No. 13 – A918

In The

Supreme Court of the United States

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, AND ROD SWANSON,

Applicants,

v.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI, in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Respondents.

On Emergency Application for Injunction Pending Appeal in the United States Court of Appeals for the Ninth Circuit

RESPONSE TO EMERGENCY APPLICATION FOR INJUNCTION PENDING APPEAL

To the Honorable Justice Anthony Kennedy Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit

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March 12, 2014

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Respondents the City of Sunnyvale, the former Mayor of Sunnyvale, Anthony Spitaleri, and the Chief of the Sunnyvale Department of Public Safety, Frank Grgurina (collectively, "Respondents" or "Sunnyvale") respond to Applicants' Emergency Application for Injunction Pending Appeal, filed on March 10, 2014, as follows:

I. INTRODUCTION

There are no exigent circumstances present here, and Applicants cannot show anything close to an indisputably clear right to legal relief.

For fourteen years, by statute not challenged here, California law has limited the size of ammunition magazines to 10 rounds. It has been unlawful to manufacture, sell, or transfer (but not to merely possess) large capacity magazines of 10 rounds or more ("LCMs") in Sunnyvale and elsewhere in California since 2000. *See* California Penal Code § 32310. On November 5, 2013, some two-thirds of Sunnyvale voters approved an ordinance (Sunnyvale Municipal Code § 9.44.050, the "Ordinance") to close this narrow loophole under state law by prohibiting continued possession of LCMs in Sunnyvale. The Ordinance took effect on December 6, 2013. (Emergency Application for Injunction Pending Appeal ("Application"), App. 3 (District Court Order), at 3.) The Ordinance allowed Sunnyvale residents, including the six Applicants who claim to have possessed LCMs since 2000, a 90-day grace period to make arrangements for lawfully storing or otherwise disposing of their LCMs. (*Id.*) That grace period ended last week, on March 6, 2014.

When they filed suit, Applicants each testified that they would comply with the grace period (*see* App. 1, Douglas Decl. at ¶ 11; Seifers Decl. at ¶ 13;

Pearson Decl. at ¶ 11; Swanson Decl. at ¶ 1; Fyock Decl. at ¶ 13), and there is no indication that compliance has posed any problems for them. Applicants base their extraordinary application on a reiteration of their merits-based arguments currently on appeal before the Ninth Circuit, which last week denied Applicants' nearly identical request for emergency relief. Accordingly, there is no exigency to justify this extraordinary application.

Equally fatal to this motion, Applicants cannot establish that their right to the requested relief is "indisputably clear" as required under the All Writs Act, 28 U.S.C. § 1651. Every federal court without exception that has considered the constitutionality of a limitation on the size of ammunition magazines to no more than 10 rounds has determined that it does not violate the Second Amendment. The Ordinance at issue here is no different. It does not prevent law-abiding citizens from possessing any firearm at all, as the vast majority of firearms that accept LCMs work equally well with California-compliant magazines of 10 rounds or less that are readily available. (App. 2, Yurgealitis Decl., ¶ 6.) To the extent that there are any firearms that were obtained by Sunnyvale residents before 2000 (when the State law went in to effect) that are not compatible with compliant magazines, the Ordinance exempts continued possession of LCMs solely for use with that weapon. (Application, App. 3 at 3, *quoting* Sunnyvale Mun. Code. § 9.44.050(c)(8)).

Nor can Applicants show that the requested relief is necessary or appropriate in aid of the Court's jurisdiction. This Court's jurisdiction will not be defeated if the requested relief is not granted. Applicants can continue to pursue their appeal with the Ninth Circuit and, if necessary, seek a writ of certiorari from

this Court.

For these reasons and the others set forth below, the Application should be denied.

II. ARGUMENT

The Court's injunctive power under the All Writs Act "should be used sparingly and only in the most critical and exigent circumstances." *Williams v. Rhodes*, 89 S. Ct. 1, 2, 21 L. Ed. 2d 69, 70 (1968) (Stewart, J.); *see also Turner Broadcasting System, Inc. v. FCC*, 507 U.S. 1301, 1303, 113 S.Ct. 1806, 123 L.Ed.2d 642 (1993) ("We have consistently stated, and our own Rules so require, that such power is to be used sparingly.") (Rehnquist, C. J., in chambers); Rule 20.1 ("Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised"). "[A] request for an injunction pending appeal 'does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.'" *Hobby Lobby Stores, Inc. v. Sebelius*, 133 S.Ct. 641, 642 (2012) (Sotomayor, J., in chambers), quoting *Respect Maine PAC v. McKee*, 562 U.S. ——, 131 S.Ct. 445, 178 L.Ed.2d 346 (2010) (internal citations omitted).

Even where "critical and exigent" circumstances exist, the Court or a Circuit Justice may issue an injunction only when it is "[n]ecessary or appropriate in aid of our jurisdiction" and "the legal rights at issue are indisputably clear." *Hobby Lobby*, 133 S. Ct. at 642-3, quoting *Wisconsin Right to Life, Inc. v. Federal Election Comm'n*, 542 U.S. 1305, 1306, 125 S.Ct. 2, 159 L.Ed.2d 805 (2004) (Rehnquist, C.J., in chambers) (internal quotation marks omitted); see also *Brown*

v. Gilmore, 533 U.S. 1301, 122 S.Ct. 1 (2001) (Rehnquist, C.J., in chambers) (denying an injunction pending certiorari, without "attempting to predict the views of my colleagues as to the ultimate merit" because "their position is less than indisputable"). It is well-established that:

> "As a threshold consideration, it must be established that four Members of the Court will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. I must also be persuaded that there is a fair prospect that five Justices will conclude that the case was erroneously decided below. Finally, an applicant must demonstrate that irreparable harm will likely result from the denial of equitable relief. In appropriate cases, a Circuit Justice will balance the equities to determine whether the injury asserted by the applicant outweighs the harm to other parties or to the public."

Lucas v. Townsend, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers) (citations omitted).

Applicants do not satisfy the demanding standards for the extraordinary relief they seek.

A. THE CIRCUMSTANCES ARE NEITHER CRITICAL NOR EXIGENT

There is nothing "critical" or "exigent" about Applicants' claim. Applicants had more than four months prior to the end of the 90-day grace period on March 6 to make arrangements for storing their LCMs outside the city or otherwise lawfully disposing of any LCMs in their possession. Indeed, Mr. Fyock, the first-named Applicant, readily admitted in a news article just days ago that his "high-capacity magazines are already out of town."[1] If Applicants ultimately prevail

[1] http://www.insidebayarea.com/news/ci_25298264/sunnyvales-ammo-magazine-ban-is-effect-but-what.

on their claims, they can retrieve their LCMs from storage outside the city at that time and continue to possess them. Applicants are merely attempting to circumvent the appeals process by asking this Court to prejudge the very issues that are now before the Ninth Circuit in this appeal.[2]

B. APPLICANTS CANNOT ESTABLISH THAT THEIR RIGHT TO RELIEF IS INDISPUTABLY CLEAR

Applicants have not demonstrated that their entitlement to injunctive relief is "indisputably clear." *Hobby Lobby*, 133 S. Ct. at 643; *Brown*, 122 S.Ct. at 2. Every court that has considered the constitutionality of a ban on LCMs, including the D.C. Circuit, has applied intermediate scrutiny and held that such a ban does not violate the Second Amendment. See *Heller v. District of Columbia*, 670 F.3d 1244, 1264 (D.C. Cir. 2011); *San Francisco Veteran Police Officers Ass'n v. City & Cnty. of San Francisco*, C-13-05351 WHA, 2014 WL 644395, at *7 (N.D. Cal. Feb. 19, 2014); *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, C-13-291S, 2013 WL 6909955, at *18 (W.D.N.Y. Dec. 31, 2013); *Shew v. Malloy*, C-13-739 AVC, 2014 WL 346859, at *9 (D. Conn. Jan. 30, 2014); *Tardy v. O'Malley*, C-13-2861, TRO Hr'g Tr., at 66-71 (D. Md. Oct. 1, 2013).[3] Not a single case in this body of law has decided the

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[2] The Ninth Circuit has already set a briefing schedule for the appeal, with all briefing to be completed by May 15, 2014. (App. 4.)

[3] Contrary to Applicants' unsupported claim that Sunnyvale's possession restriction is an "extreme outlier" because it does not "grandfather" in LCMs manufactured or sold before a certain date (Application at 1, 23), most of the laws at issue in these cases similarly did not including any such "grandfathering" clause. *See Heller*, 670 F.3d at 1249; *San Francisco Veteran Police Officers Ass'n*, 2014 WL 644395 at *1; *Cuomo*, 2013 WL 6909955, at *3 ("the SAFE Act eliminates the 'grandfather' clause, which had exempted such 'large-capacity' magazines that were

issue in Applicants' favor. The District Court's decision denying Applicants' request for preliminary injunction, as well as the Ninth Circuit's decision denying Applicants' emergency motion for an injunction pending appeal, are consistent with these prior decisions. Given this universal rejection of Applicants' position, they necessarily cannot make the required showing that their right to relief is "indisputably clear." For this reason alone this application should be denied. *See Hobby Lobby*, 133 S. Ct. at 643 (denying application to enjoin enforcement of statute under All Writs Act where precedent did not establish that applicants' right to relief was "indisputably clear").[4]

Since this Court recognized the Second Amendment right to keep and bear arms, the Circuits have adopted a careful and measured approach to the various gun control ordinances they have evaluated, deciding each case on its merits and avoiding broad pronouncements that would up-end the development of Second Amendment jurisprudence. In keeping with this careful approach, a consensus has emerged in the Circuits that while severe restrictions on the right to keep and bear arms either fail categorically without regard to their justifications or fail strict scrutiny, more modest burdens that permit armed self-defense but only regulate the exercise of that right are subject to less demanding scrutiny. *See, e.g.*,

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manufactured before September 13, 1994").

[4] In contrast, in *American Trucking Associations v. Gray*, 483 U.S. 1306 (1987) (Blackmun, J., in chambers), cited by Applicants, the Court granted an injunction requiring Arkansas state officials to establish an escrow fund for the payments made pursuant to a tax whose constitutionality was being challenged. Unlike in this case, binding authority demonstrated that the petitioner was likely to succeed on the merits of its challenge—the Court had two months earlier held that a substantially similar tax violated the Commerce Clause. *Id.* at 1306-8.

U.S. v. Chovan, 735 F.3d 1127, 1137-8 (9th Cir. 2013); *Peruta v. Cty. of San Diego*, No. 10–56971, --- F.3d ----, 2014 WL 555862, at *19-21 (9th Cir. Feb. 13, 2014); *U.S. v. Marzzarella*, 614 F.3d 85, 95-100 (3rd Cir. 2010); *Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco & Firearms*, 700 F.3d 185, 205-7 (5th Cir. 2012); *U.S. v. Skoien*, 614 F.3d 638, 641-2 (7th Cir. 2010) (*en banc*). Echoing that approach, at least one noted scholar has already weighed in that the District Court's decision is entirely consistent with emerging Second Amendment jurisprudence.[5]

C. AN INJUNCTION IS NOT NECESSARY OR APPROPRIATE TO AID THE COURT'S JURISDICTION

Furthermore, Applicants cannot show that an injunction is necessary or appropriate to aid the Court's jurisdiction. The All Writs Act creates a "limited judicial power" allowing the Court to issue writs "in aid of the appellate jurisdiction which might otherwise be defeated." *Federal Trade Commission v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) (internal quotations and citations omitted). The *Dean Foods* decision is illustrative. There, the Court addressed an application to the Court of Appeals under the All Writs Act that sought to enjoin a merger of two competing businesses pending the Federal Trade Commission's determination regarding the legality of the merger. The Court explained that if the imminent merger were allowed to proceed on schedule, review would be "virtually impossible" because one of the two entities "will have vanished."[6] *Id.* at 600, 605 (internal quotations omitted).

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[5] http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/06/are-laws-limiting-magazine-capacity-to-10-rounds-constitutional/

[6] The Court remanded to the Court of Appeals to rule on the merits of the application. *See Dean Foods*, 384 U.S. at 612.

In contrast, there is no danger that this Court's appellate jurisdiction will be defeated if it does not grant the relief that Applicants request. To the contrary, there is nothing to prevent the Applicants from continuing to pursue their appeal at the Ninth Circuit and, if necessary, file a petition for a writ of certiorari in this Court following a final judgment. As explained by the Court in rejecting a similar application in *Hobby Lobby*, "Even without an injunction pending appeal, the applicants may continue their challenge to the regulations in the lower courts. Following a final judgment, they may, if necessary, file a petition for a writ of certiorari in this Court." *Hobby Lobby*, 133 S. Ct. at 643.

Applicants attempt to get around this by relying on general assertions that their alleged rights will be "irretrievably lost" because they will "never be able to recover their protected magazines." (Application at 22.) However, there is simply no evidence to support such an extreme assertion, particularly in light of the public acknowledgment of Applicant Fyock that he simply stored his LCM's outside of Sunnyvale as the Ordinance permits.[7] This is all the more true because, in the unlikely event that the Ninth Circuit (or this Court) were to hold that LCM possession may not be prohibited, then the California law prohibiting Applicants from purchasing new LCMs would surely fall as well.

Similarly, Applicants cannot demonstrate that they will be irreparably harmed if the injunction is not granted. Their application concedes as much by rehashing the same arguments they previously made in the extensive briefing on

[7] http://www.insidebayarea.com/news/ci_25298264/sunnyvales-ammo-magazine-ban-is-effect-but-what.

their motion for preliminary injunction and in their oral argument to the District Court, as well as in their briefing to the Ninth Circuit, arguments that were rejected by both courts. In fact, Applicants themselves concede that the Ordinance permits them to store their LCMs outside the City for the duration of the appeal. (Application at 1.) Applicants also acknowledge that they may simply "purchase new compliant magazines" which are readily available to replace their LCMs. (App. 3, Dkt. 31 at 4.)

Even if Applicants could somehow demonstrate irreparable harm, that harm must be balanced against the injury to other parties to the case or to the public. *Times-Picayune Publ'g Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974). *See, e.g., Barnes v. E-Systems, Inc.*, 501 U.S. 1301, 1304-05 (1991) (Scalia, J.); *United States Postal Service v. National Ass'n of Letter Carriers*, 481 U.S. 1301, 1302-03 (1987) (Rehnquist, C.J.); *Mikutaitis v. United States*, 478 U.S. 1306, 1309 (1986) (Stevens, J.). Applicants cannot show that the balance of the equities weighs in their favor here.

The District Court found that "the Sunnyvale ordinance is substantially related to the compelling government interest in public safety" (Application, App. 3 at 15), and that "the risk that a major gun-related tragedy" would occur between March 6, 2014 and the date this case is resolved "balance[s] out" any inconvenience to Applicants in disposing of their magazines (*id.* at 17). The District Court concluded that:

> Plaintiffs are not likely to succeed on the merits, that Plaintiffs failed to prove that they would suffer irreparable harm absent a preliminary injunction, that

> the balance of the hardships is neutral, and that the public interest favors Sunnyvale. The equities, therefore, weigh sharply against granting Plaintiffs' motion for a preliminary injunction.

(*Id.* at 19.) The District Court also recognized that the "inconvenience to Plaintiffs in disposing of their now-banned magazines" is outweighed by Sunnyvale's interest in public safety and the safety of its police officers. (*Id.* at 16-19) (noting that the public has an interest in "preventing gun violence" and that "magazines having a capacity to accept more than ten rounds present special danger to law enforcement officers").

Applicants gloss over that the District Court had before it, and relied on in reaching its decision, a robust evidentiary record. Indeed, Applicants submitted declarations from three expert witnesses, and Respondents submitted declarations from four expert witnesses. The parties also each submitted lengthy factual exhibits to the District Court. The District Court carefully considered and weighed such evidence in making its ruling. (Application, App. 3, at 6-7, 10-11, 13-15, 18.) ("Sunnyvale has submitted pages of credible evidence, from study data to expert testimony to the opinions of Sunnyvale public officials, indicating that the Sunnyvale ordinance is substantially related to the compelling government interest in public safety.") This issue should not be decided on an expedited basis without careful consideration of this record.[8]

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[8] It is also noteworthy that a number of other states and municipalities have enacted laws restricting the possession or sale of ammunition magazines on the basis of capacity. *See* Haw. Rev. Stat. § 134-8(c) (prohibiting possession of LCMs capable of use with pistols); Mass. Gen. Laws Ann. ch. 140, §§ 121, 131M (enacted as 1998 Mass. Stats. ch. 180, § 8) (prohibiting sale or possession of LCMs); 2002 Md.

Contrary to Plaintiffs' repeated assertions that the Ordinance imposes an "outright ban" on the possession of arms (Application at 11), the Ordinance merely conforms to state law by limiting the capacity of an ammunition magazine to ten rounds. As the District Court noted, "The Sunnyvale law does not ban all, or even most, magazines." (Application, App. 3 at 9.) Individuals are free to possess and use magazines with 10 rounds or less. The Ordinance resulted in no change whatsoever in their available choices of firearms—the great majority of which operate equally well without LCMs, and to the extent any firearm can operate only with an LCM, it is expressly exempted. No weapons are "banned" — public safety is enhanced.

III. CONCLUSION

Rhetoric is no basis for the Court's exercise of its extraordinary All Writs Act authority. Applicant's characterization of Sunnyvale's size limitation on ammunition magazines as a "categorical" or "flat" ban on possession that "destroys" the right to arms is not evidence. In contrast, the District Court found that "Sunnyvale has submitted pages of credible evidence, from study data to expert

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Sess. Laws ch. 26, § 2 (prohibiting sale of magazine with capacity of more than 20 rounds); N.J. Stat. Ann. §§ 2C:39-1(y), 39-3(j) (prohibiting possession of magazines with capacity of more than 15 rounds except magazines grandfathered under 1990 law); 2000 N.Y. Sess. Laws ch. 189, § 11 (prohibiting LCMs except those manufactured before September 13, 1994); City of Rochester, N.Y., City Code No. 47-5 (prohibiting possession of pistol magazines containing more than 17 rounds or rifle magazines containing more than five rounds); D.C. Code § 7-2506.01 (prohibiting possession of LCMs); Chicago, Ill. Muni. Code §§ 8-20-010, 8-20-075 (prohibiting possession of magazines with capacity greater than 15 rounds). Applicants would have this Court make a ruling that could call into question the laws of these states and municipalities without the benefit of a full factual record and briefing. The Court should decline Applicants' invitation to take such a drastic step in this abbreviated interlocutory posture.

testimony to the opinions of Sunnyvale public officials, indicating that the Sunnyvale ordinance is substantially related to the compelling government interest in public safety." (Application, App. 3, at 15.) And every court that has considered the issue has rejected Applicant's arguments on the merits. Their asserted legal rights fall far short of being "absolutely clear." Accordingly, Applicants' application should be denied.

Dated: March 12, 2014

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By: _____
Roderick M. Thompson

Attorneys for Respondents

Appendix 1

Declarations of Plaintiffs in Support of Motion for Preliminary Injunction

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

DECLARATION OF WILLIAM DOUGLAS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF WILLIAM DOUGLAS

1. I, William Douglas, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of the City of Sunnyvale.

3. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

4. Prior to December 6, 2013, I acquired a magazine capable of holding more than ten rounds in accordance with state and federal law. This magazine has not been permanently altered so as to be incapable of accommodating more than 10 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a tubular magazine contained in a lever-action firearm. I currently own and possess this magazine for in-home self-defense.

5. Prior to December 6, 2013, I lawfully acquired a magazine capable of holding twenty rounds for my rifle, with the purpose of using such for target practice and for in-home self-defense.

6. I selected this particular firearm in part because I believe that a rifle with a magazine capable of holding more than ten rounds is useful for in-home self-defense.

7. I am concerned that if multiple intruders attack me while at home, I will require the use of more than ten rounds to effectively protect myself and others in my home.

8. I fear that a home intruder will be carrying a firearm with a magazine capable of holding more than ten rounds, or will be carrying multiple firearms, and that I will require a firearm with a magazine capable of holding more than ten rounds to effectively protect myself and others from such a threat in my home.

9. I believe that being forced to change my magazine after expending ten rounds during any critical time that requires me to act in self-defense will impact my ability to effectively defend myself and others in my home. Should I require more than ten rounds to neutralize the threat of a home intruder or group of intruders, I fear that I will be unable to re-load my rifle in time to effectively defend myself and others in my home.

10. Due to the Defendants' enactment of Sunnyvale Municipal Code (SMC) section 9.44.050, I am prohibited from continuing to possess, within the City of Sunnyvale, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than 10 rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm.

11. In accordance with SMC section 9.44.050, I intend to cease possessing any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on or before March 6, 2013.

12. But for SMC section 9.44.050, I would immediately and continuously possess a magazine capable of holding more than ten rounds within the City of Sunnyvale for lawful purposes, including in-home self-defense. If this court declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will continue to possess any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale.

13. Because SMC section 9.44.050 requires that I cease possessing within the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearm magazines for lawful purposes, including in-home self-defense, without risking criminal prosecution.

I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on December 19, 2013.

William Douglas, Declarant

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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Defendants.

CASE NO: CV13-05807 RMW

DECLARATION OF BRAD SEIFERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF BRAD SEIFERS

1. I, Brad Seifers, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of the City of Sunnyvale.

3. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

4. Prior to December 6, 2013, I acquired a magazine capable of holding more than ten rounds in accordance with state and federal law. This magazine has not been permanently altered so as to be incapable of accommodating more than 10 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a tubular magazine contained in a lever-action firearm. I currently own and possess this magazine for in-home self-defense.

5. Prior to December 6, 2013, I lawfully acquired a handgun that came equipped with a magazine capable of holding 15 rounds.

6. I acquired the handgun with the magazine capable of holding 15 rounds for use in my home for self-defense.

7. I selected this particular firearm in part because I believe that a handgun with a magazine capable of holding more than ten rounds best suits my needs for in-home self-defense.

8. I am concerned that if multiple intruders attack me while at home, I will require the use of more than ten rounds to effectively protect myself and others in my home.

9. I fear that a home intruder will be carrying a firearm with a magazine capable of holding more than ten rounds, or will be carrying multiple firearms, and that I will require a firearm with a magazine capable of holding more than ten rounds to effectively protect myself and others from such a threat in my home.

10. I believe that being forced to change my magazine after expending ten rounds during any critical time that requires me to act in self-defense may impact my ability to effectively defend myself and others in my home. Should I require more than ten rounds to neutralize the threat of a home intruder or group of intruders, I fear that I will be unable to re-load my handgun in time to effectively defend myself and others in my home.

11. I fear that my firearm will malfunction when I need it most for self-defense if I use a magazine that was not originally designed for use with my handgun.

12. Due to the Defendants' enactment of Sunnyvale Municipal Code (SMC) section 9.44.050, I am prohibited from continuing to possess, within the City of Sunnyvale, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than 10 rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm.

13. In accordance with SMC section 9.44.050, I intend to cease possessing any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on or before March 6, 2013.

14. But for SMC section 9.44.050, I would immediately and continuously possess a magazine capable of holding more than ten rounds within the City of Sunnyvale for lawful purposes, including in-home self-defense. If this court declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will continue to possess any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale.

15. Because SMC section 9.44.050 requires that I cease possessing within the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearm magazines for lawful purposes, including in-home self-defense, without risking criminal prosecution.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on December 19, 2013.

Brad Seifers, Declarant

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
Anna M. Barvir - S.B.N. 268728
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

DECLARATION OF DAVID PEARSON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF DAVID PEARSON

1. I, David Pearson, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of the City of Sunnyvale.

3. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

4. Prior to December 6, 2013, I acquired a magazine capable of holding more than ten rounds in accordance with state and federal law. This magazine has not been permanently altered so as to be incapable of accommodating more than 10 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a tubular magazine contained in a lever-action firearm. I currently own and possess this magazine for in-home self-defense.

5. Prior to December 6, 2013, I lawfully acquired a magazine capable of holding twenty rounds for my rifle, with the purpose of using such for target practice and for in-home self-defense.

6. I selected this particular firearm in part because I believe that a rifle with a magazine capable of holding more than ten rounds is useful for in-home self-defense.

7. I am concerned that if multiple intruders attack me while at home, I may require the use of more than ten rounds to effectively protect myself and others in my home.

8. I fear that a home intruder will be carrying a firearm with a magazine capable of holding more than ten rounds, or will be carrying multiple firearms, and that I will require a firearm with a magazine capable of holding more than ten rounds to effectively protect myself and others from such a threat in my home.

9. I believe that being forced to change my magazine after expending ten rounds during any critical time that requires me to act in self-defense may impact my ability to effectively defend myself and others in my home. Should I require more than ten rounds to neutralize the threat of a home intruder or group of intruders, I fear that I may be unable to re-load my rifle in time to effectively defend myself and others in my home.

10. Due to the Defendants' enactment of Sunnyvale Municipal Code (SMC) section 9.44.050, I am prohibited from continuing to possess, within the City of Sunnyvale, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than 10 rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm.

11. In accordance with SMC section 9.44.050, I intend to cease possessing any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on or before March 6, 2013.

12. But for SMC section 9.44.050, I would immediately and continuously possess a magazine capable of holding more than ten rounds within the City of Sunnyvale for lawful purposes, including in-home self-defense. If this court declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will continue to possess any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale.

13. Because SMC section 9.44.050 requires that I cease possessing within the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearm magazines for lawful purposes, including in-home self-defense, without risking criminal prosecution.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on December 20, 2013.

David Pearson, Declarant

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

DECLARATION OF ROD SWANSON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

-

DECLARATION OF ROD SWANSON

1. I, Rod Swanson, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of the City of Sunnyvale.

3. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

4. Prior to December 6, 2013, I acquired a magazine capable of holding more than ten rounds in accordance with state and federal law. This magazine has not been permanently altered so as to be incapable of accommodating more than 10 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a tubular magazine contained in a lever-action firearm. I currently own and possess this magazine for in-home self-defense.

5. Prior to December 6, 2013, I lawfully acquired a handgun that came equipped with a magazine capable of holding 19 rounds.

6. I acquired the handgun with the magazine capable of 19 rounds for use in my home for self-defense.

7. I selected this particular firearm in part because I believe that a handgun with a magazine capable of holding more than ten rounds best suits my needs for in-home self-defense.

8. I am concerned that if multiple intruders attack me while at home, I may require the use of more than ten rounds to effectively protect myself and others in my home.

9. I fear that a home intruder will be carrying a firearm with a magazine capable of holding more than ten rounds, or will be carrying multiple firearms, and that I may require a firearm with a magazine capable of holding more than ten rounds

to effectively protect myself and others from such a threat in my home.

10. I believe that being forced to change my magazine after expending ten rounds during any critical time that requires me to act in self-defense may impact my ability to effectively defend myself and others in my home. Should I require more than ten rounds to neutralize the threat of a home intruder or group of intruders, I fear that I may be unable to re-load my handgun in time to effectively defend myself and others in my home.

11. Due to the Defendants' enactment of Sunnyvale Municipal Code (SMC) section 9.44.050, I am prohibited from continuing to possess, within the City of Sunnyvale, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than 10 rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm.

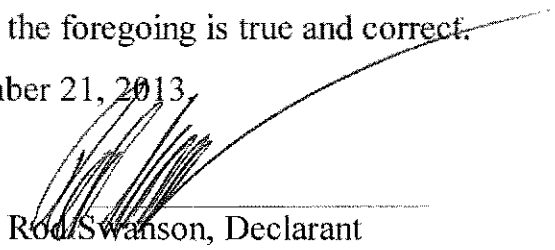
12. In accordance with SMC section 9.44.050, I intend to cease possessing any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on or before March 6, 2013.

13. But for SMC section 9.44.050, I would immediately and continuously possess a magazine capable of holding more than ten rounds within the City of Sunnyvale for lawful purposes, including in-home self-defense. If this court declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will continue to possess any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale.

14. Because SMC section 9.44.050 requires that I cease possessing within the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearm magazines for lawful purposes, including in-home self-defense, without risking criminal prosecution.

I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on December 21, 2013.



Rod Swanson, Declarant

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Defendants.

CASE NO: CV13-05807 RMW

DECLARATION OF LEONARD FYOCK IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF LEONARD FYOCK

1. I, Leonard Fyock, am a plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I am a current resident of the City of Sunnyvale.

3. I am a law-abiding adult who is not prohibited from owning firearms under the laws of the United States or the state of California. I have never been found by any law enforcement agency, any court, or any other government agency to be irresponsible, unsafe, or negligent with firearms in any manner.

4. Prior to December 6, 2013, I acquired a magazine capable of holding more than ten rounds in accordance with state and federal law. This magazine has not been permanently altered so as to be incapable of accommodating more than 10 rounds, its is not a .22 caliber tube ammunition feeding device, and it is not a tubular magazine contained in a lever-action firearm. I currently own and possess this magazine for in-home self-defense.

5. Prior to December 6, 2013, I lawfully acquired a handgun that came equipped with the magazine capable of holding 16 rounds.

6. I acquired the handgun with the magazine capable of holding 16 rounds for use in competition and in home self-defense.

7. I selected this particular firearm in part because I believe that a handgun with a magazine capable of holding more than ten rounds may best suit my needs for in-home self-defense.

8. I am concerned that if multiple intruders attack me while at home, I will require the use of more than ten rounds to effectively protect myself and others in my home.

9. I fear that a home intruder will be carrying a firearm with a magazine capable of holding more than ten rounds, or will be carrying multiple firearms, and that I may require a firearm with a magazine capable of holding more than ten rounds to effectively protect myself and others from such a threat in my home.

10. I believe that being forced to change my magazine after expending ten rounds during any critical time that requires me to act in self-defense will impact my ability to effectively defend myself and others in my home. Should I require more than ten rounds to neutralize the threat of a home intruder or group of intruders, I fear that I will be unable to re-load my handgun in time to effectively defend myself and others in my home.

11. I fear that my firearm will function less effectively when I need it most for self-defense if I use a magazine that was not originally designed for use with my handgun.

12. Due to the Defendants' enactment of Sunnyvale Municipal Code (SMC) section 9.44.050, I am prohibited from continuing to possess, within the City of Sunnyvale, any magazine capable of holding more than ten rounds that has not been permanently altered so that it cannot accommodate more than 10 rounds, is not a .22 caliber tube ammunition feeding device, and is not a tubular magazine that is contained in a lever-action firearm.

13. In accordance with SMC section 9.44.050, I intend to cease possessing any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on or before March 6, 2013.

14. But for SMC section 9.44.050, I would immediately and continuously possess a magazine capable of holding more than ten rounds within the City of Sunnyvale for lawful purposes, including in-home self-defense. If this court declares SMC section 9.44.050 invalid or otherwise enjoins its enforcement, I will continue to possess any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale.

15. Because SMC section 9.44.050 requires that I cease possessing within the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be continuously and irreparably harmed by the ongoing deprivation of my individual, fundamental right to possess and use commonly possessed firearm magazines for lawful purposes, including in-home self-defense, without risking criminal prosecution.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on December 19, 2013.

Leonard Fyock

Leonard Fyock, Declarant

Appendix 2

Declaration of James E. Yurgealitis in Support of Sunnyvale's Opposition to Motion for Preliminary Injunction

Roderick M. Thompson (State Bar No. 96192)
rthompson@fbm.com
Anthony P. Schoenberg (State Bar No. 203714)
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Attorneys for Defendants
THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10

Defendants.

Case No. 13-cv-05807 RMW

DECLARATION OF JAMES E. YURGEALITIS IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: February 21, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

I, James E. Yurgealitis, declare as follows:

1. I am currently Self Employed as a Legal and Forensic Consultant providing Criminal Case Reviews, Forensic Case Reviews and Technical Firearms Consulting, Testing and Training Services to Corporations, Legal Counsel and the Public Sector. During my previous 26 year career as a Federal Law Enforcement Officer I have been recognized, and testified as, an expert witness in numerous local, state and federal courts. I have toured numerous firearms and ammunition manufacturer's facilities both in the United States and overseas. I maintain a personal library of firearms and ammunition related books and periodicals and maintain contact with other recognized experts in the field. My final assignment in government service was as Senior Special Agent / Program Manager for Forensic Services for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), U.S. Department of Justice, a position I held for nine (9) years. During that time I was responsible for all Bureau firearms and forensic firearms related training and research at the ATF National Laboratory Center in Ammendale, Maryland.

2. My credentials, training, background and experience are stated in my curriculum vitae, a true and correct copy of which is attached as Exhibit A. My credentials, training, background and experience as an expert witness are detailed on my Statement of Qualifications, a true and correct copy of which is attached as Exhibit B.

3. I have been provided with, and have reviewed, a copy of the documents submitted by the Plaintiff(s) relative to Case No. 13-cv-05807 RMW in United States District Court for the Northern District of California, San Jose Division. I have also been provided with, and have reviewed, a copy of The City of Sunnyvale, California, Municipal Ordinance 9.44.050, (the "Ordinance") wherein the possession and use of "ammunition feeding devices" or "magazines" with a capacity of more than ten (10) Ammunition Cartridges or "rounds" is prohibited.

4. The specific capacity limitation in the Ordinance addresses "Detachable Magazines". Detachable Magazines are ammunition feeding devices not permanently integrated or fixed to the firearm receiver or frame. Common types of firearms which utilize detachable magazines include Semi Automatic Pistols, Semi Automatic Rifles, Bolt Action Rifles, Semi Automatic Shotguns, Bolt Action Shotguns and Machineguns.

5. Detachable Magazines are, can be, and have been manufactured with varying capacities. The operation (or cycle of fire) of any firearm designed and manufactured to accept a detachable magazine will function regardless of the capacity of the magazine itself. For example modern firearms such as the Beretta Model 92 Semi Automatic Pistol and the AR- 15 Type Semi Automatic Rifles will function as designed whether the operator utilizes a magazine limited to ten (10) rounds or one of greater capacity. Generally speaking, any firearm capable of accepting a detachable "Large Capacity Magazine" as defined under the Ordinance will readily accept a magazine with a maximum capacity of ten (10) rounds. This includes the vast majority of Handguns and Shoulder Fired firearms so designed and manufactured.

6. Following the enactment of California Penal Code Section 32310 regulating the Manufacture, Import or Sale of Large Capacity Magazines, numerous Firearm Manufacturers have produced firearms compliant with the legislation. For example Smith and Wesson currently markets specific models of AR-15 type rifles and Semi Automatic pistols compliant with California Law(s). Beretta, Glock, Colt, Sturm Ruger, Sigarms and numerous other manufacturers have produced and marketed specific models of firearms in California after minor changes to their design or component parts. In general firearm magazines with a maximum capacity of ten (10) rounds have been mass produced since the mid 1990's and are readily available to the public.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of January, 2014, in Sparks, Maryland.

James E. Yurgealitis

EXHIBIT A

To

DECLARATION OF JAMES E. YURGEALITIS IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

James E. Yurgealitis

P.O. Box 331
New Freedom, Pennsylvania 17349
24 Hour Mobile: (443) 452-7248
Email: jyurgealitis@gmail.com

SUMMARY:

Curently self employed as a Legal and Forensic Consultant providing Criminal Case Reviews, Forensic Analysis Reviews and Technical Firearms Consulting, Testing and Training Services to Corporations, Legal Counsel and the Public Sector

EDUCATION:

B.A., Political Science and Psychology, St. John Fisher College, Rochester, New York – May 1985

PROFESSIONAL EXPERIENCE:

December 2003 to December 2012: Senior Special Agent / Program Manager for Forensic Services ATF National Laboratory Center (NLC), Beltsville, Maryland. U. S Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Directed the administration and management of ATF's Forensic Training Programs to include the National Firearms Examiner Academy (NFEA) a 12 month training program for State and Local Forensic Firearm Examiner Trainees. Also managed two additional forensic training programs. Adminstered a $1M + budget in accordance with strict ATF and National Institute of Justice (NIJ) guidelines and reporting requirements. Responsible for oversight of all Forensic Firearms related research at the NLC. Supervised a full and part time cadre of fifty two (52) instructors and administrative personnel. Maintained liaison with commercial firearms and ammunition manufacturers and subject matter experts and ensure that lesson plans and curriculum reflected the latest technical developments in firearms manufacture, forensics and their application to federal and state law. Applied for, received and managed in excess of $2M in external grants to facilitate uninterrupted delivery of training during internal budget shortfalls. Detailed to the Department of Homeland Security Command Center in 2005 with overall responsibility to coordinate and direct Federal, State and Local Law Enforcement assets during and following Hurricanes "Irene" and "Katrina" and again in 2010 for "Andrew" and "Danielle".

June 1997 - December 2003: Special Agent / Violent Crime Coordinator, ATF Baltimore Field Division, Baltimore, Maryland

Responsible for management of ATF's "Project Disarm", a joint law enforcement initiative between ATF, The United States Attorney's office for the District of Maryland (USAO), the Baltimore City Police Department, the Baltimore City States Attorney's Office and the Maryland State Police. Duties included reviewing over 400 state and local firearms related arrests annually for subsequent referral to the USAO and Federal Prosecution. Managed a caseload of 75 – 100 criminal cases annually. Responsible for selection, referral, follow - up investigation and subsequent indictment and prosecution of armed career criminals. Testified in front of Federal Grand Juries in excess of 75 times annually. Was recognized, and testified, as an expert witness in the Identification, Operability and origin of Firearms and Ammunition in three Federal Judicial Districts. Toured over 25 firearms and ammunition manufacturing facilities in Europe and the United States.

June 1990 – June 1997:
Special Agent, ATF Baltimore Field Division, Baltimore, Maryland

Served in various capacities as a street-level Special Agent. Acted as Group Supervisor and Assistant Special Agent in Charge on numerous occasions. Served on the Washington – Baltimore High Intensity Drug Trafficking Area (HIDTA) task force from 1995 – 1999. Investigated armed narcotics trafficking organizations, seized assets, authored and executed Federal and state search and arrest warrants, conducted surveillance, interviews / interrogations, testified in Federal and state courts as a fact witness, purchased firearms, explosives and narcotics while in an undercover capacity, investigated fatal bombings and arsons, firearms trafficking, alcohol and tobacco trafficking, homicide, fraud and gun store burglaries. Also while detailed for 8 months as the Public Information Officer authored press releases, provided interviews to local and national print and television media outlets and made presentations to local and national public and special interest groups and associations.

April 1989 – June 1990 and July 1986 – March 1987: Special Agent, United States Department of State, Diplomatic Security Service (DSS), Washington Field Office, Rossyln, VA

Conducted investigations of violations of Federal Law under the department's purview to include Passport and Visa Fraud, Illegal trafficking of restricted firearms and war materials to prohibited countries, human trafficking, seized assets, authored and executed State, local and Federal Arrest and Search Warrants, testified in Federal Court as a fact witness, detailed on an as needed basis to the Dignitary Protection Division as Agent in Charge of multiple protective details for visiting and resident foreign dignitaries, temporarily assigned to support Physical and Personal Protective Security in various U.S. Embassies overseas on an as needed basis, detailed to the Secretary of State Protective Division on an as needed basis to supervise "jump team" agents assigned to augment the permanent protective detail overseas and domestically.

March 1987-February 1989: Special Agent, DSS, Secretary of State Protective Division, Washington, DC

Served in various capacities as Acting Agent in Charge, Acting Shift Leader, Lead Advance Agent and Shift Agent. Responsibilities included close personal protection of the Secretary of State both domestically and overseas, extensive foreign travel to facilitate and prepare security arrangements for overseas visits to include Presidential Summit meetings, liaison with foreign host government officials to plan and solicit assistance with security arrangements, supervision of "jump team" agents temporarily assigned to augment the detail, liaison with U.S Government Intelligence Agencies, other Federal, State and Local Law Enforcement Agencies to identify and protect against potential threats to the Secretary of State.

CLEARANCES:

Top Secret since March 1986 valid through February 2015. Numerous prior SCI Clearances.

TEACHING EXPERIENCE:

Instructed at the Federal Law Enforcement Training Center (FLETC), both recruit and in service training for ATF and other Federal Law Enforcement Agencies

Instructed at the International Law Enforcement Academy (ILEA) in Budapest, Hungary

Instructed for numerous State, local and / or regional law enforcement agencies both in the United States, Canada and Central America.

EXHIBIT B

To

DECLARATION OF JAMES E. YURGEALITIS IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Qualifications of James E. Yurgealitis
Independent Legal and Forensic Consultant

I, James E. Yurgealitis, being duly sworn, depose and state:

1.) That I was previously employed as a Senior Special Agent / Program Manager with the Bureau of Alcohol, Tobacco Firearms & Explosives, (ATF) United States Department of Justice, and had been so employed since 1990. Prior to 1990 I was employed as a Special Agent with the Bureau of Diplomatic Security, (DSS) United States Department of State and had been so employed since 1986.

2.) I have a Bachelor of Arts Degree in Political Science and Psychology from St. John Fisher College, Rochester, New York.

3.) I am a graduate of the Federal Law Enforcement Training Center, Glynco, Georgia, the Criminal Investigator Training Program, Bureau of Diplomatic Security New Agent Training, and the Bureau of ATF New Agent Training Program.

4.) I have completed the Firearms Interstate Nexus Training Program conducted by the Firearms Technology Branch, ATF Headquarters, Washington, D.C.

5.) I have completed both Advanced Interstate and European Nexus Training conducted by ATF in conjunction with several domestic and European firearm manufacturers.

6.) I have testified in excess of 200 times before Federal Grand Juries regarding the classification, operability, and commerce of firearms and / or ammunition.

7.) I have previously qualified as an expert witness regarding the origin, operability / classification and interstate movement of firearms and ammunition in U.S. District Court for the District of Maryland, U.S. District Court for the District of Delaware and the Circuit Court For Baltimore City, Maryland.

8.) I have conducted regular training for local, state and federal law enforcement agencies both domestically and overseas regarding firearms classification, operability and firearms statutes.

9.) I maintain a personal library of books, printed material and documents that relate to the field of firearms, ammunition, and firearms classification, attend local and national trade shows and professional association meetings, and regularly review periodicals relating to firearms and ammunition.

10.) I attend trade shows, maintain contact with, and regularly consult with other persons, to include published authors and recognized experts in the origin, identification and classification of firearms and ammunition.

11.) I have, during my tenure with ATF, personally examined in excess of five thousand

Qualifications Of James E. Yurgealitis contd.

firearms to determine their origin and classification and operability, and to facilitate the tracing of those firearms.

I have toured production facilities for numerous firearms and ammunition manufacturers. The tours were conducted by corporate historians, corporate officers, or production engineering personnel.

Domestic Firearm Manufacturers:
Bushmaster Firearms, Ilion, NY, USA
Colt, New Haven CT, USA (4x)
H&R 1871 Inc., Chicopee, MA, USA (2x)
Marlin, North Haven CT, USA (4x)
O.F. Mossberg & Sons, North Haven, CT, USA (4x)
Remington Firearms, Ilion, NY, USA
Savage Arms Inc., Westfield, MA, USA (4x)
Sig-Sauer / SIGARMS Inc., Exeter, NH, USA (3x)
Smith and Wesson, Springfield, MA, USA (4x)
Sturm Ruger, Newport, NH, USA (4x)
Yankee Hill Machining, Florence, MA, USA

Foreign Firearm Manufacturers:
Carl Walther GmbH, Ulm, Germany
Ceska Zbrojovka (CZ), Uhersky Brod, Czech Republic
Fegarmy (FEG), Budapest, Hungary
F.N Herstal S.A., Herstal, Belgium
Glock GmbH, Deutsch-Wagram, Austria
Heckler & Koch GmbH, Oberndorf au Neckar, Germany
J.P. Sauer & Sohn GmbH, Eckernforde, Germany

Domestic Ammunition Manufacturers:
Fiocchi Ammunition, Ozark, MO, USA
PMC, Boulder City, NV, USA
Remington, Lonoke, AR, USA (4x)
Sierra, Sedalia, MO, USA
Starline Brass, Sedalia, MO, USA

European Proof Houses
Beschussamt Ulm, (Ulm Proofhouse) Ulm, Germany
Beschusstelle Eckernforde, (Eckernforde Proofhouse) Eckernforde, Germany
Czech Republic Proofhouse, Uhersky Brod, Czech Republic
Liege Proofhouse, Liege, Belgium

Qualifications Of James E. Yurgealitis contd.

I have been allowed regular access to the following reference collections:
Bureau of Alcohol, Tobacco Firearms and Explosives Reference Collection, Martinsburg, West Virginia, USA consisting of 5,000+ firearms

Liege Proofhouse, Liege, Belgium consisting of 1,000+ ammunition cartridges

Springfield Armory National Historic Site Firearms Collection, Springfield, MA, USA consisting of 10,000+ Firearms

Smithsonian Institution (Museum of American History) Firearms Reference Collection Washington, DC, USA, consisting of 4000+ firearms

Wertechnische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany consisting of 10,000+ Firearms

I have toured the following museums:
Heeresgeschichtliches Museum, (Museum of Military History), Vienna, Austria
Hungarian Military Museum, Budapest, Hungary
Springfield Armory National Historic Site, Springfield, MA, USA
United States Air Force Museum, Dayton, OH, USA
United States Army Ordnance Museum, Aberdeen Proving Ground, Aberdeen, MD, USA
United States Military Academy Museum, West Point, NY, USA
United States Naval Academy Museum, Annapolis, MD, USA
Wertechnische Studiensammlung des BWB, (Federal Defense Procurement Bureau Museum) Koblenz, Germany

Membership in Professional Organizations:

Member, International Ammunition Association (IAA)
Technical Advisor (pending approval), Association of Firearm and Toolmark Examiners (AFTE)
Member, Federal Law Enforcement Officers Association (FLEOA)

Appendix 3

Plaintiffs' Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction

C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
Sean A. Brady - S.B.N. 262007
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs,

vs.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI, in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10,

Defendants.

CASE NO: CV 13-05807 RMW

PLAINTIFFS' ADMINISTRATIVE MOTION FOR AN EXPEDITED RULING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; DECLARATION OF CLINTON B. MONFORT IN SUPPORT

NOTICE OF MOTION AND MOTION

Pursuant to Civil Local Rule 7-11, Plaintiffs submit this Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs respectfully request that this Court expedite its ruling on whether to enjoin Defendants City of Sunnyvale, Mayor Anthony Spitaleri, Chief Frank Grgurina (collectively "the City"), and any of the City's agents, employees, officers, and representatives from enforcing Sunnyvale Municipal Code section 9.44.050 ("the Ordinance") pending resolution of the merits of this case or further order of this Court.

This motion shall be based on this Notice of Motion and Motion, the Declaration of Clinton B. Monfort, the record to date in this matter, and upon any further matters the Court deems appropriate.

PROCEDURAL HISTORY

In November of 2013, the City of Sunnyvale voters passed Measure C, which included the Ordinance. Although the election results were scheduled to be certified by the City in January of 2014, the City expedited the certification of the vote on November 26, 2013. (Monfort Decl. ¶ 3; Exh. "B.") This expedited certification caused the ordinance to take effect nearly two months earlier than originally scheduled on December 6, 2013.

The Ordinance prohibits any person, corporation, or other entity in the City of Sunnyvale from possessing ammunition magazines with the capacity to accept more than ten rounds. Sunnyvale, Cal., Muni. Code § 9.44.050 (a). Pursuant to the Ordinance, any person who possesses any magazines prohibited by the Ordinance prior to its effective date shall have ninety days to cease possessing those magazines within the City of Sunnyvale. Sunnyvale, Cal., Muni. Code § 9.44.050 (b).

On December 16, 2013, ten days after the Ordinance took effect and nineteen days after the early certification vote, Plaintiffs filed their lawsuit. On December 23, 2013, Plaintiffs filed their motion for preliminary injunction. On the same day, the Parties filed a stipulation to extend the briefing schedule so that the City would have twenty days to respond to the motion for preliminary injunction.

On December 30, 2013, the City filed an Administrative Motion to relate this case with *San Francisco Veteran Police Officers Association v. City and County of San Francisco*, Case No. 13-CV-05351. On January 7, 2014, this Court denied the City's motion.

On January 3, 2014, the City filed an Administrative Motion to Enlarge Time for Hearing and Briefing Plaintiffs' Motion for Preliminary Injunction and for Expedited Discovery. On January 7, 2014, Plaintiffs filed an Opposition to that motion. The Court granted with modifications the City's motion to enlarge time and denied the City's request for expedited discovery on January 9, 2014.

Pursuant to the Court's January 9 order, the hearing on Plaintiffs' motion for preliminary injunction is currently scheduled for February 21, 2014. Just thirteen days later, on March 6, 2014, all Sunnyvale residents will be forced to remove the prohibited magazines from their homes and cease possession in Sunnyvale. Sunnyvale, Cal., Muni. Code § 9.44.050 (b). Anyone who fails to comply with the City's mandate is subject to criminal penalties, including incarceration.

Plaintiffs now bring this Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction. (Monfort Decl. ¶ 2; Exh. "A.")

ARGUMENT

Plaintiffs appreciate that the Court has acknowledged the Ordinance's pending effective date and that the Court is sympathetic to the need to resolve the motion for preliminary injunction prior to the March 6, 2014 deadline. Ct. Order 3:15-16, ECF No. 30. With an abundance of caution, Plaintiffs bring this motion to further inform the Court of the circumstances justifying an early decision and to respectfully request the Court expedite its ruling on Plaintiffs' motion for preliminary injunction to the maximum extent possible.

Plaintiffs brought a motion for a preliminary injunction to vindicate their fundamental constitutional right to possess magazines that are commonly possessed and used for lawful purposes, and thus protected under the Second Amendment. Pls' Mot. Prelim. Inj. 1:24-3:4, 6:1-13:12, 24:22-27. Because the Ordinance prohibits residents from possessing these magazines within their homes, Plaintiffs will be irreparably harmed as of March 6, 2014. Pls' Mot. Prelim. Inj. 2:25-3:4, 23:18-22.

The current schedule on Plaintiffs' motion for preliminary injunction leaves just thirteen days between the hearing date and the effective date of the Ordinance. (Monfort Decl. ¶ 4.)

Even if the Court rules to enjoin the Ordinance, time is of the essence. (Monfort Decl. ¶ 4.) If the Court issues a ruling enjoining the Ordinance after its effective date, Sunnyvale residents will have already been required to remove the banned magazines from their homes. (Monfort Decl. ¶ 4.) And if the Court issues a ruling anytime between the hearing date and the effective date of the Ordinance, it is likely that some residents will have already dispossessed themselves of the prohibited magazines, depending on when a ruling is issued. (Monfort Decl. ¶ 4.) In both situations, law-abiding residents will be permanently dispossessed of their constitutionally protected magazines with no way to replace them because state law prohibits the purchase and sale of these magazines. Cal. Penal Code §§ 32310, 32400-50. (Monfort Decl. ¶ 4.)

If the Court for any reason does not enjoin the Ordinance, time is likewise of the essence. Because the Ordinance was certified almost two months ahead of the original schedule, law-abiding Sunnyvale residents have even less time to comply with the Ordinance. (Monfort Decl. ¶ 5.) Residents will need time to determine how they will comply with the Ordinance, and to take such steps to ensure they are not at risk of criminal prosecution. (Monfort Decl. ¶ 5.) In addition, these residents, including Plaintiffs, will need time to purchase new compliant magazines to replace the magazines they were required to turn into police, surrender to a licensed gun dealer, or remove from the city. (Monfort Decl. ¶ 5.)

Finally, an expedited ruling would preserve already scarce time to file an emergency motion seeking a temporary stay of enforcement pending appeal pursuant to Circuit Rule 27-3 and/or an emergency application for injunction pending appellate review under the All Writs Act, 28 U.S.C. section 1651(a). (Monfort Decl. ¶ 5.)

An expedited ruling will thus ensure that Plaintiffs and law-abiding residents will not suffer any inadvertent harm.

/ / /

/ / /

/ / /

CONCLUSION

For these reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Administrative Motion for an Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction.

Date: January 13, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs

Appendix 4

Ninth Circuit Order

FILED

MAR 05 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARD FYOCK; et al., Plaintiffs - Appellants, v. CITY OF SUNNYVALE; et al., Defendants - Appellees.	No. 14-15408 D.C. No. 5:13-cv-05807-RMW Northern District of California, San Jose ORDER

The appeal filed March 5, 2014 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply.

The mediation questionnaire is due three days after the date of this order.

If they have not already done so, within 7 calendar days after the filing date of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal.

The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than April 2, 2014; the answering brief is due April 30, 2014 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 14 days after service of the answering

brief. *See* 9th Cir. R. 3-3(b). The parties are reminded to submit electronically formatted excerpts of record along with their briefs and paper copies of the excerpts of record. *See* http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000639.

Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Dru E. Van Dam
Deputy Clerk

dev/MOATT

Appendix 5

Declaration of Anthony Spitaleri
in Support of Sunnyvale's
Opposition to Motion for Preliminary Injunction

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THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10

Defendants.

Case No. 13-cv-05807 RMW

DECLARATION OF ANTHONY SPITALERI IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: February 21, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

I, Anthony Spitaleri, declare as follows:

1. I served as Mayor of the City of Sunnyvale from January 10, 2012 through January 7, 2014. I had previously served as Mayor of Sunnyvale from January 2008 through January

2010. I served on the Sunnyvale City Council from January 2006 through January 2014.

2. For 36 years I was a firefighter with the Palo Alto Fire Department, before retiring as Captain.

3. I have sat for years on the National League of Cities' Public Safety and Crime Prevention Policy and Advocacy Committee. I was also a member of the League of California Cities' Public Safety Committee and Home Land Security Sub-Committee.

4. As a mayor with a long background in public safety, I became concerned with the potential for gun violence in the City of Sunnyvale, particularly after the mass shootings in Newtown and other cities around the country. Although Sunnyvale is not known for having high incidences of crime, the mass shootings in Newtown and other small municipalities demonstrated that these tragedies can hit any city, without regard to its size, location, or history of crime. Prompted by the incident in Newtown, I became increasingly interested in steps that could be taken to prevent a similar tragedy from occurring in Sunnyvale.

5. After Newtown, I became aware of the growing efforts of cities throughout California and the U.S. to take local action that could supplement federal and state regulations with the goal of stopping preventable deaths caused by gun violence. Some of these cities included San Francisco, Los Angeles and Sacramento.

6. As I understand it, one commonality of many of the mass shootings of recent years is the use of high powered, rapid fire assault weapons that utilize large capacity ammunition magazines ("LCMs"), which are capable of wreaking substantial amounts of lethal damage in brief bursts of violence.

7. I and the Sunnyvale City Council considered several measures to address this issue, some of which were borrowed from ordinances that had been successfully implemented in other California cities. Ultimately, four provisions were put to Sunnyvale voters as "Measure C." They are:

a. A requirement that lost or stolen guns be reported within forty-eight hours.

b. A requirements that residents safely store their weapons.

c. A ban on the possession of LCMs; and

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d. A requirement that merchants keep ammunition sales logs.

8. A true and correct copy of the proposed ordinance that led to the passage of Measure C — containing the complete text of Measure C — is attached hereto as Exhibit 1.

9. On November 5, 2013, Measure C, passed with 66.55% of the Sunnyvale voters voting "yes."

10. As noted in the proposed ordinance that led to the passage of Measure C, the City of Sunnyvale determined that violence caused by the intentional and accidental misuse of guns constitutes a "clear and present danger to the populace" and found that "sensible gun safety measures provide some relief from that danger and are of benefit to the entire community."

11. I believe that Measure C constitutes one such sensible gun safety measure and that it will benefit the community of the City of Sunnyvale and promote public safety. In putting Measure C on the ballot, the Sunnyvale City Council was similarly guided by its concern for the threat to public safety posed by LCMs.

12. As I understand it, only the ban on LCMs is at issue in this case. This provision limits the ammunition magazines that residents may possess to those that can hold no more than 10 rounds, subject to certain exceptions. The provision allows individuals possessing LCMs a 90-day grace period before the ban goes into effect.

13. We selected the ban on possession of LCM's in order to reduce the threat of a mass shooting and the risk to law enforcement personnel posed by weapons that use these LCMs. We believed that given the narrow loophole in California law allowing possession (but not manufacture, sale or transfer) of LCMs, the most effective way to achieve this goal of reducing the threat of injury and death posed by LCMs was to ban their possession in our city (subject to certain exceptions, including for law enforcement).

14. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of January, 2014, in Sunnyvale, California.

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San Francisco, CA 94104
(415) 954-4400

By: 
Anthony Spitaleri

Farella Braun + Martel LLP
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EXHIBIT 1

To

DECLARATION OF ANTHONY SPITALERI IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT "A' TO RESOLUTION NO. 606-13

**PROPOSED ORDINANCE TO AMEND
THE CITY OF SUNNYVALE MUNICIPAL CODE
ESTABLISHING GUN SAFETY REGULATIONS**

The City Council of the City of Sunnyvale, on its own motion, submits to the electors the following proposed ordinance to amend the Municipal Code of the City of Sunnyvale. The City Council has called a Special Municipal Election to be held on Tuesday, November 5, 2013, for the purpose of voting on the proposed amendments.

The proposed ordinance to amend the Municipal Code of the City of Sunnyvale follows the statement of the measure; it is set out in full.

CITY OF SUNNYVALE MEASURE ____

Shall the City of Sunnyvale adopt a gun safety ordinance to require: 1) reporting to police, within 48 hours, known loss or theft of a firearm; 2) storing firearms in residences in a locked container or disabling them with a trigger lock when not in the owner's immediate possession; 3) prohibiting the possession of ammunition magazines capable of holding more than 10 rounds, with certain exceptions; and 4) logging and tracking of ammunition sales within the City of Sunnyvale?

Yes _____
No _____

If Measure _____ carries, an ordinance amending the Municipal Code of the City of Sunnyvale shall be adopted, adding new Sections 9.44.030, 9.44.040, 9.44.050, 9.44.060 to Chapter 9.44, entitled "Firearms," which reads as follows:

AN ORDINANCE AMENDING CHAPTER 9.44 (FIREARMS) OF THE SUNNYVALE MUNICIPAL CODE TO ADD GUN SAFETY MEASURES

WHEREAS, the People of the City of Sunnyvale find that the violence and harm caused by and resulting from both the intentional and accidental misuse of guns constitutes a clear and present danger to the populace, and find that sensible gun safety measures provide some relief from that danger and are of benefit to the entire community; and

WHEREAS, the People of the City of Sunnyvale find that laws that provide for safe storage of guns in homes, that require a gun owner to report a stolen or lost gun, that prohibit the possession of ammunition magazines capable of holding more than ten rounds unless circumstances warrant such possession, and that require record-keeping relating to the sale of ammunition constitute sensible gun safety regulations because they are not unduly burdensome for gun owners, they aid law enforcement officers in their duties, and they offer some protection to all members of the community.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:

SECTION 1. SMC§§9.44.030, 9.44.040, 9.44.050, 9.44.060. ADDED.

Sunnyvale Municipal Code Title IX (Public Peace, Safety or Welfare), Chapter 9.44 (Firearms), is amended to add four new Sections to read as follows:

9.44.030. Duty to report theft or loss of firearms.

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Sunnyvale Department of Public Safety within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the City of Sunnyvale; or (2) the theft or loss of the firearm occurs in the City of Sunnyvale.

9.44.040. Safe storage of firearms.

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

9.44.050. Possession of large-capacity ammunition magazines prohibited.

(a) No person may possess a large-capacity magazine in the City of Sunnyvale whether assembled or disassembled. For purposes of this section, "large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or
(2) A .22 caliber tubular ammunition feeding device; or
(3) A tubular magazine that is contained in a lever-action firearm.

(b) Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

(1) Remove the large-capacity magazine from the City of Sunnyvale; or
(2) Surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or
(3) Lawfully sell or transfer the large-capacity magazine in accordance with Penal Code Section 12020.

(c) This section shall not apply to the following:

(1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;

(2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;

(3) A forensic laboratory or any authorized agent or employee thereof in the course and scope or his or her duties;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large capacity magazine is in accordance with that license or permit;

(6) A licensed gunsmith for purposes of maintenance, repair or modification of the large capacity magazine;

(7) Any person who finds a large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to the California Penal Code.

9.44.060. Ammunition Sales.

(a) It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearm ammunition within the City of Sunnyvale except in compliance with this code.

(b) Definitions:

(1) "Ammunition" means any cartridge or encasement containing a bullet or projectile, propellant, or explosive charge, and a primer which is used in the operation of a firearm.

(2) "Ammunition vendor" means any person engaged in the business of selling, leasing, or otherwise transferring firearm ammunition.

(3) "Person" means a natural person, association, partnership, firm, corporation, or other entity.

(c) Every ammunition vendor shall maintain an ammunition sales log which records all ammunition sales made by the vendor. The transferee shall provide, and the ammunition vendor shall record on the ammunition sales log, at the time of sale, all of the following information for each sale of firearms ammunition:

(1) The name, address, and date of birth of the transferee;

(2) The date of the sale;

(3) The transferee's driver's license number, state identification card number, passport number, or other valid government-issued photographic identification;

(4) The brand, type, and quantity of firearms ammunition transferred;

(5) The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;

(6) The transferee's signature and right thumbprint.

(d) The ammunition sales log shall be recorded on a form approved by the Director of Public Safety. All ammunition sales logs shall be kept at the location of the firearms ammunition sale for a period of not less than two years from the date of the sale. Ammunition sales logs shall be open to reasonable inspection by peace officers at all times the ammunition vendor is regularly open for business.

(e) No person shall knowingly provide false, inaccurate, or incomplete information to an ammunition vendor for the purpose of purchasing firearms ammunition. No ammunition vendor shall knowingly make a false, inaccurate, or incomplete entry in any ammunition sales log, nor shall any ammunition vendor refuse any reasonable inspection of an ammunition sales log subject to inspection.

SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Sunnyvale hereby declare that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Appendix 6

Declaration of Frank Grgurina in Support of Sunnyvale's Opposition to Motion for Preliminary Injunction

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THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT HOCHSTETLER, WILLIAM DOUGLAS, DAVID PEARSON, BRAD SEIFERS, and ROD SWANSON,

Plaintiffs,

v.

THE CITY OF SUNNYVALE, THE MAYOR OF SUNNYVALE, ANTHONY SPITALERI in his official capacity, THE CHIEF OF THE SUNNYVALE DEPARTMENT OF PUBLIC SAFETY, FRANK GRGURINA, in his official capacity, and DOES 1-10

Defendants.

Case No. 13-cv-05807 RMW

DECLARATION OF FRANK GRGURINA IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Date: February 21, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 – 4th Floor
280 South 1st Street
San Jose, CA 95113

I, Frank Grgurina, declare as follows:

1. I am the Chief of the Sunnyvale Department of Public Safety and have served in this role since November 2011. Prior to my current position, I was a sworn officer for the Fremont Police Department ("FPD") for over 22 years. I held a wide variety of assignments throughout my career at FPD including positions as a Field Training Officer, Street Crimes Detective, Narcotics Agent, SWAT Team Member, and as a certified instructor in weaponless defense. My final position at FPD was that of a Police Captain with oversight of all field operations. As a supervisor, manager, and as a second in command, I had the opportunity to oversee almost every work group at the Fremont Police Department.

2. The information stated in this declaration is based on my knowledge, training, education and experience.

3. I understand that the plaintiffs in this case contend that they need to use large capacity magazines to defend themselves or their homes effectively. I am not personally aware of any specific instance in the Cities of Fremont and Sunnyvale where a citizen was unable to defend him or herself as a result of not having a large capacity magazine.

4. In my opinion, possession and use of large capacity magazines by those who commit crimes poses a significant threat to public safety personnel and members of the community. I am aware of several incidents in which criminal suspects have used a large capacity magazine to harm and kill others and themselves. As an example, Criminal Suspect Shareef Allman killed three co-workers and seriously injured several others individuals in a shooting rampage which began in the City of Cupertino and ended in the City of Sunnyvale. The incident came to a deadly conclusion in the City of Sunnyvale, when Allman was confronted by Santa Clara County Sheriff's Deputies resulting in an exchange of gun fire. Allman had been in possession of several weapons, which included high capacity magazines. The incident lasted for approximately 22 hours, placing members of the community in danger for an extended period of time and requiring a massive public safety response.

5. I am familiar with the Sunnyvale Department of Public Safety's ("DPS") expectations for off duty public safety officers. DPS officers are afforded the opportunity to take

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enforcement action when confronted with criminal situations and may act as law enforcement officers at any time. This may involve assisting on-duty officers under appropriate circumstances or taking individual action while off-duty. Officers must also have the ability to defend themselves against subjects who may wish to harm them due to their role as a law enforcement officer.

6. I have been informed by the Sunnyvale City Attorney, Joan A. Borger, that Section 9.44.050 does not apply to law enforcement personnel. Law enforcement officers are exempt from Section 9.44.050, whether they are in possession of LCMs while on or off-duty. This exemption applies equally to Sunnyvale law enforcement personnel authorized to carry LCMs and to off-duty officers from other jurisdictions. Attached hereto as Exhibit A is a true and correct copy of a memorandum by Joan A. Borger and Rebecca L. Moon regarding exemptions to Section 9.44.050.

I declare under penalty of perjury under the laws of the California that the foregoing is true and correct and that this Declaration was executed on January 29, 2014, at Sunnyvale, California.



Frank Grgurina

Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
(415) 954-4400

EXHIBIT A

To

DECLARATION OF FRANK GRGURINA IN SUPPORT OF SUNNYVALE'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

CITY OF SUNNYVALE

OFFICE OF THE CITY ATTORNEY

P.O. BOX 3707 SUNNVYALE, CALIFORNIA 94088-3707
TEL: (408) 730-7464 FAX: (408) 730-7468

INTEROFFICE MEMORANDUM

TO: Frank Grgurina, Chief of Public Safety

FROM: Joan A. Borger, City Attorney
Rebecca L. Moon, Assistant City Attorney

DATE: December 13, 2013

RE: Law Enforcement Exemption for Large-Capacity Magazines

As you requested, this memo confirms the informal advice previously given by our office in regard to the interpretation of the law enforcement exemption in Sunnyvale Municipal Code Section 9.44.050(c)(2) (Sunnyvale Measure C).

Section 9.44.050(c)(2) provides that the prohibition on possession of large-capacity magazines does not apply to [1] "[a]ny government officer, agent, or employee, member of the armed forces of the United States, or peace officer, [2] to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties". The section does not apply to any person who satisfies both conditions.

Questions have been raised concerning the application of this section to:

(1) Officers who possess large-capacity magazines while off-duty.
(2) Possession of personal (non-duty) weapons by officers.
(3) Officers from other jurisdictions who are visiting or traveling through Sunnyvale.

It is our opinion that individuals listed in Section 9.44.050(c)(2), who are authorized as part of their duties to possess and use large-capacity magazines, are exempt under 9.44.050(c)(2) at all times, both while on and off duty. Further, the exemption is not limited to official duty weapons. Finally, the exemption applies to same extent to officers from other jurisdictions while in Sunnyvale.

Please do not hesitate to contact us if you have any additional questions or concerns.