APPEAL NO. 10-56971

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD PERUTA, MICHELLE LAXSON; JAMES DODD; LESLIE BUNCHER, Dr.; MARK CLEARY; CALIFORNIA RIFLE AND PISTOL ASSOCIATION FOUNDATION, Plaintiffs-Appellants, vs. COUNTY OF SAN DIEGO; WILLIAM D. GORE, individually and in his capacity as Sheriff, Defendants-Appellees.	Appeal from the United States District Court for the Southern District of California The Honorable Irma E. Gonzalez, Chief District Judge, Presiding D.C. No. 3:09-cv-02371-IEG-BGS Ninth Circuit Published Opinion filed February 13, 2014 Before O'SCANNLAIN, THOMAS, and CALLAHAN, Circuit Judges

AMICUS CURIAE BRIEF OF THE STATE OF HAWAII
IN SUPPORT OF REHEARING EN BANC

ADDENDA 1-2

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AMICUS CURIAE BRIEF OF THE STATE OF HAWAII IN SUPPORT OF REHEARING EN BANC

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Amicus Curiae is the State of Hawaii, whose **interest is in preserving the constitutionality of Hawaii's similar gun laws restricting public carry** (laws that were challenged in Baker v. Kealoha, see Ninth Circuit appeal No. 12-16258),[1] **and in preserving its residents' safety.** This brief urges that the Ninth Circuit grant rehearing *en banc*, and overturn the three-judge panel ruling in Peruta v. County of San Diego. This brief is filed pursuant to Ninth Cir. R. 29-2(a), allowing any **State** to file an amicus brief without leave.

The panel majority in this case has ruled that a "good cause" restriction on concealed carry, as interpreted by San Diego county, coupled with a ban on open carry, violates the Second Amendment. Hawaii believes strongly the panel majority was wrong, and urges *en banc* review to ensure the ability of states to restrict public carry for the protection of the health and safety of the public. The panel opinion's direct conflict with three other circuit courts' rulings -- Kachalsky (2d Cir.), Drake (3d Cir.), and Woollard (4th Cir.) -- by itself warrants *en banc* review. See FRAP 35(b)(1)(B) (inter-circuit conflict may warrant review).

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[1] Hawaii Revised Statutes §134-9 provides that **concealed** carry licenses may be granted only "[i]n an **exceptional** case, when the **applicant shows reason to fear injury to the applicant's person or property**[.]" (see Addendum 1, attached). **Unconcealed** or **open** carry licenses are generally limited to applicants "engaged in the protection of life and property," and where the "urgency or need" to so carry is indicated. Id.

Thus, the Baker challenge to *Hawaii's* law is very similar to the challenge in this case. Indeed, the panel ruling in Peruta was the sole basis for the Baker panel's disposition.

I. The Second Amendment Does Not Protect a Right to Carry Guns in Public, **Openly or Concealed**.

The Supreme Court has held only that the Second Amendment protects the right to possess a handgun **in the home** for the purpose of self-defense. D.C. v. Heller, 554 U.S. 570, 626-35 (2008) ("ban on handgun possession **in the home** violates the Second Amendment"); McDonald v. City of Chicago, 130 S.Ct. 3020, 3050 (2010) ("Heller … protects the right to possess a handgun **in the home** for … self-defense."). Heller expressly limited the right recognized:

> Like most rights, the right secured by the Second Amendment is not unlimited. … **[T]he right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose**. . . . **For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues**. . . . **[N]othing in our opinion should be taken to cast doubt on longstanding** prohibitions on [possession by felons/mentally ill,] **laws forbidding the carrying of firearms in sensitive places** such as schools and government buildings, or laws [limiting] commercial sale[s]. [n.26: We identify these **presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive**.].
>
> ***
>
> [Government may not] absolute[ly] prohibit[] handguns held and used for self-defense **in the home**.

Heller, 554 U.S. at 626-27, 636.

Heller thus did not extend the Second Amendment to the carrying of handguns outside the home, **in public**. And Heller's explicit reference to the majority of courts holding **concealed** carry laws to be constitutional as an "example" of the Second Amendment right not being a right to "keep and carry any

weapon … in any manner whatsoever," makes clear that even the Heller majority believes the Second Amendment does not protect a person's right to publicly carry a concealed weapon. See also Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897). As explained below, this should remain true even if **open carry** is **simultaneously** banned.

Heller made clear that the Second Amendment did not limit certain other "presumptively lawful regulatory measures," including prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. 554 U.S. at 626-27 & n.26. Heller accepted those exclusions from the Second Amendment as a given, without even questioning them. Why? Because such laws clearly, on their face, relate to preserving **public safety**. There is no other plausible rationale given the list of measures the Supreme Court excluded without so much as a word of explanation. Kachalsky v. County of Westchester, 701 F.3d 81, 99 (2d Cir. 2012) (stating that Heller accepted "sensitive places" ban, for example, "presumably on the ground that [firearms are] too **dangerous** … in those locations"). Therefore, outside the "core" area of the home, if a measure helps to preserve public safety, that would be a strong, if not sufficient, reason to exempt it from Second Amendment protection. Id. at 94-95 ("'**outside the home**, firearm

rights have always been more limited, because **public safety** interests often outweigh individual interests in self-defense.'[] There is a **longstanding tradition of states** regulating firearm possession and use **in public** because of the dangers posed to **public safety**."). As the Fourth Circuit commented regarding guns outside the home, "This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because … we miscalculated as to Second Amendment rights." United States v. Masciandaro, 638 F.3d 458, 475 (4th Cir. 2011).

Therefore, if carrying firearms in public presents a serious public safety risk, public carry should be deemed outside the scope of the Second Amendment.

A. Threat to Public Safety from Public Carry, **Concealed or Unconcealed**, is Substantial.

The safety risk is clear for the **concealed** carry of firearms in public -- activity even Heller exempts from Second Amendment scrutiny -- but it is also clear for the public carrying of **unconcealed** firearms as well, which presents the same dangers to public safety, and poses additional risks as well. Concealed or unconcealed, firearms are lethal weapons, and are all too often used to kill and hurt people, both intentionally and by accident. The statistics are genuinely staggering. See Centers for Disease Control and Prevention (CDC), *National Vital Statistics Reports*, Vol. 61, No. 6, at 18-19 (2012) (showing for 2010: **31,328 total U.S. deaths related to firearms**, including **11,078** firearms related **homicides**, **19,392**

suicides by firearm, and **606 accidental** firearms deaths). In addition, there were an additional **73,505 nonfatal** gunshot **injuries** in 2010. CDC, *Nonfatal Injury Reports*, available at http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html. Thus, there were a stunning **104,833** firearms related deaths or injuries in 2010 alone. The U.S. (with 15 times the civilian firearms *per capita*) had a 2010 firearms **homicide *rate*** not double, but **72 times**, that of the U.K. Compare http://www.gunpolicy.org/firearms/region/united-states with http://www.gunpolicy.org/firearms/region/united-kingdom.

As for the specific act of carrying firearms **in public**, it is obvious that any strong anger or conflict between people that arises in the public sphere is made inherently more dangerous when one or more of the parties is carrying a firearm, **concealed or unconcealed**. And incidents of public anger or conflict are frequent and widespread.[2] When a conflict breaks out, or someone becomes extremely upset or angry while in public, common sense indicates that the danger increases dramatically if a person is armed. See Woollard v. Gallagher, 712 F.3d 865, 879 (4th Cir. 2013) ("limiting … public carrying of handguns … [l]essen[s] 'the likelihood that basic confrontations between individuals would turn deadly.'"). This is true regardless of whether a person is armed openly or concealed. It is having the firearm that heightens the danger. Road rage is only the most obvious

[2] If only 1% of the U.S. population of 310 million gets very angry or into conflicts each day, that would be **3.1 million people daily**.

example of where being armed magnifies the risk. The recent Florida theatre killing over texting on a cell-phone is another.

Moreover, having a weapon on oneself (openly or concealed) not only heightens the danger from anger or conflict, but could even increase the **number** of incidents of conflict in the public sphere, because a person who would ordinarily avoid conflict out of fear for one's safety might be emboldened because of a sense of invulnerability provided by the firearm.

Although an **unconcealed** weapon could theoretically deter a fight on occasion, such **open** carry could increase the likelihood of starting many fights. As just noted, a weapon generally may embolden one to welcome conflict (and even more so knowing one's potential adversary sees it). Also, **open** carry may encourage criminals to carry firearms themselves, either by the example set, or for parity. Philip Cook et al., *Gun Control After Heller*, 56 U.C.L.A. L. Rev. 1041, 1081 (2009) (Two-thirds of gun offense prisoners report choosing to use a gun because of possible armed victims). Police officers faced with a civilian **openly** carrying will be quicker to draw their own firearms out of self-preservation, which could lead to more shootings. Or, a gang member suddenly encountering an **openly** armed rival gang member might fear for his safety and attack preemptively.

There is also strong historical reason to view **open (unconcealed)** carrying of firearms as being especially outside the scope of the Second Amendment.

Blackstone, upon whom the Heller majority relies, explained that the Statute of Northampton prohibited the "offense of riding or going armed with dangerous or unusual weapons" as "a crime against the public peace, **by terrifying the good people** of the land." 4 William Blackstone, *Commentaries* 148-49 (1769). The **open** carrying of firearms can directly "terrify" members of the public, while a **concealed** firearm might do so only when displayed or through the public's awareness that people around them may have concealed firearms. Thus, there is no reason to limit Heller's exclusion of public carry to **concealed** carry; the exclusion should extend to **open** carry as well. See Piszczatoski v. Filko, 840 F.Supp.2d 813, 836 (D.N.J. 2012) (upholding restrictions on **both concealed and open carry** and rejecting distinguishing restrictions on concealed carry **only**, because "the same rationales apply … almost equally" to both), *aff'd sub nom.* Drake v. Filko, 724 F.3d 426, 433 (3d Cir. 2013) ("justifiable need" standard for both **concealed** and **open** carry qualifies as a "presumptively lawful" "longstanding" "exception to the Second Amendment"); Kachalsky v. Cacace, 817 F.Supp.2d at 270 (S.D.N.Y. 2011) (same public safety rationales justify restrictions on both concealed **and** open carry).

Some argue that a civilian's being armed in public allows that person to stop a crime (e.g., a mass shooting). Even if one makes the highly questionable assumption that such a civilian -- who is not trained in law enforcement, much less

how to expertly deal with life and death shooting incidents -- would be able to successfully use the firearm to stop a crime (and not get innocent bystanders, or oneself, killed or injured in the process), a critical countervailing point is often overlooked. These armed civilians will not be armed **only on that one day**, when the once in a lifetime crime (that they might thwart with their firearm) occurs, but they will be armed **every other day** of their lives, when no such incident occurs. On all of those other **thousands** of days, their carrying the firearm simply increases the risk of death or injury to themselves and others. Therefore, for nearly all non-law-enforcement members of the public, their carrying firearms on a daily basis jeopardizes, not enhances, public safety.

Public carry also poses a risk of harm to a potentially unlimited number of victims (including children and innocent bystanders), whereas in the home environment, the risk of harm is limited to those who live with or choose to visit a gun owner (or his/her family) at home.

In sum, the **public** carrying of firearms -- **openly or concealed** -- should fall outside the Second Amendment because of the clear **threat to public safety** posed by such carrying. Thus, the above **common sense** analysis alone supports excluding public carry from Second Amendment protection. See Drake, 724 F.3d at 438 (noting that public carry is "obviously dangerous," and citing IMS case saying even intermediate scrutiny can be satisfied by "simple common sense").

Furthermore, **empirical research** supports restricting public carry as well. See, e.g., Ian Ayres & John J. Donohue III, *More Guns, Less Crime Fails Again: The Latest Evidence from 1977 – 2006*, 6 Econ J. Watch 218, 229 (May 2009), *available at PDF link* http://econjwatch.org/articles/more-guns-less-crime-fails-again-the-latest-evidence-from-1977-2006 (evidence demonstrates that **right to carry laws increase aggravated assaults**); Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193, 1202 (April, 2003) (rejecting Lott/Mustard view that more guns leads to less crime; statistical analysis suggests **"shall-issue" laws** (defined at n.1 as allowing all adults without serious criminal records or mental illness to carry concealed firearms in public) **increase crime**); Jens Ludwig, *Concealed-Gun-Carrying Laws and Violent Crime*, 18 Int'l Rev. L. & Econ. 239, 252 (1998) (refuting Lott/Mustard and concluding that **"shall-issue laws … increase … adult homicide rates."**); Violence Policy Center, *License to Kill IV: More Guns, More Crime*, at 5 (June 2002), *available at* http://www.vpc.org/graphics/ltk4.pdf (**concealed handgun license holders arrested for weapon-related offenses at 81 percent higher rate than general population**).

Even though some may dispute that restrictions on public carry promote public safety -- or even claim an inverse correlation -- it "is the legislature's job, not [courts'], to weigh conflicting evidence and make policy judgments."

Kachalsky, 701 F.3d at 99; cf. TBS v. FCC, 520 U.S. 180, 211 (1997) ("question is not whether [legislature] … was correct[;] the question [under **intermediate scrutiny**] is whether the legislative conclusion was reasonable and supported by substantial evidence"). At minimum, states should be free to individually make these public safety policy judgments for themselves, without judicial interference, at least absent a clear-cut constitutional entitlement.

In sum, limiting the Second Amendment's scope to self-defense **in the home** (Heller and McDonald went no further) and not extending it to the **public** sphere follows logically from the states' need to protect public safety, given the common sense **and** empirically supported serious danger posed by guns (carried concealed **or** openly) in the public sphere.

B. History and Logic Further Support Exclusion of Public Carry.

Moreover, because Heller excludes public carrying in "**sensitive places**," including "schools and government buildings," from the Second Amendment, it is reasonable to view the **entire public sphere** as a "sensitive place" where guns can be prohibited. If guns may be banned in schools because children are vulnerable there, guns should be permissibly banned anywhere significant numbers of children may be, which is the majority of public places. Government buildings, too, cover a vast array of places from post offices, libraries, city hall and court houses, to buildings servicing unemployment claims, driver's licensing, and

camping permits. And if guns can be banned in liquor-serving establishments because of the risk posed by inebriated patrons with firearms, logic would dictate that guns could be banned anywhere in public that such an inebriated person is likely to end up, which is virtually anywhere. See Moore v. Madigan, 702 F.3d 933, 948 (7th Cir. 2012) (Williams, J., dissenting) ("The resulting patchwork of places where loaded guns could and could not be carried … could not guarantee meaningful self-defense, which suggests that the constitutional right to carry … firearms in public for self-defense may well not exist.").

Furthermore, other states' laws imposing similar "good-cause"-type restrictions on public carry date back to **1927 and earlier**.[3] Thus, public carry is an "activit[y] covered by a **longstanding** regulation [and is thus] presumptively not protected from regulation by the Second Amendment." Heller v. D.C., 670 F.3d 1244, 1253 (D.C. Cir. 2011); NRA v. Bureau of ATF, 700 F.3d 185, 196 (5th Cir. 2012) ("**longstanding** [including "**mid-20th century vintage**"] presumptively lawful regulatory measure -- **whether or not [on] *Heller*'s illustrative list** -- would likely **fall outside … the Second Amendment**"); Drake v. Filko, 724 F.3d at 434 (3d Cir. 2013) (the "justifiable need" standard for public carry "is a

[3] See, e.g., **1927** Hawaii Sess. Laws Act 206, Section 7 (see Addendum 2); Drake, 724 F.3d at 433-34 (New York and New Jersey imposed their special "need" restrictions on public carry in, respectively, **1913 and 1924**); cf. Kachalsky, 701 F.3d at 90 (noting that 3 southern states, and Wyoming, in the **19th century** outright banned all public carry, open or concealed).

longstanding regulation that enjoys presumptive constitutionality").

This circuit, in United States v. Chovan, 735 F.3d 1127, 1137 (9th Cir. 2013), also suggests that where a claimed right has been "proved" to "have **historically** been restricted," it is wholly outside "rights protected by the Second Amendment." Public carry has historically been restricted not only in many states since 1927 and earlier, but in England for over six centuries.

English legal history pre-dating the Second Amendment, which the Heller majority emphasized because it construed the Second Amendment as "**codify[ing] a *pre-existing* right**," 554 U.S. at 592, supports excluding public carry from the scope of the Second Amendment. The 1328 Statute of Northampton essentially prohibited the carrying of arms in public. See Charles, *The Faces of the Second Amendment Outside the Home*, 60 Clev. St. L. Rev. 1, 20 (2012) ("the Statute of Northampton was not regulating dangerous conduct with arms, but the act of carrying arms **by itself**"); Moore, 702 F.3d at 944-45 (Williams, J., dissenting) (the Statute "prohibited **going armed in public**" "**seen or not**").

Notably, this understanding of the Statute -- barring ordinary people from carrying arms in public -- remained in effect in England, even after the right to bear arms was codified in the 1689 *Declaration of Rights*, see Charles, *supra* at 23-28, and in **America** through the passage of the Second Amendment in 1791. Id. at 31-36 (also methodically undermining evidence for opposing view). Thus, any

pre-existing right to bear arms did not extend to carrying firearms in public. Peruta, 742 F.3d at 1182-84 (Thomas, J., dissenting).

In sum, English and American history strongly supports public carry being excluded entirely from the Second Amendment. See Don Kates, *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 267 (1983) (article cited by Heller majority) ("the only carrying … the [Second] amendment … protect[s] is such transportation … implicit in … a right to possess -- *e.g.*, transporting them between the … owner's premises and a shooting range, or a gun store [etc.]").

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For the above reasons, the carrying of firearms in public, **whether concealed or unconcealed**, does not fall within the scope of the Second Amendment. Piszczatoski v. Filko, 840 F.Supp.2d at 816, 831 (D. N.J. 2012) ("the Second Amendment does not include a general right to carry handguns outside the home;" restrictions on public carry "fall outside the … Second Amendment"), *aff'd sub nom.* Drake v. Filko, 724 F.3d at 431 ("declin[ing] to definitively declare [the] right to bear arms for … self-defense extends beyond the home"); Williams v. State, 10 A.3d 1167, 1178 (Md. 2011) (carrying in public, as opposed to in home, "is outside the scope of the Second Amendment"); cf. Peterson, 707 F.3d 1197, 1211 (10th Cir. 2013) ("the Second Amendment does not confer a right to carry

concealed weapons."); People v. Yarbrough, 86 Cal.Rptr.3d 674, 682-83 (2008) ("Unlike possession … within a residence, carrying a concealed firearm … threat[ens] public order [and is not] protected by the Second Amendment").[4]

But even if the Second Amendment encompassed public carry to some extent, California's "good cause" requirement for public carry, as interpreted by San Diego County, does not burden any Second Amendment right.

> the requirement that applicants demonstrate a 'justifiable need' to publicly carry a handgun for self-defense qualifies as a 'presumptively lawful,' 'longstanding' regulation and therefore does not burden conduct within the scope of the Second Amendment's guarantee.

Drake v. Filko, 724 F.3d at 429, 434, 440 (3d Cir. 2013).

II. Even if the Second Amendment has some applicability outside the home, California's restrictions easily survive intermediate scrutiny.

Even if, contrary to the above, the Second Amendment **does** apply to some carrying of firearms **in public** for self-defense, because **public** carry is not at the "core" of the Second Amendment right, Chovan, 735 F.3d at 1138 (core right is self-defense **in the home**), Chovan establishes that **at most** intermediate scrutiny is appropriate. Id. Heller itself recognized that "the **home**," not the public, is "where the need for defense of self, family, and property is most acute." 554 U.S. at 628.

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[4] "'[P]resumptively lawful' could [mean] the identified restrictions … regulate conduct outside the scope of the Second Amendment [**or**] … pass muster under any standard of scrutiny. … [T]he better reading, based on … *Heller*, is the former." U.S. v. Marzzarella, 614 F.3d 85, 91 (3d Cir. 2010).

Moreover, unlike the ban in Chovan which **substantially** burdened Second Amendment rights, "good cause" requirements do not **substantially** burden any right to publicly carry firearms **for self-defense**. For those who demonstrate a special need to carry for **self-defense** will satisfy "good cause" requirements, and may receive concealed carry licenses. Because such laws, therefore, both affect **no core right**, and impose **no substantial burden**, Chovan's two-part scrutiny test suggests that something **less** than intermediate scrutiny is appropriate.

The panel, however, wrongly applied stricter than strict scrutiny, by not allowing consideration of the State's public safety interests at all. Other federal courts apply **at most** intermediate, not strict, scrutiny because restrictions on carrying firearms **in public** do not burden the "**core**" protections of the Second Amendment. See Kachalsky, 701 F.3d at 93 (2nd Cir.); Drake, 724 F.3d at 435-36 (3d Cir.); Masciandaro, 638 F.3d at 469-71 (4th Cir.); cf. Hightower v. City of Boston, 693 F.3d 61, 73 (1st Cir. 2012) ("the government may regulate the carrying of concealed weapons **outside the home**.").

To survive intermediate scrutiny, public carry restrictions must only have a "**reasonable**," not perfect, fit to a "**substantial, or important**" asserted governmental objective. See Chovan, 735 F.3d at 1139. Because, as explained earlier, **public carry endangers public safety**, California's granting licenses to only those establishing "good cause" is **reasonably** -- indeed substantially --

related to California's **substantial** and **important** public safety interest. And federal appellate courts have **uniformly agreed** (except for the panel below) -- upholding under intermediate scrutiny similar restrictions[5] on ***concealed*** carry, **in conjunction with** similar restrictions (or even bans) on ***open*** carry. See Kachalsky, 701 F.3d at 98 ("Restricting handgun possession **in public** … is substantially related to New York's interests in public safety and crime prevention."); Drake v. Filko, 724 F.3d at 438 ("given the obviously dangerous and deadly nature of handguns, requiring a showing of particularized need for a permit to carry one publicly serves the State's interests in public safety"); Woollard, 712 F.3d at 879, 882 ("limiting … public carrying … [l]essens 'the likelihood that basic confrontations between individuals would turn deadly;'" "the good-and-substantial-reason requirement is reasonably adapted to … protecting public safety and preventing crime.").[6]

Besides significantly reducing the risk of ordinary conflicts turning deadly, restricting public carry also enhances public safety by decreasing "the availability of handguns to criminals via theft," "curtailing the presence of handguns during routine police-citizen encounters … [that may turn] routine [encounters into] high-

[5] New York ("special need for self-protection"); New Jersey ("justifiable need"); Maryland ("good and substantial reason").

[6] Moore is distinguishable because it struck down a **complete ban** on public carry. 702 F.3d at 940-41. Even that provoked a strong dissent.

risk stops," and "[a]verting the confusion [and] potentially tragic consequences … that can result from the presence of a third person with a handgun during a [police-criminal-suspect] confrontation [because of] confusion as to which side … the [third] person is on." Woollard, 712 F.3d at 879-80.

The panel majority erroneously attacked San Diego's "good cause" requirement as no better than randomly issuing 1 out of 10 permits. But like the dissent and other circuits have concluded, "[r]estricting … public [carry] to those with ["a special need for self-protection distinguishable from … the general community"] **is** substantially related to … public safety," Kachalsky, 701 F.3d at 86, 98, because an extraordinary special need for self-defense may offset the serious safety risks from public carrying. Unlike a random reduction in number of permits issued, the "good cause" requirement ensures that the serious risks inherent in public carry are incurred only when the carrier's need for self-defense is particularly substantial.

Indeed, in light of Heller's emphasis on **self-defense** as the motivating force behind any constitutional right to possess a firearm, tying the statutory authorization to carry publicly to **a special high need for self-defense** not only has a substantial relationship to overall public safety, but also best respects the self-defense concern underlying Heller.

CONCLUSION

Hawaii respectfully urges this Court to review *en banc* the panel ruling below, and then uphold California's restricting public carry to only those establishing "good cause," as interpreted by San Diego so as not to include literally everyone. Otherwise, the entire Ninth Circuit will become a de facto shall-issue region leading to a massive, and dangerous, proliferation of guns on the streets of America. At minimum, that would turn millions of ordinary daily conflicts in the public arena into potentially life-ending tragedies. Only this Court, sitting *en banc*, can prevent that.

DATED: Honolulu, Hawaii, December 22, 2014.

s/ Girard D. Lau

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CERTIFICATE OF COMPLIANCE

I certify that the brief is proportionately spaced, has a typeface of 14 points or more and contains 4,200 words. See Ninth Cir. R. 29-2(c)(2).

DATED: Honolulu, Hawaii, December 22, 2014.

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INDEX TO ADDENDA

§ 134-9. Licenses to carry

(a) In an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property, the chief of police of the appropriate county may grant a license to an applicant who is a citizen of the United States of the age of twenty-one years or more or to a duly accredited official representative of a foreign nation of the age of twenty-one years or more to carry a pistol or revolver and ammunition therefor concealed on the person within the county where the license is granted. Where the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is a citizen of the United States of the age of twenty-one years or more, is engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted. The chief of police of the appropriate county, or the chief's designated representative, shall perform an inquiry on an applicant by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases where the applicant is not a citizen of the United States, before any determination to grant a license is made. Unless renewed, the license shall expire one year from the date of issue.

(b) The chief of police of each county shall adopt procedures to require that any person granted a license to carry a concealed weapon on the person shall:

(1) Be qualified to use the firearm in a safe manner;

(2) Appear to be a suitable person to be so licensed;

(3) Not be prohibited under section 134-7 from the ownership or possession of a firearm; and

(4) Not have been adjudged insane or not appear to be mentally deranged.

(c) No person shall carry concealed or unconcealed on the person a pistol or revolver without being licensed to do so under this section or in compliance with sections 134-5(c) or 134-25.

(d) A fee of $10 shall be charged for each license and shall be deposited in the treasury of the county in which the license is granted.

LAWS

OF THE

TERRITORY OF HAWAII

PASSED BY THE

FOURTEENTH LEGISLATURE

REGULAR SESSION
1927

COMMENCED ON WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY, AND ENDED ON TUESDAY, THE THIRD DAY OF MAY.

PUBLISHED BY AUTHORITY

HONOLULU, HAWAII
ADVERTISER PUBLISHING CO., LTD.
1927

B

ACT 206

[H. B. No. 322]

AN ACT REGULATING THE SALE, TRANSFER AND POSSESSION OF CERTAIN FIREARMS AND AMMUNITIONS, AND AMENDING SECTIONS 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2146 AND 2147 OF THE REVISED LAWS OF HAWAII 1925.

Be it Enacted by the Legislature of the Territory of Hawaii:

SECTION 5. Carrying or keeping small arms by unlicensed persons. Except as otherwise provided in Sections 7 and 11 hereof in respect of certain licensees, no person shall carry, keep, possess or have under his control a pistol or revolver; provided, however, that any person who shall have lawfully acquired the ownership or possession of a pistol or revolver may, for purposes of protection and with or without a license, keep the same in the dwelling house or business office personally occupied by him, and, in case of an unlawful attack upon any person or property in said house or office, said pistol or revolver may be carried in any lawful, hot pursuit of the assailant.

SECTION 6. Exceptions. The provisions of the preceding section shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen, mail carriers, or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of the United States, or of the National Guard, when on duty, or of organizations by law authorized to purchase or receive such weapons from the United States or this territory, or to officers or employees of the United States authorized by law to carry a concealed pistol or revolver, or to duly authorized military organizations when on duty, or to the members thereof when at or going to or from their customary places of assembly, or to the regular and ordinary transportation of pistols or revolvers as merchandise, or to any person while carrying a pistol or revolver unloaded in a wrapper from the place of purchase to his home or place of business, or to a place of repair or back to his home or place of business or in moving goods from one place of abode or business to another.

SECTION 7. Issuse of licenses to carry. The judge of a court of record or the sheriff of a county, or city and county, shall, upon the application of any person having a bona fide residence or place of business within the jurisdiction of said licensing authority, or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol or revolver concealed upon his person or to carry one elsewhere than in his home or office, said license being issued by the authorities of any state or political subdivision of the United States, issue a license to such person to carry a pistol or revolver within this territory elsewhere than in his home or office, for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a pistol or revolver, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the treasurer of the territory, and shall bear the name, address, description and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee; the duplicate shall, within seven days, be sent by registered mail, to the treasurer of the territory and the triplicate shall be preserved for six years by the authority issuing said license.

9th Circuit Case Number: 10-56971

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date): December 22, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format): s/Girard D. Lau

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CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date): Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)