

**Nos. 10-56971, 11-16255**

**IN THE**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

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EDWARD PERUTA, et al.,  
*Plaintiffs-Appellants,*

v.

COUNTY OF SAN DIEGO, et al.  
*Defendants-Appellees.*

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Appeal from United States District Court for the  
Southern District of California  
No. 3:09-cv-02371-IEG-BGS (Hon. Irma E. Gonzales)

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**BRIEF OF AMICI CURIAE WESTERN STATES SHERIFFS' ASSOCIATION;  
SHERIFF ADAM CHRISTIANSON; SHERIFF JON LOPEY; SHERIFF MARGARET  
MIMS; SHERIFF TOM BOSENKO; DAVID HENCRATT; SHERIFF STEVEN  
DURFOR; SHERIFF THOMAS ALLMAN; SHERIFF DAVID ROBINSON; SHERIFF  
SCOTT JONES; SHERIFF BRUCE HANEY; SHERIFF JOHN D'AGOSTINI; AND  
RETIRED SHERIFF LARRY JONES IN SUPPORT OF PLAINTIFF-APPELLANTS**

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Steven Durfor; Sheriff Thomas Allman; Sheriff David Robinson; Sheriff Scott Jones; Sheriff  
Bruce Haney; Sheriff John D'Agostini; and Retired Sheriff Larry Jones*

**CORPORATE DISCLOSURE STATEMENT**

The Western States Sheriffs Association has no parent corporations. It has no stock, thus no publicly held company owns 10% or more of its stock.

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**INTEREST OF THE AMICI CURIAE**

**WESTERN STATES SHERIFFS' ASSOCIATION**

The Western States Sheriffs' Association ("WSSA") was formed over twenty-two years ago by Sheriffs who hoped to achieve greater representation, communication, and collaboration among America's western sheriffs. The WSSA encompasses fifteen member states and over three hundred member sheriffs.

The organization continues to focus around common issues of western sheriffs as well as interaction with federal agencies and land and resource managers.

The Office of Sheriff is the highest law enforcement authority in any county in the United States. As issuing authorities for concealed weapons licenses, the Amici have identified this case as having great significance as they support the Second Amendment. The WSSA feels that the California Penal Code regarding CCW and open carry may need future attention by the California General Assembly.

**SHERIFF ADAM CHRISTIANSON FROM STANISLAUS COUNTY  
CALIFORNIA**

Sheriff Adam Christianson is the Sheriff-Coroner of Stanislaus County California. He is also the Immediate Past President of the California State Sheriffs' Association.

**SHERIFF JON LOPEY FROM SISKIYOU COUNTY CALIFORNIA**

Sheriff Jon Lopey is the Sheriff of Siskiyou County California. He is a member of the California State Sheriffs' Association, National Sheriffs' Association, California State Corners' Association, and California Peace Officers' Association.

**SHERIFF MARGARET MIMS FROM FRESNO COUNTY CALIFORNIA**

Sheriff Margaret Mims is the Sheriff of Fresno County California. She was elected to the office in 2006 and was the first female to be elected to the office of Sheriff in the history of Fresno County.

**SHERIFF TOM BOSENKO FROM SHASTA COUNTY CALIFORNIA**

Sheriff Tom Bosenko is the Sheriff of Shasta County California. He has over thirty years of active experience with the Shasta County Sheriff's Office as a Patrol Division Captain, lieutenant, and sergeant.

**SHERIFF DAVID HENCRATT FROM TEHAMA COUNTY CALIFORNIA**

Sheriff David Hencratt is the Sheriff-Coroner of Tehama County California. He has been with the Tehama County Sheriff's Office since 1988 and began his tenure as Sheriff in 2011.



**SHERIFF STEVEN DURFOR FROM YUBA COUNTY CALIFORNIA**

Sheriff Steven Durfor is the Sheriff-Coroner and Public Administrator of Yuba County California. He is a member of the California State Sheriffs' Association and California Coroners' Association.

**SHERIFF THOMAS ALLMAN FROM MENDOCINO COUNTY CALIFORNIA**

Sheriff Thomas Allman is the Sheriff-Coroner from Mendocino County California.

**SHERIFF DAVID ROBINSON FROM KINGS COUNTY CALIFORNIA**

Sheriff David Robinson is the Sheriff of Kings County California. He is also the Coroner and Public Administrator.

**SHERIFF SCOTT JONES FROM SACRAMENTO COUNTY CALIFORNIA**

Sheriff Scott Jones is the Sheriff of Sacramento County California. He is the Sheriff of California's Capitol City and County.

**SHERIFF BRUCE HANEY FROM TRINITY COUNTY CALIFORNIA**

Sheriff Bruce Haney is the Sheriff of Trinity County California. He is also the Coroner of Trinity County.

**SHERIFF JOHN D'AGOSTINI FROM EL DORADO COUNTY CALIFORNIA**

Sheriff John D'Agostini is the Sheriff of El Dorado County California. He is a member of the California State Sheriffs' Association.

**RETIRED SHERIFF LARRY JONES FROM GLENN COUNTY  
CALIFORNIA**

Sheriff Larry Jones, retired, is the former sheriff of Glenn County California.

**FED. R. APP. P. 29(c)(5) STATEMENT**

As required by Rule 29(c)(5) of the Federal Rules of Appellate Procedure, Amici state that this brief was not authored by counsel for a party to this action and no party or party's counsel contributed money intended to fund preparing or submitting the brief. The Self Defense Foundation, a 501(c) organization incorporated under the laws of the state of California, helped to fund the preparation of this brief.

**FED. R. APP. P. 29(a) STATEMENT**

Per Rule 29(a) of the Federal Rules of Appellate Procedure, all of the parties in these consolidated appeals have consented to the Amici's filing of this brief.

**INTRODUCTION**

In California, law-abiding citizens not in law enforcement or the military may only carry a loaded firearm if they are in possession of a license to carry a concealed firearm ("CCW license" or "CCW"). In order to obtain a CCW license, three essential elements must be established by an applicant:

1. The applicant must demonstrate good moral character;
2. The applicant must participate in the required firearms safety training; and,

3. The applicant must demonstrate “good cause” for the necessity of a CCW license.

As written in California’s statutes, the process to obtain a CCW is fair to law-abiding citizens who apply and meet the necessary statutory criteria. In practice, however, a number of local authorities use an impermissibly arbitrary standard to evaluate permit applications. In some California counties, applicants who would have been licensed elsewhere, like the Plaintiffs-Appellants, have been improperly denied a CCW by local officials exercising discretion beyond that permitted by generally accepted standards and the minimum requirements of Second Amendment jurisprudence under federal law. In particular, several local California authorities have burdened applicants with a definition of “good cause” that excludes self-defense in-and-of-itself as an appropriate demonstration of “good cause,” substituting instead an impermissibly arbitrary and unworkable standard.

Amici join in Plaintiff-Appellants’ position that the Second Amendment to the U.S. Constitution secures to responsible, law-abiding adults both the right to keep arms and the right to bear arms for purposes of self-defense. Self-defense is one of the most fundamental and longest recognized human rights. This is why the United States Supreme Court recognized that the most fundamental purpose of the

Second Amendment is to preserve citizens' rights to keep *and bear* arms for self-defense. *See generally District of Columbia v. Heller*, 554 U.S. 570 (2008).

In light of the fundamental nature of the right to bear arms, the illegal and impermissibly arbitrary licensing scheme adopted by San Diego is not narrowly tailored to advance a compelling government interest in the least restrictive means, nor does it further an important government interest in a way that is substantially related to that interest. Instead, the overly subjective San Diego licensing scheme unlawfully prevents law-abiding citizens from exercising their rights to bear arms under the Second Amendment.

## **DISCUSSION**

### **I. CALIFORNIA ONLY PERMITS ITS CITIZENS TO CARRY LOADED FIREARMS PURSUANT TO A CCW LICENSE**

In order to publicly carry a firearm in California, an individual must apply for and obtain a CCW in the city or county in which he/she resides or works. Cal. Penal Code § 26150 & §26155 *see* Appellants' Opening Br. at 5-7.

#### **a. Obtaining a CCW Under California Law Generally**

Further, California law requires applicants to demonstrate "good cause" for the license, to complete a specific training course, and to demonstrate "good moral character." Cal. Penal Code § 26150 & 26155.

While some of the criteria used to satisfy each of these requirements are laid out by statute, others are left to the judgement and determination of the licensing authority. Cal. Penal Code § 26160 & 26165. For example, the State of California requires that every California applicant complete a training course that should not exceed sixteen hours, and that shall include instruction on a least firearm safety and permissible firearm use. Cal. Penal Code § 26165(a). Notwithstanding this minimum state requirement, a licensing authority may also require an applicant to take an additional course at a community college, up to a maximum of twenty-four hours of class time, so long as this additional requirement is uniformly applied to all applicants supervised by that licensing authority. Cal. Penal Code § 26165(b). These supplemental courses are only required *after* the local authority makes a determination on “good cause” for the applicant. Cal. Penal Code § 26165(d). Additionally, the licensing authority may require psychological testing and fingerprinting. Cal. Penal Code § 26190 & 26185.

Upon completion of all tests and the payment of all fees, the licensing authority shall give written notice to the applicant regarding approval or disapproval of the license within 90 days of the initial application or 30 days after the receipt of the applicant’s background check, whichever is later. Cal. Penal Code § 26205.

Copies of application approvals or denials will be kept and filed with the Department of Justice of California. Cal. Penal Code § 26225.

**b. San Diego's Additional Requirements for Obtaining a CCW**

To obtain a CCW in San Diego an individual must file an application with the San Diego County Sheriff. ER, Vol. IV, Tab 37 at 848 (Pls.' SUF 7-8). It is the policy of the County that in order to demonstrate "good cause" an applicant "will be required to submit documentation to support and demonstrate their need." ER, VOL V, Tab 37 at 848 (Pls.' SUF 9). If the applicant wishes to demonstrate "good cause" by asserting self-defense they must provide evidence of a specific threat of harm (Examples of accepted evidence include: "Current police reports and/or other documentation supporting need (i.e., such as restraining orders or other verifiable written statement)"). See ER, Vol. IV, Tab 37 at 849 (Pls.' SUF 10). If an applicant asserts "good cause" for his or her professional or business purposes, the County does not require the same proof of specific threat. ER, Vol. IV, Tab 37 at 849 (Pls.' SUF 11). Fear for safety, alone, is not enough for licensure. See ER, Vol. IV, Tab 37 at 850 (Pls.' SUF 12).

This policy effectively deprives individuals who cannot provide such documentation of the only means available to carry a loaded firearm in public under California Law. San Diego has openly admitted that the stated purpose of

this policy is to reduce the number of CCWs issued in San Diego. ER, Vol. I, Tab 1 at 12; Vol. III, Tab 29 at 400 (Def.'s SUF 5).

## II. SELF-DEFENSE IS INHERENTLY GOOD CAUSE

The right to bear arms in self-defense is a core right protected by the Second Amendment and therefore should be considered “good cause” for CCW licensure. As the three-judge panel held, “many of the same cases that the *Heller* majority invoked as proof that the Second Amendment secures an individual right may just as easily be cited for the proposition that the right to carry in case of confrontation means nothing if not the general right to carry a common weapon outside the home for self-defense.” *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1155 (9th Cir. 2014). Amici concur with the *Peruta* panel’s view. So, too, did the *McDonald* Court which held that “Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is ‘the *central component*’ of the Second Amendment right.” *McDonald v. City of Chicago*, 561 U.S. 742 at 744 (2010) ((quoting *Heller*, 554 U.S. at 628). Because carry outside the home in California requires a CCW, to suffer the existence of a permitting scheme grounded in anything other than self-defense as “good cause” is to permit the arbitrary denial of the right to bear arms outside the home.

### **III. CURRENT SAN DIEGO STANDARD YIELDS AN ARBITRARY RESULT**

San Diego's licensing scheme is grounded in an arbitrary standard of "good cause" and its application yields a highly subjective and arbitrary result. As applied, San Diego's standard rejects certain applicants at the beginning of the application process while permitting other similarly situated applicants to proceed through the permitting process. San Diego requires an applicant seeking a CCW license for personal protection to prove that some form of "documented threat" exists to justify the issuance of the CCW license. *See* ER, Vol. IV, Tab 37 at 849 (Pls.' SUF 10). However, San Diego does not articulate what documents are necessary or what documents are sufficient. Nor does San Diego give any indication of whether similar threats to similarly situated people would be treated in a disparate manner, or what factors are considered to account for the highly variable nature of applicants' circumstances and the characteristics of the threats they face. Defendant-Appellee also does not specify how an individual who is the subject of a legitimate and imminent threat, but cannot specifically document such threat, would be able to show that he or she is deserving of a CCW. This nebulous "documented threat" criterion – wholly invented by San Diego – is unworkable and cannot be uniformly applied.



As a group of permitting agents, Amici believe in a uniform standard – that is, self-defense as “good cause” – to determine whether an applicant is eligible to apply for a CCW license. “Good cause” is the first of the three criteria Amici consider when evaluating a permit application. If an applicant can meet this uniform standard at the beginning of the permitting process, the applicant’s training credentials and good character should then be evaluated. Because felons and the mentally ill do not enjoy full firearms self-defense rights under *Heller*, accepting self-defense as “good cause” properly filters out felons, the mentally ill and other unfit applicants at the beginning of the process while leaving an objectively identifiable group of fit applicants in the applicant pool so that their training and good character can be evaluated.

San Diego seems to accept and acknowledge that self-defense is a component of “good cause” for the issuance of a CCW license. Their standard becomes unworkable, however, when San Diego adds additional burdens and makes itself the sole arbiter of who is truly in danger, who can defend themselves and who cannot. San Diego’s scheme impermissibly burdens an objective self-defense-anchored standard with a subjective view of whether a perceived danger is sufficiently dangerous to result in the issuance of a permit.

#### **IV. CURRENT SAN DIEGO STANDARD IS OUT OF ACCORD WITH CALIFORNIA NORMS AND NATIONAL NORMS**

Many of California's fifty-eight sheriffs, including Amici, recognize self-defense as "good cause" under the CCW licensing statutes. San Diego's denial of self-defense as "good cause" for issuance of a CCW is out of step with the majority of California jurisdictions and is out of step with national norms. In a Circuit where two states (Alaska and Arizona) do not even require permits to carry firearms in public and in a state where the majority of counties accept self-defense as "good cause," San Diego's requirement to "provide supporting documentation" in order to "demonstrate and elaborate good cause," often requiring "restraining orders, letters from law enforcement agencies familiar with the case" are excessive, illegal and serve only to chill and limit the lawful exercise of a fundamental Constitutional right. *See* Appellants' Opening Br. at 8-9.

In recent years, forty-one states in the United States have acted to reform their concealed weapon permit laws. John R. Lott, Jr., *What a Balancing Test Will Show for Right-to-Carry Laws*, 71 Md. L. Rev. 1207 (2012). Of these forty-one states, five do not even require a permit to carry concealed handguns<sup>1</sup>. *Id.* These changes were brought about to prevent wrongful denial of concealed carry and to

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<sup>1</sup> Montana is not completely permit free, but is free from requiring permits in 99.4% of the state. *Id.*

minimize administrative discretion in CCW issuance.<sup>2</sup> In many of these states, self-defense is considered sufficient to meet “good cause” requirements for permits to carry. For example, the preamble to Oklahoma’s “Oklahoma Self-Defense Act” states: “The [Oklahoma] Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed or unconcealed handguns for lawful self-defense and self-protection, and further finds it necessary to occupy the field of regulation of the bearing of concealed or unconcealed handguns to ensure that no honest, law-abiding citizen who qualifies pursuant to the provisions of the Oklahoma Self-Defense Act, is subjectively or arbitrarily denied his or her rights.” 21 Okl. St. Ann. § 1290.25. Similarly, under newly enacted legislation in Kansas, “[t]he legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed handguns for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed handguns for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person’s rights. No city, county or other political subdivision of this state shall

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<sup>2</sup> Brian Anise Patrick, *Rise of the Anti-Media: Informing America’s Concealed Weapons Movement* (Lexington Books, 2009) CH 5; John R. Lott, Jr., *More Guns Less Crime*, Ch. 4 (3d ed. University of Chicago Press 2010).

regulate, restrict or prohibit the carrying of concealed handguns by individuals...”

K.S.A. 2014 Supp. 75-7c17.

San Diego’s arbitrary standard stands in stark contrast to an objective national norm squarely anchored in self-defense as “good cause.”

## V. CONCLUSION

For the foregoing reasons, Amici urge the full 9<sup>th</sup> Circuit to uphold the verdict issued by the three-judge panel in Peruta v. Cnty. of San Diego, 742 F.3d 1144, 1155 (9th Cir. 2014).

Respectfully Submitted,



Dated: April 30, 2015

Jonathan S. Goldstein, Esq  
McNelly & Goldstein, LLC  
Attorneys for Amici Curiae

**CERTIFICATE OF COMPLIANCE**

I certify under the Federal Rules 29-2(c)(3) and 32 that the attached Brief of Amicus Curiae is proportionately spaced, has typeface of 14 points or more, and contains 2,757 words according to the word count feature of the word-processing system used to prepare the brief.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. S. Goldstein". The signature is written in a cursive style with a large, looping initial "J".

Dated: April 30, 2015

Jonathan S. Goldstein, Esq  
McNelly & Goldstein, LLC  
Attorneys for Amici Curiae

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 30, 2015.

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.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jonathan S. Goldstein". The signature is written in a cursive style with a large, looping initial "J".

Dated: April 30, 2015

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