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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 JONATHAN BIRDT, ) CASE NO. 2:10-CV-08377-RGK (JEM)  
12 )  
13 Plaintiff, ) **PLAINTIFF’S JOINT OPPOSITION**  
14 vs. ) **TO DEFENDANTS’ MOTIONS FOR**  
15 ) **SUMMARY JUDGMENT**  
16 CHARLIE BECK, LEE BACA, THE ) Date: May 16, 2011  
17 LOS ANGELES POLICE ) Time: 9:00 a.m.  
18 DEPARTMENT and THE LOS ) Department: 850  
19 ANGELES COUNTY SHERIFFS ) Before: Hon. R. Gary Klausner  
20 DEPARTMENT, DOES 1 to 50, ) Location: Roybal Courthouse,  
21 ) 255 East Temple Street  
22 ) Los Angeles, CA 90012  
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23 **I. INTRODUCTION**

24 There are no genuine disputes of fact presented by the motions: Plaintiff’s  
25 CCW application was denied for the sole reason that he was not a victim of a crime  
26 and a CCW permit is the only way plaintiff can exercise his Second Amendment right  
27 outside of the home.  
28

1 LAPD 30(b)(6) witness admissions:

2 Q. Well, let me represent to you that I live across the street from a school.  
3 Assuming that to be true, I cannot possession any firearm if I step off my  
4 property unless it's in a looked container or I have a CCW permit, true.

5 ...

6 A True.

7 LAPD Deposition, Page 37, Lines 2-9.

8 The only genuine legal dispute appears to be whether the Second Amendment  
9 applies outside the home, for which defendants have relied on California Case law  
10 decided before *McDonald v. City of Chicago*, 130 S. Ct. 3020, which Plaintiff  
11 contends, to the extent Defendant contends those case support their argument, were  
12 overruled in *People v. Delacy* (2011) 192 Cal.App.4th 1481. Plaintiff has satisfied all  
13 of the background and training requirements according to the LAPD 30(b)(6) witness  
14 admissions:

15 Q Sure. There are in general three requirements for the issuance of a  
16 permit: Training, background, and good cause; is that fair a statement?

17 A Yes.

18 Q And as to training and background, I presented sufficient evidence to  
19 satisfy those two elements, correct?

20 A Yes. Deposition of LAPD, Page 35, Lines 18-25.

21 Both the County and City admit that they have not reviewed their policies  
22 following *District of Columbia v. Heller*, (2008) 128 S. Ct. 2783 and *McDonald*,  
23 *infra.*, that they seek to drastically restrict permits out of a belief the issuing CCW  
24 permits will increase crime, and both readily admit they have no evidence to support  
25 this flawed theory. Moreover, logic and reality demonstrate that increased training  
26 reduces injury, and the last 30 years have seen corresponding drops in violent crime  
27 mirrored by increased issuance of CCW Permits. Therefore Plaintiff's Second  
28 Amendment right has been violated due the failure to issue him a CCW Permit.

1 **II. LASD IMPERSIBLY LIMITS SECOND AMENDMENT RIGHTS TO**  
2 **THOSE WHO HAVE ALREADY BEEN THE VICTIM OF CRIME**

3 Larry Waldie is the Under Sheriff, vested with full authority under California  
4 Law, and the arbiter of “Good Cause” for Los Angeles Residents. Unfortunately, he  
5 is not familiar with any recent case law, and has not reviewed his policy in 44 years:

6 Q. Okay. Are you aware of any recent change in law by the United States  
7 Supreme Court as it would relate to a citizen's right to keeping bear  
8 arms?

9 A No. Waldie Deposition, Page 4 line 24 to page 5, line 2.

10 Q Okay. So unless a person has been a victim of a criminal threat, they  
11 will not receive a CCW permit from your department; true?

12 A For the most part, yes.

13 Waldie Deposition, Page 22, Line 23 to Page 24, line 1.

14 As set forth above, for a Los Angeles resident, the only way they can exercise  
15 their inherent right in Los Angeles is after they have been the victim of a crime and  
16 the only way to carry a functional firearm is with a CCW Permit:

17 Q. Under normal circumstances -- a citizen who just wants to walk out of  
18 their house and walk their dog -- the only way that person can carry a  
19 loaded firearm, legally, is if they have a concealed weapons permit;  
20 true?

21 A: I would think that would be true.

22 Waldie deposition, Page 12, Lines 5-12.

23 **III. LAPD IMPERSIBLY LIMITS SECOND AMENDMENT RIGHTS TO**  
24 **THOSE WHO HAVE ALREADY BEEN THE VICTIM OF CRIME**

25 In the past ten years, the LAPD has issued four CCW permits, and adheres to a  
26 “very strict” policy of defining good cause to limit the number of permit holders (24  
27 total, 15 of whom were *Assenza*<sup>1</sup> Plaintiffs). It is unclear how many of the remaining  
28 nine had to sue, but Chief Bratton issued only two as has Chief Beck:

<sup>1</sup> See Exhibit B to the Declaration of Plaintiff attached to the Opposition to LAPD’s Separate Statement.

1 Q. My understanding is the City of Los Angeles only has 24 activity CCW  
2 permits right now; is that correct?

3 A Yes.

4 Q And of those permits can you tell me approximately how many are  
5 ascends[Assenza] of plaintiffs?

6 A. 15.

7 Q And of the remaining approximately nine, can you tell me how many of  
8 those are new applicants, let's say, within the last 10 years?

9 A. I have a vague recollection that we have four new applicants or Ccw  
10 applicants or permits.

11 LAPD Deposition, Page 7, Lines 8-25.

12 The LAPD witness also confirmed that, for a Los Angeles resident, the only  
13 way they can possess a functional firearm outside of the home is with a CCW Permit:

14 Q I'm talking about normal circumstances. I want to for walk my dog,  
15 there's nobody chasing me with a gun, the only way I can lawfully  
16 possession a load[ed] firearm is with a CCW permit?

17 A Yes. Again, with the exeption of 12025, yes.

18 LAPD Deposition, Page 33, Lines 2-6

19 The LAPD also confirms that it has not made any changes in response to  
20 *Heller/McDonald*, and in fact follows a policy that is arguably moot, citing Penal  
21 Code 12025 which permits Concealed Carry without a permit when someone is under  
22 the immediate threat of harm, the exact same standard for the issuance of a permit,  
23 thus leading to the logical question- Why did the legislature create a separate  
24 permitting system with requirements?

25 The LAPD 30(b)(6) witness admissions describing "Good Cause":

26 Q What is required to establish good cause.

27 ...

28

1 A LAPD defines good cause to be a clear and present danger of immediate  
2 threat to life or great bodily injury to the applicant, to his suppose, or to  
3 his kids. And that threat cannot be dealt with by existing law  
4 enforcement resources. And the applicant cannot reasonably avoid that  
5 danger or threat. And LAPD will also look at whether or not the  
6 issuance of the CCW will significantly lesson the threat or danger to the  
7 applicant.

8 LAPD Deposition, Page 15, line 13 to page 16, line 1.

9 The LAPD 30(b)(6) witness admissions describing why their policy is so  
10 draconian:

11 Q Why does did LAPD have such a restrictive definition of good cause.  
12 .....

13 A LAPD has a very strict CCW policy to limit the amount of CCW permits  
14 that are issued by the Chief of police specifically to the people that need  
15 them, that people can -- that we can't protect or help.  
16 .....

17 A It was dramatic pause. Again, it also protects the life of the Los Angeles  
18 Police Officer and the community members.

19 LAPD Deposition Page 30 lines 8-23.

20 The LAPD designated spokesperson on the Good Cause Policy admitting that  
21 they do not have ANY justification for their policy:

22 Q And can you please tell me all evidence, facts, studies or information  
23 upon which you rely for the assertion that your very strict policy protects  
24 officers?

25 A. I don't. I have any of the information for you, sir.

26 Q Would your answer be the same if I asked about how it would protect  
27 the community?

28 A That's correct. LAPD Deposition, Page 30 line 24 to Page 31, line 10.

1 Q Any other reason you provide for why you have a very strict policy to  
2 limit the number of permits other than the two you gave me?

3 A If we make the policy any less strict, the vast majority of the people in  
4 Los Angeles would have – or would qualify for CCW, and would put  
5 more guns on the street and lead to more gun violence, and the fear of  
6 the gun violence.

7 Q. And can you please tell me all of the facts, evidence, information,  
8 studies, or other information upon which you support your statement that  
9 issuing more permits would lead to more gun violence.

10 ...

11 A I don't have any of information, Sir.  
12 LAPD Deposition, Page 31, Lines 11-25.

13 Clearly, while the LAPD does not want to recognize the right of residents, they  
14 can point to no compelling, logical, or even rational reason for restricting a  
15 fundamental constitutional right. It is also important to note that in each State that  
16 has recognized the right of its' citizenry to bear arms, there has been no rush on  
17 permits, and in Florida, a shall issue State, less than five percent of adult citizens have  
18 sought a permit.

19 **IV. DEFENDANTS LEGAL AUTHORITIES HAVE ALL BEEN**  
20 **OVERRULED**

21 Defendants incorrectly cite to *People v. Flores (2008) 169 Cal.App.4th 568*,  
22 *People v. Villa (2009) 178 Cal.App.4th 443* and *People v. Yarbrough (2008) 169*  
23 *Cal.App.4th 303*, all pre-*McDonald* cases. Since the filing of Plaintiffs motion,  
24 California's First Appellate district, in upholding a regulation, found:

25 The Second Amendment to the United States Constitution provides: "A well  
26 regulated militia, being necessary to the security of a free state, the right of the  
27 people to keep and bear arms, shall not be infringed." In *Heller*, the Supreme  
28 Court held the Second Amendment protects an individual right "to possess and  
carry weapons in case of confrontation," unconnected with service in a militia.

1 (*Heller, supra*, 128 S.Ct. at p. 2797; see also pp. 2817–2818, 2821–2822.) The  
 2 court struck down a District of Columbia law effectively banning the  
 3 possession of handguns in the home. (*Id.* at pp. 2817–2819.)  
 4 More recently, in *McDonald v. City of Chicago* (2010) — U.S. —, 130  
 5 S.Ct. 3020, 177 L.Ed.2d 894 (*McDonald*), the court held the Second  
 6 Amendment right recognized in *Heller* is “fully applicable to the States.” (*Id.* at  
 7 p. 3026 (plur. opn. of Alito, J.); *id.* at pp. 3058, 3088 (conc. opn. of Thomas,  
 8 J.)) A plurality of the *McDonald* court concluded the Second Amendment  
 9 right applies to the states because it is “fundamental” to the American “scheme  
 10 of ordered liberty” and is therefore incorporated in the due process clause of  
 11 the Fourteenth Amendment. (*McDonald*, at pp. 3036, 3050 (plur. opn. of Alito,  
 12 J.)) In a concurring opinion, Justice Thomas agreed with the plurality's  
 13 characterization of the Second Amendment right as “fundamental.” (*Id.* at p.  
 14 3059 (conc. opn. of Thomas, J.))

15 *People v. Delacy* (2011) 192 Cal.App.4th 1481.

16 **V. DEFENDANTS ARBITRARILY PROHIBITS LAW ABIDING**  
 17 **CITIZENS FROM POSSESSING FUNCTIONAL FIREARMS**  
 18 **BASED SOLELY UPON PERSONAL BELIEF THAT GUNS**  
 19 **INCREASE VIOLENCE**

20 The United States Supreme Court has clearly stated, with regard to the Second  
 21 Amendment, that: “Putting all of these textual elements together, we find that they  
 22 guarantee the individual right to possess and carry weapons in case of confrontation.”  
 23 *District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2798. The state may have an  
 24 interest in reducing gun violence and accidents, but it cannot presume that the  
 25 exercise of a constitutional right will cause the sort of harm it is allowed to curtail.  
 26 Defendants cannot point to the impact of their practice – the deprivation of  
 27 constitutional rights – as their interest. *Simon & Schuster, Inc. v. N.Y. State Crime*  
 28 *Victims Bd.* (1991) 502 U.S. 105, 120. If anything, logically, requiring additional  
 training will reduce gun violence and accidents involving firearms.



1           There is no State interest in depriving people of the means of self-defense. The  
2 State may have an interest in reducing gun violence and accidents, but it cannot  
3 presume that the exercise of a constitutional right will cause the sort of harm it is  
4 allowed to curtail. Defendants cannot point to the impact of their practice – the  
5 deprivation of constitutional rights – as their interest. *Simon & Schuster, Inc. v. N.Y.*  
6 *State Crime Victims Bd.* (1991) 502 U.S. 105, 120.

7  
8           Q     Okay. So unless a person has been a victim of a criminal threat, they  
9                 will not receive a CCW permit from your department; true?

10          A     For the most part, yes.

11                 Waldie Deposition at Page 22, Line 23 to Page 24, line 1.

12          Q     So let's talk about a threat of immediate harm. What does that mean?

13          A.     Again, it's pretty clear on the way it's defined. The person is going to be  
14                 great bodily injury, going to be hurt with read bodily injury or threat to  
15                 life.

16                 LAPD Deposition Page 20, Lines 18-23

17          Q     But to satisfy the good cause requirement of clear and present danger the  
18                 applicant must demonstrate that they are in immediate risk of great  
19                 bodily harm, true?

20          A     Yes. Great bodily injury?

21          Q     Correct?

22          A     Yes.

23                 LAPD Deposition Page 21, lines 11-17.

24                 There is something deeply illogical about Defendants' refusal to issue a permit  
25                 to carry a handgun until *after* a realistic threat to one's life and/or loved ones has  
26                 materialized, it is a little like closing the barn door after the horses have run out.  
27                 Bearing arms, within the meaning of the Second Amendment, includes carrying  
28                 handguns "for the purpose . . . of being armed and ready for offensive or defensive



1 action in a case of conflict with another person.” *Heller*, 128 S. Ct. at 2793 (citations  
2 omitted, not the phrase “home” because no such limitation exists on the Second  
3 Amendment). The Second Amendment does not exist merely to increase the security  
4 of previously victimized individuals. If the conflict has already occurred, the unarmed  
5 would-be permit applicant might be dead. Because criminal attacks are often random,  
6 there is no particular reason to expect that a person who has previously been  
7 victimized might be more likely to need a gun than someone who has yet to be  
8 victimized. The point of having a gun available for self-defense is to avoid  
9 victimization in the first place.

10  
11 **VI. THE ONLY MECHANISM FOR A LAW ABIDING CITIZEN TO**  
12 **POSSESS A FUNCTIONAL FIREARM IN CALIFORNIA IS WITH A**  
13 **CCW PERMIT, AND CURRENTLY, THAT POWER RESTS**  
**SOLELY WITH LARRY WALDIE**

14 Defendants argue that the Second Amendment is limited to the home, or in the  
15 alternative, that they do not infringe on it “that much”. To justify their infringement,  
16 defendants rely on a vague belief that more guns equal more crime, but do not offer  
17 any support for this feeling in their motion, or through the only person with the  
18 authority to issue CCW permits:

19 Q. Okay. Can you point to any study or correlation between increased  
20 issuance of CCW permit and gun violence?

21 A No.

22 Waldie deposition at page 25 line 4-12.

23 Q Can you provide any support for how your policy of drastically  
24 restricting the issuance of CCW permits prevents violence?

25 A I -- I think just the -- putting more guns on the street, I think could  
26 clearly create much more violence in the County of Los Angeles, and I  
27 think we need to restrict the number of weapons that are available on  
28 the streets legally.

Waldie deposition at Page 25, lines

1 Q How does your restrictive policy regarding CCW's protect against gun  
2 violence in the community at large?

3 A Basically, restricting the number of weapons that possibly could get on  
4 the street and lead to violent and inappropriate manner.

5 Q Okay. And you've already talked about all of the studies, investigation,  
6 or research done by you to support that theory?

7 A I said I did not have any.

8 Waldie deposition at Page 32 line 22 to page 33 line 9.

9 Defendants seek to defend their conduct arguing that the compelling interest of  
10 public safety drives their actions, but what defendants fail wholeheartedly to show is  
11 how their actions accomplish that goal. Defendants admit that their officers lose  
12 more guns and cause more harm than CCW holders, and that they do not have any  
13 research or statistics to back up their theory. The declaration of purported expert  
14 Zimring does not even express an opinion, much less state any opinion to a  
15 reasonable degree of scientific certainty, and as such, it should be excluded.

16 The fact of the matter is that there is no evidence that “drastically curtailing” or  
17 imposing a “very strict” policy regarding permits in any way accomplishes the goal  
18 of increasing public safety, and if anything, the opposite can be said. Over the last  
19 thirty years, the availability of permits has increased from 10 States to 43, gun sales  
20 have skyrocketed, and the FBI confirms the rate of violent crime has dropped  
21 significantly each year. As such, while many argue the correlation, the only true  
22 evidence is that while gun ownership and CCW permits increase, violent crime drops.  
23 Further, defendants suggest a fear that every citizen will carry a gun in public, again,  
24 reality interferes. Florida has had a Right to Carry Law since the early 1980’s and  
25 has an adult population of about 20,000,000, but as of the last reporting date (October  
26 31, 2010) only 767,739 licensed permit holders.

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1 In fact, neither witness would even point to any evidence that their policy was  
2 in any way related to their goals: Studying crime trends in every county in the U.S.,  
3 John Lott and David Mustard concluded, “allowing citizens to carry concealed  
4 weapons deters violent crimes. . . .[W]hen state concealed handgun laws went into  
5 effect in a county, murders fell by 8.5 percent, and rapes and aggravated assaults fell  
6 by 5 and 7 percent.” Lott, “Crime, Deterrence, and Right To Carry Concealed  
7 Handguns” 1996. Former Colorado Asst. Atty. Gen. David Kopel: “Whenever a  
8 State legislature first considers a concealed carry bill, opponents typically warn of  
9 horrible consequences.... But within a year of passage, the issue usually drops off the  
10 news media’s radar screen, while gun-control advocates in the legislature conclude  
11 that the law wasn’t so bad after all.” David Kopel, “The Untold Triumph of  
12 Concealed-Carry Permits,” Policy Review, July-Aug. 1996, p. 9.

13 An article on Michigan’s law: “Concerns that permit holders would lose their  
14 tempers in traffic accidents have been unfounded. Worries about risks to police  
15 officers have also proved unfounded.... National surveys of police show they support  
16 concealed handgun laws by a 3-1 margin....There is also not a single academic study  
17 that claims Right to Carry laws have increased state crime rates. The debate among  
18 academics has been over how large the benefits have been.” “Should Michigan keep  
19 new concealed weapon law? Don’t believe gun foe scare tactics,” Detroit News,  
20 1/14/01.

21 **VII. EQUAL PROTECTION IS IMPLICATED BECAUSE CRIME**  
22 **VICTIMS ARE SEPARATED OUT**

23 Q Under normal everyday circumstances, the California legislature has  
24 chosen as the only mechanism by which a law abiding citizen under  
25 normal circumstances can possess a loaded firearm outside of the home  
26 is with a CCW permit; true?

27 A Yes.

28 Waldie deposition at Page 41.

1 Defendant treats all law abiding citizens, with proper training differently and  
2 classifies them based upon whether or not they have been a victim of crime. In other  
3 words, crime victims have their Second Amendment right, but potential victims do  
4 not. This is anathema to the Constitution:

5 “The crux of the constitutional promise of equal protection is that persons  
6 similarly situated shall be treated equally by the laws. [Citation.] However,  
7 neither clause [of the United States or California Constitutions] prohibits  
8 legislative bodies from making classifications; they simply require that laws or  
9 other governmental regulations be justified by sufficient reasons.

10 The necessary quantum of such reasons varies, depending on the nature of the  
11 classification.” (*In re Evans* (1996) 49 Cal.App.4th 1263, 1270, 57 Cal.Rptr.2d  
12 314 (*Evans* ).) “In considering whether state legislation violates the Equal  
13 Protection Clause ..., we apply different levels of scrutiny to different types of  
14 classifications. At a minimum, a statutory classification must be rationally  
15 related to a legitimate governmental purpose. [Citations.] Classifications based  
16 on race or national origin, [citation] and classifications affecting fundamental  
17 rights [citation], are given the most exacting scrutiny. Between these extremes  
18 of rational basis review and strict scrutiny lies a level of intermediate scrutiny,  
19 which generally has been applied to discriminatory classifications based on sex  
20 or illegitimacy.” (*Clark v. Jeter* (1988) 486 U.S. 456, 461, 108 S.Ct. 1910, 100  
21 L.Ed.2d 465.) “[M]ost legislation challenged under the equal protection clause  
22 is evaluated merely for the existence of a ‘rational basis’ supporting its  
23 enactment. [Citations.] Under the latter analysis, the question is whether the  
24 classification bears a fair relationship to a legitimate public purpose.” (*Evans*,  
25 at p. 1270, 57 Cal.Rptr.2d 314; see similarly *People v. McKee* (2010) 47  
26 Cal.4th 1172, 1211, fn. 14, 104 Cal.Rptr.3d 427, 223 P.3d 566.)

27 *People v. Delacy* (2011) 192 Cal.App.4th 1481  
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1 Even under a rational basis, there is no reason to deny law abiding citizens who  
2 have not yet been victimized and deprive them of their right. The Supreme Court  
3 confirmed as much, rejecting the argument that “keep and bear arms” was a unitary  
4 concept referring only to a right to possess weapons in the context of military duty.  
5 To “bear arms,” as used in the Second Amendment, is to “wear, bear, or carry . . .  
6 upon the person or in the clothing or in a pocket, for the purpose . . . of being armed  
7 and ready for offensive or defensive action in a case of conflict with another person.”  
8 *District of Columbia v. Heller* (2008) 128 S. Ct. 2783, 2793 . “[T]he core right  
9 identified in *Heller* [is] the right of a *law-abiding, responsible* citizen to possess *and*  
10 *carry* a weapon for self-defense.” *United States v. Chester* (2010) 628 F.3d 673. As  
11 such, and contrary to the moving papers, two rights are recognized, the right to  
12 possess and the right to carry.

13 Public safety is invoked to justify most laws, but where a fundamental right is  
14 concerned, a mere incantation of a public safety rationale does not save arbitrary  
15 licensing schemes. In the First Amendment arena, where the concept has been  
16 developed extensively, [W]e have consistently condemned licensing systems which  
17 vest in an administrative official discretion to grant or withhold a permit upon broad  
18 criteria unrelated to proper regulation of public places . . . There are appropriate  
19 public remedies to protect the peace and order of the community if appellant’s  
20 speeches should result in disorder or violence. *Kunz v. New York* (1951) 340 U.S.  
21 290, 294. “But uncontrolled official suppression of the privilege cannot be made a  
22 substitute for the duty to maintain order in connection with the exercise of the right.”  
23 *Hague v. Committee for Indus. Org.* (1937) 307 U.S. 496, 516. Accordingly, the  
24 Ninth Circuit rejects alleged public health and safety concerns as a substitute for  
25 objective standards and due process. *Desert Outdoor Advertising v. City of Moreno*  
26 *Valley* (1996) 103 F.3d 814, 819.

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**VIII. CONCLUSION**

While commonly used in the singular, the Second Amendment contains several fundamental rights, including: the right to keep arms, the right to bear arms, the right to carry arms, and the of self-defense. In identifying and confirming the Fundamental Rights of all Citizens, the Supreme Court has never said this right is limited to the home, or identified only a single core rights:

Our decision in *Heller* points unmistakably to the answer. 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*, 130 S. Ct. 3020, at 3037.

While there may be a place somewhere between self-defense and crime victim, as a matter of law, crime victim goes too far when a fundamental right is implicated and defendants do not offer a scintilla of evidence linking their actions to the desired results. The argument that someone who goes through a background check, receives extensive training and demonstrates a strong commitment to the Second Amendment will then somehow contribute to crime and violence is the paranoid rhetoric of the past, unsupported by empiric evidence and not reasonably related to any legitimate government interest.

The reality is that there is no justification offered by defendant showing any nexus between their overly restrictive policy and their interest in public safety. Defendants policy of requiring Plaintiff to first be a victim simply does not pass Constitutional muster and is not related to any governmental interest.

April 25, 2011

\_\_\_\_\_/s/\_\_\_\_\_  
Jonathan W. Birdt, Plaintiff