

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

CARLOS NINO DE RIVERA LAJOUS,)
SECOND AMENDMENT FOUNDATION,)
INC. and NEBRASKA FIREARMS)
OWNERS ASSOCIATION,)

Plaintiffs,)

v.)

Case No. 4:13-CV-3070

JON BRUNING, in his official capacity as)
Attorney General of the State of Nebraska,)
and DAVID SANKEY, in his official capacity)
as Superintendent of the Nebraska State)
Patrol,)

Defendants.)

**PLAINTIFFS' RESPONSE TO DEFENDANT JON BRUNING'S
MOTION TO DISMISS**

COME NOW the Plaintiffs, CARLOS NINO DE RIVERA LAJOUS, SECOND AMENDMENT FOUNDATION, INC., and NEBRASKA FIREARMS OWNERS ASSOCIATION and submit their Response to the Defendants' Motion to Dismiss.

INTRODUCTION

Defendant's Motion to Dismiss starts with the premise that Nebraska's law discriminates against lawful resident aliens. The Motion, therefore, is an attempt to explain why the discriminatory law nonetheless meets constitutional scrutiny. They argue incorrectly that there is no constitutional issue present, and even if there is the restriction somehow meets constitutional standards. However, the unsupported arguments of lawful aliens' untrustworthiness does not change the legal certainty that the State's law unconstitutionally discriminates against legal

resident aliens, a suspect class, which alone makes the challenged statute subject to strict scrutiny. Worse, the discrimination infringes on the Plaintiffs' fundamental Second Amendment rights to self-defense. Plaintiffs' Complaint therefore states a claim and is not subject to dismissal.

Defendants seem to be making a bureaucratic argument that would in no way serve as a justification for discrimination, and in no way salvages the statute, as the alleged difficulties with finding out about criminal acts committed outside the country (Defendants' only actual, albeit unsupported, argument) also applies to traveling citizens, so the same apparent lack of concern as to citizens should also be applied to Plaintiffs. Further, Nebraska allows open carry by lawful resident aliens, so the alleged concern is far too hollow to meet constitutional muster.

Defendants then argue Plaintiffs are not entitled to equal protection of the law at issue, wrongly arguing that the prohibition at issue does not implicate the Second Amendment, and then incorrectly asks the Court to use the rational basis test to analyze Plaintiffs' Fourteenth Amendment Equal Protection claim.

In fact, the Second Amendment is impacted by the State's prohibition. This is not just Plaintiffs' argument, but Defendants' as well, though as discussed herein the Defendants have chosen to make the argument in other jurisdictions. Further, the Plaintiffs as permanent resident aliens are a "suspect class" for Equal Protection purposes, and for both reasons the Defendants' prohibition must meet the burden of strict scrutiny, which it cannot do. Defendants cannot even show a rational basis for its ban, though the actual standard is much higher.

Therefore. Defendant's Motion to Dismiss this matter should be denied.

STATEMENT OF FACTS

1. Plaintiff LAJOUS is 68 years old, and a citizen of Mexico residing in Lincoln, Nebraska, and who has done so since 1990. LAJOUS received his permanent resident visa (a/k/a "green card") in 1991, and earned three associate degrees in the applied sciences from Central Community College in Hastings, Nebraska in the early 1990's. LAJOUS has worked as a machinist for an aviation company in Lincoln for fourteen years. He also has family in the area. In sum, he has many solid connections to the State of Nebraska and the Lincoln area.

(Complaint, par. 8.)

2. LAJOUS is allowed to carry a firearm openly in Nebraska, except for locations where doing such is illegal, but does not always wish to do so, and he is prohibited by NRS § 69-2433(10) from obtaining a concealed carry permit, and thus carrying a handgun in a concealed manner for self-defense. (Complaint, par. 9.)

3. LAJOUS would carry a loaded and functional concealed handgun in public for self-defense, but he refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he understands it is unlawful for a non-citizen to carry a concealed handgun in Nebraska. (Complaint, par. 10.)

4. On or about February 24, 2013, LAJOUS went to the Lincoln office of the Criminal Identification Division ("CID") of the Nebraska State Patrol to complete and submit a concealed carry permit application. Julie Rogers, a Records Technician at the State Patrol's CID, and an employee of same, learned LAJOUS

was not an American citizen and would not allow him to even fill out the application, much less submit it. Therefore, LAJIOUS's attempt to file a concealed carry permit application was denied. (Complaint, par. 11.)

5. SAF is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF's membership includes lawfully admitted aliens residing in Nebraska. SAF has over 650,000 members and supporters nationwide. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms. SAF brings this action on behalf of itself and its members. (Complaint, par. 12.)

6. Members of SAF who are legal residents yet non-citizens would carry loaded and functional concealed handguns in public for self-defense, but refrain from doing so because they understand it is impossible for a non-citizen to obtain a concealed carry permit, and thus it is unlawful for a non-citizen to carry a concealed handgun in Nebraska and fear arrest, prosecution, fine, and imprisonment. (Complaint, par. 13.)

7. NFOA is an organization incorporated under the laws of Nebraska with its principal place of business in Syracuse, Nebraska. The purposes of NFOA include education, political lobbying and legal action focusing on the Constitutional right privately to own and possess firearms in Nebraska. NFOA brings this action on behalf of itself and its supporters, which include lawful resident aliens residing in Nebraska. (Complaint, par. 14.)

8. Members of NFOA who are legal residents yet non-citizens would carry loaded and functional concealed handguns in public for self-defense, but refrain from doing so because they understand it is impossible for a non-citizen to obtain a concealed carry permit, and thus it is unlawful for a non-citizen to carry a concealed handgun in Nebraska and fear arrest, prosecution, fine, and imprisonment.

(Complaint, par. 15.)

9. LAJOUS is a member of both SAF and NFOA. (Complaint, par. 16.)

10. Defendant BRUNING is the Attorney General of the State of Nebraska, and, in his official capacity as such, is responsible for executing and administering the state of Nebraska's laws, customs, practices, and policies, including NRS § 69-2433(10). In that capacity, BRUNING is presently enforcing the laws, customs, practices and policies complained of in this action, and is sued in his official capacity. (Complaint, par. 17.)

11. Defendant SANKEY is the Superintendent of Law Enforcement and Public Safety with the Nebraska State Patrol. In SANKEY's official capacity, he is responsible for enforcing certain of Nebraska's laws, customs, practices, and policies, specifically including NRS § 69-2433(10). In that capacity, SANKEY is presently enforcing the laws, customs, practices and policies complained of in this action. Specifically, SANKEY is the authority charged with processing and issuing concealed carry permit applications in Nebraska. He is sued in his official capacity. (Complaint, par. 18.)

ARGUMENT

“Under the Federal Rules of Civil Procedure, a complaint must contain ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’ Fed.R.Civ.P. 8(a)(2). The rules require a ‘showing,’ rather than a blanket assertion, of entitlement to relief.’ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (quoting Fed.R.Civ.P. 8(a)(2)). ‘Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’ *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (quoting *Twombly*, 550 U.S. at 555). In order to survive a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the plaintiff’s obligation to provide the grounds for his entitlement to relief necessitates that the complaint contain ‘more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.’ *Twombly*, 550 U.S. at 555.

The factual allegations of a complaint are assumed true and construed in favor of the plaintiff, ‘even if it strikes a savvy judge that actual proof of those facts is improbable and ‘that a recovery is very remote and unlikely.’ *Id.* (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)). ‘On the assumption that all the allegations in the complaint are true (even if doubtful in fact),’ the allegations in the complaint must ‘raise a right to relief above the speculative level.’ *Twombly*, 550 U.S. at 555-56. In other words, the complaint must plead ‘enough facts to state a claim for relief that is plausible on its face.’ *Id.* at 547. ‘A claim has facial plausibility when the plaintiff pleads factual content that allows

the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’ *Ashcroft v. Iqbal*, 556 U.S. 662, ___, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (stating that the plausibility standard does not require a probability, but asks for more than a sheer possibility that a defendant has acted unlawfully.)” *Mitzel v. HSBC Card Services*, 2011 U.S. Dist. LEXIS 77698 at **3-4 (D. Neb. July 15, 2011).

“Determining whether a complaint states a plausible claim for relief is ‘a context-specific task’ that requires the court ‘to draw on its judicial experience and common sense.’” *Cielinski v. Werner Enterprises, Inc.*, 2010 U.S. Dist. LEXIS 134120 at *4 (D. Neb. Dec. 16, 2010). “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

Bruning is a proper party Defendant.

The Attorney General is the chief law enforcement officer, attorney and prosecutor in the State. NRS § 84-203 authorizes the Attorney General to “. . . defend, in any court or before any officer, board or tribunal, any cause or matter, civil or criminal, in which the state may be a party or interested.” Defendant Bruning does not assert the State is not interested in this litigation; in fact, the State’s defense in the rest of its Motion makes quite clear the State is claiming such an interest. Presumably, this interest in enforcing NRS § 69-2433(10), and its ultimate interest in prosecuting violators, would be manifested through the Office’s Civil Litigation Bureau, or Legal Services Bureau.

This comports with Defendant Bruning's website, where the Office states its duties include, in relevant part: ". . . Uphold and defend the Constitution and laws of the State of Nebraska;" <http://www.ago.ne.gov/about>.

Therefore, as the State's chief law enforcement officer and prosecutor, Bruning is properly a part of this case. However, should the Defendants stipulate (and/or the Court so find) that the Plaintiffs may obtain full relief in this matter by proceeding solely against Defendant Sankey, Plaintiffs will abide by that stipulation and/or finding.

The Second Amendment is not limited to citizens, and also includes lawful permanent resident aliens.

District of Columbia v. Heller, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), altered the legal landscape as to Second Amendment analysis, and in many instances the viability, of Second Amendment claims. That alteration is becoming evident throughout the Court system, including as to permanent resident aliens.

Defendants' argument that the Second Amendment applies only to citizens flies in the face of all post-*Heller* case law, and suggesting otherwise is disingenuous at best.

This is because the question of whether Lajous, a lawful alien residing in Nebraska, and SAF's similarly-situated members enjoy Second and Fourteenth Amendment rights is an easy one – the Supreme Court has ruled that they do. ". . . '[T]he people' protected by the . . . Second [Amendment] . . . refers to a class of persons who are part of a national community or who have otherwise developed

sufficient connection with this country to be considered part of that community.”

United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990). That includes those who are legally in the country. *See United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904). Of course, Nebraska acknowledges this to some extent; legal aliens are allowed home firearm possession and the open carry of firearms in public. However, Nebraska has arbitrarily decided that said legal aliens shall not be permitted to obtain a concealed carry permit.

The Tenth Circuit recently addressed the issue of the constitutionality of 18 U.S.C. § 922(g)(5) as applied to an illegal alien, an issue not confronted here. *United States v. Huitron-Guizar*, 678 F.3d 1164 (10th Cir. 2012). However, in discussing the post-Heller litigation, the Court noted as to lawful permanent residents like Lajous:

The thrust of Heller, or at least the intended thrust of much post-Heller litigation, has been to broaden the right. Recently some state statutes that burden gun possession by lawful permanent aliens (which § 922(g)(5) does not cover) have been declared invalid under the Equal Protection Clause, which requires that strict scrutiny be applied to state laws that impose restrictions based on alienage. *See, e.g., People v. Bounasri*, 31 Misc. 3d 304, 915 N.Y.S.2d 921, 924 (N.Y. City Ct. 2011) (invalidating New York statute dating from 1905, prohibiting non-citizens from possessing a dangerous weapon, and noting related decisions in Michigan, Nevada, California); *Fletcher v. Haas*, F.Supp.2d , 2012 U.S. Dist. LEXIS 44623, 2012 WL 1071713, at *14 (D. Mass. Mar. 30, 2012) (holding that Massachusetts's firearm regime contravenes the Second Amendment as applied to lawful permanent residents).

Huitron-Guizar, 678 F.3d at 1170. Other Courts have also ruled along a line

dividing the lawful permanent resident from the illegal alien, where the lawful resident possesses Second Amendment rights and the illegal alien does not. *See, e.g., United States v. Boffil-Rivera*, 2008 U.S. Dist. LEXIS 84633 at *32 (S.D. Fla. Aug. 12, 2008) (“Congress has made a policy judgment, as it has in numerous other statutes, that unlike citizens and legal residents, illegal aliens by their very unauthorized nature and lack of allegiance to the government of the United States pose a greater risk to abuse firearms.”) (Emphasis added.); *See also United States v. Flores-Higuera*, 2011 U.S. Dist. LEXIS 84934 at *5 (N.D. Ga. July 6, 2011) (“Because Defendant is not a citizen, or at the least, a lawful resident with ties to the community, the Court concludes that he is not a member of the "political community" whose rights are protected by the Second Amendment.”)

The Court concluded in *Fletcher v. Haas*, 2012 U.S. Dist. LEXIS 44623 (D. Mass. Mar. 30, 2012):

With this framework in mind, I find no justification for refusing to extend the Second Amendment to lawful permanent residents. They have necessarily “developed sufficient connection with this country to be considered part of [the] community.” *Verdugo-Urquidez*, 494 U.S. at 265. Professor Rosberg has identified as “the traditional premise of the country's immigration policy—that resident aliens are virtually full-fledged members of the American community, sharing the burdens of membership as well as the benefits.” Gerald M. Rosberg, *The Protection of Aliens from Discriminatory Treatment by the National Government*, 1977 *Sup. Ct. Rev.* 275, 337 (1978). And then-Professor Aleinikoff, a former General Counsel of the Immigration and Nationalization Service, observed a decade ago,

“Permanently residing aliens live and function much like citizens. They hold jobs, attend churches, send their

children to school, and pay taxes. Children they give birth to in the United States are American citizens. From this perspective, the fact that aliens are not required by law to apply for citizenship is not surprising; in day-to-day terms, permanently residing aliens and citizens are already largely indistinguishable.”

Fletcher, 2012 U.S. Dist. LEXIS 44623 at 41-42 (quoting T. Alexander Aleinikoff, *Semblances of Sovereignty: The Constitution, the State, and American Citizenship* 173 (2002)). Thus, the Court in *Fletcher* determined that the plaintiffs in that case, two lawful permanent resident aliens, were entitled to Second Amendment rights.

Fletcher, 2012 U.S. Dist. LEXIS 44623 at 43.

Additionally, on November 21, 2011, the District of Nebraska held that denying a lawful permanent resident the ability to possess a handgun in his home violated his fundamental Second Amendment rights. *See Pliego-Gonzalez v. City of Omaha*, 8:11-CV-335 (Order of Court attached hereto as Exhibit “A”).

There is a Second Amendment right to public carrying of firearms for lawful purposes, and Nebraska may not discriminate against Plaintiffs in the regulation of that right.

“. . . [A] severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end.” *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011). Defendants argue there is no Second Amendment right at stake, but the rulings of other Courts, as well as Defendants’ own arguments in other forums, show the Second Amendment applies to this case, and therefore strict scrutiny applies to the State’s actions.

In 2012, at least five federal Courts have held that there is a constitutional right to the public carrying of firearms. The Seventh Circuit ruled in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), that an Illinois ban on the public carrying of firearms was unconstitutional, as the Second Amendment right of bearing arms for self-defense extends outside of the home.

Also, District Courts across the country have specifically held that the Second Amendment confers rights that extend beyond the home. *See Woollard v. Gallagher*, 2012 U.S. Dist. LEXIS 28498 (D.Md, March 2, 2012) (striking down Md. Public Safety Code § 5-306(a)(5)(ii), requiring “good and substantial reason” to carry concealed handgun). Though *Woollard* was reversed by the Fourth Circuit, it was based on the “good and substantial reason” issue, and the Fourth Circuit did not disturb the District Court’s finding that the Second Amendment protects the public carrying of firearms for self-defense.¹

See also United States v. Weaver, 2012 U.S. Dist. LEXIS 29613 (S.D.W.V., March 7, 2012); *See also Bateman v. Perdue*, 2012 U.S. Dist. LEXIS 47336, at *10-*11 (E.D.N.C. March 29, 2012) (“Although considerable uncertainty exists regarding the scope of the Second Amendment right to keep and bear arms, it undoubtedly is not limited to the confines of the home.” (striking down North Carolina’s prohibition on the carrying of handguns during declared state emergencies)).

The Supreme Court “read the [Second Amendment’s] operative clause to ‘guarantee the individual right to possess and carry weapons in case of

¹ The plaintiffs in *Woollard* petitioned for *certiorari* to the U.S. Supreme Court. Said Petition is pending.

confrontation.” *United States v. Rene E.*, 583 F.3d 8, 11 (1st Cir. 2009) (quoting *District of Columbia v. Heller*, 554 U.S. at 592 (italics added)). *See also Weaver*, 2012 U.S. Dist. LEXIS 29613 at *13 (citing *United States v. Carter*, 669 F.3d 411, 415 (4th Cir. 2012) (recognizing *Heller*’s notation that the right to keep and bear arms was understood by the founding generation to encompass “self defense and hunting” as well as militia service); also citing *Heller*, 554 U.S. at 594 (stating that, by the time of the founding, the right to have arms was “fundamental” and “understood to be an individual right protecting against both public and private violence.”)). The *Heller* Court additionally mentioned militia membership and hunting as key purposes for the existence of the right to keep and bear arms. *See Heller*, 554 U.S. at 598; *See also United States v. Masciandaro*, 638 F.3d 458, 467-68 (4th Cir. 2011), *cert. den.*, 132 S.Ct. 756 (U.S. Nov. 28, 2011) (Niemeyer, J., writing separately as to Part III.B.).

The *Weaver* Court found entirely persuasive Judge Niemeyer’s dissent on *Masciandaro*, particularly for its analysis of the broader holdings of *Heller*, and agreed and adopted Judge Niemeyer’s conclusion that “the general preexisting right to keep and bear arms for participation in militias, for self-defense, and for hunting is thus not strictly limited to the home environment but extends in some form to wherever those activities or needs occur . . .” *Weaver*, 2012 U.S. Dist. LEXIS 29613 at *13 (citing *Masciandaro*, 638 F.3d at 468 (Niemeyer, J., writing separately as to Part III.B.)).

Though they are not admitting it here, the Defendants agree with this growing trend, as the State was an *amicus supporting* Plaintiff SAF in the Fourth Circuit in the appeal of *Woollard* (See *BRIEF OF THE COMMONWEALTH OF VIRGINIA AND THE STATES OF ALABAMA, ARKANSAS, FLORIDA, KANSAS, MAINE, MICHIGAN, NEBRASKA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, WEST VIRGINIA, AND THE COMMONWEALTH OF KENTUCKY AS AMICUS CURIAE IN SUPPORT OF APPELLEES URGING AFFIRMANCE, Woollard v. Gallagher*, 12-1437 (“ . . . the amici States have an interest in this Court correctly holding that the self-defense interest animating the Second Amendment's individual right to keep and bear arms applies broadly beyond the confines of an individual's home.”).

In *Woollard*, the District Court struck down an impermissible “may issue” concealed-carry permitting scheme which allowed governmental officials to arbitrarily decide whether an concealed carry permit applicant “needed” the permit and giving authority to deny the permit on that basis. The State, as *amicus*, argued: “. . . empirical research show[s] that right-to-carry laws do not result in criminal violence” See p.2 of *Woollard amicus* Brief, attached hereto as Exhibit “B.”

In *Woollard*, Nebraska argued: “Maryland's claim is premised on a belief that runs contrary to our system of ordered liberty: that law-abiding citizens may not be trusted to bear arms in defense of themselves and that there is a presumption against their doing so.” See p.9 of *Woollard amicus* Brief. The same principle

applies here. Of course, the *amicus* Brief, and the *Woollard* case, only involve citizens, but since the State concedes that resident aliens enjoy a variety of Second Amendment rights, that is a distinction without a difference.

Therefore, since the State argued so forcefully that concealed carry *is* a Second Amendment right in the Fourth Circuit, it should not be allowed to turn around and argue the opposite because it wishes to discriminate against a different group of law-abiding Nebraska residents.

This case is directly on point with the pre-*Heller* and pre-*McDonald* case of *Hetherton v. Sears, Roebuck & Co.*, 652 F.2d 1152 (3d Cir. Del. 1981). In *Hetherton*, the Court stated:

The essence of Sears' argument is that the § 904 requirement of two freeholder witnesses to the sale of a deadly weapon bears no rational basis to Delaware's legitimate interest in having purchasers positively identified and in deterring ex-felons, such as Fullman, who are not permitted to purchase firearms in Delaware, from buying guns. Hetherton counters that, since Delaware can totally ban the sale of firearms, non-freeholders are not being deprived of a right. Further, he contends the two freeholder requirement is rational in that it results in a more burdensome procedure for the purchase of weapons.

Hetherton's argument that Delaware has created no right to purchase firearms is misconceived. While it may be true that Delaware could ban the sale of all deadly weapons, it does not follow that the State, having abrogated its power to effect a total ban, can arbitrarily establish categories of persons who can or cannot buy the weapons. Clearly, Delaware could not limit the sale of firearms to men only or to members of certain religious groups. The question then is whether it is rational for Delaware to limit sales to persons who know two Delaware freeholders and can produce them as witnesses.

We think that this question must be answered in the negative. *Hetherton*, 652 F.2d at 1157-1158.

Plaintiffs allege they do not wish to always carry firearms openly, and it is obvious that there are situations where someone may wish to have a firearm for protection, yet not advertise that fact. Further, Plaintiffs allege they refrain from carrying concealed due to fear of criminal penalties. They allege they are suffering discrimination under the law, and that there is no constitutional basis for doing so. Neither of the Defendants' Responses, nor the alleged justifications for the discrimination, change that conclusion. Judge Shaw's order denying Plaintiffs a preliminary injunction in the *Plastino v. Koster* case in the Eastern District of Missouri is on appeal, and there is currently a bill on the Missouri Governor's desk (SB 75) awaiting his signature that will allow permanent resident aliens the right to concealed carry permits (*See* p.15 of SB 75, attached hereto as Exhibit "C"). Therefore, that Order is not the definitive statement the State makes it out to be.

The Defendants' conduct is unacceptable under *Hetherton*, where a rational basis burden was employed, since there was no rational basis for denying the right to sell firearms to certain categories of people. However, this case is not about the sale of firearms, but the denial of the ability to carry concealed firearms for the core fundamental Second Amendment right of self-defense. Since *Hetherton*, the Supreme Court has spoken clearly about the fundamental nature of Second Amendment rights in *Heller* and *McDonald*.

Of course, the State is allowed certain constitutional regulations of the right to carry arms, including the manner of carrying. The two obvious choices are

concealed and open carrying. Virtually all states allow concealed carry. A few allow open carry. Nebraska allows both. As this is how the State legislature has chosen to regulate the manner of exercising the Second Amendment, that regulation must be applied in a constitutionally equal manner to its law-abiding citizens. The ban neither furthers a compelling State interest (not that one is offered), nor is it the least-restrictive means to reach any such claimed interest. Since the Defendants' prohibition implicates the Second Amendment, this action challenging the statute's constitutionality states a claim and cannot be dismissed.

Plaintiffs state a claim for violation of their Fourteenth Amendment Equal Protection rights, and nothing Defendants offer gives them the ability to discriminate against Plaintiffs in the manner challenged in this suit.

Defendants first argue there is no Fourteenth Amendment violation because there is no Second Amendment right at issue to violate. Since the Defendants have the Second Amendment argument wrong, the Fourteenth Amendment argument is likewise faulty.

“The Fourteenth Amendment provides, ‘Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’ It has long been settled, and it is not disputed here, that the term ‘person’ in this context encompasses lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside.” *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).

State action violates equal protection rights if it separates individuals into discrete classes based on citizenship and subjects those individuals to disparate treatment. *Graham*, 403 U.S. at 371, 377. A classification based on an individual's status as an alien is "inherently suspect and subject to close judicial scrutiny." *Id.* at 372. "Aliens as a class are a prime example of a 'discrete and insular' minority (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153, n. 4 (1938)) for whom such heightened judicial solicitude is appropriate." *Graham*, 403 U.S. at 372. "The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws." *Id.* at 374 (quoting *Takahashi v. Fish & Game Commission*, 334 U.S. 410, 420 (1948)).

Further, legal aliens in the United States have been extended the same Constitutional rights as citizens in a variety of other situations for more than one hundred years. See, e.g., *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953) (resident alien is a "person" within the meaning of the Fifth Amendment); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (resident aliens have First Amendment rights); *Russian Volunteer Fleet v. United States*, 282 U.S. 481 (1931) (Just Compensation Clause of Fifth Amendment); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (resident aliens entitled to Fifth and Sixth Amendment rights). Even illegal aliens then-presently in the Country receive protection under the Fourteenth Amendment's Due Process Clause. (See, e.g., *Zadvydas v. Davis*, 553 U.S. 678, 693

(2001)).

While Defendants concede that permanent resident aliens, such as Lajous and SAF's applicable members, are generally entitled to equal protection of the laws under the Fourteenth Amendment, they argue Plaintiffs are not entitled to equal protection of the law at issue. They make vague references to police power and protecting the public. But these alleged justifications are not supported by any actual evidence or proof; indeed, it is impossible to justify why permanent resident aliens may carry firearms in their home, on their property, in their vehicle, and openly in public, but why banning them from carrying concealed furthers public safety. Defendants do not even try, merely claiming they are acting within their prerogative (*See* p.8 of Defendants' Motion).

Then, incredibly, in the face of a hundred years of Supreme Court law, the Defendants argue that aliens are not a suspect class and that their discrimination is subject only to a rational basis review (*See* p.8 of Defendants' Motion). Defendants practically come right out and say that lawful resident aliens cannot be trusted with concealed firearms, though they of course have no factual basis for making such an inflammatory assertion.

But while Defendants are arguing vague unsupported justifications and making discriminatory allegations against the trustworthiness of lawful resident aliens, the Defendants do not address why citizens who travel abroad are not denied concealed carry permits, since hypothetically they could commit crimes that would slip through a background check.

It should also be noted the NCIC database used for background checks contains 21 files, including the Foreign Fugitive File, which contains: “Records on persons wanted by another country for a crime that would be a felony if it were committed in the United States.” The NCIC database also contains the Immigration Violator File, which contains: “Records on criminal aliens whom immigration authorities have deported and aliens with outstanding administrative warrants of removal. *See* http://www.fbi.gov/about-us/cjis/ncic/ncic_files.

Further, the argument is outdated in 2013, in a State that protects Second Amendment rights and the equal rights of its residents. Nebraska has decided that citizens may carry concealed firearms, and not unregulated. The bearer must obtain a concealed carry permit pursuant to NRS § 69-2428, and comply with all requirements therein, including providing proof of training (*See* NRS § 69-2433(11)). The applicant must be fingerprinted and pass a national criminal background check. *See* NRS § 69-2431.

In contrast, it is the open carry of firearms, specifically handguns, that the legislature has allowed to be unregulated, including for permanent resident aliens. Therefore, whatever vague police power or public safety interest the Defendants are claiming in denying Plaintiffs equal protection, it is disingenuous when the State obviously allows permanent resident aliens all the other types of firearms carrying without police power or public safety concerns. The Defendants offer no reason why permanent resident aliens residing in Nebraska, who are trustworthy enough to

carry firearms in their home, vehicle, on their property, and openly in public places, are a danger to society if allowed to carry concealed.

Courts have specifically applied the Fourteenth Amendment's Equal Protection Clause to aliens in the context of firearms. Aliens are considered a suspect class, as noted, for example, in *People v. Rappard*, 28 Cal. App. 3d 302, 304 (Cal. App. 2d Dist. 1972). In *Rappard*, an alien was convicted of being in possession of a concealable firearm. He successfully challenged his conviction under the Equal Protection Clause. The Court held: "Since classifications based upon alienage, like those predicated upon nationality or race, are inherently suspect and subject to close judicial scrutiny, we must invoke the following strict standard when reviewing a discriminatory statute based upon alienage: 'Not only must the classification reasonably relate to the purposes of the law, but also the state must bear the burden of establishing that the classification constitutes a necessary means of accomplishing a legitimate state interest, and that the law serves to promote a compelling state interest.'" *Rappard*, 28 Cal. App. 3d at 304.

In striking down the law at issue, the Court wrote: "In short, the classification of the statute -- alienage -- has no reasonable relationship to the threat to public safety which Penal Code section 12021 was ostensibly designed to prevent. Any classification which treats all aliens as dangerous and all United States citizens as trustworthy rests upon a very questionable basis." *Id.* at 305. While *Rappard* may not bind this Court, it is instructive in its similarities.

A similar result was reached in *State v. Chumphol*, 97 Nev. 440 (Nev. 1981), where the Court stated: “A person does not exhibit a tendency toward crime merely because he or she is a noncitizen. See *Raffaelli v. Committee of Bar Examiners*, 496 P.2d 1264 (Cal. 1972). As the California Supreme Court noted in that case, classification based upon alienage ‘is the lingering vestige of a xenophobic attitude which . . . should now be allowed to join those [other] anachronistic classifications among the crumbled pedestals of history.’” *Id.* at 442.

Indeed, there is barely a justification even offered for this discrimination, which would not even satisfy rational basis, and certainly not strict scrutiny. No logical rationale can even be offered, because: (1.) permanent resident aliens seeking a concealed carry permit would still have to successfully complete and qualify under the statutory application process, and (2.) the State considers permanent resident aliens trustworthy enough to possess and carry firearms in many other contexts.

The case of *Sugarmann v. Dougall*, 413 U.S. 634 (1973) does not support Defendants’ position at all, and instead supports the legal propositions Plaintiffs are claiming. In *Sugarmann*, plaintiffs challenged a New York City ban on federally-registered resident aliens working in competitive civil service positions. The Court struck the ban down, in part because:

It is at once apparent, however, that appellants' asserted justification proves both too much and too little. As the above outline of the New York scheme reveals, the State's broad prohibition of the employment of aliens applies to many positions with respect to which the State's proffered justification has little, if any, relationship. At the same

time, the prohibition has no application at all to positions that would seem naturally to fall within the State's asserted purpose. Our standard of review of statutes that treat aliens differently from citizens requires a greater degree of precision. *Id.* at 642.

This fits the current situation directly, where one type of firearm possession is banned to aliens while others are open, and with no offered compelling interest as to why. The State argues that discriminating against an entire class of law-abiding State residents is somehow a State political function that should be rubber-stamped under rational basis review. This is an outrageous position, not to mention that it is completely wrong. The Supreme Court “. . . has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a ‘right’ or as a ‘privilege.’” *Id.* at 644. At most, Defendants can cite *Sugarmann* for the proposition that certain hypothetical state restrictions regarding constitutional functions such as voting and holding high office may meet strict scrutiny, but that is a far cry from the instant situation, and completely inapposite. Also completely inapplicable are the cases Defendants cite as “precedential authority supporting the position that a state law prohibiting non-citizens from carrying concealed weapons in public is constitutional so long as it is a rational means of achieving a legitimate government interest.” (*See* p. 10 of Defendants’ Motion.) They absolutely are not. The cases have nothing to do with firearms, pre-date the *Heller* and *McDonald* decisions in any event, and their citation as such precedential authority only underscores how incorrect Defendants’ position is.

Therefore, because the State has chosen to regulate the Second Amendment

right of the public carrying of firearms by enacting regulatory schemes of unpermitted open carrying and permitted concealed carrying, the State may not deny this right to certain classes of residents entitled to this constitutional right, such as lawful permanent residents.

Again, the State's reliance on Judge Shaw's Order in the *Plastino* case is misplaced. The Judge gave one mention and no analysis to Plaintiffs' main argument – that of equal protection for lawful resident aliens.

Instead, the Court should take note of Judge Armijo's entry of a preliminary injunction against the State of New Mexico in *Jackson v. King*, 1:12-CV-421 (D.NM, March 30, 2013). The opinion is attached hereto as Exhibit "D" and explains how an identical discriminatory prohibition in that State unconstitutionally violated the plaintiff lawful permanent residents' Fourteenth Amendment Equal Protection rights. It is not binding on this Court, but Plaintiffs assert the reasoning is unassailable and should be considered persuasive authority.

CONCLUSION

The Court should deny Defendant's Motion. The challenged statute violates Plaintiffs' Second Amendment right to self-defense, and discriminates against an entire suspect class of Nebraska residents for no basis at all beyond the speculative, which does not meet even a rational basis level of constitutional scrutiny, much less a strict scrutiny level of review. Therefore, the statute also violates the Plaintiffs' Fourteenth Amendment Equal Protection rights. The Plaintiffs' Complaint states a claim, and the Motion should be denied.

WHEREFORE, the Plaintiffs, CARLOS NINO DE RIVERA LAJOUS, SECOND AMENDMENT FOUNDATION, INC., and NEBRASKA FIREARMS OWNERS ASSOCIATION respectfully request this Honorable Court to deny Defendants' Motion in its entirety, and to grant Plaintiffs any and all relief deemed just and proper, including leave to file an Amended Complaint should the Court deem it necessary.

Dated: July 11, 2013

Respectfully submitted,

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CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

1. On July 11, 2013, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale
One of the Attorneys for Plaintiffs

No. 12-1437

**In the United States Court of Appeals
for the Fourth Circuit**

RAYMOND WOOLLARD, *et al.*,

Plaintiffs-Appellees,

v.

DENIS GALLAGHER, *et al.*,

Defendants-Appellants.

**On Appeal From the United States District Court
for the District of Maryland**

**BRIEF OF THE COMMONWEALTH OF VIRGINIA
AND THE STATES OF ALABAMA, ARKANSAS, FLORIDA,
KANSAS, MAINE, MICHIGAN, NEBRASKA, NEW MEXICO,
OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, WEST
VIRGINIA, AND THE COMMONWEALTH OF KENTUCKY
AS AMICUS CURIAE
IN SUPPORT OF APPELLEES URGING AFFIRMANCE**

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....ii

STATEMENT OF IDENTITY, INTERESTS, AND AUTHORITY
OF AMICI TO FILE 1

SUMMARY OF ARGUMENT.....2

ARGUMENT3

Maryland's Prohibition on Law-Abiding Citizens Carrying Handguns
for Self-Defense Without First Demonstrating A Necessity Does Not
Survive Any Level of Scrutiny More Demanding Than The Rational
Basis Test.3

 A. Maryland's Interest in Preventing Handgun Violence Does
 Not Justify Such a Broad Restriction..... 7

 B. Maryland Cannot Show that its Restriction is a Proper One
 Because a Broad Consensus of the States and Empirical
 Evidence Demonstrate that Right-to-Carry Laws Do Not
 Increase Criminal Violence and that Carry Restrictions on
 Law-Abiding Citizens Do Not Reduce Crime. 14

CONCLUSION..... 19

CERTIFICATE OF COMPLIANCE WITH RULE 32(A) 22

CERTIFICATE OF SERVICE..... 23

TABLE OF AUTHORITIES

	Page
Cases	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	3, 6, 7, 8
<i>Gowder v. City of Chicago</i> , No. 11-C-1304, 2012 U.S. Dist. LEXIS 84359; 2012 WL 2325826 (N.D. Ill. June 19, 2012).....	18
<i>McDonald v. City of Chicago</i> , 130 S. Ct. 3020 (2010)	6, 9
<i>United States v. Carter</i> , 669 F.3d 411, 417 (4th Cir. 2012)	8, 19
<i>United States v. Chester</i> , 628 F.3d 673 (4th Cir. 2010)	7
<i>United States v. Masciandaro</i> , 638 F.3d 458 (4th Cir. 2011)	8
<i>United States v. Playboy Ent'mt Grp., Inc.</i> , 529 U.S. 802 (2000)	8, 19
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781, 799 (1989)	8
<i>Woollard v. Sheridan</i> , No. 10-2068, 2012 U.S. Dist. LEXIS 28498; 2012 WL 695674 (D. Md. Mar. 2, 2012)	7, 14

Constitutional Provisions

U.S. Const. art. V 3

Rules

Fed. R. App. P. 29(a)..... 1

Statutes

720 Ill. Comp. Stat. 5/24-1(4) 18

Fla. Stat. § 790.06 15

Fla. Stat. § 790.06(2)(a) – (g)..... 4

Fla. Stat. § 790.06(2)(h)(1) – (7); 4

Fla. Stat. § 790.06(2)(i) – (m) 4

Fla. Stat. § 790.06(3) 4

Fla. Stat. § 790.06(5)(a) – (e)..... 4

Md. Code Ann., Crim. Law § 4-203(b)(1) 4

Md. Code Ann., Crim. Law § 4-203(a)(1)(i)..... 4

Md. Code Ann., Crim. Law § 4-203(a)(1)(ii)..... 4

Md. Code Ann., Crim. Law § 4-203(b)(3) 4

Md. Code Ann., Crim. Law § 4-203(b)(4) 4

Md. Code Ann., Crim. Law § 4-203(b)(5) 4

Md. Code Ann., Crim. Law § 4-203(b)(6) 4

Md. Code Ann., Crim. Law § 4-203(b)(7) 4

Md. Code Ann., Crim. Law § 4-203(b)(8) 4

Md. Code Ann., Crim. Law § 4-203(b)(9) 4
Md. Code Ann., Pub. Safety § 5-306(a)(1) – (4)..... 5
Md. Code Ann., Pub. Safety § 5-306(a)(5)(i) 5
Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii) 5
Md. Code Ann., Pub. Safety § 5-306(b)(1)..... 5
Md. Code Ann., Pub. Safety § 5-306(b)(2)..... 5
Md. Code Ann., Pub. Safety §§ 5-301(e)..... 5
Md. Code Ann., Pub. Safety §§ 5-303..... 5
Minn. Stat. § 624.714, subd. 2(b) 11
N.C. Gen. Stat. § 14-415.12(a)(3) 11
N.C. Gen. Stat. § 14-415.12(a)(4) 10
N.C. Gen. Stat. § 14-415.12(b)(1) – (11)..... 11
N.M. Stat. Ann. § 29-19-4(A)..... 11
N.M. Stat. Ann. § 29-19-4(B)..... 11
N.M. Stat. Ann. § 29-19-4 4
S.C. Code Ann. § 16-23-20..... 14
S.C. Code Ann. § 23-31-210(5) 10
S.C. Code Ann. § 23-31-215(A)..... 14
Tex. Gov't Code § 411.177(a)..... 14
Tex. Penal Code § 46.035(a)..... 14
Va. Code Ann. § 18.2-308(D) 4

Va. Code Ann. § 18.2-308(E)(1) – (20)..... 4
Va. Code Ann. § 18.2-308(G) 10
Va. Code Ann. § 18.2-308(G)(1) – (20)..... 11
Va. Code Ann. § 18.2-308(G)(1) – (9)..... 4
W. Va. Code § 61-7-4(a)(4)..... 11
W. Va. Code § 61-7-4(a)(5)..... 11
W. Va. Code § 61-7-4(a)(6)..... 11
W. Va. Code § 61-7-4(a)(7)..... 11
W. Va. Code § 61-7-4(a)(8)..... 11
W. Va. Code § 61-7-4(d) 10

Other Authorities

Clayton E. Cramer & David B. Kopel,
"Shall Issue": The New Wave of Concealed Handgun Permit Laws,
62 Tenn. L. Rev. 679 (1995) 3, 15, 17

John R. Lott, Jr. & David B. Mustard,
Crime, Deterrence, and Right-to-Carry Concealed Handguns,
26 J. Legal Stud. 1 (1997) 17

John R. Lott, Jr.,
What a Balancing Test Will Show For Right-to-Carry Laws,
71 Md. L. Rev. 1205 (2012) 3, 4, 15, 17, 18, 19

Mark Konkol & Frank Main,
"Chicago under fire: Murders rising despite decline in overall crime,"
(July 7, 2012), <http://www.suntimes.com/news/violence/13574486-505/chicago-under-fire-murders-rising-despite-decline-in-overall-crime.html> 18

Rasmussen Reports, Gun Control,
http://www.rasmussenreports.com/public_content/politics/current_events/gun_control (last visited July 31, 2012)..... 16

**STATEMENT OF IDENTITY,
INTERESTS, AND AUTHORITY OF AMICI TO FILE**

The Commonwealth of Virginia, pursuant to Fed. R. App. P. 29(a), files this Amicus Brief in support of the plaintiffs-appellees' argument that Maryland's "good and substantial reason" requirement for law-abiding citizens to obtain permission to carry a handgun outside the home for self-defense impinges the constitutional rights of its citizens. The Commonwealth and the amici States have an interest in this Court correctly holding that the self-defense interest animating the Second Amendment's individual right to keep and bear arms applies broadly beyond the confines of an individual's home. Because this Court's interpretation of the federal constitutional right will inform the protection afforded the right by parallel provisions in many state constitutions, the amici States urge this Court to interpret the scope of the right and apply a standard of review to its infringement that will recognize the inherent right of all citizens of the United States to lawfully and effectually protect themselves from unlawful violence.

SUMMARY OF ARGUMENT

Raymond Woollard and Second Amendment Foundation, Inc., plaintiffs below and appellees in this Court ("plaintiffs"), challenged Maryland's handgun carry restrictions as abridging their right to bear arms by requiring law-abiding citizens seeking to carry a handgun for self-defense to first demonstrate, to the satisfaction of Maryland officials, a "good and substantial reason" for exercising their right to bear arms. This restraint on law-abiding citizens carrying handguns substantially impinges the natural, inherent right of self-defense. Accordingly, it is the defendants' burden to show, at least, that the restriction is well-crafted to attaining a substantial government interest, without needlessly abridging the rights of citizens. In view of the less-restrictive alternatives available to Maryland to address safety concerns, demonstrated by the experience of a majority of the States who have recognized their citizens' interest in less restrictive regimes, and by empirical research showing that right-to-carry laws do not result in criminal violence, defendants cannot carry their burden to justify Maryland's broad restriction. Hence, the judgment of the district court should be affirmed.

ARGUMENT

Maryland's Prohibition on Law-Abiding Citizens Carrying Handguns for Self-Defense Without First Demonstrating A Necessity Does Not Survive Any Level of Scrutiny More Demanding Than The Rational Basis Test.

More than an Article V majority of the States, 41 at last count, *see* U.S. Const. art. V; John R. Lott, Jr., *What a Balancing Test Will Show For Right-to-Carry Laws*, 71 Md. L. Rev. 1205, 1207 (2012) (hereinafter Lott, *Right-to-Carry*), recognize their citizens' "natural right of defense 'of one's person or house,'" *District of Columbia v. Heller*, 554 U.S. 570, 585 (2008) (citation omitted), by requiring the issuance to all law-abiding citizen applicants of a permit to carry a handgun in public. These "shall issue" permitting regimes generally require only that the applicant demonstrate the character of a law-abiding citizen reasonably proficient in the use of handguns. *See* Clayton E. Cramer & David B. Kopel, *"Shall Issue": The New Wave of Concealed Handgun Permit Laws*, 62 Tenn. L. Rev. 679, 690-91 (1995) (hereinafter Cramer & Kopel, *The New Wave*). Generally, to show that one is law-abiding, a criminal background check is performed to discover past criminal charges and convictions, including some misdemeanors, protective orders, mental incompetency adjudications, and the like. *See, e.g.*, Fla. Stat. §

790.06(2)(a) – (g), (i) – (m), (3), (5)(a) – (e); N.M. Stat. Ann. § 29-19-4; Va. Code Ann. § 18.2-308(D) and (E)(1) – (20). Competency with a handgun may be demonstrated by showing record of completion of any number of designated training or safety courses. *See, e.g.*, Fla. Stat. § 790.06(2)(h)(1) – (7); Va. Code Ann. § 18.2-308(G)(1) – (9). It is estimated that nearly eight million Americans have been issued a permit to carry a handgun in public. *See Lott, Right-to-Carry, supra* at 1207.

Conversely, the State of Maryland prohibits nearly all law-abiding citizens¹ from publicly "wear[ing], carry[ing], or transport[ing] a handgun, whether concealed or open, on or about the person," or in a vehicle.² Md. Code Ann., Crim. Law § 4-203(a)(1)(i) and (ii). Only those

¹ The Maryland statute exempts from the prohibition certain local, state and federal officers. *See* Md. Code Ann., Crim. Law § 4-203(b)(1).

² Maryland law permits its citizens to carry handguns "on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases," Md. Code Ann., Crim. Law § 4-203(b)(6), or if a "supervisory employee," "within the confines of the business establishment in which the supervisory employee is employed" with the business owner's permission, *id.* § 4-203(b)(7), as well as outside these confines for certain limited purposes unrelated to self-defense. *Id.* § 4-203(b)(3), (4), (5), (8), and (9).

citizens who, among other things, demonstrate that they have a "good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger" may do so. Md. Code Ann., Pub. Safety § 5-306(a)(5)(ii). This requirement is supplementary to the four, objective qualifications that the Maryland Secretary of State Police enforces, *id.* §§ 5-301(e) and -303; namely, that the citizen is an adult,³ not a felon, never convicted of drug possession, use, or distribution, and not an alcoholic or controlled substance abuser. *Id.* § 5-306(a)(1) – (4). Having met these qualifications, the Maryland State Police must also find after investigation that the citizen "has not exhibited a propensity for violence or instability" that would render that citizen's public carrying of a handgun a danger. *Id.* § 5-306(a)(5)(i) .

The Maryland State Police Handgun Permit Unit determines whether a good and substantial reason exists and has concluded that such a "reason must 'reflect more than "personal anxiety" and evidence a level of threat beyond that faced by the average citizen.'" Corrected

³ Persons under 30 years of age must also be found not to have been committed to a juvenile facility or committed certain crimes as a juvenile. Md. Code Ann., Pub. Safety § 5-306(b)(1) and (2).

Br. of Appellants at 6 (hereinafter "Doc. 23" at 27). In deciding whether a threat provides a sufficient reason for that citizen to carry a handgun for self-defense, the Unit applies a five-part test to the threat, considering the "likelihood of a threat," "whether the threat can be verified," "whether the threat is particular[ized]," and the length of time from which the threat was made. (Doc. 23 at 27-28.) In short, the average, law-abiding Maryland citizen enjoys no legal right to bear a handgun in public for self-defense, but may engage in self-defense with a handgun only with the let and leave of Maryland officials.

This regime violates the plaintiffs' constitutional rights, for even average "citizens must be permitted 'to use [handguns] for the core lawful purpose of self-defense.'" *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3036 (2010) (quoting *Heller*, 554 U.S. at 630). The defendants contend otherwise, claiming that the Constitution does not guarantee individuals any right to "bear arms" outside the home for self-defense and, even if it did, that the state requirement is an appropriate means to further Maryland's "interest in public safety and the reduction of handgun violence." (Doc. 23 at 31-32.) But as the District Court properly held, "the right to bear arms is not limited to the home" and

the "citizen may not be required to offer a 'good and substantial reason' why he should be permitted to exercise his rights. The right's existence is all the reason he needs." *Woollard v. Sheridan*, No. 10-2068, 2012 U.S. Dist. LEXIS 28498, at *21, *34; 2012 WL 695674, at *7, *12 (D. Md. Mar. 2, 2012). The Second Amendment took Maryland's "policy choice[] off the table." *Heller*, 554 U.S. at 636.

A. Maryland's Interest in Preventing Handgun Violence Does Not Justify Such a Broad Restriction.

Unquestionably, the "good and substantial reason" requirement burdens "the core right identified in *Heller*--the right of a law-abiding, responsible citizen to possess and carry a weapon for self-defense." *United States v. Chester*, 628 F.3d 673, 683, 685 (4th Cir. 2010) (emphases omitted) (suggesting that any abridgement of the "core right" would be subject to strict scrutiny). Although strict scrutiny may be the test that the Supreme Court ultimately adopts, *see* Br. of Appellees' at 59-61 (hereinafter "Doc. 58" at 80-82), this restriction is subject, at least, to intermediate scrutiny under which the defendants "bear[] the burden of demonstrating (1) that it has an important governmental 'end' or 'interest' and (2) that the end or interest is substantially served by enforcement of the regulation." *United States v. Carter*, 669 F.3d

411, 417 (4th Cir. 2012); see *United States v. Masciandaro*, 638 F.3d 458, 470, 475 (4th Cir. 2011) (applying intermediate scrutiny to a citizen's claim of right to bear arms in a public park). In doing so, defendants "may not rely upon mere 'anecdote and supposition'" in discharging their burden to show that the claimed ends are substantially served by the "good and substantial reason" requirement. *Carter*, 669 F.3d at 418 (quoting *United States v. Playboy Ent'mt Grp., Inc.*, 529 U.S. 802, 822 (2000)). The requirement, under an intermediate standard, need not be the "least restrictive means" to pass muster. But it may not "substantially burden more" of the exercise of Second Amendment rights "than is necessary to further the government's legitimate interests" or "regulate . . . in such a manner that a substantial portion of the burden on [Second Amendment rights] does not serve to advance its goals." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989); see, e.g., *Carter*, 669 F.3d at 418-19.

Defendants claim that Maryland's requirement advances its interests in "public safety and the reduction of handgun violence." (Doc. 23 at 32.) But the State cannot simply prohibit handguns because they are "the quintessential self-defense weapon." *Heller*, 554 U.S. at 629.

Furthermore, the exercise of the right itself cannot be the evil to be remedied. That is, Maryland can claim no legitimate interest in preventing law-abiding citizens from using "handguns for the core lawful purpose of self-defense," nor may it so circumscribe that right to eliminate it for the ordinary citizen. *See McDonald*, 130 S. Ct. at 3026. Maryland's claim is premised on a belief that runs contrary to our system of ordered liberty: that law-abiding citizens may not be trusted to bear arms in defense of themselves and that there is a presumption against their doing so.

In explaining how the requirement supposedly advances legitimate interests, Maryland posits a number of hypothetical dangers not unique to handguns, and not characteristic of law-abiding citizens who lack an elevated "good and substantial reason" to carry. Moreover, each of the concerns may be mitigated by substantially less restrictive requirements that are presently used by other States. The first concern that the requirement is supposed to address is limiting the availability of "the weapon of choice for criminals [acting] outside the home." (Doc. 23 at 64, 68.) Defendants also assert that allowing persons to carry handguns outside the home does not further the self-defense interests of

citizens because, due to the element of surprise, "a potential victim has less of an opportunity to make use of a handgun for self-defense outside the home" and that "assailants outside the home are more likely to be able to wrest handguns away from potential victims who do not have sufficient training to use the handgun effectively for self-defense." (Doc. 23 at 64-65, 69.) Of course, practically eliminating the right of self-defense for most citizens because of a claimed fear that the right might be less effective than in the home is to cry crocodile tears. Moreover, requiring "sufficient training," as all the other States of the Fourth Circuit do, would adequately mitigate these concerns without the wholesale abridgement of the rights of citizens. *See* N.C. Gen. Stat. § 14-415.12(a)(4); S.C. Code Ann. § 23-31-210(5); Va. Code Ann. § 18.2-308(G); W. Va. Code § 61-7-4(d).

Maryland argues that the good and substantial reason requirement results in not issuing "permits to individuals who will use their handguns to commit crimes." (Doc. 23 at 71.) Maryland contends that this is true because statistics show that some portion of the persons who later commit murders will not have previously committed a felony, and thus may have qualified at some point in their lives as

law-abiding. But there is no fit at all between the requirement and the claimed concern because the requirement for an elevated reason to carry does not tend to filter out such persons. And, if it chose, Maryland could, as other states have done, impose additional restrictions that are predictive of future criminality, such as a history of domestic violence, sexual crimes, mental incompetence, or involvement in a criminal gang. *See, e.g.*, Minn. Stat. § 624.714, subd. 2(b); N.M. Stat. Ann. § 29-19-4(A) and (B); N.C. Gen. Stat. § 14-415.12(a)(3), (b)(1) – (11); Va. Code Ann. § 18.2-308(G)(1) – (20); W. Va. Code § 61-7-4(a)(4), (5), (6), (7), and (8).

Defendants also contend that "[t]he good-and-substantial-reason requirement decreases the likelihood that basic confrontations will turn deadly." (Doc. 23 at 67, 68.) It might more logically be supposed that depriving most citizens of the right of self-defense will make it more likely that basic confrontations with the non-law abiding will turn deadly for the law abiding. Furthermore, the policy choice to abridge the right of self-defense for most citizens in most circumstances is foreclosed by the Second Amendment itself.

Defendants posit that the likelihood of accidents is increased by allowing more persons to carry. (Doc. 23 at 70-71.) Again, there is no reason to believe that those law-abiding citizens with a good and substantial reason are less likely to accidentally discharge a firearm than those without, and as defendants implicitly concede, this concern could be addressed by training, as it is in other States.

Defendants offer that the requirement "helps to decrease the availability of handguns to criminals." (Doc. 23 at 68.) The reasoning is that by prohibiting law-abiding citizens from carrying handguns in public, there will be fewer persons who criminals can steal them from. This rationale proves too much as it offers no justification for distinguishing between persons with a "good and substantial reason" and those without, or distinguishing between carriage outside the home or within it, and thus would justify prohibiting all persons from carrying or owning handguns, for anyone could be robbed of them. And the risk is implausible on its face, as unlike "police officers" who are "known to keep guns," criminals are unlikely to know which law-abiding citizens do, making them difficult to target.

Defendants also suggest that the requirement, by limiting "the prevalence of firearms," has the effect of making it less likely that "victims of violent crimes will be killed." (Doc. 23 at 69.) The tortured logic is that criminals with guns are more deadly and anything which reduces the total number of guns is desirable. Again, a blanket dislike of handguns has led to a requirement without a proper fit. The only persons prevented from owning or carrying a handgun by Maryland's requirement are law-abiding citizens. This rule thus does not directly affect "the general availability of guns," but only the availability of handguns used for self-defense.

Lastly, defendants offer that their requirement "reduces interference with the ability of law enforcement to protect public safety." (Doc. 23 at 70.) This result is supposed to follow from the depressing effect the requirement has on the "proliferation of publicly-carried handguns," which is supposed to reduce the number of individuals "who are observed carrying a handgun" by police, which is supposed to lighten the load of "[i]nterdiction efforts" by presenting fewer persons for the police to stop and speak with on suspicion of criminal activity. (Doc. 23 at 70.) Again there is no fit because those

with a "good and substantial reason" present the same concern, which could be addressed for everyone simply by requiring concealed carry by permit holders. *See, e.g.*, S.C. Code Ann. § 16-23-20; S.C. Code Ann. § 23-31-215(A); Tex. Gov't Code § 411.177(a); Tex. Penal Code § 46.035(a).

The effect of requiring a proper fit between the dangers arising from the exercise of a right and a State's response to that danger is to ensure that the right is being appropriately valued and protected by the State. However, in the guise of protecting the public, a State may not simply eliminate that right for most people in most circumstances on the ground that it is the right itself that is the problem. *See Woollard v. Sheridan*, No. 10-2068, 2012 U.S. Dist. LEXIS 28498, at *34; 2012 WL 695674, at *11 (D. Md. Mar. 3, 2012) ("States may not, however, seek to reduce the danger by means of widespread curtailment of the right itself.").

B. Maryland Cannot Show that its Restriction is a Proper One Because a Broad Consensus of the States and Empirical Evidence Demonstrate that Right-to-Carry Laws Do Not Increase Criminal Violence and that Carry Restrictions on Law-Abiding Citizens Do Not Reduce Crime.

Among the States of the Fourth Circuit, Maryland is alone in requiring its law-abiding citizens to satisfy an official that a handgun is

needed to defend themselves in public. Instead of placing this life and death decision in the hands of an unaccountable agency, North Carolina, South Carolina, Virginia, West Virginia, and at least thirty-seven other States leave to the citizen who has been determined to be law-abiding and to possess the requisite proficiency with a handgun the decision whether they will protect themselves. With these rules having been in place for decades in some States, and their effects having been studied since their inception, the social science research demonstrates that public carry of handguns by law-abiding citizens does not increase criminal violence or threaten public safety, but prevents crime and protects the public.

In 1987, the State of Florida adopted what has become the model for handgun carry permit laws: non-discretionary issuance of permits to carry handguns concealed in public upon a showing that the applicant was a law-abiding citizen who possessed the requisite proficiency in the handling of a handgun. *See Fla. Stat. § 790.06*; Cramer & Kopel, *The New Wave, supra* at 690-91. Since then, dozens of states have followed suit, licensing millions of law-abiding citizens to carry handguns in public for self-defense on their own initiative. *See Lott, Right-to-Carry,*

supra at 1207. Public support for repealing these laws or imposing tighter restrictions, despite recent acts of mass violence involving the use of guns, remains weak. See Rasmussen Reports, Gun Control, http://www.rasmussenreports.com/public_content/politics/current_events/gun_control (last visited July 31, 2012).

This broad political consensus against gun control and in favor of self-defense rights is premised upon a view of criminal behavior that both enjoys empirical support and differs markedly from that expressed by Maryland's good and substantial reason requirement and by defendants' defense of it. The political consensus in the States may be summarized as follows: law-abiding citizens, those whose past actions do not suggest future criminality, are not likely to be perpetrators, but victims, of crime. When laws are in place that forbid the keeping and bearing of arms, whether in the home or outside of it, or only in certain places, those citizens will abide by them. However, those who commit acts of violence, whether assault, robbery, burglary, rape, or murder, are unlikely to be deterred from those crimes by an additional law forbidding possessing or carrying their desired weapon or by the knowledge that the police may apprehend them in the attempt or after

the fact. In such cases, the only protection for the citizen is the would-be criminal's knowledge that their victim could be armed and the ability of that victim to act effectively in self-defense. See Cramer & Kopel, *The New Wave*, *supra* at 686 (discussing a National Institute for Justice study of felony prisoners finding that "fifty-six percent of the prisoners said that a criminal would not attack a potential victim who was known to be armed").

This view of criminal behavior is confirmed by scholarly conclusions that a jurisdiction's adoption of right-to-carry laws results in the reduction of violent crime rates. See Lott, *Right-to-Carry*, *supra* at 1212-16 (describing the results of "five qualitatively different studies" of laws permitting handgun carry and concluding that "the consensus is the same: right-to-carry laws reduce violent crime"). In a seminal study of the effects of right-to-carry laws, which were then in place in only eighteen states, it was found that following adoption, "murders fell by 7.65 percent, and rapes and aggravated assaults fell by 5 and 7 percent." John R. Lott, Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. Legal Stud. 1, 23 (1997). Further studies following the effects of these laws over time indicate

that rates of violent crime experience greater "drops the longer the right-to-carry laws are in effect" and "[t]he greater the percentage of the population with permits." *See* Lott, *Right-to-Carry*, *supra* at 1212.

Sadly, the political and scholarly consensus is also confirmed by the high incidence of violence in jurisdictions that continue to impose onerous restrictions on law-abiding citizens owning or carrying firearms. Take Chicago for example, which both prohibits the possession of firearms anywhere without a permit, *see Gowder v. City of Chicago*, No. 11-C-1304, 2012 U.S. Dist. LEXIS 84359, at *3; 2012 WL 2325826, at *1 (N.D. Ill. June 19, 2012), and is located within the only State that completely bans citizens from carrying or possessing weapons almost anywhere outside their home. *See* 720 Ill. Comp. Stat. 5/24-1(4). Despite all this regulation, the rate of violent crimes has been tragically high for decades and remains so. *See* Mark Konkol & Frank Main, "Chicago under fire: Murders rising despite decline in overall crime," (July 7, 2012), <http://www.suntimes.com/news/violence/13574486-505/chicago-under-fire-murders-rising-despite-decline-in-overall-crime.html> (noting that for the first six months of

2012, the number of homicides had increased 37 percent from that recorded in the first six months of 2011).

The defendants' suggestion that permit holders will suddenly turn to a life of wanton violence is not borne out by the data either, as demonstrated by the experience of Florida, which issued over 2 million permits from October 1, 1987 to July 31, 2011 and revoked "[o]nly 168 . . . for any type of fire-arms related violation," less than 1 percent, and those violations were mostly for "accidentally carrying concealed handguns into restricted areas." Lott, *Right-to-Carry, supra* at 1211; *see also*, (Doc. 58 at 84-86). Nor is there any academic support for the argument that permitting law-abiding citizens to carry handguns in public increases the incidence of "accidental gun deaths or suicides." Lott, *Right-to-Carry, supra* at 1206. In sum, Maryland is left with "mere 'anecdote and supposition,'" a wholly inadequate basis on which to justify substantial impairment of fundamental rights. *Carter*, 669 F.3d at 418 (quoting *Playboy Entm't Grp., Inc.*, 529 U.S. at 822).

CONCLUSION

The district court's decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. This brief has been prepared using fourteen point, proportionally spaced, serif typeface: Microsoft Word 2007, Century Schoolbook, 14 point.

2. Exclusive of the table of contents, table of authorities and the certificate of service, this brief contains 3,657 words.

/s/ E. Duncan Getchell, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing BRIEF OF THE COMMONWEALTH OF VIRGINIA AND STATES OF ALABAMA, ARKANSAS, FLORIDA, KANSAS, MAINE, MICHIGAN, NEBRASKA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, WEST VIRGINIA, AND THE COMMONWEALTH OF KENTUCKY AS AMICUS CURIAE IN SUPPORT OF APPELLEES URGING AFFIRMANCE has been filed with the Clerk of the U.S. Court of Appeals for the Fourth Circuit this August 6, 2012, by using the appellate CM/ECF system, which will send notification of said filing to the attorneys of record, who have registered with the Court's CM/ECF system.

I further certify that on this August 6, 2012, I caused the required number of bound copies of the foregoing to be hand-delivered to the Clerk of Court.

/s/ E. Duncan Getchell, Jr.
Solicitor General of Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SECOND AMENDMENT)	
FOUNDATION, INC., NEBRASKA)	
FIREARMS OWNERS ASSOCIATION,)	
and ARMANDO PLIEGO GONZALEZ,)	
)	
Plaintiffs,)	8:11CV335
)	
v.)	
)	
JIM SUTTLE, individually and in his)	INJUNCTION
official capacity as Mayor of Omaha,)	
Nebraska, CITY OF OMAHA,)	
Nebraska, a municipal corporation, and)	
ALEX HAYES, individually and in his)	
official capacity as Chief of Police of)	
Omaha, Nebraska,)	
)	
Defendants.)	
_____)	

This matter is before the court on the plaintiffs’ motion for a preliminary injunction, Filing No. [21](#). The parties have entered into a Stipulation agreeing to the terms of the preliminary injunction. Filing No. [26](#).

In the stipulation, the parties agree that individuals have a fundamental right under the Second Amendment to keep firearms, including handguns, in their homes for lawful purposes, most notably for self-defense, the right is enforceable against state and local governments, legal aliens residing in Omaha enjoy fundamental constitutional rights, and legal aliens also enjoy the right of equal protection of the laws under the Fourteenth Amendment of the Constitution. *Id.* the parties agree to the entry of an order enjoining the enforcement of Omaha Municipal Code § 20-253(9), which denies non-citizens the right

to register a “concealable firearm” with the Omaha Chief of Police, thus denying them the ability to possess a “concealable firearm” in their homes. *Id.*

The stipulation establishes that the plaintiffs are entitled to preliminary injunctive relief. See [Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109,114 \(8th Cir. 1981\)\(en banc\)](#). Pursuant to the stipulation, the court further finds that no security is required as the defendants will not suffer financial harm by issuance of this order. This injunction shall remain in place pending the conclusion of this litigation.

IT IS ORDERED:

1. Defendants Jim Suttle, individually and in his official capacity as Mayor of Omaha, Nebraska; the City of Omaha, Nebraska, a municipal corporation; Alex Hayes, individually and in his official capacity as Chief of Police of Omaha, Nebraska; their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction are preliminarily enjoined from enforcing Omaha Municipal Code § 20-253(9), pending resolution of this action.

2. Defendants Jim Suttle, individually and in his official capacity as Mayor of Omaha, Nebraska; the City of Omaha, Nebraska, a municipal corporation; Alex Hayes, individually and in his official capacity as Chief of Police of Omaha, Nebraska; their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction shall allow plaintiffs and other legal aliens residing in Omaha to register “concealable firearms” for possession in their homes, provided they are otherwise-qualified to possess a firearm.

3. The hearing scheduled for November 22, 2011 at 2:00 p.m. is canceled.

4. This matter is referred to the United States Magistrate Judge for expedited progression.

DATED this 21st day of November, 2011.

BY THE COURT:

s/Joseph F. Bataillon |
UNITED STATES DISTRICT JUDGE

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 75

97TH GENERAL ASSEMBLY

2013

0366H.02T

AN ACT

To repeal sections 50.535, 57.010, 57.100, 57.104, 221.070, 302.181, 571.030, 571.037, 571.101, 571.102, 571.104, 571.107, 571.111, 571.114, 571.117, 571.121, and 650.350, RSMo, and to enact in lieu thereof twenty-one new sections relating to public safety, with penalty provisions, and an emergency clause for certain sections.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 50.535, 57.010, 57.100, 57.104, 221.070, 302.181, 571.030, 571.037, 571.101, 571.102, 571.104, 571.107, 571.111, 571.114, 571.117, 571.121, and 650.350, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 50.535, 57.010, 57.100, 57.104, 170.315, 171.410, 221.070, 221.102, 302.181, 571.011, 571.030, 571.037, 571.101, 571.104, 571.107, 571.111, 571.114, 571.117, 571.121, 571.500, and 650.350, to read as follows:

50.535. 1. Notwithstanding the provisions of sections 50.525 to 50.745, the fee collected pursuant to subsections [10 and 11] **11 and 12** of section 571.101 shall be deposited by the county treasurer into a separate interest-bearing fund to be known as the "County Sheriff's Revolving Fund" to be expended at the direction of the county or city sheriff or his or her designee as provided in this section.

2. No prior approval of the expenditures from this fund shall be required by the governing body of the county or city not within a county, nor shall any prior audit or encumbrance of the fund be required before any expenditure is made by the sheriff from this fund. This fund shall only be used by law

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

HCS SB 75

2

11 enforcement agencies for the purchase of equipment, to provide training, and to
12 make necessary expenditures to process applications for concealed carry
13 [endorsements] **permits** or renewals, including but not limited to the purchase
14 of equipment, information and data exchange, training, fingerprinting and
15 background checks, employment of additional personnel, and any expenditure
16 necessitated by an action under section 571.114 or 571.117. If the moneys
17 collected and deposited into this fund are not totally expended annually, then the
18 unexpended balance shall remain in said fund and the balance shall be kept in
19 said fund to accumulate from year to year. This fund may be audited by the state
20 auditor's office or the appropriate auditing agency.

21 3. Notwithstanding any provision of this section to the contrary, the
22 sheriff of every county, regardless of classification, is authorized to pay, from the
23 sheriff's revolving fund, all reasonable and necessary costs and expenses for
24 activities or services occasioned by compliance with sections 571.101 to
25 571.121. Such was the intent of the general assembly in original enactment of
26 this section and sections 571.101 to 571.121, and it is made express by this
27 section in light of the decision in *Brooks v. State of Missouri*, (Mo. Sup. Ct.
28 February 26, 2004). The application and renewal fees to be charged pursuant to
29 section 571.101 shall be based on the sheriff's good faith estimate, made during
30 regular budgeting cycles, of the actual costs and expenses to be incurred by
31 reason of compliance with sections 571.101 to 571.121. If the maximum fee
32 permitted by section 571.101 is inadequate to cover the actual reasonable and
33 necessary expenses in a given year, and there are not sufficient accumulated
34 unexpended funds in the revolving fund, a sheriff may present specific and
35 verified evidence of the unreimbursed expenses to the office of administration,
36 which upon certification by the attorney general shall reimburse such sheriff for
37 those expenses from an appropriation made for that purpose.

38 4. If pursuant to subsection [12] **13** of section 571.101, the sheriff of a
39 county of the first classification designates one or more chiefs of police of any
40 town, city, or municipality within such county to accept and process applications
41 for [certificates of qualification to obtain a concealed carry endorsement]
42 **concealed carry permits**, then that sheriff shall reimburse such chiefs of
43 police, out of the moneys deposited into this fund, for any reasonable expenses
44 related to accepting and processing such applications.

57.010. 1. At the general election to be held in 1948, and at each general
2 election held every four years thereafter, the voters in every county in this state

3 shall elect some suitable person sheriff. No person shall be eligible for the office
4 of sheriff who has been convicted of a felony. Such person shall be a resident
5 taxpayer and elector of said county, shall have resided in said county for more
6 than one whole year next before filing for said office and shall be a person capable
7 of efficient law enforcement. When any person shall be elected sheriff, such
8 person shall enter upon the discharge of the duties of such person's office as chief
9 law enforcement officer of that county on the first day of January next succeeding
10 said election.

11 2. [Beginning January 1, 2003, any] **No person shall be eligible for**
12 **the office of** sheriff who does not hold a valid peace officer license pursuant to
13 chapter 590 [shall refrain from personally executing any of the police powers of
14 the office of sheriff, including but not limited to participation in the activities of
15 arrest, detention, vehicular pursuit, search and interrogation. Nothing in this
16 section shall prevent any sheriff from administering the execution of police
17 powers through duly commissioned deputy sheriffs]. **Any person filing for the**
18 **office of sheriff shall have a valid peace officer license at the time of**
19 **filing for office.** This subsection shall not apply[:

20 (1) During the first twelve months of the first term of office of any sheriff
21 who is eligible to become licensed as a peace officer and who intends to become
22 so licensed within twelve months after taking office, except this subdivision shall
23 not be effective beginning January 1, 2010; or

24 (2)] to the sheriff of any county of the first classification with a charter
25 form of government with a population over nine hundred thousand **or of any**
26 **city not within a county.**

57.100. 1. Every sheriff shall quell and suppress assaults and batteries,
2 riots, routs, affrays and insurrections; shall apprehend and commit to jail all
3 felons and traitors, and execute all process directed to him by legal authority,
4 including writs of replevin, attachments and final process issued by circuit and
5 associate circuit judges.

6 **2. Beginning January 1, 2014, every sheriff shall maintain, house,**
7 **and issue concealed carry permits as specified under chapter 571.**

57.104. 1. The sheriff of any county of the first classification not having
2 a charter form of government, **county of the second classification, county**
3 **of the third classification, and county of the fourth classification** may
4 employ an attorney at law to aid and advise him in the discharge of his duties
5 and to represent him in court. The sheriff shall set the compensation for an

HCS SB 75

4

6 attorney hired pursuant to this section within the allocation made by the county
7 commission to the sheriff's department for compensation of employees to be paid
8 out of the general revenue fund of the county.

9 2. The attorney employed by a sheriff pursuant to subsection 1 of this
10 section shall be employed at the pleasure of the sheriff.

11 **170.315. 1. There is hereby established the Active Shooter and**
12 **Intruder Response Training for Schools Program (ASIRT). Each school**
13 **district and charter school may, by July 1, 2014, include in its teacher**
14 **and school employee training a component on how to properly respond**
15 **to students who provide them with information about a threatening**
16 **situation and how to address situations in which there is a potentially**
17 **dangerous or armed intruder in the school. Training may also include**
18 **information and techniques on how to address situations where an**
19 **active shooter is present in the school or on school property.**

20 2. Each school district and charter school may conduct the
21 training on an annual basis. If no formal training has previously
22 occurred, the length of the training may be eight hours. The length of
23 annual continuing training may be four hours.

24 3. All school personnel shall participate in a simulated active
25 shooter and intruder response drill conducted and led by law
26 enforcement professionals. Each drill may include an explanation of its
27 purpose and a safety briefing. The training shall require each
28 participant to know and understand how to respond in the event of an
29 actual emergency on school property or at a school event. The drill
30 may include:

31 (1) Allowing school personnel to respond to the simulated
emergency in whatever way they have been trained or informed; and

(2) Allowing school personnel to attempt and implement new
methods of responding to the simulated emergency based upon
previously used unsuccessful methods of response.

4. All instructors for the program shall be certified by the
department of public safety's peace officers standards training
commission.

5. School districts and charter schools may consult and
collaborate with law enforcement authorities, emergency response
agencies, and other organizations and entities trained to deal with

32 active shooters or potentially dangerous or armed intruders.

33 6. Public schools shall foster an environment in which students
34 feel comfortable sharing information they have regarding a potentially
35 threatening or dangerous situation with a responsible adult.

171.410. 1. Each school district and charter school may annually
2 teach the Eddie Eagle Gunsafe Program to first grade students. School
3 districts and charter schools may also teach any substantially similar
4 program of the same qualifications or any successor program in lieu of
5 the Eddie Eagle Gunsafe Program.

6 2. The purpose of the educational program shall be to promote
7 the safety and protection of children. The educational program shall
8 emphasize how students should respond if they encounter a
9 firearm. School personnel and program instructors shall not make
10 value judgments about firearms.

11 3. No school district or charter school shall include or use a
12 firearm or demonstrate the use of a firearm when teaching the
13 program.

14 4. Students with disabilities shall participate to the extent
15 appropriate as determined by the provisions of the Individuals with
16 Disabilities Education Act or Section 504 of the Rehabilitation Act.

17 5. School districts and charter schools may seek grant funding
18 for the program from public, private, and non-profit entities.

221.070. 1. Every person who shall be committed to the common jail
2 within any county in this state, by lawful authority, for any offense or
3 misdemeanor, upon a plea of guilty or a finding of guilt for such offense, shall
4 bear the expense of carrying him or her to said jail, and also his or her support
5 while in jail, before he or she shall be discharged; and the property of such person
6 shall be subjected to the payment of such expenses, and shall be bound therefor,
7 from the time of his commitment, and may be levied on and sold, from time to
8 time, under the order of the court having criminal jurisdiction in the county, to
9 satisfy such expenses.

10 2. If a person has not paid all money owed to the county jail
11 upon release from custody and has failed to enter into or honor an
12 agreement with the sheriff to make payments toward such debt
13 according to a repayment plan, the sheriff may certify the amount of
14 the outstanding to the clerk of the court in which the case was

HCS SB 75

6

15 **determined. The circuit clerk shall report to the office of state courts**
16 **administrator the debtor's full name, date of birth, and address and the**
17 **amount the debtor owes to the county jail. If the person subsequently**
18 **satisfies the debt to the county jail or begins making regular payments**
19 **in accordance with an agreement entered into with the sheriff, the**
20 **sheriff shall notify the circuit clerk who then shall notify the state**
21 **courts administrator that the person shall no longer be considered**
22 **delinquent.**

221.102. 1. The sheriff of any county may establish and operate
2 **a canteen or commissary in the county jail for the use and benefit of**
3 **the inmates, prisoners, and detainees.**

4 **2. Each county jail shall keep revenues received from its canteen**
5 **or commissary in a separate account. The acquisition cost of goods sold**
6 **and other expenses shall be paid from this account. A minimum**
7 **amount of money necessary to meet cash flow needs and current**
8 **operating expenses may be kept in this account. The remaining funds**
9 **from sales of each canteen or commissary shall be deposited into the**
10 **“Inmate Prisoner Detainee Security Fund” and shall be expended for**
11 **the purposes provided in subsection 3 of section 488.5026. The**
12 **provisions of section 33.080 to the contrary notwithstanding, the money**
13 **in the inmate prisoner detainee security fund shall be retained for the**
14 **purposes specified in section 488.5026 and shall not revert or be**
15 **transferred to general revenue.**

302.181. 1. The license issued pursuant to the provisions of sections
2 302.010 to 302.340 shall be in such form as the director shall prescribe, but the
3 license shall be a card made of plastic or other comparable material. All licenses
4 shall be manufactured of materials and processes that will prohibit, as nearly as
5 possible, the ability to reproduce, alter, counterfeit, forge, or duplicate any license
6 without ready detection. All licenses shall bear the licensee's Social Security
7 number, if the licensee has one, and if not, a notarized affidavit must be signed
8 by the licensee stating that the licensee does not possess a Social Security
9 number, or, if applicable, a certified statement must be submitted as provided in
10 subsection 4 of this section. The license shall also bear the expiration date of the
11 license, the classification of the license, the name, date of birth, residence address
12 including the county of residence or a code number corresponding to such county
13 established by the department, and brief description and colored photograph or

14 digitized image of the licensee, and a facsimile of the signature of the
15 licensee. The director shall provide by administrative rule the procedure and
16 format for a licensee to indicate on the back of the license together with the
17 designation for an anatomical gift as provided in section 194.240 the name and
18 address of the person designated pursuant to sections 404.800 to 404.865 as the
19 licensee's attorney in fact for the purposes of a durable power of attorney for
20 health care decisions. No license shall be valid until it has been so signed by the
21 licensee. If any portion of the license is prepared by a private firm, any contract
22 with such firm shall be made in accordance with the competitive purchasing
23 procedures as established by the state director of the division of purchasing. For
24 all licenses issued or renewed after March 1, 1992, the applicant's Social Security
25 number shall serve as the applicant's license number. Where the licensee has no
26 Social Security number, or where the licensee is issued a license without a Social
27 Security number in accordance with subsection 4 of this section, the director shall
28 issue a license number for the licensee and such number shall also include an
29 indicator showing that the number is not a Social Security number.

30 2. All film involved in the production of photographs for licenses shall
31 become the property of the department of revenue.

32 3. The license issued shall be carried at all times by the holder thereof
33 while driving a motor vehicle, and shall be displayed upon demand of any officer
34 of the highway patrol, or any police officer or peace officer, or any other duly
35 authorized person, for inspection when demand is made therefor.
36 Failure of any operator of a motor vehicle to exhibit his or her license to any duly
37 authorized officer shall be presumptive evidence that such person is not a duly
38 licensed operator.

39 4. The director of revenue shall issue a commercial or noncommercial
40 driver's license without a Social Security number to an applicant therefor, who
41 is otherwise qualified to be licensed, upon presentation to the director of a
42 certified statement that the applicant objects to the display of the Social Security
43 number on the license. The director shall assign an identification number, that
44 is not based on a Social Security number, to the applicant which shall be
45 displayed on the license in lieu of the Social Security number.

46 5. The director of revenue shall not issue a license without a facial
47 photograph or digital image of the license applicant, except as provided pursuant
48 to subsection 8 of this section. A photograph or digital image of the applicant's
49 full facial features shall be taken in a manner prescribed by the director. No

HCS SB 75

8

50 photograph or digital image will be taken wearing anything which cloaks the
51 facial features of the individual.

52 6. The department of revenue may issue a temporary license or a full
53 license without the photograph or with the last photograph or digital image in the
54 department's records to members of the Armed Forces, except that where such
55 temporary license is issued it shall be valid only until the applicant shall have
56 had time to appear and have his or her picture taken and a license with his or
57 her photograph issued.

58 7. The department of revenue shall issue upon request a nondriver's
59 license card containing essentially the same information and photograph or
60 digital image, except as provided pursuant to subsection 8 of this section, as the
61 driver's license upon payment of six dollars. All nondriver's licenses shall expire
62 on the applicant's birthday in the sixth year after issuance. A person who has
63 passed his or her seventieth birthday shall upon application be issued a
64 nonexpiring nondriver's license card. Notwithstanding any other provision of this
65 chapter, a nondriver's license containing a concealed carry endorsement shall
66 expire three years from the date the certificate of qualification was issued
67 pursuant to section 571.101, **as section 571.101 existed prior to August 28,**
68 **2013.** The fee for nondriver's licenses issued for a period exceeding three years
69 is six dollars or three dollars for nondriver's licenses issued for a period of three
70 years or less. The nondriver's license card shall be used for identification
71 purposes only and shall not be valid as a license.

72 8. If otherwise eligible, an applicant may receive a driver's license or
73 nondriver's license without a photograph or digital image of the applicant's full
74 facial features except that such applicant's photograph or digital image shall be
75 taken and maintained by the director and not printed on such license.
76 In order to qualify for a license without a photograph or digital image pursuant
77 to this section the applicant must:

78 (1) Present a form provided by the department of revenue requesting the
79 applicant's photograph be omitted from the license or nondriver's license due to
80 religious affiliations. The form shall be signed by the applicant and another
81 member of the religious tenant verifying the photograph or digital image
82 exemption on the license or nondriver's license is required as part of their
83 religious affiliation. The required signatures on the prescribed form shall be
84 properly notarized;

85 (2) Provide satisfactory proof to the director that the applicant has been

86 a [U.S.] **United States** citizen for at least five years and a resident of this state
87 for at least one year, except that an applicant moving to this state possessing a
88 valid driver's license from another state without a photograph shall be exempt
89 from the one-year state residency requirement. The director may establish rules
90 necessary to determine satisfactory proof of citizenship and residency pursuant
91 to this section;

92 (3) Applications for a driver's license or nondriver's license without a
93 photograph or digital image must be made in person at a license office
94 determined by the director. The director is authorized to limit the number of
95 offices that may issue a driver's or nondriver's license without a photograph or
96 digital image pursuant to this section.

97 9. The department of revenue shall make available, at one or more
98 locations within the state, an opportunity for individuals to have their full facial
99 photograph taken by an employee of the department of revenue, or their designee,
100 who is of the same sex as the individual being photographed, in a segregated
101 location.

102 10. Beginning July 1, 2005, the director shall not issue a driver's license
103 or a nondriver's license for a period that exceeds an applicant's lawful presence
104 in the United States. The director may, by rule or regulation, establish
105 procedures to verify the lawful presence of the applicant and establish the
106 duration of any driver's license or nondriver's license issued under this section.

107 11. No rule or portion of a rule promulgated pursuant to the authority of
108 this chapter shall become effective unless it is promulgated pursuant to the
109 provisions of chapter 536.

**571.011. 1. Any records of ownership of a firearm or applications
2 for ownership, licensing, certification, permitting, or an endorsement
3 that allows a person to own, acquire, possess, or carry a firearm shall
4 not be open records under chapter 610 and shall not be open for
5 inspection or their contents disclosed except by order of the court to
6 persons having a legitimate interest therein.**

**7 2. Any person or entity who violates the provisions of this
8 section is guilty of a class A misdemeanor.**

571.030. 1. A person commits the crime of unlawful use of weapons if he
2 or she knowingly:

3 (1) Carries concealed upon or about his or her person a knife, a firearm,
4 a blackjack or any other weapon readily capable of lethal use; or

HCS SB 75

10

- 5 (2) Sets a spring gun; or
- 6 (3) Discharges or shoots a firearm into a dwelling house, a railroad train,
7 boat, aircraft, or motor vehicle as defined in section 302.010, or any building or
8 structure used for the assembling of people; or
- 9 (4) Exhibits, in the presence of one or more persons, any weapon readily
10 capable of lethal use in an angry or threatening manner; or
- 11 (5) Has a firearm or projectile weapon readily capable of lethal use on his
12 or her person, while he or she is intoxicated, and handles or otherwise uses such
13 firearm or projectile weapon in either a negligent or unlawful manner or
14 discharges such firearm or projectile weapon unless acting in self-defense; **or**
- 15 (6) Discharges a firearm within one hundred yards of any occupied
16 schoolhouse, courthouse, or church building; or
- 17 (7) Discharges or shoots a firearm at a mark, at any object, or at random,
18 on, along or across a public highway or discharges or shoots a firearm into any
19 outbuilding; or
- 20 (8) Carries a firearm or any other weapon readily capable of lethal use
21 into any church or place where people have assembled for worship, or into any
22 election precinct on any election day, or into any building owned or occupied by
23 any agency of the federal government, state government, or political subdivision
24 thereof; or
- 25 (9) Discharges or shoots a firearm at or from a motor vehicle, as defined
26 in section 301.010, discharges or shoots a firearm at any person, or at any other
27 motor vehicle, or at any building or habitable structure, unless the person was
28 lawfully acting in self-defense; or
- 29 (10) Carries a firearm, whether loaded or unloaded, or any other weapon
30 readily capable of lethal use into any school, onto any school bus, or onto the
31 premises of any function or activity sponsored or sanctioned by school officials or
32 the district school board.

33 2. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not
34 apply to the persons described in this subsection, regardless of whether such uses
35 are reasonably associated with or are necessary to the fulfillment of such person's
36 official duties except as otherwise provided in this subsection. Subdivisions (3),
37 (4), (6), (7), and (9) of subsection 1 of this section shall not apply to or affect any
38 of the following persons, when such uses are reasonably associated with or are
39 necessary to the fulfillment of such person's official duties, except as otherwise
40 provided in this subsection:

41 (1) All state, county and municipal peace officers who have completed the
42 training required by the police officer standards and training commission
43 pursuant to sections 590.030 to 590.050 and who possess the duty and power of
44 arrest for violation of the general criminal laws of the state or for violation of
45 ordinances of counties or municipalities of the state, whether such officers are on
46 or off duty, and whether such officers are within or outside of the law
47 enforcement agency's jurisdiction, or all qualified retired peace officers, as defined
48 in subsection 11 of this section, and who carry the identification defined in
49 subsection 12 of this section, or any person summoned by such officers to assist
50 in making arrests or preserving the peace while actually engaged in assisting
51 such officer;

52 (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails
53 and other institutions for the detention of persons accused or convicted of crime;

54 (3) Members of the Armed Forces or National Guard while performing
55 their official duty;

56 (4) Those persons vested by article V, section 1 of the Constitution of
57 Missouri with the judicial power of the state and those persons vested by Article
58 III of the Constitution of the United States with the judicial power of the United
59 States, the members of the federal judiciary;

60 (5) Any person whose bona fide duty is to execute process, civil or
61 criminal;

62 (6) Any federal probation officer or federal flight deck officer as defined
63 under the federal flight deck officer program, 49 U.S.C. Section 44921 regardless
64 of whether such officers are on duty, or within the law enforcement agency's
65 jurisdiction;

66 (7) Any state probation or parole officer, including supervisors and
67 members of the board of probation and parole;

68 (8) Any corporate security advisor meeting the definition and fulfilling the
69 requirements of the regulations established by the board of police commissioners
70 under section 84.340;

71 (9) Any coroner, deputy coroner, medical examiner, or assistant medical
72 examiner;

73 (10) Any prosecuting attorney or assistant prosecuting attorney or any
74 circuit attorney or assistant circuit attorney who has completed the firearms
75 safety training course required under subsection 2 of section 571.111; and

76 (11) Any member of a fire department or fire protection district who is

77 employed on a full-time basis as a fire investigator and who has a valid concealed
78 carry endorsement **issued prior to August 28, 2013, or a valid concealed**
79 **carry permit** under section 571.111 when such uses are reasonably associated
80 with or are necessary to the fulfillment of such person's official duties.

81 3. Subdivisions (1), (5), (8), and (10) of subsection 1 of this section do not
82 apply when the actor is transporting such weapons in a nonfunctioning state or
83 in an unloaded state when ammunition is not readily accessible or when such
84 weapons are not readily accessible. Subdivision (1) of subsection 1 of this section
85 does not apply to any person twenty-one years of age or older or eighteen years
86 of age or older and a member of the United States Armed Forces, or honorably
87 discharged from the United States Armed Forces, transporting a concealable
88 firearm in the passenger compartment of a motor vehicle, so long as such
89 concealable firearm is otherwise lawfully possessed, nor when the actor is also in
90 possession of an exposed firearm or projectile weapon for the lawful pursuit of
91 game, or is in his or her dwelling unit or upon premises over which the actor has
92 possession, authority or control, or is traveling in a continuous journey peaceably
93 through this state. Subdivision (10) of subsection 1 of this section does not apply
94 if the firearm is otherwise lawfully possessed by a person while traversing school
95 premises for the purposes of transporting a student to or from school, or
96 possessed by an adult for the purposes of facilitation of a school-sanctioned
97 firearm-related event or club event.

98 4. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not
99 apply to any person who has a valid concealed carry [endorsement] **permit**
100 issued pursuant to sections 571.101 to 571.121, **a valid concealed carry**
101 **endorsement issued before August 28, 2013**, or a valid permit or
102 endorsement to carry concealed firearms issued by another state or political
103 subdivision of another state.

104 5. Subdivisions (3), (4), (5), (6), (7), (8), (9), and (10) of subsection 1 of this
105 section shall not apply to persons who are engaged in a lawful act of defense
106 pursuant to section 563.031.

107 6. Nothing in this section shall make it unlawful for a student to actually
108 participate in school-sanctioned gun safety courses, student military or ROTC
109 courses, or other school-sponsored or club-sponsored firearm-related events,
110 provided the student does not carry a firearm or other weapon readily capable of
111 lethal use into any school, onto any school bus, or onto the premises of any other
112 function or activity sponsored or sanctioned by school officials or the district

113 school board.

114 7. Unlawful use of weapons is a class D felony unless committed pursuant
115 to subdivision (6), (7), or (8) of subsection 1 of this section, in which cases it is a
116 class B misdemeanor, or subdivision (5) or (10) of subsection 1 of this section, in
117 which case it is a class A misdemeanor if the firearm is unloaded and a class D
118 felony if the firearm is loaded, or subdivision (9) of subsection 1 of this section,
119 in which case it is a class B felony, except that if the violation of subdivision (9)
120 of subsection 1 of this section results in injury or death to another person, it is
121 a class A felony.

122 8. Violations of subdivision (9) of subsection 1 of this section shall be
123 punished as follows:

124 (1) For the first violation a person shall be sentenced to the maximum
125 authorized term of imprisonment for a class B felony;

126 (2) For any violation by a prior offender as defined in section 558.016, a
127 person shall be sentenced to the maximum authorized term of imprisonment for
128 a class B felony without the possibility of parole, probation or conditional release
129 for a term of ten years;

130 (3) For any violation by a persistent offender as defined in section
131 558.016, a person shall be sentenced to the maximum authorized term of
132 imprisonment for a class B felony without the possibility of parole, probation, or
133 conditional release;

134 (4) For any violation which results in injury or death to another person,
135 a person shall be sentenced to an authorized disposition for a class A felony.

136 9. Any person knowingly aiding or abetting any other person in the
137 violation of subdivision (9) of subsection 1 of this section shall be subject to the
138 same penalty as that prescribed by this section for violations by other persons.

139 10. Notwithstanding any other provision of law, no person who pleads
140 guilty to or is found guilty of a felony violation of subsection 1 of this section shall
141 receive a suspended imposition of sentence if such person has previously received
142 a suspended imposition of sentence for any other firearms- or weapons-related
143 felony offense.

144 11. As used in this section "qualified retired peace officer" means an
145 individual who:

146 (1) Retired in good standing from service with a public agency as a peace
147 officer, other than for reasons of mental instability;

148 (2) Before such retirement, was authorized by law to engage in or

HCS SB 75

14

149 supervise the prevention, detection, investigation, or prosecution of, or the
150 incarceration of any person for, any violation of law, and had statutory powers of
151 arrest;

152 (3) Before such retirement, was regularly employed as a peace officer for
153 an aggregate of fifteen years or more, or retired from service with such agency,
154 after completing any applicable probationary period of such service, due to a
155 service-connected disability, as determined by such agency;

156 (4) Has a nonforfeitable right to benefits under the retirement plan of the
157 agency if such a plan is available;

158 (5) During the most recent twelve-month period, has met, at the expense
159 of the individual, the standards for training and qualification for active peace
160 officers to carry firearms;

161 (6) Is not under the influence of alcohol or another intoxicating or
162 hallucinatory drug or substance; and

163 (7) Is not prohibited by federal law from receiving a firearm.

164 12. The identification required by subdivision (1) of subsection 2 of this
165 section is:

166 (1) A photographic identification issued by the agency from which the
167 individual retired from service as a peace officer that indicates that the individual
168 has, not less recently than one year before the date the individual is carrying the
169 concealed firearm, been tested or otherwise found by the agency to meet the
170 standards established by the agency for training and qualification for active peace
171 officers to carry a firearm of the same type as the concealed firearm; or

172 (2) A photographic identification issued by the agency from which the
173 individual retired from service as a peace officer; and

174 (3) A certification issued by the state in which the individual resides that
175 indicates that the individual has, not less recently than one year before the date
176 the individual is carrying the concealed firearm, been tested or otherwise found
177 by the state to meet the standards established by the state for training and
178 qualification for active peace officers to carry a firearm of the same type as the
179 concealed firearm.

571.037. Any person who has a valid concealed carry endorsement **issued**
2 **prior to August 28, 2013, or a valid concealed carry permit**, and who is
3 lawfully carrying a firearm in a concealed manner, may briefly and openly display
4 the firearm to the ordinary sight of another person, unless the firearm is
5 intentionally displayed in an angry or threatening manner, not in necessary self

6 defense.

571.101. 1. All applicants for concealed carry [endorsements] **permits**
2 issued pursuant to subsection 7 of this section must satisfy the requirements of
3 sections 571.101 to 571.121. If the said applicant can show qualification as
4 provided by sections 571.101 to 571.121, the county or city sheriff shall issue a
5 [certificate of qualification for a concealed carry endorsement. Upon receipt of
6 such certificate, the certificate holder shall apply for a driver's license or
7 nondriver's license with the director of revenue in order to obtain a concealed
8 carry endorsement. Any person who has been issued a concealed carry
9 endorsement on a driver's license or nondriver's license and such endorsement or
10 license has not been suspended, revoked, cancelled, or denied may carry concealed
11 firearms on or about his or her person or within a vehicle] **concealed carry**
12 **permit authorizing the carrying of a concealed firearm on or about the**
13 **applicant's person or within a vehicle.** A concealed carry [endorsement]
14 **permit** shall be valid for a period of [three] **five** years from the date of issuance
15 or renewal. The concealed carry [endorsement] **permit** is valid throughout this
16 state. **A concealed carry endorsement issued prior to August 28, 2013,**
17 **shall continue for a period of three years from the date of issuance or**
18 **renewal to authorize the carrying of a concealed firearm on or about**
19 **the applicant's person or within a vehicle in the same manner as a**
20 **concealed carry permit issued under subsection 7 of this section on or**
21 **after August 28, 2013.**

22 2. A [certificate of qualification for a concealed carry endorsement]
23 **concealed carry permit** issued pursuant to subsection 7 of this section shall
24 be issued by the sheriff or his or her designee of the county or city in which the
25 applicant resides, if the applicant:

26 (1) Is at least twenty-one years of age, is a citizen **or permanent**
27 **resident** of the United States and either:

28 (a) Has assumed residency in this state; or

29 (b) Is a member of the Armed Forces stationed in Missouri, or the spouse
30 of such member of the military;

31 (2) Is at least twenty-one years of age, or is at least eighteen years of age
32 and a member of the United States Armed Forces or honorably discharged from
33 the United States Armed Forces, and is a citizen of the United States and either:

34 (a) Has assumed residency in this state;

35 (b) Is a member of the Armed Forces stationed in Missouri; or

HCS SB 75

16

36 (c) The spouse of such member of the military stationed in Missouri and
37 twenty-one years of age;

38 (3) Has not pled guilty to or entered a plea of nolo contendere or been
39 convicted of a crime punishable by imprisonment for a term exceeding one year
40 under the laws of any state or of the United States other than a crime classified
41 as a misdemeanor under the laws of any state and punishable by a term of
42 imprisonment of [one year] **two years** or less that does not involve an explosive
43 weapon, firearm, firearm silencer or gas gun;

44 (4) Has not been convicted of, pled guilty to or entered a plea of nolo
45 contendere to one or more misdemeanor offenses involving crimes of violence
46 within a five-year period immediately preceding application for a [certificate of
47 qualification for a concealed carry endorsement] **concealed carry permit** or if
48 the applicant has not been convicted of two or more misdemeanor offenses
49 involving driving while under the influence of intoxicating liquor or drugs or the
50 possession or abuse of a controlled substance within a five-year period
51 immediately preceding application for a [certificate of qualification for a concealed
52 carry endorsement] **concealed carry permit**;

53 (5) Is not a fugitive from justice or currently charged in an information
54 or indictment with the commission of a crime punishable by imprisonment for a
55 term exceeding one year under the laws of any state of the United States other
56 than a crime classified as a misdemeanor under the laws of any state and
57 punishable by a term of imprisonment of two years or less that does not involve
58 an explosive weapon, firearm, firearm silencer, or gas gun;

59 (6) Has not been discharged under dishonorable conditions from the
60 United States Armed Forces;

61 (7) Has not engaged in a pattern of behavior, documented in public **or**
62 **closed** records, that causes the sheriff to have a reasonable belief that the
63 applicant presents a danger to himself or others;

64 (8) Is not adjudged mentally incompetent at the time of application or for
65 five years prior to application, or has not been committed to a mental health
66 facility, as defined in section 632.005, or a similar institution located in another
67 state following a hearing at which the defendant was represented by counsel or
68 a representative;

69 (9) Submits a completed application for a [certificate of qualification]
70 **permit** as described in subsection 3 of this section;

71 (10) Submits an affidavit attesting that the applicant complies with the

72 concealed carry safety training requirement pursuant to subsections 1 and 2 of
73 section 571.111;

74 (11) Is not the respondent of a valid full order of protection which is still
75 in effect;

76 **(12) Is not otherwise prohibited from possessing a firearm under**
77 **section 571.070 or 18 U.S.C. 922(g).**

78 3. The application for a [certificate of qualification for a concealed carry
79 endorsement] **concealed carry permit** issued by the sheriff of the county of the
80 applicant's residence shall contain only the following information:

81 (1) The applicant's name, address, telephone number, gender, [and] date
82 and place of birth, **and, if the applicant is not a United States citizen, the**
83 **applicant's country of citizenship and any alien or admission number**
84 **issued by the Federal Bureau of Customs and Immigration Enforcement**
85 **or any successor agency;**

86 (2) An affirmation that the applicant has assumed residency in Missouri
87 or is a member of the Armed Forces stationed in Missouri or the spouse of such
88 a member of the Armed Forces and is a citizen **or permanent resident** of the
89 United States;

90 (3) An affirmation that the applicant is at least twenty-one years of age
91 or is eighteen years of age or older and a member of the United States Armed
92 Forces or honorably discharged from the United States Armed Forces;

93 (4) An affirmation that the applicant has not pled guilty to or been
94 convicted of a crime punishable by imprisonment for a term exceeding one year
95 under the laws of any state or of the United States other than a crime classified
96 as a misdemeanor under the laws of any state and punishable by a term of
97 imprisonment of [one year] **two years** or less that does not involve an explosive
98 weapon, firearm, firearm silencer, or gas gun;

99 (5) An affirmation that the applicant has not been convicted of, pled guilty
100 to, or entered a plea of nolo contendere to one or more misdemeanor offenses
101 involving crimes of violence within a five-year period immediately preceding
102 application for a [certificate of qualification to obtain a concealed carry
103 endorsement] **permit** or if the applicant has not been convicted of two or more
104 misdemeanor offenses involving driving while under the influence of intoxicating
105 liquor or drugs or the possession or abuse of a controlled substance within a
106 five-year period immediately preceding application for a [certificate of
107 qualification to obtain a concealed carry endorsement] **permit;**

108 (6) An affirmation that the applicant is not a fugitive from justice or
109 currently charged in an information or indictment with the commission of a crime
110 punishable by imprisonment for a term exceeding one year under the laws of any
111 state or of the United States other than a crime classified as a misdemeanor
112 under the laws of any state and punishable by a term of imprisonment of two
113 years or less that does not involve an explosive weapon, firearm, firearm silencer
114 or gas gun;

115 (7) An affirmation that the applicant has not been discharged under
116 dishonorable conditions from the United States Armed Forces;

117 (8) An affirmation that the applicant is not adjudged mentally
118 incompetent at the time of application or for five years prior to application, or has
119 not been committed to a mental health facility, as defined in section 632.005, or
120 a similar institution located in another state, except that a person whose release
121 or discharge from a facility in this state pursuant to chapter 632, or a similar
122 discharge from a facility in another state, occurred more than five years ago
123 without subsequent recommitment may apply;

124 (9) An affirmation that the applicant has received firearms safety training
125 that meets the standards of applicant firearms safety training defined in
126 subsection 1 or 2 of section 571.111;

127 (10) An affirmation that the applicant, to the applicant's best knowledge
128 and belief, is not the respondent of a valid full order of protection which is still
129 in effect; [and]

130 (11) A conspicuous warning that false statements made by the applicant
131 will result in prosecution for perjury pursuant to the laws of the state of
132 Missouri; **and**

133 **(12) A government-issued photo identification. This photograph**
134 **shall not be included on the permit and shall only be used to verify the**
135 **person's identity for permit renewal, or for the issuance of a new**
136 **permit due to change of address, or for a lost or destroyed permit.**

137 4. An application for a [certificate of qualification for a concealed carry
138 endorsement] **concealed carry permit** shall be made to the sheriff of the
139 county or any city not within a county in which the applicant resides. An
140 application shall be filed in writing, signed under oath and under the penalties
141 of perjury, and shall state whether the applicant complies with each of the
142 requirements specified in subsection 2 of this section. In addition to the
143 completed application, the applicant for a [certificate of qualification for a

144 concealed carry endorsement] **concealed carry permit** must also submit the
145 following:

146 (1) A photocopy of a firearms safety training certificate of completion or
147 other evidence of completion of a firearms safety training course that meets the
148 standards established in subsection 1 or 2 of section 571.111; and

149 (2) A nonrefundable [certificate of qualification] **permit** fee as provided
150 by subsection [10] **11** or [11] **12** of this section.

151 5. **(1)** Before an application for a [certificate of qualification for a
152 concealed carry endorsement] **concealed carry permit** is approved, the sheriff
153 shall make only such inquiries as he or she deems necessary into the accuracy of
154 the statements made in the application. The sheriff may require that the
155 applicant display a Missouri driver's license or nondriver's license or military
156 identification and orders showing the person being stationed in Missouri. In
157 order to determine the applicant's suitability for a [certificate of qualification for
158 a concealed carry endorsement] **concealed carry permit**, the applicant shall
159 be fingerprinted. **No other biometric data shall be collected from the**
160 **applicant.** The sheriff shall request a criminal background check, **including**
161 **an inquiry of the National Instant Criminal Background Check System,**
162 through the appropriate law enforcement agency within three working days after
163 submission of the properly completed application for a [certificate of qualification
164 for a concealed carry endorsement] **concealed carry permit**. If no
165 disqualifying record is identified by [the fingerprint check] **these checks** at the
166 state level, the fingerprints shall be forwarded to the Federal Bureau of
167 Investigation for a national criminal history record check. Upon receipt of the
168 completed background [check] **checks**, the sheriff shall **examine the results**
169 **and, if no disqualifying information is identified, shall** issue a [certificate
170 of qualification for a concealed carry endorsement] **concealed carry permit**
171 within three working days. [The sheriff shall issue the certificate within
172 forty-five calendar days if the criminal background check has not been received,
173 provided that the sheriff shall revoke any such certificate and endorsement
174 within twenty-four hours of receipt of any background check that results in a
175 disqualifying record, and shall notify the department of revenue.]

176 **(2) In the event the background checks prescribed by subdivision**
177 **(1) of this section are not completed within forty-five calendar days and**
178 **no disqualifying information concerning the applicant has otherwise**
179 **come to the sheriff's attention, the sheriff shall issue a provisional**

180 permit, clearly designated on the certificate as such, which the
181 applicant shall sign in the presence of the sheriff or the sheriff's
182 designee. This permit, when carried with a valid Missouri driver's or
183 nondriver's license or a valid military identification, shall permit the
184 applicant to exercise the same rights in accordance with the same
185 conditions as pertain to a concealed carry permit issued under this
186 section, provided that it shall not serve as an alternative to an National
187 Instant Criminal background check required by 18 U.S.C. 922(t). The
188 provisional permit shall remain valid until such time as the sheriff
189 either issues or denies the certificate of qualification under subsection
190 6 or 7. The sheriff shall revoke a provisional permit issued under this
191 subsection within twenty-four hours of receipt of any background
192 check that identifies a disqualifying record, and shall notify the
193 Missouri uniform law enforcement system. The revocation of a
194 provisional permit issued under this section shall be proscribed in a
195 manner consistent to the denial and review of an application under
196 subsection 6 of this section.

197 6. The sheriff may refuse to approve an application for a [certificate of
198 qualification for a concealed carry endorsement] **concealed carry permit** if he
199 or she determines that any of the requirements specified in subsection 2 of this
200 section have not been met, or if he or she has a substantial and demonstrable
201 reason to believe that the applicant has rendered a false statement regarding any
202 of the provisions of sections 571.101 to 571.121. If the applicant is found to be
203 ineligible, the sheriff is required to deny the application, and notify the applicant
204 in writing, stating the grounds for denial and informing the applicant of the right
205 to submit, within thirty days, any additional documentation relating to the
206 grounds of the denial. Upon receiving any additional documentation, the sheriff
207 shall reconsider his or her decision and inform the applicant within thirty days
208 of the result of the reconsideration. The applicant shall further be informed in
209 writing of the right to appeal the denial pursuant to subsections 2, 3, 4, and 5 of
210 section 571.114. After two additional reviews and denials by the sheriff, the
211 person submitting the application shall appeal the denial pursuant to subsections
212 2, 3, 4, and 5 of section 571.114.

213 7. If the application is approved, the sheriff shall issue a [certificate of
214 qualification for a concealed carry endorsement] **concealed carry permit** to the
215 applicant within a period not to exceed three working days after his or her

216 approval of the application. The applicant shall sign the [certificate of
217 qualification] **concealed carry permit** in the presence of the sheriff or his or
218 her designee and shall within seven days of receipt of the certificate of
219 qualification take the certificate of qualification to the department of
220 revenue. Upon verification of the certificate of qualification and completion of a
221 driver's license or nondriver's license application pursuant to chapter 302, the
222 director of revenue shall issue a new driver's license or nondriver's license with
223 an endorsement which identifies that the applicant has received a certificate of
224 qualification to carry concealed weapons issued pursuant to sections 571.101 to
225 571.121 if the applicant is otherwise qualified to receive such driver's license or
226 nondriver's license. Notwithstanding any other provision of chapter 302, a
227 nondriver's license with a concealed carry endorsement shall expire three years
228 from the date the certificate of qualification was issued pursuant to this section.
229 [The requirements for the director of revenue to issue a concealed carry
230 endorsement pursuant to this subsection shall not be effective until July 1, 2004,
231 and the certificate of qualification issued by a county sheriff pursuant to
232 subsection 1 of this section shall allow the person issued such certificate to carry
233 a concealed weapon pursuant to the requirements of subsection 1 of section
234 571.107 in lieu of the concealed carry endorsement issued by the director of
235 revenue from October 11, 2003, until the concealed carry endorsement is issued
236 by the director of revenue on or after July 1, 2004, unless such certificate of
237 qualification has been suspended or revoked for cause.]

238 **8. The concealed carry permit shall specify only the following**
239 **information:**

240 **(1) Name, address, date of birth, gender, height, weight, color of**
241 **hair, color of eyes, and signature of the permit holder;**

242 **(2) The signature of the sheriff issuing the permit;**

243 **(3) The date of issuance; and**

244 **(4) The expiration date.**

245 **The permit shall be no larger than two inches wide by three and one-**
246 **fourth inches long and shall be of a uniform style prescribed by the**
247 **department of public safety. The permit shall also be assigned a**
248 **Missouri uniform law enforcement system county code and shall be**
249 **stored in sequential number.**

250 **9. (1) The sheriff shall keep a record of all applications for a [certificate**
251 **of qualification for a concealed carry endorsement] concealed carry permit or**

252 a **provisional permit** and his or her action thereon. **Any record of an**
253 **application that is incomplete or denied for any reason shall be kept**
254 **for a period not to exceed one year. Any record of an application that**
255 **was approved shall be kept for a period of one year after the expiration**
256 **and non-renewal of the permit. Beginning August 28, 2013, the**
257 **department of revenue shall not keep any record of an application for**
258 **a concealed carry permit. Any information collected by the department**
259 **of revenue related to an application for a concealed carry endorsement**
260 **prior to August 28, 2013, shall be given to the members of MoSMART,**
261 **created under section 650.350, for the dissemination of the information**
262 **to the sheriff of any county or city not within a county in which the**
263 **applicant resides to keep in accordance with the provisions of this**
264 **subsection.**

265 (2) The sheriff shall report the issuance of a [certificate of qualification]
266 **concealed carry permit or provisional permit** to the Missouri uniform law
267 enforcement system. All information on any such [certificate] **permit** that is
268 protected information on any driver's or nondriver's license shall have the same
269 personal protection for purposes of sections 571.101 to 571.121. An applicant's
270 status as a holder of a [certificate of qualification] **concealed carry permit,**
271 **provisional permit,** or a concealed carry endorsement **issued prior to August**
272 **28, 2013,** shall not be public information and shall be considered personal
273 protected information. **Information retained under this subsection shall**
274 **not be batch processed for query and shall only be made available for**
275 **a single entry query of an individual in the event the individual is a**
276 **subject of interest in an active criminal investigation or is arrested for**
277 **a crime.**

278 Any person who violates the provisions of this subsection by disclosing protected
279 information shall be guilty of a class A misdemeanor.

280 [9.] 10. Information regarding any holder of a [certificate of qualification]
281 **concealed carry permit,** or a concealed carry endorsement **issued prior to**
282 **August 28, 2013,** is a closed record. **No bulk download or batch data shall**
283 **be preformed or distributed to any federal, state, or private entity,**
284 **except to MoSMART as provided under subsection 9 of this**
285 **section. Any state agency that has retained any documents or records,**
286 **including fingerprint records provided by an applicant for a concealed**
287 **carry endorsement prior to August 28, 2013, shall destroy such**

288 **documents or records, upon successful issuance of a permit.**

289 [10.] **11.** For processing an application for a [certificate of qualification
290 for a concealed carry endorsement] **concealed carry permit** pursuant to
291 sections 571.101 to 571.121, the sheriff in each county shall charge a
292 nonrefundable fee not to exceed one hundred dollars which shall be paid to the
293 treasury of the county to the credit of the sheriff's revolving fund.

294 [11.] **12.** For processing a renewal for a [certificate of qualification for a
295 concealed carry endorsement] **concealed carry permit** pursuant to sections
296 571.101 to 571.121, the sheriff in each county shall charge a nonrefundable fee
297 not to exceed fifty dollars which shall be paid to the treasury of the county to the
298 credit of the sheriff's revolving fund.

299 [12.] **13.** For the purposes of sections 571.101 to 571.121, the term
300 "sheriff" shall include the sheriff of any county or city not within a county or his
301 or her designee and in counties of the first classification the sheriff may designate
302 the chief of police of any city, town, or municipality within such county.

303 **14. For the purposes of this chapter, "concealed carry permit"**
304 **shall include any concealed carry endorsement issued by the**
305 **department of revenue before January 1, 2014 and any concealed carry**
306 **document issued by any sheriff or under the authority of any sheriff**
307 **after December 31, 2013.**

571.104. 1. (1) A concealed carry [endorsement] **permit** issued pursuant
2 to sections 571.101 to 571.121, **and, if applicable, a concealed carry**
3 **endorsement issued prior to August 28, 2013**, shall be suspended or revoked
4 if the concealed carry **permit or** endorsement holder becomes ineligible for such
5 [concealed carry] **permit or** endorsement under the criteria established in
6 subdivisions (2), (3), (4), (5), [and] (7), **and (11)** of subsection 2 of section 571.101
7 or upon the issuance of a valid full order of protection.

8 (2) When a valid full order of protection, or any arrest warrant, discharge,
9 or commitment for the reasons listed in subdivision (2), (3), (4), (5), [or] (7), **or**
10 **(11)** of subsection 2 of section 571.101, is issued against a person holding a
11 concealed carry [endorsement] **permit** issued pursuant to sections 571.101 to
12 571.121, **or a concealed carry endorsement issued prior to August 28,**
13 **2013**, upon notification of said order, warrant, discharge or commitment or upon
14 an order of a court of competent jurisdiction in a criminal proceeding, a
15 commitment proceeding or a full order of protection proceeding ruling that a
16 person holding a concealed carry **permit or** endorsement presents a risk of harm

17 to themselves or others, then upon notification of such order, the holder of the
18 concealed carry **permit or** endorsement shall surrender the **permit, and, if**
19 **applicable, the** driver's license or nondriver's license containing the concealed
20 carry endorsement to the court, [to the] officer, or other official serving the order,
21 warrant, discharge, or commitment.

22 (3) **In cases involving a concealed carry endorsement issued prior**
23 **to August 28, 2013,** the official to whom the driver's license or nondriver's
24 license containing the concealed carry endorsement is surrendered shall issue a
25 receipt to the licensee for the license upon a form, approved by the director of
26 revenue, that serves as a driver's license or a nondriver's license and clearly
27 states the concealed carry endorsement has been suspended. The official shall
28 then transmit the driver's license or a nondriver's license containing the
29 concealed carry endorsement to the circuit court of the county issuing the order,
30 warrant, discharge, or commitment. The concealed carry [endorsement] **permit**
31 issued pursuant to sections 571.101 to 571.121, **and, if applicable, the**
32 **concealed carry endorsement issued prior to August 28, 2013,** shall be
33 suspended until the order is terminated or until the arrest results in a dismissal
34 of all charges. Upon dismissal, the court holding the **permit and, if**
35 **applicable, the** driver's license or nondriver's license containing the concealed
36 carry endorsement shall return [it] **such permit or license** to the individual.

37 (4) Any conviction, discharge, or commitment specified in sections 571.101
38 to 571.121 shall result in a revocation. Upon conviction, the court shall forward
39 a notice of conviction or action and the **permit to the issuing county sheriff.**
40 **If a concealed carry endorsement issued prior to August 28, 2013, is**
41 **revoked, the court shall forward the notice and the** driver's license or
42 nondriver's license with the concealed carry endorsement to the department of
43 revenue. The department of revenue shall notify the sheriff of the county which
44 issued the certificate of qualification for a concealed carry endorsement
45 [and]. **The sheriff who issued the concealed carry permit, or the**
46 **certificate of qualification prior to August 28, 2013,** shall report the change
47 in status of the concealed carry **permit or** endorsement to the Missouri uniform
48 law enforcement system. The director of revenue shall immediately remove the
49 endorsement issued [pursuant to sections 571.101 to 571.121] **prior to August**
50 **28, 2013,** from the individual's driving record within three days of the receipt of
51 the notice from the court. The director of revenue shall notify the licensee that
52 he or she must apply for a new license pursuant to chapter 302 which does not

53 contain such endorsement. This requirement does not affect the driving
54 privileges of the licensee. The notice issued by the department of revenue shall
55 be mailed to the last known address shown on the individual's driving
56 record. The notice is deemed received three days after mailing.

57 2. A concealed carry [endorsement] **permit** shall be renewed for a
58 qualified applicant upon receipt of the properly completed renewal application
59 and the required renewal fee by the sheriff of the county of the applicant's
60 residence. The renewal application shall contain the same required information
61 as set forth in subsection 3 of section 571.101, except that in lieu of the
62 fingerprint requirement of subsection 5 of section 571.101 and the firearms safety
63 training, the applicant need only display his or her current [driver's license or
64 nondriver's license containing a] concealed carry [endorsement] **permit**. [Upon
65 successful completion of] **A name-based background check, including an**
66 **inquiry of the National Instant Criminal Background Check System,**
67 **shall be completed for each renewal application. The sheriff shall**
68 **review the results of the background check, and when the sheriff has**
69 **determined the applicant has successfully completed** all renewal
70 requirements **and is not disqualified under any provision of section**
71 **571.101,** the sheriff shall issue a [certificate of qualification] **new concealed**
72 **carry permit** which contains the date such [certificate] **permit** was
73 renewed. **The process for renewing a concealed carry endorsement**
74 **issued prior to August 28, 2013, shall be the same as the process for**
75 **renewing a permit, except that in lieu of the fingerprint requirement**
76 **of subsection 5 of section 571.101 and the firearms safety training, the**
77 **applicant need only display his or her current driver's license or**
78 **nondriver's license containing an endorsement. Upon successful**
79 **completion of all renewal requirements, the sheriff shall issue a new**
80 **concealed carry permit as provided under this subsection.**

81 3. A person who has been issued a [certificate] **concealed carry permit,**
82 **or a certificate** of qualification for a concealed carry endorsement **prior to**
83 **August 28, 2013,** who fails to file a renewal application **for a concealed carry**
84 **permit** on or before its expiration date must pay an additional late fee of ten
85 dollars per month for each month it is expired for up to six months. After six
86 months, the sheriff who issued the expired **concealed carry permit or**
87 **certificate of qualification** shall notify the **Missouri uniform law**
88 **enforcement system and the individual that such permit is expired and**

89 **cancelled. If the person has a concealed carry endorsement issued**
90 **prior to August 28, 2013, the sheriff who issued the certificate of**
91 **qualification for the endorsement shall notify the** director of revenue that
92 such certificate is expired **regardless of whether the endorsement holder**
93 **has applied for a concealed carry permit under subsection 2 of this**
94 **section.** The director of revenue shall immediately [cancel the concealed carry
95 endorsement and] remove such endorsement from the individual's driving record
96 and notify the individual [of such cancellation] **that his or her driver's license**
97 **or nondriver's license has expired.** The notice [of cancellation of the
98 endorsement] shall be conducted in the same manner as described in subsection
99 1 of this section. Any person who has been issued a [certificate of qualification
100 for a concealed carry endorsement] **concealed carry permit** pursuant to
101 sections 571.101 to 571.121, **or a concealed carry endorsement issued prior**
102 **to August 28, 2013,** who fails to renew his or her application within the
103 six-month period must reapply for a new [certificate of qualification for a
104 concealed carry endorsement] **concealed carry permit** and pay the fee for a
105 new application. [The director of revenue shall not issue an endorsement on a
106 renewed driver's license or renewed nondriver's license unless the applicant for
107 such license provides evidence that he or she has renewed the certification of
108 qualification for a concealed carry endorsement in the manner provided for such
109 renewal pursuant to sections 571.101 to 571.121. If an applicant for renewal of
110 a driver's license or nondriver's license containing a concealed carry endorsement
111 does not want to maintain the concealed carry endorsement, the applicant shall
112 inform the director at the time of license renewal of his or her desire to remove
113 the endorsement. When a driver's or nondriver's license applicant informs the
114 director of his or her desire to remove the concealed carry endorsement, the
115 director shall renew the driver's license or nondriver's license without the
116 endorsement appearing on the license if the applicant is otherwise qualified for
117 such renewal.]

118 4. Any person issued a concealed carry [endorsement] **permit** pursuant
119 to sections 571.101 to 571.121, **or a concealed carry endorsement issued**
120 **prior to August 28, 2013,** shall notify [the department of revenue and] the
121 sheriffs of both the old and new jurisdictions of the **permit or** endorsement
122 holder's change of residence within thirty days after the changing of a permanent
123 residence. The **permit or** endorsement holder shall furnish proof to [the
124 department of revenue and] the sheriff in the new jurisdiction that the **permit**

125 or endorsement holder has changed his or her residence. The sheriff of the new
126 jurisdiction may charge a processing fee of not more than ten dollars for any costs
127 associated with notification of a change in residence. **If the person has a**
128 **concealed carry endorsement issued prior to August 28, 2013, the**
129 **endorsement holder shall also furnish proof to the department of**
130 **revenue of his or her residence change. In such cases,** the change of
131 residence shall be made by the department of revenue onto the individual's
132 driving record [and]. **The sheriff shall report the residence change to the**
133 **Missouri uniform law enforcement system, and** the new address shall be
134 accessible by the Missouri uniform law enforcement system within three days of
135 receipt of the information.

136 5. Any person issued a [driver's license or nondriver's license containing
137 a] concealed carry [endorsement] **permit** pursuant to sections 571.101 to
138 571.121, **or a concealed carry endorsement issued prior to August 28,**
139 **2013,** shall notify the sheriff or his or her designee of the **permit or** endorsement
140 holder's county or city of residence within seven days after actual knowledge of
141 the loss or destruction of his or her **permit or** driver's license or nondriver's
142 license containing a concealed carry endorsement. The **permit or** endorsement
143 holder shall furnish a statement to the sheriff that the **permit or** driver's license
144 or nondriver's license containing the concealed carry endorsement has been lost
145 or destroyed. After notification of the loss or destruction of a **permit or** driver's
146 license or nondriver's license containing a concealed carry endorsement, the
147 sheriff **may charge a processing fee of ten dollars for costs associated**
148 **with placing a lost or destroyed permit or driver's license or**
149 **nondriver's license containing a concealed carry endorsement and** shall
150 reissue a new [certificate of qualification] **concealed carry permit** within three
151 working days of being notified by the concealed carry **permit or** endorsement
152 holder of its loss or destruction. The [reissued certificate of qualification] **new**
153 **concealed carry permit** shall contain the same personal information, including
154 expiration date, as the original [certificate of qualification. The applicant shall
155 then take the certificate to the department of revenue, and the department of
156 revenue shall proceed on the certificate in the same manner as provided in
157 subsection 7 section 571.101. Upon application for a license pursuant to chapter
158 302, the director of revenue shall issue a driver's license or nondriver's license
159 containing a concealed carry endorsement if the applicant is otherwise eligible to
160 receive such license] **concealed carry permit.**

161 6. If a person issued a concealed carry **permit, or** endorsement issued
162 **prior to August 28, 2013**, changes his or her name, the person to whom the
163 **permit or** endorsement was issued shall obtain a corrected [certificate of
164 qualification for a concealed carry endorsement] **or new concealed carry**
165 **permit** with a change of name from the sheriff who issued [such certificate] **the**
166 **original concealed carry permit or the original certificate of**
167 **qualification for an endorsement** upon the sheriff's verification of the name
168 change. The sheriff may charge a processing fee of not more than ten dollars for
169 any costs associated with obtaining a corrected [certificate of qualification] **or**
170 **new concealed carry permit**. The **permit or** endorsement holder shall
171 furnish proof of the name change to the [department of revenue and the] sheriff
172 within thirty days of changing his or her name and display his or her **concealed**
173 **carry permit or** current driver's license or nondriver's license containing a
174 concealed carry endorsement. [The endorsement holder shall apply for a new
175 driver's license or nondriver's license containing his or her new name. Such
176 application for a driver's license or nondriver's license shall be made pursuant to
177 chapter 302. The director of revenue shall issue a driver's license or nondriver's
178 license with concealed carry endorsement with the endorsement holder's new
179 name if the applicant is otherwise eligible for such license. The director of
180 revenue shall take custody of the old driver's license or nondriver's license. The
181 name change shall be made by the department of revenue onto the individual's
182 driving record] **The sheriff shall report the name change to the Missouri**
183 **uniform law enforcement system**, and the new name shall be accessible by
184 the Missouri uniform law enforcement system within three days of receipt of the
185 information.

186 7. A concealed carry **permit and, if applicable**, endorsement shall be
187 automatically invalid after thirty days if the **permit or** endorsement holder has
188 changed his or her name or changed his or her residence and not notified the
189 [department of revenue and] sheriff [of a change of name or residence] as
190 required in subsections 4 and 6 of this section.

571.107. 1. A concealed carry [endorsement] **permit** issued pursuant to
2 sections 571.101 to 571.121, **a valid concealed carry endorsement issued**
3 **prior to August 28, 2013**, or a concealed carry endorsement or permit issued
4 by another state or political subdivision of another state shall authorize the
5 person in whose name the permit or endorsement is issued to carry concealed
6 firearms on or about his or her person or vehicle throughout the state. No

7 [driver's license or nondriver's license containing a] concealed carry
8 [endorsement] **permit** issued pursuant to sections 571.101 to 571.121, **valid**
9 **concealed carry endorsement issued prior to August 28, 2013**, or a
10 concealed carry endorsement or permit issued by another state or political
11 subdivision of another state shall authorize any person to carry concealed
12 firearms into:

13 (1) Any police, sheriff, or highway patrol office or station without the
14 consent of the chief law enforcement officer in charge of that office or
15 station. Possession of a firearm in a vehicle on the premises of the office or
16 station shall not be a criminal offense so long as the firearm is not removed from
17 the vehicle or brandished while the vehicle is on the premises;

18 (2) Within twenty-five feet of any polling place on any election
19 day. Possession of a firearm in a vehicle on the premises of the polling place
20 shall not be a criminal offense so long as the firearm is not removed from the
21 vehicle or brandished while the vehicle is on the premises;

22 (3) The facility of any adult or juvenile detention or correctional
23 institution, prison or jail. Possession of a firearm in a vehicle on the premises of
24 any adult, juvenile detention, or correctional institution, prison or jail shall not
25 be a criminal offense so long as the firearm is not removed from the vehicle or
26 brandished while the vehicle is on the premises;

27 (4) Any courthouse solely occupied by the circuit, appellate or supreme
28 court, or any courtrooms, administrative offices, libraries or other rooms of any
29 such court whether or not such court solely occupies the building in
30 question. This subdivision shall also include, but not be limited to, any juvenile,
31 family, drug, or other court offices, any room or office wherein any of the courts
32 or offices listed in this subdivision are temporarily conducting any business
33 within the jurisdiction of such courts or offices, and such other locations in such
34 manner as may be specified by supreme court rule pursuant to subdivision (6) of
35 this subsection. Nothing in this subdivision shall preclude those persons listed
36 in subdivision (1) of subsection 2 of section 571.030 while within their jurisdiction
37 and on duty, those persons listed in subdivisions (2), (4), and (10) of subsection
38 2 of section 571.030, or such other persons who serve in a law enforcement
39 capacity for a court as may be specified by supreme court rule pursuant to
40 subdivision (6) of this subsection from carrying a concealed firearm within any
41 of the areas described in this subdivision. Possession of a firearm in a vehicle on
42 the premises of any of the areas listed in this subdivision shall not be a criminal

HCS SB 75

30

43 offense so long as the firearm is not removed from the vehicle or brandished while
44 the vehicle is on the premises;

45 (5) Any meeting of the governing body of a unit of local government; or
46 any meeting of the general assembly or a committee of the general assembly,
47 except that nothing in this subdivision shall preclude a member of the body
48 holding a valid concealed carry **permit or** endorsement from carrying a concealed
49 firearm at a meeting of the body which he or she is a member. Possession of a
50 firearm in a vehicle on the premises shall not be a criminal offense so long as the
51 firearm is not removed from the vehicle or brandished while the vehicle is on the
52 premises. Nothing in this subdivision shall preclude a member of the general
53 assembly, a full-time employee of the general assembly employed under section
54 17, article III, Constitution of Missouri, legislative employees of the general
55 assembly as determined under section 21.155, or statewide elected officials and
56 their employees, holding a valid concealed carry **permit or** endorsement, from
57 carrying a concealed firearm in the state capitol building or at a meeting whether
58 of the full body of a house of the general assembly or a committee thereof, that
59 is held in the state capitol building;

60 (6) The general assembly, supreme court, county or municipality may by
61 rule, administrative regulation, or ordinance prohibit or limit the carrying of
62 concealed firearms by **permit or** endorsement holders in that portion of a
63 building owned, leased or controlled by that unit of government. Any portion of
64 a building in which the carrying of concealed firearms is prohibited or limited
65 shall be clearly identified by signs posted at the entrance to the restricted
66 area. The statute, rule or ordinance shall exempt any building used for public
67 housing by private persons, highways or rest areas, firing ranges, and private
68 dwellings owned, leased, or controlled by that unit of government from any
69 restriction on the carrying or possession of a firearm. The statute, rule or
70 ordinance shall not specify any criminal penalty for its violation but may specify
71 that persons violating the statute, rule or ordinance may be denied entrance to
72 the building, ordered to leave the building and if employees of the unit of
73 government, be subjected to disciplinary measures for violation of the provisions
74 of the statute, rule or ordinance. The provisions of this subdivision shall not
75 apply to any other unit of government;

76 (7) Any establishment licensed to dispense intoxicating liquor for
77 consumption on the premises, which portion is primarily devoted to that purpose,
78 without the consent of the owner or manager. The provisions of this subdivision

79 shall not apply to the licensee of said establishment. The provisions of this
80 subdivision shall not apply to any bona fide restaurant open to the general public
81 having dining facilities for not less than fifty persons and that receives at least
82 fifty-one percent of its gross annual income from the dining facilities by the sale
83 of food. This subdivision does not prohibit the possession of a firearm in a vehicle
84 on the premises of the establishment and shall not be a criminal offense so long
85 as the firearm is not removed from the vehicle or brandished while the vehicle is
86 on the premises. Nothing in this subdivision authorizes any individual who has
87 been issued a concealed carry **permit or** endorsement to possess any firearm
88 while intoxicated;

89 (8) Any area of an airport to which access is controlled by the inspection
90 of persons and property. Possession of a firearm in a vehicle on the premises of
91 the airport shall not be a criminal offense so long as the firearm is not removed
92 from the vehicle or brandished while the vehicle is on the premises;

93 (9) Any place where the carrying of a firearm is prohibited by federal law;

94 (10) Any higher education institution or elementary or secondary school
95 facility without the consent of the governing body of the higher education
96 institution or a school official or the district school board. Possession of a firearm
97 in a vehicle on the premises of any higher education institution or elementary or
98 secondary school facility shall not be a criminal offense so long as the firearm is
99 not removed from the vehicle or brandished while the vehicle is on the premises;

100 (11) Any portion of a building used as a child care facility without the
101 consent of the manager. Nothing in this subdivision shall prevent the operator
102 of a child care facility in a family home from owning or possessing a firearm or
103 a [driver's license or nondriver's license containing a] concealed carry **permit or**
104 endorsement;

105 (12) Any riverboat gambling operation accessible by the public without the
106 consent of the owner or manager pursuant to rules promulgated by the gaming
107 commission. Possession of a firearm in a vehicle on the premises of a riverboat
108 gambling operation shall not be a criminal offense so long as the firearm is not
109 removed from the vehicle or brandished while the vehicle is on the premises;

110 (13) Any gated area of an amusement park. Possession of a firearm in a
111 vehicle on the premises of the amusement park shall not be a criminal offense so
112 long as the firearm is not removed from the vehicle or brandished while the
113 vehicle is on the premises;

114 (14) Any church or other place of religious worship without the consent

115 of the minister or person or persons representing the religious organization that
116 exercises control over the place of religious worship. Possession of a firearm in
117 a vehicle on the premises shall not be a criminal offense so long as the firearm
118 is not removed from the vehicle or brandished while the vehicle is on the
119 premises;

120 (15) Any private property whose owner has posted the premises as being
121 off-limits to concealed firearms by means of one or more signs displayed in a
122 conspicuous place of a minimum size of eleven inches by fourteen inches with the
123 writing thereon in letters of not less than one inch. The owner, business or
124 commercial lessee, manager of a private business enterprise, or any other
125 organization, entity, or person may prohibit persons holding a concealed carry
126 **permit or** endorsement from carrying concealed firearms on the premises and
127 may prohibit employees, not authorized by the employer, holding a concealed
128 carry **permit or** endorsement from carrying concealed firearms on the property
129 of the employer. If the building or the premises are open to the public, the
130 employer of the business enterprise shall post signs on or about the premises if
131 carrying a concealed firearm is prohibited. Possession of a firearm in a vehicle
132 on the premises shall not be a criminal offense so long as the firearm is not
133 removed from the vehicle or brandished while the vehicle is on the premises. An
134 employer may prohibit employees or other persons holding a concealed carry
135 **permit or** endorsement from carrying a concealed firearm in vehicles owned by
136 the employer;

137 (16) Any sports arena or stadium with a seating capacity of five thousand
138 or more. Possession of a firearm in a vehicle on the premises shall not be a
139 criminal offense so long as the firearm is not removed from the vehicle or
140 brandished while the vehicle is on the premises;

141 (17) Any hospital accessible by the public. Possession of a firearm in a
142 vehicle on the premises of a hospital shall not be a criminal offense so long as the
143 firearm is not removed from the vehicle or brandished while the vehicle is on the
144 premises.

145 2. Carrying of a concealed firearm in a location specified in subdivisions
146 (1) to (17) of subsection 1 of this section by any individual who holds a concealed
147 carry [endorsement] **permit** issued pursuant to sections 571.101 to 571.121, **or**
148 **a concealed carry endorsement issued prior to August 28, 2013**, shall not
149 be a criminal act but may subject the person to denial to the premises or removal
150 from the premises. If such person refuses to leave the premises and a peace

151 officer is summoned, such person may be issued a citation for an amount not to
152 exceed one hundred dollars for the first offense. If a second citation for a similar
153 violation occurs within a six-month period, such person shall be fined an amount
154 not to exceed two hundred dollars and his or her **permit, and, if applicable,**
155 endorsement to carry concealed firearms shall be suspended for a period of one
156 year. If a third citation for a similar violation is issued within one year of the
157 first citation, such person shall be fined an amount not to exceed five hundred
158 dollars and shall have his or her concealed carry **permit, and, if applicable,**
159 endorsement revoked and such person shall not be eligible for a concealed carry
160 [endorsement] **permit** for a period of three years. Upon conviction of charges
161 arising from a citation issued pursuant to this subsection, the court shall notify
162 the sheriff of the county which issued the **concealed carry permit, or, if the**
163 **person is a holder of a concealed carry endorsement issued prior to**
164 **August 28, 2013, the court shall notify the sheriff of the county which**
165 **issued the** certificate of qualification for a concealed carry endorsement and the
166 department of revenue. The sheriff shall suspend or revoke the **concealed**
167 **carry permit or, if applicable, the** certificate of qualification for a concealed
168 carry endorsement [and]. **If the person holds an endorsement,** the
169 department of revenue shall issue a notice of such suspension or revocation of the
170 concealed carry endorsement and take action to remove the concealed carry
171 endorsement from the individual's driving record. The director of revenue shall
172 notify the licensee that he or she must apply for a new license pursuant to
173 chapter 302 which does not contain such endorsement. [A concealed carry
174 endorsement suspension pursuant to sections 571.101 to 571.121 shall be
175 reinstated at the time of the renewal of his or her driver's license.] The notice
176 issued by the department of revenue shall be mailed to the last known address
177 shown on the individual's driving record. The notice is deemed received three
178 days after mailing.

571.111. 1. An applicant for a concealed carry [endorsement] **permit**
2 shall demonstrate knowledge of firearms safety training. This requirement shall
3 be fully satisfied if the applicant for a concealed carry [endorsement] **permit**:

4 (1) Submits a photocopy of a certificate of firearms safety training course
5 completion, as defined in subsection 2 of this section, signed by a qualified
6 firearms safety instructor as defined in subsection 5 of this section; or

7 (2) Submits a photocopy of a certificate that shows the applicant
8 completed a firearms safety course given by or under the supervision of any state,

9 county, municipal, or federal law enforcement agency; or

10 (3) Is a qualified firearms safety instructor as defined in subsection 5 of
11 this section; or

12 (4) Submits proof that the applicant currently holds any type of valid
13 peace officer license issued under the requirements of chapter 590; or

14 (5) Submits proof that the applicant is currently allowed to carry firearms
15 in accordance with the certification requirements of section 217.710; or

16 (6) Submits proof that the applicant is currently certified as any class of
17 corrections officer by the Missouri department of corrections and has passed at
18 least one eight-hour firearms training course, approved by the director of the
19 Missouri department of corrections under the authority granted to him or her [by
20 section 217.105], that includes instruction on the justifiable use of force as
21 prescribed in chapter 563; or

22 (7) Submits a photocopy of a certificate of firearms safety training course
23 completion that was issued on August 27, 2011, or earlier so long as the
24 certificate met the requirements of subsection 2 of this section that were in effect
25 on the date it was issued.

26 2. A certificate of firearms safety training course completion may be
27 issued to any applicant by any qualified firearms safety instructor. On the
28 certificate of course completion the qualified firearms safety instructor shall
29 affirm that the individual receiving instruction has taken and passed a firearms
30 safety course of at least eight hours in length taught by the instructor that
31 included:

32 (1) Handgun safety in the classroom, at home, on the firing range and
33 while carrying the firearm;

34 (2) A physical demonstration performed by the applicant that
35 demonstrated his or her ability to safely load and unload a revolver and a
36 semiautomatic pistol and demonstrated his or her marksmanship with both;

37 (3) The basic principles of marksmanship;

38 (4) Care and cleaning of concealable firearms;

39 (5) Safe storage of firearms at home;

40 (6) The requirements of this state for obtaining a [certificate of
41 qualification for a concealed carry endorsement] **concealed carry permit** from
42 the sheriff of the individual's county of residence [and a concealed carry
43 endorsement issued by the department of revenue];

44 (7) The laws relating to firearms as prescribed in this chapter;

45 (8) The laws relating to the justifiable use of force as prescribed in
46 chapter 563;

47 (9) A live firing exercise of sufficient duration for each applicant to fire
48 both a revolver and a semiautomatic pistol, from a standing position or its
49 equivalent, a minimum of [fifty] **twenty** rounds from each handgun at a distance
50 of seven yards from a B-27 silhouette target or an equivalent target;

51 (10) A live fire test administered to the applicant while the instructor was
52 present of twenty rounds from each handgun from a standing position or its
53 equivalent at a distance from a B-27 silhouette target, or an equivalent target,
54 of seven yards.

55 3. A qualified firearms safety instructor shall not give a grade of passing
56 to an applicant for a concealed carry [endorsement] **permit** who:

57 (1) Does not follow the orders of the qualified firearms instructor or
58 cognizant range officer; or

59 (2) Handles a firearm in a manner that, in the judgment of the qualified
60 firearm safety instructor, poses a danger to the applicant or to others; or

61 (3) During the live fire testing portion of the course fails to hit the
62 silhouette portion of the targets with at least fifteen rounds, with both handguns.

63 4. Qualified firearms safety instructors who provide firearms safety
64 instruction to any person who applies for a concealed carry [endorsement]
65 **permit** shall:

66 (1) Make the applicant's course records available upon request to the
67 sheriff of the county in which the applicant resides;

68 (2) Maintain all course records on students for a period of no less than
69 four years from course completion date; and

70 (3) Not have more than forty students in the classroom portion of the
71 course or more than five students per range officer engaged in range firing.

72 5. A firearms safety instructor shall be considered to be a qualified
73 firearms safety instructor by any sheriff issuing a [certificate of qualification for
74 a concealed carry endorsement] **concealed carry permit** pursuant to sections
75 571.101 to 571.121 if the instructor:

76 (1) Is a valid firearms safety instructor certified by the National Rifle
77 Association holding a rating as a personal protection instructor or pistol
78 marksmanship instructor; or

79 (2) Submits a photocopy of a **notarized** certificate from a firearms safety
80 instructor's course offered by a local, state, or federal governmental agency; or

HCS SB 75

36

81 (3) Submits a photocopy of a **notarized** certificate from a firearms safety
82 instructor course approved by the department of public safety; or

83 (4) Has successfully completed a firearms safety instructor course given
84 by or under the supervision of any state, county, municipal, or federal law
85 enforcement agency; or

86 (5) Is a certified police officer firearms safety instructor.

87 6. Any firearms safety instructor **qualified under subsection 5 of this**
88 **section may submit a copy of a training instructor certificate, course**
89 **outline bearing notarized signature of instructor, and recent**
90 **photograph of his or herself to the sheriff of the county in which he or**
91 **she resides. Each sheriff shall collect an annual registration fee of ten**
92 **dollars from each qualified instructor who chooses to submit such**
93 **information and shall retain a database of qualified instructors. This**
94 **information shall be a closed record except for access by any sheriff.**

95 7. Any firearms safety instructor who knowingly provides any sheriff
96 with any false information concerning an applicant's performance on any portion
97 of the required training and qualification shall be guilty of a class C
98 misdemeanor. **A violation of the provisions of this section shall result in**
99 **the person being prohibited from instructing concealed carry permit**
100 **classes and issuing certificates.**

571.114. 1. In any case when the sheriff refuses to issue a [certificate of
2 qualification] **concealed carry permit** or to act on an application for such
3 [certificate] **permit**, the denied applicant shall have the right to appeal the
4 denial within thirty days of receiving written notice of the denial. Such appeals
5 shall be heard in small claims court as defined in section 482.300, and the
6 provisions of sections 482.300, 482.310 and 482.335 shall apply to such appeals.

7 2. A denial of or refusal to act on an application for a [certificate of
8 qualification] **concealed carry permit** may be appealed by filing with the clerk
9 of the small claims court a copy of the sheriff's written refusal and a form
10 substantially similar to the appeal form provided in this section. Appeal forms
11 shall be provided by the clerk of the small claims court free of charge to any
12 person:

13 SMALL CLAIMS COURT

14 In the Circuit Court of, Missouri
15, Denied Applicant

16)

HCS SB 75

37

17)
18 vs.) Case Number
19)
20)

21 , Sheriff
22 Return Date

23 APPEAL OF A DENIAL
24 OF [CERTIFICATE OF
25 QUALIFICATION FOR A

26 CONCEALED CARRY ENDORSEMENT] A CONCEALED CARRY PERMIT
27 The denied applicant states that his or her properly completed application for a
28 [certificate of qualification for a concealed carry endorsement] **concealed carry**
29 **permit** was denied by the sheriff of County, Missouri, without just
30 cause. The denied applicant affirms that all of the statements in the application
31 are true.

32 , Denied Applicant

33 3. The notice of appeal in a denial of a [certificate of qualification for a
34 concealed carry endorsement] **concealed carry permit** appeal shall be made
35 to the sheriff in a manner and form determined by the small claims court judge.

36 4. If at the hearing the person shows he or she is entitled to the requested
37 [certificate of qualification for a] concealed carry [endorsement] **permit**, the
38 court shall issue an appropriate order to cause the issuance of the [certificate of
39 qualification for a] concealed carry [endorsement] **permit**. Costs shall not be
40 assessed against the sheriff unless the action of the sheriff is determined by the
41 judge to be arbitrary and capricious.

42 5. Any person aggrieved by any final judgment rendered by a small claims
43 court in a denial of a [certificate of qualification for a] concealed carry
44 [endorsement] **permit** appeal may have a right to trial de novo as provided in
45 sections 512.180 to 512.320.

571.117. 1. Any person who has knowledge that another person, who was
2 issued a [certificate of qualification for a] concealed carry [endorsement] **permit**
3 pursuant to sections 571.101 to 571.121, **or concealed carry endorsement**
4 **prior to August 28, 2013**, never was or no longer is eligible for such **permit or**
5 endorsement under the criteria established in sections 571.101 to 571.121 may
6 file a petition with the clerk of the small claims court to revoke that person's
7 [certificate of qualification for a concealed carry endorsement and such person's]

HCS SB 75

38

8 concealed carry **permit or** endorsement. The petition shall be in a form
9 substantially similar to the petition for revocation of concealed carry **permit or**
10 endorsement provided in this section. Appeal forms shall be provided by the clerk
11 of the small claims court free of charge to any person:

12 SMALL CLAIMS COURT

13 In the Circuit Court of, Missouri
14, PLAINTIFF

15)

16)

17 vs.) Case Number

18)

19, DEFENDANT,

20 Carry **Permit or** Endorsement Holder

21, DEFENDANT,

22 Sheriff of Issuance

23 PETITION FOR REVOCATION

24 OF [CERTIFICATE OF QUALIFICATION] A **CONCEALED CARRY PERMIT**

25 OR **CONCEALED CARRY ENDORSEMENT**

26 Plaintiff states to the court that the defendant,, has a [certificate
27 of qualification or a] concealed carry [endorsement] **permit** issued pursuant to
28 sections 571.101 to 571.121, RSMo, **or a concealed carry endorsement**
29 **issued prior to August 28, 2013**, and that the defendant's [certificate of
30 qualification] **concealed carry permit** or concealed carry endorsement should
31 now be revoked because the defendant either never was or no longer is eligible
32 for such a [certificate] **permit** or endorsement pursuant to the provisions of
33 sections 571.101 to 571.121, RSMo, specifically plaintiff states that defendant,
34, never was or no longer is eligible for such [certificate] **permit** or
35 endorsement for one or more of the following reasons:

36 (CHECK BELOW EACH REASON

37 THAT APPLIES TO THIS DEFENDANT)

38 Defendant is not at least twenty-one years of age or at least eighteen years
39 of age and a member of the United States Armed Forces or honorably
40 discharged from the United States Armed Forces.

41 Defendant is not a citizen **or permanent resident** of the United States.

42 Defendant had not resided in this state prior to issuance of the permit and

HCS SB 75

39

43 does not qualify as a military member or spouse of a military member
44 stationed in Missouri.

45 Defendant has pled guilty to or been convicted of a crime punishable by
46 imprisonment for a term exceeding [one year] **two years** under the laws
47 of any state or of the United States other than a crime classified as a
48 misdemeanor under the laws of any state and punishable by a term of
49 imprisonment of one year or less that does not involve an explosive
50 weapon, firearm, firearm silencer, or gas gun.

51 Defendant has been convicted of, pled guilty to or entered a plea of nolo
52 contendere to one or more misdemeanor offenses involving crimes of
53 violence within a five-year period immediately preceding application for
54 a [certificate of qualification or] concealed carry [endorsement] **permit**
55 issued pursuant to sections 571.101 to 571.121, RSMo, **or a concealed**
56 **carry endorsement issued prior to August 28, 2013**, or if the
57 applicant has been convicted of two or more misdemeanor offenses
58 involving driving while under the influence of intoxicating liquor or drugs
59 or the possession or abuse of a controlled substance within a five-year
60 period immediately preceding application for a [certificate of qualification
61 or a] concealed carry [endorsement] **permit** issued pursuant to sections
62 571.101 to 571.121, RSMo, **or a concealed carry endorsement issued**
63 **prior to August 28, 2013**.

64 Defendant is a fugitive from justice or currently charged in an information
65 or indictment with the commission of a crime punishable by imprisonment
66 for a term exceeding one year under the laws of any state of the United
67 States other than a crime classified as a misdemeanor under the laws of
68 any state and punishable by a term of imprisonment of [one year] **two**
69 **years** or less that does not involve an explosive weapon, firearm, firearm
70 silencer, or gas gun.

71 Defendant has been discharged under dishonorable conditions from the
72 United States Armed Forces.

73 Defendant is reasonably believed by the sheriff to be a danger to self or
74 others based on previous, documented pattern.

75 Defendant is adjudged mentally incompetent at the time of application or
76 for five years prior to application, or has been committed to a mental

77 health facility, as defined in section 632.005, RSMo, or a similar
78 institution located in another state, except that a person whose release or
79 discharge from a facility in this state pursuant to chapter 632, RSMo, or
80 a similar discharge from a facility in another state, occurred more than
81 five years ago without subsequent recommitment may apply.

82 Defendant failed to submit a completed application for a [certificate of
83 qualification or] concealed carry [endorsement] **permit** issued pursuant
84 to sections 571.101 to 571.121, RSMo, **or a concealed carry**
85 **endorsement issued prior to August 28, 2013.**

86 Defendant failed to submit to or failed to clear the required background
87 check. **(Note: This does not apply if the defendant has submitted**
88 **to a background check and been issued a provisional permit**
89 **pursuant to subdivision (2) of subsection 5 of section 571.101, and**
90 **the results of the background check are still pending.)**

91 Defendant failed to submit an affidavit attesting that the applicant
92 complies with the concealed carry safety training requirement pursuant
93 to subsection 1 of section 571.111, RSMo.

94 **Defendant is otherwise disqualified from possessing a firearm**
95 **pursuant to 18 U.S.C. 922(g) because {specify reason}:**

96 The plaintiff subject to penalty for perjury states that the information contained
97 in this petition is true and correct to the best of the plaintiff's knowledge, is
98 reasonably based upon the petitioner's personal knowledge and is not primarily
99 intended to harass the defendant/respondent named herein.

100, PLAINTIFF

101 2. If at the hearing the plaintiff shows that the defendant was not eligible
102 for the [certificate of qualification or the] concealed carry [endorsement] **permit**
103 issued pursuant to sections 571.101 to 571.121, **or a concealed carry**
104 **endorsement issued prior to August 28, 2013**, at the time of issuance or
105 renewal or is no longer eligible for a [certificate of qualification] **concealed**
106 **carry permit** or the concealed carry endorsement [issued pursuant to the
107 provisions of sections 571.101 to 571.121], the court shall issue an appropriate
108 order to cause the revocation of the [certificate of qualification or] **concealed**
109 **carry permit and, if applicable, the** concealed carry endorsement. Costs
110 shall not be assessed against the sheriff.

111 3. The finder of fact, in any action brought against [an] **a permit or**

112 endorsement holder pursuant to subsection 1 of this section, shall make findings
113 of fact and the court shall make conclusions of law addressing the issues at
114 dispute. If it is determined that the plaintiff in such an action acted without
115 justification or with malice or primarily with an intent to harass the **permit or**
116 endorsement holder or that there was no reasonable basis to bring the action, the
117 court shall order the plaintiff to pay the defendant/respondent all reasonable
118 costs incurred in defending the action including, but not limited to, attorney's
119 fees, deposition costs, and lost wages. Once the court determines that the
120 plaintiff is liable to the defendant/respondent for costs and fees, the extent and
121 type of fees and costs to be awarded should be liberally calculated in
122 defendant/respondent's favor. Notwithstanding any other provision of law,
123 reasonable attorney's fees shall be presumed to be at least one hundred fifty
124 dollars per hour.

125 4. Any person aggrieved by any final judgment rendered by a small claims
126 court in a petition for revocation of a [certificate of qualification] **concealed**
127 **carry permit** or concealed carry endorsement may have a right to trial de novo
128 as provided in sections 512.180 to 512.320.

129 5. The office of the county sheriff or any employee or agent of the county
130 sheriff shall not be liable for damages in any civil action arising from alleged
131 wrongful or improper granting, renewing, or failure to revoke a [certificate of
132 qualification or a] concealed carry [endorsement] **permit** issued pursuant to
133 sections 571.101 to 571.121, **or a certificate of qualification for a concealed**
134 **carry endorsement issued prior to August 28, 2013**, so long as the sheriff
135 acted in good faith.

571.121. 1. Any person issued a concealed carry [endorsement] **permit**
2 pursuant to sections 571.101 to 571.121, **or a concealed carry endorsement**
3 **issued prior to August 28, 2013**, shall carry the concealed carry **permit or**
4 endorsement at all times the person is carrying a concealed firearm and shall
5 display the concealed carry **permit and a state or federal government-**
6 **issued photo identification or the endorsement or permit** upon the request
7 of any peace officer. Failure to comply with this subsection shall not be a
8 criminal offense but the concealed carry **permit or** endorsement holder may be
9 issued a citation for an amount not to exceed thirty-five dollars.

10 2. Notwithstanding any other provisions of law, the director of revenue,
11 by carrying out his or her requirement to issue a driver's or nondriver's license
12 reflecting that a concealed carry permit has been granted **under the law as it**

13 **existed prior to August 28, 2013**, shall bear no liability and shall be immune
14 from any claims for damages resulting from any determination made regarding
15 the qualification of any person for such permit or for any actions stemming from
16 the conduct of any person issued such a permit. By issuing the permit on the
17 driver's or nondriver's license, the director of revenue [is] **was** merely acting as
18 a scrivener for any determination made by the sheriff that the person [is] **was**
19 qualified for the permit.

**571.500. No state agency or department, or contractor or agent
2 working for the state, shall construct, enable by providing or sharing
3 records to, maintain, participate in, develop, or cooperate with or
4 enable the state or federal government in developing a database or
5 record of the number or type of firearms, ammunition, or firearms
6 accessories that an individual possesses.**

650.350. 1. There is hereby created within the department of public
2 safety the "Missouri Sheriff Methamphetamine Relief Taskforce"
3 (MoSMART). MoSMART shall be composed of five sitting sheriffs. Every two
4 years, the Missouri Sheriffs' Association board of directors will submit twenty
5 names of sitting sheriffs to the governor. The governor shall appoint five
6 members from the list of twenty names, having no more than three from any one
7 political party, to serve a term of two years on MoSMART. The members shall
8 elect a chair from among their membership. Members shall receive no
9 compensation for the performance of their duties pursuant to this section, but
10 each member shall be reimbursed from the MoSMART fund for actual and
11 necessary expenses incurred in carrying out duties pursuant to this section.

12 2. MoSMART shall meet no less than twice each calendar year with
13 additional meetings called by the chair upon the request of at least two members.
14 A majority of the appointed members shall constitute a quorum.

15 3. A special fund is hereby created in the state treasury to be known as
16 the "MoSMART Fund". The state treasurer shall invest the moneys in such fund
17 in the manner authorized by law. All moneys received for MoSMART from
18 interest, state, and federal moneys shall be deposited to the credit of the
19 fund. The director of the department of public safety shall distribute at least fifty
20 percent but not more than one hundred percent of the fund annually in the form
21 of grants approved by MoSMART.

22 4. Except for money deposited into the deputy sheriff salary
23 supplementation fund created under section 57.278 **or money deposited into**

24 **the concealed carry permit fund created under subsection 5 of this**
25 **section**, all moneys appropriate to or received by MoSMART shall be deposited
26 and credited to the MoSMART fund. The department of public safety shall only
27 be reimbursed for actual and necessary expenses for the administration of
28 MoSMART, which shall be no less than one percent and which shall not exceed
29 two percent of all moneys appropriated to the fund, except that the department
30 shall not receive any amount of the money deposited into the deputy sheriff
31 salary supplementation fund for administrative purposes. The provisions of
32 section 33.080 to the contrary notwithstanding, moneys in the MoSMART fund
33 shall not lapse to general revenue at the end of the biennium.

34 **5. A special fund is hereby created in the state treasury to be**
35 **known as the “Concealed Carry Permit Fund”. The state treasurer shall**
36 **invest the moneys in such fund in the manner authorized by law. All**
37 **moneys shall be deposited to the credit of the fund. The director of the**
38 **department of public safety shall annually distribute all monies in the**
39 **fund in the form of grants approved by MoSMART. The department of**
40 **public safety shall administer all MoSMART grant deposits under this**
41 **section. Grant funds deposited into the fund created under this section**
42 **shall be spent first to ensure county law enforcement agencies’ ability**
43 **to comply with the issuance of concealed carry permits including, but**
44 **not limited to, equipment, records management hardware and software,**
45 **personnel, supplies, and other services. Notwithstanding the provisions**
46 **of section 33.080 to the contrary, any moneys remaining in the fund at**
47 **the end of the biennium shall not revert to the credit of the general**
48 **revenue fund. The state treasurer shall invest moneys in the fund in**
49 **the same manner as other funds are invested. Any interest and moneys**
50 **earned on such investments shall be credited to the fund.**

51 **6.** Any rule or portion of a rule, as that term is defined in section 536.010,
52 that is created under the authority delegated in this section shall become effective
53 only if it complies with and is subject to all of the provisions of chapter 536 and,
54 if applicable, section 536.028. This section and chapter 536 are nonseverable and
55 if any of the powers vested with the general assembly pursuant to chapter 536 to
56 review, to delay the effective date or to disapprove and annul a rule are
57 subsequently held unconstitutional, then the grant of rulemaking authority and
58 any rule proposed or adopted after August 28, 2003, shall be invalid and void.

59 **[6.] 7.** Any county law enforcement entity or established task force with

60 a memorandum of understanding and protocol may apply for grants from the
61 MoSMART fund on an application to be developed by the department of public
62 safety with the approval of MoSMART. All applications shall be evaluated by
63 MoSMART and approved or denied based upon the level of funding designated for
64 methamphetamine enforcement before 1997 and upon current need and
65 circumstances. No applicant shall receive a MoSMART grant in excess of one
66 hundred thousand dollars per year. The department of public safety shall
67 monitor all MoSMART grants.

68 [7.] 8. MoSMART's anti-methamphetamine funding priorities are as
69 follows:

70 (1) Sheriffs who are participating in coordinated multijurisdictional task
71 forces and have their task forces apply for funding;

72 (2) Sheriffs whose county has been designated HIDTA counties, yet have
73 received no HIDTA or narcotics assistance program funding; and

74 (3) Sheriffs without HIDTA designations or task forces, whose application
75 justifies the need for MoSMART funds to eliminate methamphetamine labs.

76 [8.] 9. MoSMART shall administer the deputy sheriff salary
77 supplementation fund as provided under section 57.278.

78 **10. Beginning August 28, 2013, the department of revenue shall**
79 **begin transferring any records related to the issuance of a concealed**
80 **carry permit to MoSMART for dissemination to the sheriff of the county**
81 **or city not within a county in which the applicant or permit holder**
82 **resides.**

[571.102. The repeal and reenactment of sections 302.181
2 and 571.101 shall become effective on the date the director of the
3 department of revenue begins to issue nondriver licenses with
4 conceal carry endorsements that expire three years from the dates
5 the certificates of qualification were issued, or on January 1, 2013,
6 whichever occurs first. If the director of revenue begins issuing
7 nondriver licenses with conceal carry endorsements that expire
8 three years from the dates the certificates of qualification were
9 issued under the authority granted under sections 302.181 and
10 571.101 prior to January 1, 2013, the director of the department of
11 revenue shall notify the revisor of statutes of such fact.]

Section B. Because immediate action is necessary to permit the
2 MoSMART board to have proper funding necessary to implement the provisions

HCS SB 75

45

3 of this act, the repeal and reenactment of section 650.350 of section A of this act
4 is deemed necessary for the immediate preservation of the public health, welfare,
5 peace, and safety, and is hereby declared to be an emergency act within the
6 meaning of the constitution, and the repeal and reenactment of section 650.350
7 of section A of this act shall be in full force and effect upon its passage and
8 approval.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOHN W. JACKSON and SECOND
AMENDMENT FOUNDATION,
INC.,**

Plaintiffs,

vs.

No. 2:12-CV-00421-MCA-RHS

**GARY KING, in his Official Capacity
as Attorney General of the State of New
Mexico, and BILL HUBBARD, in his
Official Capacity as Director of the
Special Investigations Division of the
New Mexico Department of Public
Safety,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on *Plaintiffs' Motion for Preliminary Injunction*. [Doc. 18] The Court conducted oral argument on Plaintiffs' motion on December 18, 2012. [Doc. 27] Having considered the submissions, the relevant case law, and otherwise being fully advised in the premises, the Court grants Plaintiffs' motion.

I. BACKGROUND

On April 24, 2012, Plaintiffs John W. Jackson and the Second Amendment Foundation, Inc. (SAF), filed their *Complaint* [Doc. 1] "pursuant to 42 U.S.C. § 1983 for deprivation of civil rights under color of law, [seeking] equitable, declaratory, and injunctive relief challenging the State of New Mexico's prohibition on otherwise

qualified non-U.S. citizens who legally reside in New Mexico from obtaining a concealed carry permit, pursuant to section NMSA 1978, § 29-19-4(A)(1) of the New Mexico Concealed Handgun Carry Act.” [Doc. 1 at 1] Plaintiffs allege that the citizenship requirement in Section 29-19-4(A)(1) violates the equal protection clause of the United States Constitution, the right to keep and bear firearms in the Second Amendment to the United States Constitution, and is preempted by federal immigration law. [Doc. 1 at 6-7]

On May 17, 2012, Defendants Gary King, Attorney General of the State of New Mexico, and Bill Hubbard, Director of the Special Investigations Division of the New Mexico Department of Public Safety, filed their Answer to Plaintiffs’ Complaint. [Doc. 10] In their Answer Defendants admitted that “legal resident aliens are prohibited from carrying concealed weapons” and that “only citizens may carry concealed weapons.” [Doc. 10 at 2]

On August 9, 2012, Plaintiffs filed *Plaintiffs’ Motion for Preliminary Injunction*. [Doc. 18] In support of their motion, Plaintiffs submitted the Declaration of John W. Jackson, who averred that he is a permanent legal resident of the United States residing in Rio Rancho, Sandoval County, New Mexico, and that he is “prohibited by NMSA 1978, § 29-19-4A(1) from obtaining a concealed carry permit, and thus carrying a handgun in a concealed manner for self-defense.” [Doc. 19] Plaintiffs also submitted the Declaration of Julianne Versnel, who is the Director of Operations of SAF. Ms. Versnel averred that SAF has “individual members and supporters who are adversely impacted by NMSA 1978, § 29-19-14(A)(1)” and that “[b]ut for criminal enactments challenged in this

complaint, SAF members who are legal aliens residing within New Mexico would obtain concealed carry permits and carry concealed firearms for their own defense.” [Doc. 19] Plaintiffs contend that they are entitled to preliminary injunctive relief because “[t]he deprivations of constitutional rights subject Plaintiffs to irreparable harm, and is such a clear-cut constitutionally-inflicted harm that Plaintiffs are likely to succeed on the merits by the conclusion of this litigation.” [Doc. 19 at 6] Plaintiffs further contend that the balance of the equities and the public interest would be served by awarding them the preliminary injunctive relief that they seek.

Defendants do not dispute that permanent resident aliens “are entitled to Second Amendment rights under the equal protection clause of the Fourteenth Amendment.” [Doc. 20 at 4] Defendants contend, however, that no Second Amendment rights are at issue in this case because “the concealed carry of a firearm is not a constitutional right.” [Id.] Defendants point out that Plaintiffs are free to carry firearms openly and to carry concealed firearms in their own home, on their own property, and in their own vehicle. Because there is no constitutional violation, Defendants argue that Plaintiffs’ motion for a preliminary injunction should be denied.

On September 19, 2012, the Court held a telephonic status conference regarding Plaintiffs’ motion. At the status conference, the parties agreed that an evidentiary hearing was unnecessary, but requested oral argument. [Doc. 25] Oral argument on Plaintiffs’ motion was held on Tuesday, December 18, 2012. [Doc. 27]

Following oral argument, Defendant King moved to dismiss Plaintiffs’ *Complaint*

for failure to state a claim upon which relief can be granted and for lack of standing, alleging that he is not responsible for the execution and administration of the Concealed Handgun Carry Act, NMSA 1978, § 29-19-1, *et seq.* and, therefore, Plaintiffs injuries are not traceable to him, nor redressable by him. [Doc. 28] The Court agreed and granted Defendant King’s motion to dismiss. [Doc. 41] Accordingly, Defendant King is no longer a party to this case.

II. STANDARD

The decision to grant a preliminary injunction is within the Court’s discretion. See Winnebago Tribe of Nebraska v. Stovall, 341 F.3d 1202, 1205 (10th Cir. 2003).

“Because a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.” Greater Yellowstone Coal. v. Flowers, 321 F.3d 1250, 1256 (10th Cir. 2003). “To obtain a preliminary injunction, the moving party must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood that the movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant’s favor; and (4) that the injunction is in the public interest.” Attorney Gen. of Oklahoma v. Tyson Foods, Inc., 565 F.3d 769, 776 (10th Cir. 2009) (internal quotation marks and citation omitted). “Generally, where the moving party has established that the [latter] three harm factors tip decidedly in its favor, the probability of success requirement is somewhat relaxed and the movant need only show questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation.” Nova Health Sys. v. Edmondson, 460 F.3d 1295, 1298 n.6 (10th Cir.

2006) (internal quotation marks and citations omitted). However, this relaxed standard does not apply to the “three types of disfavored injunctions,” which are:

(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits. When a preliminary injunction falls into one of these categories, it must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course. A district court may not grant a preliminary injunction unless the moving party makes a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.

Awad v. Ziriax, 670 F.3d 1111, 1125 (10th Cir. 2012) (internal quotation marks and citation omitted).

Plaintiffs contend that the relaxed standard is applicable to this case because the “latter three elements weigh heavily in its favor.” [Doc. 19 at 10 (internal quotation marks and citation omitted)]. However, in Nova Health Systems, the Tenth Circuit Court of Appeals held that “where . . . the plaintiff seeks to enjoin the enforcement of a statute, a showing that the questions are ‘fair ground for litigation’ is not enough; the plaintiff must meet the traditional ‘substantial likelihood of success’ standard.” 460 F.3d at 1298 n.6; see also Heideman v. South Salt Lake City, 348 F.3d 1182, 1189 (10th Cir. 2003) (“[w]here ... a preliminary injunction ‘seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme,’ the less rigorous fair-ground-for-litigation standard should not be applied.” (internal quotation marks and citation omitted)). Accordingly, the Court concludes that the relaxed standard is inapplicable to this case.

Defendant Hubbard contends that Plaintiffs seek a disfavored injunction and, therefore, the heightened standard must be applied. [Doc. 20 at 3] The status quo is defined as

the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing. In determining the status quo for preliminary injunctions, [the Tenth Circuit] looks to the reality of the existing status and relationship between the parties and not solely to the parties' legal rights.

Schrier v. Univ. Of Colorado, 427 F.3d 1253, 1260 (10th Cir. 2005) (internal quotation marks and citations omitted). In Nova Health Systems, the Court expressed no opinion as to whether a preliminary injunction seeking to enjoin the enforcement of a statute would alter the status quo and, therefore, be a disfavored injunction subject to the heightened standard of review. 460 F.3d at 1298 n.5.

The District of Kansas addressed this issue, however, in American Civil Liberties Union of Kansas and Western Missouri v. Praeger, 815 F.Supp.2d 1204 (D. Kan. 2011). In that case, the plaintiff sought “declaratory and injunctive relief to halt the enforcement of a Kansas statute which took effect on July 1, 2011.” Id. at 1207. The Court held that, because the statute was newly enacted, the “last uncontested status between the parties before the dispute arose would be that which existed prior to the challenged statute taking effect.” Id. at 1208. In arriving at this conclusion, the Court relied on the concurrence in O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 977 (10th Cir. 2004), which noted that “[w]hen a statute is newly enacted, and its enforcement will restrict rights citizens previously had exercised and enjoyed, it is not uncommon for

district courts to enjoin enforcement pending a determination of the merits of the constitutional issue.” Conversely, “[w]hen a statute has long been on the books and enforced, . . . it is exceedingly unusual for a litigant who challenges its constitutionality to obtain (or even to seek) a preliminary injunction against its continued enforcement.” Id. Because the statute at issue in Praeger was newly enacted, the Court concluded that “the heightened standard for injunctions that alter the status quo [did] not apply to plaintiff’s request for a preliminary injunction.” Praeger, 815 F.Supp.2d at 1209.

The citizenship requirement in New Mexico’s Concealed Handgun Carry Act is not newly enacted—it has been a part of the statutory scheme since its enactment in 2003. See 2003 New Mexico Laws Ch. 255 (S.B. 23). Because the citizenship requirement “has long been on the books and enforced,” O Centro Espirita Beneficiente Uniao Do Vegetal, 389 F.3d at 977, the Court concludes that the requested relief seeks to alter the status quo. Cf. American Ass’n of People With Disabilities v. Herrera, 580 F.Supp.2d 1195, 1247 (D. N.M. 2008) (denying the plaintiff’s request for a preliminary injunction enjoining the enforcement of New Mexico’s voter-registration laws in relevant part because it would “upset the status quo that has existed for three years”). Accordingly, the heightened standard of review applicable to disfavored injunctions applies to Plaintiffs’ motion for a preliminary injunction.

III. DISCUSSION

It is undisputed that Plaintiffs may openly carry a loaded firearm in accordance with Article II, Section 6 of the New Mexico Constitution. See N.M. Const. art. II, § 6

(“No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.”). However, New Mexico’s Concealed Handgun Carry Act does not permit non-United States citizens to carry a loaded concealed firearm. Specifically, Section 29-19-4 provides, in relevant part, as follows:

- A. The department shall issue a concealed handgun license to an applicant who:
- (1) is a citizen of the United States;
 - (2) is a resident of New Mexico or is a member of the armed forces whose permanent duty station is located in New Mexico or is a dependent of such a member;
 - (3) is twenty-one years of age or older;
 - (4) is not a fugitive from justice;
 - (5) has not been convicted of a felony in New Mexico or in any other state or pursuant to the laws of the United States or any other jurisdiction;
 - (6) is not currently under indictment for a felony criminal offense in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;
 - (7) is not otherwise prohibited by federal law or the law of any other jurisdiction from purchasing or possessing firearms;
 - (8) has not been adjudicated mentally incompetent or committed to a mental institution;
 - (9) is not addicted to alcohol or controlled substances; and
 - (10) has satisfactorily completed a firearms training course approved by the department for the category and the largest caliber of handgun that the applicant wants to be licensed to carry as a concealed handgun.

Although noncitizens cannot obtain a concealed handgun license, they may nonetheless carry a concealed loaded firearm in the following limited circumstances:

- (1) in the persons’s residence or on real property belonging to him as owner, lessee, or licensee;
- (2) in a private automobile or other private means of conveyance, for lawful protection of the person’s or another’s person or property.

NMSA 1978, § 30-7-2. In any other circumstance, carrying a loaded concealed firearm without a “valid concealed handgun license issued . . . by the department of public safety pursuant to the provisions of the Concealed Handgun Carry Act” is a petty misdemeanor.” Id.

A. Second Amendment

Plaintiffs contend that the citizenship requirement in New Mexico’s Concealed Handgun Carry Act violates their fundamental right to keep and bear arms under the Second Amendment to the United States Constitution. Defendant Hubbard responds that there is no fundamental right to carry a concealed firearm under the Second Amendment.

The Second Amendment provides as follows: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” This provision is “fully applicable to the States.” McDonald v. City of Chicago, 130 S. Ct. 3020, 3026 (2010) (citations omitted).

In District of Columbia v. Heller, 554 U.S. 570, 592 (2008), the United States Supreme Court held that the Second Amendment guarantees “the individual right to possess and carry weapons in case of confrontation.” However, the Court cautioned that “the right [is] not a right to keep and carry any weapon whatsoever, in any manner whatsoever and for whatever purpose.” Id. at 626. “For example, the majority of 19th-

century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” Id. Although the Court did “not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment,” the Court stated that nothing in its opinion “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or law imposing conditions and qualifications on the commercial sale of arms.” Id. at 626-27.

After examining the history and text of the Second Amendment, the Heller Court held that the District of Columbia’s total ban on handgun possession in the home was unconstitutional. The Court reasoned that:

the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition on an entire class of “arms” that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home “the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family,” . . . would fail constitutional muster.

Id. at 628-29 (citation omitted)

Following Heller, the Tenth Circuit Court of Appeals adopted “a two-pronged approach to Second Amendment challenges.” United States v. Reese, 627 F.3d 792, 800 (10th Cir. 2010) (internal quotation marks and citation omitted); see also Peterson v. Martinez, 707 F.3d 1197, (10th Cir. 2013).

Under this approach, a reviewing court first ask[s] whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. If it does not, [the court's] inquiry is complete. If it does, [the court] must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.

Reese, 627 F.3d at 800 (alterations in original) (internal quotation marks and citations omitted).

Defendant Hubbard concedes that permanent resident aliens have a Second Amendment right to keep and bear arms for self-defense. [Doc. 20 at 4] See United States v. Huitron-Guizar, 678 F.3d 1164, 1169 (10th Cir. 2012) (assuming, without deciding, that the Second Amendment “right of the people” includes “at least some aliens unlawfully here”); see also Fletcher v. Haas, 851 F. Supp. 2d 287, 301 (D. Mass. 2012) (finding “no justification for refusing to extend the Second Amendment to lawful permanent residents”). Defendant Hubbard contends, however, that the Second Amendment right does not encompass the right to keep and bear *concealed* firearms.

In Peterson, the Tenth Circuit Court of Appeals addressed the issue of whether the Second Amendment protects the right to keep and bear concealed firearms. In that case, the plaintiff challenged a Colorado statute that required Colorado residency for the issuance of a concealed carry permit. However, the statute did “not affect the ability of non-residents to openly carry firearms in the state.”¹ Id. at 1209. The Court noted that, in

¹The Court noted that a municipal ordinance in the Denver Revised Municipal Code prohibited “individuals from carrying firearms—concealed or not—unless the individuals holds a valid [concealed handgun license] or ‘is carrying the weapon concealed within a private

Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897), the United States Supreme Court stated that “the right of the people to keep and bear arms (article 2) is not infringed by laws prohibiting the carrying of concealed weapons.” Although this statement was “plainly obiter dicta” the Court noted that it was “bound by Supreme Court dicta almost as firmly as by the Court’s outright holdings, particularly when the dicta is recent and not enfeebled by later statements.” Peterson, 707 F.3d at 1210 (quoting United States v. Serawop, 505 F.3d 1112, 1122 (10th Cir. 2007). Although not recent, “the Supreme Court’s contemporary Second Amendment jurisprudence does nothing to enfeeble—but rather strengthens—the statement that concealed carry restrictions do not infringe the Second Amendment right to keep and bear arms.” Id.

The Court observed that “[t]here can be little doubt that bans on the concealed carrying of firearms are longstanding.” Id. Indeed, in Heller, the Supreme Court held that “[g]iven this lengthy history of regulation, restrictions on concealed carry qualify as ‘longstanding’ and thus ‘presumptively lawful regulatory measures.’” Id. at 1211 (quoting Heller, 554 U.S. at 626 & n.26). In light of Robertson and Heller, the Court concluded that the plaintiff’s “Second Amendment claim fails at step one of our two-step analysis: the Second Amendment does not confer a right to carry concealed weapons.”

Id.

automobile or other private means of conveyance, for hunting or for lawful protection of such person’s or another person’s person or property, while traveling.” Peterson, 707 F.3d at 1202 (quoting Denver Rev. Mun. Code § 38-117(a), (b) & (f)). However, the plaintiff did not challenge the constitutionality of the municipal ordinance and, therefore, the Court did not address it. Id. at 1208-09.

Pursuant to Peterson, the Second Amendment does not confer a right to carry concealed weapons. Accordingly, Plaintiffs have failed to demonstrate a substantial likelihood of success on the merits of their Second Amendment claim.

B. Equal Protection

Alternatively, Plaintiffs contend that New Mexico's Concealed Handgun Carry Act violates the Equal Protection Clause of the Fourteenth Amendment because it discriminates on the basis of alienage. Plaintiffs further contend that the citizenship requirement cannot survive strict scrutiny because it is not narrowly tailored to further a compelling government interest. Defendant Hubbard responds that the Act does not violate the Equal Protection Clause because "[t]here is no constitutional right at issue here." [Doc. 20 at 5] Defendant Hubbard further contends that strict scrutiny is inapplicable to this case because the regulation of concealed firearms rests "firmly within a State's constitutional prerogative" and does not impact economic rights. [Id.]

1. Substantial Likelihood of Success on the Merits

The Equal Protection Clause of the Fourteenth Amendment provides as follows: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal protection "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). Governmental classifications are subject to strict scrutiny under the Equal Protection Clause if they burden a fundamental right or target a suspect class. Save Palisade FruitLands v. Todd, 279 F.3d 1204, 1210 (10th Cir. 2002). "To

survive strict scrutiny, the government must show that its classification is narrowly tailored to achieve a compelling government interest.” KT.& G Corp v. Attorney General of State of Okla., 535 F.3d 1114, 1137 (10th Cir. 2008).

Although New Mexico’s Concealed Handgun Carry Act does not burden a fundamental right, it nonetheless may be subject to strict scrutiny if it targets a suspect class. See 16B Am. Jur. 2d Constitutional Law § 834 (“The plaintiff need not prove that another fundamental right was trampled, as the right to equal protection of the laws is itself fundamental . . .”). Alienage is a suspect classification and state statutes that discriminate on the basis of alienage are subject to strict scrutiny. See Graham v. Richardson, 403 U.S. 365, 371-72 (1971) (holding that “classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a ‘discrete and insular’ minority . . . for whom such heightened judicial solicitude is appropriate”) (citation and footnotes omitted); Soskin v. Reinertson, 353 F.3d 1242, 1254 (10th Cir. 2004) (recognizing that “Supreme Court precedents establish . . . [that] states on their own cannot treat aliens differently from citizens without a compelling justification”). New Mexico’s Concealed Handgun Carry Act discriminates on the basis of alienage and, therefore, strict scrutiny is the applicable standard. Indeed, in Huitron-Guizar, the Tenth Circuit Court of Appeals recognized that, under the Equal Protection Clause, state laws regulating the possession of firearms that discriminate against permanent resident aliens must survive strict scrutiny. 678 F.3d at 1170 (“Recently some state statutes that burden gun possession by lawful

permanent aliens . . . have been declared invalid under the Equal Protection Clause, which requires that strict scrutiny be applied to state laws that impose restrictions based on alienage.”).

Defendant Hubbard contends, however, that pursuant to Sugarman v. Dougall, 413 U.S. 634, 648 (1973), the Court’s scrutiny should “not be so demanding” because the concealed carrying of a firearm is a matter “resting firmly within a State’s constitutional prerogative.” The Court disagrees. In Sugarman, the plaintiffs, who were federally registered aliens, challenged a New York statute that restricted civil service to United States citizens. Id. at 635-36. Applying strict scrutiny, the United States Supreme Court held that the indiscriminate citizenship requirement in the civil service law violated the Equal Protection Clause of the United States Constitution. Id. at 643. In arriving at its conclusion, the Court recognized that the State may “in an appropriately defined class of positions, require citizenship as qualification for office.” Id. at 647. “Such power inheres in the State by virtue of its obligation . . . to preserve the basic conception of a political community.” Id. (Internal quotation marks and citations omitted.). Although “such state action, particularly with respect to voter qualifications is not wholly immune from scrutiny under the Equal Protection Clause,” the Court noted that its “scrutiny will not be so demanding where we deal with matters resting firmly within a State’s constitutional prerogatives.” Id. at 648. The Court explained as follows:

This is no more than a recognition of a State’s historical power to exclude aliens from participation in its democratic political institutions . . . and a recognition of a State’s constitutional responsibility for the establishment

and operation of its own government, as well as the qualification of an appropriately designated class of public office holders. . . This Court has never held that aliens have a constitutional right to vote or to hold high public office under the Equal Protection Clause. Indeed, implicit in many of this Court’s voting rights decisions is the notion that citizenship is a permissible criterion for limiting such rights. . . . A restriction on the employment of noncitizens, narrowly confined, could have particular relevance to this important state responsibility, for alienage itself is a factor that reasonably could be employed in defining political community.

Id. (Internal quotation marks and citations omitted).

New Mexico’s Concealed Handgun Carry Act does not seek to preserve the basic conceptions of a state political community. See Chan v. City of Troy, 559 N.W. 2d 374, 376 (Mich. App. 1997) (per curiam) (applying strict scrutiny to Michigan’s concealed handgun statute because “[t]he purchase or possession of a pistol clearly is not a function bound up with the operation of a State as a governmental entity, nor does it otherwise involve the implementation of the sovereign powers of a state” (internal quotation marks and citations omitted)). Nor does the Act affect the State’s constitutional responsibility for the establishment and operation of its own government or the qualification of its voters or a designated class of public office holders. Therefore, the Court concludes that the Act does not pertain to “matters resting firmly within the State’s constitutional prerogative,” as defined by Sugarman.

Alternatively, Defendant Hubbard contends that strict scrutiny is inapplicable because New Mexico’s Concealed Handgun Carry Act does not deprive aliens of an economic benefit. [Doc. 20 at 5] Defendant Hubbard fails to cite any case law indicating that strict scrutiny is only applicable to state economic legislation that discriminates on

the basis of alienage. In the seminal case of City of Cleburne, the United States Supreme Court observed that strict scrutiny is the appropriate standard to be used when “*social or economic legislation*” discriminates on the basis of alienage. 473 U.S. at 440 (emphasis added). Indeed, courts typically apply strict scrutiny to state social legislation, such as New Mexico’s Concealed Handgun Carry Act, that restricts the possession of concealed firearms on the basis of alienage. See, e.g., Smith v. South Dakota, 781 F. Supp. 2d 879, 884 (D. S.D. 2011); State v. Ibrahim, 269 P.3d 292, 296-97 (Wa. App. 2011); People v. Bounasri, 31 Misc. 3d 304, 2011 WL 356059, at * 2 (N.Y. City Ct. 2011).

Applying the strict scrutiny test, Defendant Hubbard contends that the state of New Mexico has a compelling interest in protecting “the public from concealed carry of firearms because of the inherent danger that unregulated concealed weapons pose to the public.” [Doc. 20 at 7] As the Second Circuit Court of Appeals recognized in Kachalsky v. County of Westchester, 701 F.3d 81, 97 (2d Cir. 2012), the states have a “substantial, indeed compelling, government interest[] in public safety and crime prevention.” See also Fletcher, 851 F. Supp. 2d at 303 (recognizing that Massachusetts “has an interest in regulating firearms to prevent dangerous persons from obtaining firearms”). The Court therefore agrees with Defendant Hubbard that the state has a compelling interest in protecting the public from concealed firearms. The question remains, however, whether the citizenship requirement is narrowly tailored to serve this interest.

“The purpose of the narrow tailoring requirement is to ensure that ‘the means chosen “fit” th[e] compelling goal so closely that there is little or no possibility that the

motive for the classification was illegitimate . . . prejudice or stereotype.” Grutter v. Bollinger, 539 U.S. 306, 333 (2003) (quoting Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989) (plurality opinion)). Defendant Hubbard has failed to demonstrate a close fit between the means chosen and the state’s compelling interest. There is no argument made, much less any evidence proffered, that a permanent resident alien, such as Mr. Jackson, who resides in this country legally, poses a greater danger by virtue of his or her status alone, when carrying a concealed loaded firearm, than do United States citizens. Indeed, “[a]ny classification which treats all aliens as dangerous and all United States citizens as trustworthy rests upon a very questionable basis.” People v. Rappard, 28 Cal. App. 3d 302, 305 (Cal. Ct. App. 1972); see also Fletcher, 851 F.Supp.2d at 303 (“Any classification based on the assumption that lawful permanent residents are categorically dangerous and that all American citizens by contrast are trustworthy lacks even a reasonable basis.”). For this reason, various courts have concluded that state laws, like New Mexico’s Concealed Handgun Carry Act, which impose an indiscriminate ban precluding all legal resident aliens from carrying concealed firearms violate the Equal Protection Clause of the United States Constitution. See, e.g., Smith v. South Dakota, 781 F. Supp. 2d 879, 886 (2011); Rappard, 28 Cal. App. 3d at 305; State v. Chumphol, 634 P.2d 451, 452 (Nev. 1981); Bounasri, 2011 WL 356059, at *3; Chan, 559 N.W. 2d at 376; Ibrahim, 269 P.3d at 296-97.

During oral argument before this Court, Defendant Hubbard argued for the first time that the citizenship requirement is narrowly tailored to further the state’s compelling

interest in public safety because a non-citizen's immigration status is subject to change at the will of the federal government, without notice to the state. The Court is not persuaded by this argument. The Concealed Handgun Carry Act prohibits *all* non-citizens, regardless of their immigration status, from obtaining a concealed carry permit. The Act does not attempt to distinguish between lawful permanent residents, such as Plaintiff Jackson, and illegal aliens. Moreover, the Act does not attempt to distinguish between non-citizens whose immigration status changes during the course of the application process and permit holding period and those whose immigration status does not. Thus, the citizenship requirement is overinclusive; it encompasses a large number of non-citizens who, by virtue of their status alone, pose no greater risk of harm to public safety. Because Defendant Hubbard has failed to demonstrate a close fit between the citizenship requirement and the state's compelling interest in public safety, the Court concludes that Plaintiffs have made a strong showing of a substantial likelihood of success on the merits of their Equal Protection claim.

2. *Irreparable Harm*

As previously explained, Plaintiffs have made a strong showing that the citizenship requirement in New Mexico's Concealed Handgun Carry Act violates the Equal Protection Clause. "When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." Kikumura v. Hurley, 242 F.3d 950, 963 (10th Cir. 2001) (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed.1995)); see also Heideman,

348 F.3d at 1189-90 (holding that the plaintiffs had established irreparable harm because the statute at issue deprived them of their First Amendment Rights). Plaintiffs' constitutional injury cannot be adequately redressed by post-trial relief and, therefore, the Court concludes that they will suffer irreparable harm in the absence of preliminary injunctive relief.

3. *Balance of the Harms*

Because Plaintiffs seek a disfavored injunction, they must make a strong showing that the balance of the harms supports the issuance of preliminary injunctive relief. As previously explained, Plaintiffs have demonstrated that the continued enforcement of the citizenship requirement in New Mexico's Concealed Handgun Carry Act violates their right to equal protection of the laws and constitutes an irreparable harm. Thus, the harm to Plaintiffs is significant. In contrast, the harm to Defendant Hubbard is minimal.

Although Defendant Hubbard may incur some administrative costs if he is forced to grant concealed carry permits to noncitizens that must later be revoked after a full trial on the merits,² these costs pale in comparison to the deprivation of Plaintiffs' constitutional rights. Accordingly, the Court concludes that the balance of the harms factor supports the issuance of preliminary injunctive relief.

4. *Public Interest*

²Defendant Hubbard also argues that the public welfare and safety will be put at risk if concealed carry permits are issued to noncitizens. [Doc. 20 at 11] This argument is rejected because, as previously explained, Defendant Hubbard has failed to establish that permanent resident aliens such as Mr. Jackson pose a greater risk of danger, by virtue of their status alone, than citizens with respect to the carrying of concealed firearms.

Defendant Hubbard does “not have an interest in enforcing a law that is likely constitutionally infirm.” Chamber of Commerce of the United States v. Edmondson, 594 F.3d 742, 771 (10th Cir. 2010). Additionally, “it is always in the public interest to prevent the violation of a party's constitutional rights.” Awad, 670 F.3d at 1132 (internal quotation marks and citation omitted); see also Chamber of Commerce of the United States, 594 F.3d at 771 (holding that “the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law.” (internal quotation marks and citation omitted)). The public interest is served by granting Plaintiffs’ request for preliminary injunctive relief.

C. Severability

“[A] court sustaining an equal protection challenge has ‘two remedial alternatives: it may either declare the statute a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion.’” Petrella v. Brownback, 697 F.3d 1285, 1296 (10th Cir. 2012) (quoting Heckler v. Mathews, 465 U.S. 728, 738 (1984)). “In order to determine whether partial invalidation of a state statute is appropriate, federal courts look to state law.” Citizens for Responsible Gov’t State Political Action Comm. v. Davidson, 236 F.3d 1174, 1195 (10th Cir. 2000); see Leavitt v. Jane L., 518 U.S. 137, 139 (1996) (“Severability is of course a matter of state law.”) (per curiam).

It is well established in [New Mexico] that a part of a law may be invalid and the remainder valid, where the invalid part may be separated from the other portions, without impairing the force and effect of the remaining

parts, and if the legislative purpose as expressed in the valid portion can be given force and effect, without the invalid part, and, when considering the entire act it cannot be said that the legislature would not have passed the remaining part if it had known that the objectionable part was invalid.

Bradbury & Stamm Const. Co. v. Bureau of Revenue, 372 P.2d 808, 811 (N.M. 1962).

However, the Court “cannot rewrite or add language to a statute in order to make it constitutional.” State v. Frawley, 172 P.3d 144, 155 (N.M. 2007).

The Court concludes that the citizenship requirement in subsection (1) of section 29-19-4(A) may be severed without impairing the remainder of the Act’s force and effect. If subsection (1) is removed, the statute nonetheless provides for the issuance of a concealed carry permit to an applicant who satisfies the remainder of the statutory requirements, subsections (2) through (10). Because the severance of subsection (1) “in no way affects the enforceability of the other portions of the statute,” Bradbury & Stamm Const. Co., 372 P.2d at 814, the first prong of the severability test is satisfied.

Additionally, severance of the citizenship provision will not impair the legislative purpose as expressed in the remainder of the Act. The manifest purpose of the Act is to permit the issuance of “concealed handgun licenses to qualified members of the public who satisfy the requisite education and training.” New Mexico Voices for Children v. Denko, 90 P.3d 458, 459 (N.M. 2004). Severance of the citizenship provision will not impair this purpose, nor will it require the issuance of concealed carry permits to illegal aliens. Section 29-19-4(A)(7) of the Act prohibits the issuance of concealed carry permits to applicants who are “otherwise prohibited from federal law or the law of any other

jurisdiction from purchasing or possessing firearms.” Title 18 of the United States Code, Section 922(g)(5) prohibits any person who “is illegally or unlawfully in the United States” from “ship[ping] or transport[ing] in interstate or foreign commerce, or possess[ing] in or affecting commerce, any firearm or ammunition; or [receiving] any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” See Huitron-Guizar, 678 F.3d at 1170 (10th Cir. 2012) (upholding the constitutionality of Section 922(g)(5)). Because illegal aliens are prohibited from purchasing or possessing firearms under federal law, they are not eligible to obtain a concealed carry permit under the Concealed Handgun Carry Act. Accordingly, the second prong of the severability test weighs in favor of severance.

The foregoing analysis is also dispositive of the third prong of the severance test, namely, whether the legislature would have passed the Act if it had known that the citizenship provision was unconstitutional. “Because the Legislature did not articulate a specific purpose in the Act, we look to the entire Act to ascertain whether the Legislature would have passed the Act if it had known that” the citizenship provision was unconstitutional. Baca v. New Mexico Dep’t of Public Safety, 47 P.3d 441, 445 (N.M. 2002) (per curiam). As previously explained, severance of the citizenship provision preserves the legislative purpose of the Act and does not require the issuance of concealed carry permits to illegal aliens. Considering the Act as a whole, the Court concludes that the Legislature would have passed the Act if it had known that the citizenship provision was unconstitutional.

For the foregoing reasons, the Court concludes that the proper remedy for the alleged Equal Protection violation is to sever the citizenship provision in Section 29-19-14(A)(1) from the remainder of the Concealed Handgun Carry Act.

IV. CONCLUSION

The Court, applying the heightened standard applicable to disfavored injunctions, finds that Plaintiffs have satisfied each of the requirements for obtaining preliminary injunctive relief.

Defendant Hubbard has failed to establish that a legal permanent resident alien such as Mr. Jackson poses a greater risk of danger by virtue of his or her status alone, than do citizens, with respect to the carrying of concealed weapons.

The Court further concludes that the citizenship provision in Section 29-19-14(A)(1) is severable from the remainder of the Concealed Handgun Carry Act.

IT IS THEREFORE HEREBY ORDERED that *Plaintiffs' Motion for Preliminary Injunction* is **GRANTED** and Defendant Hubbard is preliminarily enjoined from enforcing the citizenship provision in Section 29-19-14(A)(1) of the Concealed Handgun Carry Act pending resolution of this action.

SO ORDERED this 30th day of March, 2013 in Albuquerque, New Mexico.


M. CHRISTINA ARMIJO
Chief United States District Judge