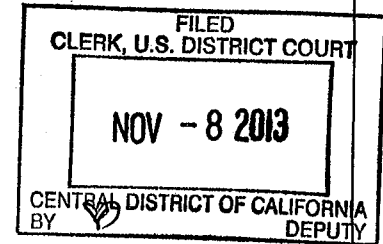


1 Charles Nichols
2 PO Box 1302
3 Redondo Beach, CA 90278
4 Voice: (424) 634-7381
5 E-Mail: CharlesNichols@Pykrete.info
6 In Pro Per



7
8 United States District Court
9 Central District of California
10

11 Charles Nichols,
12 PLAINTIFF,
13 vs.
14 KAMALA D. HARRIS, Attorney
15 General, in her official capacity as
16 Attorney General of California
17
18 Defendant.

) Case No.: CV-11-9916 SJO (SS)
) **PLAINTIFF NICHOLS' NOTICE**
) **OF LODGING OF PROPOSED**
) **STATEMENT OF**
) **UNCONTROVERTED FACTS AND**
) **CONCLUSIONS OF LAW;**
) **EVIDENCE IN SUPPORT**

) [L.R. 56-1]

) Date: December 17, 2013
) Time: 10:00 am
) Crtrm: 23 - 3rd Floor
) Magistrate Judge: Suzanne H. Segal
) District Judge: S. James Otero
) Trial Date: None
) Action Filed: November 30, 2011

21
22
23
24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25
26 PLEASE TAKE NOTICE that pursuant to Local Rule 56-1 Plaintiff Nichols,
27 In Pro Per, hereby lodges his separate statement of uncontroverted facts and
28 conclusions of law.

1 Dated: November 8, 2013

Respectfully submitted,

2 

3 By: Charles Nichols
4 PLAINTIFF in Pro Per
5 PO Box 1302
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CERTIFICATE OF SERVICE

On this, the 8th day of November, 2013, I caused to be served a copy of the foregoing **PLAINTIFF NICHOLS' NOTICE OF LODGING OF PROPOSED STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW; EVIDENCE IN SUPPORT** by US Mail on:

Jonathan Michael Eisenberg
Office of the California Attorney General
Government Law Section
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
213-897-6505
213-897-1071 (fax)
jonathan.eisenberg@doj.ca.gov

LEAD ATTORNEY / ATTORNEY TO BE NOTICED representing Kamala D Harris
(Defendant).

Executed this the 8th day of November, 2013 by:

A handwritten signature in black ink, appearing to read 'Charles Nichols', is written over a horizontal line.

Charles Nichols

1 Charles Nichols
2 PO Box 1302
3 Redondo Beach, CA 90278
4 Voice: (424) 634-7381
5 E-Mail: CharlesNichols@Pykrete.info
6 In Pro Per
7
8
9
10

United States District Court
Central District of California

11 Charles Nichols,

12 PLAINTIFF,

13 vs.

14 KAMALA D. HARRIS, Attorney

15 General, in her official capacity as

16 Attorney General of California

17
18 Defendant.
19
20
21

Case No.: CV-11-9916 SJO (SS)

**PLAINTIFF CHARLES NICHOLS'
SEPARATE STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW;
EVIDENCE IN SUPPORT
THEREOF**

[L.R. 56-1]

**[Filed concurrently with Notice of
Motion and Motion for Partial
Summary Judgment, Memorandum
of Points and Authorities, Proposed
Order and Declaration of Plaintiff
Charles Nichols]**

22 Plaintiff Charles Nichols, In Pro Per, respectfully submits the following
23 Statement of Uncontroverted Facts and Conclusions of Law pursuant to Local Rule
24 56-1 in support of his Motion for Partial Summary Judgment. Plaintiff contends
25 that there is no issue about the following material facts.
26
27
28

I. STATEMENT OF UNCONTROVERTED FACTS

<u>Undisputed Fact</u>	<u>Support for Undisputed Fact</u>
<p>1. California law bans the Open Carry of loaded firearms in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory. In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section. There is no enumerated exemption within this statute.</p>	<p>1. Cal. Penal Code § 25850. Exhibit A - Brief Of Respondent California Attorney General Kamala D. Harris – Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203 – Appellate Dkt #13. pg 3. Dkt., #96 pg 1, lines 22-23.</p>
<p>2. California law bans the Open Carry of unloaded handguns in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited</p>	<p>2. Cal. Penal Code § 26350. Exhibit B - Brief Of Respondent California Attorney General Kamala D. Harris – Nichols v. Brown 9th Circuit Court of Appeals No. 13-56203 –</p>

1 area of unincorporated territory. There
 2 is no enumerated exemption within this
 3 statute. A violation of subparagraph
 4 (A) of paragraph (1) of
 5 subdivision (a) is punishable by
 6 imprisonment in a county jail not
 7 exceeding one year, or by a fine not to
 8 exceed one thousand dollars (\$1,000),
 9 or by both that fine and imprisonment,
 10 if both of the following conditions
 11 exist:

12 (A) The handgun and unexpended
 13 ammunition capable of being
 14 discharged from that handgun are in
 15 the immediate possession of that
 16 person.

17 (B) The person is not in lawful
 18 possession of that handgun.
 19 Otherwise, a violation of this
 20 section is a misdemeanor.

21 3. California law bans the Open Carry
 22 of unloaded firearms, other than
 23 handguns, in any public place or on
 24 any public street in an incorporated city
 25 outside a vehicle while in the
 26 incorporated city or city and county. A
 27 violation is punishable by
 28 imprisonment in a county jail not

Appellate Dkt #13. pg 5.

Dkt., #96 pg 1, lines 22-23.

3. Cal. Penal Code § 26400.

Exhibit B - Brief Of Respondent
 California Attorney General Kamala D.
 Harris – Nichols v. Brown 9th Circuit
 Court of Appeals No. 13-56203 –
 Appellate Dkt #13. pg 5.

1 exceeding one year, or by a fine not to
 2 exceed one thousand dollars (\$1,000),
 3 or by both that fine and imprisonment,
 4 if the firearm and unexpended
 5 ammunition capable of being
 6 discharged from that firearm are in the
 7 immediate possession of the person
 8 and the person is not in lawful
 9 possession of that firearm. Otherwise,
 10 a violation of this section is a
 11 misdemeanor. There is no enumerated
 12 exemption within this statute.

13 4. California law bans the carrying of
 14 concealed firearms. There is no
 15 enumerated exemption within this
 16 statute.

17 5. California law theoretically
 18 provides for the entirely discretionary
 19 issuance of a license to carry loaded
 20 and exposed in only that county a
 21 pistol, revolver, or other firearm
 22 capable of being concealed upon the
 23 person where the population of the
 24 county is less than 200,000 persons
 25 according to the most recent federal
 26 decennial census.

27 6. California law theoretically
 28 provides for the entirely discretionary

4. Cal. Penal Code § 25400.

5. Cal. Penal Code § 26150 through
 26225, inclusive.

6. Cal. Penal Code § 26150 through
 26225, inclusive.

1 issuance of a license to carry a pistol,
 2 revolver, or other firearm capable of
 3 being concealed upon the person,
 4 loaded or unloaded. A person must be
 5 a resident of the city, city and county,
 6 or county unless the applicant's
 7 principal place of employment or
 8 business is in the county or a city
 9 within the county and the applicant
 10 spends a substantial period of time in
 11 that place of employment or business.

12 7. Absent permission, California law
 13 generally prohibits the possession of
 14 firearms within 1,000 feet of a K-12
 15 public or private school or on the
 16 grounds of a college or university.

7. Cal. Penal Code § 626.9

17 8. Absent permission, California law
 18 generally prohibits the possession of
 19 firearms within the State Capitol or
 20 grounds of the Governor's mansion.

8. Cal. Penal Code § 171c, 171d.

21 9. California law generally prohibits
 22 the possession of firearms within the
 23 sterile area of an airport or a passenger
 24 vessel terminal.

9. Cal. Penal Code § 171.5

25 10. Absent permission, California law
 26 generally prohibits the possession of
 27 firearms within any state or local
 28 public building or at any meeting

10. Cal. Penal Code § 171b.

1 required to be open to the public
 2 pursuant to Chapter 9 (commencing
 3 with Section 54950) of Part 1 of
 4 Division 2 of Title 5 of, or Article 9
 5 (commencing with Section 11120) of
 6 Chapter 1 of Part 1 of Division 3 of
 7 Title 2 of, the Government Code. This
 8 includes court houses and persons
 9 otherwise exempt if they are a party to
 10 an action pending before the court.

11 11. A firearm shall be deemed loaded
 12 for the purposes of Sections 171c and
 13 171d whenever both the firearm and
 14 unexpended ammunition capable of
 15 being discharged from such firearm are
 16 in the immediate possession of the
 17 same person.

18 12. California law generally prohibits
 19 the possession of firearms within the
 20 sterile area of a public transit facility.

21 13. An act or omission that is
 22 punishable in different ways by
 23 different provisions of law shall be
 24 punished under the provision that
 25 provides for the longest potential term
 26 of imprisonment, but in no case shall
 27 the act or omission be punished under
 28 more than one provision. An acquittal

11. Cal. Penal Code § 171e.

12. Cal. Penal Code § 171.7

13. Cal. Penal Code § 654

1 or conviction and sentence under any
2 one bars a prosecution for the same act
3 or omission under any other.

4 14. California law generally prohibits
5 the possession of firearms not
6 immediately recognizable as a firearm.

14. Cal. Penal Code § 24510

7 15. California law generally prohibits
8 the possession of any undetectable
9 firearm.

15. Cal. Penal Code § 24610

10 16. A license to Carry A Pistol,
11 Revolver, or Other Firearm Capable of
12 Being Concealed Upon the Person
13 shall not be issued if the Department of
14 Justice determines that the person is
15 prohibited by state or federal law from
16 possessing, receiving, owning, or
17 purchasing a firearm.

16. Cal. Penal Code § 26195

18 17. A license to carry loaded and
19 exposed a pistol, revolver, or other
20 firearm capable of being concealed
21 upon the person is revoked
22 immediately upon a change of the
23 licensee's place of residence to another
24 county.

17. Cal. Penal Code § 26210

25 18. California Penal Code section
26 26400 does not apply to, or affect, the
27 carrying of an unloaded firearm that is
28 not a handgun when the firearm is

18. Cal. Penal Code § 26405

1 either in a locked container or encased
 2 and it is being transported directly
 3 between places where a person is not
 4 prohibited from possessing that firearm
 5 and the course of travel shall include
 6 only those deviations between
 7 authorized locations as are reasonably
 8 necessary under the circumstances.

9 19. A minor shall not possess a pistol,
 10 revolver, or other firearm capable of
 11 being concealed upon the person.

19. Cal. Penal Code § 29610

12 20. The Attorney General maintains an
 13 online database known as the
 14 Prohibited Armed Persons File. The
 15 purpose of the file is to cross-reference
 16 persons who have ownership or
 17 possession of a firearm on or after
 18 January 1, 1991, as indicated by a
 19 record in the Consolidated Firearms
 20 Information System, and who,
 21 subsequent to the date of that
 22 ownership or possession of a firearm,
 23 fall within a class of persons who are
 24 prohibited from owning or possessing a
 25 firearm.

20. Cal. Penal Code § 30000

26 21. California law generally prohibits
 27 the possession of "assault weapons"
 28 and .50 BMG rifles.

21. Cal. Penal Code § 30605

1	22. California law generally prohibits	22. Cal. Penal Code § 32625
2	the possession of machineguns.	
3	23. California prohibits prisoners from	23. Cal. Penal Code § 4502
4	possessing firearms.	
5	24. The California Attorney General's	24. Exhibit C.
6	Department of Justice publication titled	
7	"FIREARMS PROHIBITING	
8	CATEGORIES" lists many categories	
9	of persons prohibited from possessing	
10	a firearm under state and Federal law	
11	including convicted felons and many	
12	categories of misdemeanor convictions.	
13	25. California law generally prohibits	25. Cal. Penal Code § 25300
14	possession of a firearm when the	
15	person carries a firearm in a public	
16	place or on any public street while	
17	masked so as to hide the person's	
18	identity.	
19	26. California Penal Code section	26. Cal. Penal Code § 25640 & 25610
20	25400 does not apply to, or affect,	
21	licensed hunters or fishermen carrying	
22	pistols, revolvers, or other firearms	
23	capable of being concealed upon the	
24	person while engaged in hunting or	
25	fishing, or transporting those firearms	
26	unloaded when going to or returning	
27	from the hunting or fishing expedition.	
28	However, the firearm must be within a	

1 motor vehicle and locked in the
 2 vehicle's trunk or in a locked container
 3 in the vehicle or the firearm is carried
 4 by the person directly to or from any
 5 motor vehicle for any lawful purpose
 6 and, while carrying the firearm, the
 7 firearm is contained within a locked
 8 container.

9 27. California Penal Code section
 10 26350 does not apply to, or affect, the
 11 open carrying of an unloaded handgun
 12 by a licensed hunter while engaged in
 13 hunting or while transporting that
 14 handgun when going to or returning
 15 from that hunting expedition.

16 28. According to California Penal
 17 Code section 26040, nothing in
 18 California Penal Code section 25850
 19 shall prevent any person from carrying
 20 a loaded firearm in an area within an
 21 incorporated city while engaged in
 22 hunting, provided that the hunting at
 23 that place and time is not prohibited by
 24 the city council. PC 26040 does not
 25 require that one be a licensed hunter.

26 29. Nothing in California Penal Code
 27 section 25850 shall prevent any person
 28 from storing aboard any vessel or

27. Cal. Penal Code § 26366

28. Cal. Penal Code § 26040

29. Cal. Penal Code § 26060

1 aircraft any loaded or unloaded rocket,
 2 rocket propelled projectile launcher, or
 3 similar device designed primarily for
 4 emergency or distress signaling
 5 purposes, or from possessing that type
 6 of a device while in a permitted
 7 hunting area or traveling to or from a
 8 permitted hunting area and carrying a
 9 valid California permit or license to
 10 hunt.

11 30. The text of California Penal Code
 12 sections 25850, 26350, 26400, 26150,
 13 26165, 26155, 26160, 26175, 26180,
 14 26185, 26190, 26200, 26202, 26205,
 15 26210, 26215, 26220, 17030, were
 16 filed in this case.

17 31. The first page of California Senate
 18 Bill 1080 "Deadly Weapons
 19 Recodification Act of 2010" states "SB
 20 1080, Committee on Public Safety.
 21 Deadly weapons. Existing law
 22 generally regulates deadly weapons.
 23 This bill would reorganize without
 24 substantive change the provisions of
 25 the Penal Code relating to deadly
 26 weapons, to be operative January 1,
 27 2012.

28 32. A judicial decision determining the

30. Dkt #88, Exhibits 1-18.

31. Dkt #88, Exhibit 19-1

32. Cal. Penal Code § 16025(a)

1 constitutionality of a previously
 2 existing provision is relevant in
 3 determining the constitutionality of any
 4 provision of this part, of Title 2
 5 (commencing with Section 12001) of
 6 Part 4, or any other provision of the
 7 Deadly Weapons Recodification Act of
 8 2010, which restates and continues that
 9 previously existing provision.

10 33. In enacting the Deadly Weapons
 11 Recodification Act of 2010, the
 12 Legislature has not evaluated the
 13 constitutionality of any provision
 14 affected by the act, or the correctness
 15 of any judicial decision determining
 16 the constitutionality of any provision
 17 affected by the act.

33. Cal. Penal Code § 16025(b)

18 34. The Deadly Weapons
 19 Recodification Act of 2010 is not
 20 intended to, and does not, reflect any
 21 determination of the constitutionality
 22 of any provision affected by the act.

34. Cal. Penal Code § 16025(c)

23 35. Every person who carries a loaded
 24 or unloaded firearm on his or her
 25 person, or in a vehicle, during the
 26 commission or attempted commission
 27 of any street gang crimes described in
 28 subdivision (a) or (b) of Section 86.22,

35. Cal. Penal Code § 12021.5(a)

1 shall, upon conviction of the felony or
 2 attempted felony, be punished by an
 3 additional term of imprisonment in the
 4 state prison for one, two, or three years
 5 in the court's discretion. The court shall
 6 impose the middle term unless there
 7 are circumstances in aggravation or
 8 mitigation. The court shall state the
 9 reasons for its enhancement choice on
 10 the record at the time of sentence.

11 36. Every person who carries a loaded
 12 or unloaded firearm together
 13 with a detachable shotgun magazine, a
 14 detachable pistol magazine, a
 15 detachable magazine, or a belt-feeding
 16 device on his or her person, or in a
 17 vehicle, during the commission or
 18 attempted commission of any street
 19 gang crimes described in subdivision
 20 (a) or (b) of Section 186.22, shall, upon
 21 conviction of the felony or attempted
 22 felony, be punished by an additional
 23 term of imprisonment in the state
 24 prison for two, three, or four years in
 25 the court's discretion. The court
 26 shall impose the middle term unless
 27 there are circumstances in aggravation
 28 or mitigation. The court shall state the

36. Cal. Penal Code § 12021.5(b)

1 reasons for its enhancement choice on
2 the record at the time of sentence.

3 37. Unless it is with the written
4 permission of the school district
5 superintendent, the superintendent's
6 designee, or equivalent school
7 authority, no person shall carry
8 ammunition or reloaded ammunition
9 onto school grounds, except sworn law
10 enforcement officers acting within the
11 scope of their duties or persons
12 exempted under Section 25450.

37. Cal. Penal Code § 30310(a).

13 38. California Assembly Bill 144
14 (Effective date 1/1/2012) is filed in this
15 case.

38. Dkt #88 – Exhibit 20

16 39. California Assembly Bill 1527
17 (Effective date 1/1/2013) is filed in this
18 case.

39. Dkt #88 – Exhibit 21

19 40. California Attorney General's
20 Opinions Volume 51 – 1968 pgs 197-
21 201 is filed in this case.

40. Dkt #88 – Exhibit 25

22 41. Excerpts from the California State
23 Archives legislative file of Assembly
24 Bill 1591 ("The Mulford Act of 1967")
25 are filed in this case.

41. Dkt #88 – Exhibits 26-1 through
26-76.

26 42. California Penal Code section
27 25850(a) was formerly codified as PC
28 12031(a)(1).

42. Cal. Penal Code § 25850(a)
Former Cal. Penal Code §
12031(a)(1)

1	43. California Penal Code section	43. Cal. Penal Code § 25850(b)
2	25850(b) was formerly codified as PC	Former Cal. Penal Code §
3	12031(e).	12031(e)
4	44. California Penal Code section	44. Cal. Penal Code § 25850(c)(6)
5	25850(c)(6) was formerly codified as	Former Cal. Penal Code §
6	PC 12031 (a)(2)(F).	(a)(2)(F)
7	45. In 2011, 80.8 percent of homicide	45. Exhibit D – Homicide in
8	victims were male, 19.2 percent were	California 2011 - Attorney General –
9	female.	Department of Justice Publication – pg
10		1 and Table 5 on pg 10.
11	46. In 2011, over half (54.5 percent) of	46. Exhibit D – Homicide in
12	white victims were aged “40 and over.”	California 2011 - Attorney General –
13		Department of Justice Publication – pg
14		1 and Table 9 on pg 12.
15	47. In 2011, of the homicides where	47. Exhibit D – Homicide in
16	location was reported, 35.3 percent	California 2011 - Attorney General –
17	occurred on the street or sidewalk; 24.1	Department of Justice Publication – pg
18	percent in the victim’s residence, and	1 and Table 19 on pg 25.
19	13.5 percent in a residence other than	
20	the victim’s.	
21	48. In 2011, the largest proportion of	48. Exhibit D – Homicide in
22	male victims (40.4 percent) were killed	California 2011 - Attorney General –
23	on the street or sidewalk.	Department of Justice Publication – pg
24		1 and Table 19 on pg 25.
25	49. From 2002 to 2011, the	49. Exhibit D – Homicide in
26	overwhelming majority of homicide	California 2011 - Attorney General –
27	arrestees and victims were male.	Department of Justice Publication – pg
28		2.

1 50. In 2011, there were 136 justifiable
2 homicides reported. Of these, 101 were
3 committed by a peace officer and 35
4 were committed by a private citizen.

50. Exhibit D – Homicide in
California 2011 - Attorney General –
Department of Justice Publication – pg
2 and Table 39 on pg 43.

5 51. Prior to January 1, 2000, existing
6 law generally provided that carrying a
7 concealed or loaded firearm was
8 punishable as a misdemeanor and,
9 under certain circumstances, a felony.
10 However, the Legislature determined
11 that carrying a concealed or loaded
12 firearm without being listed with the
13 Department of Justice (DOJ) as the
14 registered owner of the firearm is a
15 serious crime and should be treated as
16 such. Assembly Bill (AB) 491 (Scott,
17 1999) amended both Penal Code (PC)
18 sections 12025 (carrying a concealed
19 firearm) and 12031 (carrying a loaded
20 firearm) to increase the number of
21 circumstances when an offense could
22 be charged. The following additional
23 circumstances may be charged as either
24 felonies or misdemeanors:
25 ■ When a person has both a firearm
26 and unexpended ammunition in their
27 immediate possession and that person
28 is not listed with the DOJ as the

51. Exhibit E – Concealable Firearms
Charges in California 2000-2003 -
Attorney General – Department of
Justice Publication – Introduction - pg
1.

1 registered owner of the firearm (former
2 Penal Code section 12025).

3 ■ When a person carries a loaded
4 firearm on his/her person or in a
5 vehicle on any public street and that
6 person is not listed with the DOJ as the
7 registered owner of the firearm (former
8 Penal Code section 12031).

9 52. AB 491 also amended PC sections
10 12025 and 12031 to require district
11 attorneys to report specified
12 information to the Attorney General
13 about individuals charged with
14 carrying a concealed or loaded firearm.
15 This information includes the gender,
16 race/ethnic group, and age of any
17 person charged with a felony or
18 misdemeanor under either PC sections
19 12025 or 12031 and any other offense
20 charged in the same complaint or
21 indictment. In addition, the Attorney
22 General is required to compile these
23 data and submit an annual report to the
24 Legislature. In response to AB 491, the
25 DOJ developed the Concealable
26 Weapons Statistical System to meet the
27 new data collection and reporting
28 requirements.

52. Exhibit E – Concealable Firearms
Charges in California 2000-2003 -
Attorney General – Department of
Justice Publication – Introduction - pg
1.

1 Data collection and reporting began in
 2 2000 after all district attorneys were
 3 notified by the DOJ of the reporting
 4 requirement.¹ District attorneys submit
 5 data in either electronic format, via the
 6 Legal Net, or in manual format.

7 53. Prior to January 1, 2000, existing
 8 law generally provided that carrying a
 9 loaded firearm was punishable as a
 10 misdemeanor and, under certain
 11 circumstances, a felony. In 1999, PC
 12 section 12031 was amended to increase
 13 the number of circumstances when an
 14 offense could be charged. The
 15 following additional circumstance
 16 may be charged as either a felony or a
 17 misdemeanor:

18 ■ When a person carries a loaded
 19 firearm on his/her person or in a
 20 vehicle on any public street and that
 21 person is not listed with the DOJ as the
 22 registered owner of the firearm.

23 Comparing 2000 to 2003:

24 ■ The proportion of total charges for
 25 PC section 12031 resulting in felony-
 26 level filings increased 6.4 percentage
 27 points (from 55.1 percent to 61.5
 28 percent); misdemeanor-level filings

53. Exhibit E – Concealable Firearms
 Charges in California 2003 - Attorney
 General – Department of Justice
 Publication – pg 14.

1	decreased identically.	
2	54. The proportion of total charges for	54. Exhibit E – Concealable Firearms
3	PC section 12031 resulting in	Charges in California 2003 - Attorney
4	felony-level filings increased each	General – Department of Justice
5	year since 2000.	Publication – pg 14.
6	55. Comparing 2000 to 2003:	55. Exhibit E – Concealable Firearms
7	■ The proportion of males charged	Charges in California 2003 - Attorney
8	with PC section 12031 resulting in	General – Department of Justice
9	felony-level filings increased 6.7	Publication – pg 15.
10	percentage points (from 55.6 percent to	
11	62.3 percent); misdemeanor-level	
12	filings for males decreased identically.	
13	■ The proportion of females charged	
14	with PC section 12031 resulting in	
15	felony-level filings decreased 2.5	
16	percentage points (from 45.7 percent to	
17	43.2 percent); misdemeanor-level	
18	filings for females increased	
19	identically.	
20	56. From 2000 through 2003, the vast	56. Exhibit E – Concealable Firearms
21	majority of persons charged with	Charges in California 2003 - Attorney
22	PC section 12031 were male, and	General – Department of Justice
23	males were proportionately more	Publication – pg 15.
24	likely to be filed on at the felony	
25	level than females.	
26	57. When charged with PC section	57. Exhibit E – Concealable Firearms
27	12031, blacks were proportionately	Charges in California 2003 - Attorney
28	most likely to be filed on at the felony	General – Department of Justice

1 level, followed by Hispanics, other 2 race/ethnic groups, and whites. This 3 pattern exists throughout the period 4 shown.	Publication – pg 16.
5 58. In 2003: Whites accounted for 488 6 of the 1,973 arrests for violation of PC 7 12031, 190 of the 1,213 felony arrests 8 for violation of PC 12031 and 288 of 9 the 760 misdemeanor arrests for 10 violation of PC 12031.	58. Exhibit E – Concealable Firearms Charges in California 2003 - Attorney General – Department of Justice Publication – pg 16, Table N-9.
11 59. From 2011 to 2012, assaults 12 against law enforcement officers 13 decreased 4.0 percent, and the number 14 of assaults in 2012 was the lowest in 5 15 years.	59. Exhibit F – Crime In California 2012 - Attorney General – Department of Justice Publication – pg 1.
16 60. In 2012, there were 20,521 felony 17 weapons arrests in California. 19,049 18 were male (92.8%), 1,472 were female 19 (7.2%). 5,160 were White (25.1%). 20 10,182 were Hispanic (49.6%). 4,143 21 were Black (20.2%). 1,036 were 22 “Other” (5.0%).	60. Exhibit F – Crime In California 2012 - Attorney General – Department of Justice Publication – Table 31.
23 61. In 2012, there were 5,676 24 misdemeanor weapons arrests in 25 California. 5,136 were male (90.5%), 26 540 were female (9.5%). 1,933 were 27 White (34.1%). 2,489 were Hispanic 28 (43.9%). 885 were Black (15.6%).	61. Exhibit F – Crime In California 2012 - Attorney General – Department of Justice Publication – Table 35.

1	369 were "Other" (6.5%).	
2	62. In 2012, there were 157,634	62. Exhibit F – Crime In California
3	Domestic Violence Related Calls for	2012 - Attorney General – Department
4	Assistance. 804 involved firearms.	of Justice Publication – Table 47.
5	63. In April 2002, law enforcement	63. Exhibit F – Crime In California
6	agencies were instructed to report	2012 - Attorney General – Department
7	personal weapons (hands, fists, or feet)	of Justice Publication – pg 65.
8	only if the assault resulted in an injury	
9	(aggravated assault). This instruction	
10	resulted in a notable decrease in the	
11	number of personal weapons reported.	
12	64. Felony level arrest offences in	64. Exhibit F – Crime In California
13	Exhibit F are: 171b(a)(1), 171b(a)(2),	2012 - Attorney General – Department
14	171b(a)(3), 171b(a)(4), 171b(a)(5),	of Justice Publication – pg 69, 71.
15	171b(a)(6)*, 171c, 171d(a)*, 171d(b)*,	
16	186.28(a), 626.9(b)*, 626.9(d), 26.9(h),	
17	626.9(i), 626.95(a)*, 626.10(a)(1)*,	
18	626.10(b)*, 4502(a), 4502(b), 8101(a)	
19	WI, 8101(b) WI, 8103(a)(1) WI,	
20	8103(f)(1) WI, 12761 HS*, 18710(a)*,	
21	18720, 19200(a)*, 20310*, 20410*,	
22	20510*, 20610*, 20710*, 20910*,	
23	21110*, 21310*, 21810*, 22010*,	
24	22210*, 22410*, 23900, 24310*,	
25	24410*, 24510*, 24610*, 24710*,	
26	25100(a), 25300(a), 25400(a)(1)*,	
27	25400(a)(2)*, 25400(a)(3)*,	
28	25400(c)(1), 25400(c)(2), 25400(c)(3),	

1 25400(c)(4), 25400(c)(5)*,
 2 25400(c)(6)*, 25800(a)*, 25850(c)(1),
 3 25850(c)(2), 25850(c)(3), 25850(c)(4),
 4 25850(c)(5)*, 25850(c)(6)*,
 5 26100(b)*, 26100(c), 26100(d)*,
 6 27500(a), 27500(b)*, 27505(a)*,
 7 27515*, 27520*, 27545*,
 8 28210(a)(1)*, 29650*, 29800(a)(1),
 9 29800(b), 29805*, 29815(a)*,
 10 29820(b)*, 29825(a)*, 29900(a)(1),
 11 29900(b)(1), 30210(a)*, 30210(b)*,
 12 30305(a)(1)*, 30600(a), 30605(a)*,
 13 31500*, 32310*, 32900*, 33210,
 14 33215*, 33410, 33600*

15 Notes: These codes are valid for 2012
 16 data and may not be applicable for
 17 prior years. "All Other Felony
 18 Offenses" also includes sections in the
 19 Election Code and Water Code.

20 "All Other Misdemeanor Offenses"
 21 also includes sections in the California
 22 Code of Regulations, City or County
 23 Ordinances, Civil Procedure Code,
 24 Election Code, Public Utilities Code,
 25 Uniform Fire Code, and Water Code.

26 *These code sections can be either a
 27 felony or a misdemeanor.

28 65. Misdemeanor level arrest offences

65. Exhibit F – Crime In California

1 in Exhibit F are: 136.2(a)(7)(b)2,
 2 171b(a)(6)*, 171d(a)*, 171d(b)*,
 3 171.5(c)(1), 171.5(c)(2), 171.5(c)(3),
 4 171.5(c)(4), 171.5(c)(5), 171.5(c)(6),
 5 171.5(c)(7), 171.5(c)(8), 171.5(c)(9),
 6 171.5(c)(10), 171.5(c)(11),
 7 171.5(c)(12), 468, 626.10(a)(1)*,
 8 626.10(a)(2), 626.10(b)*, 626.10(i),
 9 626.9(b)*, 626.95(a)*, 653k, 12761
 10 HS*, 17500, 17510(a)(1), 17510(a)(2),
 11 17510(a)(3), 17512, 18710(a)*,
 12 19200(a)*, 19910, 19915, 20010,
 13 20150(a), 20155, 20310*, 20410*,
 14 20510*, 20610*, 20710*, 20810(a),
 15 20910*, 21110*, 21310*, 21510(a),
 16 21510(b), 21510(c), 21710, 21810*,
 17 22010*, 22210*, 22410*, 22610(a),
 18 22610(b), 22610(c)(1), 22610(d),
 19 22615(a), 22615(b), 22900, 23920,
 20 24310*, 24410*, 24510*, 24610*,
 21 24710*, 25100(b), 25200(a),
 22 25200(b)(3), 25400(a)(1)*,
 23 25400(a)(2)*, 25400(a)(3)*,
 24 25400(c)(5)*, 25400(c)(6)*,
 25 25800(a)*, 25850(a), 25850(c)(5)*,
 26 25850(c)(6)*, 26100(a), 26100(b)*,
 27 26100(d)*, 26180(a), 26350(a)(2),
 28 26500(a), 27500(b)*, 27505(a)*,

2012 - Attorney General – Department
 of Justice Publication – pg 70, 71.

1	27515*, 27520*, 27545*, 28050,	
2	28210(a)(1)*, 29650*, 29805*,	
3	29815(a)*, 29820(b)*, 29825(a)*,	
4	29825(b), 30210(a)*, 30210(b)*,	
5	30305(a)(1)*, 30605(a)*, 30610(a),	
6	31500*, 32310*, 32900*, 33215*,	
7	33600*	
8	66. The vast majority of persons	66. Exhibit E – Concealable Firearms
9	charged with either former PC section	Charges in California 2003 - Attorney
10	12025 or former PC section 12031	General – Department of Justice
11	were male.	Publication – pg 2.
12	67. When charged with either PC	67. Exhibit E – Concealable Firearms
13	section 12025 or PC section 12031,	Charges in California 2003 - Attorney
14	blacks were proportionately the most	General – Department of Justice
15	likely race/ethnic group to be filed on	Publication – pg 2.
16	at the felony level; whites were	
17	proportionately the least likely	
18	race/ethnic group to be filed on at the	
19	felony level.	
20	68. When charged with PC section	68. . Exhibit E – Concealable
21	12025, blacks were proportionately	Firearms Charges in California 2003 -
22	most likely to be filed on at the felony	Attorney General – Department of
23	level, followed by Hispanics, other	Justice Publication – pg 6.
24	race/ethnic groups, and whites. This	
25	pattern exists throughout the period	
26	shown.	
27	69. In 2012, 39.4% of the estimated	69. United States Census Bureau ->
28	population of California is White (not	http://quickfacts.census.gov/qfd/states/

1	Hispanic or Latino), 13.9% is Asian	06000.html
2	and 6.6% is Black or African-	
3	American and 3.6% is two or more	
4	racess.	
5	70. As of the 2010 US Census, the	70. Exhibit G. US Census Bureau -
6	following counties in California had a	Annual Estimates of the Resident
7	population of fewer than 200,000	Population: April 1, 2010 to July 1,
8	people with a combined population of	2012
9	2,040,530:	
10	Alpine, Sierra, Modoc, Trinity, Mono,	
11	Mariposa, Inyo, Plumas, Colusa,	
12	Glenn, Del Norte, Lassen, Amador,	
13	Siskiyou, Calaveras, San Benito,	
14	Tuolumne, Tehama, Lake, Yuba,	
15	Mendocino, Sutter, Nevada, Humboldt,	
16	Napa, Madera, Kings, Imperial, Shasta,	
17	El Dorado	
18	71. As of the 2010 US Census, the	71. Exhibit G. US Census Bureau -
19	following counties in California had a	Annual Estimates of the Resident
20	population of 200,000 or more people	Population: April 1, 2010 to July 1,
21	with a combined population of	2012
22	35,213,426: Yolo, Butte, Marin,	
23	Merced, Santa Cruz, San Luis Obispo,	
24	Placer, Solano, Monterey, Santa	
25	Barbara, Tulare, Sonoma, Stanislaus,	
26	San Joaquin, San Mateo, San	
27	Francisco, Ventura, Kern, Fresno,	
28	Contra Costa, Sacramento, Alameda,	

1 Santa Clara, San Bernardino,
 2 Riverside, Orange, San Diego
 3 Los Angeles.

4 72. California counties with a
 5 population of fewer than 200,000
 6 people are predominantly White in
 7 race:

8 White Population/Total Population:

9 Alpine County 881 / 1,175

10 Amador County 33,149 / 38,091

11 Calaveras County 40,522 / 45,578

12 Colusa County 13,854 / 21,419

13 Del Norte County 21,098 / 28,610

14 Glenn County 19,990 / 28,122

15 Humboldt County 109,920 / 134,623

16 Imperial County 102,553 / 174,528

17 Inyo County 13,741 / 18,546

18 Kings County 83,027 / 152,982

19 Lake County 52,033 / 64,665

20 Lassen County 25,532 / 34,895

21 Madera County 94,456 / 150,865

22 Mariposa County 16,103 / 18,251

23 Mendocino County 67,218 / 87,841

24 Modoc County 8,084 / 9,686

25 Mono County 9,686 / 14,202

26 Napa County 97,525 / 136,484

27 Nevada County 90,233 / 98,764

28 Plumas County 17,797 / 20,007

72. California Department of Finance
 – 2010 Census Detailed Age by
 Race/Hispanic Origin by Gender -
[http://www.dof.ca.gov/research/demog
 raphic/state_census_data_center/census
 _2010/documents/2010SF1_STCO_Ag
 eRaceSex-Web.zip](http://www.dof.ca.gov/research/demographic/state_census_data_center/census_2010/documents/2010SF1_STCO_AgeRaceSex-Web.zip)

1 San Benito County 35,181 / 55,269
 2 Shasta County 153,726 / 177,223
 3 Sierra County 3,022 / 3,240
 4 Siskiyou County 38,030 / 44,900
 5 Sutter County 57,749 / 94,737
 6 Tehama County 51,721 / 63,463
 7 Trinity County 12,033 / 13,786
 8 Tuolumne County 48,274 / 55,365
 9 Yuba County 49,332 / 72,155

10 73. Population of Counties by
 11 Decennial Census: 1900 to 1990

73. US Bureau of the Census -
<http://www.census.gov/population/cencounts/ca190090.txt>

13 74. The Attorney General admits that
 14 Nichols is a natural person, i.e., a
 15 human being.

74. Answer to Scnd. Am. Complaint ¶
 3.

16 75. The Attorney General admits that,
 17 since January 3, 2011, she has been
 18 (and presently is) the Attorney General
 19 of the State of California, and further
 20 that she must comply with her legal
 21 obligations as the Attorney General of
 22 the State of California, which legal
 23 obligations are found in various
 24 sources, including the U.S.
 25 Constitution, the California
 26 Constitution, statutes, and case law,
 27 which sources speak for themselves.

75. Answer to Scnd. Am. Complaint ¶
 4.

28 76. The Attorney General admits that

76. Answer to Scnd. Am. Complaint ¶

1 the U.S. Supreme Court issued the
 2 decision known as *District of*
 3 *Columbia v. Heller*, 554 U.S. 470
 4 (2008), which decision speaks for
 5 itself.

7.

6 77. The Attorney General admits that
 7 Nichols is not challenging the
 8 constitutionality of, or the
 9 constitutionality of enforcement of,
 10 certain state or federal laws

77. Answer to Scnd. Am. Complaint ¶
 8.

11 78. The Attorney General admits to
 12 instructing all issuing authorities in
 13 California not to issue a license to
 14 openly carry a handgun to PLAINTIFF
 15 and similarly situated individuals on
 16 page 1 of her "STANDARD
 17 APPLICATION FOR LICENSE TO
 18 CARRY A CONCEALED WEAPON
 19 (CCW)" prepared by the Attorney
 20 General pursuant to California Penal
 21 Code section 26175 which also
 22 provides for her to revise the
 23 application form. DEFENDANT
 24 HARRIS has refused to either create or
 25 revise the application form to
 26 accommodate PLAINTIFF'S and
 27 similarly situated individuals Second
 28 Amendment right to openly carry a

78. Answer to Scnd. Am. Complaint ¶
 12.

1 loaded firearm in public for the
2 purpose of self-defense and other
3 lawful purposes.

4 79. The Attorney General admits that
5 California Penal Code sections: 25850,
6 26350, 26400, 26150, 26155, 26160,
7 26165, 26175, 26180, 26185, 26190,
8 26200, 26202, 26205, 26210, 26215,
9 26220, 17030 speak for themselves.

79. Answer to Scnd. Am. Complaint
¶¶ 15-32.

10 80. The Attorney General admits that
11 the City of Redondo Beach local
12 ordinances 4-35.01, 4-35.06, 4-35.20,
13 5-8.01(a)(1) speak for themselves.

80. Answer to Scnd. Am. Complaint
¶¶ 33-34.

14 81. The Attorney General admits that
15 the Office of the Attorney General
16 publishes California crime statistics
17 information, including a publication by
18 the State of California's Office of
19 Attorney General titled
20 "CONCEALABLE FIREARMS
21 CHARGES IN CALIFORNIA 2000-
22 2003" and "Crime In California 2010"
23 which publications she says speak for
24 themselves.

81. Answer to Scnd. Am. Complaint ¶
39.

25 82. The Attorney General admits that
26 the California Department of Justice
27 has one database or more containing
28 information about arrests made for

82. Answer to Scnd. Am. Complaint ¶
40.

1	weapons offenses.	
2	83. The Attorney General has admitted	83. Answer to Scnd. Am. Complaint
3	to enforcement of the laws enumerated	¶¶ 41-42, 47.
4	in Plaintiff's operative complaint,	
5	Second Amended Complaint (SAC), as	
6	well as to laws unspecified by code	
7	section in the SAC.	
8	84. The Attorney General admits that	84. Answer to Scnd. Am. Complaint ¶
9	Nichols obtained a Law Enforcement	48.
10	Gun Release letter from the Attorney	
11	General's California Department of	
12	Justice as required by California law.	
13	85. Any person who claims title to any	85. Cal. Penal Code § 33850.
14	firearm that is in the custody or control	
15	of a court or law enforcement agency	
16	and who wishes to have the firearm	
17	returned shall make application for a	
18	determination by the Department of	
19	Justice as to whether the applicant is	
20	eligible to possess a firearm.	
21	86. When the Department of Justice	86. Cal. Penal Code § 33865.
22	receives a completed application for a	
23	Law Enforcement Gun Release Letter	
24	pursuant to Section 33850	
25	accompanied by the fee required	
26	pursuant to Section 33860, it shall	
27	conduct an eligibility check of the	
28	applicant to determine whether the	

1 applicant is eligible to possess a
2 firearm.

3 87. If the Department of Justice
4 determines that the applicant is eligible
5 to possess the firearm, the department
6 shall provide the applicant with
7 written notification that includes the
8 following:

9 (1) The identity of the applicant.

10 (2) A statement that the applicant is
11 eligible to possess a firearm.

87. Cal. Penal Code § 33865.

12 88. The Attorney General has issued a
13 letter stating that Plaintiff Nichols is
14 eligible to possess a firearm.

88. Answer to Scnd. Am. Complaint ¶
48.

15 89. The “good cause” requirement of
16 the Los Angeles Sheriff’s Department
17 is intended to dramatically restrict the
18 number of persons who are secretly
19 armed within the county. In 2011,
20 there was an average of approximately
21 400 existing concealed weapons
22 permits that were issued by the LASD
23 in a county of some 10 million people.
24

89. Exhibit H. Decl., of Los Angeles
County Under Sheriff Paul Tanaka –
Thomson v. Torrance Police
Department and the Los Angeles
County Sheriff’s Department – Dkt
#37-1, Case # CV 11-06154 (SJO)
(JCx), Judge Otero Presiding - ¶¶10-11

25 90. The Los Angeles County Sheriff’s
26 Department Concealed Weapon’s
27 Licensing Policy, and Standard
28 Application to Carry a Concealed

90.
[http://file.lacounty.gov/lasd/cms1_181
452.pdf](http://file.lacounty.gov/lasd/cms1_181452.pdf)

1	Weapon is online at the LASD website.	
2	91. Plaintiff Nichols is a resident of	91. Nichols Decl., ¶ 1
3	Los Angeles County.	
4	92. Plaintiff Nichols resides in an	92. Nichols Decl., ¶ 2
5	incorporated city within Los Angeles	
6	County which does not have a chief of	
7	police.	
8	93. The front yard fence to Plaintiff	93. Nichols Decl., ¶ 3
9	Nichols' single-family residence facing	
10	the street is less than 3.5 feet in height.	
11	94. Plaintiff Nichols is a male.	94. Nichols Decl., ¶ 4
12	95. Plaintiff Nichols is 53 years of age.	95. Nichols Decl., ¶ 5
13	96. Since this action was first filed on	96. Nichols Decl., ¶ 6
14	November 30, 2011, Defendant Harris	
15	has issued to Plaintiff Nichols two Law	
16	Enforcement Gun Release letters	
17	authorizing the release of his single-	
18	shot shotgun then held by the City of	
19	Redondo Beach.	
20	97. Such letters authorizing the release	97. Nichols Decl., ¶ 7
21	of a firearm can only be issued to	
22	persons who are not prohibited from	
23	possessing a firearm.	
24	98. Plaintiff Nichols is not prohibited	98. Nichols Decl., ¶ 8
25	under either California State or Federal	
26	law from purchasing or possessing a	
27	firearm.	
28	99. Plaintiff Nichols seeks to exercise	99. Nichols Decl., ¶ 9

1 his Second Amendment right to openly
 2 carry handguns for the purpose of self-
 3 defense and for other lawful purposes,
 4 such handguns to be openly carried,
 5 not encased, both loaded and unloaded,
 6 in non-sensitive public places within
 7 incorporated cities and in non-sensitive
 8 places of unincorporated county
 9 territory where the Open Carry of
 10 handguns, both loaded and unloaded, is
 11 prohibited.

12 100. Plaintiff Nichols seeks to exercise
 13 his Second Amendment right to openly
 14 carry long guns for the purpose of self-
 15 defense and for other lawful purposes,
 16 such long guns to be openly carried,
 17 not encased, both loaded and unloaded,
 18 in non-sensitive public places within
 19 incorporated cities and in non-sensitive
 20 places of unincorporated county
 21 territory where the Open Carry of
 22 handguns, both loaded and unloaded, is
 23 prohibited.

24 101. Plaintiff Nichols seek to exercise
 25 his Second Amendment right to openly
 26 carry firearms for the purpose of self-
 27 defense and for other lawful purposes,
 28 such firearms to be openly carried, not

100. Nichols Decl., ¶ 10

101. Nichols Decl., ¶ 11

1 encased, both loaded and unloaded, in,
 2 within and on his motor vehicles,
 3 attached camper or trailer in non-
 4 sensitive public places within
 5 incorporated cities and in non-sensitive
 6 places of unincorporated county
 7 territory where the Open Carry of
 8 firearms, both loaded and unloaded, is
 9 prohibited in, within and on his motor
 10 vehicles, in non-sensitive public places
 11 within incorporated cities and in non-
 12 sensitive places of unincorporated
 13 counties.

14 102. Plaintiff Nichols seeks to be free
 15 from warrantless searches and seizures
 16 of his person and property and to be
 17 free to refuse to voluntarily consent to
 18 unlawful searches and seizures of his
 19 person and property pursuant to the
 20 Fourth Amendment of the United
 21 States Constitution when in non-
 22 sensitive public places.

23 103. Plaintiff Nichols seek to exercise
 24 his Second Amendment right to openly
 25 carry firearms for the purpose of self-
 26 defense and for other lawful purposes,
 27 such firearms to be openly carried, not
 28 encased, both loaded and unloaded,

102. Nichols Decl., ¶ 12

103. Nichols Decl., ¶ 13

1	within the curtilage of his home.	
2	104. Plaintiff Nichols seeks to be free	104. Nichols Decl., ¶ 14
3	from warrantless searches and seizures	
4	of his person and property and to be	
5	free to refuse to voluntarily consent to	
6	unlawful searches and seizures of his	
7	person and property pursuant to the	
8	Fourth Amendment of the United	
9	States Constitution within the curtilage	
10	of his home.	
11	105. It takes several minutes to load a	105. Nichols Decl., ¶ 15
12	muzzle-loading revolver: to measure	
13	the charge, pour it into the chamber of	
14	the cylinder, properly seat the ball, ram	
15	the ball into the chamber, rotate the	
16	cylinder, repeat the process for each	
17	cylinder, seal each chamber with	
18	grease and cap each chamber.	
19	106. It takes many seconds to load a	106. Nichols Decl., ¶ 16
20	muzzle-loading long gun.	
21	107. It takes several seconds to load a	107. Nichols Decl., ¶ 17
22	modern semi-automatic firearm that	
23	uses metallic cartridges contained in a	
24	magazine.	
25	108. It takes many seconds to load a	108. Nichols Decl., ¶ 18
26	modern single action revolver that uses	
27	metallic cartridges.	
28	109. It takes many seconds to retrieve	109. Nichols Decl., ¶ 19

1	and load an unloaded modern firearm	
2	from a fully enclosed container. It	
3	takes many more seconds to unlock the	
4	container.	
5	110. Depending upon the distance one	110. Nichols Decl., ¶ 20
6	has ventured from his motor vehicle,	
7	retrieving a firearm from the motor	
8	vehicle trunk, assuming the motor	
9	vehicle has a trunk, can take a	
10	substantial amount of time.	
11	111. An unloaded long gun, inside of a	111. Nichols Decl., ¶ 21
12	motor vehicle, substantially burdens	
13	Plaintiff Nichols' right to self-defense.	
14	112. Plaintiff Nichols' motor vehicle	112. Nichols Decl., ¶ 22
15	does not have a trunk.	
16	113. An unloaded firearm, fully	113. Nichols Decl., ¶ 23
17	encased, in a locked or unlocked	
18	container, substantially burdens	
19	Plaintiff Nichols' right to self-defense.	
20	114. Prior to the enactment of the	114. Nichols Decl., ¶ 24
21	Mulford Act of 1967 which enacted, in	
22	part, former California Penal Code	
23	section 12031 which is now codified,	
24	in part, as California Penal Code	
25	section 25850 a firearm was considered	
26	to be loaded only if it had a live round	
27	in the firing chamber, or in the case of	
28	muzzle-loading firearms, if the firing	

1	chamber was uncapped or unprimed.	
2	115. Firearms, which do not have	115. Nichols Decl., ¶ 25
3	mechanical safeties preventing the	
4	accidental discharge of a firearm, are	
5	best carried with the firing chamber	
6	empty and with live rounds in the	
7	cylinder or magazine.	
8	116. Plaintiff Nichols owns firearms	116. Nichols Decl., ¶ 26
9	which do not have firing pin safeties	
10	and seek to carry them with an	
11	unloaded firing chamber.	
12	117. Plaintiff Nichols seeks to openly	117. Nichols Decl., ¶ 27
13	carry modern firing reproductions of	
14	muzzle loading firearms, both loaded	
15	and unloaded, in the curtilage of his	
16	home, in non-sensitive public places of	
17	incorporated cities and in non-sensitive	
18	unincorporated county territory where	
19	it is prohibited, in and on his motor	
20	vehicles and in and on attached	
21	campers and trailers for the purpose of	
22	self-defense and for other lawful	
23	purposes.	
24	118. Plaintiff Nichols received a death	118. Nichols Decl., ¶ 28
25	threat via email which was reported to	
26	both the Attorney General and the Los	
27	Angeles Sheriff's department.	
28	119. Plaintiff Nichols attempted to file	119. Nichols Decl., ¶ 29

1	the police report (Dkt. # 10) which was	
2	rejected by this court (Dkt. # 11).	
3	120. Plaintiff Nichols requested both	120. Nichols Decl., ¶ 30, FAC
4	an application and license from the	
5	Redondo Beach Chief of Police	
6	through his then attorney, the Redondo	
7	Beach City Attorney, to openly carry a	
8	loaded handgun.	
9	121. The license was refused in an	121. Nichols Decl., ¶ 31, FAC
10	email from the City Attorney citing	
11	California law which precludes the	
12	issuance of a license to persons in	
13	counties with a population of 200,000	
14	or more people.	
15	122. Los Angeles County has a	122. Nichols Decl., ¶ 32
16	population of more than 200,000	
17	people.	
18	123. The conclusion of the Los	123. Nichols Decl., ¶ 33
19	Angeles Sheriff's Department Sergeant	
20	Inge was that someone who threatened	
21	to shoot Plaintiff Nichols and called	
22	upon others to track him down and do	
23	the same was not committing a	
24	criminal offense because the email did	
25	not use the word "kill."	
26	124. The Attorney General refused to	124. Nichols Decl., ¶ 34
27	prosecute.	
28	125. Plaintiff Nichols fears arrest,	125. Nichols Decl., ¶ 35

1 prosecution, fine and imprisonment
 2 were Plaintiff Nichols to openly carry a
 3 firearm outside of his home. Plaintiff
 4 Nichols refrains from doing so but has
 5 not completely abstained from doing
 6 so.

7 126. Beginning in January of 2015,
 8 Plaintiff Nichols plans on traveling
 9 through the state and to visit every
 10 incorporated city and every County
 11 within the State of California and to
 12 openly carry firearms, loaded and
 13 unloaded, in non-sensitive public
 14 places in those incorporated cities
 15 (including the city and county of San
 16 Francisco) and unincorporated county
 17 territory and to carry them in and on
 18 his motor vehicle and in and on an
 19 attached camper or trailer.

126. Nichols Decl., ¶ 36

20 127. Beginning in January of 2015,
 21 Plaintiff Nichols plans on openly
 22 carrying firearms, loaded and
 23 unloaded, in non-sensitive public
 24 places in non-sensitive unincorporated
 25 county territory (including the city and
 26 county of San Francisco) and to carry
 27 them in and on his motor vehicle and in
 28 and on an attached camper or trailer.

127. Nichols Decl., ¶ 37

1 128. Plaintiff Nichols plans on
 2 carrying loaded and unloaded firearms
 3 within the curtilage of his home for the
 4 purpose of self-defense and for other
 5 lawful purposes. It is impossible to
 6 predict when such a need will arise and
 7 therefore impossible to articulate a
 8 concrete plan.

128. Nichols Decl., ¶ 38

9 129. To Plaintiff Nichols' knowledge,
 10 there are no permits or licenses
 11 available to him to carry a loaded or
 12 unloaded firearm for the purpose of
 13 self-defense and police chiefs and
 14 county sheriffs are prevented by state
 15 law from issuing licenses to private
 16 citizens to openly carry a loaded or
 17 unloaded firearm in counties with a
 18 population of 200,000 or more persons
 19 and such licenses are only theoretically
 20 available for handguns and only in
 21 those counties with a population of
 22 fewer than 200,000 people and are only
 23 available in those counties to residents
 24 of those counties and are invalid
 25 outside of the county of issuance.

129. Nichols Decl., ¶ 39

26 130. To Plaintiff Nichols' knowledge,
 27 cities and counties are free to enact
 28 local regulations restricting where and

130. Nichols Decl., ¶ 40

1 when persons with a CCW license may
2 carry a weapon pursuant to the license
3 even if there is no restriction placed on
4 the license by the county sheriff or
5 police chief that issued the license.

6 131. It is Plaintiff Nichols'
7 understanding that except for certain
8 exceptions, such as travelers while on a
9 journey, carrying a concealed weapon
10 falls outside the scope of the Second
11 Amendment.

131. Nichols Decl., ¶ 41

12 132. It is Plaintiff Nichols'
13 understanding that Plaintiff Nichols
14 does not satisfy the Los Angeles
15 Sheriff's Department "good cause"
16 requirement for being issued a license
17 to carry a loaded, concealable firearm
18 and concealed carry substantially
19 burdens Plaintiff Nichols' ability to
20 defend himself even if he had a
21 concealed carry license.

132. Nichols Decl., ¶ 42

22 133. Defendant Harris has never
23 promised to not enforce the laws at
24 issue.

133. Nichols Decl., ¶ 43
Dkt. #82, pg 6, lines 2-5.

25 134. Justifiable Homicide: Self-
26 Defense or Defense of Another. ("[A
27 defendant is not required to retreat. He
28 or she is entitled to stand his or her

134. CALCRIM 505

1 ground and defend himself or herself
 2 and, if reasonably necessary, to pursue
 3 an assailant until the danger of
 4 (death/great bodily injury/ {insert
 5 forcible and atrocious crime}) has
 6 passed. This is so even if safety could
 7 have been achieved by retreating.]”)

8 135. Right to Self-Defense or Defense
 9 of Another (Non-Homicide). (“[A
 10 defendant is not required to retreat. He
 11 or she is entitled to stand his or her
 12 ground and defend himself or herself
 13 and, if reasonably necessary, to pursue
 14 an assailant until the danger of
 15 (death/bodily injury/ {insert crime})
 16 has passed. This is so even if safety
 17 could have been achieved by
 18 retreating.]”)

135. CALCRIM 3470

19 136. 74% of homicides of White males
 20 occur outside of the victim’s residence.

136. Exhibit D – Homicide in
 California 2011 - Attorney General –
 Department of Justice Publication – pg
 Table 19 on pg 25.

II. CONCLUSIONS OF LAW

1. A motion for summary judgment should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

2. The moving party bears the initial burden of informing the court of the basis for the motion and identifying the portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets this initial burden, the burden shifts to the non-moving party to present specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. "A mere scintilla of evidence supporting the nonmoving party's position is insufficient;" the moving party will win summary judgment unless there is "evidence on which a jury could reasonably find for the non-moving party." *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1146 (9th Cir. 2005).

3. "'Right of the People.'" The first salient feature of the operative clause is that it codifies a "right of the people." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times... All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body.'" *District of Columbia v. Heller*, 128 S. Ct. 2783 - Supreme Court (2008) at 2790.

4. "'Keep and bear Arms.'" We move now from the holder of the right—"the people"—to the substance of the right: "to keep and bear Arms."... Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications... the Second Amendment extends, *prima facie*, to all

1 instruments that constitute bearable arms, even those that were not in existence at
 2 the time of the founding.” *District of Columbia v. Heller*, 128 S. Ct. 2783 -
 3 Supreme Court (2008) at 2791-2792.

4 5. “Meaning of the Operative Clause. Putting all of these textual elements
 5 together, we find that they guarantee the individual right to possess and carry
 6 weapons in case of confrontation. This meaning is strongly confirmed by the
 7 historical background of the Second Amendment. We look to this because it has
 8 always been widely understood that the Second Amendment, like the First and
 9 Fourth Amendments, codified a pre-existing right. The very text of the Second
 10 Amendment implicitly recognizes the pre-existence of the right and declares only
 11 that it “shall not be infringed.” As we said in *United States v. Cruikshank*, 92 U.S.
 12 542, 553, 23 L.Ed. 588 (1876), “[t]his is not a right granted by the Constitution.
 13 Neither is it in any manner dependent upon that instrument for its existence. The
 14 Second amendment declares that it shall not be infringed” *District of*
 15 *Columbia v. Heller*, 128 S. Ct. 2783 - Supreme Court (2008) at 2797-2798.

16 6. “Thus, the right secured in 1689 as a result of the Stuarts' abuses was by
 17 the time of the founding understood to be an individual right protecting against
 18 **both public and private violence.**” *District of Columbia v. Heller*, 128 S. Ct.
 19 2783 - Supreme Court (2008) at 2798-2799. (emphasis added).

20 7. “In *Nunn v. State*, 1 Ga. 243, 251 (1846), the Georgia Supreme Court
 21 construed the Second Amendment as protecting the “natural right of self-defence”
 22 and therefore struck down a ban on carrying pistols openly. **Its opinion perfectly**
 23 **captured the way in which the operative clause of the Second Amendment**
 24 **furtheres the purpose announced in the prefatory clause**, in continuity with the
 25 English right:
 26 **“The right of the whole people, old and young, men, women and boys, and not**
 27 **militia only, to keep and bear arms of every description, and not such merely**
 28 **as are used by the militia, shall not be infringed, curtailed, or broken in upon,**

1 **in the smallest degree**; and all this for the important end to be attained: the rearing
 2 up and qualifying a well-regulated militia, so vitally necessary to the security of a
 3 free State. Our opinion is, that any law, State or Federal, is repugnant to the
 4 Constitution, and void, which contravenes this right, originally belonging to our
 5 forefathers, trampled under foot by Charles I. and his two wicked sons and
 6 successors, re-established by the revolution of 1688, conveyed to this land of
 7 liberty by the colonists, and finally incorporated conspicuously in our own Magna
 8 Charta!" *District of Columbia v. Heller*, 128 S. Ct. 2783 - Supreme Court (2008)
 9 at 2809. (emphasis added).

10 8. "We are of the opinion, then, that so far as the act of 1837 seeks to
 11 suppress the practice of carrying certain weapons *secretly*, that it is valid, inasmuch
 12 as it does not deprive the citizen of his *natural* right of self-defence, or of his
 13 constitutional right to keep and bear arms. But that so much of it, as contains a
 14 prohibition against bearing arms *openly*, is in conflict with the Constitution, and
 15 void; and that, as the defendant has been indicted and convicted for carrying a
 16 pistol, without charging that it was done in a concealed manner, under that portion
 17 of the statute which entirely forbids its use, the judgment of the court below must
 18 be reversed, and the proceeding quashed." *Nunn v. State*, 1 Ga. (1 Kel.) 243
 19 (1846) at 251.

20 9. "Likewise, in *State v. Chandler*, 5 La. Ann. 489, 490 (1850), the
 21 Louisiana Supreme Court held that citizens had a right to carry arms openly: "This
 22 is the right guaranteed by the Constitution of the United States, and which is
 23 calculated to incite men to a manly and noble defence of themselves, if necessary,
 24 and of their country, without any tendency to secret advantages and unmanly
 25 assassinations." *District of Columbia v. Heller*, 128 S. Ct. 2783 - Supreme Court
 26 (2008) at 2809.

27 10. "The act of the 25th of March, 1813, makes it a misdemeanor to be
 28 "found with a concealed weapon, such as a dirk, dagger, knife, pistol, or any other

1 deadly weapon concealed in his bosom, coat, or any other place about him, that
 2 does not appear in full view." This law became absolutely necessary to counteract
 3 a vicious state of society, growing out of the habit of carrying concealed weapons,
 4 and to prevent bloodshed and assassinations committed upon unsuspecting
 5 persons. It interfered with no man's right to carry arms (to use its words) "in full
 6 open view," which places men upon an equality. This is the right guaranteed by the
 7 Constitution of the United States, and which is calculated to incite men to a manly
 8 and noble defence of themselves, if neccessary, and of their country, without any
 9 tendency to secret advantages and unmanly assassinations." *State v. Chandler*, 5
 10 La. Ann. 489, 52 Am. Dec. 599 (1850) at 489-490.

11 11. "Like most rights, the right secured by the Second Amendment is not
 12 unlimited. From Blackstone through the 19th-century cases, commentators and
 13 courts routinely explained that the right was not a right to keep and carry any
 14 weapon whatsoever in any manner whatsoever and for whatever purpose. See, e.g.,
 15 Sheldon, in 5 Blume 346; Rawle 123; Pomeroy 152-153; Abbott 333. **For**
 16 **example, the majority of the 19th-century courts to consider the question held**
 17 **that prohibitions on carrying concealed weapons were lawful under the**
 18 **Second Amendment or state analogues.** See, e.g., *State v. Chandler*, 5 La. Ann.,
 19 at 489-490; *Nunn v. State*, 1 Ga., at 251; see generally 2 Kent *340, n. 2; The
 20 American Students' Blackstone 84, n. 11 (G. Chase ed. 1884). Although we do not
 21 undertake an exhaustive historical analysis today of the full scope of the Second
 22 Amendment, nothing in our opinion should be taken to cast doubt on longstanding
 23 prohibitions on the possession of firearms by felons and the mentally ill, or laws
 24 forbidding the carrying of firearms in sensitive places such as schools and
 25 government buildings, or laws imposing conditions and qualifications on the
 26 commercial sale of arms." *District of Columbia v. Heller*, 128 S. Ct. 2783 -
 27 Supreme Court (2008) at 2816-2817. (emphasis added).
 28

1 12. “Two years ago, in *District of Columbia v. Heller*, 554 U.S. ___, 128
 2 S.Ct. 2783, 171 L.Ed.2d 637 (2008), we held that the Second Amendment protects
 3 the right to keep and bear arms for the purpose of self-defense, **and** we struck
 4 down a District of Columbia law that banned the possession of handguns in the
 5 home.” *McDonald v. City of Chicago*, Ill., 130 S. Ct. 3020 - Supreme Court
 6 (2010) at 3026. (emphasis added).

7 13. “Both *Heller* and *McDonald* do say that “the need for defense of self,
 8 family, and property is most acute” in the home, id. at 3036 (emphasis added); 554
 9 U.S. at 628, 128 S.Ct. 2783, but that doesn't mean it is not acute outside the home.
 10 *Heller repeatedly invokes a broader Second Amendment right than the right to*
 11 *have a gun in one's home*, as when it says that the amendment “guarantee[s] the
 12 individual right to possess and carry weapons in case of confrontation.” 554 U.S. at
 13 592, 128 S.Ct. 2783. *Confrontations are not limited to the home.*” *Moore v.*
 14 *Madigan*, 702 F. 3d 933 - Court of Appeals, 7th Circuit (2012) at 935-936. (italics
 15 added).

16 14. “After reviewing these two lines of authority—the Illinois cases holding
 17 that section 24-1.6(a)(1), (a)(3)(A) is constitutional, and the Seventh Circuit’s
 18 decision holding that it is not—we are convinced that the Seventh Circuit’s
 19 analysis is the correct one. As the Seventh Circuit correctly noted, neither *Heller*
 20 nor *McDonald* expressly limits the second amendment’s protections to the home.
 21 On the contrary, both decisions contain language strongly suggesting if not
 22 outright confirming that the second amendment right to keep and bear arms
 23 extends beyond the home. Moreover, if *Heller* means what it says, and “individual
 24 self-defense” is indeed “the central component” of the second amendment right to
 25 keep and bear arms (*Heller*, 554 U.S. at 599), then it would make little sense to
 26 restrict that right to the home, as “[c]onfrontations are not limited to the home.”
 27 *Moore*, 702 F.3d at 935-36. Indeed, *Heller* itself recognizes as much when it states
 28 that “the right to have arms *** was by the time of the founding understood to be

1 an individual right protecting against both public and private violence.” (Emphasis
 2 added.) *Heller*, 554 U.S. at 593-94.” *People v. Aguilar* (2013) at ¶ 20 IL 112116,
 3 ____ N.E.2d ____, 2013 Ill. LEXIS 853, 2013 WL 5080118 (Ill. 2013) (unanimous
 4 decision).

5 15. “In *Heller*, the Supreme Court concluded, by parsing the language in the
 6 operative clause of the Second Amendment, that *the Amendment does "guarantee*
 7 *the individual right to possess and carry weapons in case of confrontation,"* a
 8 codification, the Court said, of a "pre-existing" right. *Heller*, 554 U.S. at 592, 128
 9 S.Ct. 2783; see *id.* at 595, 128 S.Ct. 2783 ("There seems to us no doubt, on the
 10 basis of both text and history, that the Second Amendment conferred an individual
 11 right to keep and bear arms."). The Court explained that "the inherent right of self-
 12 defense has been central to the Second Amendment"... *The "core lawful purpose"*
 13 *of the right to bear arms, therefore, is for "self-defense."* *Id.* at 630, 128 S.Ct.
 14 2783.” *US v. Bryant*, 711 F. 3d 364 - Court of Appeals, 2nd Circuit (2013) at 368.
 15 (italics added).

16 16. “After conducting an analysis "of both text and history," *id.* at 595, 128
 17 S.Ct. 2783, the Court recognized that *the Second Amendment "guarantee[s] the*
 18 *individual right to possess and carry weapons in case of confrontation,"* *id.* at 592,
 19 128 S.Ct. 2783. The "central component of [this] right" is self-defense. *Id.* at 599,
 20 128 S.Ct. 2783.” *NATIONAL RIFLE ASS'N OF AMERICA, INC. v. McCraw*, 719
 21 F. 3d 338 - Court of Appeals, 5th Circuit (2013) at 346. (italics added).

22 17. “In *Heller*, the Supreme Court held that *the Second Amendment*
 23 *"guarantee[s] the individual right to possess and carry weapons in case of*
 24 *confrontation..."* *Schrader v. Holder*, 704 F. 3d 980 - Court of Appeals, Dist. of
 25 Columbia Circuit (2013) at 988. (italics added).

26 18. “In *Heller*, the Supreme Court concluded that the Second Amendment
 27 codifies a pre-existing "individual right to possess and carry weapons in case of
 28

1 confrontation." 554 U.S. at 592, 128 S.Ct. 2783." *Kachalsky v. County of*
 2 *Westchester*, 701 F. 3d 81 - Court of Appeals, 2nd Circuit (2012) at 88.
 3 "In *Heller*, the Supreme Court struck down the District of Columbia's ban on
 4 handgun possession, concluding that *the Second Amendment "guarantee[s] the*
 5 *individual right to possess and carry weapons in case of confrontation.*" 554 U.S.
 6 at 592, 635, 128 S.Ct. 2783." *US v. Henry*, 688 F. 3d 637 - Court of Appeals, 9th
 7 Circuit (2012) at 639-640. (italics added).

8 19. "In *District of Columbia v. Heller*, the Supreme Court held that the
 9 Second Amendment codified a pre-existing "*individual right to possess and carry*
 10 *weapons in case of confrontation.*" 554 U.S. at 592, 128 S.Ct. 2783." *US v.*
 11 *Decastro*, 682 F. 3d 160 - Court of Appeals, 2nd Circuit (2012) at 165. (italics
 12 added).

13 20. "[A]lthough the Court "d[id] not undertake an exhaustive historical
 14 analysis . . . of the full scope of the Second Amendment," *id.* at 626, 128 S.Ct.
 15 2783, it did examine the Amendment's history extensively, concluding that "all of
 16 [the Second Amendment's] elements together" coalesce to "*guarantee the*
 17 *individual right to possess and carry weapons in case of confrontation,*" *id.* at 592,
 18 128 S.Ct. 2783. In *McDonald*, the Court made this Second Amendment guarantee
 19 applicable to the states via the Fourteenth Amendment and reiterated *Heller's*
 20 reasoning that "*individual self-defense is 'the central component' of the Second*
 21 *Amendment right.*" 130 S.Ct. at 3036 (quoting *Heller*, 554 U.S. at 599, 128 S.Ct.
 22 2783)." *Walters v. Wolf*, 660 F. 3d 307 - Court of Appeals, 8th Circuit (2011) at
 23 316. (italics added).

24 21. "Resolving the longstanding issue whether the Second Amendment
 25 guarantees an individual right to keep and bear arms or a collective right to do so
 26 in connection with militia service, the Supreme Court in *Heller* held, based on "the
 27 historical background of the Second Amendment," that *the Amendment guarantees*
 28 *the "pre-existing" "individual right to possess and carry weapons in case of*

1 *confrontation.*" *Heller*, 128 S.Ct. at 2797 (emphasis omitted). Because the right
 2 predated the Constitution, the Court looked to the historical record when
 3 articulating its nature, noting that the right was secured to individuals according to
 4 "'libertarian political principles,' not as members of a fighting force," to "protect[]
 5 against both public and private violence." *Id.* at 2798-99. It also observed that
 6 throughout the country's history, Americans have valued the right not only to be
 7 able to prevent the elimination of militia, but "even more important[ly], for self-
 8 defense and hunting." *Id.* at 2801." *US v. Masciandaro*, 638 F. 3d 458 - Court of
 9 Appeals, 4th Circuit (2011) at 465-466. (italics added).

10 22. "The Court began its textual analysis by explaining that the function of
 11 the Second Amendment's prefatory clause ("A well regulated Militia, being
 12 necessary to the security of a free State") is merely to announce a purpose for the
 13 command given by the operative clause ("the right of the people to keep and bear
 14 Arms, shall not be infringed")—"apart from that clarifying function, [the] prefatory
 15 clause does not limit or expand the scope of the operative clause." *Id.* at 2789.[2]
 16 *The operative clause, Heller concluded, "guarantee[s] the individual right to*
 17 *possess and carry weapons in case of confrontation, "a meaning that "is strongly*
 18 *confirmed by the historical background of the Second Amendment."* *Id.* at 2797.
 19 Consideration of the historical sources was important because, as *Heller* explained,
 20 "the Second Amendment, like the First and Fourth Amendments, codified a pre-
 21 existing right." *Id.*" *US v. Chester*, 628 F. 3d 673 - Court of Appeals, 4th Circuit
 22 (2010) at 675. (italics added).

23 23. "The Second Amendment provides: "A well regulated Militia, being
 24 necessary to the security of a free State, the right of the people to keep and bear
 25 Arms, shall not be infringed." U.S. Const. amend. II. Approximately two years
 26 ago, in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d
 27 637 (2008), the Supreme Court held that several "District of Columbia [statutes]
 28 prohibit[ing] ... the possession of usable handguns in the home violate[d] the

1 Second Amendment...." 128 S.Ct. at 2787-88. In doing so, the Court concluded
 2 that the Second Amendment "confer[s] an individual right to keep and bear arms."
 3 Id. at 2799; see id. at 2797 (concluding that the operative clause of the *Second*
 4 *Amendment "guarantee[s] the individual right to possess and carry weapons in*
 5 *case of confrontation"*).” *US v. Reese*, 627 F. 3d 792 - Court of Appeals, 10th
 6 Circuit (2010) at 800. (italics added).

7 24. “Because “[c]onstitutional rights are enshrined with the scope they were
 8 understood to have when the people adopted them,” id. at 2821, the Court
 9 interpreted the text in light of its meaning at the time of ratification, id. at 2797-99.
 10 It concluded that the Second Amendment codified a pre-existing “individual right
 11 to possess and carry weapons in case of confrontation.” Id. at 2797. The “prefatory
 12 clause”—providing “[a] well regulated Militia being necessary to the security of a
 13 Free State”—explains only the purpose for codification, viz., preventing the
 14 disbandment of the militia by the federal government. Id. at 2801. It says nothing
 15 about the content of the right to bear arms and does not mean the right was
 16 protected solely to preserve the militia. Id. “[M]ost [Americans] undoubtedly
 17 thought it even more important for self-defense and hunting,” and the interest in
 18 self-defense “was the central component of the right itself.” Id.” *US v.*
 19 *Marzzarella*, 614 F. 3d 85 - Court of Appeals, 3rd Circuit (2010) at 89-90.

20 25. “In *Heller*, the Court based its holding on a reading of the Second
 21 Amendment's main clause, the “operative clause.” Id. at 2789 (“The Second
 22 Amendment is naturally divided into two parts: its prefatory clause and its
 23 operative clause. The former does not limit the latter grammatically but rather
 24 announces a purpose.”). The Court read the operative clause to “guarantee the
 25 individual right to possess and carry weapons in case of confrontation.” Id. at 2797.
 26 Although not codified in the amendment, the Court found that this right included a
 27 right to “self-defense,” which it described as “the central component of the right
 28 itself.” Id. at 2801. It held that the District of Columbia statutes were

1 unconstitutional because they prohibited a class of arms that Americans utilize for
 2 the lawful purpose of self-defense, thus prohibiting citizens from using firearms for
 3 "the core lawful purpose of self-defense." Id. at 2818." *US v. Chester*, 628 F. 3d
 4 673 - Court of Appeals, 4th Circuit (2010) at 675.

5 26. "The Court based its holding on a reading of the amendment's main
 6 clause, the "operative clause." Id. at 2789. The Court read the operative clause to
 7 "guarantee the individual right to possess and carry weapons in case of
 8 confrontation." Id. at 2797. Although not "codifi[ed]" in the amendment, this right
 9 included a right to "self-defense," which the Court described as "the central
 10 component of the right itself." Id. at 2801; see also id. at 2817 ("[T]he inherent
 11 right of self-defense has been central to the Second Amendment right."). Thus, the
 12 statutes in question were unconstitutional because they "prohibit[] . . . an entire
 13 class of 'arms' that is overwhelmingly chosen by American society for th[e] lawful
 14 purpose [of self-defense]," and "make[] it impossible for citizens to use [firearms]
 15 for the core lawful purpose of self-defense.'" *US v. RENE E.*, 583 F. 3d 8 - Court
 16 of Appeals, 1st Circuit (2009) at 11.

17 27. "In striking down the District of Columbia's ban on the possession of
 18 usable handguns, the Supreme Court in *Heller* concluded, for the first time, that the
 19 Second Amendment guarantees an individual right to possess weapons
 20 unconnected with militia service. See 128 S.Ct. at 2787-812; see also id. at 2797
 21 (stating that the Second Amendment "guarantee[s] the individual right to possess
 22 and carry weapons in case of confrontation"). The Court explained that this
 23 individual right comported with the purpose of the Amendment—to prevent the
 24 elimination of the militia—because "the way tyrants had eliminated a militia
 25 consisting of all the able-bodied men was not by banning the militia but simply by
 26 taking away the people's arms...." Id. at 2801." *US v. Tagg*, 572 F. 3d 1320 - Court
 27 of Appeals, 11th Circuit (2009) at 1326.

1 28. "In *Heller*, the Court held for the first time that the Second Amendment
 2 "codified a pre-existing" individual right to keep and bear arms. 554 U.S. at 592,
 3 128 S.Ct. at 2797. In so holding, the Court struck down a prohibition of the
 4 possession of operable handguns in one's home.[31] The Court reached its holding
 5 after an extensive discussion of the background of the Second Amendment at the
 6 time of drafting, reasoning that, while "self-defense had little to do with
 7 codification; it was the central component of the right itself." Id. at 599, 128 S.Ct.
 8 at 2801 (emphasis in original). The Court concluded that the District of Columbia's
 9 ban made it impossible to use a handgun for the "core lawful purpose of self-
 10 defense." Id. at 630, 128 S.Ct. at 2818." *GeorgiaCarry. Org, Inc. v. Georgia*, 687
 11 F. 3d 1244 - Court of Appeals, 11th Circuit (2012) at 1259.

12 29. "Any Second Amendment analysis must now begin with the Supreme
 13 Court's recent seminal decision in *Heller*, which held that the Second Amendment
 14 codified a "pre-existing" right that allows individuals to keep and bear arms.
 15 *Heller*, 554 U.S. at 592, 595, 128 S.Ct. 2783. The Court noted that the right to keep
 16 and bear arms was understood by the founding generation to encompass not only
 17 militia service, but also "self-defense and hunting," id. at 599, 128 S.Ct. 2783, and
 18 that, indeed, self-defense constituted "the central component of the right," id." *US*
 19 *v. Carter*, 669 F. 3d 411 - Court of Appeals, 4th Circuit (2012) at 414-415.

20 30. "The Second Amendment protects similarly intangible and
 21 unquantifiable interests. *Heller* held that the Amendment's central component is the
 22 right to possess firearms for protection. 554 U.S. at 592-95, 128 S.Ct. 2783.
 23 Infringements of this right cannot be compensated by damages." *Ezell v. City of*
 24 *Chicago*, 651 F. 3d 684 - Court of Appeals, 7th Circuit (2011) at 699.

25 31. "Two years after deciding *Heller*, the Supreme Court revisited the
 26 Second Amendment in *McDonald v. City of Chicago*, ___ U.S. ___, 130 S.Ct.
 27 3020, 177 L.Ed.2d 894 (2010), holding that the Second Amendment was
 28 applicable to the States by incorporation into the Fourteenth Amendment.

1 Explaining *Heller* further, the *McDonald* Court stated that "self-defense is the
 2 central component" of the individual right to keep and bear arms and that this right
 3 is "fundamental." Id. at 3036, 3038 n. 17 (plurality opinion) (emphasis omitted)."
 4 *US v. Masciandaro*, 638 F. 3d 458 - Court of Appeals, 4th Circuit (2011) at 467.

5 32. "As has been amply discussed, in *Heller*, the Supreme Court invalidated
 6 a gun ban in the District of Columbia, holding that the Second Amendment
 7 guarantees to law-abiding citizens the right to possess handguns for the purposes of
 8 self-defense. The Court identified the right to self-defense as "the central
 9 component of the right itself," *Heller*, 128 S.Ct. at 2802..." *US v. Chester*, 628 F.
 10 3d 673 - Court of Appeals, 4th Circuit (2010) at 686.

11 33. "In *Heller*, the United States Supreme Court held that the Second
 12 Amendment to the federal Constitution codifies the long-existing right of an
 13 individual to possess and carry weapons for self-defense in case of confrontation.
 14 (*Heller*, supra, 554 U.S. at pp. 592-595; see *McDonald v. Chicago* (2010) 561 U.S.
 15 ____ [177 L.Ed.2d 894, 130 S.Ct. 3020] [2d Amend. applies to the states].)" *People*
 16 *v. Mitchell*, 209 Cal.App.4th 1364 (2012) at 1372-1373.

17 34. "Amendment Two of the United States Constitution states, "A well
 18 regulated Militia, being necessary to the security of a free State, the right of the
 19 people to keep and bear Arms, shall not be infringed." (U.S. Const., 2d Amend.)
 20 The Second Amendment protects an individual's right to possess and carry
 21 weapons in case of confrontation. (*Heller*, supra, 554 U.S. at pp. 592, 595.) The
 22 Second Amendment is fully applicable to the states by the due process clause of
 23 the Fourteenth Amendment. (*McDonald v. City of Chicago* (2010) 561 U.S. ____
 24 [177 L.Ed.2d 894, 130 S.Ct. 3020].)" *People v. Ellison*, 196 Cal.App.4th 1342
 25 (2011) at 1347.

26 35. "In *Heller*, the Supreme Court held the Second Amendment protects an
 27 individual right "to possess and carry weapons in case of confrontation,"
 28 unconnected with service in a militia. (*Heller*, supra, 554 U.S. at p. 592 [128 S.Ct.

1 at p. 2797]; see also *id.* at pp. 627-630, 634-636 [128 S.Ct. at pp. 2817-2818, 2821-
2 2822].)” *People v. Delacy*, 192 Cal.App.4th 1481 (2011) at 1486-1487.

3 36. “In so holding, the court explained that the Second Amendment codified
4 a pre-existing right of the individual “to possess and carry weapons in case of
5 confrontation.” (*Id.* at p. ____ [171 L.Ed. at p. 657] [“The very text of the Second
6 Amendment implicitly recognizes the pre-existence of the right and declares only
7 that it ‘shall not be infringed.’”].)” *People v. James*, 174 Cal. App. 4th 662 (2009)
8 at 674.

9 37. “For example, the Court said, “the majority of the 19th-century courts to
10 consider the question held that prohibitions on carrying concealed weapons were
11 lawful under the Second Amendment or state analogues.”” *NATIONAL RIFLE*
12 *ASS'N OF AMERICA, INC. v. McCraw*, 719 F. 3d 338 - Court of Appeals, 5th
13 Circuit (2013) at 346.

14 38. “More recently, in *District of Columbia v. Heller*, 554 U.S. 570, 128
15 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Court noted that “the majority of the 19th-
16 century courts to consider the question held that prohibitions on carrying concealed
17 weapons were lawful under the Second Amendment or state analogues,” and
18 explained that “nothing in our opinion should be taken to cast doubt on
19 longstanding prohibitions.” *Id.* at 626, 128 S.Ct. 2783. In light of our nation's
20 extensive practice of restricting citizens' freedom to carry firearms in a concealed
21 manner, we hold that this activity does not fall within the scope of the Second
22 Amendment's protections.” *Peterson v. Martinez*, 707 F. 3d 1197 - Court of
23 Appeals, 10th Circuit (2013) at 1201.

24 39. “In the nineteenth century, laws directly regulating concealable weapons
25 for public safety became commonplace and far more expansive in scope than
26 regulations during the Founding Era. Most states enacted laws banning the
27 carrying of concealed weapons.[21] And as *Heller* noted, “the majority of the 19th-
28 century courts to consider the question held that prohibitions on carrying concealed

1 weapons were lawful under the Second Amendment or state analogues." *Heller*,
 2 554 U.S. at 626, 128 S.Ct. 2783. Indeed, the nineteenth century Supreme Court
 3 agreed, noting that "the right of the people to keep and bear arms... is not infringed
 4 by laws prohibiting the carrying of concealed weapons." *Robertson v. Baldwin*,
 5 165 U.S. 275, 281-82, 17 S.Ct. 326, 41 L.Ed. 715 (1897)." *Kachalsky v. County of*
 6 *Westchester*, 701 F. 3d 81 - Court of Appeals, 2nd Circuit (2012) at 95-96.

7 40. "This appeal presents a single issue: Does New York's handgun
 8 licensing scheme violate the Second Amendment by requiring an applicant to
 9 demonstrate "proper cause" to obtain a **license to carry a concealed handgun in**
 10 **public?"** *Kachalsky v. County of Westchester*, 701 F. 3d 81 - Court of Appeals,
 11 2nd Circuit (2012) at 83. (emphasis added).

12 41. "In *Heller*, the Court explained that "the right secured by the Second
 13 Amendment is not unlimited" and noted that "the majority of the 19th-century
 14 courts to consider the question held that prohibitions on carrying concealed
 15 weapons were lawful under Second Amendment or state analogues." 128 S.Ct. at
 16 2816. We have interpreted this portion of *Heller* as stating that "laws prohibiting
 17 the carrying of concealed weapons" are an "example[]" of 'longstanding' restrictions
 18 that [are] 'presumptively lawful' under the Second Amendment." *United States v.*
 19 *Rene E.*, 583 F.3d 8, 12 (1st Cir.2009) (quoting *Heller*, 128 S.Ct. at 2816-17 & n.
 20 26); see also *Robertson v. Baldwin*, 165 U.S. 275, 281-82, 17 S.Ct. 326, 41 L.Ed.
 21 715 (1897) (observing that "the first 10 amendments to the [C]onstitution" protect
 22 rights that are "subject to certain well-recognized exceptions" and stating, in dicta,
 23 that the Second Amendment right "is not infringed by laws prohibiting the carrying
 24 of concealed weapons").[9] Licensing of the carrying of concealed weapons is
 25 presumptively lawful, and Hightower makes no serious argument to the contrary."
 26 *Hightower v. City of Boston*, 693 F. 3d 61 - Court of Appeals, 1st Circuit (2012) at
 27 73-74.

1 42. “Accordingly, as the *Heller* Court acknowledged, the Second
 2 Amendment right, like other constitutional rights, is "not unlimited" in that it is
 3 "not a right to keep and carry any weapon whatsoever in any manner whatsoever
 4 and for whatever purpose." 554 U.S. at 626, 128 S.Ct. 2783. Indeed, *Heller* lists
 5 several examples of what the Court deemed to be "presumptively lawful regulatory
 6 measures," including prohibitions on carrying concealed weapons..." *US v.*
 7 *Carter*, 669 F. 3d 411 - Court of Appeals, 4th Circuit (2012) at 415.

8 43. “See *Heller*, 128 S.Ct. at 2816 (noting that "the majority of the 19th-
 9 century courts to consider the question held that prohibitions on carrying concealed
 10 weapons were lawful under the Second Amendment or state analogues"). Since
 11 historical meaning enjoys a privileged interpretative role in the Second
 12 Amendment context, see *id.* at 2816; *Skoien*, 587 F.3d at 809, this longstanding
 13 out-of-the-home/in-the-home distinction bears directly on the level of scrutiny
 14 applicable. Indeed, one of the principal cases relied upon in *Heller* upheld a state
 15 concealed carry ban after applying review of a decidedly less-than-strict nature.
 16 See *Nunn v. State*, 1 Ga. 243, 249 (1846) ("But a law which is merely intended to
 17 promote personal security, and to put down lawless aggression and violence, and to
 18 this end prohibits the wearing of certain weapons in such a manner as is calculated
 19 to exert an unhappy influence upon the moral feelings of the wearer, by making
 20 him less regardful of the personal security of others, does not come in collision
 21 with the Constitution")." *US v. Masciandaro*, 638 F. 3d 458 - Court of Appeals,
 22 4th Circuit (2011) at 470-471.

23 44. “Nor does *Heller* purport to invalidate any and every regulation on gun
 24 use; to the contrary, the Court in *Heller* disclaims any such intent:
 25 Like most rights, the right secured by the Second Amendment is not unlimited.
 26 From Blackstone through the 19th-century cases, commentators and courts
 27 routinely explained that the right was not a right to keep and carry any weapon
 28 whatsoever in any manner whatsoever and for whatever purpose.... For example,

1 the majority of the 19th-century courts to consider the question held that
 2 prohibitions on carrying concealed weapons were lawful under the Second
 3 Amendment or state analogues....” *Justice v. Town of Cicero*, 577 F. 3d 768 -
 4 Court of Appeals, 7th Circuit (2009) at 774.

5 45. “The Court also articulated a nonexclusive list of what it viewed to be
 6 acceptable government regulation of firearms: [T]he majority of the 19th-century
 7 courts to consider the question held that prohibitions on carrying concealed
 8 weapons were lawful under the Second Amendment or state analogues.” *US v.*
 9 *Fincher*, 538 F. 3d 868 - Court of Appeals, 8th Circuit (2008) at 873.

10 46. “As noted in *Heller*, generally, prohibitions on carrying concealed
 11 weapons have historically been upheld in the United States:
 12 “Like most rights, the right secured by the Second Amendment is not unlimited.
 13 From Blackstone through the 19th-century cases, commentators and courts
 14 routinely explained that the right was not a right to keep and carry any weapon
 15 whatsoever in any manner whatsoever and for whatever purpose. See, e.g.,
 16 Sheldon, in 5 Blume, 346; Rawle 123; Pomeroy 152-153; Abbott 333. For
 17 example, the majority of the 19th-century courts to consider the question held that
 18 prohibitions on carrying concealed weapons were lawful under the Second
 19 Amendment or state analogues. See, e.g., *State v. Chandler*, 5 La Ann at 489-490;
 20 *Nunn v. State*, 1 Ga at 251; see generally 2 Kent *340, n 2; The American Students’
 21 Blackstone 84, n 11 (G. Chase ed 1884).”
 22 554 US at 626.” *State v. Christian*, Oregon Supreme Court No. S060407 (2013)
 23 fn. 8.

24 47. “[T]he United States Supreme Court stated that “the right secured by the
 25 Second Amendment is not unlimited.” The Court observed that “[f]rom Blackstone
 26 through the 19th Century cases, commentators and courts routinely explained that
 27 the right was not a right to keep and carry any weapon whatsoever in any manner
 28 whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626, 128 S.Ct. 2783.

1 Illustrating this point, the Court related that "the majority of the 19th-century
 2 courts to consider the question held that prohibitions on carrying concealed
 3 weapons were unlawful under the Second Amendment or state analogues." *State v.*
 4 *RPH*, 265 P. 3d 890 - Wash: Supreme Court 2011 at 900.

5 48. "*Heller* noted, as mentioned above, that "the majority of the 19th-
 6 century courts to consider the question held that prohibitions on carrying concealed
 7 weapons were lawful under the Second Amendment or state analogues." 554 U.S.
 8 at 626, 128 S.Ct. 2783,[7] citing *Nunn v. State*, 1 Ga. 243 (Ga.1846) ("so far as the
 9 act . . . seeks to suppress the practice of carrying certain weapons secretly, . . . it is
 10 valid, inasmuch as it does not deprive the citizen of his natural right of self-
 11 defence, or of his constitutional right to keep and bear arms") (emphasis in
 12 original); and *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850) (statute prohibiting
 13 the carrying of concealed weapons did not violate the Constitution of the United
 14 States). Indeed, more than a century ago, the Supreme Court commented that "the
 15 right of the people to keep and bear arms (article 2) is not infringed by laws
 16 prohibiting the carrying of concealed weapons[.]" *Robertson v. Baldwin*, 165 U.S.
 17 275, 281-82, 17 S.Ct. 326, 41 L.Ed. 715 (1897) (dictum).

18 49. Such laws recognize the particular danger posed by the carrying of
 19 concealed weapons. See, e.g., (*Pomeroy*) *Brown v. United States*, 58 App.D.C.
 20 311, 312, 30 F.2d 474, 475 (1929) ("What was the purpose of Congress in the
 21 enactment of this law? Obviously, the protection of the public from the menace of
 22 concealed 'deadly or dangerous' weapons. No one familiar with present conditions
 23 will doubt the necessity for such a statute."); *People v. Yarbrough*, 169
 24 Cal.App.4th 303, 86 Cal.Rptr.3d 674, 682 (2008) ("Unlike possession of a gun for
 25 protection within a residence, carrying a concealed firearm presents a recognized
 26 threat to public order, and is prohibited as a means of preventing physical harm to
 27 persons other than the offender") (internal quotation marks and citation omitted);
 28 *State v. Chandler*, 5 La. Ann. at 489-90 ("This law became absolutely necessary to

1 counteract a vicious state of society, growing out of the habit of carrying concealed
 2 weapons, and to prevent bloodshed and assassinations committed upon
 3 unsuspecting persons."...)” *Gamble v. US*, 30 A. 3d 161 - DC: Court of Appeals
 4 (2011) at 165.

5 50. “This right “to keep and bear Arms,” however, has limitations:
 6 Like most rights, the right secured by the Second Amendment is not unlimited.
 7 From Blackstone through 19th century cases, commentators and courts routinely
 8 explained that the right was not a right to keep and carry any weapon whatsoever
 9 in any manner whatsoever and for whatever purpose. For example, the majority of
 10 the 19th-century courts to consider the question held that prohibitions on carrying
 11 concealed weapons were lawful under the Second Amendment or state analogues.”
 12 *Williams v. State*, 10 A. 3d 1167 - Md: Court of Appeals (2011) at 1175.

13 51. “Another equally damaging defect in Mr. Mack's argument is that
 14 *Heller* did not recognize a right to carry concealed weapons. By Mr. Mack's own
 15 admission, he left the house and encountered Mr. Price while carrying the ice pick
 16 in his pocket. In *Heller* the Supreme Court made clear that “the right secured by
 17 the Second Amendment is not unlimited,” and it specifically acknowledged that
 18 laws prohibiting the carrying of concealed weapons have long been upheld as
 19 appropriate limits on that right. 128 S.Ct. at 2816 (“[T]he majority of 19th century
 20 courts to consider the question held that prohibitions on carrying concealed
 21 weapons were lawful.”). See *Robertson v. Baldwin*, 165 U.S. 275, 281-82, 17 S.Ct.
 22 326, 41 L.Ed. 715 (1897) (“[T]he right of the people to keep and bear arms ... is not
 23 infringed by laws prohibiting the carrying of concealed weapons....”)” *Mack v. US*,
 24 6 A. 3d 1224 - DC: Court of Appeals (2010) at 1236.

25 52. “Like most rights, the right secured by the Second Amendment is not
 26 unlimited. From Blackstone through the 19th-century cases, commentators and
 27 courts routinely explained that the right was not a right to keep and carry any
 28 weapon whatsoever in any manner whatsoever and for whatever purpose.

1 [Citations omitted.] For example, the majority of the 19th-century courts to
 2 consider the question held that prohibitions on carrying concealed weapons were
 3 lawful under the Second Amendment or state analogues." *Wooden v. US*, 6 A. 3d
 4 833 - DC: Court of Appeals (2010) at 836.

5 53. "However, the Court also declared that the Second Amendment right is
 6 not absolute, that it "is not unlimited," *id.* at 2816; it does not "protect the right of
 7 citizens to carry arms for any sort of confrontation...", *id.* at 2799; nor is it "a right
 8 to keep and carry any weapon whatsoever in any manner whatsoever and for
 9 whatever purpose," *id.* at 2816 (citation omitted). Moreover, historically,
 10 "prohibitions on carrying concealed weapons were lawful under the Second
 11 Amendment or state analogues." *Id.* (citations omitted)." *Plummer v. US*, 983 A.
 12 2d 323 - DC: Court of Appeals (2009) at 336.

13 54. "The court did not recognize a "right to keep and carry any weapon
 14 whatsoever in any manner whatsoever and for whatever purpose," observing that
 15 historically, most courts have "held that prohibitions on carrying concealed
 16 weapons were lawful under the Second Amendment or state analogues." (*Id.* at p.
 17 ____ [171 L.Ed.2d at p. 678].) The high court's decision in *Heller* does not require
 18 us to conclude that possession in a public place of a loaded, cocked, semiautomatic
 19 weapon with a chambered round, **concealed** in a large glove and ready to fire,
 20 cannot be defined as a crime under state law." *People v. Dykes*, 46 Cal. 4th 731 -
 21 Cal: Supreme Court (2009) at 778. (emphasis added).

22 55. "However, the *Heller* court recognized that the right to bear arms in
 23 self-defense, like most constitutional rights, is not unlimited. (*Heller*, *supra*, 554
 24 U.S. at pp. 595, 626.) "[T]he right [is] not a right to keep and carry any weapon
 25 whatsoever in any manner whatsoever and for whatever purpose." (*Id.* at p. 626,
 26 italics added.) Of particular relevance here, the *Heller* court commented that the
 27 majority of 19th-century courts held that "prohibitions on carrying concealed
 28

1 weapons were lawful under the Second Amendment...." (*Ibid.*, italics added.)"
 2 *People v. Mitchell*, 209 Cal. App. 4th 1364 (2012) at 1373.

3 56. "However, the Supreme Court observed that the right is not unlimited.
 4 (*Heller*, supra, 554 U.S. at pp. 595, 626.) The "right [is] not a right to keep and
 5 carry any weapon whatsoever in any manner whatsoever and for whatever
 6 purpose." (*Ibid.*) The court acknowledged that the majority of 19th-century courts
 7 to consider the question held that prohibitions on carrying concealed weapons were
 8 lawful under the Second Amendment. (554 U.S. at pp. 595, 626.)" *People v.*
 9 *Ellison*, 196 Cal. App. 4th 1342 (2011) at 1348.

10 57. "In addition to the list of "presumptively lawful regulatory measures"
 11 noted in our earlier discussion, the *Heller* opinion emphasizes, with apparent
 12 approval, that "the majority of the 19th-century courts to consider the question held
 13 that prohibitions on carrying concealed weapons were lawful under the Second
 14 Amendment or state analogues." (*Heller*, supra, 554 U.S. at pp. ____ - ____ & fn. 26
 15 [128 S.Ct. at pp. 2816-2817 & fn. 26]; see also *id.* at p. ____ [128 S.Ct. at p. 2851]
 16 (dis. opn. of Breyer, J.) [noting that "the majority implicitly, and appropriately, ...
 17 broadly approv[es] a set of laws" restricting firearm use, including "prohibitions on
 18 concealed weapons [and] forfeiture by criminals of the Second Amendment
 19 right"].) Given this implicit approval of concealed firearm prohibitions, we cannot
 20 read *Heller* to have altered the courts' longstanding understanding that such
 21 prohibitions are constitutional. (See also *Robertson v. Baldwin* (1897) 165 U.S.
 22 275, 281-282 [41 L.Ed. 715, 17 S.Ct. 326] [stating in dicta, "the right of the people
 23 to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of
 24 concealed weapons ..."].)" *People v. Flores*, 169 Cal. App. 4th 568 (2008) at 575.

25 58. "The court declared: "[T]he majority of the 19th-century courts to
 26 consider the question held that prohibitions on carrying concealed weapons were
 27 lawful under the Second Amendment or state analogues. [Citations.]" *People v.*
 28 *Yarbrough*, 169 Cal. App. 4th 303 (2008) at 313.

59. "Significantly, two of the examples the *Heller* majority cites as permissible examples are general prohibitions on concealed carry comparable to § 941.23. See *id.* at 2816 (citing *State v. Chandler*, 5 La. Ann. 489, 489-90 (La. 1850), and *Nunn v. State*, 1 Ga. 243, 251 (Ga. 1846)).

¶ 11 Little might argue that I have read too much into the majority's comment. But a further exchange between the *Heller* majority and dissenting Justice Breyer demonstrates that this was a carefully considered comment. In dissent, Justice Breyer wrote: [T]he majority's list, in Part III of its opinion, of provisions that in its view would survive Second Amendment scrutiny [consists of] (1) "prohibitions on carrying concealed weapons"; (2) "prohibitions on the possession of firearms by felons"; (3) "prohibitions on the possession of firearms by ... the mentally ill"; (4) "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings"; and (5) government "conditions and qualifications" attached "to the commercial sale of arms." *Heller*, 128 S. Ct. at 2869-70 (Breyer, J., dissenting) (emphasis added). What is particularly telling is the majority's response to Justice Breyer. The majority did not take issue with Justice Breyer's characterization, but instead embraced it: Justice BREYER chides us ... for not providing extensive historical justification *for those regulations of the right that we describe as permissible....* [But] there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us. *Heller*, 128 S. Ct. at 2821 (emphasis added).

Accordingly, I conclude there is little doubt that the *Heller* majority, and dissenters for that matter, consider general prohibitions on the carrying of concealed weapons permissible. If our supreme court looked to *Heller* for guidance, it would reach the same conclusion." *State v. Little*, Wis: Court of Appeals, 4th Dist. (2012) at ¶¶10-11.

1 60. "It was held in this case, that the statute of 1831, prohibiting all
 2 persons, except travellers, from wearing or carrying concealed weapons, is not
 3 unconstitutional." *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833) (full citation).
 4 "See also *State v. Reid*, 1 Ala. 612, 616-617 (1840) ("A statute which, under the
 5 pretence of regulating, amounts to a destruction of the right, or which requires
 6 arms to be so borne as to render them wholly useless for the purpose of defence,
 7 would be clearly unconstitutional")." *District of Columbia v. Heller*, 128 S. Ct.
 8 2783 (2008) at 2818.

9 61. "The question recurs, does the act, "To suppress the evil practice of
 10 carrying weapons secretly," trench upon the constitutional rights of the citizen? We
 11 think not." *State v. Reid*, 1 Ala. 612, 35 Am. Dec. 44 (1840) at 616.

12 62. "The Court first articulated the strict-scrutiny standard in *Korematsu v.*
 13 *United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944). There, we held
 14 that "[p]ressing public necessity may sometimes justify the existence of [racial
 15 discrimination]; racial antagonism never can." *Id.*, at 216, 65 S.Ct. 193.[1] Aside
 16 from *Grutter*, the Court has recognized only two instances in which a "[p]ressing
 17 public necessity" may justify racial discrimination by the government. First, in
 18 *Korematsu*, the Court recognized that protecting national security may satisfy this
 19 exacting standard. In that case, the Court upheld an evacuation order directed at
 20 "all persons of Japanese ancestry" on the grounds that the Nation was at war with
 21 Japan and that the order had "a definite and close relationship to the prevention of
 22 espionage and sabotage." 323 U.S., at 217-218, 65 S.Ct. 193. Second, the Court
 23 has recognized that the government has a compelling interest in remedying past
 24 discrimination for which it is responsible, but we have stressed that a government
 25 wishing to use race must provide "a `strong basis in evidence for its conclusion that
 26 remedial action [is] necessary.'" *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500,
 27 504, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (quoting *Wygant v. Jackson Bd. of*
 28 *Ed.*, 476 U.S. 267, 277, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (plurality

1 opinion)).” *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 - Supreme
2 Court (2013) at 2422-2423.

3 63. “Once racial discrimination is shown to have been a “substantial” or
4 “motivating” factor behind enactment of the law, the burden shifts to the law’s
5 defenders to demonstrate that the law would have been enacted without this
6 factor.” *Hunter v. Underwood*, 471 US 222 - Supreme Court (1985) at 228.

7 64. “Similarly, in *Hunter v. Underwood*, 471 U.S. 222 (1985), the Supreme
8 Court unanimously struck down a provision of the Alabama constitution that
9 disenfranchised individuals convicted of crimes involving moral turpitude. The
10 provision was facially neutral because it applied to persons of all races. *Id.* at 227.
11 However, there was compelling evidence that the provision was adopted at the turn
12 of the 20th century for the purpose of disenfranchising black voters who were
13 convicted of such crimes at a far higher rate than white voters. Assuming,
14 arguendo, that the disenfranchisement provision would be constitutional if it were
15 passed in modern times without the intent to discriminate against racial minorities,
16 the Court nonetheless held that because it had been enacted for a discriminatory
17 purpose it “violates equal protection under *Arlington Heights*.” *Id.* at 233. The
18 1903 Alabama legislature’s willingness (or intent) to also disenfranchise white
19 individuals convicted of crimes of moral turpitude was irrelevant; all that mattered
20 was that the act “would not have been adopted . . . in the absence of the racially
21 discriminatory motivation.”[24] *Id.* at 231.” *PACIFIC SHORES PROPERTIES,*
22 *LLC v. City of Newport Beach*, Court of Appeals, 9th Circuit No. 11-55460 (2013)
23 Slip Op., pg., 34.

24 65. “Moreover, in *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18
25 L.Ed.2d 830 (1967), the Supreme Court struck down a California housing law. The
26 law was facially neutral with respect to race: By its own terms, it simply protected
27 certain ownership and sale rights of property owners. But the Court concluded that,
28 on the basis of the context and circumstances of the law’s passage, it had the

1 "design and intent" of weakening the state's anti-discrimination laws. Id. at 374, 87
 2 S.Ct. 1627." *In re Golinski*, 587 F. 3d 901 - Court of Appeals, 9th Circuit (2009) at
 3 903.

4 66. "The question presented is whether knowledge that the firearm is loaded
 5 is an element of the offense of carrying a loaded firearm in a public place.[1] (Pen.
 6 Code, § 12031, subd. (a).) We hold that such knowledge is not an element of the
 7 offense and affirm the judgment." *People v. Dillard*, 154 Cal. App. 3d 261 (1984)
 8 at 263.

9 67. "Penal Code section 12031, subdivision (a), does not require knowledge
 10 that the gun was loaded, as the statute prohibits the carrying of a loaded firearm
 11 and does not specify knowledge it is loaded as an element of the crime. Appellant
 12 does not contend the contrary." *People v. Harrison*, 1 Cal. App. 3d 115 (1969) at
 13 120.

14 68. "Last, Taylor alleges the gun was inoperable and operability is an
 15 element of Penal Code section 12031, subdivision (a). Although we find the
 16 evidence demonstrates the gun was operable, we hold operability is not an element
 17 of possession of a loaded firearm in a public place." *People v. Taylor*, 151 Cal.
 18 App. 3d 432 (1984) at 437.

19 69. "To summarize, we conclude that a Taser is a firearm and can be a
 20 loaded firearm within section 12031. In other words, the question presented for
 21 determination, whether section 12031, subdivision (a) applies to the weapon
 22 known as a "Taser" is answered in the affirmative." *People v. Heffner*, 70 Cal.
 23 App. 3d 643 (1977) at 652.

24 70. "In *Heller*, the court determined the treatment of the Second
 25 Amendment in *Lewis v. United States* (1980) 445 U.S. 55, 65-66 [Second
 26 Amendment guarantees no right to keep and bear a firearm that does not have
 27 some reasonable relationship to the preservation or efficiency of a well regulated
 28 militia] to be "footnoted dictum" (*Heller*, supra, 554 U.S. at p. 625, fn. 25.)

1 *Rupf* relied on *Lewis v. United States* for the proposition that "[l]egislative
 2 restrictions on the use of firearms are neither based upon constitutionally suspect
 3 criteria, nor do they trench upon any constitutionally protected liberties." (*Rupf*,
 4 supra, 85 Cal.App.4th at p. 421.) It also relied on Ninth Circuit and other federal
 5 authorities—now abrogated—holding that the Second Amendment is a right held
 6 by the states, and does not protect the possession of a weapon by a private citizen.
 7 (Ibid., quoting *Hickman v. Block* (9th Cir. 1996) 81 F.3d 98, 101.)” *City of San*
 8 *Diego v. Boggess*, Cal: Court of Appeal, 4th Appellate Dist., 1st Div. No. D061715
 9 (2013) at fn. 7.

10 71. “For example, the majority of the 19th-century courts to consider the
 11 question held that prohibitions on carrying concealed weapons were lawful under
 12 the Second Amendment or state analogues. . . .” *NATIONAL RIFLE*
 13 *ASSOCIATION OF AMERICA INCORPORATED v. BUREAU OF ALCOHOL*
 14 *TOBACCO FIREARMS AND EXPLOSIVES* (2012) at 193.

15 72. “We know of no other enumerated constitutional right whose core
 16 protection has been subjected to a freestanding "interest-balancing" approach. The
 17 very enumeration of the right takes out of the hands of government—even the
 18 Third Branch of Government—the power to decide on a case-by-case basis
 19 whether the right is really worth insisting upon. A constitutional guarantee subject
 20 to future judges' assessments of its usefulness is no constitutional guarantee at all.
 21 Constitutional rights are enshrined with the scope they were understood to have
 22 when the people adopted them, whether or not future legislatures or (yes) even
 23 future judges think that scope too broad.” *Heller* at 2821.

24 73. “Those who believe in the primacy of collective security read *Heller*
 25 narrowly within the factual context in which the case arose. See discussion as to
 26 Part III.B in *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011);
 27 *Piszcatoski v. Filko*, 840 F. Supp. 2d 813 (D. N.J. 2012). Judge Posner
 28 persuasively discredited that reading by his textual analysis in the opinion deciding

1 *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Aside from the textual meaning
 2 of "bear arms," he recognized the common-sense view that armed self-defense is
 3 important outside the home and that hunting takes place outside the home.
 4 Accordingly, the Court concludes that the Second Amendment protects the right to
 5 openly carry firearms outside the home for a lawful purpose, subject to such
 6 restrictions as may be reasonably related to public safety." *BONIDY v. United*
 7 *States Postal Service*, Dist. Court, D. Colorado - Civil Action No. 10-cv-02408-
 8 RPM - (July 9, 2013).

9 74. Cities and counties are free to enact local laws restricting when and
 10 where a CCW license is valid even if the issuing authority has not placed any
 11 restrictions on the license. *CALGUNS FOUNDATION, INC. v. County of San*
 12 *Mateo*, Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. No. A136092 (August
 13 2, 2013).

14 75. *McDonald v. City of Chicago*, Ill., 130 S. Ct. 3020 - Supreme Court
 15 (2010) fully incorporated the private right to keep and bear arms to all states and
 16 local governments. *McDonald* did not incorporate some shadow version of the
 17 Federal guarantee or some watered-down version of the Federal guarantee. The
 18 private right to keep and bear arms for the purpose of self-defense and for other
 19 lawful purposes exists within the home, within the curtilage of one's home and in
 20 non-sensitive public places.

21 76. "Mere refusal to consent to a stop or search does not give rise to
 22 reasonable suspicion or probable cause. People do not have to voluntarily give up
 23 their privacy or freedom of movement, on pain of justifying forcible deprivation of
 24 those same liberties if they refuse." *US v. Fuentes*, 105 F. 3d 487 - Court of
 25 Appeals, 9th Circuit 1997 at 490.

26 77. "Weapons traditionally found to be outside the scope of the protection
 27 of the Second Amendment have been: pipe bombs, *United States v. Tagg* (11th Cir.
 28 2009) 572 F. 2d 1320, 1326; concealed weapons *State v. Chandler* (1850); and,

1 unmarked firearms, *United States v. Carter* (9th Cir. 2005).” *People v. LISCOTTI*,
 2 Cal: Court of Appeal No. 2010043342 (August 30, 2013) Slip Op. pg., 3.

3 78. “The policy underlying the prohibition against concealed weapons is
 4 based on the protection of those persons who may come into contact with a
 5 weapon bearer. If a weapon is not concealed, one may take notice of the weapon
 6 and its owner and govern oneself accordingly, but no such opportunity for cautious
 7 behavior or self-preservation exists for one encountering the bearer of a concealed
 8 weapon. In light of this policy, the question whether a particular weapon was
 9 concealed should be considered from the point of view of one approaching the
 10 location of the weapon, and the intent of the defendant as to concealment should
 11 not be considered, since a defendant's innocent intent does not make a concealed
 12 weapon any more visible.” *People v. Mitchell*, 209 Cal. App. 4th 1364 (2012)
 13 (01/23/2013 - Petition for review denied in Supreme Court.)

14 79. “[A] state may be able to require "open carry" — that is, require persons
 15 who carry a gun in public to carry it in plain view rather than concealed. See
 16 *District of Columbia v. Heller*, supra, 554 U.S. at 626, 128 S.Ct. 2783...” *Moore v.*
 17 *Madigan*, 702 F. 3d 933 - Court of Appeals, 7th Circuit (2012).

18 80. “The act of firearm possession, by itself, is innocent.” *People v. Jones*,
 19 278 P. 3d 821 - Cal: Supreme Court (2012) at 356.

20 81. The right to bear arms, in public, has always been recognized as a right
 21 and race has always been a factor in the United States in denying the right to keep
 22 and bear arms. In the notorious “Dred Scott decision” the US Supreme Court
 23 recognized that if Blacks were recognized as citizens then they would be free “to
 24 keep and carry arms wherever they went.” One hundred and ten years later, Blacks
 25 and other minorities began to carry arms in California. The California legislature
 26 made that a crime.

27 “More especially, it cannot be believed that the large slaveholding States
 28 regarded them as included in the word citizens, or would have consented to a

1 Constitution which might compel them to receive them in that character from
 2 another State. For if they were so received, and entitled to the privileges and
 3 immunities of citizens, it would exempt them from the operation of the special
 4 laws and from the police regulations which they considered to be necessary for
 5 their own safety. It would give to persons of the negro race, who were recognised
 6 as citizens in any one State of the Union, the right to enter every other State
 7 whenever they pleased, singly or in companies, without pass or passport, and
 8 without obstruction, to sojourn there as long as they pleased, to go where they
 9 pleased at every hour of the day or night without molestation, unless they
 10 committed some violation of law for which a white man would be punished; and it
 11 would give them the full liberty of speech in public and in private upon all subjects
 12 upon which its own citizens might speak; to hold public meetings upon political
 13 affairs, and *to keep and carry arms wherever they went*. And all of this would be
 14 done in the face of the subject race of the same color, both free and slaves, and
 15 inevitably producing discontent and insubordination among them, and endangering
 16 the peace and safety of the State.” *Dred Scott v. Sandford*, 60 US 393 - Supreme
 17 Court (1857) at 416-417. (Emphasis added).

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22 Dated: November 8, 2013

Respectfully submitted,



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CERTIFICATE OF SERVICE

On this, the 8th day of November, 2013, I caused to be served a copy of the foregoing **PLAINTIFF CHARLES NICHOLS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW; EVIDENCE IN SUPPORT THEREOF** by US Mail on:

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LEAD ATTORNEY / ATTORNEY TO BE NOTICED representing Kamala D Harris
(Defendant).

Executed this the 8th day of November, 2013 by:



Charles Nichols