JACKIE GOLDBERG
FRED KEELEY
CAROLE MIGDEN
GEORGE RUNNER
RODERICK WRIGHT

December 13, 2001

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

RECEIVED
DEC 13 2001

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative constitutional amendment that establishes the right of Californians to possess firearms and requires the judiciary to apply a test of "strict scrutiny" in the evaluation of state and local actions regulating the right to bear arms (File No. SA2001RF0041).

Background

The U.S. Constitution's Second Amendment guarantees the right of citizens to keep and bear arms and has been subject to significant court review for years. Currently, the State Constitution has no equivalent provision. While the Second Amendment confers specific rights regarding the right to bear arms, the courts have allowed federal, state, and local governments to establish prohibitions and restrictions on firearm ownership.

Proposal

This measure adds a new section to the State Constitution that defines the existing right to defend life and liberty to include the right of each person to keep and bear arms for the defense of self, family, and home. The measure states that this right shall not be infringed.

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While individuals may possess and carry firearms, many of the state's existing systems for background checks, weapons permits, and law enforcement investigations of individuals with weapons would likely not change. For example:

- Because the measure has no impact on federal law and maintains prohibitions against the possession of weapons by convicted felons and the mentally incompetent, it appears that the state's systems for background checks (including waiting periods) for weapons purchases and concealed weapons permits would remain in place.
- Under the provisions of this constitutional amendment, it would still be illegal to possess and carry a firearm for the purposes of committing a criminal act.
- Because this measure makes no direct change to existing state constitutional law, the state and local governments would presumably still be responsible for using their police powers to guarantee public safety, thus allowing for the continued prohibition of weapons in certain public places or under certain circumstances (for example, while a person is intoxicated or while operating a motor vehicle).

However, local jurisdictions would not be able to limit who obtains concealed weapons permits unless the applicant does not meet federal or state criteria. In addition, individuals could no longer be arrested and tried for simple possession of a weapon, unless other circumstances existed. Currently, these types of arrests are misdemeanor offenses where the individual is generally cited and released.

The experience of other states enacting similar measures has been an initial increase in requests for concealed weapons permits, resulting in an increase in the number of background checks.

The measure also amends the State Constitution to require the application of a strict scrutiny test in judicial review of state actions that restrict individual rights to acquire and possess firearms. The strict scrutiny test presumes the challenged regulatory action to be invalid and the burden of proof is on state and local governments to show that the law serves a compelling public interest.

Under existing law, state and local government actions regulating firearms have generally been tested under the "rational relationship" test. This test presumes the legislation to be valid if it is rationally related to a legitimate government purpose. The burden of proof is on the challenging party to show that the law is unconstitutional.

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The measure does not limit the ability of the state to regulate the purchase and possession of firearms by individuals who are:

- Felons.
- Minors.
- Mentally incompetent.
- Subject to restraining orders based on their violent conduct.

Finally, this measure stipulates that all local government action on this subject is preempted by state law and the amendment.

Fiscal Effect

Direct Effects. The strict scrutiny test could remove perceived barriers to challenging firearm laws in the courts, resulting in increased legal expenses to the state for defending firearm laws, as well as additional court costs.

The remaining provisions of the measure will probably not result in any direct net cost to state government because it does not specifically change existing statutes. Rather, it establishes constitutional guidelines which apparently are not in conflict with existing state laws and the systems for their implementation. In addition, while there is a potential for an increase in the number of background checks (primarily concealed weapons permits) processed by the Department of Justice, this department is statutorily authorized to recover such costs through fees.

Local governments could experience some costs and savings. The net fiscal impact is unknown. Specifically, while the request for concealed weapons permits could increase, resulting in additional processing costs, the number of concealed weapons violations would likely decrease, resulting in savings to local law enforcement. This measure could also increase legal expenses to local governments resulting from an increase in the number of challenges to local firearm ordinances.

Indirect Effect. Research in other states has shown that similar measures can result in indirect savings and costs, however, much of this research is inconclusive regarding the net effect of such changes. Savings could result from the potential reduction in crime resulting from a larger number of citizens possessing firearms for self-defense. On the other hand, increased costs could result from injuries and death resulting from accidental and unintentional firearms use. The net impact of these savings and costs is unknown.

Hon. Bill Lockyer

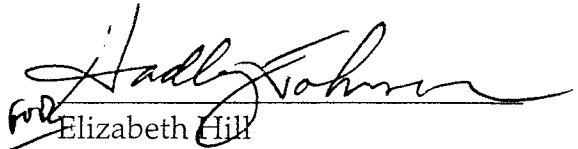
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December 13, 2001

Summary

We estimate that this measure would result in unknown, potential costs to the state and unknown net fiscal effects on local governments.

Sincerely,


Elizabeth Hill
Legislative Analyst


B. Timothy Gage
Director of Finance



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555

Facsimile: (916) 323-2137
(916) 324-5490

January 5, 2000

FILED
In the office of the Secretary of State
of the State of California

JAN 05 2000

BILL JONES, Secretary of State

By 
Deputy Secretary of State

Bill Jones
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

RE: INITIATIVE TITLE AND SUMMARY
SUBJECT: RIGHT TO KEEP AND BEAR ARMS.
INITIATIVE CONSTITUTIONAL AMENDMENT.
FILE NO: SA1999RF0053, Amdt. #1-S

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

Handwritten signature of Diane Calkins in cursive.

DIANE CALKINS
Initiative Coordinator

For BILL LOCKYER
Attorney General

DC:ms
Enclosures

Date: January 5, 2000
File No.: SA1999RF0053, Amdt. #1-S

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

RIGHT TO KEEP AND BEAR ARMS. INITIATIVE CONSTITUTIONAL AMENDMENT.

Amends the California Constitution to state Article I, Section 1 includes the right to keep and bear arms in defense of self, family and home. All State regulation of the right to keep and bear arms will be subject to strict scrutiny review. The Amendment and state law preempts all county, city, and local government action on this subject. The Amendment does not limit the State from regulating the acquisition and possession of arms by felons, minors, the mentally incompetent, and persons subject to restraining orders based on their violent conduct. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in unknown, potential costs to the state and unknown net fiscal effects on local governments.

Donald E.J. Kilmer, Jr.

Attorney At Law

Defending Life, Liberty and Property

1261 Lincoln Avenue • Suite 108
San Jose, California 95125
Telephone (408) 998-8489
Facsimile (408) 998-8487
dejilmer@aol.com

November 11, 1999

Attorney General Bill Lockyer
ATTN.: Diane Calkins – Initiative Coordinator
1300 I Street, Suite 125
P.O. Box 94244-2550
Sacramento, CA 94244-2550

Facsimile: 916/323-2137 & 916/324-5490

RECEIVED
NOV 15 1999

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

SUBJECT: Proposed California Constitutional Amendment
Your File No.: SA1999RF0053

Dear Ms. Calkins:

Thank you for your letter of October 29, 1999. On behalf of Geoffrey M. Metcalf and myself, I would like to submit the following substantive changes to our proposed initiative.

The Original Language is as follows:

The inalienable right to defend life and liberty as set forth in Article I, Section 1 of the California Constitution includes the fundamental right of each person to keep and bear arms for the defense of self, family and home. This right shall not be infringed.

- A. All State and local government action regulating the right of law-abiding persons to acquire and possess arms for the defense of self, family and home, shall be subject to strict scrutiny, in the same respect as the freedoms of speech and of the press.
- B. This Amendment does not limit the State or local governments from regulating the acquisition and possession of arms by: felons, minors, the mentally incompetent, and any person subject to restraining orders based upon their own violent conduct.

The editing is indicated as follows:

{No change to the Preamble}

The inalienable right to defend life and liberty as set forth in Article I, Section 1 of the California Constitution includes the fundamental right of each person to keep and bear arms for the defense of self, family and home. This right shall not be infringed.

{deletes the words and local, and adds the underlined text}

- A. All State government action regulating the right of law-abiding persons to acquire and possess arms for the defense of self, family and home, shall be subject to strict scrutiny, in the same respect as the freedoms of speech and of the press. All county, city and local government action on this subject is preempted by state law and this Amendment.

{deletes the words or local governments }

- B. This Amendment does not limit the State from regulating the acquisition and possession of arms by: felons, minors, the mentally incompetent, and any person subject to restraining orders based upon their own violent conduct.

The final version of the proposed initiative is as follows:

The inalienable right to defend life and liberty as set forth in Article I, Section 1 of the California Constitution includes the fundamental right of each person to keep and bear arms for the defense of self, family and home. This right shall not be infringed.

- A. All State government action regulating the right of law-abiding persons to acquire and possess arms for the defense of self, family and home, shall be subject to strict scrutiny, in the same respect as the freedoms of speech and of the press. All county, city and local government action on this subject is preempted by state law and this Amendment.
- B. This Amendment does not limit the State from regulating the acquisition and possession of arms by: felons, minors, the mentally incompetent, and any person subject to restraining orders based upon their own violent conduct.

If is not too late, I would also like to add a clarification to my November 9, 1999 letter. A paragraph #5 should be added to state: That this amendment preempts city, county and local governments from taking action that interferes with this right.

Thank you very much for your time and attention to this matter. If you have any questions or need clarification. Please feel free to contact my office.

Cordially,

Dated:



Geoffrey M. Metcalf
Vetothegovernor.org

Dated:

11/11/99



Donald E. J. Kilmer, Jr.
Attorney at Law

FILE

**SA 1999 RF 0053,
Amdt. # 1-S**

Joint Legislative Budget Committee

CHAIR
STEVE PEACE

VICE CHAIR
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GOVERNMENT CODE SECTIONS 9140-9143

ASSEMBLY

ROY ASHBURN
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CAROLE MIGDEN
GEORGE RUNNER
RODERICK WRIGHT



925 L STREET, SUITE 1000
SACRAMENTO, CALIFORNIA 95814
(916) 445-4656

December 22, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

RECEIVED
DEC 23 1999

Attention: Ms. Diane Calkins
Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Lockyer:

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Background

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December 22, 1999

Proposal

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While individuals may possess and carry firearms, many of the state's existing systems for background checks, weapons permits, and law enforcement investigations of individuals with weapons would likely not change. For example:

- Because the measure has no impact on federal law and maintains prohibitions against the possession of weapons by convicted felons and the mentally incompetent, it appears that the state's systems for background checks (including waiting periods) for weapons purchases and concealed weapons permits would remain in place.
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However, local jurisdictions would not be able to limit who obtains concealed weapons permits unless the applicant does not meet federal or state criteria. In addition, individuals could no longer be arrested and tried for simple possession of a weapon, unless other circumstances existed. Currently, these types of arrests are misdemeanor offenses where the individual is generally cited and released.

The experience of other states enacting similar measures has been an initial increase in requests for concealed weapons permits, resulting in an increase in the number of background checks.

The measure also amends the State Constitution to require the application of a "strict scrutiny" test in judicial review of state actions that restrict individual rights to acquire and possess firearms. The strict scrutiny test presumes the challenged regula-

Hon. Bill Lockyer

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December 22, 1999

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Under existing law, state and local government actions regulating firearms have generally been tested under the "rational relationship" test. This test presumes the legislation to be valid if it is rationally related to a legitimate government purpose. The burden of proof is on the challenging party to show that the law is unconstitutional.

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Local governments could experience some costs and savings. The net fiscal impact is unknown. Specifically, while the request for concealed weapons permits could increase, resulting in additional processing costs, the number of concealed weapons violations would likely decrease, resulting in savings to local law enforcement. This measure

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December 22, 1999

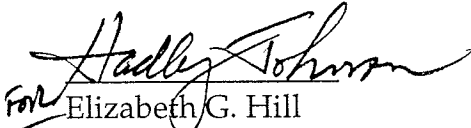
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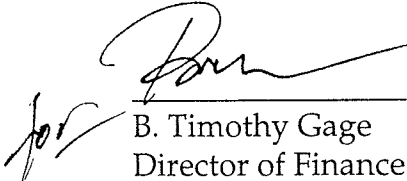
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Summary

We estimate that this measure would result in unknown, potential costs to the state and unknown net fiscal effects on local governments.

Sincerely,


for Elizabeth G. Hill
Legislative Analyst


for B. Timothy Gage
Director of Finance