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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DOROTHY McKAY, DIANA KILGORE, PHILLIP WILLMS, FRED KOGEN, DAVID WEISS, and THE CRPA FOUNDATION,

Plaintiffs,

v.

SHERIFF SANDRA HUTCHENS, individually and in her official capacity as Sheriff of Orange County, California, ORANGE COUNTY SHERIFF-CORONER DEPARTMENT, COUNTY OF ORANGE, and DOES 1-10,

Defendants.

CASE NO: SACV 12-1458JVS (JPRx)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[Fed. R. Civ. P. 65]

Date: October 15, 2012
Time: 1:30 p.m.
Location: Ronald Reagan Federal Building
411 West Fourth Street
Room 1053
Santa Ana, CA 92701
Courtroom: 10C
Judge: James V. Selna
Date Action Filed: September 5, 2012

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INTRODUCTION

Defendants Orange County Sheriff Sandra Hutchens, Orange County Sheriff-Coroner Department, and the County of Orange (hereinafter "Sheriff Hutchens") have adopted and implement an official written policy for issuing licenses to publicly carry a handgun that requires the applicants to prove they have a special need for such a license beyond a general desire for self-defense. This standard disqualifies most Orange County residents, including Plaintiffs, from obtaining such a license.

These licenses are the only lawful means to generally carry a handgun for self-defense in public. As such, Sheriff Hutchens' policy deprives law-abiding adults like Plaintiffs of their right to bear arms under the Second Amendment to the United States Constitution; particularly, their right, as the Supreme Court described it, "to possess and carry firearms in case of confrontation" for self-defense purposes. *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

There is no textual or historical support for Sheriff Hutchens' policy of prohibiting *most* people from exercising in *most* public places their fundamental, constitutional right to armed self-defense. Sheriff Hutchens' policy is thus unconstitutional on its face and as applied to Plaintiffs, and by operation of law causes Plaintiffs irreparable harm. Enjoining implementation of her policy will restore Plaintiffs' constitutional rights and also restore those rights to all Orange County residents, thereby serving the public interest as well as equity.

Injunctive relief preventing Sheriff Hutchens from continuing to implement her current unconstitutional policy pending resolution of this lawsuit is warranted.

STATEMENT OF FACTS

With few and very limited exceptions, California has banned the unlicensed carrying of handguns in most public places whether loaded (Cal. Penal Code § 25850) or unloaded (Cal. Penal Code § 26350), and whether concealed (Cal. Penal

Code § 25400) or exposed (Cal. Penal Code § 26350).

California law vests in Sheriff Hutchens the authority to issue licenses that allow for carrying loaded handguns about generally in public (a "Carry License") to Orange County residents who submit a written application showing they meet certain statutorily required criteria. Cal. Penal Code § 26150.

A Carry License applicant must successfully complete a handgun training course covering handgun safety and California firearm laws (Cal. Penal Code § 26165), and must pass a criminal background check (Cal. Penal Code § 26185). And, even if an applicant successfully completes the background check and a suitable handgun training course, a Carry License may only be issued if the applicant is additionally proven to be of "good moral character" and to have "good cause" for carrying a loaded handgun in public. Cal. Penal Code § 26150.

Carry License issuing authorities currently exercise discretion in deciding whether an applicant has "good cause" to be issued a license. While most issue such licenses to virtually all law-abiding, competent adult applicants seeking one for self-defense who meet the other criteria, some choose to rarely issue them.

California law requires that each issuing authority publish an official written policy articulating, among other things, what the sheriff has chosen to consider "good cause" for a Carry License. Cal. Penal Code § 23160. Sheriff Hutchens has chosen to adopt an official written policy that rejects as "good cause" applicants' "general concerns about personal safety." (Pls.' Req. Judicial Notice, Ex. OO.) To even *potentially* satisfy Sheriff Hutchens' "good cause" standard, applicants must at minimum prove they are the target of a specific threat or engage in business that subjects them to "far greater risk than the general population." (Pls.' Req. Judicial Notice, Ex. OO.)

Because California law generally prohibits the unlicensed, public carrying of handguns, a Carry License is the only means by which an individual can lawfully go about armed for self-defense in most public places in California. In

short, the Sheriff's policy of denying such licenses denies *most* individuals the ability to lawfully carry a firearm for self-defense in *most* public places.

Plaintiffs Dorothy McKay, a public school teacher and National Rifle Association-certified Firearms Instructor / Range Safety Officer who often travels to remote areas to provide tutoring and training services (Decl. of Dorothy McKay Supp. Mot. Prelim. Inj. ["McKay Decl."] ¶¶ 4-5); Phillip Willms, a businessman and competitive shooter (Willms Decl. ¶¶ 3-6); Fred Kogen, a medical doctor who travels performing the controversial procedure of infant circumcision (Kogen Decl. ¶¶ 4-5); and David Weiss, a pastor who travels providing ministry services often to unknown parishioners in unfamiliar areas (Weiss Decl. ¶ 4); each applied to Sheriff Hutchens for a Carry License, asserting a desire for general self-defense as their "good cause."(McKay Decl. ¶¶ 7-8; Willms Decl. ¶¶ 8-9; Kogen Decl. ¶¶ 7-8; Weiss Decl. ¶¶ 6-7.) Sheriff Hutchens denied each of them for lack of "good cause."(McKay Decl. ¶ 9; Willms Decl. ¶ 10; Kogen Decl. ¶ 9; Weiss Decl. ¶ 8.)[1]

Supporters of Plaintiff The CRPA Foundation, such as Plaintiff Diana Kilgore, refrain from applying for a Carry License from Sheriff Hutchens because they do not meet her official heightened "good cause" standard, and it would be futile to do so. (Kilgore Decl. ¶¶ 4-7; Silvio Decl. ¶¶ 7-8.)

ARGUMENT

Plaintiffs seeking a preliminary injunction must establish that: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)). Plaintiffs can satisfy their showing under each prong. A preliminary injunction is thus appropriate here.

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[1] Plaintiff Willms requested reconsideration of his denial, and on March 21, 2012, his denial was confirmed. (Willms Decl. ¶¶ 11-12.)

I. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS BECAUSE SHERIFF HUTCHENS' POLICY ABROGATES THEIR FUNDAMENTAL SECOND AND FOURTEENTH AMENDMENT RIGHTS

A. Carrying Arms for Self-Defense, Whether in Private or Public, Is Core Activity Protected Under the Second Amendment

At the end of its detailed parsing of the Second Amendment's operative clause in *Heller*, the Supreme Court concluded that "[p]utting all of these textual elements together, we find that they guarantee the individual right to possess *and carry* weapons in case of confrontation." *Heller*, 554 U.S. at 592 (emphasis added). In defining what it means to "bear" or "carry" arms, the Court adopted Justice Ginsburg's definition from an earlier case, finding "the most familiar meaning" is to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 584 (citation omitted).

As the Court explained in *McDonald v. City of Chicago*, 561 U.S. 3025, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010): "Self-defense is a basic right, . . . and in *Heller*, we held that individual self-defense is 'the central component' of the Second Amendment right." *Id*. at 3036 (citation omitted). The Court thus characterized the right to bear arms for self-defense as part of the holding, not mere dictum. *Heller* and *McDonald* repeatedly confirm this. *See, e.g.*, *Heller*, 554 U.S. at 628 ("the inherent right of self-defense has been central to the Second Amendment right"); *McDonald*,130 S. Ct. at 3023 ("[*Heller*] concluded that citizens must be permitted 'to use handguns for the core lawful purpose of self-defense' "). Further, the right to armed self-defense exists in both private and public settings. As discussed in detail, *infra*, *Heller* and *McDonald* expressly, implicitly, and repeatedly make this point – even the dissent in *Heller* concedes it.

Here, Sheriff Hutchens' Carry License policy completely deprives Plaintiffs and *most* Orange County residents from carrying arms for self-defense purposes in *almost all* public places. Such a comprehensive prohibition of a fundamental right

is necessarily unconstitutional. So, while important, this case is simple.

As explained below, the proper test – and the only test approved by the Supreme Court – for analyzing broad-based prohibitions on the exercise of Second Amendment rights is the scope-based test applied in *Heller* and *McDonald*. So this Court need not wade into the standard of review quagmire. In any event, whatever standard ultimately applies here, the burden is on Sheriff Hutchens to prove her policy survives *some* form of heightened judicial review. And that she cannot do.

B. *Heller* and *McDonald* Endorse a Scope-Based Analysis for Second Amendment Challenges, Not a Means-Ends Approach That Necessarily Entails a Balancing of Interests

The Supreme Court, while not settling on a framework for reviewing all Second Amendment challenges, has left little doubt that courts are to assess gun laws based on "both text and history," *Heller*, 554 U.S. at 595, and not by resorting to interest-balancing tests. The Supreme Court rejects the "tiers-of-scrutiny" framework. *Id.* at 628 n.27, 634-35. *Heller* advances an analytical approach that first focuses on "examination of a variety of legal and other sources to determine *the public understanding* of [the] legal text," *id.* at 605, with particular focus on "the founding period," *id*. at 604, to determine whether the restricted activity falls within the scope of the Second Amendment. If it does, the court again turns to "text and history" to determine whether the particular restriction is nevertheless permissible because it is similar or analogous to restrictions historically understood as permissible limits on the right to bear arms, i.e., whether there is "historical justification for those regulations." *Id*. at 635.

In short, where sufficient historical justifications exist for a restriction on activity falling within the scope of the right, then the restriction is valid; if not, it is invalid. *See id.* at 634-35. The presumption, of course, is that activity falling within the scope of the right to arms "shall not be infringed," with the burden on the government to justify the challenged restriction, *based on text, history, and tradition*. *See id.* at 634-36.

The Supreme Court's reliance upon text and history rather than judicial balancing is also reflected in what *Heller* did *not* examine. Notably absent from its analysis is any reference to "compelling interests," "narrowly tailored" laws, or any other means-ends scrutiny jargon. Nor was there talk of "legislative findings" purporting to justify the District's restrictions. Instead, *Heller* focused on whether the challenged laws restricted the right to arms as it was understood by those who drafted and enacted the Second and Fourteenth Amendments. *Id.* at 626-34.

The Court gleaned its understanding from an extensive examination of the textual and historical narrative of the right to arms, *id*. at 605-19, emphasizing that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Id.* at 634-35.

The *Heller* Court ultimately found that handguns are arms protected by the Second Amendment, *id.* at 629, and held that keeping handguns in one's home for self-defense purposes is core conduct protected by the same, *id.* at 635. Because the District's handgun ban and locked-storage requirement directly conflicted with or precluded protected conduct, and because there was no historical antecedent for such restrictions, the laws were deemed per se unconstitutional. *Id.* at 628-30.

The Court's later decision in *McDonald* further underscored the notion that history and tradition, rather than burdens and benefits, should guide analyses of the Second Amendment's scope. Like *Heller*, *McDonald* did not use balancing tests, and it expressly rejected judicial assessment of "the costs and benefits of firearms restrictions," stating that courts should not make "difficult empirical judgments" about the efficacy of particular gun regulations. *McDonald*, 130 S. Ct. at 3050. This language is compelling. Means-ends tests, like strict or intermediate scrutiny, necessarily require assessing the "costs and benefits" of regulations, as well as "difficult empirical judgments" about their effectiveness.

As such, those tests are inappropriate here. This court should evaluate

Sheriff Hutchens' policy using the same scope-based, historical test employed by the Supreme Court in both *Heller* and *McDonald*.

C. Sheriff Hutchens' Policy and Application Thereof Cannot Survive a *Heller* Scope-Based Analysis

In California, with limited exceptions, the only lawful way one can carry a handgun in public generally for self-defense purposes is with a Carry License. This means Sheriff Hutchens' policy bars those, including Plaintiffs, who do not cite a "good cause" that she finds acceptable from being able to legally go about armed for self-defense outside of their homes. For her policy to be valid, the Sheriff must show that prohibiting law-abiding, competent adults from exercising their right to go about armed for self-defense in public, unless they can prove some special need for doing so that she subjectively agrees with, is commonplace in our history and traditions. Sheriff Hutchens can make no such showing.

The text of the Second Amendment does not limit the carry-right to within the home. As *Heller* noted, "the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right . . . declar[ing] only that it 'shall not be infringed.' " *Heller*, 554 U.S. at 592. And nothing in the historical record suggests this "['pre-existing'] individual right to possess and carry weapons in case of confrontation," *id.*, has been regarded as limited to the home.

Moreover, *Heller* did *not* suggest that carrying firearms could be generally banned in public or that the right to arms was limited to one's home. It did suggest that laws restricting possession in "sensitive places" might be lawful, *id.* at 626, and it cited several cases indicating that regulations on the manner of public carry (open versus concealed) might also pass constitutional muster, *id.* at 629. But, as discussed in detail below, both observations support an historical understanding that public carry may be regulated to some extent but must be permitted, generally.

1. There Is No Historical Support for Bans on the General Carrying of Firearms in Public for Self-defense

Firearms carried for self-defense have historically been ubiquitous in American public life. *See Judy v. Lashley*, 50 W.Va. 628, 41 S.E. 197, 200 (1902)

(citing 5 *The American & English Encyclopedia of Law* 729 (David S. Garland & Lucius P. McGehee, 2d ed. 1896)) ("So remote from a breach of the peace is the carrying of weapons, that at common law it was not an indictable offense, nor any offense at all.") As the *Heller* Court noted, "the right [to arms] secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both *public* and private violence." *Heller*, 554 U.S. at 594 (emphasis added). Our Founding Fathers certainly seem to have been of this understanding.[2] Many jurisdictions even "required individual arms-bearing for public-safety reasons." *Id.* at 601.[3]

Typical regulations of arms-bearing during the founding era were narrowly tailored for specific purposes, such as laws prohibiting slaves from bearing arms[4] or, the most prevalent, laws codifying the common-law offense of carrying unusual arms to the terror of the people.[5] This narrow limit on the right to bear

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[2] Thomas Jefferson wrote a nephew, "Let your gun therefore be the constant companion of your walks." Thomas Jefferson, *Writings* 816-17 (Merrill D. Peterson ed., 1984). John Adams publicly carried arms Anne H. Burleigh, *John Adams* 8-9 (1969), as did George Washington Benjamin O. Tayloe, *Our Neighbors on LaFayette Square: Anecdotes and Reminiscences* 47 (1872).

[3] For example, In 1623, Virginia forbade its colonists to travel unless they were "well armed"; in 1631 it required target practice on Sunday and for people to "bring their peeces to church." *The Right To Keep And Bear Arms: Report of the Subcommittee on the Constitution of the Committee on the Judiciary*, U.S. Senate, 97th Cong., 2d Sess. 3 (1982) (footnotes omitted).

[4] *See, e.g.*, *An Act for the Better Ordering and Governing Negroes and Other Slaves in this Province, and to Prevent the Inveigling or Carrying Away Slaves from Their Masters or Employers* (Ga. 1765), *in Statutes Enacted by the Royal Legislature of Georgia* 668 (1910) (making it generally unlawful for "any slave, unless in the presence of some white person, to carry and make use of firearms").

[5] *See An Act Forbidding and Punishing Affrays* (Va. 1786), *in A Collection of All Such Acts of the General Assembly of Virginia* 33 (Augustine Davis ed., 1794).

arms in the last-mentioned regulation does not apply "unless such [firearm] wearing be accompanied with such circumstances as are apt to terrify the people; consequently the wearing of common weapons, or having the usual number of attendants, merely for ornament or defence, where it is customary to make use of them, will not subject a person to the penalties of this act." William W. Hening, *The New Virginia Justice*, *in The Commonwealth of Virginia* 50 (2d ed. 1810). Thus, although "going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the people of the land . . . it should be remembered, that in this country the constitution guaranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner as to terrify the people unnecessarily." Charles Humphreys, *A Compendium of the Common Law in Force in Kentucky* 482 (1822).[6]

While this widely accepted prohibition on bearing arms with the purpose to terrify confirms some limitations on the right were – and still are – tolerated by the Second Amendment, its prevalence militates against the validity of policies like Sheriff Hutchens' that broadly prohibit law-abiding citizens from peaceably carrying operable firearms in non-sensitive public places for their self protection.

Those who wrote and ratified the Fourteenth Amendment understood the right to bear arms in precisely the same way. In 1866, a Senator remarking on the Freedmen's Bureau Act said "the founding generation 'were for every man bearing his arms about him and keeping them in his house, his castle, for his own defense.' " *Heller*, 554 U.S. at 616 (quoting Cong. Globe, 39th Cong., 1st Sess., 362, 371 (1866)); *see also id.* at 614-15 (citing Stephen P. Halbrook, *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866-1876*, at 19 (1998)).

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[6] *See also State v. Huntly*, 25 N.C. 418, 422-23 (1843) ("[I]t is to be remembered that the carrying of a gun *per se* constitutes no offence. For any lawful purpose . . . the citizen is at perfect liberty to carry his gun. It is the wicked purpose – and the mischievous result – which essentially constitute the crime.")

Additionally, an 1866 report to Congress from the Freedmen's Bureau stated: "There must be 'no distinction of color' in the right to carry arms, any more than in any other right." H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 297 (1866). A Mississippi court recognized this in 1866 when it struck down a state ban on carrying a firearm without a license: "While, therefore, the citizens of the State and other white persons are allowed to carry arms, the freedmen can have no adequate protection against acts of violence unless they are allowed the same privilege." Halbrook, *supra*, at 57-58 (quoting *State v. Wash Lowe*, reprinted in N.Y. Times, Oct. 26, 1866, at 2). Thus, carrying arms for personal defense was widely understood as a right enjoyed by all free people.

The *McDonald* Court embraced this view when it cited as an example of laws that would be nullified by the Fourteenth Amendment, a statute providing "no freedman, free negro or mulatto, not in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep *or carry* fire-arms of any kind." 130 S. Ct. at 3038 (internal quotation omitted) (emphasis added). The *McDonald* Court likewise condemned "Regulations for Freedman in Louisiana" which stated no freedman "shall be allowed to carry firearms, or any kind of weapons, within the parish, without the written special permission of his employers, approved and indorsed by the nearest and most convenient chief of patrol." *Id.* (citing 1 Walter L. Fleming, *Documentary of History of Reconstruction* 279-80 (1950)).

Further evidence that a right to publicly carry arms for self-defense has been historically recognized is found in the numerous state court cases interpreting constitutional right to arms provisions. "A large body of relevant precedent affirms that the right to bear arms extends outside the home. Thus, courts already have many of the resources they need to resolve the carry rights cases." Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev.

585, 623-32 (2012) (discussing body of case law from state courts articulating right to carry firearms outside of the home for self-defense purposes).

2. Neither *Heller* Nor *McDonald* Limit Bearing Arms to Inside the Home; Both Assume Public Carry in Some Manner

Despite this historical record, some district courts have limited the Second Amendment's protections to the home or, to the extent they recognize a right outside the home (or assume one for purposes of analysis), afford it very little protection. The California district courts to have considered Second Amendment challenges to sheriffs' policies that reject general self-defense as "good cause" have upheld them by either limiting the right to the home, *see, e.g.*, *Richards v. County of Yolo*, 821 F. Supp. 2d 1169, 1174-75 (E.D. Cal. May 16, 2011), or by remaining agnostic on whether the right extends beyond the home and upholding such policies because they nevertheless meet "intermediate scrutiny," *see, e.g.*, Civil Minutes - General, *Thomson v. Torrance Police Dept.* 7-10, No. 11-06154 (C.D. Cal. July 2, 2012), ECF No. 70; Order Re: Plaintiff's and Defendants' Motions for Summary Judgment 5-7, *Birdt v. Beck*, No. 10-08377 (C.D. Cal. Jan. 13, 2011), ECF No. 96; *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106, 1116-17 (S.D. Cal. 2010).

Those courts confining the Second Amendment, or at least its core, to the home based on *Heller*'s specific facts not only ignore the historical record, but also *Heller*'s detailed analysis and findings on the right's scope. For instance, in noting the right – like all rights – is not unlimited, *Heller* cited two nineteenth century state court cases that upheld *concealed* carry prohibitions, *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850) and *Nunn v. State*, 1 Ga. 243, 251 (1846). *Heller*, 554 U.S. at 626. But both cases involved prohibitions where the right to arms was still readily available by way of *open* carry. *Chandler*, 5 La. Ann. at 490 (noting the prohibition on carrying concealed weapons "interfered with no man's right to carry arms . . . 'in full view,' which places men upon an equality"); *Nunn*, 1 Ga. at 251 ("[S]o far as the act . . . seeks to suppress the

practice of carrying certain weapons *secretly*, that it is valid, inasmuch as it does not deprive the citizen of his *natural* right of self-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*; . . .") Thus both cases acknowledge a right to public carry in some manner.

This same view of the right to public carry is reflected in *Heller's* discussion of two other state supreme court opinions holding open carry prohibitions invalid. *See Heller*, 554 U.S. at 629 (citing *Andrews v. State*, 50 Tenn. 165, 187 (1871); *State v. Reid*, 1 Ala. 612, 616-17 (1840)).

> In *Andrews* v. *State*, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly or privately, without regard to time or place, or circumstances," violated the state constitutional provision (which the court equated with the *Second Amendment*). That was so even though the statute did not restrict the carrying of long guns. See also *State v. Reid,* ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional").

Id. (internal citations omitted).

Further support for the right to public carry in some manner, either open or concealed, appears in legal treatises cited by *Heller*. *See*, *e.g.*, William Blackstone, *The American Students' Blackstone* 84 n.11 (G. Chase ed. 1884) ("[I]t 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* . . . ."), cited in *Heller*, 554 U.S. at 626 (emphasis added).

So *Heller* confirms that this country has historically required government to make available to all law-abiding, competent adults some manner to generally be armed for self-defense in public. And, in noting that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" would be "presumptively lawful," *Heller* reaffirms a right to publicly bear arms exists today. 554 U.S. at 627 n.26. For, it implies that forbidding the carrying of firearms in "non-sensitive" places is *not* "presumptively lawful" and that even in "sensitive

places" the "presumption" may be overcome. If the right were limited to the home, this "sensitive places" qualifier to public carry would be superfluous. Even Justice Stevens concedes the *Heller* majority's view of the Second Amendment includes a right of law-abiding adults to carry arms in public for self-defense purposes and that laws broadly denying that right are likely to fall: "Given the presumption that most citizens are law abiding, and the reality that the need to defend oneself may suddenly arise in a host of locations outside the home, I fear that the District's policy choice may well be just the first of an unknown number of dominoes to be knocked off the table." *Heller*, 554 U.S. at 679-80 (Stevens, J., dissenting).

Recognizing *Heller*'s observations correctly, several district courts have definitively confirmed the right of law-abiding adults to publicly bear arms.[7] *See e.g., Bateman v. Perdue*, No. 10-265, 2012 WL 3068580, at *4 (E.D. N.C. Mar. 29, 2012) (the right to bear arms "is not strictly limited to the home environment but extends in some form to wherever [militia] activities or [self-defense or hunting] needs occur") (citations omitted); *United States v. Weaver*, No. 09-00222, 2012 WL 727488, at *4 n.7 (S.D. W. Va. Mar. 6, 2012) ("The fact that courts may be reluctant to recognize the protection of the Second Amendment outside the home says more about the courts than the Second Amendment. Limiting this fundamental right to the home would be akin to limiting the protection of First Amendment freedom of speech to political speech or college campuses"); *Woollard v. Sheridan*, No. 10-02068, 2012 WL 695674, at *7 (D. Md. Mar. 2,

[7] Plaintiffs cite district court cases from other jurisdictions because, due to its nascent state, Second Amendment jurisprudence offers little by way of binding precedent beyond *Heller* and *McDonald*. And, Plaintiffs wish to provide this Court cases showing the California district courts to have ruled on this issue conflict with a growing consensus that there is a right to armed self-defense in public.

2012) ("the right to bear arms is not limited to the home.").[8]

While some courts have gone astray by either limiting the right to the home, accepting the non sequitur that because in-home firearm possession is a "core right" public possession cannot be, and/or wrongly applying means-ends scrutiny (or the wrong version thereof), this Court now has the opportunity to adopt an approach consistent with *Heller* and *McDonald*. In doing so, this Court should find that, while government may regulate carrying arms, the Second Amendment as historically recognized requires allowing law-abiding, competent adults some manner to be publicly "armed and ready" "in case of confrontation." In California, that manner is a Carry License, which Sheriff Hutchens wrongly denies Plaintiffs.

D. If the Court Employs a Means-Ends Test, Strict Scrutiny Must Apply Because Core Second Amendment Activity Is Involved

1. Laws Impinging Upon Fundamental Rights Warrant Strict Scrutiny

When a law interferes with fundamental constitutional rights, it is subject to "strict judicial scrutiny." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 54, 100 S. Ct. 948, 960, 74 L. Ed. 2d 794 (1983) ("strict scrutiny [is] applied when government action impinges upon a fundamental right protected by the Constitution"). *McDonald* laid to rest any doubt about the fundamental nature of the right to bear arms, declaring "the right to bear arms was fundamental to the newly formed system of government." 130 S. Ct. at 3037; *accord id.* at 3042. And the Supreme Court has made clear the Second Amendment does not deserve a lesser status from other rights. *See id.* at 3043 (plurality op.) ("what [respondents] must mean is that the Second Amendment should be singled out for special–and specially unfavorable–treatment. We reject that suggestion."); *see also id.* at 3044 (rejecting plea to "treat the right recognized in *Heller* as a second-class right,

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[8] Though these courts mostly interpreted the Second Amendment's scope accurately, they incorrectly applied means-ends scrutiny.

subject to an entirely different body of rules than the other Bill of Rights guarantees"). In short, the "default" standard of review for restrictions on fundamental rights must be strict scrutiny. The right to bear arms is no exception.

2. *Heller* Rejects Rational Basis and Interest Balancing Tests

Heller did not explicitly state strict scrutiny is required of laws that restrict rights protected by the Second Amendment because the Court eschewed levels of scrutiny in favor of the scope-based, historical approach outlined above. *Heller* nonetheless points clearly to strict scrutiny as the standard that *would* be required in a levels-of-scrutiny framework, if ever appropriate. *McDonald*'s confirming the fundamental nature of the right to arms eliminated any doubt on that score. So, while *Heller* and *McDonald might* leave open a debate between strict scrutiny and the sui generis historical approach they applied, they foreclose any debate between strict scrutiny and some lesser standard, at least where core conduct is at issue.

Even before *McDonald* confirmed the right to arms as fundamental, the inadequacy of intermediate scrutiny was clear from *Heller*, itself. *Heller* explicitly rejected not only rational basis review, but also Justice Breyer's "interest-balancing" approach. 544 U.S. at 628 n.27; *see also McDonald*, 130 S. Ct. at 3050 (plurality op.) ("while [Justice Breyer's] opinion in *Heller* recommended an interest-balancing test, the Court specifically rejected that suggestion"). Justice Breyer's approach assumes the government's interest in regulating firearms—some version of protecting public safety—would always be compelling. Thus, in his view, whether the level of scrutiny were strict (requiring a compelling government interest) or intermediate (requiring only an important one), the government interest would always qualify, and the analysis would really turn on a search for the appropriate degree of fit, which Justice Breyer described as interest-balancing. *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting).

Terminology aside, however, Justice Breyer's approach in substance is simply intermediate scrutiny. Justice Breyer relied on cases such as *Turner*

Broadcasting Systems, Inc. v. FCC, 520 U.S. 180, 114 S. Ct. 2445, 129 L. Ed. 2d 497 (1997), and *Thompson v. Western States Medical Center*, 535 U.S. 357, 122 S. Ct. 1497, 152 L. Ed. 2d 563 (2002), which explicitly apply intermediate scrutiny. *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting). Even more revealingly, Justice Breyer invoked *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992), the case on which the United States principally relied in advocating that the Court adopt intermediate scrutiny. *Heller*, 554 U.S. at 690 (Breyer, J., dissenting); Brief for United States as Amicus Curiae at 8, 24, 28, *Heller*, 554 U.S. 570 (No. 07-290). Because Justice Breyer's interest-balancing amounted to intermediate scrutiny and the Court rejected it (and reaffirmed that rejection in *McDonald*), it would be inappropriate for this Court to adopt intermediate scrutiny as the standard for judging Sheriff Hutchens' policy.

In short, because Sheriff Hutchens' policy intentionally and directly denies most law-abiding, competent adults their right to bear arms for self-defense in most public places, this Court need not adopt any particular standard of review or venture beyond the scope-based analysis applied in *Heller* and *McDonald* to determine Plaintiffs will likely prevail in striking down that policy. But if the Court finds a means-ends approach is warranted, strict scrutiny must apply.

E. Sheriff Hutchens' Policy Cannot Survive Any Heightened Standard of Review Because It Is Not Tailored to Serve, Nor Does It Serve, a Legitimate Government Interest

1. The Sheriff's Policy Prohibits Almost All Residents from Exercising Their Right to Carry Arms in Public for Self-Defense; It Is Not Tailored to Serve *Any* Interest

Under heightened scrutiny, the presumption of validity is reversed, with the challenged law presumed unconstitutional. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382,112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992) (content-based speech regulations are presumptively invalid). As the party with the burden of proof, Sheriff Hutchens must establish "beyond controversy" that her policy satisfies each element of the applicable heightened scrutiny test to pass constitutional

muster. *See S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010) ("[U]nless the conduct at issue is not protected by the Second Amendment at all, the Government bears the burden of justifying the constitutional validity of the law.").

To prevail under strict scrutiny, Sheriff Hutchens must prove that her policy of denying Carry Licenses to responsible, law-abiding people like Plaintiffs – unless they demonstrate a special need for one – is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). Under this standard, the Sheriff is not unbound in asserting her compelling interest. Courts do not generally allow legislative fact-finding to undermine a fundamental right. *See Landmark Commc'ns v. Virginia*, 435 U.S. 829, 843, 98 S. Ct. 1535, 56 L. Ed. 2d 1 (1978) ("Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake.").

Under intermediate scrutiny, Sheriff Hutchens must prove her policy "is substantially related to achievement of an important governmental purpose." *Stop H-3 Ass'n v. Dole,* 870 F.2d 1419, 1429 n.20 (9th Cir. 1989). Although the means she chooses to advance her goal need not be the *least* restrictive alternative, they must nevertheless be "narrowly tailored" to the state's goal. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989). To be valid, a regulation must "directly advance[] the governmental interest asserted, and . . . not [be] more extensive than is necessary to serve that interest." *C. Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980).

Even this relatively relaxed standard does not tolerate "categorical exclusion . . . in total disregard of . . . individual merit." *United States v. Virginia*, 518 U.S. 515, 546, 116 S. Ct. 2264, 5 L. Ed. 2d 735 (1996). Sheriff Hutchens' policy denies Carry Licenses to most people, even if they (i) are trained, (ii) are law-abiding, (iii) pass a criminal background check, and (iv) are found to be of

"good moral character," merely because they have not been targeted for violence recently. That last condition – the only thing standing between Plaintiffs and a Carry License – sweeps far too broadly to be considered "narrowly tailored" – or tailored at all – under intermediate or strict scrutiny.

In sum, even if Sheriff Hutchens were able to show her policy furthers some compelling government interest, she would be unable to show that it is tailored to that end. The policy effectively bans public carry for most residents, including Plaintiffs. Additionally, if the goal is to reduce accidental or unlawful shootings, then there are less restrictive means to do so including, e.g., requiring applicants to pass background checks and safety-oriented handgun training courses. Finally, the Sheriff's policy directly conflicts with the right to arms. The constitutional "default position" is that all law-abiding citizens have a right to carry arms for self-defense, subject to some reasonable restrictions tailored to a specific government interest – restrictions that still allow most citizens a manner in which to exercise their right. Sheriff Hutchens' policy gets things backward. It assumes all residents are prohibited from carrying arms and then grants exceptions to certain persons who meet her subjective "good cause" standard. That is the opposite of tailoring, thus rendering the policy invalid regardless of its purpose.

2. Sheriff Hutchens' Policy Does Not Actually Serve Any Legitimate Governmental Interest

The Supreme Court has emphasized that, even under intermediate scrutiny, government cannot "get away with shoddy data or reasoning" and "evidence must fairly support [its] rationale for its ordinance." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002). Mere "lawyers' talk" unsupported by evidence is insufficient. *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460, 463 (7th Cir. 2009). Even a case cited approvingly by the *Heller* dissent states government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc.*, 512 U.S. at 235.

Sheriff Hutchens thus cannot simply assert that the compelling interest of public safety is furthered by her policy. She must prove it. If this Court holds the Sheriff to that burden of proof, she cannot meet it. There simply is no evidence her policy furthers public safety. Concern about license-holders committing crimes or accidents is "mere conjecture" and has been repudiated, repeatedly. Empirical evidence gathered over many years shows such public safety concerns are unfounded. While gun crime is a serious problem, issuing Carry Licenses to law-abiding adults does not exacerbate it and, in fact, may reduce crime.

A recently published law review article, examining whether restricting law-abiding individuals' access to Carry Licenses furthers the government's public safety interest, finds overwhelmingly that it does not:

> There have been a total of 29 peer reviewed studies by economists and criminologists, 18 supporting the hypothesis that shall-issue laws reduce crime, 10 not finding any significant effect on crime, including the NRC report, and [Aneja, Donohue, and Zhang]'s paper, using a different model and different data, finding that right-to-carry laws temporarily increase one type of violent crime, aggravated assaults.

John R. Lott, Jr., *What a Balancing Test Will Show for Right-to-Carry Laws*, 71 Md. L. Rev. 1205, 1206 (2012). Based on its extensive research on the issue, the article concludes that:

> If right-to-carry laws either reduce crime or leave it unchanged and if no one argues that they lead to more accidental gun deaths or suicides, regulations prohibiting people from carrying concealed handguns cannot withstand either strict or intermediate scrutiny.

Id.

Likewise, the *Woollard* court, even when applying the incorrect "intermediate scrutiny" standard, held that:

> A law that burdens the exercise of an enumerated constitutional right by simply making that right more difficult to exercise cannot be considered 'reasonably adapted' to a government interest, no matter how substantial that interest may be. Maryland's goal of 'minimizing the proliferation of handguns among those who do not have a demonstrated need for them,' is not a permissible method of preventing crime or ensuring public safety; it burdens the right too broadly.

Woollard, 2012 WL 695674, at *11.

Thus, the Sheriff's policy fails heightened scrutiny on multiple grounds. First, it is not narrowly tailored to serve *any* particular purpose. Rather, it operates as a broad ban on public carry. Second, the public safety rationale (fewer Carry Licenses equals less crime) lacks any evidentiary support; in fact, the evidence cuts the other way. Finally, the Sheriff's policy generally seeks to bar law-abiding citizens from carrying firearms for self-defense unless they show a "special need," while the Second Amendment seeks to protect the right of all law-abiding citizens "to possess and carry [firearms] in case of confrontation" for self-defense. *Heller*, 554 U.S. at 592. The two cannot be reconciled, as explained by the *Woollard* court. *Woollard,* 2012 WL 695674, at *11-12. One protects a citizen's right to carry arms, the other strips citizens of that right.

F. Sheriff Hutchens' Policy Violates the Equal Protection Clause Facially and as Applied to Plaintiffs Regardless of Whether It Violates the Second Amendment Per Se

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985) (citation omitted). Strict scrutiny applies to government classifications that "impinge on personal rights protected by the Constitution." *Id.* at 440 (citations omitted). "Where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized." *Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th Cir. 1995) (quoting *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 1083, 16 L. Ed. 169 (1966), and citing *Kramer v. Union Free School Dist.*, 395 U.S. 621, 633, 89 S. Ct. 1886, 1892, 23 L. Ed. 2d 583 (1969)).

As these cases make clear, all law-abiding persons are similarly situated in their worthiness to exercise fundamental rights. Since carrying arms is undisputably protected activity under the Second Amendment, *Heller*, 554 U.S. at

595, even if assuming *arguendo* that curtailing *all* peoples' ability to generally carry arms in public is a valid government power, by allowing some people to generally carry a handgun in public (i.e., exercise a *superior form* of the right) while limiting all others to only carrying within their homes or in an emergency, Sheriff Hutchens' policy still violates the Equal Protection Clause unless it meets strict scrutiny; once certain people are granted the right to carry publicly, all qualified persons are entitled to do so. *Cf. Kramer*, 395 U.S. at 628-29 (holding that even though it need not be granted, once the franchise is granted to the electorate, lines inconsistent with the Equal Protection Clause may not be drawn). The classification created by the Sheriff's policy cannot meet strict scrutiny for the reasons described above. It is exactly the type of ill the authors of the Fourteenth Amendment sought to remedy. The Freedmen's Bureau bill guaranteed "full and equal benefit of all laws and proceedings [for the security of person and estate], including the constitutional right to bear arms." *See McDonald*, 130 S. Ct. at 3040.

Thus, even if this Court finds Plaintiffs unlikely to prevail on their Second Amendment claim, they are still likely to do so on their Equal Protection claim because no legitimate governmental interest is furthered by treating law-abiding, competent persons differently in their access to the fundamental right to armed defense based on their current threat level subjectively determined by the Sheriff.

G. Alternatively, California's "Good Cause" Provision Itself Facially Violates the Second Amendment and Equal Protection Clause

While Plaintiffs believe it is Sheriff Hutchens' chosen policy for applying California Penal Code section 26150(a)(2)'s "good cause" provision that causes their injury and not that provision itself, even if the Court finds Sheriff Hutchens' policy blameless, the Court should find section 26150(a)(2) to be a facially unconstitutional precondition on the right to armed self-defense for the same reasons provided against Sheriff Hutchens' policy explained above. For, requiring competent, law-abiding adults like Plaintiffs to prove they have "good cause" to exercise a right beyond self-defense is anathema to the nature of a right; it instead

constitutes a privilege granted at the behest of the Sheriff. No textual or historical justification exists for doing so with any fundamental right, let alone the Second Amendment. And, drawing on the First Amendment (as the Supreme Court has done), construing California Penal Code section 26150(a)(2) as conferring discretion on Sheriff Hutchens to determine what constitutes "good cause" to exercise the right to bear arms may create the equivalent of an unlawful prior restraint. A permissible prior restraint must not place "unbridled discretion in the hands of a government official or agency" and must not allow "a permit or license [to] be granted or withheld in the discretion of such official." *Staub v. City of Baxley*, 355 U.S. 313, 322, 78 S. Ct. 277, 2 L. Ed. 2d 302 (1958).

Moreover, the "good cause" provision necessarily creates a classification of Orange County residents, including Plaintiffs, who are deprived of their Second Amendment right to bear arms generally in public because they cannot meet the Sheriff's standard of "good cause" for a Carry License, regardless of whether they are competent and law-abiding, while the rights of other classes of competent, law-abiding Orange County residents are not so infringed. As such, it facially violates the Equal Protection Clause, for the same reasons explained above.

In sum, whether the Court finds that it is Plaintiffs' facial or as applied challenge to Sheriff Hutchens' policy on either Second Amendment or Equal Protection Clause grounds, or their facial challenge to California Penal Code section 26150(a)(2)'s "good cause" provision on either Second Amendment or Equal Protection Clause grounds, to be the proper one here, Plaintiffs are likely to succeed on the merits regardless.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT ISSUED

Generally speaking, once a plaintiff shows a likelihood of success on the merits for a constitutional claim, irreparable harm is presumed. 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no

further showing of irreparable injury is necessary.") Federal courts have routinely imported the First Amendment's "irreparable-if-only-for-a-minute" concept to cases involving other constitutional rights and, in doing so, have held a deprivation of these rights constitutes irreparable harm, per se. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (citing *Associated Gen. Contractors v. Coal. For Econ. Equity*, 950 F.2d, 1401, 1412 (9th Cir. 1991)). Further, the Supreme Court has made clear the Second Amendment should be treated no differently. *See McDonald*, 130 S. Ct. at 3043, 3044; *see also Ezell v. City of Chicago*, 651 F.3d 684, 700 (7th Cir. 2011) (holding deprivations of Second Amendment rights "irreparable and having no adequate remedy at law.")

Here, Plaintiffs have established a likelihood of success on the merits of their constitutional claims, and irreparable harm should be presumed.

III. THE BALANCE OF EQUITIES TIPS IN PLAINTIFFS' FAVOR AND PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST

Plaintiffs have suffered and, if this motion is not granted, will continue to suffer the deprivation of their fundamental Second Amendment rights. They are likely to succeed on the merits of their constitutional claims, and the harm invited upon them is irreparable. *See supra* Parts I-II. Yet, not only are Plaintiffs' Second Amendment rights at stake in this action. Any Orange County residents wishing to exercise their Second Amendment right to bear arms who cannot show a "special need" to do so that is acceptable to Sheriff Hutchens can also be unconstitutionally prohibited from exercising that right by the Sheriff's "good cause" policy.

The Ninth Circuit has held that when plaintiffs challenge state action that affects the general public seeking to exercise constitutional rights, as Plaintiffs do here for Orange County residents seeking a Carry License, "the balance of equities and the public interest thus tip sharply in favor of enjoining the ordinance." *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). And the Sheriff "cannot reasonably assert that [she] is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Haynes v. Office of the Attorney*

General Phill Kline, 298 F. Supp. 2d 1154, 1160 (D. Kan. Oct. 26, 2004) (citing *Zepeda v. U.S. Immig. & Naturaliz. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983)).

Moreover, as explained above, no valid interest is actually furthered by Sheriff Hutchens' policy because there is no evidence that restricting issuance of Carry Licenses to law-abiding, competent adults actually increases public safety. And little burden is imposed on the Sheriff by the temporary relief Plaintiffs seek. She would merely be precluded from denying self-defense as "good cause" for a Carry License.[9] Doing so would actually entail *less* work for her department, since investigation and scrutiny concerning applicants' cause for a license would generally be unnecessary.

The relief Plaintiffs seek is not extreme. To the contrary, Plaintiffs are merely asking that Sheriff Hutchens join the overwhelming majority of Carry License issuing authorities throughout the nation, in recognizing that law-abiding people are entitled to carry a handgun for self-defense. At least forty states issue Carry Licenses in the manner Plaintiffs assert Sheriff Hutchens must issue them, while four states do not even require licenses to carry handguns at all. (Lott, *supra*, at 1208 n.16; *see also* Pls.' Req. Judicial Notice, Exs. A through PP.) Only Illinois and the District of Columbia do not issue Carry Licenses in any manner. Lott, *supra*, at 1207. In issuing so restrictively, Sheriff Hutchens shares company with only a few states and maybe a dozen or so California counties. She is in a marked minority.

CONCLUSION

Once it is acknowledged that the Supreme Court has declared armed self-defense as the very core of Second Amendment rights and that the right to be "armed and ready" for a self-defense confrontation extends beyond the home, the

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[9] Plaintiffs are informed and believe and herein allege that the *majority* of California sheriffs already issue Carry Licenses in this manner.

outcome of this case is obvious – at least if the Second Amendment right to arms is afforded the same respect as other fundamental, enumerated rights. For, while it is certainly true that a legislature may impose limited restrictions on the exercise of constitutional rights, e.g., limiting its exercise to virtuous, competent citizens to possess arms in common use and in non-sensitive places, it cannot deny such rights generally. Sheriff Hutchens' "good cause" policy does just that. It bars *all* otherwise qualified, law-abiding applicants from obtaining a Carry License unless they can show an "extraordinary need" to exercise their Second Amendment right to be "armed and ready" for a self-defense confrontation outside the home, a need beyond a general desire for self protection. No other fundamental, enumerated right requires such a showing before one can exercise it.

Consequently, Plaintiffs are likely to prevail on their complaint challenging the constitutionality of Sheriff Hutchens' "good cause" policy for the reasons and on the grounds stated herein. Irreparable harm is presumed because Plaintiffs seek to vindicate their fundamental rights. And, the temporary relief they seek furthers both the public interest, by restoring their fellow Orange County residents' Second Amendment rights, and equity, by treating law-abiding, competent people equally in the enjoyment of their fundamental rights without detriment to the Sheriff.

Plaintiffs respectfully ask the Court to grant this motion and enjoin Sheriff Hutchens' enforcement of her "good cause" policy pending the outcome of this litigation to the extent her policy requires Carry License applicants to show "good cause" for a Carry License beyond a desire for general self-defense.

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