

FILED

FEB 13 2012

K.L.

2012 FEB 10 PM 12:15
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

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

United States District Court
Central District of California

Charles Nichols,

Plaintiff,

vs.

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.:

CV-11-9916 SJO (SS)

**REQUEST FOR JUDICIAL
NOTICE OF RECENTLY
DECIDED 9TH CIRCUIT OPINION
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO MOTIONS TO
DISMISS BY REDONDO BEACH
DEFENDANTS AND MOTION TO
DISMISS BY DEFENDANT
KAMALA D. HARRIS, ATTORNEY
GENERAL, IN HER OFFICIAL
CAPACITY AS ATTORNEY
GENERAL OF CALIFORNIA**

Date: Vacated
Time: Vacated
Ctvm: Vacated
Trial Date: Not Yet Set
Action Filed: Nov. 30, 2011

Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY
DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY
REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS,
ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA

24

REQUEST FOR JUDICIAL NOTICE

Plaintiff CHARLES NICHOLS ("NICHOLS") hereby requests that the Court take judicial notice of the recent Opinion by the Court of Appeals for the 9th Circuit – Perry v. Brown (Case No. 10-16696/No. 11-16577; D.C. No. 3:09-cv-02292-VRW).

This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited below. This request is made in opposition to the Motions to Dismiss the Complaint for Declaratory and Injunctive Relief ("Motions") of defendants CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE DEPARTMENT, CITY OF REDONDO BEACH POLICE CHIEF JOSEPH LEONARDI (collectively "Redondo Beach Defendants") and KAMALA D. HARRIS, Attorney General, in her official capacity as Attorney General of California (collectively "Defendants").

BASIS FOR REQUESTING JUDICIAL NOTICE

On a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rule of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. Lee v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001) (citing Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial notice of documents outside of the complaint that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed.R.Evid. 201(d); Wietschner v. Monterey Pasta Co., 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003). Courts can take judicial notice of such matters when considering a motion to dismiss. Wietschner, 294 F. Supp. 2d at 1109; MGIC Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS, ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA

1 Indem. Corp. v. Weisman, 803 F. 2d 500, 504 (9th Cir. 1986). Further, Courts
2 "may take judicial notice of facts of 'common knowledge' in ruling on a motion to
3 dismiss." Newcomb v. Brennan, 558 F.2d 825, 829 (7th Cir. 1977).

4 As explained further below, the Court may take judicial notice of of the recent
5 Opinion by the Court of Appeals for the 9th Circuit – Perry v. Brown (Case No.
6 10-16696; D.C. No. 3:09-cv-02292-VRW) which was filed on February 7th, 2012
7 and is a document on file at the official website of the UNITED STATES
8 COURTS FOR THE 9TH CIRCUIT -
9 <http://www.ca9.uscourts.gov/datastore/general/2012/02/07/1016696com.pdf>

10
11 No. 10-16696

12 Argued and Submitted December 6, 2010

13 San Francisco, California

14 Submission Withdrawn January 4, 2011

15 Resubmitted February 7, 2012

16
17 No. 11-16577:

18 Argued and Submitted December 8, 2011

19 San Francisco, California

20 Filed February 7, 2012

21
22 This Opinion strikes down as unconstitutional Article I, Section 7.5 of the
23 California Constitution because it violates the Fourteenth Amendment to the
24 United States Constitution.

25
26 Unlike the separate Motions to Dismiss Plaintiff's case, which rely on
27 convoluted logic and incorrect interpretations of the Eleventh Amendment to the
28 United States Constitution to support why Plaintiff's case should be dismissed
Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY
DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY
REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS,
ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA 3

1 pursuant to F.R.Civ.P. 12(b)(1) in the Motion to Dismiss by Defendant Harris and
2 pursuant to both F.R.Civ.P. 12(b)(1) and F.R.Civ.P. 12(b)(6) by the Redondo
3 Beach Defendants; The Court in Perry v. Brown found no Eleventh Amendment
4 bar nor should this court.

5
6 Beginning at page 8 of the Opinion "I – A" and throughout, the decision
7 relied heavily on its reading of the California Constitution.

8
9 Unlike Same Sex Marriage, which was inconceivable to the people who
10 drafted both the California and United States Constitutions, self-defense is
11 enumerated in Article I, Section 1 of the California Constitution which this state
12 has always recognized as self-defense while armed. California courts have found
13 that even convicted felons have the right to defend themselves with loaded
14 handguns provided that they did not possess the handgun prior to finding
15 themselves in danger and relinquish possession of the handgun once the threat has
16 passed (see People v. King, 582 P. 2d 1000 - Cal: Supreme Court 1978). The
17 original version of the statute at issue in this case had a much broader exemption
18 for self-defense than it does today. The legislative record will show that
19 constitutionality of the statute at issue was a concern of the legislature which,
20 incorrectly, determined that the ability to carry a loaded firearm when one
21 reasonably believed he was in danger satisfied the constitutional constraints. The
22 self-defense exception to the statute at issue in this case was subsequently amended
23 to prohibit Loaded Open Carry of firearms until one is in grave, immediate danger;
24 a point at which it is very likely too late.

25
26 Effective January 1st of this year, for the first time in its history, California
27 has enacted a statute which makes it a crime to openly carry an unloaded handgun
28 which, in conjunction with the statute at issue, makes it impossible for even a
Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY
DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY
REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS,
ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA 4

1 person in grave, immediate danger to defend himself with a handgun. That statute
2 also makes it impossible for persons who lack the upper body strength to wield a
3 rifle or shotgun to defend themselves with a firearm at all. That statute, combined
4 with the statute at issue in this case, denies physical disabled persons their right to
5 self-defense.

6
7 Even for persons not physically disabled, California's recently enacted ban
8 on openly carried handguns does not apply to unincorporated county territory
9 where the discharge of firearms is not prohibited. Los Angeles County, where
10 Plaintiff resides, prohibits the discharge of firearms (with limited exceptions)
11 throughout the County. San Bernardino County (in the venue of this Court) has no
12 such restrictions. A person in unincorporated territory of San Bernardino County
13 can openly carry a LOADED handgun, rifle or shotgun. Other counties in this
14 venue have ordinances both prohibiting the discharge of firearms in unincorporated
15 county territory and permitting the discharge of firearms for the purpose of self-
16 defense (Los Angeles County has no self-defense exception).

17
18 Given that it is illegal to openly carry a handgun (loaded or unloaded) up
19 until one finds himself in grave, immediate danger; these self-defense exceptions
20 are meaningless as one is prevented from openly carrying even an unloaded
21 handgun to begin with.

22
23 The author of the recently enacted bill which bans the open carry of
24 unloaded handguns in all incorporated cities and in unincorporated county territory
25 where the discharge of firearms is prohibited testified in California legislative
26 committee hearings and in the floor debates the reasons for enacting a ban on
27 Openly Carried handguns. The reasons he gave were:

28
**Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY
DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY
REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS,
ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA** 5

1. One doesn't need a handgun to buy a cheeseburger.
2. There are people who are offended at the sight.
3. It wastes police resources to inspect handguns to see if they are loaded.
4. Persons who openly carry holstered handguns are at danger of being shot by police.

The proponents of the bill were asked by legislators both in committee in the floor debates to cite even a single instance of a person who was openly carrying a holstered handgun committing a crime. The proponents of the handgun ban could not.

If the Court in *Perry v. Brown* can look to other sections of the California Constitution to strike down a section of the California Constitution despite the Eleventh Amendment then this Court has precedent by which to strike down a statute enacted by the legislature because approximately 30 armed members of the Black Panther Party for Self-Defense marched into the state Capitol nearly 45 years ago in an impromptu publicity stunt. Racial minorities with guns have been a recurrent theme in California's gun control laws.

Unlike the Court in *Perry v. Brown* which extrapolated a right to marriage between a man and a woman to a right to same sex marriage, this Court need not make any extrapolation. Armed self-defense, including self-defense with a loaded handgun has always been an individual right in California. Even if this Court were to conclude that the Second Amendment right to self-defense ends behind one's front door, this Court has precedent to find that the statute at issue is a violation of the Fourteenth Amendment to the United States Constitution and/or the Second Amendment to the United States Constitution and/or the Fourth Amendment to the United States Constitution.

Nichols v. Edmund G Brown Jr et al – REQUEST FOR JUDICIAL NOTICE OF RECENTLY DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS, ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA

1 For the foregoing reasons, the Court may properly consider the exhibits in
2 ruling on the Motions.

3
4
5 Dated: February 8, 2012
6

7
8 

9 Charles Nichols
10 Plaintiff, In Pro Per
11

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **REQUEST FOR JUDICIAL NOTICE OF RECENTLY DECIDED 9TH CIRCUIT OPINION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS BY REDONDO BEACH DEFENDANTS AND MOTION TO DISMISS BY DEFENDANT KAMALA D. HARRIS, ATTORNEY GENERAL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA**

was served via United States Mail, postage prepaid, on this 9, day of February, 2012;

on the following:

Kamala D. Harris
Attorney General of California
Peter K. Southworth
Supervising Deputy Attorney General
Jonathan M. Eisenberg
Deputy Attorney General
300 South Spring Street, Ste. 1702
Los Angeles, CA 90013

Attorneys for Defendants:

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

AND

Michael W. Webb
City Attorney for the City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277-0639

Attorney for Defendants:

CITY OF REDONDO BEACH, CITY OF REDONDO BEACH POLICE
DEPARTMENT, CITY OF REDONDO BEACH POLICE CHIEF JOSEPH
LEONARDI and DOES 1 to 10



Charles Nichols
Plaintiff, In Pro Per