

MICHAEL W. WEBB S.B.N. 133414
 City Attorney for the
 City of Redondo Beach
 415 Diamond Street
 Redondo Beach, CA 90277-0639

Phone: (310) 318-0655
 Fax: (310) 372-3886

Attorney for Redondo Beach Defendants

**IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

CHARLES NICHOLS,
 Plaintiff,

v.

EDMUND G. BROWN, JR., in his
 official capacity as Governor of
 California, KAMALA D. HARRIS,
 Attorney General, in her official
 capacity as Attorney General of
 California, CITY OF REDONDO
 BEACH, CITY OF REDONDO
 BEACH POLICE DEPARTMENT,
 CITY OF REDONDO BEACH
 POLICE CHIEF JOSEPH
 LEONARDI, and DOES 1 to 10,
 Defendants.

CASE NO: 2:11-cv-09916-SJO-SS

**DEFENDANTS' REPLY TO
 PLAINTIFFS' OPPOSITION TO
 DEFENDANTS' MOTION TO
 DISMISS
 (Fed. R. Civ. P. 12(b)(1) and 12(b)(6))**

Date: March 6, 2012
 Time: 10:00 a.m.
 Location: Courtroom 23 3rd Floor
 Judge: Hon. Suzanne H. Segal
 Date Action Filed: November 20, 2011

Defendants City of Redondo Beach, Redondo Beach Police Department, and
 Redondo Beach Police Chief Joseph Leonardi (collectively "Redondo Beach
 Defendants" or "the City") hereby submit this Reply to Plaintiff's Opposition to the
 City's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and
 12(b)(6).

ARGUMENT

It is unclear exactly what Plaintiff wants to do, how the City is allegedly preventing him from doing it, why the law compels them to, and why he wants them to be a party to this action. So Defendants find it trying to respond to Plaintiff's Opposition. But, in any event plaintiff has no case or controversy with the Redondo Beach Defendants. Their Motion to Dismiss his complaint should be granted.

Whether Plaintiff's claims about the unconstitutionality of California's statutes are accurate or not is not a concern of the City. That is a matter for Plaintiff to resolve *with the state*. The City should not be made to answer for the state's adoption of the statutes that Plaintiff contends cause his alleged injury. The City cannot invalidate a state law. So the City is powerless to provide a remedy even if one was appropriate.

I. Plaintiff Fails to Demonstrate Standing

As Defendants point out in their Motion, Plaintiff lacks standing to sue Defendants. His Complaint fails to demonstrate a link between an official policy or practice of Defendants and his alleged injuries; and even if it did, the relief he seeks against Defendants would not redress the grievances asserted in this lawsuit. Plaintiff's Opposition actually bolsters the City's case, offering his alleged experiences to demonstrate why the injunctive relief Plaintiff seeks against the City would not prevent his prosecution for the activities he wishes to engage in. Moreover, Plaintiff's Opposition shows that his alleged injury is speculative as the City.

A) Plaintiff Alleges No Injury In Fact Caused by Defendants

To have standing Plaintiff must show that he "has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011) (internal quotation marks and citations omitted).

1 Plaintiff's Opposition reveals that the injury he alleges against the City is
2 hypothetical. The injury Plaintiff asserts is the prohibition on his ability to carry a
3 loaded firearm openly in public and being subject to searches of his firearm when
4 doing so. But as Plaintiff admits in his Opposition, it is *state* law that subjects him
5 to those restrictions. There is no official policy or practice of Defendants beyond
6 the mere enforcement of state law.

7 Plaintiff argues *his* interpretation of state law in conjecturing that
8 Defendants will prosecute him or search him for carrying firearms on his private
9 property, or for carrying an unloaded shotgun in public places where state law
10 allows, and then asks this Court to prevent Defendants from doing so.

11 But this is a baseless hypothetical of a *future* injury, not one Plaintiff has or
12 is currently suffering. As such, it is foreclosed by the U.S. Supreme Court's
13 decision in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), which held that a
14 plaintiff, even though he had been subjected to choke-holds by officers in the past,
15 did not have standing to sue for injunctive relief to stop future choke-holds because
16 his injury was hypothetical. *See id.* at 109.

17 **B) Plaintiff Cannot Show How Defendants Cause His Alleged Injury**

18 Contrary to Plaintiff's assertion, Defendants do not contend that a plaintiff
19 must necessarily wait until being arrested to have standing to challenge a law.
20 Plaintiff correctly notes the general proposition that one need only face a "credible
21 threat of prosecution" of a law to have standing to challenge that law. (Pl.'s Opp'n.
22 to Redondo Beach Defs.' Mot. to Dismiss 13). But Plaintiff must point to an
23 *official* policy or practice of *Defendants* which causes that threat of prosecution to
24 provide him standing against a municipal entity like the City. (*Id.* at 6., relying on
25 *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115 (1992)).

26 Plaintiff's alleging mere enforcement of general law *state* statutes, the
27 existence of which Defendants have no control over, without more is insufficient.
28 Equally insufficient are Plaintiff's newly mentioned incidents from the year 2010

1 allegedly involving individual Redondo Beach officers performing searches of
 2 *other* peoples' firearms. Moreover the City Attorney's alleged statements that
 3 Defendants ban the public open carry of unloaded firearms in the City is irrelevant,
 4 because *state law* already prohibits that activity. (Cal. Penal Code § 26350)

5 **C) Plaintiff Verifies that His Alleged Injury Cannot Be Redressed by**
 6 **Granting the Relief He Seeks Against Defendants**

7 Plaintiff does not explain how injunctive relief against the City would
 8 redress his alleged injury. And in fact his own statements suggest it will not.
 9 Plaintiff explains that he desires to carry a firearm in public, including on his own
 10 property, without being subjected to prosecution or search, but that he is impeded
 11 from doing so not only by Defendants, but also by the Torrance Police Department,
 12 and by the Los Angeles Police Department, who he states drive by his property.
 13 (Opp'n 13). He is also subject to the Los Angeles County Sheriff's enforcement of
 14 the challenged statutes. (last visited Feb. 14, 2012)

15 So, even if he were to obtain an injunction against the City from enforcing
 16 the state law, he would still face a prosecution by other law enforcement agencies
 17 for violating those same state laws.

18 **II. Plaintiff Fails to State a Claim**

19 Notwithstanding his *pro se* status, Plaintiff is nonetheless required to explain
 20 with *some* degree of particularity why Redondo Beach is being singled out from
 21 other California cities in this lawsuit challenging provisions of *state* laws.

22 The case Plaintiff relies on for the proposition that pro se plaintiffs are
 23 entitled to special treatment in pleading standards, *Hebbe v. Pliler*, 611 F.3d 1202,
 24 1205 (9th Cir. 2010), (Opp', 10-11), is not helpful to Plaintiff beyond that general
 25 maxim – the validity of which Defendants concede. In *Hebbe*, the plaintiff
 26 mentioned specific activity by the prison-defendants that violated his rights. He
 27 specifically he alleged they “forced him to choose between his constitutional right
 28 to [physical] exercise and his constitutional of access to the courts” by denying him
 legal library access unless he gave up time outside of his cell. *Hebber*, 611 f.3d at

1 1203. Plaintiff Nichols here makes no such specific allegations against Defendants
2 that are relevant.

3 Plaintiff gives much weight to the *Hacopian* case. Defendants agree that
4 case is instructive here. As Plaintiff himself points out in the Conclusion of his
5 Opposition, the plaintiffs in *Hacopian* adequately alleged a Fourth Amendment
6 claim “by alleging facts to support that Defendants conducted an unreasonable
7 search and seizure.” (Opp’n 19).

8 Here, Plaintiff does not and cannot point to specific acts or policies of
9 Defendants as were present in the *Hacopian* case.

10 It is also worth noting that, beyond suing specific officers for specific acts,
11 though the plaintiffs in that case sued the police department, they did *not* sue the
12 municipality.

13 CONCLUSION

14 For the reasons set forth above, this Court should grant Redondo Beach
15 Defendants’ Motion to Dismiss.

16 Date: February 14, 2012

**REDONDO BEACH CITY
ATTORNEY’S OFFICE**

18 / s /Michael W. Webb
19 Michael W. Webb
20 Counsel for Redondo Beach Defendants
21
22
23
24
25
26
27
28

