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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 MARK BAIRD and
16 RICHARD GALLARDO,
17 Plaintiffs,

18 v.

19 ROB BONTA, in his official capacity as
20 Attorney General of the State of California,
21 Defendants.

Case No. 2:19-cv-00617-KJM-AC

**DECLARATION OF MARK BAIRD
IN OPPOSITION TO DEFENDANT’S
MOTION, AND ISO PLAINTIFFS’
CROSS-MOTION, FOR SUMMARY
JUDGMENT**

Date: November 3, 2023
Time: 10:00 a.m.
Room: 3
Judge: Hon. Kimberly J. Mueller

DECLARATION OF MARK BAIRD

22 1. I, Mark Baird, am a plaintiff in the above-captioned matter. I submit this
23 Declaration in support of the plaintiffs’ motion for a preliminary injunction to enjoin California
24 Penal Codes §§ 25850 and 26350 and their enforcement by Defendant Bonta, his officers, agents,
25 servants, employees, and all persons acting in concert with him who receive actual notice of the
26 injunction. I make this declaration of my own personal knowledge and, if called as a witness, I

1 could and would testify competently to the truth of the matters set forth herein.

2 2. I am over the age of 18 and a resident of Siskiyou County, California, located in
3 the Eastern District of California. Siskiyou County has a population of less than 200,000.

4 3. I am not prohibited from possessing, purchasing, receiving, or transferring
5 firearms under state or federal law.

6 4. I possess firearms in my home for self-defense, which does not require a license or
7 any other government permission under the California Penal Code.

8 5. I intend to carry a firearm open and exposed on my person (“open carry”), loaded,
9 or unloaded, for self-defense outside of my home and throughout California.

10 6. While the right to carry a handgun for self-defense outside of one’s home is
11 presumptively protected by the Second and Fourteenth Amendments, under California Penal
12 Code sections 25850 and 26350, I face arrest, prosecution, incarceration up to one year, fines up
13 to \$1,000, and other criminal penalties simply for exercising the rights protected by the Second
14 and Fourteenth Amendments.

15 7. I do not presently hold a California concealed carry handgun license, and I do not
16 fall within any of the exemptions to those sections of the California Penal Code that criminalize
17 the possession of firearms, including Penal Code sections 25850 and 26350.

18 8. I do not hold an open carry license in California, and there is no process for
19 obtaining an open carry license in California. On more than one occasion, I have tried to apply for
20 an open carry license in Siskiyou County, but the only application form published by Defendant’s
21 California Department of Justice (“DOJ”) is for obtaining a concealed carry license. Under State
22 law, licensing officers cannot use any licensing form other than that published by the DOJ, there
23 is no Open Carry license application available from the DOJ and, even if there were an Open
24
25
26
27

1 Carry application, no Open Carry licenses are issued anywhere in California. I was
2 previously advised by the licensing authority in my county that no Open Carry licenses will be
3 issued.

4 9. Between 2012 and the present date, no Open Carry license have been issued in
5 California. Defendant/the State have produced no evidence that any Open Carry license has ever
6 been issued in California.

7 10. Even if I were issued an Open Carry License, under California law such a license
8 would only be valid in the county of issuance. Once I stepped over the county line, I would be
9 guilty of a crime under Penal Code sections 25850 and/or 26350.

10 11. Peaceable Open Carry in California was lawful prior to its becoming a state in
11 1850 and remained lawful until 1968; its practice was largely unremarkable.

12 12. Motivated by racial animus, California criminalized the open carriage of a loaded
13 handgun with the passage of the Mulford Act in 1967. See, California Penal Code § 25850. From
14 that point on, to lawfully carry a loaded handgun the people were required to apply to the
15 government for a license, which could be granted or denied at the discretion of a government
16 employee.

17 13. Despite the enactment of Penal Code section 25850, it remained legal to Open
18 Carry handguns on one's person – unloaded - with the ammunition in close proximity to use for
19 self-defense, if necessary.

20 14. But in 2012, an absolute ban on Open Carry was instituted with the passage of
21 Penal Code section 26350, which criminalized the open carriage of unloaded handguns.

22 15. Criminalizing the peaceable open carriage of a handgun for self-defense is
23 repugnant to the plain text of the Second Amendment, which declares that “the right to keep and
24 bear Arms shall not be infringed.”

1 16. There is no historical analogue whereby criminal sanctions were imposed for one's
2 peaceably, open carriage of handguns for self-defense – whether loaded or unloaded. Nor is there
3 any historical analogue whereby the citizenry was required to seek and obtain permission from
4 the government in order to lawfully possess and/or carry weapons, including firearms, for self-
5 defense.
6

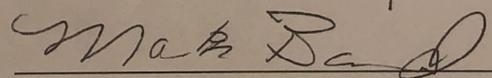
7 17. As the Supreme Court recognized in *Bruen*, when post-ratification regulations
8 conflict with the plain text of the Second Amendment, “the text controls.” *NYSRPA v. Bruen*, 142
9 S.Ct. 2111, 2137 (2022).

10 18. I am suffering, and will continue to suffer actual and concrete constitutional harms
11 by the ongoing violation of conduct presumptively protected by the Second and Fourteenth
12 Amendments – the guaranteed individual right to bear arms for self-defense – my exercise of
13 which will subject me to criminal penalties under Penal Code sections 25850 and 26350.
14

15 19. Based on the continuing violation of my constitutional rights, and the State's
16 failure to identify an historical analogue to the challenged regulations, summary judgment in
17 favor of Plaintiffs is required under the Second and Fourteenth Amendments and Supreme Court
18 precedent, as is the permanent injunction of the enforcement of California Penal Code sections
19 25850 and 26350 by defendant Rob Bonta, his successors, officers, agents, servants, employees,
20 and all persons acting in concert with him who receive actual notice of the injunction, against
21 individuals who peaceably carry a handgun open and exposed, loaded or unloaded, for self-
22 defense.
23

24 I declare under penalty of perjury under the laws of the United States of America that the
25 foregoing is true and correct.

26 Dated: September 28, 2023



Mark Baird