

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE MORRISON C. ENGLAND, JR., JUDGE

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ADAM RICHARDS, ET AL.,

Plaintiffs,

No. 2:09-cv-01235

vs.

ED PRIETO, et al.,

Defendants.

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REPORTER'S TRANSCRIPT

MOTION FOR SUMMARY JUDGMENT

THURSDAY, MARCH 10, 2011

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Reported by: DIANE J. SHEPARD, CSR 6331, RPR

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SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 10, 2011

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THE CLERK: Calling civil case 09-01235, Adam Richards, et al., v. Ed Prieto, et al. On for plaintiffs' and defendants' motions for summary judgment, Your Honor.

THE COURT: Thank you. Good afternoon. May I have your appearances for the record, please.

MR. GURA: Good afternoon, Your Honor. Alan Gura and Don Kilmer for the plaintiffs, who are here in the courtroom.

THE COURT: Thank you.

MS. SANDERS: Good afternoon, Your Honor. May it please the Court, my name is Serena Sanders and this is Peter Halloran on behalf of defendants County of Yolo and Sheriff Ed Prieto.

THE COURT: Thank you very much. If you are both going to argue, if you would come to the podium, please.

Let me get right into a question I have. I understand the positions that you have taken respectively. And a great deal of your argument and your belief is based upon an interpretation of Heller. And that in Heller the United States Supreme Court held that it is constitutional to carry a weapon in your pocket or wherever, in other words concealed. That that was part of the rights guaranteed under the Second Amendment.

1           In Heller it does say, however, that there are  
2           certain restrictions that can be imposed upon the carrying of a  
3           weapon, which are included but not limited to certain  
4           restrictions based upon mentally ill persons having them,  
5           felons having them near schools, et cetera.

6           How is it that you're able to carve out such a  
7           specific statement from Heller, which is that you may carry a  
8           concealed weapon in your pocket, if you will. I'm paraphrasing  
9           what you're saying.

10           MR. GURA: Well, first of all, Heller starts by  
11           telling us that the word bear arms means to carry. Quite  
12           simply, bearing means to carry, and the right was to carry so a  
13           person can be armed in case of a confrontation with another  
14           person. So there are legitimate times when a person can carry.

15           Heller then gives us certain exceptions which say,  
16           well, you can't carry for any type of confrontation, or  
17           anytime, anyplace, or in any manner, which, of course,  
18           presupposes you can carry in some ways sometimes in some  
19           places. And Heller also tells us that you can't carry into a  
20           sensitive place. And we agree with that, whatever a sensitive  
21           place might be. But that informs the idea there are  
22           non-sensitive places in which you can carry.

23           What Heller stands for is the proposition, which is  
24           not a remarkable one and which is not contested in this case,  
25           which is that the Government may regulate the carrying of guns.

1 There is no question that it can.

2 The Government has an interest in regulating the  
3 carrying of firearms in the interest of public safety. And so  
4 long as those regulations are constitutionally appropriate,  
5 they will survive.

6 This type of regulation, however, is problematic.  
7 Because here we have the entire right hinged upon the exercise  
8 of completely arbitrary discretion by the sheriff.

9 THE COURT: When you say the complete right, what do  
10 you mean, counsel, by the complete right?

11 MR. GURA: Because without Sheriff Prieto's  
12 permission no one can exercise the right to bear arms.

13 THE COURT: No. There is nothing in Heller that I  
14 can see that says that you don't have the right to purchase a  
15 firearm, you don't have the right to keep one in your home, you  
16 don't have the right to use one to go hunting. You do have the  
17 right to have an arm and to keep them after certain background  
18 checks.

19 But you're carving out a much more specific issue,  
20 which would be to carry a concealed weapon. That's carrying a  
21 concealed weapon. Not actually owning a weapon.

22 MR. GURA: Your Honor, the right is not to carry a  
23 concealed weapon. It's simply to carry a weapon. If the  
24 Government wants to say, as they have in this case, that the  
25 only manner in which you can carry is concealed, and we're

1 going to license and permit that, that's fine. They can do  
2 that. There is no right to carry a gun in any particular  
3 manner. And all the cases that Heller reviewed stand for that  
4 proposition.

5 If the Government determines that carrying guns in a  
6 concealed fashion is something that's going to be banned, they  
7 can do that so long as they still allow you to carry openly.

8 And vice versa the same is true as well. If the  
9 Government determines that the open carrying of guns is  
10 problematic, if it's something that they wish to restrict,  
11 that's okay so long as they allow people then to carry in a  
12 concealed fashion. We don't have a choice as to the manner in  
13 which we carry. Heller makes that very clear.

14 However, once the Government has made that choice,  
15 then in California that choice is for concealed carry because  
16 the law forbids the open carrying of functional weapons  
17 entirely. There is no way to get a permit for that unless  
18 you're in certain counties that have a very low population.

19 Then the question is, okay, how do we go get the  
20 permit to exercise this right? And here we have a licensing  
21 scheme which says that your license to carry a gun is going to  
22 hinge upon whether Sheriff Prieto feels that you have good  
23 moral character or good cause to exercise what Heller describes  
24 and McDonald describes to be a fundamental constitutional  
25 right, and that's the nub of the problem.

1           There is no question that bear arms means to carry  
2           them. How the Government regulates that, they have many  
3           options at their disposal. The only thing that they can't do  
4           absolutely, we know, is to forbid entirely that right or to  
5           leave it up to the complete arbitrary discretion of a licensing  
6           official.

7           The Supreme Court has instructed many times that when  
8           it comes to fundamental rights, they cannot be left at the  
9           unbridled discretion of an official who determines whether you  
10          are a good enough person to exercise something that is your  
11          right.

12          THE COURT: But again we're talking about the  
13          specific issue of concealed firearm, which when looking at  
14          Heller, it stated that: Nothing in our opinion should be taken  
15          to cast doubt on long-standing prohibitions on the possession  
16          of firearms by felons and the mentally ill, laws forbidding the  
17          carrying of firearms in sensitive places such as schools and  
18          government buildings, or laws imposing conditions and  
19          qualifications on the commercial sale of arms.

20          In a footnote it states: We identify these  
21          presumptively regulatory measures only as examples. Our list  
22          does not purport to be exhaustive.

23          So isn't there still a legitimate interest in the  
24          state when it comes to the act of carrying a concealed weapon  
25          as opposed to having a weapon or owning a weapon? I'm still

1 trying to draw distinction between the two.

2 MR. GURA: Heller instructs that people have the  
3 right to carry guns, and it also instructs, as Your Honor  
4 noted, the states can ban the carrying of guns in a concealed  
5 fashion. Each and every single one of the cases that Heller  
6 relied upon and the principles that Heller upheld were that if  
7 the state wishes to forbid the concealed carrying of guns, it  
8 can do so provided that it does not also ban the open carrying  
9 of arms.

10 And if we look at Reid, if we look at Nunn, if we  
11 look at all these cases that Heller invoked, Chandler from  
12 Louisiana, they all stand for the same proposition. The  
13 Government can tell you how to carry your gun. In California  
14 the Government has said we will ban the open carrying of  
15 functional firearms. There is no way that you can do that  
16 unless you get permission in a county that has fewer than  
17 200,000 people in it, and Yolo is not that county, so that's  
18 not available.

19 So therefore the only thing that California will let  
20 you do is apply for a permit to carry a concealed handgun. And  
21 at that point we're saying, okay, what are the standards for  
22 obtaining this permit? It's a fundamental right that's being  
23 licensed.

24 THE COURT: So is there a distinction that you draw  
25 between the right of the Government to put a reasonable

1 regulation and the way that Yolo County has applied that reg?  
2 Is that your distinction?

3 Or are you arguing that no local agency such as the  
4 county sheriff has the right to have a regulatory scheme  
5 regarding concealed weapons, permits, or CCWs? Or are you just  
6 saying that Sheriff Prieto arbitrarily or somehow used some  
7 standard that's just not appropriate?

8 MR. GURA: Well, we have two arguments. First of  
9 all, the argument that we are not making, and I would like this  
10 to be very clear, but we are not saying that Yolo cannot  
11 regulate the concealed carrying of guns. Of course Yolo can  
12 regulate the carrying of guns, concealed or otherwise, provided  
13 that state law lets them do that, and that's an issue that is  
14 not before the Court.

15 What we're saying are two different things. First of  
16 all, we have an as-applied challenge and we also have a facial  
17 challenge. Let's take the facial challenge first.

18 We have a statutory scheme that licenses a  
19 fundamental right on the basis of arbitrary discretion and  
20 moral character determinations. The Supreme Court has  
21 instructed that there is no need to test such schemes. They  
22 are just plain not constitutional. You can't say your right to  
23 speak is based upon whether you think you have a good reason to  
24 do so or good moral character to do so. Your right to assemble  
25 is not based upon those things. And of course the right to

1 arms, as McDonald instructs, is fundamental as well.

2 So we can't condition -- whatever else we do with the  
3 right to arms, we can't say you need to prove to us you have a  
4 good reason to exercise it. Because it's a right. You don't  
5 have to prove a reason or sufficient moral character in order  
6 to be entitled to exercise your right. So whatever else they  
7 do, you can't have this arbitrary discretion imposed upon the  
8 right.

9 The second argument we have is that to the extent  
10 that Sheriff Prieto has a policy, the policy is itself  
11 unconstitutional because the standards he has adopted are  
12 inappropriate. Sheriff Prieto has said that he will take it  
13 upon himself to determine when he feels you have a good enough  
14 reason to make an application, and he has also said that  
15 self-defense is not a basis to exercise the right to bear arms.  
16 And that contradicts directly with the decision in Heller.

17 So of course we're not saying that Sheriff Prieto  
18 can't regulate the issuing of gun-carry licenses or impose  
19 other restrictions on the carrying of guns. We're not making  
20 that sort of a blanket, overbroad challenge. We're simply  
21 saying there is a right, you can regulate that right, but the  
22 way in which this right is being regulated, both as a matter of  
23 the state law as well as Sheriff Prieto's policies, are not  
24 constitutional because they vest an incredible amount of  
25 unbridled discretion. And they actually set standards which

1 are themselves unconstitutional because they conflict with the  
2 very purpose of the right as described in Heller.

3 THE COURT: Is there a right to carry a concealed  
4 weapon after Heller?

5 MS. SANDERS: No, Your Honor. Heller didn't deal  
6 with -- Heller's holding did not deal with concealed weapons at  
7 all.

8 What Heller did hold was that there is a right to  
9 possess a handgun in the home for self-defense. This extends  
10 beyond the home. And even though Heller had language about  
11 carrying in one's pocket, no holding -- and the holding in that  
12 case and none of the holdings in any court has held that there  
13 is a right to carry a concealed weapon in public.

14 Even the cases that plaintiff cites that are state  
15 court cases from the 19th Century indicate that if there is an  
16 absolute ban on carrying concealed weapons, that the remedy for  
17 that is not to have the concealed weapon portion part of that  
18 scheme to be held unconstitutional, but for the entire scheme  
19 to be looked at and re-assessed.

20 None of the cases, Nunn, Andrews, Chandler and --  
21 fourth one -- did I say Andrews -- none of the four cases that  
22 plaintiffs cite ban the concealed weapon portion part of that  
23 regulation. In fact, they expressly uphold that saying in as  
24 far as regulatory schemes apply to carrying weapons secretly,  
25 that it is valid, that section of the law is valid. So nothing

1 precludes California and Sheriff's policy from being  
2 applicable.

3 THE COURT: Even though it's not precluded, is it, as  
4 counsel has alluded to, possible that Sheriff Prieto is  
5 applying the law in an unconstitutional manner?

6 MS. SANDER: No, Your Honor. Sheriff Prieto's policy  
7 -- he is authorized by Penal Code 12050 to create a policy, to  
8 publish that policy, which he has done. He has identified what  
9 good cause means. He has given examples of it. And his  
10 definition of that is in line with what courts have held the  
11 definition of proper cause or good cause to mean.

12 In a case that I have for the Court, if the Court  
13 wishes to have it, called Bach v. Pataki out of New York, the  
14 Second Circuit held that good cause was something  
15 distinguishable -- a reason for self-defense distinguishable  
16 from the general population's need for self-defense. And  
17 Sheriff Prieto's policy is directly in line with that  
18 definition.

19 THE COURT: But he says you must have a "valid reason  
20 to request a permit." What is a valid reason? Is it a valid  
21 reason on the part of the person requesting, or a valid reason  
22 on the part of the sheriff? If so, does that valid reason  
23 change whenever the sheriff changes? Or is there something  
24 else that happens? How does that apply?

25 MS. SANDERS: Indeed the policy does say that there

1 needs to be a valid reason, but then Sheriff Prieto specifies  
2 what would be valid reasons and what would not be considered  
3 valid reasons.

4 One of the items listed on what would not be  
5 considered a valid reason is the general desire for  
6 self-defense without any particular showing that self-defense  
7 is necessary.

8 And plaintiffs do not say that he applied that part  
9 of the policy arbitrarily against them. They admit that they  
10 have no particularized need and can identify no threats of  
11 violence against them that would be -- would show that their  
12 circumstances are other than what Sheriff Prieto's policy  
13 indicate.

14 THE COURT: All right. Do you have something else  
15 that you wish to add?

16 MS. SANDERS: No, Your Honor.

17 THE COURT: Response.

18 MR. GURA: Well, the response is, you know, we had  
19 another set of defendants in this case earlier, Your Honor.  
20 You might recall the County of Sacramento and its former  
21 sheriff. And we were able to settle that portion of the case  
22 because they -- the former sheriff, before he left office, and  
23 his successor both took another look and determined that in  
24 fact there was a way that they could apply California law in a  
25 manner that satisfies the constitutional interest.

1           When people apply now to the County of Sacramento and  
2           say that they want a permit to carry a gun, if they assert an  
3           interest in self-defense, they get her permits granted unless  
4           there is some specific reason to deny those permits. And there  
5           are two former plaintiffs from Sacramento County who have been  
6           issued permits, and everyone's happy.

7           But here we have a sheriff who says that -- and I'm  
8           quoting here from his policy -- that the issuance, amendments  
9           or vacation -- that's a quote -- of a gun-carry license  
10          "remains exclusively within the discretion of the sheriff."  
11          And it further goes on to say that the gun license may be  
12          renewed "if the sheriff or his designee feels there is  
13          sufficient reason to renew the license." He requires three  
14          letters of reference as a matter of character references to  
15          determine whether you have good moral character. These are  
16          arbitrary standards.

17          What we're asking for is something very simple.  
18          We're asking for objective standards and due process. We have  
19          a fundamental, constitutional right at issue. Of course, like  
20          other fundamental rights, subject to regulation. But the  
21          regulation here acts as a prior restraint that gives the  
22          sheriff total and absolute arbitrary discretion based upon his  
23          feelings and his assessment of people's moral character.  
24          That's not appropriate in 2011 with respect to a fundamental  
25          right.

1 MS. SANDERS: The undersheriff's declaration that was  
2 submitted in this case shows that there are important interests  
3 to Yolo that are distinct from other counties. In Yolo there  
4 is a particular gang problem. There are more people coming in  
5 with gangs, and gang task forces have been implemented in that  
6 county.

7 Additionally, undersheriff's declaration states that  
8 there are very important government interests in policing an  
9 area that has more concealed weapon permits. Perhaps  
10 Sacramento's situation is that they have a greater police force  
11 so that they can handle situations like that. But policing  
12 capabilities are distinct to different counties.

13 As far as the discretion that plaintiffs' counsel  
14 talks about, Penal Code 12050 authorizes that discretion. And  
15 so for Sheriff Prieto to specify that he has the discretion to  
16 issue permits is an entirely on-point recitation of  
17 California's law.

18 Plaintiffs' discussion regarding prior restraint  
19 raises the issue of the comparison between the First Amendment  
20 and the Second Amendment, which is both unprecedented and  
21 unwise. Guns are not the same as speech. Shooting off one's  
22 mouth and shooting a gun have very different repercussions.  
23 And in order to apply First Amendment frameworks to Second  
24 Amendment context there are very real and very consequential  
25 circumstances that will result from that.

1 MR. GURA: Your Honor, if I may?

2 THE COURT: Yes. Go ahead.

3 MR. GURA: Well, the Third, Fourth, and D.C. Circuits  
4 have held First Amendment frameworks are applicable to the  
5 Second Amendment because the Supreme Court has -- well, the  
6 D.C. Circuit did it before the Supreme Court affirmed it. And  
7 then, of course, the Supreme Court having had the First  
8 Amendment framework all over the Heller and McDonald cases, the  
9 Third and Fourth Circuit took that hint and adopted the First  
10 Amendment as a guide.

11 In fact, the cases are somewhat broader than counsel  
12 alludes to. Staub versus City of Baxley states that it's  
13 constitutional freedoms that cannot be subject to unbridled  
14 discretion. The language is somewhat broader than the First  
15 Amendment, although, of course, the First Amendment is where  
16 these issues come up most frequently. That's also a function  
17 of the fact that Second Amendment litigation is somewhat in its  
18 infancy, Your Honor. We haven't had Heller to work with for  
19 more than a couple years. This is one of the earlier cases,  
20 which, I suppose, makes it somewhat interesting.

21 Now McDonald did reject completely this notion that  
22 the Second Amendment must be treated as a second-class right  
23 because guns are dangerous. We know guns are dangerous. And  
24 the City of Chicago made that argument saying, well, maybe we  
25 shouldn't have to follow the Second Amendment. We need a

1 firmer hand to deal with gun issues because, you know, guns are  
2 so dangerous.

3 The Supreme Court rejected that theory. The Supreme  
4 Court said, look, the Bill of Rights makes many policy choices,  
5 and every right that limits the ability of police or  
6 prosecutors to act in the interest of public safety has some  
7 arguable social costs. But those policy choices have been made  
8 by the framers and the people who ratified the various  
9 amendments.

10 The one thing that Yolo has in common, not just with  
11 Sacramento County but indeed with all the counties in the  
12 United States, is that it is subject to the Fourteenth  
13 Amendment, and it is part of America, and it is subject to the  
14 Second Amendment.

15 And so while every community has problems perhaps  
16 with crime, and every community is entitled to experiment in  
17 its own way dealing with crime problems, what communities  
18 cannot do is take it upon themselves to experiment in the  
19 violation of core fundamental civil rights. Here we have a  
20 right which does apply. It applies equally throughout the  
21 United States, even to Yolo County.

22 And so while we respect that people often disagree as  
23 to whether or not the Second Amendment is a good idea, and  
24 Sheriff Prieto is most certainly entitled to feeling that this  
25 is a bad policy, it nonetheless is a policy that's reflected in

1 our constitution and has to be applied.

2 THE COURT: But like Heller stated: Like most  
3 rights, the Second Amendment right is not unlimited. It is not  
4 a right to keep and carry any weapon whatsoever in any manner  
5 whatsoever and for whatever purpose.

6 MR. GURA: We agree with that. And we're not saying  
7 that you have the right to have any weapon in any manner for  
8 whatever purpose. What we're challenging is the law that let's  
9 you -- that does not allow you to carry arms at all. If you  
10 don't have a license from Sheriff Prieto, you can't bear arms  
11 in California if you're a Yolo County resident. It's that  
12 simple.

13 So, of course, you know, if the sheriff wants to  
14 impose regulations upon the right that satisfy time, place, and  
15 manner restrictions --

16 THE COURT: Isn't that what that is? Time, place and  
17 manner, that is, that you cannot carry a weapon which is  
18 concealed on your person. Isn't that different than saying  
19 that you can have the weapon in your home, or you can have it  
20 in your garage, you can have it in your backyard, you can have  
21 it anyplace else, but when you're in public, the public domain,  
22 that there can be a reasonable restriction that if you have a  
23 weapon, it is not to be a firearm. Shouldn't say a weapon.  
24 Firearm. That it must not be concealed for purposes of officer  
25 safety, for purposes of other public member safety.

1 I mean, there could be reasonable reasons for that.  
2 As an example, we're all very familiar with the situation in  
3 Arizona with the congresswoman and the federal judge that were  
4 shot and one killed and the other individuals. Had there been  
5 concealed weapons on five people there, and everyone started  
6 pointing and started shooting, wouldn't that have created a  
7 much more dangerous situation for law enforcement, for other  
8 people that are in the area, such that this is one of those  
9 things that could be reasonably regulated -- reasonably  
10 regulated by local law enforcement and the government.

11 MR. GURA: We do not challenge -- Your Honor, we  
12 would agree that Sheriff Prieto -- if he had the authority --  
13 and now we're getting into an issue of the sheriff's actual  
14 authority under the California law. Because the sheriff is not  
15 the highest authority here. The higher authority is the  
16 California legislature. And the sheriff has to work with the  
17 what the legislature has given him. And the legislature has  
18 said there will not be any open carrying of functional  
19 firearms. That's the state law.

20 So the sheriff can't say -- he doesn't have the  
21 ability, even if he wanted to, he can't say, you know what, I'm  
22 going to ban concealed carrying, and I'll let people walk  
23 around. And you can exercise your right to bear arms. You can  
24 exercise it by having the arms out openly. If the state were  
25 to make that policy choice, that would be constitutional, and

1 we would not challenge that.

2 THE COURT: California is not open carry.

3 MR. GURA: That's right. And so the state has made  
4 its decision. It said the way that people are going to  
5 exercise the right to bear arms in California is they are going  
6 to exercise that right by applying for a license to carry them  
7 in a concealed fashion.

8 At that point, that's the only avenue available to  
9 the plaintiffs to exercise a fundamental constitutional right.  
10 Because, Your Honor, the words keep and bear are separate  
11 words. Keep is what you do inside your home. Bear is what you  
12 do out in public. There is nothing -- Heller, if anything,  
13 instructs that the right extends beyond your doorway.

14 There's discussion that, for example, you have the  
15 right to bear arms for purposes of hunting, which never occurs  
16 indoors. There is discussions about sensitive places, which  
17 don't exist inside one's home.

18 We know that bear arms means to carry them. And  
19 Heller instructs courts very specifically that we interpret the  
20 constitution according to the way that the people who framed it  
21 understood those words, what meaning those words had to the  
22 people who framed them.

23 THE COURT: What about when it says in Heller: In  
24 sum, we hold that the district's ban on handgun possession in  
25 the home violates the Second Amendment, as does its prohibition

1 against rendering any lawful firearm in the home operable for  
2 the purpose of immediate self-defense. Used the term "in the  
3 home" twice.

4 MR. GURA: Because, Your Honor, that actually -- that  
5 was my case, the Heller case. And those are the facts of the  
6 case. In Heller we only challenged the home possession of  
7 guns. There is --

8 THE COURT: I understand that. But you're  
9 extrapolating this a little bit farther on than what Heller  
10 actually stood for. Heller did not say that carrying a  
11 concealed weapon or requiring a concealed weapon permit was  
12 unconstitutional or violative of the Second Amendment.

13 MR. GURA: And, Your Honor, we don't make any  
14 different argument. We will -- we've conceded that you can ban  
15 all concealed carrying, and you can require a license for  
16 concealed carrying as well. Those are not things that we  
17 contest.

18 The caveats are if you're going to ban all concealed  
19 carrying, you have to allow open carrying. And if you're going  
20 to license the carrying of guns, whether it's concealed or  
21 open, you have to do it according to constitutional standards.  
22 Not according to unbridled discretion.

23 So, you know, there is no question that you can have  
24 a different legal framework, and maybe, you know, there are  
25 many different ways to approach this issue. The state has a

1 lot of flexibility here. What cannot happen, however, is the  
2 complete abrogation of the right or having it hinge upon  
3 unbridled discretion.

4 And so, of course, they could do things differently,  
5 but they haven't. They've done things this way. This is the  
6 law that we have got to work with, and this is the law that the  
7 sheriff has to work with. And given what we've received from  
8 the Legislature, the sheriff cannot deny permits to exercise a  
9 fundamental constitutional right based upon his assessment of  
10 someone's moral character or whether he thinks they have a good  
11 enough reason to exercise a right.

12 THE COURT: Thank you.

13 MR. GURA: You're welcome.

14 THE COURT: Anything else?

15 MS. SANDERS: Your Honor, plaintiff keeps referring  
16 to the fundamental right in applying the frameworks of the  
17 First Amendment to this, quote, unquote, fundamental right.  
18 But no court has held that there is even a right at all under  
19 the Second Amendment to carry a loaded, concealed weapon in  
20 public let alone a fundamental right to do so.

21 Furthermore, I bring the Court's attention again to  
22 the structure of plaintiffs' argument. They are conceding that  
23 it is constitutional to ban all concealed carry weapons, and at  
24 that point in the analysis evaluation ends. Under Marzzarella  
25 it states that once something is found to be outside of the

1       ambit of the Second Amendment, analysis ends.

2               That plaintiffs choose not to bring in the open carry  
3       portion of California's framework does not make it -- it does  
4       not require this Court focus on the concealed weapons portions  
5       part of the law and to hold that to be unconstitutional, even  
6       if an absolute ban theory exists, which is entirely based on  
7       four state court cases from the 19th Century.

8               THE COURT: Thank you. Anything else?

9               MR. GURA: Well, Your Honor, I think that we've gone  
10       over this. What I would like to leave here today with, though,  
11       is just this. There is a right to keep and bear arms. Bear  
12       arms means to carry them in public. Whatever the relation  
13       might be has to be according to constitutional standards.

14               And, yes, they can ban the way in which you carry  
15       guns. But so long as there is a licensing regime imposed, that  
16       licensing regime has to meet constitutional standards, and this  
17       one does not.

18               THE COURT: I've understood the argument. Anything  
19       else final?

20               MS. SANDERS: Your Honor, Sheriff Prieto's policy  
21       does meet constitutional standards. The Southern District of  
22       California court upheld a very similar policy, and we request  
23       that this Court recognize that and so hold.

24               THE COURT: Recognizing, of course, that the Southern  
25       District of California is not persuasive on this Court.

