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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ADAM RICHARDS et al., No. 2:09-cv-01235 MCE-DAD

Plaintiffs,

v.

**MEMORANDUM AND ORDER**

COUNTY OF YOLO and YOLO COUNTY  
SHERIFF ED PRIETO,

Defendants.

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Plaintiffs Adam Richards, Brett Stewart, the Second Amendment Foundation, Inc., and The Calguns Foundation, Inc. (collectively, "Plaintiffs") seek redress from Sheriff Ed Prieto and the County of Yolo (collectively, "Defendants") after Plaintiffs Richards and Stewart were denied gun permits under Yolo County's, and by extension Sheriff Prieto's, concealed weapon licensing policy.

Both Plaintiffs and Defendants have filed Motions for Summary Judgment. A hearing on the matter was held on March 10, 2011. For the reasons set forth below, Plaintiffs' Motion is denied and Defendants' Motion is granted.



1 Plaintiffs are not challenging the California statute itself<sup>2</sup>, but  
2 instead challenge Yolo County's interpretation of their statutory  
3 authority, namely its Concealed Weapon License Policy.

4 Consistent with the regulations under California Penal Code,  
5 Yolo County and Defendant Prieto, as the Sheriff, have created a  
6 policy regulating the issuance of concealed weapon licenses to Yolo  
7 County residents. Sheriff Prieto retains "discretion to issue a  
8 license to carry a concealed firearm to residents within Yolo  
9 County." (See Policy, ECF No. 60-1, at 1.) The policy, accessible  
10 to the public, clearly enumerates the criteria for obtaining the  
11 license, and an applicant must, among other things, demonstrate  
12 that they have a valid reason to request the permit in the first  
13 place. (Id.) Examples of valid reasons listed in the policy  
14 "include, but are not limited to:" credible threats of violence  
15 against the applicant, and being a business owner who carries large  
16 sums of cash. (Id. at 1-2.) Examples of invalid reasons include  
17 hunting, fishing, or self-defense "without credible threats of  
18 violence." (Id. at 2.) The issuance of a license ultimately bears  
19 on whether the "Sheriff or his designee feels there is sufficient  
20 reason to grant the license." (Id.)

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23 <sup>2</sup> The State of California and/or its legislature is not a party to  
24 the action. Plaintiffs appear to be challenging Defendants'  
25 exercise of state law at the local level. (See e.g. Sec. Am.  
26 Compl., ECF No. 48 (hereinafter, "SAC").) However, Yolo County's  
27 policy derives its authority from the legislature's framework, and  
28 there is substantial overlap between the policy and California law.  
In addition, Plaintiffs' Motion for Summary Judgment specifically  
challenges portions of California's Penal Code. (ECF No. 54-1 at  
21.) Recognizing the close overlap, this Court interprets  
Plaintiffs' arguments as those ultimately against Defendants, and  
not the state legislature or, by extension, the California Penal  
Code.

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**B. Plaintiffs**

Plaintiffs Second Amendment Foundation, Inc. and The Calguns Foundation, Inc. are non-profit organizations designed to promote the rights of firearm holders, and more generally anti-gun control advocates. (SAC 2.) Both Plaintiffs Richards and Stewart are members and supporters of both organizations. (Id. at 1.)

In March 2009, Plaintiff Richards contacted the Yolo County Sheriff's office to inquire about the procedure to obtain a permit to carry a handgun. Defendant was told that he could not obtain a concealed weapon license for self-defense purposes because that would not constitute good cause under the terms of the policy. (Id. at 4.) In addition, since Plaintiff Richards resides in Davis, the Yolo County Sheriff's office informed him that he would first have to apply for a concealed weapon license from the Chief of Police in the City of Davis. (Id.)

Similarly, in March 2010, Plaintiff Stewart applied for a concealed weapon license from Yolo County, after first being told that Davis police had discontinued issuing Carry Concealed Weapon permits. (Id. at 5.) On April 27, 2010, Plaintiff Stewart was informed in writing that he was being denied a permit by Yolo County because his application did not "'meet the criteria'" for granting a license, as outlined in the policy. (Id.)

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1 In judging evidence at the summary judgment stage, the court does  
2 not make credibility determinations or weigh conflicting evidence.  
3 See T.W. Elec. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,  
4 630-631 (9th Cir. 1987) (citing Matsushita Elec. Indus. Co., Ltd.  
5 v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

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7 **ANALYSIS**

8 **A. Second Amendment**

9 **1. Heller and the Scope of Protection**

10  
11 Plaintiffs argue that, by maintaining a policy that deprives  
12 Plaintiffs Richards and Stewart of a concealed weapon license,  
13 Defendants are infringing on their Second Amendment right to bear  
14 arms, as the Yolo County license policy effectively acts as a  
15 complete ban on an individual's right to carry. They challenge the  
16 policy both on its face, and as applied. (See Mot. Summ. J. Hr'g  
17 Tr. 9:15-17, March 10, 2011, ECF No. 70.) Defendants, on the other  
18 hand, believe that the Second Amendment has never been interpreted  
19 as granting citizens the right to carry a concealed weapon in  
20 public, and restrictions on firearm possession has been the status  
21 quo in the United States for many years. Further, Defendants  
22 contend that Yolo County's policy does not violate the Second  
23 Amendment, because it is not a total ban on the possession of  
24 handguns.

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1           The Second Amendment protects an individual's right to "keep  
2 and bear arms." U.S. Const. amend. II. Rights bestowed under the  
3 Second Amendment are "fundamental," and apply "equally to the  
4 Federal Government and the States." McDonald v. City of Chicago,  
5 130 S. Ct. 3020, 3050 (2010). Specifically, the Second Amendment  
6 "protects a personal right to keep and bear arms for lawful  
7 purposes, most notably for self-defense in the home." McDonald,  
8 130 S. Ct. at 3044. See also United States v. Heller, 554 U.S.  
9 570, 635 (2008) ("the District's ban on handgun possession in the  
10 home [for self-defense purposes] violates the Second Amendment.");  
11 United States v. Vongxay, 594 F.3d 1111, 1115 (9th Cir. 2010)  
12 (explaining the scope of Heller was limited to the right to  
13 register and keep a loaded firearm in the home for self-defense).

14           However, as the Supreme Court of the United States recently  
15 clarified in a landmark case, the "right secured by the Second  
16 Amendment is not unlimited. From Blackstone through the 19th-  
17 century cases, commentators and courts routinely explained that the  
18 right was not a right to keep and carry any weapon whatsoever in  
19 any manner whatsoever and for whatever purpose." Heller, 554 U.S.  
20 at 626. In fact, the Court was careful to explain that their  
21 decision did not, in any way, invalidate many of the longstanding  
22 state and federal prohibitions on firearm possession.

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1 Id. at 627.<sup>4</sup> Based upon this, Heller cannot be read to invalidate  
2 Yolo County's concealed weapon policy, as the Second Amendment does  
3 not create a fundamental right to carry a concealed weapon in  
4 public.

5 Furthermore, the policy does not create a total ban on  
6 carrying a firearm, such that the policy completely infringes on  
7 the rights protected by the Second Amendment. Since the Supreme  
8 Court has yet to articulate the appropriate standard of review, the  
9 Ninth Circuit has determined that only regulations that  
10 "substantially burden the right to keep and bear arms trigger  
11 heightened scrutiny under the Second Amendment." Nordyke v. King,  
12 No. 07-15763, 2011 WL 1632063, at \*6 (9th Cir. May 2, 2011)  
13 (evaluating whether a restriction on gun sales substantially  
14 burdens Second Amendment rights). It then follows that if the  
15 regulation does not place a substantial burden to an individual's  
16 fundamental right, then rational basis review applies.

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19 <sup>4</sup>Plaintiffs' implicit argument is that Heller stands for the  
20 general right to carry a concealed weapon for self-defense purposes  
21 in public. (See Hr'g Tr. 23:9-13 ("There is a right to keep and  
22 bear arms. Bear arms means to carry them in public.") The  
23 Supreme Court does explain that the historical inference of the  
24 word "bear" should be interpreted to mean that there is a right to  
25 carry "upon the person or in the clothing or in a pocket" a "weapon  
26 for a particular purpose - confrontation." Id. at 584-85.  
27 However, Heller's ultimate holding is not the Court's  
28 interpretation of the historical significance of the Second  
Amendment's language. To the contrary, the Court, both in Heller,  
and subsequently in McDonald, took pain-staking effort to clearly  
enumerate that the scope of Heller extends only to the right to  
keep a firearm in the home for self-defense purposes. See supra  
(emphasis added). This Court does not infer that Heller grants any  
right that "extends beyond the home," as Plaintiffs contended  
during oral argument. (Hr'g Tr. 11:8-10.) Courts "often limit the  
scope of their holdings, as such limitations are integral" to  
understanding the holdings' reach. Vongxay, 594 F.3d at 1115.



1 Id. at \*6 (In "a variety of contexts" the Supreme Court "applies  
2 mere rational basis scrutiny to laws that regulate, but do not  
3 significantly burden, fundamental rights.").<sup>5</sup>

4 In determining whether government action "substantially  
5 burdens" a constitutionally-protected right, courts "typically ask  
6 whether the restriction leaves open sufficient alternative avenues"  
7 for exercising the right. Id. at \*7-8. The appropriate inquiry  
8 here, under a substantial burden analysis, is whether Yolo County's  
9 restrictions leave Plaintiffs with "reasonable alternative means"  
10 to obtain and keep a firearm "sufficient for self-defense  
11 purposes." Id. at \*7.

12 California Penal Code has carved out a number of exceptions  
13 that allow individuals to possess and carry loaded firearms in  
14 public settings, including for use in hunting, or in a situation  
15 where someone who believes they are in "immediate, grave, danger  
16 and that the carrying of the weapon is necessary for the  
17 preservation of that person or property." Penal Code  
18 § 12031(j)(1).<sup>6</sup>

19 \_\_\_\_\_  
20 <sup>5</sup> In their Summary Judgment Motion, Plaintiffs interpret Heller to  
21 mean that rational basis review could not, under any circumstances,  
22 be used to evaluate the merits of a policy regulating portions of  
23 the Second Amendment. (ECF No. 54-1 at 26.) Indeed, the Ninth  
24 Circuit previously interpreted Heller the same way; namely that  
25 rational-basis scrutiny would not be appropriate to review Second  
26 Amendment restrictions. See Vongxay, 594 F.3d at 1118 n.5.  
27 However, earlier this month, the Ninth Circuit read Heller as  
28 "insisting that a Second Amendment backed only by rational basis  
review would have 'no effect,'" and heightened scrutiny is only  
appropriate for claims that substantially burden the right to bear  
and keep arms. Nordyke, 2011 WL 1632063, at \*10 (citing Heller,  
554 U.S. at 627 n.27) (emphasis added).

<sup>6</sup> Immediate is defined as "the brief interval before and after the  
local law enforcement agency, when reasonably possible, has been  
notified of the danger and before the arrival of its assistance."  
Id.

1 A regulation or policy "does not substantially burden a  
2 constitutional right simply because it makes the right...more  
3 difficult to exercise." Nordyke, 2011 WL 1632063, at \*8.

4 Under the statutory scheme, even if Plaintiffs are denied a  
5 concealed weapon license for self-defense purposes from Yolo  
6 County, they are still more than free to keep an unloaded weapon  
7 nearby their person, load it, and use it for self-defense in  
8 circumstances that may occur in a public setting. Yolo County's  
9 policy does not substantially burden Plaintiffs' right to bear and  
10 keep arms. Therefore, rational basis review applies.

11 A regulation is constitutional under rational basis review if  
12 it bears "a reasonable relationship to a legitimate government  
13 interest." United States v. Whitlock, 2011 WL 1651232, at \*5 (9th  
14 Cir. April 28, 2011) (citing United States v. LeMay, 260 F.3d 1018,  
15 1031 (9th Cir. 2001)). As Defendants contend, regulating concealed  
16 firearms is an essential part of Yolo County's efforts to maintain  
17 public safety and prevent both gun-related crime and, most  
18 importantly, the death of its citizens. Yolo County's policy is  
19 more than rationally related to these legitimate government goals,  
20 and Plaintiffs' Motion for Summary Judgment fails as to this  
21 portion of their argument.

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1                   **2. Defendants' "Good Cause" Discretion**

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3           Plaintiffs also assert that the portions of Yolo County's  
4 concealed weapon license policy evaluating an applicant's good  
5 moral character and good cause for seeking a permit, gives the  
6 government "unbridled discretion" in violation of the Second  
7 Amendment. In applying traditional First Amendment analysis,  
8 Plaintiffs contend the statute is a prior restraint on the freedom  
9 to keep and bear arms. Defendants, in turn, believe any analogy of  
10 the Second Amendment to the First is improper because it "ignores  
11 the fundamental difference between regulation of speech and guns."  
12 (Def's. Mot. for Summ. J. 24, ECF No. 59.)

13           In a facial challenge<sup>7</sup> to a statute outside of the First  
14 Amendment context, a plaintiff must demonstrate that "no set of  
15 circumstances exists under which" the statute would be valid, "i.e.  
16 that the law is unconstitutional in all of its applications."  
17 Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442,  
18 450 (2008). See also Hotel & Motel Ass'n. of Oakland v. City of  
19 Oakland, 344 F.3d 959, 971 (9th Cir. 2003) ("To bring a successful  
20 facial challenge outside the context of the First Amendment, the  
21 challenger must establish that no set of circumstances exists under  
22 which the statute would be valid." (internal citations omitted));  
23 Nordyke, 2011 WL 1632063, at \*7 n.11 ("A facial challenge" is "the  
24 most difficult challenge to mount successfully.").

25  
26 <sup>7</sup> Plaintiffs characterized this portion of their argument as a  
27 "facial challenge" during oral argument, and the pleadings support  
28 such an interpretation. (See Hr'g Tr. 9:15-10:8) An as-applied  
constitutional challenge to Yolo County's policy was not asserted  
under the analogous First Amendment analysis.

1 Courts are instructed to first determine whether "the  
2 enactment reaches a substantial amount of constitutionally  
3 protected conduct" by examining "the ambiguous as well as the  
4 unambiguous scope of the enactment." Village of Hoffman Estates v.  
5 Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 & n.6 (1982).  
6 Such an inquiry must be "examined in the light of the facts of the  
7 case at hand," which should ultimately demonstrate that the  
8 regulation is patently invalid because "no standard of conduct is  
9 specified at all." Id. at 495 n.7 (internal citations omitted).

10 An exception to the rigidity of the facial challenge test  
11 exists for issues involving the First Amendment. A law involving  
12 First Amendment protections "may be overturned as impermissibly  
13 broad because a substantial number of its applications are  
14 unconstitutional, judged in relation to the statute's plainly  
15 legitimate sweep." Wash. State Grange, 552 U.S. at 449 n.6  
16 (internal citations omitted). Plaintiffs suggest the Court turn to  
17 case precedent established from examining the rights and  
18 regulations carved from the First Amendment as a framework for  
19 assessing those rights indicated under the Second Amendment.  
20 However, Plaintiffs do not address the exception in their papers,  
21 but cite cases entrenched in First Amendment constitutional  
22 analysis. The Court sees no reason to analogize rights under the  
23 Second Amendment to those under the First, as plenty of case  
24 authority exists to provide a clear framework of analysis to facial  
25 challenges, without poaching precedent from another Amendment's  
26 framework.

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1           Therefore, this Court cannot invalidate the good cause and  
2 good moral character portions of Yolo County's policy as  
3 unconstitutional on their face. Plaintiffs cannot demonstrate that  
4 there are zero circumstances under which Sheriff Prieto could  
5 clearly issue a concealed weapon permit to someone who demonstrates  
6 plausible good cause under the terms of the policy, and is also of  
7 objective good moral character. Any inquiry into the facial  
8 constitutionality of Yolo County's policy is futile, for it is both  
9 "undesirable" and near impossible for the Court to "consider every  
10 conceivable situation which might possibly arise in the application  
11 of complex and comprehensive legislation." Gonzales v. Carhart,  
12 550 U.S. 124, 168 (2007) (internal citations omitted); Nordyke,  
13 2011 WL 1632063 at \*7. Facial challenges are also disfavored for  
14 many reasons, most notably because they "rest on speculation."  
15 Wash. State Grange, 552 U.S. at 450.

16           Moreover, Yolo County's policy does contain a standard of  
17 conduct; applicants are clearly instructed to be of good moral  
18 character (and submit application documents corroborating such  
19 character), and demonstrate good cause for requiring the license.  
20 The policy goes further by providing examples of the types of good  
21 cause that satisfy the terms of the policy. While Plaintiffs are  
22 entitled to dislike the qualifications and standards created by  
23 Sheriff Prieto and Yolo County's policy, they cannot demonstrate  
24 that the policy itself is void for facial vagueness. For each of  
25 the above reasons, Plaintiffs' Motion for Summary Judgment on the  
26 Second Amendment claim fails and Defendants' Motion for Summary  
27 Judgment is granted.

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1           **B.     Equal Protection**

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3           Plaintiffs insist that Yolo County's concealed weapon license  
4 policy is subjective because Sheriff Prieto has discretionary  
5 authority to determine what constitutes "good cause." Plaintiffs  
6 also believe the policy is arbitrary and violates Equal Protection  
7 because some individuals are granted the right to bear arms for  
8 self-defense, while others are not. Defendants maintain that Yolo  
9 County's interest in preventing crime and ensuring public safety  
10 merits the policy's language and renders it constitutional.

11           The Equal Protection Clause of the Fourteenth Amendment  
12 requires that all "persons similarly situated" be treated the same  
13 under the law. City of Cleburne v. Cleburne Living Center, Inc.,  
14 473 U.S. 432, 439 (1985); Freeman v. City of Santa Ana, 68 F.3d  
15 1180, 1187 (1995). Modern equal protection analysis is a two step  
16 process: the first step is identifying the classification of  
17 groups, namely that a law is "applied in a discriminatory manner or  
18 imposes different burdens on different classes of people." Id.

19           The second step requires the court to "assess the legitimacy  
20 of a discriminatory statute under the appropriate level of  
21 scrutiny." Sagana v. Tenorio, 384 F.3d 731, 740 (9th Cir. 2004).

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1 Where an ordinance does not "purposefully operate to the detriment  
2 of a suspect class, the only requirement of equal protection is  
3 that the ordinance be rationally related to a legitimate  
4 governmental interest. Nordyke, 2011 WL 1632063, at \*14 (internal  
5 citations omitted).<sup>8</sup>

6 Plaintiffs' equal protection claim fails for two reasons.  
7 First, the policy does not treat similarly situated individuals  
8 differently. All law-abiding citizens who apply for a permit are  
9 not the same because some can demonstrate they have good cause and  
10 are of good moral character, and some cannot. Second, Defendants'  
11 good cause and good character clauses in the policy are clearly  
12 rationally related to Yolo County's goals of reducing the incidence  
13 of unlawful public shootings, prevent police from safely responding  
14 to dangerous situations, generally preventing crime, and ensuring  
15 public safety.

#### 16 17 **CONCLUSION** 18


19 Compared to many of this country's constitutional protections,  
20 the scope of rights under the Second Amendment is ambiguous and no  
21 doubt subject to change and evolution over time. Nonetheless, even  
22 in light of Heller and McDonald, Yolo County's concealed license  
23 policy is constitutionally valid.

24 \_\_\_\_\_  
25 <sup>8</sup> Though the right to keep and bear arms for self-defense is a  
26 fundamental right, "that right is more appropriately analyzed under  
27 the Second Amendment. Id. (citing Albright v. Oliver, 510 U.S.  
28 266, 273 (1994) ("Where a particular amendment provides an explicit  
textual source of constitutional protection against a particular  
sort of government behavior, that Amendment, not the more  
generalized notion of substantive due process, must be the guide  
for analyzing those claims." (internal citations omitted))).

1 Plaintiffs' Motion for Summary Judgment (ECF No. 54) is DENIED.  
2 Defendants' Cross Motion for Summary Judgment (ECF No. 58) is  
3 GRANTED. The Clerk of Court is accordingly directed to enter  
4 judgment in favor of Defendants Yolo County and Yolo County Sheriff  
5 Ed Prieto.

6 IT IS SO ORDERED.

7 Dated: May 13, 2011

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10 MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
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