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May 23, 2012

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**VIA E-FILING**

Molly Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, California 94103

Re: *Dorothy McKay, et al. v. Sheriff Sandra Hutchens, et al.*  
U.S. Courts for the Ninth Circuit Case No. 12-57049  
D.C. No.: 8:12-cv-01458-JVS-JPR

Dear Ms. Dwyer:

Pursuant to FRAP, Rule 28(j), counsel for Defendants-Appellees, Sheriff Sandra Hutchens and the Orange County Sheriff-Coroner Department, hereby inform the Court that new case authority came to the attention of counsel after briefing has been completed. The case is *Woollard v. Gallagher*, 712 F.3d 865 (4<sup>th</sup> Cir. March 21, 2013). (The *Woollard* District Court unpublished decision was cited by Appellants in their opening brief for the proposition that the right to bear arms extends beyond the home, and was previously distinguished in Respondents' brief at pp.24-27.) The unpublished decision has since been overruled.

In *Woollard*, Plaintiffs filed an action against Maryland's state officials ("Defendants") seeking to enjoin the enforcement of a section of the Public Safety Article of the Maryland Code, which imposed conditions for a permit to carry a handgun in public. Under the permitting scheme, the Secretary of the Maryland State Police must make certain findings including that the applicant "has good and substantial reason to wear, carry, or transport a handgun" and that a "permit is necessary as a reasonable precaution against apprehended danger." The "apprehended danger cannot be established by, inter alia, a 'vague threat' or a general fear of 'liv[ing] in a dangerous society.'" The Plaintiffs alleged that the permit requirement violated the Second Amendment and prevailed in the District Court. Defendants appealed.

The Court of Appeal reversed, declining to decide the issue of whether the challenged statute implicates Second Amendment protections, reasoning that analysis was not necessary because "the good-and-substantial-reason requirement passes constitutional muster under what we have deemed to be the applicable standard—intermediate scrutiny." The Court rejected the proposition that it must apply strict

Molly Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
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scrutiny whenever the law impinges upon a fundamental right. The Court also found that the good-and-substantial-reason requirement was reasonably adapted to Maryland's significant interests of crime prevention. The Court also rejected Plaintiffs' facial challenge.

The case is relevant to Respondents' arguments about the proper standard of review (Resp. Brief, pp. 33-376) and that requiring a certain reason to obtain a permit is reasonably adapted to the state's interest in public safety and crime reduction (Resp. Brief, pp.38-48).

Very truly yours,

NICHOLAS S. CHRISOS  
COUNTY COUNSEL

By Marianne Van Riper  
Marianne Van Riper, Senior Deputy

MVR:ml

ec/cc: All Parties of Record (via ECF/U.S.PS.—see attached Proof of Service)

9th Circuit Case Number: 12-57049

CERTIFICATE OF SERVICE

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I hereby certify that I electronically filed the foregoing letter dated May 23, 2013, to Molly Dwyer, Clerk of Court of the U.S. Court of Appeals for the Ninth Circuit with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 23, 2013.

The following participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Anna Barvir, Esq.  
Sean Anthony Barty, Esq.  
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9th Circuit Case Number: 12-57049

CERTIFICATE OF SERVICE

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I further certified that on May 23, 2013, I mailed a copy of the above-stated letter via United States Postal Service to the following:

Molly Dwyer, Clerk of Court  
Office of the Clerk  
James R. Browning Courthouse  
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P.O. Box 193939  
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Kamala D. Harris, California Attorney General  
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1300 "I" Street  
Sacramento, CA 95814

Executed this 23<sup>rd</sup> day of May, 2013.

  
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Marzette L. Lair