

1 Alan Gura (Calif. Bar No. 178221)
Gura & Possessky, PLLC
2 101 N. Columbus St., Suite 405
Alexandria, VA 22314
3 703.835.9085/Fax 703.997.7665

4 Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
5 1645 Willow Street, Suite 150
San Jose, CA 95125
6 408.264.8489/Fax 408.264.8487

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10	Deanna Sykes, Andrew Witham,)	Case No.
	Adam Richards, Second Amendment)	
11	Foundation, Inc., and The Calguns)	
	Foundation, Inc.,)	COMPLAINT
12)	
	Plaintiffs,)	42 U.S.C. §§ 1983, 1988
13)	
	v.)	
14)	
	John McGinness, County of Sacramento,)	
15	Ed Prieto, and County of Yolo,)	
)	
16	Defendants.)	

17
18 **COMPLAINT**

19 COME NOW the Plaintiffs, Deanna Sykes, Andrew Witham, Adam Richards, Second
20 Amendment Foundation, Inc. (“SAF”), and The Calguns Foundation, Inc. (“CGF”), by and
21 through undersigned counsel, and complain of Defendants as follows:

22 **THE PARTIES**

23 1. Plaintiff Deanna Sykes is a natural person and a citizen of the United States and of
24 the State of California, residing in Sacramento County, California. Plaintiff Sykes is a member of
25 SAF and a supporter of and participant in CGF activities.

26 2. Plaintiff Andrew Witham is a natural person and a citizen of the United States and
27 of the State of California, residing in Sacramento County, California. Plaintiff Witham is a
28 member of SAF and a supporter of and participant in CGF activities.

1 3. Plaintiff Adam Richards is a natural person and a citizen of the United States and
2 of the State of California, residing in Yolo County, California. Plaintiff Richards is a member of
3 SAF and a supporter of and participant in CGF activities.

4 4. Plaintiff Second Amendment Foundation, Inc. is a non-profit membership
5 organization incorporated under the laws of Washington with its principal place of business in
6 Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including
7 California. The purposes of SAF include education, research, publishing and legal action
8 focusing on the Constitutional right to privately own and possess firearms, and the consequences
9 of gun control. SAF brings this action on behalf of itself and its members.

10 5. Plaintiff The Calguns Foundation, Inc. is a non-profit organization incorporated
11 under the laws of California with its principal place of business in Redwood City, California. The
12 purposes of CGF include supporting the California firearms community by promoting education
13 for all stakeholders about California and federal firearm laws, rights and privileges, and
14 defending and protecting the civil rights of California gun owners. CGF represents these
15 members and supporters, which include California gun owners. CGF brings this action on behalf
16 of itself and its supporters, who possess all the indicia of membership.

17 5. Defendant County of Sacramento is a municipal entity organized under the
18 Constitution and laws of the State of California.

19 6. Defendant John McGinness is the Sheriff of Sacramento County, and as such, he
20 is responsible for formulating, executing and administering Sacramento County's laws, customs,
21 practices, and policies at issue in this lawsuit; has enforced the challenged laws, customs and
22 practices against plaintiffs, and is in fact presently enforcing the challenged laws, customs and
23 practices against plaintiffs. Defendant McGinness is sued in both his individual and official
24 capacities.

25 7. Defendant County of Yolo is a municipal entity organized under the Constitution
26 and laws of the State of California.

27 8. Defendant Ed Prieto is the Sheriff of the County of Yolo, and as such, he is
28 responsible for formulating, executing and administering Yolo County's laws, customs,

1 practices, and policies at issue in this lawsuit; has enforced the challenged laws, customs and
2 practices against plaintiffs, and is in fact presently enforcing the challenged laws, customs and
3 practices against plaintiffs. Defendant Prieto is sued in both his individual and official
4 capacities.

5 **JURISDICTION AND VENUE**

6 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

8 10. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

9 **STATEMENT OF FACTS**

10 *Background*

11 11. The Second Amendment to the United States Constitution provides: “A well
12 regulated Militia being necessary to the security of a free State, the right of the people to keep
13 and bear Arms shall not be infringed.”

14 12. The Second Amendment is incorporated as against the states through the
15 Fourteenth Amendment, such that Defendants cannot, under color of law, deprive Plaintiffs of
16 their right to keep and bear arms.

17 13. The Second Amendment guarantees the right of law-abiding individuals to
18 publicly carry operational handguns for self-defense.

19 14. States retain the ability to regulate the manner of carrying handguns, prohibit the
20 carrying of handguns in specific, narrowly defined sensitive places, prohibit the carrying of arms
21 that are not within the scope of Second Amendment protection, and disqualify specific,
22 particularly dangerous individuals from carrying handguns.

23 15. States may not completely ban the carrying of handguns for self-defense, deny
24 individuals the right to carry handguns in non-sensitive places, deprive individuals of the right to
25 carry handguns in an arbitrary and capricious manner, or impose regulations on the right to carry
26 handguns that are inconsistent with the Second Amendment.

27 16. Almost all states basically respect the Second Amendment rights to carry a
28 handgun for self-defense, in that the right to carry a handgun is either unregulated, or regulated to

1 the extent that individuals passing a background check and completing a gun safety course are, as
2 a matter of course, licensed to carry handguns. In some of these states, a license to carry a
3 handgun is required only if the handgun is concealed.

4 17. California law generally bans the carrying of concealed firearms. California Penal
5 Code § 12025. With very few exceptions, California generally prohibits the open, public carrying
6 of loaded handguns for self-defense in incorporated cities and many unincorporated areas, Penal
7 Code § 12031.

8 18. California law allows the carrying of loaded handguns in public, for self-defense,
9 upon issuance of a permit to carry a concealed handgun or, in certain counties, a license to carry
10 an exposed handgun. Penal Code § 12050(a).

11 19. Applicants seeking a license to carry a handgun must pass a criminal background
12 check, Penal Code § 12052, and successfully complete a course of training in the proper use of
13 handguns. Penal Code § 12050(a)(1)(E). Applications for a permit to carry a handgun are made
14 to the Sheriff of the county in which the applicant either resides or spends a substantial period of
15 time in owing to the applicant's principal place of employment or business being located in that
16 county. Alternatively, application may be made to the chief or other head of a municipal police
17 department of any city or city and county in which the applicant resides.

18 20. In addition to the successful completion of a background check and training, the
19 issuance of a permit to carry a handgun is left to the discretion of the issuing authority, based
20 upon that authority's determination of whether the applicant "is of good moral character, [and]
21 that good cause exists for the issuance" of the permit. Penal Code §§ 12050(a)(1)(A), (B). In
22 practice, the issuance of permits varies widely among California jurisdictions. Some issuing
23 authorities almost never issue handgun carry permits, others issue permits only occasionally, and
24 yet others liberally issue permits to most if not all law-abiding applicants.

25 *Violations of Plaintiffs' Right to Bear Arms*

26 21. Plaintiff Deanna Sykes, a lesbian, is concerned that her sexual orientation might
27 increase the odds that she would be targeted with criminal violence. The State of California has
28 recognized that violent crime directed at gay and lesbian people is a problem requiring specific

1 legislative attention. California Penal Code §§ 422.55(a)(6), 422.6 and California Civil Code §
2 51.7. Plaintiff Sykes is also a competitive shooter and firearm instructor, and thus frequently
3 transports quantities of firearms and ammunition throughout the Sacramento area. As small-
4 statured woman traveling alone with guns and ammunition, Plaintiff may be particularly
5 vulnerable to criminal attack. Even apart from her sexual orientation and firearm-related
6 activities, Plaintiff Sykes is not immune from the risk of criminal behavior. She seeks to exercise
7 her Second Amendment right to carry a handgun for personal protection.

8 22. The Second Amendment right to carry a handgun, and the inherent right of self-
9 defense and self-preservation it advances, are not considered by Defendant Sacramento County to
10 constitute “good cause” for the issuance of a handgun carry permit.

11 23. Defendant Sheriff McGinness is continuing Sacramento County’s “good cause”
12 policy for denying applications for gun carry permits. On a public website maintained by
13 Defendant Sacramento County, Defendant McGinness lays out his policy for determining
14 applications to carry handguns. Defendant McGinness explains that “[t]he mere fear of
15 victimization, or desire to carry a firearm, shall be insufficient” “good cause” to issue a gun carry
16 permit. Defendant McGinnis also explains that “[w]hat may be good cause in one area of the
17 county may not be in another area.”

18 24. Pursuant to Defendant Sacramento County’s “good cause” policy, Plaintiff Sykes
19 was denied a permit to carry a handgun by Defendant McGinnis’s predecessor, and it is obvious
20 that re-submission of the same application to Defendant McGinnis would be a futile act.

21 25. But for the lack of a permit to carry a handgun, Plaintiff Sykes would carry an
22 operational handgun in public for self-defense.

23 26. Plaintiff Andrew Witham emigrated to California from the United Kingdom on
24 October 31, 1998, and became a naturalized American citizen on January 22, 2003. In the United
25 Kingdom, Plaintiff Witham served nearly sixteen years as a British Reserve Sworn police officer
26 (Special Constable), earning the Queen’s Medal for Long Service and Good Conduct.

27 27. Between 2000 and 2004, Plaintiff Witham served as a non-sworn Community
28 Service Officer with the Redding Police Department, earning the annual Merit Award in 2001.

1 28. On December 10, 2006, Plaintiff Witham completed the basic course required to
2 obtain a handgun carry permit in Shasta County, as well as the course of training required to
3 obtain a permit to carry an exposed firearm from the California Bureau of Security and
4 Investigative Services. Since then, Plaintiff Witham has re-qualified four times for the exposed
5 handgun permit, which he currently possesses, along with a Private Investigator license.

6 29. Plaintiff Witham's Private Investigator license, in conjunction with his Exposed
7 Firearm Permit, allows him to carry an exposed, loaded handgun in California but only while he
8 is engaged in the course and scope of his work as a private investigator.

9 30. Since January 2, 2008, Plaintiff Witham has been employed as a Public Safety
10 Officer at McGeorge School of Law, University of the Pacific. The position is that of a
11 uniformed, non-sworn law enforcement officer on the campus of a private university. Plaintiff
12 Witham works late night and early morning shifts, requiring him to travel to and from work
13 through some of Sacramento's most crime-plagued areas..

14 31. In 2005, while employed as Security and Surveillance Manager for an Indian
15 casino in Shasta County, Plaintiff Witham reported several tribal members embezzling from the
16 casino. Owing to this incident, Plaintiff Witham received death threats and various other threats
17 of violence and intimidation, including the leaving of dead animals in his driveway. The Sheriff
18 of Shasta County issued Plaintiff Witham a license to carry a handgun in January, 2007, which
19 was to last for two years.

20 32. On or about July, 2007, Plaintiff Witham relocated from Shasta to the City of
21 Fairfield, in Solano County. As required by law, Plaintiff Witham notified the Sheriff of Shasta
22 County of this move.

23 33. On or about July, 2008, Plaintiff Witham relocated from Solano County to
24 Sacramento County, and again notified the Sheriff of Shasta County of this move. Within days,
25 Plaintiff Witham's permit to carry a handgun was revoked. Plaintiff Witham has reason to
26 believe this was done at the request of Defendant McGinness, pursuant to the custom, policy, or
27 practice of Defendant Sacramento County.

28 ///

1 34. Plaintiff Witham contacted Defendant McGinness's office to inquire about the
2 revocation of his permit to carry a handgun, and was advised that a permit would have to be
3 issued by Defendant McGinness. Plaintiff Witham was further advised that application for a
4 permit to carry a handgun could not be made by individuals residing in Sacramento County for
5 less than 12 months, in the absence of a letter attesting to the applicant's good character from the
6 issuing authority of the applicant's previous gun permit.

7 35. Plaintiff was advised that as a matter of policy, the Sheriff of Shasta County does
8 not issue letters of the sort required by Defendant McGinness.

9 36. Although Defendant McGinness does not require that handgun carry permit
10 applicants complete the required training prior to making their applications, Plaintiff Witham
11 was certified on December 16, 2008, in 24 hours POST PC 832 Firearms Familiarization at the
12 Sacramento Regional Public Safety Training Center, an approved course for issuance of a
13 handgun carry permit in Sacramento County.

14 37. However, owing to the fact that Plaintiff Witham has not been a resident of
15 Sacramento County for over 12 months, Defendant McGinness refuses to even provide Plaintiff
16 Witham with the form for applying for a handgun carry permit.

17 38. But for the lack of a permit to carry a handgun, Plaintiff Witham would carry an
18 operational handgun in public for self-defense.

19 39. In March, 2009, Plaintiff Adam Richards, a law-abiding citizen who wishes to
20 exercise his right to bear arms, contacted Defendant Prieto's office to inquire about the process
21 for obtaining a permit to carry a handgun. Defendant Prieto's office advised Plaintiff Richards
22 that the desire to have a gun available for self-defense would not constitute "good cause" for the
23 issuance of the permit, and that his application would be a futile act. Defendant Prieto's written
24 policy regarding the issuance of gun carry permits includes among "examples of invalid reasons
25 to request a permit" "self-protection and protection of family (without credible threats of
26 violence)." Plaintiff Richards was further advised that as a matter of policy, his application
27 would not be considered unless he first applied to the Chief of Police in the City of Davis, where
28 Plaintiff Richards resides.

1 the Fourteenth Amendment to the United States Constitution, damaging Plaintiffs in violation of
2 42 U.S.C. § 1983. Plaintiffs are therefore entitled to permanent injunctive relief against such
3 customs, policies, and practices.

4 **THIRD CLAIM FOR RELIEF**
5 **U.S. CONST., AMEND. XIV – DUE PROCESS, 42 U.S.C. § 1983**
6 **AGAINST DEFENDANTS MCGINNESS AND SACRAMENTO COUNTY**

7 44. Paragraphs 1 through 43 are incorporated as though fully stated herein.

8 45. Plaintiff Witham had a cognizable property interest in his permit to carry a
9 handgun, the revocation of which was caused by Defendants McGinness and Sacramento County
10 without sufficient due process. Defendants are propagating customs, policies, and practices that
11 violate Plaintiff Witham’s right to due process under the Fourteenth Amendment to the United
12 States Constitution, damaging Plaintiff in violation of 42 U.S.C. § 1983. Plaintiff is therefore
13 entitled to permanent injunctive relief against such customs, policies, and practices.

14 **FOURTH CLAIM FOR RELIEF**
15 **U.S. CONST., AMEND. XIV – RIGHT TO TRAVEL, 42 U.S.C. § 1983**
16 **AGAINST DEFENDANTS MCGINNESS AND SACRAMENTO COUNTY**

17 46. Paragraphs 1 through 45 are incorporated as though fully stated herein.

18 47. The Fourteenth Amendment guarantees individuals the right to interstate and
19 intrastate travel.

20 48. By demanding that individuals reside in Sacramento County for a year before
21 allowing them to apply for a permit to carry a handgun, Defendants McGinness and Sacramento
22 County are propagating customs, policies, and practices that violate Plaintiffs’ right to travel
23 under the Fourteenth Amendment to the United States Constitution, damaging Plaintiffs in
24 violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to permanent injunctive relief
25 against such customs, policies, and practices.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs request that judgment be entered in their favor and against
28 Defendants as follows:

1. An order permanently enjoining Defendants, their officers, agents, servants,
employees, and all persons in active concert or participation with them who receive actual notice

1 of the injunction, from enforcing the “good moral character” and “good cause” requirements of
2 California Penal Code § 12050 against handgun carry permit applicants who seek the permit for
3 self-defense and are otherwise qualified to obtain a handgun carry permit under that section;

4 2. An order permanently enjoining Defendants, their officers, agents, servants,
5 employees, and all persons in active concert or participation with them who receive actual notice
6 of the injunction, from requiring any duration of local residence prior to accepting an application
7 under California Penal Code § 12050;

8 3. Declaratory relief that the “good moral character” and “good cause” provisions of
9 California Penal Code § 12050 are unconstitutional either on their face and/or as applied to bar
10 applicants who are otherwise legally qualified to possess firearms and who assert self-defense as
11 their “good cause” for seeking a handgun carry permit;

12 4. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988;

13 5. Any other further relief as the Court deems just and appropriate.

14 Dated: May 5, 2009

Respectfully submitted,

15 Alan Gura (Calif. Bar No. 178221)
16 Gura & Possessky, PLLC
17 101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

Donald E.J. Kilmer, Jr. (Calif. Bar No. 179986)
Law Offices of Donald Kilmer, A.P.C.
1645 Willow Street, Suite 150
San Jose, CA 95125
408.264.8489/Fax 408.264.8487
E-Mail: Don@DKLawOffice.com

18
19 By: _____
Donald E. J. Kilmer, Jr.

20 Attorneys for Plaintiffs
21
22
23
24
25
26
27
28