No. 11-16255

In The United States Court of Appeals For The Ninth Circuit

ADAM RICHARDS, BRETT STEWART, SECOND AMENDMENT FOUNDATION, INC., AND THE CALGUNS FOUNDATION, INC.,

Plaintiffs-Appellants,

v.

ED PRIETO AND COUNTY OF YOLO,

Defendants-Appellees.

Appeal from a Judgment of the United States District Court
for the Eastern District of California
Hon. Morrison C. England, District Judge
(2:09-CV-01235-MCE-DAD)

OPPOSITION TO PETITION FOR REHEARING EN BANC

Donald E. J. Kilmer, Jr.
Law Offices of Donald Kilmer
1645 Willow Street, Suite 150
San Jose, CA 95125
408.264-8489/408.264-8487
don@dklawoffice.com

Alan Gura*
GURA & POSSESSKY, PLLC
105 Oronoco Street, Suite 305
Alexandria, VA 22314
703.835.9085/703.997.7665
alan@gurapossessky.com

Counsel for Appellants
*Counsel of Record

April 11, 2014

CORPORATE DISCLOSURE STATEMENT

The Second Amendment Foundation, Inc., and the Calguns Foundation, Inc., have no parent corporations. No publicly traded company owns 10% or more of appellant corporations' stock.

Dated: April 11, 2014 Respectfully submitted,

Second Amendment Foundation, Inc.
The Calguns Foundation, Inc.

By: /s/ Alan Gura
Alan Gura
Counsel for Appellants

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INTRODUCTION

While serious conflicts exist between various Second, Third, and Fourth Circuit decisions and *Peruta* v. *County of San Diego*, 742 F.3d 1144 (9th Cir. 2014), this Court is not the one that must reevaluate matters. It decided *Peruta* correctly, and consistently with controlling precedent. Moreover, *Peruta* is consistent with this Court's treatment of fundamental rights, and longstanding precedent evaluating discretionary licensing schemes in this area.

Perhaps recognizing the difficulty of attacking *Peruta*'s merits, Defendants and their *amici* devote substantial space to their personal opinions of what the law *should* be, rather than what it is, predicting mayhem should responsible, law-abiding Californians exercise a fundamental constitutional right long enjoyed, safely, throughout most of the country. But this is a court of law, not public policy. Sensibly or not, the Framers ratified a right to "bear" arms—per the Supreme Court, a right to carry defensive arms in case of confrontation.

As for the State, it cannot enter *Peruta*, which is moot with respect to any state law. Nor, having successfully fought attempts to be sued in "good cause" challenges, and having declined to intervene in this case

when invited, could the State enter the litigation to defend its law—were its law even implicated by the panel's decision. Manifestly, that is not the case.

ARGUMENT

I. *PERUTA* IS FULLY CONSISTENT WITH *HELLER*.

A. CALIFORNIA IS NOT A "SENSITIVE PLACE."

Defendants argue that *Peruta* is inconsistent with *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), because *Heller* acknowledged that the government may bar guns from "sensitive places,"*id.* at 626; Pet. for Reh'g ("Pet.") 8-9.

The argument fails. Absent the license at issue, Plaintiffs cannot carry loaded guns, openly or concealed, "while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory." Cal. Penal Code § 25850.[1]

Whatever a "sensitive place" may be, it cannot be "any public place" or "any public street" in any incorporated city, or anywhere else where

[1] "'[P]rohibited area' means any place where it is unlawful to discharge a weapon." Cal. Penal Code § 17030.

firing a gun is unlawful absent emergency. Defendants' argument that the entire state is a "sensitive place," lumping in obviously sensitive places such as airports with "city streets," Pet. 9, is specious. What good is a right to "carry weapons in case of confrontation," *Heller*, 554 U.S. at 592, that cannot be exercised on virtually all streets and in virtually all public places? The exception cannot swallow the rule.

Moreover, *Peruta* "does not assess *why* bans on carrying guns in sensitive places comport[s] with the Second Amendment," *id.* at 9, because the Supreme Court supplied the explanation, offering that sensitive place restrictions are presumptively constitutional as "longstanding" regulations informing the right's scope. *Heller*, 554 U.S. at 626. The Second Amendment is not an all-or-nothing proposition, guns everywhere, or guns nowhere. *Heller* did not explain what renders a place "sensitive," but "there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us." *Id.* at 635.

Neither *Peruta* nor this case present a "sensitive place" platform. The panel thus left undisturbed California's various "sensitive place" prohibitions, including bans on gun carrying at gun shows, Cal. Penal

Code § 27330; the State Capitol, legislative and executive offices, and legislative hearings, Cal. Penal Code § 171c(a)(1); polling places, Cal. Elections Code § 18544(a); labor pickets, Cal. Penal Code § 17510; and courtrooms where one's case is pending, Cal. Penal Code § 171b(b)(2)(B). Nor did the panel disturb Sheriff Prieto's authority to "include any reasonable restrictions or conditions that [he] deems warranted, including restrictions as to the time, place, manner, and circumstances under which the licensee may carry a [concealable firearm]." Cal. Penal Code § 26200.

B. THERE IS NO RIGHT TO CARRY GUNS IN ANY PARTICULAR MANNER.

The license Plaintiffs seek allows only concealed carrying. Since concealed carrying may be banned, Defendants allege that Plaintiffs fail to state a Second Amendment claim. In other words, Defendants theorize that the Second Amendment protects only the open carrying of firearms. Pet. 10.

This argument misstates both the law and Plaintiffs' claims. *Heller* held that the Second Amendment's use of "bear arms" includes *concealed* carrying: "wear, bear, or carry . . . upon the person *or in the clothing or in a pocket*, for the purpose . . . of being armed and ready for

offensive or defensive action in a case of conflict with another person." *Heller*, 554 U.S. at 584 (citation and internal quotation omitted) (emphasis added). Defendants fail to address this holding.

Just because a right *may* be exercised in some fashion, does not mean that it *must* be so exercised. The state may ban concealed carrying because it may regulate the manner in which guns are carried. It may likewise ban open carrying. *See, e.g.*, Tex. Penal Code § 46.035(a).

Defendants correctly proclaim that "[no] other circuit [has] stated that *a right to concealed carry* arises wherever no ability to open carry exists," Pet. 12 (emphasis added)—but neither did the panel here issue any such holding. It held only that the right to carry must be allowed in some fashion. In no way does that unremarkable holding imply that the right "arises" depending on legislation; the Second Amendment, which covers placing guns "in the clothing or in a pocket," *Heller*, 554 U.S. at 584, "codified a *pre-existing* right," *id.* at 592. Because the right is a right to carry arms, generally, Plaintiffs never claimed a right to carry *concealed* handguns. *See, e.g.,* Second Amend. Complaint, ¶ 11.

There is no need to reexamine the history meticulously surveyed by the panel, which Defendants do not attempt to rebut. Consistent with the long legal tradition securing the right to carry defensive handguns, concealed carry prohibitions were approved only where the right to bear arms was otherwise tolerated, *e.g.*, where open carrying was allowed. *Peruta* recounted numerous decisions, 742 F.3d at 1156-61, and notable scholarly commentators, *id.* at 1163-65, recounting this essential rule. And as the panel noted, *Heller* invoked many of these same sources.

Defendants' argument ignores not only *Heller*'s definition of "bear arms," and the overwhelming weight of history, tradition and precedent; it defies circuit precedent, and the logic of time, place and manner restrictions. "The protections of the Second Amendment are subject to the same sort of reasonable restrictions that have been recognized as limiting, for instance, the First Amendment." *Parker* v. *District of Columbia*, 478 F.3d 370, 399 (D.C. Cir. 2007), *aff'd sub nom Heller* (citing *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989)); *see Jackson* v. *City & Cnty. of San Francisco*, No. 12-17803, 2014 U.S. App. LEXIS 5498 at *13 (9th Cir. March 25, 2014).

Time, place and manner restrictions on protected speech must "leave open ample alternative channels for communication," *Ward*, 491 U.S. at 791 (quotation omitted), lest they destroy the right. Second Amendment law follows the same logic. "[F]irearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not." *Jackson*, 2014 U.S. App. LEXIS 5498 at *13-*14. Every time is a time subject to restriction, every place is a place, and every manner is a manner—but that does not mean that all times, places, or manners of exercising a right may be forbidden concurrently.

The state may regulate the manner in which handguns are carried. This Court would have no basis for holding that California must allow the open carrying of handguns.[2]

C. THE RIGHT TO BEAR ARMS IS NOT LIMITED TO THE HOME.

Nothing in *Heller* allows that "full prohibitions" on carrying guns in public "may be presumptively lawful." Pet. 8. Were it so, *Heller* would

[2]Defendants' assertion that the state does not truly ban open handgun carrying because it permits the practice outside cities, and in non-public places such as private residences; or once a violent criminal attack is imminent, Pet. 10 n.5, is specious. The question is not what Plaintiffs might do in circumstances not at issue in the case.

not have described as presumptively lawful prohibitions against the carrying of guns into discrete "sensitive places." *Heller*, 554 U.S. at 626.

Nor does "defense of hearth and home," *id.* at 635, constitute the Second Amendment's "core," let alone to the point where the right is practically meaningless in public. *Heller* must be read carefully. Three times, it succinctly describes the Second Amendment's "core" interest, to wit: (1) the Second Amendment's "core lawful purpose [is] self-defense," *id.* at 630; (2) "Individual self-defense . . . was the *central component* of the right itself," *id.* at 599; (3) "the inherent right of self-defense has been central to the Second Amendment right." *Id.* at 628. Nothing in these terse definitions of the Second Amendment's "core" limits the self-defense interest to the home.[3]

Other courts' efforts to drag the core inside "hearth and home" via an unduly extended elliptical quotation prove incompatible with *Heller*'s logic. The Second and Fourth Circuits, for example, cite *Heller*

[3]Defendants' theory that *United States* v. *Chovan*, 735 F.3d 1127 (9th Cir. 2013), limited the Second Amendment's "core" to home defense thus fails. Moreover, any such limitation in *Chovan* would be dictum, as that case neither concerned, let alone explored or saw briefed, the Second Amendment's public application.

at pages 634-35 for the home-core proposition. *Woollard* v. *Gallagher*, 712 F.3d 865, 874 (4th Cir. 2013); *Kachalsky* v. *Cnty. of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012). These courts apparently extract "core" from the majority's response to Justice Breyer's dissent: "[w]e know of no other enumerated constitutional right whose *core* protection has been subjected to a freestanding 'interest-balancing' approach." *Heller*, 554 U.S. at 634 (emphasis added). To this use of "core," the courts appended language borrowed from the lengthy paragraph's end, that "whatever else it leaves to future evaluation, [the Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. But *Heller* may not be fairly read to suggest that interest-balancing inquiries may be substituted for "the scope [the Second Amendment was] understood to have when the people adopted [it]," *id.* at 634-35—the theory rejected in the context of the lower court's elliptical citation—whenever the arms at issue are outside the home.

Indeed, "in [*Heller*], we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of

handguns in the home." *McDonald* v. *City of Chicago*, 130 S. Ct. 3020, 3026 (2010). The syntax is clear: the holding, relating to self-defense, was applied in a factual setting arising inside the home—the home setting did not define the right. *Cf. State* v. *Blocker*, 291 Or. 255,259, 630 P.2d 824, 825-26 (1981).

The "policy choices [taken] off the table" by the Second Amendment "*include* the absolute prohibition of handguns held and used for self-defense in the home." *Heller*, 554 U.S. at 636 (emphasis added). That the "the need for defense of self, family, and property is *most acute*" in the home, *id.* at 628 (emphasis added), and that the Second Amendment right is secured "*most notably* for self-defense within the home," *McDonald*, 130 S. Ct. at 3044 (emphasis added), exclude the possibility that the right is limited to the home.

II. THE PANEL CORRECTLY DETERMINED, CONSISTENT WITH CIRCUIT PRECEDENT, THAT DEFENDANTS' "GOOD CAUSE" POLICY DESTROYS THE RIGHT TO BEAR ARMS.

Defendants claim that "[n]o other circuit court, including the Seventh, has determined a Second Amendment right can be 'totally destroyed' where there are available legal avenues for exactly that conduct.'" Pet. 12.

But neither did the panel so hold. Rather, the panel found—and this much is unassailable—that

> [i]n California, the only way that the typical responsible, law-abiding citizen can carry a weapon in public for the lawful purpose of self-defense is with a concealed-carry permit. And, in San Diego County, that option has been taken off the table.

Peruta, 742 F.3d at 1169.

So too is the option off the table for Yolo County residents. How else may Plaintiffs engage in "exactly that conduct," Pet. 12—carrying defensive handguns in Davis, California? It is no answer to assert that Plaintiffs might carry guns in the middle of nowhere, or in their homes and offices. Pet. 10 n.5. Plaintiffs may also carry handguns in public in 44 states, but the issue here is California.

Defendants err in claiming that *Peruta*'s "total destruction" approach conflicts with *United States* v. *Chovan*, 735 F.3d 1127 (9th Cir. 2013). Without citing *Peruta*, this Court just explained that the "total destruction" approach is fully consistent with *Chovan*:

> A law that imposes such a severe restriction on the core right of self-defense that it "amounts to a destruction of the [Second Amendment] right," is unconstitutional under any level of scrutiny. By contrast, if a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right, we may apply intermediate scrutiny.

Jackson, 2014 U.S. App. LEXIS 5498, at *14 (citing *Chovan*, 735 F.3d at 1138-39) (quotation and other citations omitted).

As the panel correctly noted, *Heller* dispensed with means-ends scrutiny in striking down Washington, D.C.'s handgun and functional firearms bans. *Peruta*, 742 F.3d at 1168. Thus, had *Chovan* held that means-ends scrutiny is required in all Second Amendment cases without exception, *Chovan*, not *Peruta* (or now, *Jackson*), would be the decision requiring rehearing. But *Chovan* contained no such holding. To the contrary, *Chovan*'s allows that means-ends scrutiny must be avoided at "step one" if the regulation does not implicate conduct secured by the Second Amendment. *Chovan*, 735 F.3d at 1136. And *Chovan* did not overrule *United States* v. *Vongxay*, 594 F.3d 1111 (9th Cir. 2010), which utilized no standard of review to uphold the federal felon-in-possession ban, 18 U.S.C. § 922(g)(1), as presumptively lawful.

The concept that a right is destroyed when no one may exercise it absent special dispensation, or when the law presumes that people may not engage in the protected activity, is hardly novel. *Cf. Speiser* v. *Randall*, 357 U.S. 513, 526 (1958); *Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958). Courts have long applied this rule in securing state

constitutional protections of the right to bear arms. Michigan's Supreme Court struck down a state law leaving to a Sheriff's discretion the licensing of handgun possession by immigrants. "The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff." *People* v. *Zerillo*, 189 N.W. 927, 928 (Mich. 1922). "The [provision] making it a crime for an unnaturalized, foreign-born resident to possess a revolver, unless so permitted by the sheriff, contravenes the guaranty of such right in the Constitution of the State and is void." *Id.*

Directly on-point, Indiana's intermediate appellate court rejected a licensing official's claim that a "proper reason" requirement allowed him discretion to deny handgun carry license applications. The official lacked "the power and duty to subjectively evaluate an assignment of 'self-defense' as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant 'needed' to defend himself." *Schubert* v. *DeBard*, 398 N.E.2d 1339, 1341 (Ind. Ct. App. 1980).

> Such an approach contravenes the essential nature of the constitutional guarantee. It would supplant a right with a mere administrative privilege which might be withheld simply on the basis that such matters as the use of firearms are better left to the

> organized military and police forces even where defense of the individual citizen is involved.

Id. (footnote omitted); *see also Mosby* v. *Devine*, 851 A.2d 1031, 1047 (R.I. 2004). The Second Circuit, in upholding a handgun carry licensing scheme that rejects self-defense as "proper cause" to exercise the right, at least identified (though it misapplied) the same principle:

> *Heller* stands for the rather unremarkable proposition that where a state regulation is entirely inconsistent with the protections afforded by an enumerated right—as understood through that right's text, history, and tradition—it is an exercise in futility to apply means-end scrutiny.

Kachalsky, 701 F.3d at 89 n.9.

Indeed, this Court has recently embraced *Peruta*'s right-destruction analysis in the context of securing another controversial right. "Allowing a *physician* to decide if abortion is medically necessary is not the same as allowing a *woman* to decide whether to carry her own pregnancy to term." *Isaacson* v. *Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013). *Peruta* could be summarized as "allowing a *Sheriff* to decide if carrying a gun is necessary is not the same as allowing an *individual* to decide whether to carry her own gun for self-defense."

Rejecting Arizona's law requiring "medical necessity" for abortions past 20 weeks of gestational life, this Court offered that "regulations involve limitations as to the mode and manner of abortion, not preclusion of the choice to terminate a pregnancy altogether." *Id.* Referencing the abortion right's "undue burden"/"substantial obstacle" standard of review, this Court specifically rejected utilizing means-ends scrutiny, favoring *Heller*/*Peruta*-style destruction. *Id.* at 1225.

III. CALIFORNIA LACKS STANDING TO ENTER DISPUTES CONCERNING COUNTY SHERIFF POLICIES.

Plaintiffs are constrained to address California's efforts to intervene here and in *Peruta*. California lacks standing, as a matter of both causation and redressability. And while the parties' past litigation conduct cannot manufacture jurisdiction, *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 701-02 (1982), judicial estoppel can establish the predicate facts that determine jurisdiction, or the absence thereof. Having successfully argued that its officers play no role in establishing or administering concealed carry licensing policies, the state cannot now assert that decisions addressing those policies injure the state or control its conduct.

State law entrusts to sheriffs and police chiefs exclusive authority over concealed carry licensing policies. Cal. Penal Code §§ 26160, 26202. The panel's decisions here and in *Peruta* both addressed only the licensing policies of county sheriffs. Some California sheriffs' policies already consider the self-defense interest "good cause." For example, this case was mooted as to former Sacramento County Sheriff McGinness, upon the reformation of that county's policies and the granting of concealed carry permits to former plaintiffs Deanna Sykes and Andrew Witham, among *many* others. For his part, Sheriff Gore has decided to join his defense-friendly colleagues, or at least to acquiesce in this Court's decision. Even were *Peruta* vacated tomorrow, neither this Court nor the state could do anything to keep Gore from printing permits to all otherwise-qualified comers. The *Peruta* dispute is moot.

Plaintiffs here challenged the "good cause" statute, and its application by Sheriff Prieto. And unlike in *Peruta*, 741 F.3d at 1196 (Thomas, J., dissenting), Plaintiffs here filed, served and even emailed to the state the required notice of claim of unconstitutionality, see Dkt. 57. Had the panel reached Plaintiffs' facial challenge, the state's

decision to sleep on its rights would be consequential. *See* Fed. R. Civ. P. 5.1(c) (60 day waiting period). But the panel reached only Sheriff Prieto's policies, leaving the state without an interest in the outcome.

The state's lack of interest in these cases is confirmed as a matter of judicial estoppel, considering how hard the state fought to be dismissed from previous "good cause" challenges. Judicial estoppel "protect[s] the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Ah Quin* v. *County of Kauai DOT*, 733 F.3d 267, 270 (9th Cir. 2013) (quotation omitted). The doctrine looks to

> whether (1) a party's later position is clearly inconsistent with its earlier position, (2) the first court accepted the advanced position, and (3) the party seeking to assert an inconsistent position would obtain an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Malaney v. *UAL Corp*., No. 12-15182, 2014 U.S. App. LEXIS 880, at *15 (9th Cir. Jan. 16, 2014) (citation omitted).

California's Attorney General and Firearms Director both obtained dismissal from a previous "good cause" challenge for lack of standing. *Mehl* v. *Blanas*, No. Civ. S. 03-2682, Dkt. 17 (E.D.Cal. Sep. 3, 2004), *aff'd*, 532 Fed. Appx. 752 (9th Cir. 2013). The state's arguments to this

Court are illuminating.

> [A]s a threshold matter, appellants' applications for CCW licenses were denied by [the Sheriff], not the Attorney General. Accordingly, appellants . . . cannot establish federal jurisdiction to litigate the constitutionality of the CCW licensing statutes against the Attorney General.

Brief for Attorney General Lockyer, *Mehl* v. *Blanas*, No. 08-15773, Dkt. 13, at 1-2 (footnote omitted).[4]

"[T]he Attorney General has no statutory authority to grant, deny or revoke CCW licenses. Only sheriffs and chiefs of police are authorized to perform these functions." *Id.* at 41 (citation omitted). While the State may be heard to defend the constitutionality of its laws,

> [t]his Court has been very clear that suits cannot be brought in federal court against an attorney general to challenge the validity of statutes that he has no authority to enforce because there is no Article III jurisdiction and because the action would be barred by the Eleventh Amendment.

Id. at 41-42. "Since only sheriffs and chiefs of police have authority under the CCW statutes to grant, deny or revoke licenses, Applicants cannot establish Article III jurisdiction over the Attorney General with

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[4]Plaintiffs had earlier dismissed their appeal against the Firearms Director.

regard to their facial challenges to the validity of the statutes . . . ." *Id.* at 42.

> Applicants' alleged harm comes from exercise of prerogatives vested by law in the Sheriff exclusively, and thus the only effective remedy for any ostensible deprivation of rights would have to be directed to the Sheriff.

Id. at 43-44.

The state's arguments have shifted 180 degrees, but it prevailed in its earlier course. Allowing it to now claim authority over county licensing policies would unfairly prejudice Plaintiffs, who are entitled to know of their elected officials' responsibilities in this area, and who could have named the Attorney General or other state officials directly had the latter taken a different position.

IV. POLICY ARGUMENTS ARE IRRELEVANT.

The constitutional issues here do not turn on whether carrying guns for self-defense is a good idea. "*Heller* specifically renounced an approach that would base the constitutionality of gun-control regulations on judicial estimations of the extent to which each regulation is likely to reduce such crime." *Nordyke* v. *King*, 644 F.3d 776, 784, *vacated*, 664 F.3d 774 (9th Cir. 2011). Courts may not

"constrict the scope of the Second Amendment in situations where they believe the right is too dangerous." *Id.*

> The right to keep and bear arms . . . is not the only constitutional right that has controversial public safety implications. All of the constitutional provisions that impose restrictions on law enforcement and on the prosecution of crimes fall into the same category.

McDonald, 130 S. Ct. at 3045 (citations omitted).

Indeed, many constitutional policies are to some extent controversial. Plaintiffs could doubtless muster a militia of learned economists to attack the Sixteenth Amendment's underlying policies, but the Internal Revenue Code would remain constitutional. True, "miscalculat[ing] as to Second Amendment rights" might wrongly disarm individuals, leaving them vulnerable to "some unspeakably tragic act of mayhem." *United States* v. *Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011). But the Second Amendment does not "require judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise." *McDonald*, 130 S. Ct. at 3050.

In any event, Plaintiffs have already addressed *all* of the policy arguments. *See* Reply Br. 24-28. So have the other parties and *amici*,

here and in *Peruta*. Suffice it to say, Plaintiffs can match Defendants and their *amici*, study for study, statistic for statistic, anecdote for anecdote. And notwithstanding the same hysteria that attended the outcome of *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012), the Chicago River has not turned to blood. Crime *declined* in the Second City,[5] where law-abiding citizens now defend themselves with guns,[6] as they routinely do elsewhere.[7]

The answer to whether on balance, carrying guns does more good than harm, is one that the People may constitutionalize. Courts must respect, not second-guess, that decision.

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[5]"CPD: 2014 sees lowest 1st-quarter murder total in 56 years," WLS ABC-7, available at http://abclocal.go.com/wls/story?section=news/local/chicago_news&id=9487263 (last visited Apr. 11, 2014).

[6]Carlos Sadovi & Peter Nickeas, "Cops: No charges for man with concealed carry permit who fired at armed male," Chicago Tribune, April 5, 2014, available at: http://www.chicagotribune.com/news/local/breaking/chi-cops-no-charges-for-man-with-concealed-carry-permit-who-fired-at-armed-male-20140405,0,2472485.story (last visited Apr. 11, 2014).

[7]"The pistol-toting 'Angel of Mercy' that saved a driver from an angry Detroit mob," Fox 2 Detroit, available at: http://www.myfoxdetroit.com/story/25196717/the-pistol-toting-angel-of-mercy-that-saved-a-driver-from-an-angry-detroit-mob#ixzz2ydXmyCMZ (last visited Apr. 11, 2014).

CONCLUSION

The petition for rehearing en banc should be denied.

Dated: April 11, 2014

Respectfully Submitted,

Donald E. J. Kilmer, Jr.
Law Offices of Donald Kilmer
1645 Willow Street, Suite 150
San Jose, CA 95125
408.264-8489/408.264-8487
don@dklawoffice.com

Alan Gura*
GURA & POSSESSKY, PLLC
105 Oronoco Street, Suite 305
Alexandria, VA 22314
703.835.9085/703.997.7665
alan@gurapossessky.com

By: /s/ Alan Gura
Alan Gura

Counsel for Appellants

CERTIFICATE OF COMPLIANCE
TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of the Court's March 21, 2014 order, because this brief contains 4,178 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionately spaced typeface using WordPerfect X4 in 14 point Century Schoolbook font.

/s/ Alan Gura
Alan Gura
Counsel for Appellants

Dated: April 11, 2014

CERTIFICATE OF SERVICE

On this, the 11th day of April, 2014, I served the foregoing Brief by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 11th day of April, 2014.

/s/ Alan Gura
Alan Gura