No. 12-17803

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESPANOLA JACKSON et al.,

Plaintiffs-Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV-09-2143-RS)

APPELLANTS' EXCERPTS OF RECORD
VOLUME IV of IV

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Pursuant to Ninth Circuit Rule 30-1, Plaintiffs-Appellants Espanola Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti, David Golden, Noemi Margaret Robinson, National Rifle Association of America, Inc., and San Francisco Veteran Police Officers Association, by and through their counsel of record, hereby confirm to the contents and form of Appellants' Excerpts of Record on appeal.

Date: February 7, 2013

MICHEL & ASSOCIATES, P.C.

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

INDEX TO APPELLANTS' EXCERPTS OF RECORD

VOLUME I

VOLUME II

INDEX TO APPELLANTS' EXCERPTS OF RECORD

INDEX TO APPELLANTS' EXCERPTS OF RECORD

VOLUME III

INDEX TO APPELLANTS' EXCERPTS OF RECORD

VOLUME IV

INDEX TO APPELLANTS' EXCERPTS OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2013, an electronic PDF of **APPELLANTS' EXCERPTS OF RECORD VOLUME IV of IV** was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: February 7, 2013 **MICHEL & ASSOCIATES, P.C.**

/s/ C. D. Michel
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****E-filed 12/12/11****

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants.

_____/

No. C 09-2143 RS

ORDER DENYING MOTION TO STRIKE

Pursuant to Civil Local Rule 7-1(b), plaintiffs' motion to strike defendants' "affirmative defenses" related to standing and ripeness is suitable for disposition without oral argument, and the hearing set for December 15, 2011 is vacated. As defendants correctly concede, the issues of standing and ripeness do not properly constitute affirmative defenses. Nevertheless, as defendants also point out, it remains plaintiffs' burden to establish the facts they alleged on which the Court relied when it denied defendants' motion to dismiss. While the allegations in defendants' answer are therefore surplusage, it would serve no salutary purpose to strike them.

Because motions to strike that would have no substantive or practical effect if granted are disfavored, the motion is denied. This ruling, however, is not an endorsement of the propriety of any particular discovery requests defendants may have propounded, or may intend to propound, regarding standing or ripeness issues. As plaintiffs have observed, the Court's ruling on standing

United States District Court
For the Northern District of California

and ripeness turned on a relatively narrow set of facts, which are unlikely to be in substantial controversy. Any disputes as to the relevance, burden, and/or proportionality of particular discovery requests will be evaluated if and when presented.

IT IS SO ORDERED.

Dated: 12/12/11

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in his official capacity; POLICE CHIEF GEORGE GASCÓN, in his official capacity, and Does 1-10,

Defendants.

Case No. C09-2143 RS

DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendants City and County of San Francisco; former San Francisco Mayor Gavin Newsom, in his official capacity; and former San Francisco Police Department Chief Of Police George Gascon, in his official capacity, (collectively, the "City" or "Defendants") hereby respond to the First Amended Complaint for Declaratory and Injunctive Relief ("Complaint") filed on or about August 24, 2009 by Plaintiffs Espanola Jackson, et al. ("Plaintiffs") as follows. Except as specifically admitted, each and every allegation or portion of an allegation is denied.

INTRODUCTION

1. Responding to Paragraph 1, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that former Mayor Gavin Newsom and former Police Chief George Gascon are proper defendants to this action since they no longer hold those offices and were sued only in their official capacities. Defendants have repeatedly offered to stipulate that the proper individual defendants at any given time should be deemed to be the Mayor and Police Chief then in office. Plaintiffs have to date done nothing to formalize Defendants' proposed stipulation. Accordingly, at this time, Defendants admit only that the City and County of San Francisco is a proper defendant to this action, which challenges the validity of San Francisco Police Code sections 4512 and 613.10(g) under the Second Amendment. Any remaining allegations in Paragraph 1 are denied.

2. Responding to Paragraph 2, Defendants deny the allegations therein.

3. Responding to Paragraph 3, Defendants deny that the "trigger lock" ordinance struck down by the Supreme Court in *District of Columbia v. Heller* was similar to Section 4512 but admit the remaining allegations therein.

4. Responding to Paragraph 4, Defendants deny the allegations therein.

5. Responding to Paragraph 5, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

6. Responding to Paragraph 6, Defendants deny the allegations therein.

7. Responding to Paragraph 7, Defendants deny the allegations therein.

8. Responding to Paragraph 8, Defendants deny the allegations therein.

9. Responding to Paragraph 9, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants admit the remaining allegations in Paragraph 9.

JURISDICTION AND VENUE

10. Responding to Paragraph 10, Defendants deny that this Court has Article III jurisdiction over this action because Plaintiffs lack standing, their claims against Sections 4512 and 613.10(g) are unripe, and their claim against Section 1290 is moot. Defendants admit that, in the absence of these Article III defects, this Court would have statutory jurisdiction over Plaintiffs' federal claims. Defendants deny that this Court has supplemental jurisdiction over Plaintiffs' state law claims because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation. Except as expressly admitted, the allegations in Paragraph 10 are denied.

11. Responding to Paragraph 11, Defendants deny the allegations.

12. Responding to Paragraph 12, Defendants admit that venue is proper for any claims over which the Court otherwise has constitutional and statutory jurisdiction. Except as expressly admitted, the allegations in Paragraph 12 are denied.

INTRADISTRICT ASSIGNMENT

13. Responding to Paragraph 13, Defendants admit the allegations.

PARTIES

14. Responding to Paragraph 14, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

15. Responding to Paragraph 15, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

16. Responding to Paragraph 16, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

17. Responding to Paragraph 17, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

18. Responding to Paragraph 18, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

19. Responding to Paragraph 19, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

20. Responding to Paragraph 20, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

21. Responding to Paragraph 21, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

22. Responding to Paragraph 22, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations and deny them on that basis.

23. Responding to Paragraph 23, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

24. Responding to Paragraph 24, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations and deny them on that basis.

25. Responding to Paragraph 25, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

26. Responding to Paragraph 26, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants admit the remaining allegations in Paragraph 26.

27. Responding to Paragraph 27, Defendants deny the allegations therein.

28. Responding to Paragraph 28, Defendants deny the allegations therein.

29. Responding to Paragraph 29, Defendants admit that former Mayor Newsom signed Section 4512 into law and deny the remaining allegations therein.

30. Responding to Paragraph 30, Defendants deny the allegations therein.

31. Responding to Paragraph 31, Defendants admit the allegations therein.

32. Responding to Paragraph 32, Defendants deny the allegations therein.

33. Responding to Paragraph 33, Defendants deny the allegations therein.

34. Responding to Paragraph 34, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

35. Responding to Paragraph 35, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants admit the remaining allegations in Paragraph 35.

36. Responding to Paragraph 36, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

37. Responding to Paragraph 37, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations and deny them on that basis.

38. Responding to Paragraph 38, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants deny the remaining allegations in Paragraph 38.

39. Responding to Paragraph 39, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that complying with Sections 4512 and 613.10(g) subjects Plaintiffs to irreparable harm. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 39 and deny them on that basis.

DECLARATORY JUDGMENT ALLEGATIONS

40. Responding to Paragraph 40, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants admit that Plaintiffs make contentions as described and that Defendants deny those contentions, but Defendants deny that those allegations are sufficient to establish a substantial controversy of sufficient immediacy and reality to support the issuance of a declaratory judgment. Except as expressly admitted, the remaining allegations in Paragraph 40 are denied.

INJUNCTIVE RELIEF ALLEGATIONS

41. Responding to Paragraph 41, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants deny the remaining allegations in Paragraph 41.

42. Responding to Paragraph 42, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that Sections 4512 and 613.10(g) violate Plaintiffs' Second Amendment rights. Defendants lack knowledge or information sufficient to form a belief about future actions of the Board of Supervisors and City officials, and deny the remaining allegations on that basis.

43. Responding to Paragraph 43, Defendants deny the allegations therein.

44. Responding to Paragraph 44, Defendants deny the allegations therein.

45. Responding to Paragraph 45, Defendants deny the allegations therein.

FIRST CLAIM FOR RELIEF: VALIDITY OF SFPC § 4512
Violation of the Second Amendment Right to Keep and Bear Arms
(US. Const. Amend. II and XIV)

46. Responding to Paragraph 46, Defendants incorporate the above admissions and denials as if set forth fully herein.

47. Responding to Paragraph 47, Defendants admit the allegations therein.

48. Responding to Paragraph 48, Defendants admit that the Second Amendment provides as set forth in quotation marks, but Defendants deny the remaining allegations therein.

49. Responding to Paragraph 49, Defendants admit the allegations therein.

50. Responding to Paragraph 50, Defendants admit that Section 4512 has been in effect since 2007 and deny the remaining allegations therein.

51. Responding to Paragraph 51, Defendants deny the allegations therein.

52. Responding to Paragraph 52, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

53. Responding to Paragraph 53, Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations and deny them on that basis.

54. Responding to Paragraph 54, Defendants admit the allegations therein.

55. Responding to Paragraph 55, Defendants admit the allegations therein.

SECOND CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)
Violation of the Second Amendment Right to Keep and Bear Arms
(US. Const. Amend. II and XIV)

56. Responding to Paragraph 56, Defendants incorporate the above admissions and denials as if set forth fully herein.

57. Responding to Paragraph 57, Defendants deny the allegations therein.

58. Responding to Paragraph 58, Defendants deny the allegations therein.

59. Responding to Paragraph 59, Defendants admit that ammunition that is designed to expand or fragment upon impact is distinct from ammunition that is designed to pierce body armor. Plaintiffs deny that ammunition that is designed to expand or fragment upon impact is not "cop-killer" ammunition, as it is designed to enhance the lethality of gunshot wounds suffered by any gunshot victim, including police officers. Except as expressly admitted, the remaining allegations in Paragraph 59 are denied.

60. Responding to Paragraph 60, Defendants deny the allegations therein.

61. Responding to Paragraph 61, Defendants admit the allegations therein.

62. Responding to Paragraph 62, Defendants admit the allegations therein.

THIRD CLAIM FOR RELIEF: VALIDITY OF SFPC § 1290
Violation of the Second Amendment Right to Keep and Bear Arms
(US. Const. Amend. II and XIV)

63. Responding to Paragraph 63, Defendants incorporate the above admissions and denials as if set forth fully herein.

64. Responding to Paragraph 64, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

65. Responding to Paragraph 65, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

66. Responding to Paragraph 66, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

67. Responding to Paragraph 67, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so

held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

FOURTH CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)
Violation of the Fifth Amendment Right to Due Process
(US. Const. Amend. V and XIV)

68. Responding to Paragraph 68, Defendants incorporate the above admissions and denials as if set forth fully herein.

69. Responding to Paragraph 69, Defendants deny the allegations therein.

70. Responding to Paragraph 70, Defendants deny the allegations therein.

71. Responding to Paragraph 71, Defendants deny the allegations therein.

72. Responding to Paragraph 72, Defendants deny the allegations therein.

73. Responding to Paragraph 73, Defendants deny the allegations therein.

FIFTH CLAIM FOR RELIEF:
VALIDITY OF SFPC §§ 4512, 1290 and 613.10(g)
Violation of the Right to Self-Defense Under State Law
(Cal. Const., art. 1 § 1, Cal. Penal Code § 12026)

74. Responding to Paragraph 74, Defendants incorporate the above admissions and denials as if set forth fully herein.

75. Responding to Paragraph 75, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

76. Responding to Paragraph 76, Defendants deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

77. Responding to Paragraph 77, Defendants deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

78. Responding to Paragraph 78, Defendants deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

79. Responding to Paragraph 79, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290.

80. Responding to Paragraph 80, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

81. Responding to Paragraph 81, Defendants deny that this action challenges San Francisco Police Code section 1290 because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Defendants further deny that this action makes any claim under state law because, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Ripeness)

Plaintiffs' complaint is barred in whole or in part because the claims alleged therein are not ripe for review. Plaintiffs have never been subjected to enforcement or even a threat of enforcement of San Francisco Police Code sections 613.10(g) or 4512, and they may never face such action.

Second Affirmative Defense
(Standing)

Plaintiffs' complaint is barred in whole or in part because they have failed to establish that they or any of them has suffered or will imminently suffer an injury in fact under any of the challenged laws.

Third Affirmative Defense
(Mootness)

Plaintiffs' complaint against San Francisco Police Code section 1290 is barred because that claim has been mooted by legislative action.

Fourth Affirmative Defense
(Waiver)

Plaintiffs' complaint against San Francisco Police Code section 1290 is barred because that claim has been mooted by legislative action, the Court has so held, and Plaintiffs have affirmatively waived the right to file an amended complaint challenging the successor provisions to Section 1290. Further, by stipulation and order, Plaintiffs have waived their rights to pursue any and all state law claims in the course of this litigation.

Fifth Affirmative Defense
(Qualified Immunity)

Plaintiffs' claims against San Francisco officials are barred in whole or in part by the doctrine of qualified immunity.

Sixth Affirmative Defense
(Failure to State a Claim)

The allegations in the complaint fail to state a claim on which relief can be granted.

PRAYER

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiffs take nothing from Defendants by way of this action;

2. The Complaint be dismissed with prejudice and judgment entered in favor of Defendants; and

3. Defendants be awarded costs of suit and any other relief the Court deems proper.

Dated: October 17, 2011

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
SHERRI SOKELAND KAISER
Deputy City Attorneys

By: s/Sherri Sokeland Kaiser
SHERRI SOKELAND KAISER

Attorneys for Defendants City and County of San Francisco, former Mayor Gavin Newsom and former Police Chief George Gascon

****E-filed 9/27/11****

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants.

_____/

No. C 09-2143 RS

ORDER DENYING MOTION TO DISMISS FOR LACK OF STANDING, GRANTING LEAVE TO AMEND MOOT CLAIM

I. INTRODUCTION

In the wake of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment confers an individual right to keep and bear arms, plaintiffs brought this challenge to certain ordinances of the City and County of San Francisco relating to storage and discharges of firearms, and sales of particular types of ammunition. This litigation was then stayed pending further guidance as to whether the right announced in *Heller* constrains the states, a question answered in the affirmative in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). Defendants[1] now move to dismiss under Rule 12(b)(1) of the Federal Rules of Civil

[1] The operative first amended complaint names as defendants the City and County of San Francisco, its Mayor, and its Chief of Police. As defendants point out, the particular individuals holding those offices have changed since the complaint was filed, and may change again before this action is resolved. Defendants offer to stipulate that the individual defendants at any given time should be deemed to be the Mayor and Chief of Police then in office.

Procedure, contending that plaintiffs lack standing to challenge the ordinances because they have not shown, and cannot show a genuine and particularized threat that the ordinances will be enforced against them. For essentially the same reasons, defendants further contend plaintiffs' claims are not ripe. Because plaintiffs have adequately alleged an intent and desire to engage in conduct that is prohibited by the ordinances but which they contend is constitutionally protected, the motion will be denied. Plaintiffs will be given leave to amend, however, as to one claim involving an ordinance that has been repealed and replaced by somewhat different provisions, and which is therefore subject to dismissal on mootness grounds.

II. BACKGROUND

The First Amended Complaint challenges three provisions of the San Francisco Police Code ("SFPC"):

Section 4512, "The Safe Storage Law," generally allows San Francisco residents to carry unsecured handguns freely in their homes at any time, but requires them to apply trigger locks or to store handguns in locked containers when the guns are not under direct, personal control.

Section 613.10(g), entitled "Prohibiting Sale Of Particularly Dangerous Ammunition," prohibits gun shops from selling ammunition that has been enhanced to increase the damage it inflicts on the human body, such as fragmenting bullets, expanding bullets, bullets that project shot or disperse barbs into the body, or other bullets that serve no "sporting purpose." Plaintiffs contend that while bullets designed to expand or fragment upon impact fall within this ban, they are particularly suited for self-defense because they are designed, for safety reasons, to prevent ricochet and to eliminate over-penetration of unarmored assailants. Plaintiffs assert the police often use such bullets for the same reasons, and that they are unlike so-called "cop killer" or armor-penetrating bullets that might more reasonably be characterized as "particularly dangerous."

Section 1290, "the discharge ban" formerly prohibited firing or discharging "firearms or fireworks of any kind or description" within city limits. Plaintiffs challenged it on grounds that it did not explicitly contain appropriate exceptions for self-defense. Section 1290 has since been *repealed*, and replaced with amendments to provisions in sections 4502 and 4506. While this

motion to dismiss was pending, plaintiffs moved for leave to amend to delete their challenge to section 1290 and to allege the grounds on which they contend the revised provisions of sections 4502 and 4506 still fail to pass constitutional muster. The motion for leave to file a second amended complaint at that juncture was denied, with the understanding that unless the entire action were dismissed for lack of standing, plaintiffs would be given leave to amend this particular claim upon issuance of this order.

III. LEGAL STANDARDS

As noted above, defendants move to dismiss this action under Rule 12(b)(1) of the Federal Rules of Civil Procedure on the ground that plaintiffs lack standing and that their claims are unripe. The Article III case or controversy requirement limits federal courts' subject matter jurisdiction by requiring, among other things, that plaintiffs have standing and that claims be "ripe" for adjudication. *Allen v. Wright*, 468 U.S. 737, 750 (1984). The party asserting federal subject matter jurisdiction bears the burden of proving its existence. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Standing addresses whether the plaintiff is the proper party to bring the matter to the court for adjudication. *See Allen*, 468 U.S. at 750-51. The related doctrine of ripeness is a means by which federal courts may dispose of matters that are premature for review because the purported injuries are too speculative and may never occur. Because standing and ripeness pertain to federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss. *See St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *see also White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

"[T]he irreducible constitutional minimum of standing contains three elements," all of which the party invoking federal jurisdiction bears the burden of establishing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). First, the plaintiff must prove that he or she suffered an "injury in fact," i.e., an "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id*. at 560 (citations, internal quotation marks, and footnote omitted). Second, the plaintiff must establish a causal connection by proving that the injury is fairly traceable to the challenged conduct of the defendant.

Id. at 560-61. Third, the plaintiff must show that the injury will likely be redressed by a favorable decision. *Id*. at 561.

"[T]he question of ripeness turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 201(1983)(quotations omitted). The central concern of the ripeness inquiry is "whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997) (quotations omitted).

IV. DISCUSSION

Defendants insist that under "well established and well elucidated" law in this circuit, persons who have not yet been arrested or prosecuted under a challenged law have standing only if they can show imminent injury-in-fact by means of a "genuine and particularized threat" that the challenged law will be enforced against them. Relying primarily on *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121 (9th Cir. 1996) ("*Gun Rights Committee*"), defendants argue that it simply is not enough for plaintiffs to allege that they "wish and intend" to engage in conduct prohibited by the law in dispute; rather, they must also allege facts showing when and how they will violate the law, and a specific threat that they will be prosecuted if they do. Defendants contend plaintiffs have not shown that any law enforcement official has specifically threatened any of them, much less all of them, with arrest and prosecution under any of the challenged ordinances. Defendants place particular emphasis on the observation in *Gun Rights Committee* that, "[w]e have repeatedly admonished . . . that the mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III." 98 F.3d at 1126 (quotations omitted).

Gun Rights Committee involved a challenge to the federal "assault weapons" ban enacted by Congress in 1994, which prohibited the manufacture, transfer or possession of semiautomatic assault weapons and the transfer or possession of "large capacity ammunition feeding device[s]."

The plaintiffs alleged "that they 'wish and intend' to engage in unspecified conduct prohibited by the Act," but had not "articulated concrete plans" to do so. 98 F. 3d at 1124, 1127.

Because *Gun Rights Committee* long preceded *Heller*, the court quickly dispensed with the notion that the plaintiffs might have standing under the Second Amendment—the lack of any then-recognized individual constitutional right to keep and bear arms foreclosed plaintiffs from asserting standing. 98 F. 3d at 1124-25. Plaintiffs' challenge under the Ninth Amendment was rejected for the same basic reason. *Id*. at 1125. Accordingly, the court's standing analysis proceeded only under the claim that Congress had exceeded its power under the Commerce Clause in enacting the assault weapons ban. Here, in contrast, plaintiffs are pursuing what the Supreme Court has now pronounced to be an individual right guaranteed by the Second Amendment, not simply challenging the scope of the Commerce Clause. While defendants may be correct that *Heller* cannot be seen as overruling *Gun Rights Committee*, *per se*, the applicability of the standing analysis in *Gun Rights Committee* to a case involving assertion of individual constitutional guarantees is uncertain.

The continued vitality of *Gun Rights Committee* is also questionable in light of *MedImmune, Inc. v. Genentech, Inc*., 549 U.S. 118 (2007). The *Gun Rights Committee* court had pointed out that, "The acts necessary to make plaintiffs' injury—prosecution under the challenged statute—materialize are almost entirely within plaintiffs' own control." 98 F. 3d at 1127. As a result, the court concluded, "[p]laintiffs have failed to show the high degree of immediacy that is necessary for standing under these circumstances." *Id.* In *MedImmune*, however, the Supreme Court rejected this argument.

> Our analysis must begin with the recognition that, where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced. The plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction.

549 U.S. at 128-129.[2]

[2] Indeed, the Court went on to hold that even where the threatened action was by a *private* party—a patent holder threatening an infringement action—the same principle applies.

Ultimately, though, even to the extent that at least some aspects of *Gun Rights Committee* remain good law, it simply is distinguishable. Plaintiffs have not merely alleged that they "wish and intend" to violate the ordinances in some vague and unspecified way, at some unknown point in the future. Plaintiffs allege they own guns now, and that based on their personal views of how it would enhance their personal safety, they want to keep their guns unlocked *now* for potential use in self defense, and that they wish to acquire prohibited ammunition *now* for the same purpose. While the time that they will actually *use* the guns in self defense is unknown and may never come, that does not undermine the immediacy and concreteness of the injury they have alleged. Even as to the discharge rules, which plaintiffs do not contend they intend to violate unless and until a self-defense situation arises, it would be unreasonable to require an incident to occur before judicial review of the validity of the rules is available.[3]

Defendants also rely on *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1 (9th Cir. 1974), which found no justiciable controversy where the governing body of an Indian tribe sought declaratory relief as to the applicability of a county anti-gambling ordinance to "traditional tribal games of chance," and to the possible development of a tribally-run card room on reservation lands. Although the "case or controversy" issues discussed in *Rincon* underlie part of the standing doctrine, the decision was not framed in terms of standing, and it did not involve an assertion of individual constitutional rights. Nothing in the facts or discussion in *Rincon* otherwise compels a conclusion that plaintiffs lack standing here.

Defendants' contention that the plaintiffs' claims are not ripe are based on the same basic arguments as their position on standing, and do not provide a separate basis for dismissal. *See MedImmune,* 549 U.S. at 128 n. 8 ("standing and ripeness boil down to the same question in this case.") Similarly, their arguments that the case should be dismissed on *prudential* standing grounds

[3] Defendants' motion also challenges plaintiffs' standing to make a derivative claim on behalf of gun shop owners with respect to the ban on sales of certain types of ammunition. Plaintiffs, however, have made it clear that they are asserting that the ban unduly burdens their *own* alleged right to acquire and possess such ammunition. While it may be that plaintiffs will be unable, as a factual matter, to establish that a ban on sales within the City and County of San Francisco actually presents a significant burden on their ability to obtain such ammunition, that would only undermine the merits of the claim, not plaintiffs' standing to bring it.

rest on the same assumptions as to the concreteness and immediacy of plaintiffs' alleged injury. Accordingly, the motion to dismiss must be denied.

IV. CONCLUSION

The motion to dismiss for lack of standing is denied. In light of plaintiffs' concession that the claim directed at Section 1290 is now moot, however, it will be dismissed, with leave to amend to allege plaintiffs' challenges to the amendments of sections 4502 and 4506. Any amended complaint shall be filed with 15 days of the date of this order. The parties shall appear for a Case Management Conference on November 3, 2011, at 10:00 a.m., with a joint Case Management Conference statement to be filed one week in advance.

IT IS SO ORDERED.

Dated: 9/26/11

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

PAGES 1 - 27

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

ESPANOLA JACKSON, ET AL., PLAINTIFFS, VS. CITY AND COUNTY OF SAN FRANCISCO, ET AL., DEFENDANTS.	NO. C 09-2143 RS

SAN FRANCISCO, CALIFORNIA
THURSDAY, MAY 5, 2011

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF:
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LONG BEACH, CA 90802
BY: **CLINTON B. MONFORT**
ATTORNEY AT LAW

FOR DEFENDANT:
OFFICE OF THE CITY ATTORNEY
CITY & COUNTY OF SAN FRANCISCO
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SAN FRANCISCO, CA 94102
BY: **SHERRI SOKELAND KAISER**
ATTORNEY AT LAW

REPORTED BY: JAMES YEOMANS, CSR 4039, RPR
OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

THURSDAY, MAY 5, 2011 2:00 P.M.

(THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

THE CLERK: C 09-2143, JACKSON, ET AL. VERSUS CITY AND COUNTY OF SAN FRANCISCO.

PLEASE STATE YOUR APPEARANCES.

MS. KAISER: GOOD AFTERNOON.

SHERRI KAISER FOR DEFENDANT CITY AND COUNTY OF SAN FRANCISCO.

MR. MONFORT: GOOD AFTERNOON.

CLINTON MONFORT FOR THE PLAINTIFFS.

THE COURT: GOOD AFTERNOON.

LET ME MAKE SOME COMMENTS, PRELIMINARY COMMENTS. TO SOME EXTENT A FORM OF A TENTATIVE RULING, OTHERS ARE SORT OF OBSERVATIONS.

LET ME MENTION FIRST, THAT I RECEIVED A FLURRY OF SUBMISSIONS IN ADDITION TO THE ACTUAL MOTION WHICH IS FOCUSED, AS I UNDERSTAND IT, ON THE STANDING QUESTION, THE RIPENESS QUESTION. I RECEIVED THIS SUBMISSION FROM THE CITY LAST WEEK AND THEN ADDITIONAL ONE AS WELL TODAY.

I THINK, WITH RESPECT TO THE APPELLATE BRIEFING THAT PLAINTIFFS' COUNSEL APPARENTLY ARGUED, POSITION THAT THE DEFENDANTS THINK IS SOMEHOW INCONSISTENT WITH WHAT THE POSITIONS THAT ARE BEING TAKEN HERE, POSITIONS PLAINTIFFS ARE TAKING.

I DON'T THINK THERE IS, TO THE EXTENT THERE'S SUCH A

THING AS LAWYER ESTOPPEL, I DON'T THINK THAT CONCEPT WOULD APPLY HERE, EVEN IF THE FACTS OF THE OTHER CASE WERE NOT DISTINGUISHABLE, AND I THINK THAT THEY ARE.

I DON'T THINK THERE'S ANYTHING WRONG WITH AN ATTORNEY ARGUING FOR DIFFERENT RESULTS, GOOD ATTORNEY SHOULD BE ABLE TO DO THAT. SO I DON'T WANT TO DISCUSS THAT. I DON'T THINK THAT'S WORTH OUR TIME.

IF A PARTY WANTS TO SUBMIT SOMETHING, THIS GOES TO THE PROCESS QUESTION, AFTER REPLY BRIEF IS IN, YOU HAVE TO SEEK LEAVE TO DO THAT.

AND UNDER OUR LOCAL RULES 7-3(D), WITH A COUPLE OF EXCEPTIONS THERE THAT ARE MENTIONED IN THE RULE BUT DON'T APPLY HERE, YOU GOT TO ASK FOR THAT, AND THE CITY'S SUBMISSION I DON'T THINK WAS CONSISTENT WITH THOSE RULES.

THAT SAID, THE SUBMISSION WAS NOT, AS PLAINTIFFS ARGUE, AN EX PARTE. THAT TERM IS SO MISUSED IN COURT BECAUSE IT WAS SUBMITTED WITH NOTICE TO THE OTHER SIDE.

EX PARTE COMMUNICATIONS IS ONE WHERE ONLY ONE SIDE SUBMITS SOMETHING, THE OTHER SIDE DOESN'T SEE IT. THAT DOES OFTEN CREATE SOME ETHICAL ISSUES, VERY SELDOM IS -- THAT'S NOT WHAT HAPPENED HERE.

THE BOTTOM LINE IS, I'M NOT GOING TO CONSIDER THE SUBMISSION THE CITY MADE. I DON'T THINK IT'S RELEVANT TO ANY OF THE ISSUES I HAVE TO DECIDE ON THIS MOTION. I JUST -- I DON'T THINK IT'S PRODUCTIVE FOR US TO HEAR ANY ARGUMENT ON

THAT.

IN ADDITION TO THAT, I GOT A MOTION FROM PLAINTIFFS THAT WAS FILED EARLIER THIS WEEK FOR LEAVE TO FILE A SUPPLEMENTAL REPORT, AND THAT WAS NOTICED FOR HEARING IN JUNE, UNNOTICED THAT.

THE PURPOSE OF IT IS TO APPARENTLY INCLUDE A NEW CLAIM THAT PLAINTIFFS NOW WANT TO ADVANCE WITH RESPECT TO THE AMENDMENTS TO THE DISCHARGE BAN, WHICH FORMALLY WAS SECTION 1290, NOW IT'S SECTION 4502 AND 4506, AND PLAINTIFFS WOULD THEN ALSO DISMISS THE CLAIM IN THE PRESENT COMPLAINT THAT CHALLENGES 1290.

I THINK, PLAINTIFF IS PROBABLY CORRECT, TECHNICALLY A SUPPLEMENTAL COMPLAINT WOULD BE PROPER. I THINK, RELATES TO THE EVENTS THAT TOOK PLACE AFTER THE ORIGINAL COMPLAINT WAS FILED, AMENDMENTS TO THE LAW, AND I DON'T WANT TO HAVE MORE THAN ONE OPERATIVE PLEADING.

SO RATHER THAN A SUPPLEMENTAL PLEADING WHAT I'M INCLINED TO DO, PUT ASIDE FOR A MOMENT THE STANDING ISSUE, WHICH WE WILL GET TO, WHICH IF I WERE TO GRANT DEFENDANT'S MOTION WOULD RENDER THIS SOMEWHAT ACADEMIC.

BUT LET'S PUT THAT ASIDE FOR THE MOMENT. TO HAVE THE PLAINTIFFS ACCORDED LEAVE TO AMEND, TO SIMPLY AMEND AND HAVE THIS UPDATED CLAIM, IF YOU WILL, RATHER THAN HAVE IT IN TWO DIFFERENT PIECES, SO I WOULD BE INCLINED TO DO THAT.

SO THOSE ARE KIND OF THE PRELIMINARY THINGS. LET'S

TALK ABOUT THE MAIN ISSUES THAT WE'RE HERE TO DISCUSS. THAT'S THE STANDING ISSUE AND THE RIPENESS QUESTION, WHICH I THINK IS RELATED.

AND THAT'S REALLY THE ONLY THING I THINK WE'RE FOCUSING ON HERE. FROM TIME-TO-TIME SEEMS TO BE SOME MERGING INTO OTHER ISSUES IN THE CASE.

TO THE EXTENT I WERE TO DENY DEFENDANT'S MOTION, WE'LL GET TO THOSE SUBSTANTIVE ISSUES, BUT AT THIS JUNCTURE ALL WE'RE TALKING ABOUT IS STANDING.

DEFENDANTS ARE CONTENDING THAT THE PLAINTIFFS LACK STANDING TO BRING THIS ACTION BECAUSE THE CLAIM, AS I UNDERSTAND IT, THE ARGUMENT IS THAT PLAINTIFFS HAVE NOT SUFFERED ANY INJURY IN FACT BY ARREST OR PROSECUTION UNDER THE CHALLENGED LAW AND THEY REALLY COULD ONLY HAVE STANDING TO SHOW EMINENT INJURY IN FACT.

I RECOGNIZE THAT IN MAKING THAT ARGUMENT THERE'S RELIANCE ON THE SAN DIEGO GUN RIGHTS CASE. DEFENDANTS ARE ARGUING THAT BASED ON THAT CASE IT'S SIMPLY NOT ENOUGH FOR PLAINTIFFS TO ALLEGE THAT THEY WISH AND INTEND TO ENGAGE IN CONDUCT PROHIBITED BY THE LAW IN DISPUTE, AFTER ALLEGED FACTS THAT SHOW HOW AND IN WHAT FASHION THEY VIOLATED THE LAW, A SPECIFIC THREAT THAT WOULD BE PROSECUTED.

AND DEFENDANTS CONTEND IT'S INSUFFICIENT BECAUSE IT'S DEVOID OF ALLEGATION OF LAW ENFORCEMENT HAS MADE ANY SUCH INDICATION THEY WERE GOING PROCEED IN THAT FASHION.

THAT SAID, GUN RIGHTS CASE WAS DECIDED PRIOR TO THE SUPREME COURT DECISIONS IN HELLER AND MC DONALD. GUN RIGHTS INVOLVE A CHALLENGE TO A FEDERAL LAW.

I THINK, PROHIBITED MANUFACTURE, TRANSFER, POSSESSION OF SEMIAUTOMATIC WEAPONS, THE TRANSFER AND POSSESSION OF AMMUNITION, ASSAULT WEAPONS BAN, AND IN THAT CASE THE PLAINTIFFS HAVE ALLEGED THEY WISH -- THEY INTENDED TO ENGAGE IN SOME CONDUCT.

I DON'T THINK IT WAS ARTICULATED AS TO WHAT WAS GOING TO VIOLATE THE ACT POTENTIALLY, I THINK, BECAUSE IT DOES PREDATE HELLER AND REALLY FOCUSES ON THE COMMERCE CLAUSE QUESTION, THE POWER OF CONGRESS IN ENACTING ASSAULT WEAPONS BAN.

I JUST DON'T THINK THAT IT IS REALLY UP TO DATE FOR OUR PURPOSE IN TERMS OF CONSIDERING WHERE THINGS STAND IN THE STANDING QUESTION.

AND I THINK IT'S ALSO UNDERCUT TO SOME LARGE EXTENT BY THE MEDLMMUNE CASE SUPREME COURT BECAUSE IN THAT CASE THE COURT INDICATED THE ANALYSIS HAS TO BEGIN WITH AN UNDERSTANDING. IF THERE'S THREATENED ACTION BY THE GOVERNMENT THE PLAINTIFF IS NOT REQUIRED TO EXPOSE THEMSELVES TO THE LIABILITY BEFORE BRINGING SUIT TO CHALLENGE THE BASIS FOR THE THREAT.

SO I THINK THAT FURTHER, AS I SAY, SORT OF UNDERCUTS FOR ITS STANDING PURPOSE THE QUESTION ELUCIDATED IN GUN RIGHTS.

I KNOW THAT DEFENDANTS ARE RELYING ON MISSION INDIANS

CASE. INTERESTING CASE. WHERE THERE WAS THIS GENERAL ISSUE ABOUT POSSIBLY ENFORCING GAMBLING LAWS. BUT I THINK IT WAS QUITE -- THAT THAT CASE QUITE AMORPHOUS AND I THINK WE'RE IN A SOMEWHAT DIFFERENT POSTURE HERE.

SO I SUPPOSE MY SENSE IS THAT WE'RE IN A VERY DIFFERENT WORLD, TO JUST SUMMARIZE, THEN WE WERE IN THE GUN RIGHTS CASE, SAN DIEGO GUN RIGHTS AND THAT THE ARGUMENT AT THE VERY LEAST FOR STANDING IS STRONGER IN THIS CASE.

SO I KNOW THAT'S A LONG WINDED QUASI TENTATIVE, BUT I THOUGHT I'D START OUT AND GIVE YOU SOME OF MY THOUGHTS ON IT. SO WHY DON'T I TURN FIRST TO MS. KAISER.

MS. KAISER: THANK YOU, YOUR HONOR.

I THINK, A FEW THINGS. ONE IS, IT MAY BE THE CASE, AS YOU SAY, THAT DECISIONS BY THE NINTH CIRCUIT ARE SOMEHOW OUTMODED OR OUTDATED, BUT THEY STILL CONTROL.

THE COURT: I WOULDN'T SAY OUTDATED. WHAT I'M SAYING IS, WE DON'T LIVE IN A STATIC WORLD AND EVEN THE JUDGES IN THE CIRCUIT WOULD SAY EVENTS MAY OCCUR IN THE FORM OF SUPREME COURT DECISIONS THAT ONE HAS TO TAKE INTO ACCOUNT IN ASSESSING WHERE THOSE OPINIONS STAND, AND THERE'S -- I THINK, WE ALL HAVE TO AGREE IT'S A MAJOR C CHANGE, WHATEVER ONE MAY THINK IT MEANS IN THE END IN TERMS OF SUBSTANTIVE ISSUES.

HELLER AND MC DONALD, IT'S A CHANGED CIRCUMSTANCE FROM WHAT WAS THE STATE OF UNDERSTANDING OF THE LAW WHEN THE NINTH CIRCUIT DEALT WITH THE SAN DIEGO CASE.

MS. KAISER: I ABSOLUTELY AGREE WITH YOU THERE HAS BEEN A C CHANGE, I WOULD BE FOOLISH TO DENY IT. BUT THE QUESTION ISN'T SIMPLY WHETHER THERE HAS BEEN A C CHANGE, WHETHER THAT C CHANGE IS CLEARLY IRRECONCILABLE WITH PRIOR NINTH CIRCUIT AUTHORITY.

I DON'T THINK THAT THRESHOLD IS MET HERE. I DON'T THINK THERE'S ANY REASON WHY HELLER OR MC DONALD HAS TO BE READ AS CONFLATING, ANTIDOTALLY CONFLICTING WITH THE PRIOR AUTHORITY THE CITY RELIES ON.

AND THE FACT IS THAT HELLER AND MC DONALD ARE BOTH VERY RECENT OPINIONS. SO IT'S NOT AS THOUGH THE CITY HAS A WEALTH OF SUBSEQUENT CASE LAW TO RELY ON, IT'S SIMPLY THE STANDING DOCTRINE LONG BEEN ESTABLISH IN THE NINTH CIRCUIT.

SO THE QUESTION HAS TO BE, HAVE HELLER AND MC DONALD SO ALTERED THE LANDSCAPE IN REGARD TO THE --

THE COURT: IN ADDITION, AS I INDICATED BEFORE, IN ADDITION TO THE CHANGED TERRAIN THAT HELLER AND MC DONALD REPRESENTS, HOW MUCH MEDLMMUNE DECISION, THE MEDLMMUNE DECISION REALLY DOES SEEM TO INDICATE THAT THE PLAINTIFF DOES NOT HAVE TO PUT THEMSELVES IN POSITION OF HAVING VIOLATED THE LAW IN ORDER TO HAVE STANDING.

AND HOW CAN WE RECONCILE THAT WITH SAN DIEGO GUN RIGHTS FOR PURPOSE OF DETERMINING WHETHER OR NOT THERE'S STANDING IN THE CASE.

MS. KAISER: WELL, I THINK THAT ACTUALLY THOSE CASES

ARE ALSO CONSISTENT WITH EACH OTHER. IT'S LONG BEEN THE FACT YOU CAN BRING REINFORCEMENT CHALLENGES IF YOU HAVE STANDING TO DO SO.

AND SO THE DOCTRINE HAS BEEN CLEAR FOR A LONG TIME, YOU DON'T ACTUALLY HAVE TO BREAK THE LAW AND SUBJECT YOURSELF TO PROSECUTION. THERE'S ACTUALLY NOTHING NEW WITH THAT IDEA. THAT'S SIMPLY A RESTATEMENT OF PRE-ENFORCEMENT CHALLENGE DOCTRINE.

BUT THE PROBLEM IS, EVEN IN TERMS OF A PRE-ENFORCEMENT CHALLENGE THERE ARE STILL STANDING REQUIREMENTS THAT THE PLAINTIFF MUST MEET AND THOSE INCLUDE ACTUAL OR EMINENT INJURY.

AND IN THE CASE OF EMINENT INJURY IN THE PRE-ENFORCEMENT CHALLENGE DOCTRINE OTHER THAN IN FIRST AMENDMENT CASES WHICH ARE SPECIAL CASES I'M HAPPY TO TALK ABOUT.

THE COURT: I UNDERSTAND, I AGREE WITH YOUR ARGUMENT THAT THOSE CASES HAVE A PARTICULAR CHILLING ISSUE THAT IS NOT PRESENT WHEN ADDRESSING SOMETHING OTHER THAN THE FIRST AMENDMENT. I THINK, THAT'S A LEGITIMATE ARGUMENT AND I'M AWARE OF IT.

MS. KAISER: WELL, THEN THE ISSUE BECOMES WHETHER THE INJURY, IF IT'S NOT -- IF CHILL DOESN'T SUFFICE, IS IT SUFFICIENTLY EMINENT?

AND THAT'S WHERE THE ACTUAL CONDUCT IN WHICH THE PLAINTIFF WISHES TO ENGAGE OR HAS ENGAGED, ATTRACTS THE

ATTENTION OF LAW ENFORCEMENT, TO THE EXTENT THAT LAW ENFORCEMENT SAYS, HEY, IF YOU DO THAT YOU WILL BE PROSECUTED.

AND THERE ARE TWO THINGS THAT ARISE FROM THAT THAT ARE VERY IMPORTANT FOR JUDICIAL DECISION MAKING. ONE IS A CLEAR SET OF FACTS OF THE PLAINTIFFS' CONDUCT, IT'S THIS PARTICULAR CONDUCT.

AND THE SECOND THING IS, IT'S A CLEAR STATEMENT OF HOW THE JURISDICTION INTERPRETS. THE MAIN ARGUMENT REALLY AGAINST ALL OF THE SAN FRANCISCO ORDINANCES IS THEIR EFFECT ON SELF-DEFENSE, BUT THEY NEVER BEEN APPLIED IN A SELF-DEFENSE CONTEXT.

WE DON'T KNOW WHAT PROSECUTORS WOULD DO IN SAN FRANCISCO IN THE EVENT THAT IT WAS IN-HOME SELF-DEFENSE, YOU KNOW, DIRECTLY UNDER THE RUBRIC OF HELLER.

I HAVE A HARD TIME IMAGING, FRANKLY, THE PROSECUTORS WOULD IGNORE HELLER BASED ON A PORTION OF THE LAW THAT IS -- HAS BEEN EXPLICITLY PREEMPTED BY THE SUPREME COURT.

THE COURT: HOW ABOUT SAFE STORAGE ORDINANCE?

MS. KAISER: THE SAFE STORAGE ORDINANCE IS NOT PREEMPTED BY HELLER BECAUSE THE STORAGE ORDINANCE IN HELLER THAT IS CHALLENGED REQUIRED GUNS TO BE COMPLETELY INOPERABLE AT ALL TIMES. EITHER DISASSEMBLED OR LOCKED. YOU COULD NEVER EVER HAVE IT OUT.

HERE YOU CAN CARRY YOUR GUN AROUND YOUR HOUSE ALL DAY. AND YOU CAN HAVE IT IN YOUR HOLSTER IF YOU WANT TO. YOU COULD

HAVE IT IN YOUR HAND, YOU COULD HAVE IT LOADED. YOU COULD BE RUNNING. THE ONLY THING YOU CAN'T DO IS PUT IT DOWN AND WALK AWAY, SO THAT IT'S AVAILABLE TO OTHER PEOPLE IN THE HOUSE TO --

THE COURT: YOU'RE ARGUING WHY -- WELL, THE STANDING HURDLE IS ADDRESSED BY PLAINTIFFS, WE'LL GET TO THESE CONCERNS. SOME OF THIS IS WHY YOU'RE SORT OF HEARING, YOU SAY WHY IT SHOULD WITHSTAND SCRUTINY BECAUSE AN ORDINANCE HAS A GOOD PURPOSE AND ALL THE REST OF IT.

BUT WE'RE TALKING NOW, I'M CONFINING ENTIRELY TO THE QUESTION OF STANDING AND WHETHER OR NOT THERE IS ENOUGH OF A CONCRETE ACTUAL POTENTIAL INJURY FOR THESE PLAINTIFFS TO BRING FORWARD THE CLAIM.

NOT SO MUCH WHETHER OR NOT THE SAFE STORAGE IS SOMETHING THAT IF IT IS LITIGATED WILL SURVIVE THE APPROPRIATE LEVEL OF SCRUTINY.

MS. KAISER: I UNDERSTAND. I WAS ACTUALLY ANSWERING A DIFFERENT QUESTION, WHETHER OUR ORDINANCE IS PREEMPT BY HELLER. I DON'T BELIEVE IT IS FOR THOSE REASONS.

YES, SET THAT ASIDE. IN TERMS OF THE INJURY ANALYSIS THEN UNDER THE SAFE STORAGE LAW ONE OF TWO THINGS WOULD HAVE TO HAPPEN BASED ON THE STANDING CASE LAW.

THERE ACTUALLY HAS TO BE EITHER AN ACTUAL INJURY IN TERMS OF AN ACTUAL UNCONSTITUTIONAL PROSECUTION THAT COUNTS OR THE ACTUAL DENIAL OF THE USE OF A FIREARM IN SELF-DEFENSE IN THE HOME WHEN YOU'RE UNDER ATTACK.

AND THAT'S A VERY SPECULATIVE INJURY IN THIS CONTEXT. IT'S NOT LIKE SPEECH WHERE YOU DON'T DO IT YOU'RE INJURED. HERE IN ORDER FOR THAT INJURY TO ARISE YOU HAVE TO HAVE -- LET'S EVEN ASSUME THAT THIS IS A PLAINTIFF WHO HAS A GUN AND WANTS TO USE IT IN SELF-DEFENSE AT ALL TIMES, BUT HAS A TRIGGER LOCK ON IT, IN ORDER FOR THAT ORDINANCE TO CAUSE INJURY THERE WOULD HAVE TO BE A HOME INVADER, WHICH IS ALREADY FAIRLY UNLIKELY.

THEY WOULD HAVE TO GIVE THE PLAINTIFF ENOUGH NOTICE THEY WERE IN THE HOUSE, THAT THE PLAINTIFF COULD REACH THE GUN, BUT NOT QUITE ENOUGH NOTICE THAT THEY COULD ALSO UNLOCK IT AND FIRE IT.

THERE'S THIS LITTLE TINY WINDOW WHERE THE SAFE STORAGE ORDINANCE MIGHT HAVE AN EFFECT. WHILE THE INJURY IS POSSIBLE, ITS VERY SPECULATIVE AND THAT ISN'T ENOUGH FOR STANDING.

THE COURT: WELL, EXCEPT, I THINK, THE EXTENSION OF YOUR ARGUMENT, I DON'T SEE A SCENARIO OTHER THAN THE ACTUAL ARREST OR ENFORCEMENT OF THE PROVISION, THAT EVEN THOUGH YOU'RE INDICATING, WELL, I ACKNOWLEDGE THAT MEDLMMUNE SAYS IT DOESN'T HAVE TO BE, YOU HAVE TO BE ARRESTED OR THE LIKE. I DON'T SEE WHERE ANYTHING BUT THAT WOULD BE ENOUGH FROM YOUR ANALYSIS TO WARRANT STANDING.

I MEAN, I DON'T SEE THIS SORT OF ACKNOWLEDGE MENT THAT, YES, WE DON'T, THE PLAINTIFF DOESN'T HAVE TO PUT HIM OR HERSELF IN THAT POSITION, BUT THEN THE ARGUMENT SEEMS TO BE

THERE, UNTIL THEY'RE IN THAT POSITION THEY CAN NEVER HAVE STANDING. THAT'S WHERE I'M HAVING SOME BE TROUBLE.

MS. KAISER: OKAY. I -- JUST TO CLARIFY MY POSITION, WHICH I THINK YOU MAY HAVE UNDERSTOOD QUITE CORRECTLY, JUST TO CLARIFY IT.

THERE ARE TWO KINDS INJURY YOU CAN SUFFER. ONE IS THE ACTUAL DEPRIVATION OF THE RIGHT TO FIRE YOUR GUN IN SELF-DEFENSE IN THE HOME, WE WERE JUST DESCRIBING THAT.

THE SECOND KIND OF ACTUAL INJURY THAT YOU CAN SUFFER IS AN UNCONSTITUTIONAL PROSECUTION.

YOU DON'T HAVE OBVIOUSLY THE FIRST KIND WE WERE DISCUSSING, IS VERY SPECULATIVE AND HYPOTHETICAL AND PROBABLY NOT ENOUGH TO ANCHOR STANDING.

THE SECOND TYPE OF INJURY, THE UNCONSTITUTIONAL PROSECUTION, THAT IS WHERE IT IS IMPORTANT THAT THERE'S AN INDIVIDUALIZED REASON TO BELIEVE BASED, PERHAPS, ON THE PRIOR CONDUCT OF THE PLAINTIFF.

MOST OF THE CASES WHERE THERE'S NOT A CLEAR THREAT OF ENFORCEMENT DEAL WITH CONDUCT THE PLAINTIFF HAS ALREADY ENGAGED IN MULTIPLE TIMES.

THE COURT: OR ALTERNATIVELY, I SUPPOSE, YOU COULD SAY IF THERE'S A TRACK RECORD OF OTHERS BEING PROSECUTED.

MS. KAISER: OR A TRACK RECORD OF OTHERS BEING PROSECUTED, SO WE KNOW HOW THE LOCALITY OR JURISDICTION INTERPRETS AND ENFORCES ITS LAWS IN THE EVENT OF A CONDUCT

THAT'S BEING HYPOTHESIZED IN THE COMPLAINT.

HERE WE DON'T HAVE EITHER ONE OF THOSE THINGS. WE NEITHER HAVE AN INDICATION OF CLEAR SET OF FACTS THAT SHOW WHAT EXACTLY IS GOING TO HAPPEN SHOULD THIS SITUATION ARISE, WE SIMPLY HAVE A GENERALIZED RECITATION OF WE INTEND TO DO WHAT THE LAW SAYS WE SHOULDN'T DO AND WE REALLY WISH WE CAN DO IT TO YOU IF THE LAW WERE THE OTHER WAY WE COULD.

THE COURT: WHAT SHOULD I MAKE, IF ANYTHING, OF THE FACT THAT IN JUDGE WILKIN'S CASE THE, AS I UNDERSTAND IT, THE CITY ANSWERED THE COMPLAINT AND DID NOT INVOKE A STANDING QUESTION?

SHOULD I -- IS THAT A FAIR THING FOR ME TO TAKE INTO ACCOUNT? AND IF IT IS, HOW SHOULD I TAKE IT INTO ACCOUNT?

MS. KAISER: OKAY. I PERSONALLY THINK NOW THE CASES ARE NOT CONSOLIDATED AND THEY'RE COMPLETELY SEPARATE. THAT IT REALLY SHOULDN'T MATTER IN THE COURTROOM.

I WOULD HAVE BEEN HAPPY TO BRING THEM TOGETHER TO TREAT THEM THE SAME.

THE COURT: BUT UNLIKE A LAWYER OF STOCK HOLD SORT OF NOTION, WHICH I DON'T THINK IS REALLY AN ARGUMENT THAT GOES VERY FAR, BUT THE PARTY TAKING DIFFERENT POSITIONS IS SOMETHING THAT, PERHAPS, THE APPROPRIATE CIRCUMSTANCE CAN BE TAKEN INTO ACCOUNT, THERE IS A STANDING ARGUMENT TO BE HAD. ONE WOULD EXPECT IT SHOULD BE ADVANCED IF THERE IS NO STANDING.

AND, I MEAN, I WOULD ASSUME THE CITY TAKEN THE

POSITION, THE CITY HAS ANSWERED THE COMPLAINT, SO WHETHER OR NOT THE MATTERS WERE CONSOLIDATED, BOTH MATTERS WOULD GO IN FRONT OF JUDGE WILKEN OR IN FRONT OF ME OR WHAT HAVE YOU.

THAT'S REALLY A CASE MANAGEMENT ISSUE, BUT THE QUESTION IS SHOULD -- WHY SHOULDN'T, I GUESS, IS A BETTER WAY TO PHRASE IT, WHY SHOULDN'T I CONSIDER THE CITY'S POSITION IN THAT LITIGATION FOR PURPOSE OF DETERMINING WHETHER OR NOT THERE IS A STANDING PROBLEM?

MS. KAISER: TWO THINGS. TO ANSWER YOUR QUESTION DIRECTLY. THERE ARE ADDITIONAL CLAIMS IN PIZZO WHERE I BELIEVE THE FACTS WILL SHOW ONCE WE ENTER DISCOVERY THAT THE PLAINTIFF LACKS STANDING, AND BECAUSE OF SITUATION ABOUT THERE'S THIS APPLICATION AND WHETHER IT WAS SUBMITTED, ET CETERA.

BUT THAT REQUIRES FACTUAL DISCOVERY. WHEREAS THESE OTHER CLAIMS THAT I'M CHALLENGING RIGHT NOW IN JACKSON ARE THE SOLE CLAIMS IN THE COMPLAINT AND NONE OF THEM REQUIRE FACTUAL DISCOVERY, AT LEAST, FROM THE CITY'S SIDE.

IT MAY BE THAT THE PLAINTIFFS ARGUE THAT THEY CAN BRING ADDITIONAL FACTS THAT WILL ESTABLISH STANDING BECAUSE OF IMMEDIATE THREATS OF ENFORCEMENT MAYBE, BUT THE CITY DIDN'T NEED ADDITIONAL FACTS IN ORDER TO BRING THE MOTION.

SO WE CAN BRING A FULLY DISPOSITIVE MOTION HEARING. WE DIDN'T HAVE THAT OPPORTUNITY IN PIZZO AND SO WE DECIDED TO REFRAIN AND BRING ALL OF OUR ARGUMENTS SIMULTANEOUSLY SIMPLY AS A MATTER OF COMEDY. WE DON'T WAIVE OUR SUBJECT MATTER

JURISDICTION ARGUMENT BY WAITING FOR THE NEXT ROUND OF MOTIONS.

SECONDLY, I KNOW YOU DON'T WANT TO DISCUSS THIS, YOU MENTIONED IT A FEW TIMES NOW, THE LETTER FROM THE CITY DOES NOT ALLEGE, TRY TO BRING FORWARD ANY NOTION OF LAWYER ESTOPPEL. ACTUALLY MAKES THE POINT THAT THE CLIENT FOR THE FIRST FILING IS THE STATE ARM OF THE NRA WHICH IS THE PLAINTIFF HERE.

AND SO IT MAKES ACTUALLY THE PARTIES NOT THE LAWYER. IT'S TRUE IT WAS THE SAME LAWYER BOTH TIMES, BUT IN FACT THESE TWO PARTIES ARE IN PRIVITY, THAT IS THE POINT OF THE LETTER, NOT THAT THE LAWYER DID SOMETHING IMPROPER.

THE COURT: OKAY. MR. MONFORT.

MR. MONFORT: TO THE EXTENT YOUR HONOR WILL BE INCLINED TO DENY THE MOTION, I DON'T WANT TO TAKE UP TOO MUCH OF YOUR TIME.

THE COURT: MS. KAISER INDICATED, MADE SOME POINTS THAT I'D LIKE YOU TO ADDRESS.

MR. MONFORT: ABSOLUTELY. THANK YOU. JUST CHECKING FIRST.

THE COURT: SMART MOVE. ALWAYS WANT TO MAKE SURE.

MR. MONFORT: SETTING ASIDE FOR A MOMENT THE CITY'S CLAIMS REGARDING WHETHER OR NOT THE ALLEGED SECOND AMENDMENT VIOLATIONS IN AND OF THEMSELVES WOULD CONSTITUTE THE HARM GIVING PLAINTIFFS STANDING IN THE CASE, AND MOVING AHEAD TO THE GUN RIGHTS CASE THE CITY RELIES ON IN REGARD TO THAT COURT'S ANALYSIS OF PRE-ENFORCEMENT STANDING, THERE'S A COUPLE OF

DISTINGUISHING FACTORS THERE THAT, I THINK, ARE IMPORTANT FOR YOUR CONSIDERATION.

FIRST, IN THAT CASE THE COURT TOOK TIME AS MEDLMMUNE ALSO NOTED THE PLAINTIFFS HAD NO CONCRETE INTENTION TO ENGAGE IN THE PROHIBITED CONDUCT.

CONVERSELY PLAINTIFFS IN THE CASE HAS ALLEGE EVIDENCE THAT BUT FOR THE CHALLENGED PROVISION THEY WOULD IMMEDIATELY ENGAGE IN THE CONDUCT PROHIBITED BY THE ORDINANCES THAT ARE CHALLENGING.

THE COURT: IT'S TRUE, IS IT NOT, AS MS. KAISER SORT OF SUGGESTED, ALTHOUGH, IT WAS MORE RESPONDING TO THE THEORETICAL QUESTIONS, I SUPPOSE.

THERE'S NO TRACK RECORD HERE, THESE ARE RELATIVELY KNEW, I SUPPOSE, THERE'S NO TRACK RECORD OF THE MUNICIPALITY ENFORCEMENT OF ANY OF THESE PROVISIONS.

MR. MONFORT: WE'RE NOT AWARE OF ANY PROSECUTION. I'M UNAWARE. I THINK, THIS MIGHT BE FLESHED OUT IN DISCOVERY WHETHER IT'S BEEN USED IN TERMS OF PLEA AGREEMENTS, ANYTHING OF THAT NATURE, AND ACTUALLY NOT AWARE OF THAT.

BUT I'M NOT AFFIRMATIVELY AWARE OF ANY ACTUAL PROSECUTION. HOWEVER, IN THE SAN DIEGO GUN RIGHTS CASE ALL NOTE A RIGHT OF ENFORCEMENTS IN THAT CASE, I THINK IT'S DISTINGUISHABLE IN THE PRESENT CASE.

THERE THE CASE NOT ONLY THE CITY KIND OF THREATENED TO ENFORCE THE ORDINANCES, THEY DONE SO PUBLICLY, BUT ALSO

PERSONALLY WITH RESPECT TO PLAINTIFFS, SHOWING UP ONE OF PLAINTIFF'S HOMES TO MAKE SURE HE WAS COMPLYING WITH THE ORDINANCE.

I'M NOT SURE HOW THEY CAN READ THAT AS ANYTHING OTHER THAN ATTEMPT TO ENFORCE THE ORDINANCE.

AND WITH REGARD TO DISCHARGE ORDINANCE, PLAINTIFFS HAVE BEEN TOLD BY CITY OFFICIALS WHEN ASKED IF THEY DISCHARGED THEIR FIREARMS IN SELF-DEFENSE, WHETHER OR NOT THEY WOULD BE PROSECUTED, THEY WERE TOLD, YES, THEY WOULD BE PROSECUTED, UNLESS THEY ALLEGED THAT THE DISCHARGED OCCURRED ACCIDENTALLY, AND OBVIOUSLY PLAINTIFFS ARE OF THE OPINION THAT SELF-DEFENSE WOULD NEVER BE ACCIDENTAL.

SO THEY ARE FACED WITH HAVING TO LIE OR TO FACE PROSECUTION UNDER THE ORDINANCE.

THE COURT: HOW ABOUT THE AMMUNITION SALE PROVISION? POINTS OUT THAT FROM THEIR PERSPECTIVE THAT REALLY GOES TO GUN SHOP OWNERS AND THAT'S NOT WHO THESE PLAINTIFFS ARE. HOW CAN YOU BRING A CLAIM BASED ON THAT PARTICULAR PROVISION?

MR. MONFORT: RIGHT. IT'S INTERESTING, OBVIOUSLY, PLAINTIFFS ARE NEVER GOING TO BE FACED WITH PROSECUTION FOR ORDINANCE THAT CAN'T BE APPLIED TO THEM.

HOWEVER, THAT IS NOT TO SAY PLAINTIFFS DON'T SUFFER AN INJURY AS A RESULT OF THE CITY'S ENFORCEMENT, ONGOING ENFORCEMENT OF THE ORDINANCE.

THE COURT: YOUR ARGUMENT IS BECAUSE THE ENFORCEMENT

OF THAT PROVISION WOULD RESULT IN YOUR CLIENTS NOT BEING ABLE TO BUY THE AMMUNITION, THEREFORE, THEY HAVE STANDING EVEN THOUGH, AS YOU SAY, THEY'RE NEVER GOING TO BE SUBJECT TO ANY PROSECUTION.

MR. MONFORT: THAT'S CORRECT. SETTING ASIDE, OF COURSE, ANY POTENTIAL CONSPIRACY, SOMETHING LIKE THAT, BUT THAT WOULD DENY THEM ACCESS.

THE PRIMARY HARM WOULD BE, YES, DENYING THEM ACCESS TO AMMUNITION, AND PLAINTIFFS PUT FORTH A LITTLE BIT OF A HYPOTHETICAL FOR THE COURT'S REVIEW THAT KIND OF PUTS IT IN PERSPECTIVE FOR -- THE CITY THEN COULD, EACH CITY, CITY OF SAN FRANCISCO BAN THE SALE OF THIS KIND OF SELF-DEFENSE AMMUNITION.

NOT AMMUNITION FOR SPORTING GUNS, SELF-DEFENSE AMMUNITION. SELF-DEFENSE BEING A COMPONENT OF THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS, OTHER THEN SAY INCREMENTALLY BAN THE SALE OF IT, SUCH THAT PLAINTIFFS WOULD BE DEPRIVED ACCESS TO THE AMMUNITION, AS LONG AS THEY WOULD HAVE 10 PERCENT OF THE CITIES IN AMERICA TO GO TO, 5 PERCENT, I DON'T KNOW WHAT LINE WOULD, PLAINTIFFS WOULD BE HARMED. THEY WOULD BE LEFT WITHOUT A WAY TO VINDICATE OUR RIGHTS UNLESS AND UNTIL A RETAILER DECIDED TO CHALLENGE THE ORDINANCE INSTEAD OF THEM.

MS. KAISER: MAY I COMMENT?

THE COURT: LET ME ASK ONE MORE QUESTION. WITH RESPECT TO THE RINCON BAND MICHIGAN INDIANS CASE, I RECOGNIZE YOU'RE TALKING ABOUT TIMING BEING OF CONSEQUENCE AND THAT THIS

GOES A BIT FAR BACK AND THE FIRST TO ACKNOWLEDGE THAT.

BUT THE SENSE OF THAT CASE IT SEEMS TO BE THAT THERE IS A SUGGESTION THAT THERE'S GOING TO BE ENFORCEMENT OF GAMBLING LAWS AND THE COURT'S SAYS THAT'S NOT ENOUGH.

THAT'S FAIRLY GENERAL CONCERN THAT THIS AREA IS GOING TO BE AN AREA SUBJECT OF ENFORCEMENT, ISN'T THAT PRETTY MUCH WHAT WE HAVE HERE?

I MEAN, PUTTING ASIDE ALL OF THE INTERVENING DECISIONS SPECIFIC TO GUN ISSUES AND NOT SPECIFIC TO GUN ISSUES LIKE MEDLMMUNE, IN A SENSE THAT CASE IS THE CLOSEST TO OUR SITUATION, ISN'T IT?

MR. MONFORT: I THINK, IT'S FACTUAL DISTINGUISHABLE IN A SENSE THAT THE CITY HASN'T ALLEGED A GENERAL INTENT EVEN FOR ENFORCEMENT FIREARM LAWS OR TO ENFORCE THE STATE FIREARM LAWS, RATHER THIS CITY HAS SPECIFICALLY ENTERED PLAINTIFF'S HOME AND MADE SURE HE WAS ENFORCING THE SPECIFIC LAW CHALLENGED IN THIS LITIGATION.

SAME THING WITH RESPECT TO THE DISCHARGE BAN, THE ONLY EXCEPTION BEING EXCEPT FOR NOT ENTERING THEIR HOME, BUT TELLING THAT LAW WOULD BE ENFORCED AGAINST THEM IF DISCHARGED IN SELF-DEFENSE AS OPPOSED TO ACCIDENTALLY, WITH THE EXCEPTION BEING THE BAN ON SELF-DEFENSE AMMUNITION BECAUSE PLAINTIFFS CAN'T BE PROSECUTED UNDER THAT THEMSELVES.

THE COURT: OKAY. MS. KAISER, YOU SAID YOU HAD SOMETHING?

MS. KAISER: YES. I THINK, THAT PLAINTIFFS MAYBE OVERSTATING THEIR ALLEGATIONS A LITTLE BIT.

IN TERMS OF THE AMMUNITION ALLEGATIONS, THERE'S NO ALLEGATION ANYWHERE THAT ANY PLAINTIFF EVEN ATTEMPTED TO BUY THE SORT OF AMMUNITION IN SAN FRANCISCO, THAT THEY COULDN'T BUY IT.

AND IT'S CLEARLY THE CASE THAT THE ORDINANCE ITSELF DOES NOT EFFECT OR OUTLAW THE USE OF SUCH AMMUNITION, THE POSSESSION OF SUCH AMMUNITION.

THEY'RE CLAIMING THEY'RE BEING DEPRIVED OF THE RIGHT TO POSSESS AND USE SUCH AMMUNITION, BUT THERE SIMPLY NO ALLEGATION THAT SUPPORTS THAT.

AND IT NEEDS TO BE PARTICULAR TO THE PLAINTIFF. STANDING DOCTRINE IS QUITE CLEAR THE GENERALIZED GRIEVANCES THAT DON'T DISTINGUISH THE PLAINTIFF FROM ANY OTHER MEMBER OF THE PUBLIC ARE INADEQUATE OR ELSE THE COURT WOULD ALREADY BE DECIDING IDEOLOGICAL DISPUTES OR POLITICAL QUESTIONS.

THAT'S EXACTLY WANT YOU HAVE HERE WITH AMMUNITION, ALLEGATION. I SUBMIT THAT'S ALSO THE CASE FOR THE REMAINING ALLEGATIONS THAT PLAINTIFFS ARE DISCUSSING.

IN TERMS OF THE DA PRONOUNCEMENT ABOUT THE SAFE STORAGE ORDINANCE, THAT WE CAN GO IN YOUR HOUSE ANY TIME AND CHECK. THAT ACTUALLY THEIR OBJECTION SEEMS TO BE MORE TO THE UNREASONABLE SEARCH AND SEIZURE NOTION WE CAN GO INTO YOUR HOUSE ANYTIME.

YOU KNOW, THAT'S JUST A GENERALIZED WE CAN ENFORCE OUR ORDINANCE NOT SPECIFIC IN ANY WAY TO THE PLAINTIFFS.

SECOND, THE EPISODE WITH PLAINTIFF GOLDEN.

THE COURT: HAVEN'T THE PLAINTIFFS, THOUGHT, ON THE STORAGE ISSUE, ALLEGED THAT THEY -- WHAT THEY INTEND TO DO, WHAT THEY -- THEY'RE FREE TO OPERATE WITHOUT THE SPECTER OF THE ORDINANCE, THEY WANT TO ACT IN A CERTAIN FASHION, AND AGAINST THAT THEY HAVE SOME INDICATION FROM THE LOCAL AUTHORITIES THAT THE LOCAL AUTHORITIES FEEL THAT THEY ARE EMPOWERED TO ENFORCE THAT PROVISION.

I MEAN, IT'S A BIT MORE CONCRETE AND SPECIFIC THAN I THINK YOU'RE SUGGESTING.

MS. KAISER: I DON'T THINK IT'S MORE CONCRETE AND SPECIFIC IN REGARD TO THE PARTICULAR PLAINTIFFS AND WHATEVER CONDUCT IT IS THEY ALLEGED WHICH WE DON'T ACTUALLY KNOW ANY CONCRETE WAY.

FOR EXAMPLE, WOULD IT BE THE CASE THAT THE PLAINTIFF WOULD BE CARRYING THE WEAPON AS PERFECTLY ALLOWED, BUT HAS A SHOWER, LOCKS THE -- PUTS THE GUN ON THE SINK, SOMEONE BREAKS IN, THEY NEED TO SHOOT IN SELF-DEFENSE, THEY HAVE THEIR GUN AVAILABLE, IS THAT PERSON GOING TO BE CHARGED?

BECAUSE, FIRST OF ALL, THEY'RE DOING, THEY ARE ENGAGING IN CONDUCT PROTECTED BY HELLER.

SECOND OF ALL, THEY HAVE THEIR GUN IN A LOCKED CONTAINER IN THE SENSE OF THE LOCKED ROOM WHERE NO ONE CAN COME

IN AND GET IT.

I DON'T KNOW, THE PROSECUTORS ARE FREE TO MAKE A DECISION ABOUT THAT AND WE DON'T KNOW ENOUGH TO KNOW WHAT SORT OF SITUATION IS REALLY BEFORE THE COURT. REALLY IT MIGHT BE UNCONSTITUTIONAL.

THE SAME THING IS TRUE OF A SLEEPING PLAINTIFF, FOR EXAMPLE, WHILE YOU'RE SLEEPING AND YOU WALK THROUGH THE DOOR MAKE SURE THAT THE GUN IS INACCESSIBLE, ARE YOU GOING TO BE CHARGED UNDER THE SAFE STORAGE LAW IF YOU SHOOT YOUR GUN IN SELF-DEFENSE?

I HAVE A HARD TIME BELIEVING THAT, BUT MAYBE WE DON'T KNOW IS THE POINT, THAT'S WHY THERE'S NO STANDING, THAT'S WHY THE CASE IS UNRIPE AND THAT'S WHY IT HAS TO BE PARTICULAR TO THE PLAINTIFFS.

BECAUSE IT HAS TO BE A SCENARIO THAT'S KIND OF ENOUGH FOR THE COURT TO MAKE INFORMED JUDGMENT. PARTICULARLY IN A DELICATE UNSETTLED AREA OF LAW LIKE THIS ONE WHERE THERE'S VERY LITTLE PRECEDENT, THE LAW IS CHANGING QUICKLY.

YOUR HONOR WOULD BE MAKING DECISIONS THAT MAY ENCROACH ON THE POLITICAL BRANCHES OF THE GOVERNMENT IF YOU ENGAGE IN WHAT IS ESSENTIALLY AN ADVISORY OPINION HOW THESE THINGS SHOULD BE APPLIED BEFORE THEY'RE ACTUALLY BEING APPLIED.

YOU MAY ALSO ENCROACH ON THE CONCEPT OF FEDERALISM IN TERMS OF TAKING AWAY A POWER OF A LOCAL GOVERNMENT TO MAKE LAWS UNDER THE CONSTITUTION.

THE COURT: A LOT OF THOSE ARGUMENTS ARE MERGING INTO ARGUMENTS THAT, PERHAPS, YOU WOULD ADVANCE TO SAY YOU CAN'T ON THE SUBSTANTIVE MERITS OF THE MATTER WEIGH IN BECAUSE IT WILL HAVE THESE AFFECTS.

I'M NOT SURE ALL OF THAT GOES DIRECTLY TO THE STANDING QUESTION. YOU'RE SAYING THERE'S A DANGER THAT BY EXAMPLE YOU'RE GOING ENCROACH IN ANOTHER BRANCH IF YOU WEIGH INTO IT. WELL, LEGITIMATE ISSUE, BUT PERHAPS NOT LEGITIMATE ISSUE FROM THE STANDING PERSPECTIVE.

MS. KAISER: ACTUALLY, YOUR HONOR, THIS IT IS A VERY LEGITIMATE ISSUE FROM THE STANDING PERSPECTIVE. THAT'S ONE OF THE FUNCTIONS THAT THE STANDING DOCTRINE EXPLICITLY SERVES.

THE COURT: AGAINST ADVISORY OPINIONS.

MS. KAISER: AGAINST ADVISORY OPINIONS. AGAINST REACHING OUT AND SETTLING GENERALIZE GRIEVANCES THAT ANY MEMBER OF THE PUBLIC CAN BRING.

HERE WE HAVE ANY MEMBER OF THE PUBLIC WHO SAYS I WANT TO HAVE MY GUN IN A WAY IN MY HOUSE, I WOULD -- ANY ONE OF THEM CAN COME AND SUE IF THESE PLAINTIFFS HAVE STANDING.

NO MATTER WHAT THE CITY HAS DONE OR NOT DONE, NO MATTER HOW THE CITY HAS RESPONDED TO INTERVENING OR HOW THAT HAS SHAPED IT, NO MATTER WHETHER THIS COURT HAS A FULL SET OF FACTS ON WHICH TO BASE ITS DECISION.

THAT'S THE CONCERN BY AN ADVISORY OPINION AND IT IS A CONSTITUTIONAL CONCERN FOR THAT REASON. IT'S NOT JUST A

QUESTION OF SOUND JUDICIAL ADMINISTRATION, IT'S A CONSTITUTIONAL QUESTION ABOUT THE PROPER AREA IN WHICH THE JUDICIARY SHOULD FUNCTION.

THE COURT: ANY FINAL COMMENTS?

MR. MONFORT: SURE. I WOULD JUST LIKE TO ADD, THAT SUBSEQUENT TO SAN DIEGO GUN RIGHTS AND AUTHORITY RELIED BY THE CITY, THE NINTH CIRCUIT AND THE SUPREME COURT HAVE BOTH HELD THAT THE ISSUE IN TERMS OF PRE-ENFORCEMENT CHALLENGES, IN ARIZONA RIGHT TO LIFE THE COURT CONFIRMED IT'S SUFFICIENT FOR STANDING PURPOSE.

PLAINTIFFS INTEND TO ENGAGE IN THE ART OF EFFECTIVE CONDUCT ARGUABLE INFECTED WITH CONSTITUTIONAL INTEREST AND THERE'S A CREDIBLE THREAT AS OPPOSED TO IMPUGNING PROSECUTION.

PLAINTIFFS HERE ALLEGES SPECIFIC INTENT TO ENGAGE IN THE PROHIBITED ACTIVITY AND ALSO ALLEGE CREDIBLE THREAT OF THE LAW ENFORCED AGAINST THEM.

THE SAME CONCEPT WAS POINTED OUT AS YOU EARLIER ALLUDED TO GENERALLY, THE GOVERNMENT EFFECTIVELY COALESCES BEHAVIOR ELIMINATING ANY THREAT OF PROSECUTION PLAINTIFFS DO NOT LOSE STANDING.

AND THAT IS EXACTLY THE CASE HERE. PLAINTIFFS HAVE HAD THEIR BEHAVIOR COERCED BY THE CITY'S ENACTMENT AND PROMISED ENFORCEMENT OF THESE ORDINANCES.

AND THEN FINALLY WITH REGARD TO WHETHER OR NOT THE CITY WILL ACTUALLY SEEK PROSECUTIONS OR ENFORCE THE ORDINANCES

AGAINST THE PLAINTIFFS IN THE MANNER FOR WHICH THEY ALLEGE THEY WANT TO ENGAGE IN THE CONSTITUTIONAL CONDUCT, THE SUPREME COURT IN 2010 OVER THE HUMANITARIAN LAW PROJECT FOUND STANDING WHERE THERE WAS A CREDIBLE THREAT OF ENFORCEMENT.

AND THE COURT WENT ONTO NOTE PLAINTIFFS INTENDED TO IMMEDIATELY ENGAGE IN PROHIBITED CONDUCT AS IS THE CASE HERE, AND THE COURT ALSO NOTED THE GOVERNMENT NEVER ARGUED PLAINTIFFS WILL NOT BE PROSECUTED IF THEY ENGAGE IN THAT ACTIVITY.

IT SOUND LIKE PLAINTIFFS' DEFENSE AT ISSUE WHAT TYPE OF CONDUCT IS LAWFUL, WHAT WILL BE PROSECUTED, WHAT WILL NOT BE PROSECUTED, AND THE CITY HAS GUARANTEED NOT BE PROSECUTED FOR ENGAGING IN THE ALLEGED CONDUCT THEY WISH TO ENGAGE IN.

THE COURT: MS. KAISER'S POINT WAS JUST GOING TO THE LAST THING YOU SAID. THERE ARE NO BOUNDARIES AT THE MOMENT AS TO WHEN THE AUTHORITY WOULD PROSECUTE OR WOULDN'T PROSECUTE.

WE DON'T HAVE ANY INDICATION AS SHE WAS DESCRIBING SELF-DEFENSE CIRCUMSTANCE, WE JUST DON'T KNOW WHAT THE POSITION WOULD BE OF THE LAW ENFORCEMENT AUTHORITY BECAUSE WE HAVE NO TRACK RECORD FOR THAT YET.

MR. MONFORT: I UNDERSTAND. IN THE MEANTIME PLAINTIFFS ARE, HOWEVER, LEFT IN THE POSITION OF HAVING TO KIND OF GUESS WHAT BEHAVIOR ISN'T CONSTITUTIONAL, AND ALL THEY HAVE TO GO ON IS THEIR FIREARMS MUST BE STORED LOCKED UNLOADED OR DISABLED WITH TRIGGER LOCK OR FACE PROSECUTION WITH THE ORDINANCE.

THAT'S ALL THEY HAVE TO RELY ON. SIMILARLY PLAINTIFFS HAVE STANDING TO CHALLENGE VIRTUAL IDENTICAL ORDINANCE IN THE DISTRICT OF COLUMBIA.

THE COURT: I'M GOING TO TAKE THE MATTER UNDER SUBMISSION. INTERESTING ARGUMENT AND I WILL GIVE YOU AN ORDER.

MR. MONFORT: THANK YOU.

MS. KAISER: THANK YOU.

(PROCEEDINGS ADJOURNED.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 21ST DAY OF NOVEMBER, 2011.

/S/ JAMES YEOMANS

_____

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JEFF GODOWN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR EDWIN LEE, in his official capacity; ACTING POLICE CHIEF JEFF GODOWN, in his official capacity, and Does 1-10,

Defendants.

Case No. C09-2143 RS

REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF JURISDICTION

Hearing Date: April 14, 2011
Time: 1:30 p.m.
Place: Courtroom 3, 17th Floor

INTRODUCTION

In their opposition, Plaintiffs ask this Court to rule—as the first and only court ever to do so in the country—that any member of the general public who believes his right to armed self-defense is hindered by local gun control laws can maintain a federal court action to challenge those laws, simply on the basis that obeying the law "chills" a fundamental right. Not only would this upend established standing law, but it would throw open the courthouse doors to every concerned citizen to bring their favorite constitutional bellyaches to the Court's immediate and lasting attention.

For the many reasons that follow, and not least the requirement that this Court follow existing Ninth Circuit law that precludes Plaintiffs' suggested remodel of constitutional prerequisites to suit, this Court should grant the City's motion to dismiss this case in full for lack of subject matter jurisdiction.

ARGUMENT

I. PLAINTIFFS' CHALLENGE TO SECTION 1290 HAS BEEN MOOTED BY RECENT LEGISLATION

Plaintiffs allege that the citywide ban on discharging firearms in Police Code section 1290 violates the Second Amendment because it does not contain an explicit exception for discharging hanguns in the home in self-defense. (Am. Compl. ¶¶ 63-67.) A recent amendment to Section 1290 moots this claim by adding an explicit in-home self-defense exception. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1031 (9th Cir. 2006) (amendment resolving the challenged feature of a law moots the dispute).

San Francisco Ordinance No. 50-11 (effective March 16, 2011 and attached as an appendix[1] for the convenience of the Court) actually amends three Police Code sections: 1290, 4502 and 4506. Prior to this amendment, Section 1290 contained the strange bedfellows of both a blanket prohibition on discharging firearms and a permit requirement for fireworks.[2] Section 4502 separately and

[1] It is also available at http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances11/o0050-11.pdf.

[2] As the City explained in its opening brief, this odd pairing reflects the origin of Section 1290 as a 19th century nuisance ordinance regulating noise, not as a gun control ordinance at all. Its explicit reservation to every San Franciscan of the right to "shoot[] destructive animals within and upon his own inclosure" strongly implies additional exceptions for, at the very least, the then-as-now compelling purposes of law enforcement and self-defense. *See* Opening Br. at 5-6.

redundantly prohibited the discharge of firearms, though only in public places, and Section 4506 set forth certain exceptions to Section 4502, among them law enforcement and "necessary self-defense." Ordinance No. 50-11 harmonizes these three provisions. It removes all reference to firearms from Section 1290, which now governs only fireworks. It expands the reach of the firearms discharge ban in Section 4502 to the entire City, like prior Section 1290, by eliminating the restriction to public places. And it restates the exceptions in Section 4506, now explicitly applicable to all firearms discharges in the City, to include "[p]ersons in lawful possession of a handgun who discharge said handgun in necessary and lawful defense of self or others while in a personal residence." S.F. Police Code § 4506(a)(2).

Because there is now an explicit exception to San Francisco's ban on firearms discharges for handguns used in the home in self-defense, there is no longer a live dispute between the parties on this issue. Plaintiffs' claim that Section 1290 violates the Second Amendment is moot and must be dismissed.

II. PLAINTIFFS CONCEDE THAT THEY CANNOT MEET THE STANDING REQUIREMENTS THAT APPLY TO THEIR CLAIMS UNDER EXISTING LAW

In their Opposition, Plaintiffs take the position—already explicitly and decisively rejected by the Ninth Circuit—that "the mere enactment of the ordinances, which prohibit the exercise of fundamental rights" and the failure of the City to disavow the possibility of enforcement is a "direct harm" or "actual injury" sufficient to confer standing, "regardless of whether prosecution is imminent." Opp. Br. at 7, 15. That is flat-out wrong.

The parties agree that injury-in-fact is a bedrock prerequisite for federal jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The parties also agree that the plaintiffs are not required to break the law and subject themselves to arrest to have standing to seek a declaratory judgment. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007). But the parties disagree emphatically over the nature of the injury that suffices to establish constitutionally cognizable injury-in-fact in this pre-enforcement challenge to local ordinances under the Second Amendment.

The law in this Circuit governing standing in pre-enforcement challenges is well established and well elucidated. Plaintiffs who have not yet suffered *actual* injury-in-fact by arrest or prosecution

under the challenged law have standing only if they can show *imminent* injury-in-fact by means of a genuine and particularized threat that the challenged law will be enforced against them. *Compare, e.g., Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (plaintiff demonstrated imminent injury-in-fact after he was twice warned by police to cease handbilling and a companion engaging in the same conduct who did not comply with the warnings was actually arrested and prosecuted) *with San Diego Gun Rights Committee v. Reno*, 98 F.3d 1121, 1126-28 (plaintiffs failed to show imminent injury-in-fact when they alleged only a "wish and inten[t]" to violate the law, had never personally been threatened with enforcement, and demonstrated no history of past enforcement against anyone on the basis of the conduct in which they intended to engage) *and Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1, 4 (9th Cir. 1974) (plaintiffs lacked standing when they received threats "clearly of a general nature" that gambling on tribal lands was illegal and the gambling laws would be enforced on the reservation, but the threats were not directed at any particularized conduct by the plaintiffs); *see also* Opening Br. at 9-12 and the additional cases discussed therein.

The Ninth Circuit has also been quite clear about the kinds of allegations that do not suffice to establish pre-enforcement standing. As it emphasized in *Gun Rights Committee*, "[w]e have repeatedly admonished . . . that '[t]he mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy with the meaning of Article III.' " 98 F.3d at 1126 (quoting *Stoianoff v. Montana*, 695 F.2d 1214, 1223). Likewise, while "every criminal law, by its very existence, may have some chilling effect on personal behavior . . . '[a]llegations of a subjective "chill" are not an adequate substitute for a claim of specific objective harm or a threat of specific future harm.'" *Gun Rights Committee*, 98 F.3d at 1129 (quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) (additional internal quotation marks and citation omitted). Accordingly, in that case, plaintiffs' allegations that the Crime Control Act they sought to challenge had chilled "their desire and ability to purchase outlawed firearms" did not state a constitutionally cognizable injury. *Id.*

Plaintiffs' amended complaint comes nowhere close to satisfying these standing requirements. The amended complaint is devoid of allegations that any law enforcement official has made a specific threat to any of the Plaintiffs, much less all of them, that their individual conduct is about to be met

with arrest and prosecution under any of the challenged statutes.[3] Instead, Plaintiffs do as they must and urge this Court to make an exception to the governing law for pre-enforcement challenges in Second Amendment cases.

In advocating this novel approach, Plaintiffs rely extensively on a body of cases that has carved out an exception to the general rule that "chilling" is not a constitutional injury, but that rule is carefully limited to First Amendment and privacy cases because they have special characteristics. Those cases explain that self-censorship is an actual, completed injury at the moment of the foregone speech, regardless of whether the plaintiff also faces imminent injury under a particularized threat of arrest and prosecution. *See, e.g., Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (in a First Amendment case, "self-censorship [is] a harm that can be realized even without an actual prosecution"); *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) (recognizing the "sensitive nature of constitutionally protected expression" and a special need to allow pre-enforcement challenges because "free expression [is] of transcendent value to all society, and not merely those exercising their rights"); *Arizona Right to Life Political Action Committee v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) ("Constitutional challenges based on the First Amendment present unique standing considerations."); *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000) ("the inquiry tilts dramatically toward a finding of standing" when threats of enforcement touch on First Amendment rights); *Bland v. Fessler*, 88 F.3d 729, 736-37 (9th Cir. 1996); *Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003) (explaining that a threat to free speech is latent in the mere existence of a prohibitory statute because most speech is easily deterred).[4]

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[3] Setting aside the now-moot claim against Section 1290, Plaintiffs allege only a general public statement by the District Attorney that the Section 4512, the safe storage law, may be enforced (Am. Compl. ¶ 52) and a visit by an unidentified "City official" to Plaintiff Golden's house, during which the official allegedly checked how Mr. Golden stored his guns (*id.* at ¶ 53). Even if true, neither allegation describes a particularized threat of enforcement against any Plaintiff, including Mr. Golden. Plaintiffs do not assert that additional facts exist that could rectify this deficiency.

[4] Plaintiffs do cite two cases that, at first blush, appear to endorse the idea that the mere chilling effect of a statute, without any particularized threat of enforcement, satisfies the injury-in-fact requirement even outside the core First Amendment context. *See Bland v. Fessler*, 88 F.3d 729, 737 (9th Cir. 1996); *Mobil Oil Corp. v. Attorney General of Virginia*, 940 F.2d 73, 76 (4th Cir. 1991). But closer examination reveals that the plaintiffs in each case also alleged that the complying with the business regulations at issue had caused them actual economic injury. *Bland*, 88 F.3d at 737; *Mobil Oil*, 940 F.2d at 75.

Despite the careful cordoning of the "chilling" exception to First Amendment cases, Plaintiffs assert that for the purposes of standing to bring a pre-enforcement challenge, "the Second Amendment is no different from the First." According to Plaintiffs, "the Court should relax the 'rigid standing requirements' and recognize Plaintiffs' standing because the 'mere existence' of the challenged ordinances has and continues to 'chill' conduct protected by the Second Amendment." Opp. Br. at 20. But the Court is not writing on a blank slate. The Ninth Circuit has already announced and elaborated the general rule of standing for pre-enforcement challenges outside the First Amendment context, and that rule requires Plaintiffs to show a particularized threat of enforcement. *See, e.g., Gun Rights Committee*, 98 F.3d at 1129; *Rincon Band*, 495 F.2d at 5-6. Unlike the chilling exception, the general rule has not been limited to a particular context. Accordingly, it controls the instant case. *See Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) ("[C]aselaw on point *is* the law.)

Plaintiffs try to avoid this conclusion. In their view, the Supreme Court's recent recognition of the Second Amendment as a source of fundamental rights means that pre-enforcement challenges under either Amendment should also enjoy relaxed standing requirements. Opp. Br. at 20. But this is an invitation to error. This Court can only disregard existing Ninth Circuit precedent if it has become "clearly irreconcilable" with "intervening higher authority." *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003). That has not happened here, and *Gun Rights Committee* continues to control.

The Court is not required to treat Second Amendment claims just like First Amendment claims simply because they are both fundamental rights. In fact, there are very real differences between the two Amendments in the context of pre-enforcement challenges. Self-censorship, without more, is an actual injury under the First Amendment sufficient to confer standing because it completely and immediately defeats the right to speak freely. In contrast, storing a handgun safely locked when it is not being used or carried does not completely and immediately defeat the use of handguns for self-defense in the home. Rather, the risk of injury is inherently speculative, contingent on the criminal acts of third parties, and thankfully downright unlikely.[5] Likewise, a risk of actual injury to innocent

[5] Consider that any given individual may not wish to use firearms in self-defense, and those who do may never face a home invader. And even then, for the safe storage ordinance to make any difference to an armed homeowner's ability to defend herself, the intruder would have to give the homeowner enough warning that she could retrieve her handgun from wherever she was storing it, but not quite enough time to unlock it.

third parties from pass-through or ricochet bullets during a home invasion in which the armed homeowner is firing a gun loaded with standard ammunition rather than collapsing or exploding bullets can be presumed to exist, but it too is speculative, contingent, and possibly even more unlikely.

The fact that Plaintiffs may never experience any actual injury to their ability to use hand guns to defend themselves in their homes, even if they chill own their constitutionally protected storage and ammunition preferences in favor of the challenged ordinances, eliminates the pressing need to adjudicate these pre-enforcement Second Amendment and distinguishes them from First Amendment challenges. The Court neither can nor should treat them as though they were the same.

III. PLAINTIFFS DO NOT DISPEL THE POWERFUL PRUDENTIAL REASONS TO REFRAIN FROM EXERCISING JURISDICTION OVER THIS DISPUTE

Even assuming that Plaintiffs could meet the constitutional requirements for pre-enforcement standing, which they cannot, prudential standing and prudential ripeness concerns both counsel that Plaintiffs' claims are too undeveloped and uncertain to decide, particularly with delicate constitutional questions at stake. Prudential rules of jurisdiction exist to help the courts avoid unnecessary decisions and promote more accurate judicial decision making. *See Simmonds v. INS*, 326 F.3d 351, 357 (2d Cir. 2003) (citing Alexander M. Bickel, *The Supreme Court 1960 Term Foreword: The Passive Virtues*, 75 Harv. L. Rev. 40, 58-64 (1961)).

Plaintiffs insist that their claims are sufficiently "concrete," and the "chill" to their fundamental Second Amendment rights is sufficiently severe, that there can be no prudential reason to decline to hear their challenge. Opp Br. at 20-25. This ignores the fact that the instant dispute lacks nearly all of the common law and constitutional safeguards against judicial error.

First, the constitutional questions can still be avoided, and accordingly they should be. *See Poe v. Ullman*, 367 U.S. 497, 506 (1961) ("[T]he declaratory judgment device . . . does not permit litigants to invoke the power of this Court to obtain constitutional rulings in advance of necessity."). None of the plaintiffs has been threatened with arrest or prosecution under the safe storage law, and none alleges that the law has actually prevented him or her from resorting to armed self-defense in a moment of need. As for the sale restriction on unusually dangerous ammunition, no gun dealers have complained that that their permits have been threatened or revoked, none of the plaintiffs has alleged

an actual inability to purchase their preferred ammunition, and the law does not prohibit the possession or use of such ammunition for in-home self-defense in any event. There is no actual injustice, nor even an imminent threat of injustice, that the Court must act to resolve.

Moreover, waiting for an actual controversy to ripen increases the odds that the proper law will be applied to evaluate the claims. *See Simmonds*, 326 F.3d at 360 (declining jurisdiction on prudential grounds in part because "laws dealing with immigration, removal and the rights of aliens have been especially changeable in recent years. . . . What the law will be when and if Simmonds comes to be detained by the INS is, therefore, anything but clear.") Analogously to *Simmonds*, recent Second Amendment jurisprudence has been volatile and introduced substantial doctrinal change, and there is precious little precedent to guide the Court in its analysis of the constitutional limitations on weapons storage or ammunition sales. Waiting for an actual controversy to develop will give the law that much more time to develop and settle, and decrease the odds that the Court will have to revisit what it decides.

Finally, waiting for an actual or imminent controversy to arise would aid the Court by providing a factual context to anchor its analysis. Even if Plaintiffs are correct that there is nothing more to know about their actions, the Court is missing critical information about how San Francisco will actually interpret and enforce the challenged laws. Will it threaten charges for any failure to apply a trigger lock to a gun that is not being carried in a residence, no matter the circumstances? Will the plaintiff being threatened with enforcement be the primarily absent father of six unsupervised children? Might San Francisco exercise its discretion not to prosecute if there are live threats of violence against the gun owner, or if the gun owner stores the gun in a locked room rather than a locked box? A crystallized controversy puts the flesh on the bones of an abstract law and helps orient the Court to the complexities of its task.

In this case, where the law in uncertain and rapidly changing, the facts are altogether absent, and chilled conduct may never even hamper the use of a handgun for self-defense in the home, this Court should decline jurisdiction for prudential as well as constitutional reasons. For now, the risk of a hasty and mistaken constitutional decision, and the potential detriment to the constitutional rights of

subsequent litigants or the rightful police powers of local governments, vastly outweigh the harm to Plaintiffs of waiting for another day.

CONCLUSION

For all of the reasons set forth above, the City respectfully requests that the Court dismiss the amended complaint in its entirety for lack of subject matter jurisdiction.

Dated: March 31, 2011

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION, Plaintiffs vs. CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY; POLICE CHIEF GEORGE GASCÓN, in his official capacity, and Does 1-10, Defendants.	CASE NO. CO9-2143 PJH **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** **[FRCP Rule 12(b)(1)]** Hearing Date: April 14, 2011 Time: 9:00 a.m. Place: Courtroom 5

TABLE OF CONTENTS

PAGE(S)

TABLE OF CONTENTS (CONT.)

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL CASES

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

STATUTES & RULES

STATEMENT OF ISSUES TO BE DECIDED

1. Do Plaintiffs have standing to challenge unconstitutional city laws that cause Plaintiffs direct and ongoing harm, where: (1) the city has declared its intention to enforce those laws and/or has never declared it was *not* going to enforce those laws; (2) Plaintiffs comply with the laws and, in so doing, forego fundamental, constitutionally protected rights; and (3) because of this coerced compliance, Plaintiffs have not yet been criminally prosecuted under the laws? Or, must they first violate the law and subject themselves to prosecution to have standing?

2. Do Plaintiffs have standing to challenge a law that deprives them of access to the types of ammunition most suitable for self-defense, where the Supreme Court has held that individuals have the right to possess functional firearms for self-defense, and where ammunition is a necessary component of a functional firearm, or must Plaintiffs first open their own firearms business within the city, begin selling such ammunition in violation of the law, and subject themselves to forfeiture of their business licenses before they may raise a challenge to vindicate their personal rights to purchase ammunition most suitable for self-defense?

3. Where Defendants' unconstitutional laws currently cause specific harm to Plaintiffs by coercing them to forego the exercise of individual, fundamental rights, including the right to keep a firearm ready for self-defense emergencies, to purchase ammunition tailored for self-defense, and to use a firearm in self-defense, are Plaintiffs' grievances ripe for adjudication, or must they suffer these harms until they violate the law, then seek redress of their grievances in a state criminal court to have their rights restored?

INTRODUCTION

Motions to dismiss for lack of subject matter jurisdiction on fact-dependant bases generally waste the court's time because they are premature, being brought before the parties have had an opportunity to flesh out the factual grounds for plaintiffs' claims. Because, at this stage, courts favor amendment of the pleadings over dismissal, any defect regarding standing or ripeness is often easily corrected. For these reasons, such motions are disfavored.

That said, Plaintiffs' current dispute with Defendants is real and ripe for adjudication. Plaintiffs presently own guns and want to keep them in their homes in operable condition, ready to

defend themselves and their families. Defendants' ordinances prevent them from doing so without violating the law, thereby infringing upon Plaintiffs' Second Amendment right to keep and bear arms for self-defense and other lawful purposes. Defendants have moved to dismiss this action, claiming their laws cause Plaintiffs no harm and, because no Plaintiff has actually been criminally charged, prosecuted, or convicted for violating the challenged laws, the case is not ripe.

In short, Defendants argue that until Plaintiffs break the law, and unless Defendants choose to prosecute them for doing so, Plaintiffs have no standing to seek a declaration regarding whether the laws in question violate their constitutional rights. Hence, Plaintiffs must either forego their right to possess a handgun in the home that is ready to be used for immediate defense against a violent attack, or violate the law and become "criminals" themselves.

Defendants' claims are untenable and conflict with the body of authority on declaratory relief. Plaintiffs' "predicament–submit to a statute or face the likely perils of violating it–is precisely why the declaratory judgment cause of action exists." *Mobil Oil Co. v. Atty Gen. of Commw. of Va.*, 940 F.2d 73, 74 (4th Cir. 1991), *cited with approval*, *Bland v. Fessler*, 88 F.3d 729, 737 (9th Cir. 1996). Moreover, Defendants' contention that Plaintiffs are unharmed unless actually prosecuted conflicts with general legal principles and the law in this circuit. *Bland*, 88 F.3d at 737. Plaintiffs have raised serious legal issues concerning the fundamental right of law-abiding citizens to keep and bear arms within the sanctity of their homes to defend themselves and their loved ones. The Court should address these concerns now, as it is authorized to do under the Declaratory Relief Act, 28 U.S.C. §§ 2201-2201, rather than force Plaintiffs to break the law and face criminal prosecution before their rights can be ascertained.

Finally, Plaintiffs are regrettably compelled to note that Defendants' jurisdictional challenge appears to have more to do with gamesmanship than with merit. Despite pushing to consolidate this case with *Pizzo v. Newsom* (which includes, among many others, "copy and paste" challenges to sections 4512, 1290 and 613.10(g)), Defendants forewent a motion to dismiss in that case. *See* Defendants' Answer, *Pizzo v. Newsom*, No. 09-4493 (N.D. Cal. filed Sept. 23, 2009) (Pls.' Req. Jud. Notice, Exh. A); Case Docket Sheet, *Pizzo*, *supra*, No. 09-4493 (Pls.' Req. Jud. Notice, Exh. B). Defendants' willingness to pass on an opportunity to dismiss those claims in

Pizzo, while fervently arguing they should be dismissed here, suggests Defendants' concern is not with this case's justiciability, but with ensuring it is bogged down with yet another preliminary motion, while *Pizzo* moves toward resolution on the merits.

Defendants' motion should be denied in full, and the parties should have their dispute heard and their rights and obligations under the law adjudicated on the merits. To the extent the Court is not so inclined, Plaintiffs should be granted leave to amend.

SUMMARY OF FACTS

Plaintiffs brought this suit to challenge the validity of San Francisco Police Code sections 4512, 1290, and 613.10(g)[1] enacted by Defendant City and County of San Francisco and enforced by its Mayor and Chief of Police ("Defendants"). Each of these sections violates Plaintiffs' right to keep and bear arms under the Second Amendment to the Constitution and, specifically, their right to defense of self and others by exercising that right within their homes.

Section 4512: "Safe" Storage Law

In August 2007, Defendants passed section 4512, requiring handguns kept within the home to be stored in a locked container or disabled with a trigger lock, unless that firearm "is carried on the person of an individual over the age of 18" or "under the control of a person who is a peace officer" as defined by state law. Violation is a misdemeanor punishable by a fine not to exceed $1,000 and/or by imprisonment not to exceed six months. S.F. Cal., Police Code art. 45, § 4512(e). In effect, section 4512 requires, under threat of criminal prosecution, that Plaintiffs render and keep their handguns inoperable and practically useless for self-defense emergencies.

The Supreme Court, in *District of Columbia v. Heller*, 554 U.S. 570, 571 (2008), struck down a similar trigger lock ordinance, finding the requirement "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." The requirements of section 4512 similarly make it virtually impossible for Plaintiffs to use their handguns for the constitutionally protected purpose of self-defense–particularly in life-threatening

[1] All further statutory references are to the San Francisco Police Code unless otherwise indicated.

situations when the need to exercise that right is most acute.[2] Regardless, Defendants have "failed to repeal and continue to enforce" section 4512 (Am. Compl. ¶ 35) and "ha[ve] never advised the public or [their] law enforcement personnel that [they] did not intend to enforce" or "that [they have] stopped enforcing [it] at any time following its enactment" (Am. Compl. ¶ 55).

In fact, quite the opposite is true–Defendants' have expressly indicated their intention to enforce the law. For instance, upon passage of section 4512, former District Attorney Kamala Harris infamously declared "[j]ust because you legally possess a gun in the sanctity of your locked home doesn't mean that we're not going to walk into that home and check to see if you're being responsible and safe in the way that you conduct your affairs." (Am. Compl. ¶ 52.) In short, Defendants have clearly stated their intent to enforce the law and coerce behavior restricting constitutional rights, going so far as to publicly threaten the preemptive enforcement of the law by invading the sanctity of one's home just to "check" on whether handguns are stored in compliance with the ordinance. Additionally, on May 6, 2009, a city official came unannounced to Plaintiff Golden's residence, demanding to see that his firearms were properly stored in a locked container for the purpose of ensuring he was safely storing his handguns. (Am. Compl. ¶ 53.)

As a matter of fact (assumed true for purposes of this motion), Plaintiffs each presently own at least one handgun that they intend to keep operable within their homes, accessible for immediate self-defense and not disabled by a trigger lock nor stored in a locked container. (Am.

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[2] While the burden Defendants impose on Plaintiffs' right to keep and bear arms is not at issue in this motion, we note that the *Heller* Court understood it to be a serious concern, so much so that Chief Justice Roberts and Justice Scalia had the following exchange with counsel for the District of Columbia, regarding the ease with which one might render a locked weapon operable in the dead of night to defend against an intruder:

> JUSTICE SCALIA: You turn on, you turn on the lamp next to your bed so you can–you can turn the knob at 3-22-95, and so somebody--
> MR. DELLINGER: Well--
> CHIEF JUSTICE ROBERTS: Is it like that? Is it a numerical code?
> MR. DELLINGER: Yes, you can have one with a numerical code.
> CHIEF JUSTICE ROBERTS: So then you turn on the lamp, you pick up your reading glasses--

Transcript of Oral Argument at 83-84, *Heller*, 554 U.S. 570 (2008) (No. 07-290). Clearly, the Court was having a bit of fun of Mr. Dellinger's suggestion that the District's trigger-lock ordinance would impose a minimal or insignificant burden to one's right to Arms in an emergency.

Compl. ¶¶ 22-23, 37.) Plaintiffs presently keep their handguns in inoperable condition in compliance with the law. (Am. Compl. ¶¶ 23, 25.) But for the enactment and credible threat of enforcement of section 4512, they would each "keep their handguns operable within the home, i.e., not disabled by a trigger lock or locked in a container . . . ." (Am. Compl. ¶ 23.) Plaintiffs thus seek a declaration of their rights under the Second Amendment with respect to section 4512 and, should the Court enjoin the enforcement of the law, would immediately resume keeping their handguns in operable condition, ready for use in a self-defense emergency.

Section 1290: Discharge Ban

In addition, section1290's blanket prohibition against the "discharge [of] any firearms" within the City and County of San Francisco–with no exception for self-defense discharges within the home–violates Plaintiffs' right to keep and bear arms in defense of self and others as guaranteed by the Second Amendment. The rights recognized in *Heller* necessarily include a right to discharge firearms in self-defense, not simply to keep and bear them. Simply put, section 1290 deters, punishes, and directly conflicts with the exercise of that constitutional right.

Notably, Police Code section 4502 prohibits discharging firearms in *public* places, and section 4506(a) *expressly* provides an exception for public discharges made in self-defense. Section 1290 provides *no such exception*. Further, as alleged in Plaintiffs' Amended Complaint, Defendants have threatened enforcement of section 1290 in self-defense situations. Specifically, "San Francisco police have advised homeowners, who have otherwise lawfully discharged firearms in self-defense to thwart late-night criminal attacks in their homes, that they would be arrested for discharging their firearms [under section 1290] unless they stated the discharges were 'accidental.' The police further advised these homeowners that it was the city's policy to arrest anyone who discharged a firearm within the city, and that there was no exception for discharges within one's home while defending oneself from criminal attack." (Am. Compl. ¶ 65.) Based on the foregoing, no self-defense exception can be implied.[3]

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[3] Moreover, this suit was filed initially on May 15, 2009. Defendants have had ample opportunity to amend section 1290 to cure the obvious defect (and narrow the issues in this suit), but has chosen not to do so. Evidently, in addition to Plaintiffs' suit, it will take an order from this

In sum, as a matter of fact (based on the statute's existence and on Plaintiffs' allegations), section 1290 remains the law in San Francisco and has been enforced, as a matter of policy, against residents discharging firearms in self-defense within the sanctity of their own homes. Defendants have provided no evidence that its policy of enforcing section 1290 has changed. (Am. Compl. ¶¶ 61-62.) And Plaintiffs have alleged their intent to discharge their firearms in violation of section 1290 to defend hearth and home should the need arise. (Am. Compl. ¶¶ 38-39.) Plaintiffs thus seek a judicial declaration of their rights under the Second Amendment as it relates to section 1290 and injunctive relief prohibiting enforcement of the same.

Section 613.10(g): Ban on Ammunition Serving "No Sporting Purpose"

Plaintiffs also challenge section 613.10(g), Defendants' ban on the sale, lease, or transfer of ammunition that "serves no sporting purpose" or is designed to expand or fragment upon impact. Section 613.10(g) effectively bans all self-defense ammunition that does not also serve a "sporting purpose." But self-defense is not a "sport." Thus, section 613.10(g) effectively prohibits city residents, including Plaintiffs, from purchasing ammunition specifically designed for self-defense. This is often the same ammunition used by law enforcement. It is ammunition designed, for safety reasons, to prevent ricochet and eliminate over-penetration of unarmored assailants. (Am. Compl. ¶ 58.) Such ammunition is the exact opposite of the "cop-killer bullets" Defendants claim it seeks to ban, yet it remains subject to prohibition under section 613.10(g).

Banning the sale of ammunition designed for self-defense violates Plaintiffs' right to keep and bear arms and defeats its "core lawful purpose of self-defense." Moreover, Section 613.10(g)'s ban on the sale of all ammunition that "serves no sporting purpose" is vague and overbroad, as it fails to adequately inform ammunition retailers and law enforcement as to which ammunition is regulated by the law. (Am. Compl. ¶¶ 70-72.) In turn, retailers, unsure of which ammunition is subject to the ordinance, steer far wider of the zone of unlawful conduct and refrain from selling far more types of ammunition that may or may not be subject to the ban. This further

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court to force Defendants to bring section 1290 into compliance with *Heller* and *McDonald v. Chicago*, __ U.S. __, 130 Sup. Ct. 3020 (2010).

impacts Plaintiffs' access to ammunition necessary for the exercise of their fundamental rights. Plaintiffs' thus seek declaratory and injunctive relief.

SUMMARY OF ARGUMENT

The assertion that Plaintiffs lack standing and that their claims are not yet ripe for review because Plaintiffs have not suffered an injury-in-fact traceable to Defendants' conduct is without merit. By Defendants' enactment and ongoing enforcement of sections 4512, 1290, and 613.10(g), Plaintiffs presently endure the direct and ongoing harm of the denial of their individual, fundamental right to keep and bear arms, which necessarily includes the right to keep their firearms in a condition ready for use in self-defense emergencies.

Defendants' core argument, that Plaintiffs suffer no harm unless and until they violate the law, and Defendants directly threaten to prosecute them, runs counter to case law governing pre-enforcement challenges to laws that violate fundamental rights and has harmful practical consequences. Nonetheless, Plaintiffs will address each of Defendants' contentions in turn.

Because Plaintiffs have been placed "between the Scylla of intentionally flouting state law and the Charybdis of forgoing what [they believe] to be constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding," they have suffered a sufficient injury to seek declaratory relief without "first expos[ing] [themselves] to actual arrest or prosecution." *Steffel v. Thompson,* 415 U.S. 452, 462 (1974). By virtue of the mere enactment of the ordinances, which prohibit the exercise of fundamental rights, and Defendants' expressly declared intent to enforce these laws and failure to disavow such intent, Plaintiffs suffer direct harm and face a credible threat of enforcement, such that Plaintiffs have standing to challenged these ordinances and their claims are ripe for review. *See Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298 (1979); *Epperson v. Arkansas*, 393 U.S. 97 (1968)**.**

Regarding Plaintiffs' challenges to section 613.10(g), they have standing to bring this action on their own behalf to vindicate their personal rights to purchase the ammunition most suitable for self-defense. They do not, as Defendants suggest, seek to assert the rights of third party ammunition retailers to sell the ammunition regulated by the challenged ordinance.

Finally, no further factual development will make the underlying issues any more clear, so

this Court should refuse to exercise its discretion to dismiss this case on prudential ripeness grounds and address Plaintiffs' harms *now*, rather than wait until some unknown future date.

For the reasons set out above–and more thoroughly examined below–Defendants' motion should be denied, and litigation on the merits of Plaintiffs' claims should be permitted to proceed.

In the event the Court is not satisfied with the sufficiency of Plaintiffs' allegations, Plaintiffs respectfully request leave to amend the complaint under the liberal policy in federal courts favoring amendment of the pleadings over dismissal before plaintiff has an opportunity to be heard. *Jones v. Comty. Redevel. Agency of City of L.A.*, 733 F.2d 646, 650 (9th Cir. 1984).

ARGUMENT

I. TO SURVIVE A MOTION TO DISMISS, PLAINTIFFS NEED ONLY PRESENT PLAUSIBLE ALLEGATIONS SUFFICIENT TO ESTABLISH THIS COURT HAS SUBJECT MATTER JURISDICTION

The plaintiff has the initial burden of establishing standing. *See, e.g.*, *Kokkonen v. Guardian of Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The particular weight of that burden is contingent upon the procedural posture of the case. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Takhar v. Kessler*, 76 F.3d 995, 1000 (9th Cir. 1996) (internal citations and quotation marks omitted). And, as the Supreme Court observed in *Lujan*, "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim." 504 U.S. at 561.

Defendants raise doubts about the plausibility of Plaintiffs' factual allegations by attacking *only the specifics* behind Plaintiffs' general statements regarding issues central to the standing question. (*See* Defs.' Mem. Supp. Mot. to Dismiss ("Defs.' Mot.") 7, 11-12 n.4.) But Plaintiffs have sufficiently pled in general terms, which is all that is required, *Lujan,* 504 U.S. at 561, that they and others similarly situated have been subject to threats of enforcement by Defendants under the provisions challenged in this action (Am. Compl. ¶¶ 52-53, 65) and that Defendants have never disavowed their intention to enforce those sections (Am. Compl. ¶¶ 54-55, 61-62, 66-67).

To require that Plaintiffs show more to survive a motion to dismiss would be improper. While it is true that the court need not accept mere "labels and conclusions" or a "formulaic recitation of the elements of a cause of action" *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. 1937, 1949 (2009), such is not the case here. The Amended Complaint does more than make conclusory statements that the challenged ordinances violate the Second Amendment. It alleges facts that, if accepted as true, establish a credible threat the ordinances will be enforced, causing Plaintiffs to surrender their rights to engage in constitutionally protected conduct.

II. PLAINTIFFS HAVE PLED SUFFICIENT FACTS TO ESTABLISH STANDING TO BRING THIS ACTION, INDICATING AN INJURY-IN-FACT TRACEABLE TO DEFENDANTS' ACTIONS

Article III of the U.S. Constitution limits the jurisdiction of federal courts to "actual cases or controversies," requiring there be an "actual dispute[] between adverse parties." *Richardson v. Ramirez*, 48 U.S. 24, 36 (1974). This requirement encompasses the "core component of standing." *Lujan*, 504 U.S. at 560. To establish Article III standing, Plaintiffs must show they "have suffered a constitutionally cognizable injury-in-fact," *Cal. Pro-Life Council v. Getman*, 328 F.3d 1088, 1093 (9th Cir. 2003), generally requiring the "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. Defendants argue this requires Plaintiffs show they are "*actually* being prosecuted, or at a minimum, [have] received a personalized threat of *imminent* prosecution under the challenged law." (Defs.' Mot. 8 (emphasis added).) Such a showing is far more than is required of Plaintiffs.

It is not a controversial legal principle that the government creates an "actual case or controversy" whenever its laws cause reasonable people to forego behavior protected by the Constitution. As the Supreme Court recently affirmed:

> [W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat–for example, the constitutionality of a law threatened to be enforced. The plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction.

MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 129 (2007) (emphasis omitted). In other words, a plaintiff need not first expose himself to actual arrest or prosecution to challenge a

statute that arguably infringes on the exercise of his constitutional rights. *Babbitt,* 442 U.S. at 298. Indeed, if actual prosecution were required to establish standing, the Declaratory Judgment Act, under which this action is brought and which provides the mechanism for seeking pre-enforcement review, would *itself* be unconstitutional.

Accordingly, in cases where a plaintiff seeks to challenge a law under which he has not yet faced prosecution, the courts have found that Article III standing lies so long as a plaintiff: (1) "alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute" and (2) can demonstrate a "credible threat of enforcement" of that law. *Id.* at 298. Plaintiffs have plainly alleged facts sufficient to satisfy both prongs of the standing analysis for pre-enforcement challenges.

A. Plaintiffs Have Established an Intention to Engage in a Course of Conduct Protected by the Constitution, Yet Proscribed by the Challenged Ordinances

Under the first prong of *Babbitt*, Plaintiffs must "allege[] an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute." *Id.* It is not necessary that Plaintiffs allege an intention to *break the law*, it is sufficient that they establish a concrete plan to engage in the proscribed conduct and that they would immediately implement that plan, but for the arguably unconstitutional limitation. *See Holder v. Humanitarian Law Project*, __ U.S. __, 130 S. Ct. 2705, 2717 (2010).

Nevertheless, Defendants erroneously equate this case with *San Diego Gun Rights Committee v. Reno*, 98 F.3d 1121 (1996), a firearms case decided before the Second Amendment was recognized as protecting a fundamental, individual right, in which the court found plaintiffs lacked standing. There, the plaintiffs expressed only a "desire or wish" to manufacture or possess "assault weapons" in some unspecified manner at some unspecified future time. *Id.* at 1127. Here, "Plaintiffs presently intend to exercise their rights to defend themselves, their homes and families by keeping firearms in the home, including handguns, available for immediate use by assembling them, removing trigger locks, removing them from locked storage containers, and loading them with appropriate ammunition and, if necessary discharging them is defense of self or others." (Am. Compl. ¶ 37.) Plaintiffs also allege that, but for the enforcement of these ordinances, they would presently "keep their handguns in their residences without being stored in a locked

container or disabled with a trigger lock; would forthwith purchase ammunition designed for self-defense use without regard to whether it serves any sporting purpose; and would discharge their firearms if threatened with imminent deadly force." (Am. Compl. ¶ 40.)

In sum, Plaintiffs currently own guns, which are presently kept inoperable as required by law, and Plaintiffs seek–immediately–to render their guns operable for defense of themselves, their families, and their homes. (Am. Compl. ¶¶ 37-39.) Unlike *Reno*, Plaintiffs here have described a "concrete plan" to engage in constitutionally protected conduct–a plan they would implement presently but for the challenged ordinances. And this, under *Holder* and *Arizona Right to Life Political Action Committee v. Bayless*, 320 F.3d 1002 (9th Cir. 2003) is all that is required to meet the first prong of the pre-enforcement standing analysis.

In *Holder*, plaintiffs challenged a federal law prohibiting the knowing provision of "material support or resources" to designated terrorist organizations. 130 S. Ct. at 2712-13. There, plaintiffs were found to have standing where they had provided support to two such organizations before the enactment of the statute and alleged only "that they would provide similar support if the statute's allegedly unconstitutional bar were lifted." *Id.* at 2717. They never established an intent to break the law, only to engage in the proscribed conduct *immediately*, but for the ongoing enforcement of the challenged statute.

Similarly, in *Arizona Right to Life*, the Ninth Circuit found plaintiff had standing to raise a pre-enforcement challenge, though they alleged only that they "wanted" to engage in the regulated conduct, but obeyed the law to avoid civil penalties. 320 F.3d at 1006. Because plaintiff neither broke the law, nor alleged an intention to do so, it was never "personally in danger of prosecution on the basis of [its] actions." (*See* Defs.' Mot. 12.) Regardless, the court found pre-enforcement standing existed because plaintiff reasonably "modif[ied] its behavior out of fear of being the object of an enforcement action." *Ariz. Right to Life* at 1007.

Here, Plaintiffs have alleged that, but for the enactment and enforcement of the challenged ordinances, they would exercise their rights to defend themselves immediately, keeping handguns unencumbered by trigger locks or locked containers, purchasing and loading the most appropriate ammunition, regardless of whether it serves a "sporting purpose," and discharging them when

necessary for self-defense. (Am. Compl. ¶ 23-25, 37-39.) Like the plaintiffs in *Holder*, Plaintiffs would immediately engage in the described course of conduct "if the [ordinance's] allegedly unconstitutional bar were lifted." *See Holder*, 130 S. Ct. 2717. And, like the plaintiffs in *Arizona Right to Life*, Plaintiffs have not alleged an intention to break the law, but to obey it until such time as this Court declares their rights under the Constitution. This course of action demonstrates a "commendable respect for the rule of law" and should not be the basis for the Court to shut its doors to Plaintiffs' concerns. *See Bland*, 88 F.3d at 737.

To follow Defendants' suggestion that Plaintiffs must first allege an intention to *break the law* (Defs.' Mot. 12), would put Plaintiffs in an unenviable position, requiring them to openly flout the law and come to the attention of the authorities before seeking a declaration of the parties' rights and responsibilities under the Second Amendment.[4] Sound public policy dictates against encouraging individuals–who wish to both obey the law *and* exercise their fundamental rights–to themselves become criminals before their rights can be declared by a court.[5]

Accordingly, because Plaintiffs have alleged they would presently render their firearms operable for use in a self-defense emergency if the Court prevented the enforcement of the challenged ordinances, Plaintiffs have presented a sufficiently concrete plan to engage in constitutionally protected conduct proscribed by law. As such, Plaintiffs have satisfied the first

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[4] Taken to its logical conclusion, the position lobbied by Defendants would leave Plaintiffs and similarly situated law-abiding citizens subject to a grievous wrong without a remedy, as they would never be in the position to challenge these ordinances. For if Plaintiffs obey the law and are robbed, raped, or murdered while unlocking and loading their handguns, they will obtain no relief for the harm caused by the ordinances, which they followed to their detriment. Defendants' untenable position would leave only *law-breaking* gun owners, who have actually violated the law, with standing to determine legislative constitutional rights violations. Accordingly, Second Amendment challenges would be muddied (as Defendants would no doubt prefer it), such that they would only be brought by criminals who have already violated the law as opposed to law-abiding individuals whom the Second Amendment was intended to protect. And all the while Plaintiffs will continue to be denied their rights without any avenue for recourse.

[5] "Public policy should encourage a person aggrieved by laws he considers unconstitutional to seek a declaratory judgment against the arm of the state entrusted with the state's enforcement power, *all the while complying with the challenged law*, rather than to deliberately break the law and take his chances in the ensuing suit or prosecution." *Mobil Oil Corp.,* 940 F.2d at 75, *cited with approval*, *Ariz. Right to Life*, 320 F.3d at 1007; *Bland*, 88 F.3d at 737.

prong of the standing analysis for pre-enforcement challenges as set forth in *Babbit*.

B. Plaintiffs Reasonably Fear the Challenged Ordinances Are Being and Will Continue to Be Enforced

Plaintiffs allege that Defendants have expressly indicated an intention to enforce the challenged ordinances. For instance, former District Attorney Kamala Harris publicly declared "[j]ust because you legally possess a gun in the sanctity of your locked home doesn't mean that we're not going to walk into that home and check to see if you're being responsible and safe in the way that you conduct your affairs." (Am. Compl. ¶ 52.) And on May 6, 2009, a city official came unannounced to Plaintiff Golden's residence, demanding to see that his firearms were properly stored in a locked container. (Am. Compl. ¶ 53.) "San Francisco police have [repeatedly] advised homeowners, who have otherwise lawfully discharged firearms in self-defense to thwart late-night criminal attacks in their homes, that they would be arrested for discharging their firearms [under section 1290] unless they stated the discharges were 'accidental.' The police further advised these homeowners that it was the city's policy to arrest anyone who discharged a firearm within the city, and that there was no exception for discharges within one's home while defending oneself from criminal attack." (Am. Compl. ¶ 65.)[6]

In light of these instances, as well as Defendants' failure to publicize that the ordinances are not being enforced, Plaintiffs legitimately fear prosecution should they exercise their fundamental rights in violation of the law. They have thus alleged facts sufficient to establish standing to raise a pre-enforcement challenge, having presented "an actual and well-founded fear that the law will be enforced against them." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383 (1988). As explained above, the fact that Plaintiffs have curbed their behavior in order to evade actual prosecution does not destroy Article III standing, and it does not destroy their reasonable fear that, should they resume the proscribed conduct, the law will be enforced against them. It is sufficient that the threat of prosecution is "credible"–as it would be with any statute threatened to

[6] Although section 613.10(g) does not impose liability on individual purchasers, Plaintiffs nonetheless have standing to sue in their own right as Defendants' enforcement denies them access to constitutionally protected components of a functional firearm as set forth fully in section II. C., *infra*.

be enforced–rather than "imaginary or speculative"–as would be the case if the statute were obsolete or never enforced. *See Babbitt*, 442 U.S. at 298.

In accordance with the Supreme Court's opinions in *Babbitt* and its progeny, the Ninth Circuit has concluded that a plaintiff who challenges a law before it is enforced can establish the requisite "credible threat of enforcement" by demonstrating that the defendant "intends either to enforce a statute or to encourage local law enforcement agencies to do so." *Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 618 (9th Cir. 1999). Judicial authorization for pre-enforcement standing is especially apparent in instances where the "alleged danger of the [challenged law] is, in large measure, one of self-censorship," wherein the challenger abstains from the exercise of constitutionally protected conduct for fear the law will be enforced against him. *Id.* Such a harm is one "that can be realized even without actual prosecution." *Am. Booksellers*, 484 U.S. at 393. The Ninth Circuit has repeatedly affirmed that the "pre-enforcement nature" of a suit does not foreclose standing where a plaintiff alleges a *well-founded fear the law will be enforced*. *Bland*, 88 F.3d at 737 (emphasis added). Plaintiffs fears are indeed well founded–for not only have Defendants promised to enforce the laws should they happen to encounter a violation, the *City's chief prosecutor publicly* threatened to enter *the sanctity of residents' locked homes* to *guarantee* compliance with Defendants' gun policies.

Plaintiffs here have established a "credible threat of enforcement," having alleged that Defendants have explicitly stated their intention to enforce the challenged ordinances. But even absent Defendants' noted policy of enforcement, under the circumstances, the ordinances' "mere existence" provides sufficient threat of enforcement to defeat Defendants' motion.

1. Plaintiffs Need Not Face an "Individualized Threat of Imminent Prosecution" Before They May Bring a Pre-Enforcement Challenge; The Requisite "Credible Threat of Enforcement" Is Established by a Showing that Defendants Intend to Enforce the Ordinances

The "credible threat" standard does not, as Defendants suggest, require that Plaintiffs show they are subject to an "individualized threat of imminent prosecution." (Defs.' Mot. 9.) In fact, the requirement advocated by Defendants is not supported by the great body of case law regarding

pre-enforcement constitutional challenges.[7] Defendants' imminent prosecution requirement instead echoes the injury-in-fact element of standing, requiring an "invasion of a legally protected interest that is . . . 'actual or imminent.' " *Lujan*, 504 U.S. at 560-61. Perhaps Defendants are advocating that if a plaintiff challenging a statute does not face "actual" prosecution, he must at least face an "imminent" one, but this erroneously conflates Plaintiffs' "injury" and the government's "prosecution." In so doing, Defendants ignore the great harm inflicted by the existence and enforcement of a statute that prevents individuals from *engaging in constitutionally protected conduct*. Standing exists because plaintiff's abstention, when reasonably coerced by the government, is *itself* an actual injury, regardless of whether prosecution is imminent. *See Poe v. Ullman*, 367 U.S. 497, 508 (1961).

Not only does Defendants' imminent prosecution requirement conflict with Supreme Court guidance on this issue, but it has harmful practical consequences. Obviously, a prosecution is unlikely to be imminent if individuals refrain from violating the law under a credible threat of the law's enforcement, as Plaintiffs have done. Yet, as Defendants would have it, individuals would have pre-enforcement standing only if they come close enough to violating the law to become singled out or uniquely targeted by law enforcement. But if they do violate the law, the door to declaratory relief in federal court is slammed shut as soon as the government initiates prosecution. *See Younger v. Harris*, 401 U.S. 37, 40-41 (1971); *see also Samuels v. Mackell*, 401 U.S. 66, 73 (1971) (extending *Younger* to actions for declaratory relief). But the Declaratory

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[7] Defendants rely on *Steffel*, 415 U.S. at 459, for the rule that a pre-enforcement challenge may be heard only "so long as [plaintiff] faces a genuine, individualized threat of imminent prosecution." (Defs.' Mot. 9.) *Steffel* should not be read to require such a stringent test. Even though plaintiffs in that case had faced an individualized threat, the Court no where states that such is *required* before pre-enforcement standing can be had. To the contrary, the *Steffel* Court relies on *Epperson v. Arkansas*, 393 U.S. 97, a case in which plaintiff faced *no* individualized threat of prosecution, imminent or otherwise. *Steffel*, 415 U.S. at 459.

Defendants also cite *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1, 4 (9th Cir. 1974) to argue that threats of prosecution of a "general nature" are insufficient to confer standing. This case, however, is distinguishable because no fundamental right was implicated by the challenged ordinance. *Id.* at 3-4. *Rincon* itself indicates this would have made a difference. *Id.* at 6 (distinguishing *Rincon* from a case in which plaintiff had standing where he alleged "interference with fundamental rights").

Judgment Act was designed precisely to provide " 'an alternative to pursuit of the arguably illegal activity.' " *MedImmune*, 549 U.S. at 129 (quoting *Steffel*, 415 U.S. at 480 (Rehnquist, J. concurring)). To follow Defendants' rule would essentially nullify the purpose of the Act.

Instead, courts have found standing in instances in which prosecution was neither imminent nor individually threatened. *Holder*, a recent Supreme Court case discussed *supra*, is a good example. Recall that, there, plaintiffs sought pre-enforcement review of a federal statute making it a crime to "knowingly provid[e] material support or resources" to foreign terrorist organizations. *Holder*, 130 S. Ct. at 2712, 2717. Though the government never actually threatened plaintiffs with prosecution (even during twelve years of litigation), the Court nonetheless found the requisite "credible threat of enforcement" because it never disavowed its ability or intent to enforce the statute against plaintiffs. *Id.* at 2717.

Similarly, Plaintiffs allege they would immediately engage in constitutionally protected conduct but for the enactment and continued enforcement of sections 4512, 1290, and 613.10(g). (Am. Compl. ¶¶ 23-25, 37-39.) They have a valid, well-founded fear of prosecution the moment they do engage in that conduct. The challenged ordinances are, after all, neither "moribund," *Doe v. Bolton*, 422 U.S. 179, 188 (1973), nor a "historical curiosity," *Navegar, Inc. v. United States*, 103 F.3d 994, 1000 (D.C. Cir. 1997). Plaintiffs genuinely fear enforcement based on "credible threats" by high-profile city officials and law enforcement officers, expressly indicating their intention to enforce these laws. (Am. Compl. ¶¶ 52-53, 56.) And Defendants have not disavowed their ability to enforce the ordinances (Am. Compl. ¶¶ 54-55, 61-62, 66-67), a fact which courts have long considered to be a factor in favor of finding standing, *Babbit,* 442 U.S. at 302.

To establish a "credible threat," Plaintiffs need not show a history of completed or imminently threatened prosecutions. Plaintiffs have satisfied their burden by pleading, in general terms, that a "credible threat of enforcement" exists because Defendants have demonstrated an intention to enforce the challenged ordinances. Recall that Defendants have publicly threatened to enter the locked homes of firearms owners to ensure compliance with the "safe" storage law, conducted a surprise home visit of Plaintiff Golden to ensure his firearms were stored in a locked container, and informed homeowners–who had otherwise lawfully discharged their firearms in

self-defense–of Defendants' intention to enforce section 1290 against them unless they claimed the discharge was accidental. In light of all these facts, just like the plaintiffs in *Holder*, Plaintiffs have established a "credible threat" the challenged ordinances will be enforced.

2. The "Mere Existence" of the Ordinances Is Sufficient to Confer Standing in Cases, Like This, Wherein *Constitutionally Protected Conduct Is "Chilled"*

Even if criminal prosecution were unlikely, the mere existence of the ordinance *is itself* a basis for standing to challenge them, because they are laws capable of "chilling" constitutionally protected conduct.[8] In *Epperson v. Arkansas*, for example, a teacher had standing to challenge the Arkansas "anti-evolution" statute even though she never faced any threat of prosecution under the law, which had been on the books for *nearly forty years without any history of enforcement*, and where the statute was "more of a curiosity than a vital fact of life." 393 U.S. at 98-102.

Similarly, in *California Pro-Life Council, Inc. v. Getman*, the Ninth Circuit cited with approval a Seventh Circuit case holding the following:

> A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech[[9]] need not show that the authorities have threatened to prosecute him; ***the threat is latent in the existence of the statute***. Not if it clearly fails to cover his conduct, of course. But if it arguably covers it, and so may deter constitutionally protected expression because most people are frightened of violating criminal statutes especially when the gains are slight, . . . there is standing.

328 F.3d, 1088, 1095 (9th Cir. 2003) (citing *Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2001)) (emphasis added). Ultimately, the Ninth Circuit limited its earlier ruling in *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134 (1999), and reaffirmed the "validity of pre-enforcement challenges to statutes infringing upon constitutional rights." *Cal. Pro-Life Council,*

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[8] Defendants rely on *Stoianoff v. Montana*, 695 F.2d 1214, 1223 (9th Cir. 1983) for the rule that " 'The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy with [sic] the meaning of Article III.' "(Defs.' Mot. 9 (quoting *Stoianoff*, 695 F.2d at 1223).) This case is distinguishable, however, because no fundamental right was implicated by the challenged statute, and the exercise of constitutionally protected conduct was not abandoned.

[9] For a discussion on applying First Amendment analysis of pre-enforcement standing to a Second Amendment challenge, see page 20, *infra*.

Inc., 328 F.3d at 1094. The court recognized that particularly, *but not exclusively*, in the First Amendment context, "the Supreme Court has dispensed with rigid standing requirements," and found standing to challenge a law whose very existence "chilled" constitutionally protected conduct, inflicting the harm of self-censorship. *Id.* at 1094-95.

In fact, a long line of cases uphold pre-enforcement review of First Amendment challenges to criminal statutes by plaintiffs with bases for standing no different than those asserted by Plaintiffs here. For example, in *American Booksellers*, plaintiffs brought a suit challenging the constitutionality of a newly enacted Virginia statute criminalizing the display for commercial purposes of certain sexually explicit visual and/or written material. 484 U.S. at 387-88. The Commonwealth of Virginia claimed plaintiffs lacked standing because they had not yet been threatened with prosecution under the statute, which had not yet taken effect. *Id.* at 392. The Supreme Court, "not troubled by the pre-enforcement nature of th[e] suit," concluded that "plaintiffs ha[d] alleged an actual and well-founded fear that the law [would] be enforced against them" because the "state ha[d] not suggested that the . . . law [would] not be enforced" and because the there was no reason to assume that it would not be. *Id.* at 393.

There is no distinction between *American Booksellers* and the case at bar, except that Plaintiffs have clearly alleged that law enforcement officers and high-profile city officials have explicitly expressed their intentions to enforce the challenged ordinances (Am. Compl. ¶¶ 52-53, 65), providing even more support that Plaintiffs have a well-founded fear the ordinances will be enforced against them. And especially as to section 4512, having been enacted only four years ago,[10] it would be wholly unreasonable to believe the San Francisco Board of Supervisors so recently enacted laws it had no intention to see enforced.

Defendants attempt to limit the application of the relaxed standards of pre-enforcement standing–particularly the idea that a statute's "chilling effect" alone may confer standing–to the

[10] *See Bland v. Fessler*, 88 F.3d 729, 737 (standing to bring a pre-enforcement challenge even though the law had never been enforced against *anyone* because the court found no reason to assume it would not be enforced– the Attorney General had not stated he would not enforce the statute and it had only been on the books for six years, so it had "not fallen into desuetude").

First Amendment context. (Defs.' Mot. 9 n.3, 12.) Claiming that Plaintiffs must show that they are "actually being prosecuted" or have "received a personalized threat of imminent prosecution under the challenged law," Defendants relegate to a mere footnote the important fact that the Supreme Court has relaxed this standard in cases implicating First Amendment and privacy rights and casts aside the notion that Second Amendment challenges deserve similar deference. (Defs' Mot. 9 n.3.) Citing *Reno*, Defendants instead suggest that, "[u]nder controlling Ninth Circuit precedent, [the stricter standard] is stringently applied to *other types of constitutional claims*" not rooted in the First Amendment. (Defs.' Mot. 9 n.3. (emphasis added).) Defendants then assert that *Reno* "is so similar to the case at bar that it directly controls this lawsuit,"–a gross overstatement of its bearing on this case.

First, Defendants fail to mention that *Reno* is *not* a Second Amendment opinion; *Reno* specifically rejected plaintiff's Second Amendment claim *on the merits*, *not* for lack of jurisdiction to bring that claim. *Id.* at 1124-25 (citing *Hickman v. Block*, 81 F.3d 98, 101 (9th Cir. 1996), *abrogation recognized*, *Nordyke v. King*, 563 F.3d 439, 444 (9th Cir. 2009)). The court similarly rejected the plaintiffs' Ninth Amendment challenge, finding ultimately that the Ninth Amendment (which does not exist as an independent source of rights) does not confer an individual, fundamental right to keep and bear arms–again rejecting plaintiffs' claims on the merits rather than standing. *Id.* at 1125. Thus, the court limited its analysis to the plaintiff's standing to raise a *Commerce Clause challenge*. *Id*. at 1125-26, 1125 n.2. And the Commerce Clause empowers Congress to enact legislation affecting certain types of commerce; it neither proclaims nor recognizes the *rights of individual citizens.*[11] In stark contrast, the Second Amendment protects individual, fundamental rights *of the People*. *See Heller*, 554 U.S. at 595. It should thus come as no surprise that a court might exercise its discretion under the Declaratory Relief Act to entertain a Second Amendment challenge to a local ordinance that infringes upon an individual's fundamental right to armed self-defense, while declining to adjudicate a challenge

[11] "The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. Const. art. I § 8.

to a federal statute because it allegedly infringes upon the freedom to engage in commerce concerning semiautomatic "assault weapons."

Moreover, *Reno* was handed down in a pre-*Heller*/*McDonald* world–a world in which fundamental rights protected by the Second Amendment were not yet recognized. It is thus hardly surprising the *Reno* court so easily dismissed the Second Amendment challenge and refused to apply the relaxed rules of pre-enforcement standing previously reserved for First Amendment and privacy cases. But the United States Supreme Court's rulings in *Heller* and *McDonald* confirm that Second Amendment rights are indeed fundamental to our system of ordered liberty and should be afforded protections similar to those of the First Amendment. The Supreme Court has emphatically rejected attempts to deprive the Second Amendment of the dignity afforded other fundamental rights and explained the Second Amendment is no different from the First, *id.* at 634-35, implying that First Amendment doctrine should inform Second Amendment analyses. In fact, several post-*Heller* decisions have applied First Amendment analysis in the Second Amendment context.[12] This court should now do the same in considering Plaintiffs' standing to bring this challenge to vindicate Plaintiffs' fundamental rights.

Applying the principles often used in First Amendment pre-enforcement challenges to this context, the Court should relax the "rigid standing requirements" and recognize Plaintiffs' standing because the "mere existence" of the challenged ordinances has and continues to "chill" conduct protected by the Second Amendment.

C. Plaintiffs Have Standing to Challenge Section 613.10(g) As They Assert Their Own Rights, Not the Rights of Third Party Ammunition Retailers

Plaintiffs raise two constitutional challenges to section 613.10(g); namely, that it impermissibly infringes upon Plaintiffs' Second Amendment right to keep and bear arms, and that the terms of the ordinance are unconstitutionally vague. Because Plaintiffs assert their own

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[12] *United States* v. *Marzzarella,* 614 F.3d 85, 89 n.4, 96-97 (3d Cir. 2010); *United States* v. *Chester*, 628 F.3d 673, 682 (4th Cir. 2010) ("[g]iven *Heller's* focus on 'core' Second Amendment conduct and the Court's frequent references to First Amendment doctrine we agree with those who advocate looking to the First Amendment as a guide in developing a standard of review for the Second Amendment"); *United States* v. *Huet*, No. 08-0215, 2010 WL 4853847, * 10-11 (W.D. Pa. Nov. 22, 2010).

rights, rather than the rights of third party ammunition retailers, and because they themselves have suffered an injury-in-fact by the enactment and enforcement of section 613.10(g), Plaintiffs have standing to raise both claims.

In *Doe v. Bolton*, 410 U.S. 179 (1973), a woman had standing to challenge an abortion statute, claiming the law was unconstitutionally vague because it "deterred hospitals and doctors from performing abortions. She sued 'on her own behalf and on behalf of all others similarly situated.' " *Id.* at 186. In that case, she claimed that her *own right* to procure an abortion was infringed by the existence of a law that restricted the circumstances under which a physician could perform the procedure. She was personally under *no threat* of prosecution under the arguably vague statute because it operated not against women seeking abortions, but against the healthcare providers who sought to perform them. However, because her access to the constitutionally protected procedure was limited by the challenged law's enforcement against physicians, she indeed suffered an injury-in-fact sufficient to confer standing. *Id.*

The standing issue plays out similarly in this case. Here, Plaintiffs raise Second Amendment and vagueness challenges to section 613.10(g), San Francisco's ordinance prohibiting the transfer or sale of ammunition that "serves no sporting purpose" or is designed to expand or fragment upon impact. As Defendants correctly note, section 613.10(g) "applies to licensed San Francisco firearms dealers, and plaintiffs do not allege that they hold such permits or intend to apply for them." (Defs.' Mot. 5.) From there, however, Defendants miss the point. The harm Plaintiffs suffer is not the prosecution of retailers under section 613.10(g), but the infringement of their own fundamental rights. As such, Plaintiffs are suing on their *own behalf*, and not, as Defendants suggest, to vindicate the rights of gun dealers and ammunition retailers.

Plaintiffs' Second Amendment claim rests on the argument that prohibiting the sale of this ammunition ultimately prohibits "law-abiding residents from using the type of ammunition best suited for self-defense" and violates "Plaintiffs' right to self-defense, which is at the core of the Second Amendment right to keep and bear arms." (Am. Compl. ¶ 60.) In other words, while Plaintiffs are under no threat of prosecution under section 613.10(g), the threat of its enforcement against gun dealers significantly limits Plaintiffs' access to the ammunition best suited for self-

defense in violation of the Second Amendment. The existence and enforcement of the ordinance effectively limit not only the ability of ammunition retailers to sell the ammunition, *but the right of Plaintiffs to access it*. *See Andrews v. State*, 50 Tenn. 165, 178, 8 A. Rep. 8, 13 (1871). And *that* is the harm Plaintiffs seek to vindicate.

Examination of the issue in the context of firearms is also revealing. Consider, for example, a law banning the sale of handguns by retailers. Although residents would be denied the ability to access handguns for self-defense, as Defendants would have it, Plaintiffs would be barred from challenging the government's denial of their Second Amendment rights because they aren't "retailers." And though Defendants might argue that the ability to access certain types of ammunition is not encompassed by the Second Amendment, that is an issue for the court to consider on the *merits*, not on a motion to dismiss for lack of standing.

Plaintiffs' vagueness challenge similarly hinges on the issue of access. Plaintiffs allege that "the provisions, in particular the undefined phrase, 'serves no sporting purpose,' inevitably leads citizens–both sellers and buyers of ammunition–to steer far wider of the 'unlawful zone' of conduct than if the boundaries of the forbidden areas were clearly marked." (Am. Compl. ¶ 71.) The result is that retailers, unsure of what constitutes ammunition that "serves no sporting purpose," halt transfers of far more types of ammunition out of fear that they may be regulated by the law. As the vagueness of the statute challenged in *Doe* arguably discouraged physicians from performing abortions, section 613.10(g) similarly discourages ammunition retailers from selling ammunition necessary for the full and meaningful exercise of Plaintiffs' Second Amendment rights. Plaintiffs are thus harmed not only by denial of access to ammunition that is *actually banned by section 613.10(g)* (whatever that may be), but by their inability to acquire ammunition that doesn't *actually fall within the scope of the ordinance*–but which they nonetheless are unable to purchase because 613.10(g)'s vagueness causes retailers to forego the sale of ammunition *beyond the intended scope of the law*.

Much like Plaintiffs' Second Amendment claims, whatever Defendants' stance regarding Plaintiffs' vagueness claim might be, that is an issue appropriate for resolution on the merits. Because Plaintiffs have pled in general terms that they will be harmed by being denied

access to ammunition in excess of what is actually prohibited, thus denying them access to constitutionally protected components of a functional firearm, dismissal of Plaintiffs' claims at this stage of the litigation is unwarranted.

III. PLAINTIFFS' CLAIMS ARE RIPE BECAUSE PLAINTIFFS HAVE SUFFERED AN INJURY-IN-FACT, NOTHING WILL BRING MORE CLARITY TO THE ISSUES, AND PLAINTIFFS WILL CONTINUE TO SUFFER GREAT HARDSHIP ABSENT REVIEW OF THEIR CLAIMS

The ripeness doctrine is "drawn both from Article III limitation on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803 (2003). While Article III ripeness, like Article III standing, is jurisdictional and mandatory, "[p]rudential considerations of ripeness are discretionary . . . ." *Thomas* 220 F.3d at 1142. Under both ripeness tests, this case is ready for judicial review.

A. Having Established Sufficient Injury to Confer Article III Standing, Plaintiffs Meet the Requirement of Constitutional Ripeness

"Sorting out where standing ends and ripeness begins is not an easy task." *Thomas*, 220 F.3d at 1138. The Ninth Circuit has noted that "the ripeness inquiry contains both a constitutional and a prudential component . . . and that the constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry." *Cal. Pro-Life Council*, 328 F.3d at 1094 n.2 (citations omitted). Because Plaintiffs have established sufficient injury to confer standing, their claims are necessarily ripe for review. *See Ariz. Right to Life*, 320 F.3d at 1007 n.6 (noting that a finding that plaintiff has suffered a harm "dispenses with any ripeness concerns").

B. Plaintiffs Meet the Further Requirement of Prudential Ripeness Because No Further Factual Development Will Make the Issues More Clear and Their Constitutional Rights Are Undermined Every Second the Court Delays Review of Their Claims

Often "when a court declares that a case is not prudentially ripe, it means that the case will be better decided later *and that the parties will not have constitutional rights undermined by the delay*." *Simmonds v. INS*, 326 F.3d 351, 357 (2d Cir. 2003) (emphasis added). Prudential ripeness thus turns on two considerations: (1) whether an issue is presently fit for judicial decision and (2) whether and to what extent the parties will endure hardship if a decision is withheld. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967). Because no additional fact would make this case better fit for review–even absent prosecution, Plaintiffs' injury is immediate and very real–and because Plaintiffs' Second Amendment rights are continuously

undermined by the existence of the challenged ordinances, Plaintiffs' claims are ripe for review.

1. Plaintiffs' Challenge Is Fit for Judicial Review Because No Further Factual Context Is Required to Clarify the Issues

The first prong of the ripeness doctrine tests whether the issues are "fit" for judicial consideration. To be so fit, the issues should be sufficiently focused to permit judicial resolution without further factual development. *See Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir. 1992). In contrast, ripeness is less likely when the factual record does not permit a necessary assessment of the effect of the challenged law on the plaintiff's conduct, *see Socialist Party v. Gilligan*, 406 U.S. 583 (972), or where the outcome "hangs on future contingencies that may or may not occur," *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1125 (9th Cir. 2009). Contrary to Defendants' assertions, this is not such a case.

Here, no further factual record is necessary to clarify the impact of the challenged ordinances on Plaintiffs' conduct, as the injury invited upon Plaintiffs by Defendants' enforcement of those laws is already apparent and very real. The harm lies in the fact that Plaintiffs have surrendered their constitutional rights out of reasonable fear of criminal liability and commendable respect for the law. That harm exists even absent an actual or imminent prosecution. And for purposes of defeating a motion to dismiss, Plaintiffs have sufficiently alleged facts that, if accepted as true, establish this injury. As such, prosecution of Plaintiffs under the ordinances would not add anything to the record necessary for the Court to pass upon the constitutionality of the challenged ordinances.

2. Plaintiffs Presently Suffer Great Hardship by the Infringement of Their Constitutional Rights and They Will Continue to so Suffer Unless and Until This Court Grants Review of Their Claims

In general, the greater the potential hardship from denying review, the greater the chance the case is ripe. Significant hardship is often found in cases in which the plaintiff faces a decision whether to comply with a statute or regulation and surrender their fundamental rights or not to comply and face criminal or civil penalties. In such cases, the plaintiff need not wait to be prosecuted and challenge the law as a defense. *See Steffel*, 415 U.S. 452; *U.S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548 (1973). As with standing, the question in these pre-enforcement review cases generally turns on the degree of certainty that the affected

party intends to engage in the proscribed conduct and the likelihood of prosecution if it does. The certainty of enforcement is informed by whether prosecuting authorities have warned of enforcement or have disclaimed an intent to enforce the challenged laws. And, as noted above, this analysis shifts in favor of petitioners when fundamental rights are denied by arguably unconstitutional laws that coerce law-abiding citizens to forego such rights or violate the law.

The harm inflicted on Plaintiffs in this case, which has been detailed extensively above, is clear; as is Plaintiffs' intention to engage in constitutionally protected conduct, but for the enforcement of the challenged ordinances. (Am. Compl. ¶¶ 23-25, 37-39.) And enforcement of these laws is highly probable as both law enforcement officers and public officials have indicated their intention to enforce them, and they have not disavowed any intention to continue so doing. (Am. Compl. ¶¶ 52-55, 61-62, 65-67.)

Because Plaintiffs' constitutional rights are infringed every minute the challenged ordinances are allowed to stand, forcing Plaintiffs to forego protected conduct or risk criminal prosecution, the harm imposed from denying review is severe, tilting the balance of the prudential ripeness analysis strongly in Plaintiffs' favor. Viewed together with the fact that little factual development is required before the Court can properly consider this case, Plaintiffs' claims are now ripe for review. Accordingly, the Court should exercise its jurisdiction over this case and refuse to exercise its discretion to dismiss on ripeness grounds at this stage.

CONCLUSION

Based on the reasons set forth above, and in light of the fact that motions to dismiss for lack of jurisdiction on fact-dependant bases are generally disfavored, Plaintiffs have alleged facts sufficient to establish both standing and ripeness. Plaintiffs thus respectfully request that Defendants' motion to dismiss be denied in full. Alternatively, should this Court grant the motion, Plaintiffs request leave to amend.

Date: March 23, 2011

MICHEL & ASSOCIATES, PC

/S/
C. D. Michel
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION, Plaintiffs vs. CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY; POLICE CHIEF GEORGE GASCÓN, in his official capacity, and Does 1-10, Defendants.	**CASE NO.: CV-09-2143-RS** **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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Sherri Sokeland Kaiser, Deputy City Attorney
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I declare under penalty of perjury that the foregoing is true and correct. Executed on March 23, 2011.

/S/
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JEFF GODOWN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASOCIATION,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR EDWIN LEE, in his official capacity; ACTING POLICE CHIEF JEFF GODOWN, in his official capacity, and Does 1-10,

Defendants.

Case No. C09-2143 RS

NOTICE OF MOTION AND MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF JURISDICTION; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES
Fed. R. Civ. P. 12(b)(1)

Hearing Date: April 7, 2011
Time: 1:30 p.m.
Place: Courtroom 3, 17th Floor

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

NOTICE AND MOTION

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD: Defendants hereby move to dismiss the amended complaint in this matter in its entirety under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. The hearing on the motion will take place at 1:30 p.m. on Thursday, April 7, 2011, or as soon thereafter as may be heard, before the Honorable Richard Seeborg in Courtroom 3 on the 17th Floor of the United States District Court, San Francisco Division, 450 Golden Gate Ave., San Francisco, California. The motion shall be based on this notice of motion and motion, the supporting memorandum of points and authorities and request for judicial notice, the arguments of counsel at the hearing, and any such further matters as the Court deems appropriate.

STATEMENT OF ISSUES TO BE DECIDED

1) Have plaintiffs established standing to make a pre-enforcement challenge to local laws under the Second Amendment when they do not allege that they have are being prosecuted or face a genuine threat of imminent prosecution under those laws, and do not allege any incidents of prior enforcement of these laws against anyone, much less homeowners who used their weapons in self-defense in their home?

2) Have plaintiffs established standing to challenge a permit condition that prohibits licensed, San Francisco firearms dealers from selling certain types of particularly dangerous ammunition when they do not allege that they themselves are licensed San Francisco gun dealers, that any such gun dealer sells prohibited ammunition or has had its permit revoked on the basis of prohibited ammunition sales, that any such gun dealer even wishes to sell such ammunition, or that a gun dealer affected by the challenged permit condition faces an obstacle to enforcing its own rights?

3) Do plaintiffs' allegations indicate that their federal constitutional claims are ripe for adjudication when their allegations establish at most the existence of the challenged laws and a general statement of the government's intent to enforce or failure to disavow them; plaintiffs' allegations fail to demonstrate that any state authority has rendered an opinion construing the challenged municipal laws to reach the conduct in which plaintiffs would like to engage; and plaintiffs themselves face no penalties or other hardship should a licensed gun dealer violate the ammunition sales prohibition?

INTRODUCTION

Defining the limits of the government's ability to regulate guns and ammunition consonant with the Second Amendment poses difficult constitutional questions that should be answered carefully, little by little, and not until they become unavoidable. Only in this way can federal courts avoid intruding on the powers of the coordinate branches of government and the States, powers they must guard as zealously as their own. And only in this way can courts draw on the fullest possible measure of prior courts' wisdom and experience to guide and inform their own judgments. Thus, the ripeness and standing constraints imposed on federal jurisdiction by Article III of the United States Constitution help safeguard federal courts from issuing erroneous and premature decisions. Where courts confront constitutional questions, these jurisdictional limitations take on heightened importance, because avoidable mistakes injure not only the parties before the court and all of the parties to follow, but the fabric of democratic self-government itself. This is why courts always avoid constitutional questions if they can, whether because of a constitution limit on their jurisdiction or simply as a matter of prudence.

These considerations require the Court to dismiss plaintiffs' amended complaint as an inadequately crystallized, primarily ideological dispute over which it lacks jurisdiction. Fewer than three years ago, for the first time in the Nation's history, the Supreme Court announced that each individual has a Second Amendment right to bear arms: specifically, the right to keep and use handguns in the home for self-defense. *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008). And still less than a year ago, it further determined that the Second Amendment applies to states and localities as well as the federal government. *McDonald v. Chicago,* 130 S.Ct. 3020, 3050 (2010) (plurality opinion). In the giddy aftermath of these decisions, the National Rifle Association and others with similar interests appear have embarked on a campaign to identify gun-control laws around the country that they could challenge under *Heller* to cleanse them from the books. Or at least that's the most likely explanation for this complaint.

Because as it turns out, the three local gun-related ordinances that the plaintiffs challenge here have never been enforced, or even inspired any threat of enforcement, against any of the plaintiffs. One of the laws doesn't even apply to private citizens like the plaintiffs and can never be enforced

against them. They have no personal stake in the matter, no crystallized injury-in-fact that confers them with standing to present their concerns to the Court. And the constitutional questions they pose can wait to be answered another day, because any claim that plaintiffs may eventually suffer injury are entirely speculative, and such injuries may never occur.

These standing and ripeness requirements separate those plaintiffs with a real story to tell and the pressing need to tell it from the ideologues, who can offer only abstract talking points and policy preferences. Plaintiffs' failure to allege that they have suffered any concrete and actual or imminent injury from the ordinances they challenge reveals them as cause-based crusaders. While our form of government thrives on that sort of civic engagement in the public square, the Constitution closes the door to generalized and premature assertions of rights in federal court. This Court should dismiss their complaint for lack of subject matter jurisdiction.

BACKGROUND

On August 24, 2009, the National Rifle Association (NRA), along with six San Francisco residents and the San Francisco Veteran Police Officers Association (SFVPOA) (collectively, plaintiffs), filed an amended complaint against the City and County of San Francisco, its Mayor, and its Chief of Police (collectively, defendants or the City).[1] Plaintiffs' suit is a pre-enforcement challenge to three local gun-related ordinances, each of which they allege to be in violation of the Second Amendment, and one of which they also believe to be unconstitutionally vague.

A. Police Code Section 4512: The Safe Storage Law

The first challenged ordinance, San Francisco Police Code section 4512,[2] is designed to prevent accidental shootings in the home. While it allows San Francisco residents to carry unsecured handguns freely in their homes at any time, the safe storage law requires the gun owner to apply a trigger lock or store the handgun in a locked container when it is not under such direct, personal

[1] The individuals holding those offices have changed since this suit was filed and may change again before it is resolved. Given that the Mayor and the Chief of Police are sued in their official capacities only, the City stipulates that the proper defendant at any given time is the Mayor or Chief of Police then in office.

[2] All further statutory references are to the San Francisco Police Code unless otherwise indicated. The full text of each San Francisco ordinance referenced in this Memorandum has been reproduced in Appendix A for the convenience of the Court.

control. Failure to do so may be charged as a misdemeanor. *See* App. A, § 4512(a). Plaintiffs assert that the safe storage law violates the Second Amendment because a handgun that must be locked when it is stored will necessarily be unavailable in a self-defense emergency for the time it takes to unlock it. Am. Compl. ¶ 50. They assert that the Second Amendment does not tolerate any obstacle between them and their loaded handguns, no matter how quick and simple to remove, and no matter whether it protects against unintended uses of that firearm by children or others.

But there are no allegations in the amended complaint to indicate that any of the plaintiffs has ever been prosecuted or faced a threat of prosecution under the safe storage law. Plaintiff David Golden alleges that "a city official came unannounced to [his] San Francisco residence and demanded to see his firearms – firearms he legally possessed – to determine whether they were properly stored in a locked box" (Am. Compl. ¶ 53), but he provides no further detail nor any allegation that this episode resulted in his prosecution or a genuine threat of prosecution under the safe storage law.

Instead, plaintiffs collectively allege that they "presently intend to keep their handguns within the home in a manner ready for immediate use to protect themselves and their families from attack by violent intruders, as is their right under the Second Amendment," and that they "forthwith would keep their handguns operable within the home . . . if this court declared the ordinances challenged herein void and unenforceable." Am. Compl. ¶¶ 22-23. They also assert that an unnamed City official at some point publicly declared to someone in some context that City intended to enforce the law: "Just because you legally possess a gun in the sanctity of your locked home doesn't mean that we're not going to walk into that home and check to see if you're being responsible and safe in the way you conduct your affairs." *Id*. at ¶ 52. They complete their jurisdictional allegations by asserting that the City has not, to their knowledge at least, disavowed that intent or instructed its police officers not to enforce the law. *Id*. at ¶ 55.

B. Section 613.10(g): Prohibiting Sale Of Particularly Dangerous Ammunition

Next, plaintiffs challenge Section 613.10(g), which prohibits a licensed San Francisco gun shop from selling, leasing or otherwise transferring to another person ammunition that has been enhanced to increase the damage it inflicts on the human body, such as fragmenting bullets, expanding bullets, bullets that project shot or disperse barbs into the body, or other bullets that serve no sporting

purpose. *See* § 613.10(g)(1)-(3). Plaintiffs claim that the Second Amendment prohibits the City from restricting the sale of this unusually dangerous ammunition because it is "the very type of ammunition most suitable for self-defense." Am. Compl. ¶ 58. According to the plaintiffs, hollow-point and similar ammunition "has greater stopping power and is less likely to pass through the intended target or ricochet off hard surfaces and injure innocent bystanders." *Id*. They assert that the Second Amendment prohibits the City from restricting the sale of ammunition that enhances the safety of a shooter firing in self-defense, even though such ammunition would be equally available to aggressors, and even though the safety of the shooter comes at the expense of more grievous injury to the victim.

Once again, there is no allegation that the City has enforced Section 613.10(g) against any of the plaintiffs, nor that they currently face a genuine threat of enforcement. Indeed, the ordinance is a permit condition that only applies to licensed San Francisco firearms dealers, and plaintiffs do not allege that they hold such permits or intend to apply for them. And while plaintiffs do make a conclusory allegation that they "are prohibited from purchasing" the covered types of ammunition (Am. Compl. ¶ 7), they do not allege facts demonstrating that any of them tried but was unable to purchase such ammunition, nor that any of them has been prevented from possessing or using it in self-defense. They also do not claim that any of them has suffered injury to their person, family or property from a pass-through or ricocheting bullet, whether or not discharged in self-defense.

Plaintiffs raise a second challenge to Section 613.10(g), alleging that it is unconstitutionally vague and overbroad in violation of their Fifth Amendment right to due process, particularly in regard to its ban on selling ammunition that "serves no sporting purpose." Am. Compl. ¶¶ 69-73. Although plaintiffs claim that Section 613.10(g) is defective both "on its face and as applied" (*id*., ¶ 69), as with all of their other claims, they nowhere allege facts showing that it has ever been applied, to them or to anyone else.

C. Section 1290: The Discharge Ban

Finally, plaintiffs also challenge a somewhat unusual section of the Police Code that, in one breath, prohibits firing both firearms and fireworks. *See* App. A, § 1290 ("No person or persons, firm, company, corporation or association shall fire or discharge any firearms or fireworks of any kind or description" within City limits.) This section and its precursors hail back more than a century, to at

least 1892, when the provision was Section 22 of General Order 1,587 of the Board of Supervisors. *See* Request for Judicial Notice, Ex. A at 35-36. Old Section 22 delimited a central area in the City bounded by various City streets within which one could not discharge any "firearms, firecrackers, bombs or fireworks." *Id.* at 36. This prohibited shooting-bombing-exploding area also extended to within "300 yards from any public highway, or upon any ground set apart as a cemetery or public square, or park, or within three hundred yards of any dwelling-house." *Id.* Even so, every person explicitly retained the right to "shoot[] destructive animals within or upon his own inclosure." *Id.* at 36. As the City has changed over time and non-residential areas have dwindled to the vanishing point (leaving, one hopes, only pets, raccoons and rodents to maraud in people's yards), these historical limitations on the scope and extent of Section 22 have fallen away. Modern Section 1290 appears as an unelaborated ban on all firearms discharges within the City.

Despite the fact that there clearly are implied exceptions to the discharge ban, at least to keep the police from arresting each other at the S.F.P.D. firing range, Plaintiffs charge that Section 1290 violates the Second Amendment because it lacks an explicit exception for discharging handguns inside the home for lawful self-defense purposes. Am. Compl. ¶ 64. Given the well-established statutory right under state law to use reasonable force to protect one's person, property, and the person of another (Cal. Civ. Code § 50), and state law's express declaration that killing a home invader in self-defense is a justifiable homicide (Cal. Penal Code § 197), the notion that Section 1290 is ever enforced against anyone for discharging a handgun in the home in self-defense seems implausible on its face.

As one would expect, and as with the other challenged ordinances, plaintiffs nowhere allege that the City has prosecuted or stands ready to prosecute any one of them for violating Section 1290, nor even that any State authority has construed Section 1290 to reach discharges in the home for self-defense. And while they do claim that "San Francisco police have advised homeowners, who have otherwise lawfully discharged firearms in self-defense to thwart late-night criminal attacks in their homes, that they would be arrested for discharging their firearms unless they stated the discharges were 'accidental' . . . and that there was no exception for discharges within one's home while defending oneself from criminal attack," (*id.* ¶ 65), they do not allege that the City has ever arrested or

prosecuted anyone under Section 1290 for discharging a firearm in self-defense under any circumstances, much less a homeowner fending off a home invader in the middle of the night.

Taken singly or together, the allegations in the amended complaint fail to establish that the plaintiffs have standing to bring any of their claims, or that the claims are ripe for judicial consideration. Because the plaintiffs bear the burden of affirmatively establishing both before this Court can hear their claims, the City now brings this motion to dismiss the amended complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

ARGUMENT

I. TO AVOID DISMISSAL, PLAINTIFFS MUST MAKE PLAUSIBLE FACTUAL ALLEGATIONS THAT ESTABLISH SUBJECT MATTER JURISDICTION IN THIS COURT.

Federal Rule of Civil Procedure 12(b)(1) provides that a complaint must be dismissed if the plaintiffs' allegations fail to establish subject matter jurisdiction. "The federal courts are presumed to lack jurisdiction, unless the contrary appears affirmatively from the record." *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) ("*Gun Rights Committee*") (internal quotation marks omitted). The burden of establishing standing rests solely on the plaintiffs. *Renne v. Geary*, 501 U.S. 312, 316 (1991).

For purposes of a motion to dismiss, this Court must accept as true all factual allegations that have a plausibility of truth, but not mere "conclusory statements" or implausible allegations. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In fact, federal courts have long recognized their inherent power—and, in constitutional cases, duty—to independently assess not only the legal sufficiency, but also the likely truth of jurisdictional allegations. *See Poe v. Ullman*, 367 U.S. 497, 501 (1961). Just as legally insufficient allegations fail to establish federal jurisdiction, implausible allegations are "too fragile a foundation for indulging in constitutional adjudication." *Id.*

Therefore, to survive a motion to dismiss under Rule 12(b)(1), a complaint raising constitutional questions, like this one, must contain plausible factual allegations that together establish federal subject-matter jurisdiction. For each of the many independent reasons that follow, the amended complaint in this case comes nowhere close.

II. THE ALLEGATIONS IN THE AMENDED COMPLAINT FAIL TO DEMONSTRATE THAT ANY OF THE PLAINTIFFS HAS STANDING TO CHALLENGE ANY OF THE ORDINANCES.

Under Article III of the U.S. Constitution, the judicial branch is empowered to adjudicate only "Cases" or "Controversies." U.S. Const. Art. III, § 1. This limitation defines and safeguards the separation of powers between the judiciary and coordinate branches of government by preventing such intrusions as advisory opinions or preemptive injunctions, and it necessarily circumscribes the kinds of disputes the federal courts can hear and resolve. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Although portions of the standing doctrine reflect prudential considerations rather than constitutional requirements, "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Id*. Accordingly, a plaintiff who seeks to invoke the jurisdiction of a federal court must demonstrate standing.

In this case, the standing analysis reveals that the plaintiffs are entirely unsuited to press their asserted claims, and the Court must dismiss the amended complaint.

A. Plaintiffs' Allegations Fail To Demonstrate The "Irreducible Constitutional Minimum" Of An Injury-In-Fact.

One "irreducible constitutional minimum of standing" is injury-in-fact, which requires every plaintiff to show "an invasion of a legally protected interest which is (a) concrete and particularized … and (b) 'actual or imminent, not "conjectural" or "hypothetical." ' " *Id*. (citations omitted). A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Id*. at 561 n.1. If the plaintiff has not yet suffered an actual injury from the complained-of law or conduct, then "imminent" injury may also be sufficient to show injury-in-fact. But imminence exists only where a plaintiff can show that the injury is "*certainly* impending" or has a "high degree of immediacy, so as to reduce the possibility of deciding a case in which no injury would have occurred at all." *Id*. at 564 n.2 (emphasis in original) (internal quotation marks and citation omitted).

In the context of constitutional challenges to the City's ordinances, these standing concerns require the plaintiff to show that he or she is actually being prosecuted or, at a minimum, has received

a personalized threat of imminent prosecution under the challenged law.[3] "The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy with the meaning of Article III." *Stoianoff v. State of Montana*, 695 F.2d 1214, 1223 (9th Cir. 1983). Nor does standing flow from a simple "ideological" interest in seeing the statute invalidated. *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908, 918 (9th Cir. 2004).

But at the other end of the spectrum, neither is it necessary "that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights," so long as he or she faces a genuine, individualized threat of imminent prosecution. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Steffel challenged the constitutionality of a criminal trespass statute that the police had twice invoked to stop him from passing out handbills against the Vietnam War in front of a local shopping mall. Unwilling to be arrested, Steffel complied both times the police warned him to stop handbilling or face arrest and prosecution. In contrast, his companion on the second occasion continued handbilling—and was promptly arrested and arraigned on a criminal trespass charge. Moreover, during the course of the litigation, the defendant officials stipulated that Steffel would likewise be arrested for criminal trespass if were ever to ignore the order to cease handbilling. *Id*. at 455-56. On these facts, the Court found a sufficiently concrete and imminent threat of prosecution under the challenged law to support standing. *Id*. at 459.

In *Carey v. Population Services International*, 431 U.S. 678, 682 (1977), plaintiff Population Planning Associates, Inc. (PPA), a mail-order contraceptives distributor in North Carolina, brought a challenge to the constitutionality of a New York criminal statute prohibiting the display, distribution, and advertising of contraceptives under certain circumstances. PPA did business in New York and routinely violated the New York restrictions. Various officials became aware of these violations, and PPA received two letters documenting violations and requesting future compliance. The second letter also threatened PPA, warning that its continued failure to comply would result in the matter being

[3] This rule has been relaxed for First Amendment and abortion-related cases due to their unique considerations. See, *e.g.*, *Doe v. Bolton*, 410 U.S. 179 (1973) (abortion); *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908, 917 (9th Cir. 2004) (same); *Washington Mercantile Assoc. v. Williams*, 733 F.2d 687, 688-89 (9th Cir. 1984) (First Amendment). Under controlling Ninth Circuit precedent, it is stringently applied to other types of constitutional claims. *See San Diego County Gun Rights Committee v. Reno*, 98 F.3d 1121, 1129-30 (9th Cir. 1996).

referred to the Attorney General for legal action. In addition, PPA received a report from inspectors at the State Board of Pharmacy that documented that PPA had violated the law and been warned to stop. *See id.* at 682-83. In reliance on *Steffel*, the Court found these threats of enforcement sufficiently imminent to support standing, even though no legal action had yet been initiated against PPA. *Id*. at 684 n.3.

In *Poe*, in contrast, the Supreme Court denied standing to plaintiffs seeking a similar declaration that a Connecticut statute prohibiting the use of contraceptives was invalid. 367 U.S. at 501. Unlike PPA and its history of actual tangles with officials, the plaintiffs in *Poe* alleged only that the State's Attorney had declared that he intended to prosecute any violations of Connecticut law, including the use of and advice concerning contraceptives. *Id*. at 500-01. The Court suggested that such an allegation is insufficient to show standing, because it lacks the required immediacy. *Id*. at 501. In addition, the Court noted that the challenged statute, which had been on the books since 1879, appeared to have gone unenforced but for a single prosecution twenty years earlier, even though it was common knowledge that contraceptives were widely sold at Connecticut drug stores. *Id*. at 501-02. In the Court's view, the fact that the statute had so rarely been used made it highly improbable that the plaintiffs faced an imminent threat of prosecution. *Id*. at 502.

And in *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1, 4 (9th Cir. 1974), plaintiffs were again denied standing for lack of an imminent threat of enforcement. The Band sought a declaratory judgment and injunction against the San Diego County gambling ordinance so that it could establish a card room on its reservation. To show injury-in-fact, the Band alleged that (1) even before its decision to open a card room, several tribe members had been arrested for impromptu gambling at their annual fiestas; (2) Sheriff's Department representatives had informed individual tribe members that gambling on the reservation was illegal, and that the San Diego gambling ordinance would be enforced against the Band; and (3) after the Band requested a written statement of the county's view of its jurisdiction to enforce the gambling ordinance on reservation land, the Sheriff responded that all gambling laws would be enforced on the reservation to the same extent as in the rest of the county. *Id*. at 3-4. On these facts, and in reliance on *Poe v. Ullman*, the court concluded that the threat alleged by the Band "is clearly of a general nature." *Id*. at 4. Even though the threats were

directed to plaintiff, and even though they addressed the very law under dispute, at bottom they boiled down to nothing more the assertion that the authorities would enforce the law. That proposition is insufficient to confer standing as a matter of law. *Id.*

These decisions and the distinctions they draw together provide the foundation for a case with facts so similar to the case at bar that it directly controls this lawsuit. In *Gun Rights Committee*, 98 F.3d 1121, three individual and two associational plaintiffs brought a facial constitutional challenge to a federal law banning semiautomatic assault weapons and large capacity ammunition feeding devices for a period of ten years. *Id*. at 1124. Like the plaintiffs here, none of the individual plaintiffs had been arrested or prosecuted under the challenged law, though they wished to engage in conduct it prohibited and intended to do so. *Id*.

As the cases just discussed required, the Ninth Circuit held that the *Gun Rights Committee* plaintiffs lacked standing. Rejecting their argument that they were injured simply by "the chilling of their desire and ability" to engage in the prohibited conduct (*id*. at 1129), the Court explained that "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *See id*., quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) and further citing to *Steffel*, 415 U.S. at 476 (Stewart, J. concurring). The only remaining allegations of harm left to the *Gun Rights Committee* plaintiffs boiled down to complaints about the "mere existence of a statute, which may or may not ever be applied to [them]." *Gun Rights Committee*, 98 F.3d at 1121. That, admonished the court, cannot alone support standing. *Id*. (citing *Stoianoff*, 695 F.2d at 1223); *see also id*. ("[T]he mere possibility of criminal sanctions applying does not of itself create a case or controversy" (internal quotation marks omitted)). Further, the *Gun Rights Committee* plaintiffs, like the plaintiffs in this case, also failed to establish that they had received a specific threat of an imminent intent to prosecute them.[4] *Id*. at 1127-28. And they did not even show

[4] In the case at bar, Plaintiff David Golden makes a conclusory allegation that he "has been harassed by city agencies regarding the manner of storage of firearms in his home," (Am. Compl. ¶ 18), but there is no indication that this "harassment" took the form of a specific threat by law enforcement officials to prosecute Mr. Golden for a violation of the safe storage law. He further alleges that, "[o]n May 6, 2009, a city official came unannounced to [his] San Francisco residence and demanded to see his firearms – firearms he legally possessed – to determine whether they were properly stored in a locked box." *Id*. ¶ 53. This account likewise fails to establish a constitutionally sufficient injury. Whether the unnamed city official is a member of law enforcement and the reason why the official wanted to make sure any guns were secured remain unexplained. Indeed, Golden

a history of past enforcement, which might have bolstered their argument that they faced a strong governmental response if they violated the law. *Id.*

Gun Rights Committee, and its holding that the plaintiffs lacked standing to challenge a gun law that they believed to be unconstitutional and intended someday to violate, directly controls this case. Indeed, the plaintiffs here make an even weaker showing of any sort of enforcement-related injury, because they allege that they intend to obey the laws unless and until this Court invalidates them. Thus, it is hardly surprising that none of them alleges having received a specific warning from a prosecuting authority that they were personally in danger of prosecution on the basis of their actions. Nor do plaintiffs allege any history of past enforcement of the challenged laws against others who are similarly situated, which might lend some credibility to a plaintiff's fear of prosecution in a case in which the plaintiff's conduct might trigger efforts to enforce the law (*see LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000))—though this clearly is not such a case. Rather, they allege only their information and belief that the City has not affirmatively disavowed an intent to enforce the challenged laws. While this might be a consideration in a First Amendment case, in which the simple chilling effect of possible enforcement "tilts [the inquiry] dramatically toward a finding of standing," (*id.*), once again this is not such a case.

In sum, because the plaintiffs in this case do not allege facts that demonstrate—or even hint—that they have suffered an actual injury-in-fact, face a genuine threat of imminent prosecution, or ever intend to violate the challenged laws, they are in an even worse position to establish standing than the plaintiffs in *Gun Rights Committee*, who utterly failed to do so. Of that case, the Ninth Circuit acidly remarked: "[I]t would be difficult to imagine a circumstance under which plaintiffs could have made a more feeble showing of injury-in-fact." 98 F.3d at 1133. Of course, they have not yet had the opportunity to review the amended complaint in this case.

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does not even allege that the safe storage law was at issue, and it is quite possible that the official simply wanted to assure him- or herself that Golden did not have a loaded weapon in easy reach during the visit. But one thing is crystal clear: the critical allegations for purposes of standing—that Golden violated the safe storage law and was arrested, prosecuted, or threatened with prosecution in the wake of this incident—are all missing.

B. The Plaintiffs Lack Standing To Challenge Section 613.10(g) For The Further Reason That They Are Barred From Asserting The Rights Of Third Parties Who Face No Obstacle To Defending Their Own Rights Should They So Choose.

Prudential concerns as well as constitutional requirements must guide the courts in evaluating standing when a plaintiff makes a constitutional challenge without showing at least a threat of imminent prosecution under the statute. *See Poe*, 367 U.S. at 502. The Supreme Court has "developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing on a large part of all the constitutional questions pressed upon it for decision." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 341, 346 (1936). The doctrine of prudential standing requires the court "to consider . . . whether the alleged injury is more than a mere generalized grievance, whether the plaintiff is asserting her own rights or the rights of third parties, and whether the claim falls within the zone of interests to be protected or regulated by the constitutional guarantee in question." *Wolfson v. Brammer*, 616 F.3d 1045, 1056 (9th Cir. 2010) (internal quotation marks omitted). Here, in addition to improperly asserting merely generalized grievances in relation to all of their claims, *see* Section II.A, *supra*, plaintiffs lack prudential standing because they improperly assert the rights of third parties in their challenge to Section 613.10(g).

Although the Constitution does not strictly bar third-party standing, it is strongly disfavored on a prudential basis because, like the other circumstances and practices over which federal courts do not accept jurisdiction, it threatens to bring issues to the Court that do not necessarily require decision. *See Singleton v. Wulff*, 428 U.S. 106, 113-14 (1976) ("[T]he courts should not adjudicate [a third party's constitutional] rights unnecessarily, and it may be that the holders of those rights . . . do not wish to assert them.")

Thus, without a showing that persons whose rights are directly affected by a challenged law face "some genuine obstacle" to asserting their own rights, third party standing is foreclosed. *Id*. at 115-16. So, for example, a physician may assert the rights of women seeking abortions, because they face significant obstacles in unavoidable mootness and public exposure of their most private decisions if they seek to assert their rights themselves. *Id*. at 117. Likewise, a criminal defendant may assert the equal protection rights of potential jurors dismissed on the basis of race, because the dismissed jurors themselves will not have sufficient information or incentive to do so on their own. *Powers v. Ohio*,

499 U.S. 400, 414-15 (1991). And the foreign-born children of American mothers were allowed to assert their mothers' equal protection rights to have their children awarded U.S. passports on the same terms as foreign-born children of American fathers, because the challenged law applied only to children born before 1932, and by the time the claim was brought the mothers had died. *Wauchope v. U.S. Dept. of State*, 985 F.2d 1407, 1411 (9th Cir. 1993).

In this case, plaintiffs seek to assert the rights of San Francisco gun dealers to sell particular types of ammunition that plaintiffs believe are entitled to Second Amendment protection, and those gun dealers' due process rights to clarity in defining ammunition with "no sporting purpose." But they do not explain why no gun dealers themselves are among the plaintiffs in case, nor do they identify any "genuine obstacle" local gun dealers might face to asserting their own rights directly. And certainly none is evident.

Accordingly, plaintiffs lack third-party standing to challenge Section 613.10(g), and this is an independent reason why their constitutional challenges to the unusually dangerous ammunition regulation must be dismissed. To echo another of the Ninth Circuit's observations in *Gun Rights Committee*, "[t]o grant plaintiffs standing to challenge the constitutionality of the [gun law] in the circumstances of this case would … throw all prudential caution to the wind." 98 F.3d at 1133. Indeed.

III. THE ALLEGATIONS IN THE AMENDED COMPLAINT ALSO FAIL TO ESTABLISH THAT PLAINTIFFS' CLAIMS ARE RIPE.

The ripeness doctrine has developed "to separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action." *Portman v. County of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993). "[W]here it is impossible to know whether a party will ever be found to have violated a statute, or how, if such a violation is found, those charged with enforcing the statute will respond, any challenge to the statute is premature." *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 986 (9th Cir. 1991). Accordingly, where, as in this case, the plaintiffs have not established a sufficiently imminent injury, the standing and ripeness inquiries largely overlap, and both independently bar access to the federal

courthouse. *Wolfson*, 616 F.3d at 1058; *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138-39 (9th Cir. 2000) (en banc).

In addition, there is a separate, prudential component of the ripeness doctrine that plaintiffs must satisfy to establish federal jurisdiction. Prudential ripeness focuses on two elements: the fitness of the issues for judicial decision and the hardship to the parties of withholding consideration. *See Wolfson*, 616 F.3d at 1060. As with constitutional standing, prudential standing, and constitutional ripeness, plaintiffs' allegations fail to establish that their claims satisfy the prudential ripeness doctrine.

In particular, the allegations demonstrate that this case is extraordinarily unfit for judicial consideration, because rendering an opinion would require the Court to make difficult constitutional decisions of first impression in a vacuum, with precious little precedent and no facts at all to guide it. The need to avoid the unnecessary consideration of constitutional challenges is particularly acute where, as here, a federal court is asked to strike down a legislative enactment. The power to nullify an act of a coordinate branch of government, and sometimes the act of a separate if also subordinate government, must be wielded cautiously. That is why a federal court " 'can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here.' " *Poe*, 367 U.S. at 504 (quoting *State of Georgia v. Stanton*, 6 Wall. 50, 75 (1868)). For this prudential reason, courts should wait to adjudicate such constitutional questions until the decision becomes one of "strict[] necessity," that is, "only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action." *Id.* at 504 (internal quotation marks omitted); *id*. at 506 (chiding that a party cannot "invoke the power of [the] Court to obtain constitutional rulings in advance of necessity."). *Id*. at 506.

Moreover, federal courts are routinely cautioned to use their prudential power to avoid adjudicating facial constitutional challenges, particularly where the plaintiff fails to elaborate how the statute has caused any concrete injury that could focus the court's analysis. According to the Supreme Court,

> [F]acial challenges are best when infrequent. See, *e.g.*, *United States v. Raines*, 362 U.S. 17, 22 (1960) (laws should not be invalidated by 'reference to hypothetical cases'); *Yazoo & Mississippi Valley R. Co. v. Jackson Vinegar Co.*, 226 U.S. 217, 219-220 (1912) (same). Although passing on the validity of a law wholesale may be efficient in the abstract, any gain is often offset by losing the lessons taught by the particular, to which common law method normally looks. Facial adjudication carries too much promise of 'premature interpretatio[n] of statutes' on the basis of factually barebones records. *Raines*, *supra*, at 22.

Sabri v. United States, 541 U.S. 600, 609-610 (2004); *see also Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) ("Exercising judicial restraint in a facial challenge frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy." (internal quotation marks omitted).)

That is certainly the case here. Without any sort of factual record to guide the Court, it is impossible to know how the challenged ordinances operate outside the realm of hypothetical vagaries. As the *Gun Rights Committee* Court concluded its opinion, "to hold that [plaintiffs'] claims are ripe for adjudication in the absence of any factual context would essentially transform district courts into the general repository of citizen complaints against every legislative action." 98 F.3d at 1133. This is yet another reason why the Court must dismiss the amended complaint.

CONCLUSION

For all of the reasons set forth above, the City respectfully requests that the Court dismiss the amended complaint in its entirety for lack of subject matter jurisdiction.

Dated: February 10, 2011

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
SHERRI SOKELAND KAISER
Deputy City Attorneys

By: s/Sherri Kaiser
SHERRI SOKELAND KAISER

Attorneys for Defendants City and County of San Francisco, Mayor Edwin Lee and Acting Police Chief Jeff Godown

APPENDIX A

(Challenged provisions of the San Francisco Police Code.)

* * *

ARTICLE 9: MISCELLANEOUS CONDUCT REGULATIONS
SEC. 613.10. - LICENSE—CONDITIONS.

In addition to all other requirements and conditions stated in this Article, each license shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the license by the Chief of Police:

(a) The business shall be carried on only in the building located at the street address shown on the license, except as otherwise authorized under Section 12071(b)(1) of the California Penal Code.

(b) The licensee shall comply with Sections 12073, 12074, 12076, 12077 and 12082 of the California Penal Code, to the extent that the provisions remain in effect.

(c) The licensee shall not deliver any pistol or revolver to a purchaser earlier than 10 days after the application for the purchase, lease or transfer, unless otherwise provided by State or federal law.

(d) The licensee shall not deliver any firearm to a purchaser, lessee or other transferee unless the firearm is unloaded and securely wrapped or unloaded in a locked container.

(e) The licensee shall not deliver any firearm, firearm ammunition, or firearm ammunition component to a purchaser, lessee or other transferee unless the purchaser, lessee or other transferee presents clear evidence of his or her identity and age to the seller. As used in this Section, "clear evidence of his or her identity and age" includes, but is not limited to, a motor vehicle operator's license, a State identification card, an armed forces identification card, an employment identification card which contains the bearer's signature and photograph, or any similar documentation which provides the seller reasonable assurance of the identity and age of the purchaser.

(f) The licensee shall not display in any part of the premises where it can be readily seen from outside the premises, any firearm, firearm ammunition or imitation thereof, or placard advertising the sale or other transfer thereof, other than a sign identifying the name of the business.

(g) The licensee shall not sell, lease or otherwise transfer to any person any ammunition that:

(1) Serves no sporting purpose;

(2) Is designed to expand upon impact and utilize the jacket, shot or materials embedded within the jacket or shot to project or disperse barbs or other objects that are intended to increase the damage to a human body or other target (including, but not limited to, Winchester Black Talon, Speer Gold Dot, Federal Hydra-Shok, Hornady XTP, Eldorado Starfire, Hollow Point Ammunition and Remington Golden Sabre ammunition; or

(3) Is designed to fragment upon impact (including, but not limited to, Black Rhino bullets and Glaser Safety Slugs).

This subsection does not apply to conventional hollow-point ammunition with a solid lead core when the purchase is made for official law enforcement purposes and the purchaser is authorized to make such a purchase by the director of a public law enforcement agency such as the Chief of the San Francisco Police Department or the Sheriff of the City and County of San Francisco.

(h) The licensee shall post within the licensee's premises a notice stating the following: "THE CALIFORNIA PENAL CODE PROHIBITS THE SALE OF FIREARMS OR FIREARMS AMMUNITION TO PERSONS UNDER THE AGE OF 18, AND FURTHER GENERALLY PROHIBITS THE SALE OF A PISTOL, REVOLVER, OR FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON TO ANY PERSON UNDER THE AGE OF 21."

The posted notice shall be in a conspicuous location, shall be in 36 point type block letters in black ink on a white background, and shall be located so that the notice

can easily and clearly be seen by all prospective purchasers of firearms and firearm ammunition.

(i) The licensee shall not sell, lease or otherwise transfer any ultracompact firearm except as authorized by Section 613.10-2 or any 50 caliber firearm or 50 caliber cartridge except as authorized by Section 613.10-1.

(j) Any license issued pursuant to this Article shall be subject to such additional conditions as the Chief of Police finds are reasonably related to the purpose of this Article.

(k) The licensee shall comply with the requirements of Section 613.10-3 and shall, in addition, post the appropriate notice or notices, as specified below, in a conspicuous location at the entrance of the licensee's premises (or at the entrance to the separate room or, enclosure pursuant to Section 613.10-3(c)). Such notice shall be in 36 point type block letters in black ink on a white background.

(1) Licensees that sell, lease or otherwise transfer firearms, other than firearms capable of being concealed on the person, shall post a notice at the entrance to the premises (or at the entrance to the separate room or enclosure pursuant to Section 613.10-3(c)) stating the following:

"THE SAN FRANCISCO POLICE CODE REQUIRES THAT FIREARMS DEALERS PROHIBIT ENTRY BY PERSONS UNDER AGE 18, AND FURTHER PROHIBITS ENTRY BY (1) PERSONS CONVICTED OF A VIOLENT OFFENSE WHO ARE PROHIBITED FROM POSSESSING FIREARMS PURSUANT TO CALIFORNIA PENAL CODE SECTIONS 12021 OR 12021.1; AND (2) PERSONS WHO ARE CURRENTLY PROHIBITED FROM POSSESSING FIREARMS BECAUSE THEY HAVE BEEN ADJUDICATED AS MENTALLY DISORDERED, NOT GUILTY BY REASON OF INSANITY OR INCOMPETENT TO STAND TRIAL."

(2) Licensees that sell, lease or otherwise transfer firearms capable of being concealed on the person shall post a notice at the entrance to the premises (or at the entrance to the separate room or enclosure containing such firearms pursuant to Section 613.10-3(c)) stating the following:

"THE SAN FRANCISCO POLICE CODE REQUIRES THAT FIREARMS DEALERS PROHIBIT ENTRY BY PERSONS UNDER AGE 21, AND FURTHER PROHIBITS ENTRY BY (1) PERSONS CONVICTED OF A VIOLENT OFFENSE WHO ARE PROHIBITED FROM POSSESSING FIREARMS PURSUANT TO CALIFORNIA PENAL CODE SECTIONS 12021 OR 12021.1; AND (2) PERSONS WHO ARE CURRENTLY PROHIBITED FROM POSSESSING FIREARMS BECAUSE THEY HAVE BEEN ADJUDICATED AS MENTALLY DISORDERED, NOT GUILTY BY REASON OF INSANITY OR INCOMPETENT TO STAND TRIAL."

(3) Licensees that sell, lease or otherwise transfer firearms capable of being concealed on the person, but who keep such firearms in a separate room or enclosure in accordance with Section 613.10-3(c) shall post the notice required by paragraph (1) at the entrance to the premises or separate room or enclosure containing firearms that are not capable of being concealed on the person, and shall post the notice required by paragraph (2) at the entrance to the separate room or enclosure containing firearms capable of being concealed on the person.

(l) The licensee shall notify the Chief of Police of the name, age and address of, and submit a certificate of eligibility under Penal Code Section 12071 from the State Department of Justice for, any person not listed on the licensee's application under Section 613.2(a)(1) who will be given access to, or control of, workplace firearms, firearm ammunition, or firearm ammunition components. The licensee shall submit the

required information and certificate within 10 days of such person being employed or otherwise being given access to, or control over workplace firearms, firearm ammunition, or firearm ammunition components.

(m) Within the first five business days of April and October of each year, licensees shall cause a physical inventory to be taken that includes a listing of each firearm held by the licensee by make, model, and serial number, together with a listing of each firearm the licensee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code Section 12071(b)(13). Licensees shall maintain a copy of the inventory on the premises for which the license was issued. Immediately upon completion of the inventory, licensees shall forward a copy of the inventory to the address specified by the Chief of Police, by such means as specified by the Chief of Police. With each copy of the inventory, licensees shall include an affidavit signed by the licensee (or, if the licensee is not a natural person, by an officer, general manager, or other principal of the licensee) stating under penalty of perjury that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory.

(Added by Ord. 91-94, App. 2/25/94; amended by Ord. 290-95, App. 9/1/95; Ord. 225-96, App. 6/11/96; Ord. 283-96, App. 7/3/96; Ord. 62-00, File No. 000197, App. 4/14/2000; Ord. 242-00, File No. 000950, App. 10/27/2000; Ord. 260-04, File No. 031932, App. 11/4/2004; Ord. 192-07, File No. 070684, App. 8/1/2007)

S.F., Cal., Police Code art. 9, § 613.10 (2010), *available at* http://library.municode.com/HTML/14140/level1/ART9MICORE.html#ART9MICORE_S613.10LION.

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ARTICLE 17: MISCELLANEOUS LICENSE REGULATIONS
SEC. 1290. - DISCHARGE OF FIREARMS PROHIBITED—FIREWORKS.

No person or persons, firm, company, corporation or association shall fire or discharge any firearms or fireworks of any kind or description within the limits of the City and County of San Francisco.

Provided, however, that public displays of fireworks may be given with the joint written consent of the Fire Marshal and the Chief of Police.

(Added by Ord. 1.075, App. 10/11/38)

S.F., Cal., Police Code art. 17, § 1290 (2010), *available at* http://library.municode.com/HTML/14140/level1/ART17MILIRE.html#ART17MILIRE_S1290DIFIPRIR.

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ARTICLE 45: FIREARMS AND WEAPONS VIOLENCE PREVENTION ORDINANCE

SEC. 4512. - HANDGUNS LOCATED IN A RESIDENCE TO BE KEPT IN A LOCKED CONTAINER OR DISABLED WITH A TRIGGER LOCK.

(a) **Prohibition.** No person shall keep a handgun within a residence owned or controlled by that person unless the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice.

(b) **Definitions.**

(1) "Residence." As used in this Section, "residence" is any structure intended or used for human habitation including but not limited to houses, condominiums, rooms, in law units, motels, hotels, SRO's, time-shares, recreational and other vehicles where human habitation occurs.

(2) "Locked container." As used in this Section, "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock or similar locking device.

(3) "Handgun." As used in this Section, "handgun" means any pistol, revolver, or other firearm that is capable of being concealed upon the person, designed to be used as a weapon, capable of expelling a projectile by the force of any explosion or other form of combustion, and has a barrel less than 16 inches in length.

(4) "Trigger lock." As used in this Section, a "trigger lock" means a trigger lock that is listed in the California Department of Justice's list of approved firearms safety devices and that is identified as appropriate for that handgun by reference to either the manufacturer and model of the handgun or to the physical characteristics of the handgun that match those listed on the roster for use with the device under Penal Code Section 12088(d).

(c) **Exceptions.** This Section shall not apply in the following circumstances:

(1) The handgun is carried on the person of an individual over the age of 18.

(2) The handgun is under the control of a person who is a peace officer under Penal Code Section 830.

(d) **Lost or Stolen Handguns.** In order to encourage reports to law enforcement agencies of lost or stolen handguns pursuant to San Francisco Police Code Section 616, a person who files a report with a law enforcement agency notifying the agency that a handgun has been lost or stolen shall not be subject to prosecution for violation of Section 4512 (a) above.

(e) **Penalty.** Every violation of this Section shall constitute a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000.00 or by imprisonment in the county jail not to exceed six months, or by both.

(f) **Severability.** If any provision, clause or word of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision, clause, word or application of this Section which can be given effect without the invalid provision, clause or word, and to this end the provisions of this Section are declared to be severable.

(Added by Ord. 193-07, File No. 070683, App. 8/1/2007)

S.F., Cal., Police Code art. 45, §§ 4500-4512 (2010), *available at* http://library.municode.com/HTML/14140/level1/ART45FIWEVIPROR.html.

****E-filed 12/16/2010****

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants.

_____/

No. C 09-2143 RS

ORDER DENYING MOTION TO CONSOLIDATE

Defendants City and County of San Francisco, its mayor, and its police chief (collectively "the City") move to consolidate this case with *Pizzo v. City and County of San Francisco*, et al., C09-4493 CW. Plaintiffs oppose consolidation. They argue that this relatively streamlined case, which seeks only declaratory and injunctive relief as to the facial constitutionality under federal law of three specific San Francisco Police Code ("SFPC") sections, should not be tethered to the more complex *Pizzo* action, which in addition to challenging the same three SFPC sections at issue here, also involves additional defendants and claims, challenges certain state statutes, and seeks damages and a jury trial.

A motion to relate *Pizo* to this action pursuant to Civil Local Rule 3-12 was previously denied. The City correctly asserts, and plaintiffs do not disagree, that denial of a motion to relate under Rule 3-12 does not automatically preclude consolidation under Fed. R. Civ. P. 42. Indeed, the

Court is obligated to exercise its discretion in considering the merits of a consolidation motion under Rule 42 even where a prior motion to relate under the local rules has been denied. *See Investors Research Co. v. U.S. Dist. Ct. for the Southern Dist. Of Cal.*, 877 F.2d 777 (9th Cir. 1989).

Cases are "related" under Rule 3-12 when they, "concern substantially the same parties, property, transaction or event; and . . . [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." In contrast, a court has discretion to order consolidation under Rule 42 whenever they merely, "involve a common question of law or fact." While consolidation is therefore *permissible* under a much broader range of circumstances than those specified for relating cases under Rule 3-12, it does not follow that consolidation is appropriate every time there is some common question of law or fact, without regard to issues such as those identified in Rule 3-12.

Here, the City has not made a persuasive showing that any benefits of consolidation outweigh the burdens. Without anticipating any specific constraints on the shape this litigation may eventually take, it likely will be significantly narrower than *Pizo*.[1] It would therefore be unfair to plaintiffs in this action to force them to be involved in an action of a much broader scope than the one they chose to initiate.

While there obviously will be some burden to the City in litigating the facial validity of the three SFPC sections in two different cases, it appears that any additional work will be largely ministerial, as the substantive legal work likely can be used in both actions. Because this is a facial constitutional challenge, the chance of any conflicting factual determinations between the two actions is remote. In the event one of the courts, but not the other, finds one or more of the SFPC sections constitutionally invalid on its face, the practical consequences to the City will be little different than if only a single court had considered the question and reached such a conclusion in the first instance.[2]

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[1] The City acknowledges as much when it proposes that were consolidation granted, the Court might subsequently want to sever out those portions of the *Pizzo* action that do not overlap with this one.

[2] If anything, having one decision in its favor would only assist the City in arguing to an appellate court that any decision going the other way should be reversed.

Thus, while the City has shown that the threshold requirement under Rule 42 that there be "a common question of law or fact" is satisfied here, the circumstances as a whole do not warrant consolidation. The motion is denied.

Dated: 12/16/2010

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION, Plaintiffs vs. CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in his official capacity; POLICE CHIEF GEORGE GASCON, in his official capacity, and Does 1-10, Defendants.	CASE NO. C09-2143 PJH **AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs bring this Amended Complaint for Declaratory and Injunctive Relief against the above-named Defendants as a matter or course pursuant to Federal Rules of Civil Procedure, Rule 15(a)(1)(A). Defendants have not yet filed a responsive pleading to Plaintiffs' initial complaint. Defendants have filed a motion

to dismiss under Rule 12(b)(1), set for hearing September 23, 2009. Plaintiffs seek to obviate the need, if any, for such hearing by way of this amended complaint, and to that end allege as follows:

INTRODUCTION

1. Plaintiffs bring this suit to challenge the validity of San Francisco Police Code §§ 4512, 1290, and 613.10(g) enacted by Defendant City and County of San Francisco and enforced by its Mayor, Gavin Newsom, and its Chief of Police, George Gascon (collectively, "CITY").[1] Each of these code sections violates Plaintiffs' right to keep and bear arms under the Second Amendment to the United States Constitution and, in particular, their right to defend themselves and others by exercising that right within the sanctity of their own homes.

2. San Francisco Police Code § 4512 (hereafter, "Section 4512") requires that handguns kept within the home be stored in a *locked* container or *disabled* with a trigger lock. Thus, Section 4512 requires Plaintiffs and other city residents to render and keep their handguns inoperable and, in effect, useless for immediate self-defense purposes.

3. The United States Supreme Court recently struck down a similar "trigger lock" ordinance in *District of Columbia v. Heller*, 128 S. Ct. 2783, 2818, 171 L. Ed. 637, 680 (2008), holding "the District's requirement (as applied to respondent's handgun) that firearms in the home be rendered and kept inoperable at all times . . . makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional."

4. CITY's requirement that handguns in the home be stored in a locked

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[1]George Gascon recently replaced former Chief of Police, Heather Fong, who retired after the initial Complaint was filed. As Chief Fong was sued in her official capacity, only, Plaintiffs take this opportunity to substitute in Chief Gascon.

container or disabled with a trigger lock likewise makes it impossible for city residents, including Plaintiffs, to use their handguns for the core lawful purpose of self-defense – particularly in urgent, life-threatening situations when the need to exercise the Constitutional right to self-defense is most acute. As the Supreme Court in *Heller* recognized, in such life-threatening situations, one has little time – if any – to fumble around in the dark and remove a trigger lock or open and retrieve a handgun from a safe to ward off a violent attack. As in *Heller*, CITY's requirements here violate Plaintiffs' right to defend themselves against such attacks by exercising their Second Amendment right to keep and bear arms.

5. In addition, San Francisco Police Code § 1290's blanket prohibition against the "discharge [of] any firearms" within the City and County of San Francisco – with no exception for self-defense discharges within the home – violates Plaintiffs' right to keep and bear arms in defense of self and others as guaranteed by the Second Amendment. Section 1290 criminalizes and deters the exercise of that right.

6. Plaintiffs also challenge on Second Amendment grounds CITY's ban on the sale, lease or transfer of ammunition that "serves no sporting purpose." (San Francisco Police Code § 613.10(g), hereafter "Section 613.10(g)".) Banning ammunition because it "serves no sporting purpose" places an unnecessary and undue burden upon the right to keep and bear arms for their "core lawful purpose of self-defense." Self-defense is not a "sport."

7. Section 613.10(g) also bans all ammunition designed to expand or fragment upon impact. Section 613.10(g)'s ban is grossly overinclusive, in effect, banning all ammunition designed for close-quarters self-defense purposes. As a result, Plaintiffs are prohibited from purchasing ammunition commonly used nationwide for self-defense – the same ammunition used by law enforcement for defense of self and others. Banning the sale of ammunition specifically designed for self-defense violates Plaintiffs' right to keep and bear arms under the Second

Amendment and defeats its "core lawful purpose of self-defense."

8. Moreover, Section 613.10(g)'s ban on the sale/purchase of any and all ammunition that "serves no sporting purpose" is vague and overbroad, and fails to adequately inform Plaintiffs or anyone about which ammunition is in fact banned, in violation of Plaintiffs' rights to Due Process under the Fifth Amendment.

9. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate and halt CITY's enforcement of Sections 4512, 1290, and 613.10(g).

JURISDICTION and VENUE

10. The Court has original jurisdiction of this civil action pursuant to 28 U.S.C. § 1331 because the action arises under the Constitution and laws of the United States, thus raising federal questions. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress. The Court has supplemental jurisdiction over Plaintiffs' state law claims asserted herein under 28 U.S.C. § 1367 because such claims arise out of the same case or controversy as the federal claims.

11. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, respectively.

12. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

INTRADISTRICT ASSIGNMENT

13. Pursuant to Civil Local Rule 3-2(c), this action arises in the County of San Francisco because a substantial part of the events or omissions giving rise to the claims occurred in that County. Pursuant to Civil Local Rule 3-2(d), this action should be assigned to either the San Francisco or Oakland Division.

PARTIES

14. Plaintiff Espanola Jackson is a seventy-four-year-old woman who resides in San Francisco. She is an African American civil rights activist who owns handguns and keeps them in her home for self-defense and other lawful purposes.

15. Plaintiff Paul Colvin is an eighty-four-year-old resident of San Francisco, who owns handguns and keeps them in his home for self-defense and other lawful purposes. Due to his age, Plaintiff Colvin finds opening a gun safe or unfastening a trigger lock to be difficult.

16. Plaintiff Thomas Boyer is a resident of San Francisco. He is a gay civil rights activist and an officer of the San Francisco Chapter of Pink Pistols, an organization that represents the interests of gay, lesbian, bisexual and transgendered firearms owners, with specific emphasis on self-defense issues, in over 32 states with 40 chapters. Mr. Boyer owns handguns and keeps them in the home for self-defense and other lawful purposes.

17. Plaintiff Larry Barsetti is a resident of San Francisco. He is a retired police officer and Secretary of the San Francisco Veteran Police Officer's Association. He, as well as many other veteran police officers, owns handguns and keeps them in the home for self-defense and other lawful purposes.

18. Plaintiff David Golden is a resident of San Francisco who owns handguns and keeps them in the home for self-defense and other lawful purposes. He has been harassed by city agencies regarding the manner of storage of firearms in his home.

19. Plaintiff Noemi Margaret Robinson is a female homeowner in San Francisco who owns handguns and keeps them in the home for self-defense and other lawful purposes.

20. Plaintiff National Rifle Association of America, Inc. (hereafter "NRA") is a non-profit association incorporated under the laws of New York, with its principal place of business in Fairfax, Virginia. The NRA has a membership of

approximately 4 million persons. NRA members reside in the City and County of San Francisco, including Plaintiff David Golden. The purposes of the NRA include protection of the right of citizens to have firearms for the lawful defense of their families, persons, and property, and to promote public safety and law and order. The NRA brings this action on behalf of itself and its members, some of whom reside in, and others of whom travel through, the City and County of San Francisco.

21. Plaintiff San Francisco Veteran Police Officers Association (hereafter, "SFVPOA") is an organization that represents the interests of veteran police officers in the City and County of San Francisco. Many of these veteran police officers own handguns and live within the City and County of San Francisco, including Plaintiff Larry Barsetti.

22. Each of the individual Plaintiffs identified above are citizens and taxpayers of the City and County of San Francisco who presently intend to keep their handguns within the home in a manner ready for immediate use to protect themselves and their families from attack by violent intruders, as is their right under the Second Amendment to the United States Constitution – a right the CITY now denies them by: (1) forcing them to keep their guns in an inoperable condition pursuant to Section 4512; and (2) forcing them to use only ammunition that "serves a sporting purpose" pursuant to Section 613.20(g). Plaintiffs also fear prosecution under Section 1290 for discharging a firearm within city limits should they discharge a firearm while exercising their right to self-defense while in the home.

23. The individual Plaintiffs presently intend to and forthwith would keep their handguns operable within the home, i.e., not disabled by a trigger lock or locked in a container, and loaded with ammunition designed for self-defense, e.g., hollow-point or frangible ammunition, if this court declared the ordinances challenged herein void and unenforceable or otherwise enjoined their enforcement.

24. Each of the associational Plaintiffs identified above has individual members who, like the named individual Plaintiffs, are citizens and taxpayers of the

City and County of San Francisco who have an acute interest in keeping their handguns within the home in a manner ready for immediate use to protect themselves and their families, but are prevented from doing so by CITY's enforcement of Sections 4512, 1290, and 613.10(g), and thus have standing to seek declaratory and injunctive relief to halt that enforcement; the interests of these members are germane to their respective associations' purposes; and neither the claims asserted nor the relief requested herein requires that these members participate in this lawsuit individually.

25. Many members of the associational Plaintiffs presently intend to and forthwith would keep their handguns operable within the home, i.e., not disabled by a trigger lock or locked in a container, and loaded with ammunition designed for self-defense, e.g., hollow-point or frangible ammunition, if this court declared the ordinances challenged herein void and unenforceable or otherwise enjoined their enforcement.

26. Defendant City and County of San Francisco is a municipal corporation acting as such by and under state law. Defendant City and County of San Francisco is a "person" acting under color of state law within the meaning of 42 U.S.C. § 1983, and principally responsible for implementing and enforcing Sections 4512, 1290, and 613.10(g).

27. Defendant Gavin Newsom is the current mayor and chief executive officer of Defendant City and County of San Francisco. Defendant Newsom is an agent, servant, and/or employee of Defendant City and County of San Francisco, acting under color of state law as that phrase is used in 42 U.S.C. § 1983, responsible for enforcing Sections 4512, 1290 and 613.10(g). Defendant Newsom is sued in his official capacity.

28. Defendant George Gascon is the Chief of Police of Defendant City and County of San Francisco. Defendant Gascon is an agent, servant, and/or employee of Defendant City and County of San Francisco, acting under color of state law as

that phrase is used in 42 U.S.C. § 1983, responsible for enforcing Sections 4512, 1290 and 613.10(g). Defendant Gascon is sued in his official capacity.

GENERAL ALLEGATIONS

29. In August of 2007, Defendant Newsom signed into law and CITY began enforcing San Francisco Police Code § 4512, which provides in pertinent part: "No person shall keep a handgun within a residence unless the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice." (A copy of San Francisco Police Code § 4512 is attached hereto as Exhibit "A" and incorporated herein.)

30. Under CITY's policy, a person may not keep a working handgun in the home for emergency use – at least not one that is readily accessible and unsecured by locking devices, which is by definition what is required in an emergency. In short, the CITY's policy renders a person's handgun useless in a self-defense emergency, just as it renders one's right to keep and bear arms in the home for self-defense meaningless. Moreover, CITY's trigger lock requirement has no exception for self-defense use, subjecting anyone who uses a handgun in self-defense in the home to possible arrest and prosecution.

31. On June 26, 2008, the United States Supreme Court held in *District of Columbia v. Heller*, 128 S. Ct. 2783, 2821-22 (2008), that "the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for immediate self-defense."

32. The *Heller* decision invalidated CITY's policy under San Francisco's Section 4512 that prohibits the rendering of lawful handguns in the home operable for immediate self-defense by requiring all handguns to be stored in a locked container or disabled with a trigger lock.

33. In addition to rendering Plaintiffs' handguns inoperable within the home for immediate self-defense, CITY prohibits the sale of ammunition intended for use

in self-defense situations, pursuant to Section 613.10(g). Thus, in the unlikely event that Plaintiffs have sufficient time to render their handguns operable to ward off attacks within their homes, CITY requires them to do so only with ammunition suitable for "sporting purposes," rather than ammunition specifically designed for use in self-defense emergencies. This further limits the ability of Plaintiffs to adequately and safely defend themselves and their families within the sanctity of their own homes, as is their right under the Second Amendment.

34. CITY also prohibits the discharge of any firearm within city limits, pursuant to Section 1290, without any exception for self-defense, thereby subjecting Plaintiffs and others within the city to criminal charges for discharging a firearm within their homes in defense of themselves or others.

35. To date, CITY has failed to repeal and continues to enforce Sections 4512, 1290 and 613.10(g) despite the Supreme Court's ruling in *Heller* that the Second Amendment guarantees the right of individuals to keep and bear arms and, specifically, to keep handguns in the home operable for immediate self-defense.

36. Plaintiffs Espanola Jackson, Paul Colvin, Thomas Boyer, Larry Barsetti, David Golden, and Noemi Margaret Robinson, are responsible law-abiding adults qualified to own firearms under the laws of the United States and the laws of the State of California. Plaintiffs seek to lawfully possess handguns in their homes in an operable state for immediate self-defense use, along with handgun ammunition intended for use in defense of self or others.

37. Plaintiffs presently intend to exercise their rights to defend themselves, their homes and families by keeping firearms in the home, including handguns, available for immediate use by assembling them, removing trigger locks, removing them from locked storage containers, and loading them with the appropriate ammunition and, if necessary, discharging them in defense of self or others. CITY's policies under Sections 4512, 1290 and 613.10(g) prevent them from doing so and otherwise criminalize the exercise of Plaintiffs' Second Amendment rights.

38. Because CITY has not repealed and continues to enforce Sections 4512, 1290 and 613.10(g), Plaintiffs continue to face the potential for criminal prosecution by exercising their Constitutional right to keep a handgun in the home that is operable for immediate self-defense, to use ammunition suitable for that purpose and, if necessary, to discharge the handgun in defense of themselves or others.

39. Because CITY has not repealed and continues to enforce Sections 4512, 1290 and 613.10(g), Plaintiffs are subjected to irreparable harm in that they are unable to keep their handguns within the home in a manner ready for immediate use to protect themselves and their families from attack by violent intruders. But for these provisions, Plaintiffs would forthwith, at any time they deem it reasonable and necessary, keep their handguns in their residences without being stored in a locked container or disabled with a trigger lock; would forthwith purchase ammunition designed for self-defense use without regard to whether it serves any sporting purpose; and would discharge their firearms if threatened with imminent deadly force consistent with the laws of the State of California.

DECLARATORY JUDGMENT ALLEGATIONS

40. There is an actual and present controversy between the parties hereto in that Plaintiffs contend that CITY's policy of forbidding residents from possessing handguns in an operable condition, loaded with suitable ammunition, and available for immediate use in self-defense is unlawful, and presents an ongoing, unnecessary – and dangerous – burden on Plaintiffs' right to self-defense under the Second Amendment, as does the threat of prosecution for discharging a firearm in self-defense. CITY denies these contentions. Plaintiffs desire a judicial declaration of their rights and CITY's duties, namely, that CITY's policies under Sections 4512, 1290 and 613.10(g) violate Plaintiffs' Second Amendment rights. Plaintiffs should not have to face criminal prosecution by CITY for exercising their Constitutional right to keep and bear arms to defend themselves and their families or,

alternatively, give up those rights in order to comply with the CITY ordinances challenged herein.

INJUNCTIVE RELIEF ALLEGATIONS

41. If an injunction does not issue enjoining CITY from enforcing Sections 4512, 1290 and 613.10(g), Plaintiffs will be irreparably harmed. Plaintiffs are presently and continuously injured by these laws insofar as they preclude them from effectively exercising their Second Amendment right to defend themselves and their families within the sanctity of their own homes. Sections 4512 and 613.10(g) deny Plaintiffs the right to keep and bear handguns in the home that are immediately usable for self-defense and loaded with ammunition suitable for that purpose – or to keep and use such firearms and ammunition in that manner and for that purpose without fear of criminal prosecution under those sections and Section 1290.

42. If not enjoined by this Court, CITY will continue to enforce Sections 4512, 1290 and 613.10(g) in derogation of Plaintiffs' Second Amendment rights.

43. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages are indeterminate or unascertainable and, in any event, would not fully redress any harm suffered by Plaintiffs as a result of being unable to access an operable handgun loaded with appropriate ammunition for the defense of themselves and their families.

44. Finally, the "irreparable harm" and unascertainable "damage" that could result from CITY's ongoing violation of Plaintiffs' Constitutional right to keep and bear arms in defense of themselves and their families – within the sanctity of their own homes – includes severe physical injury and death.

45. The injunctive relief sought would eliminate that irreparable harm, and allow Plaintiffs to defend themselves in accordance with their right to do so under state and federal law. Accordingly, injunctive relief is appropriate.

/ / /

FIRST CLAIM FOR RELIEF: VALIDITY OF SFPC § 4512

Violation of the Second Amendment Right to Keep and Bear Arms

(U.S. Const., Amend.'s II and XIV)

46. Paragraphs 1-45 are realleged and incorporated herein by reference.

47. The Fourteenth Amendment to the United States Constitution provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." The Second Amendment is applicable to the States and political subdivisions thereof through the Fourteenth Amendment.

48. The Second Amendment to the United States Constitution provides: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." The Supreme Court of the United States has interpreted the Second Amendment to at a minimum guarantee the right of responsible, law-abiding adults to keep firearms in their dwellings in a condition suitable for immediate self-defense.

49. The Fourteenth Amendment to the United States Constitution extends that guarantee through its Due Process Clause so as to apply against state and local government entities, including CITY.

50. CITY's enactment in August of 2007 and enforcement of Section 4512, which mandates all handguns kept in the home be stored in a locked container or disabled with a trigger lock, precludes Plaintiffs from keeping a handgun in the home that is operable for immediate self-defense.

51. CITY's continued enforcement of Section 4512 under color of state law impermissibly infringes upon the right of the people, including Plaintiffs herein, to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution.

52. Regarding enforcement of Section 4512, CITY has publicly stated that:

"Just because you legally possess a gun in the sanctity of your locked home doesn't mean that we're not going to walk into that home and check to see if you're being responsible and safe in the way that you conduct your affairs."

53. On May 6, 2009, a city official came unannounced to Plaintiff Golden's San Francisco residence and demanded to see his firearms – firearms he legally possessed – to determine whether they were properly stored in a locked box.

54. CITY has no documents indicating that it has advised the public or its law enforcement personnel that it did not intend to enforce Section 4512 when it was passed in August 2007, nor that it has stopped enforcing Section 4512 at any time following its enactment.

55. On information and belief, CITY has never advised the public or its law enforcement personnel that it did not intend to enforce Section 4512 when it was passed in August 2007, nor that it has stopped enforcing Section 4512 at any time following its enactment.

SECOND CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)

Violation of the Second Amendment Right to Keep and Bear Arms

(U.S. Const., Amend.'s II and XIV)

56. Paragraphs 1- 55 are realleged and incorporated herein by reference.

57. CITY's enactment and enforcement of San Francisco Police Code § 613.10(g), which bans the sale of any ammunition that "serves no sporting purpose" or is designed to expand or fragment upon impact is contrary to and infringes upon the Second Amendment right to keep and bear arms for defense of self and others.

58. The ammunition specifically banned by Section 613.10(g) (hollow-point and similar ammunition) is the very type of ammunition most suitable for self-defense, especially in close quarters, e.g., within one's home, because it has greater stopping power and is less likely to pass through the intended target or ricochet off

hard surfaces and injure innocent bystanders. That is a primary reason such ammunition is used – and preferred – by law enforcement. CITY recognizes this fact, as is evident in the exception provided in Section 613.10(g) for the purchase of "conventional hollow-point ammunition with a solid lead core when the purchase is made for official law enforcement purposes."

59. Ammunition that is designed to expand or fragment upon impact is the antithesis of so-called "cop-killer" ammunition, which is designed to penetrate body armor (and whose sale is otherwise prohibited by California and federal law). Plaintiffs are *not* seeking legalization of "cop-killer" ammunition.

60. Prohibiting law-abiding residents from using the type of ammunition best suited for self-defense conflicts with Plaintiffs' right to self-defense, which is at the core of the Second Amendment right to keep and bear arms, rendering the ammunition ban unconstitutional.[2]

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[2] San Francisco Police Code section 613.10(g) reads in full, as follows:

(g) The licensee shall not sell, lease or otherwise transfer to any person any ammunition that:

(1) Serves no sporting purpose;

(2) Is designed to expand upon impact and utilize the jacket, shot or materials embedded within the jacket or shot to project or disperse barbs or other objects that are intended to increase the damage to a human body or other target (including, but not limited to, Winchester Black Talon, Speer Gold Dot, Federal Hydra-Shok, Hornady XTP, Eldorado Starfire, Hollow Point Ammunition and Remington Golden Sabre ammunition; or

(3) Is designed to fragment upon impact (including, but not limited to, Black Rhino bullets and Glaser Safety Slugs).

This subsection does not apply to conventional hollow-point ammunition with a solid lead core when the purchase is made for official law enforcement purposes and the purchaser is authorized to make such a purchase by the director of a public law enforcement agency such as the Chief of the San Francisco Police Department or the Sheriff of the City and County of San Francisco.

61. CITY has no documents indicating that it has advised the public or its law enforcement personnel that it did not intend to enforce Section 613.10(g) when it was passed, nor in August 2007 when Section 613.10 was last amended, nor that it has stopped enforcing Section 613.10(g) at any time following its enactment.

62. On information and belief, CITY never has advised the public or its law enforcement personnel that it did not intend to enforce Section 613.10(g) when it was passed, nor in August 2007 when Section 613.10 was last amended, nor that it has stopped enforcing Section 613.10(g) at any time following its enactment.

THIRD CLAIM FOR RELIEF: VALIDITY OF SFPC § 1290

Violation of the Second Amendment Right to Keep and Bear Arms

(U.S. Const., Amend.'s II and XIV)

63. Paragraphs 1- 62 are realleged and incorporated herein by reference.

64. CITY's enactment and enforcement of San Francisco Police Code § 1290, which criminalizes the discharge of any firearms within the City and County of San Francisco, without a self-defense exception, further threatens to punish Plaintiffs for discharging any firearm, including a handgun lawfully used within the home for self-defense, all in violation of Plaintiffs' right to keep and bear arms under the Second Amendment.[3]

65. CITY has a history of enforcing or threatening to enforce Section 1290. San Francisco police have advised homeowners, who have otherwise lawfully discharged firearms in self-defense to thwart late-night criminal attacks in their

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[3] Section 1290 reads, in full, as follows:

> No person or persons, firm, company, corporation or association shall fire or discharge any firearms or fireworks of any kind or description within the limits of the City and County of San Francisco. Provided, however, that public displays of fireworks may be given with the joint written consent of the Fire Marshal and the Chief of Police.

homes, that they would be arrested for discharging their firearms unless they stated the discharges were "accidental." The police further advised these homeowners that it was the city's policy to arrest anyone who discharged a firearm within the city, and that there was no exception for discharges within one's home while defending oneself from criminal attack.

66. CITY has no documents indicating that it has advised the public or its law enforcement personnel that it did not intend to enforce Section 1290 when it was enacted in October 1938, nor that it has stopped enforcing Section 1290 at any time following its enactment.

67. On information and belief, CITY never has advised the public or its law enforcement personnel that it did not intend to enforce Section 1290 when it was enacted in October 1938, nor that it has stopped enforcing Section 1290 at any time following its enactment.

FOURTH CLAIM FOR RELIEF: VALIDITY OF SFPC § 613.10(g)

Violation of the Fifth Amendment Right to Due Process

(U.S. Const., Amend. V and XIV)

68. Paragraphs 1-67 are realleged and incorporated herein by reference.

69. Section 613.10(g) bans the sale (and necessarily the purchase) of ammunition that "[s]erves no sporting purpose" or is designed to expand or fragment upon impact. This provision, on its face and as applied, is vague insofar as it fails to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he or she may act accordingly.

70. Section 613.10(g) also fails to provide explicit standards for those who must apply it, and thus impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application of CITY's sales ban.

71. Moreover, the provisions, in particular the undefined phrase, "serves no

sporting purpose," inevitably leads citizens – both sellers and buyers of ammunition – to steer far wider of the "unlawful zone" of conduct than if the boundaries of the forbidden areas were clearly marked, thus further undermining Plaintiffs' ability to exercise their right to keep and bear arms under the Second Amendment.

72. Section 613.10(g) also is overbroad, both on its face and as applied, inasmuch as not all ammunition unsuitable for "sporting purposes" or designed to expand or fragment upon impact is unsuitable for self-defense purposes, and thus the provisions of Section 613.10(g) prohibit and/or deter protected conduct, specifically activity (the purchase of ammunition) necessarily associated with the right to keep and bear arms for self-defense under the Second Amendment.

73. The vague and overbroad provisions of Section 613.10(g) violate Plaintiffs' right to Due Process under the Fifth Amendment.

FIFTH CLAIM FOR RELIEF:

VALIDITY OF SFPC §§ 4512, 1290 and 613.10(g)

Violation of the Right to Self-Defense Under State Law

(Cal. Const., art. 1 § 1, Cal. Penal Code § 12026)

74. Paragraphs 1-74 are realleged and incorporated herein by reference.

75. Each of the municipal ordinances, Sections 4512, 1290 and 613.10(g), challenged above under federal law also violates pertinent California laws, including California Penal Code § 12026(b), and innumerable statutes which authorize, either expressly or implicitly, the use of firearms in self-defense. California public policy likewise implies the right to discharge handguns or other firearms for defense of self, family, home and business. In particular, California law guarantees the right of law-abiding responsible adults to acquire and possess lawful handguns in their own homes and offices for defense of self, family, home and business, as recognized in *Fiscal v. City and County of San Francisco*, 158 Cal.App.4th 895, 907-908 (2008).

76. In addition, California Constitution Article 1, § 1 guarantees certain inalienable rights, among them the right to defend one's life, liberty, and property. Section 1 provides, in full, as follows:

§ 1. Inalienable rights

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

77. California Penal Code § 12026 (b) guarantees the right of law-abiding responsible adults to acquire and possess lawful handguns in the sanctity of their own homes and offices for lawful purposes, including the exercise of their Constitutional right to self-defense under Article 1, Section 1, quoted above. Penal Code section 12026, subdivision (b) reads in full:

> No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Section 12021 or 12021.1 of this code [relating to certain persons convicted of crimes and to narcotics addicts] or Section 8100 or 8103 of the Welfare and Institutions Code [relating to persons with mental disorders], to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

78. Implicit in Penal Code § 12026(b) guaranteeing the right of law-abiding responsible adults to acquire and possess handguns in their homes and offices is

that those whom California law authorizes to possess handguns are entitled to discharge them when in defense of self, family, home and business, and otherwise exercise their right to defend their life, liberty and property under Article 1, Section 1 of the California Constitution.

79. As noted above in the claims for relief under federal law, the provisions of Section 4512 render handguns inoperable and thus useless in self-defense emergencies; Section 1290 prohibits the discharge of any firearm – with no exception for self-defense use within the home or on private property (where Penal Code § 12026 entitles one to possess a handgun); and Section 613.10(g) bans the sale (and consequently the purchase and use) of ammunition designed specifically for self-defense.

80. Therefore, San Francisco Police Code Sections 4512, 1290 and 613.10(g), separately and/or in combination, infringe upon the right to self-defense recognized and guaranteed by the Article 1, Section 1 of the California Constitution, in conjunction with laws such as Penal Code § 12026(b) which make it clear that, under California law, the right to self-defense contemplates and includes the lawful use of handguns.[4]

81. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief to stop CITY's enforcement of these three sections.

PRAYER

WHEREFORE Plaintiffs pray for relief as follows:

1) For a declaration that San Francisco Police Code § 4512 infringes upon the right to keep and bear arms protected by the Second Amendment, as incorporated

[4] Plaintiffs recognize that under current state law, Article 1, Section 1, standing alone, does not expressly guarantee an individual right to keep and bear arms, only an inalienable right to defend one's life, liberty, and property. (*Kasler v. Lockyer*, 23 Cal. 4th 472, 481 (2000).)

into the Fourteenth Amendment, by impermissibly forbidding residents from keeping handguns in the home available for immediate use in defense of self and others;

2) For a preliminary and permanent prohibitory injunction forbidding CITY and its agents, employees, officers, and representatives, including Defendants Mayor Newsom and Police Chief Gascon, from enforcing, or attempting to enforce San Francisco Police Code § 4512;

3) For a declaration that San Francisco Police Code § 613.10(g) infringes upon the right to keep and bear arms protected by the Second Amendment, as incorporated into the Fourteenth Amendment, by impermissibly forbidding dealers from selling (and residents from purchasing) ammunition designed for use in defense of self and others within the City and County of San Francisco;

4) For a declaration that San Francisco Police Code § 613.10(g) is, on its face and as applied, vague and overbroad in violation of Plaintiffs' right to Due Process under the Fifth Amendment, as incorporated into the Fourteenth Amendment.

5) For a preliminary and permanent prohibitory injunction forbidding CITY and its agents, employees, officers, and representatives, including Defendants Mayor Newsom and Police Chief Gascon, from enforcing, or attempting to enforce San Francisco Police Code §613.10(g);

6) For a declaration that San Francisco Police Code § 1290 infringes upon the right to keep and bear arms protected by the Second Amendment, as incorporated into the Fourteenth Amendment, by impermissibly forbidding the discharge of any firearm within the City and County of San Francisco, without an exception for otherwise lawfully discharging a firearm within the home or on private property for the defense of self and others;

7) For a preliminary and permanent prohibitory injunction forbidding CITY and its agents, employees, officers, and representatives, including Defendants Mayor Newsom and Police Chief Gascon, from enforcing, or attempting to enforce

San Francisco Police Code § 1290;

8) In the alternative, under Plaintiffs' Fifth Claim for Relief pursuant to California law, for: (1) a declaration that San Francisco Police Code §§ 4512, 1290, and/or 613.10(g) infringe upon the right to use a handgun in defense of self and others guaranteed by Article 1, section 1 of the California Constitution in conjunction with California Penal Code § 12026 and related state laws; and (2) a preliminary and permanent prohibitory injunction forbidding CITY and its agents, employees, officers, and representatives, including Defendants Mayor Newsom and Police Chief Gascon, from enforcing, or attempting to enforce San Francisco Police Code §§ 4512, 1290 and/or 613.10(g);

9) For remedies available pursuant to 42 U.S.C. § 1983 and for an award of reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988, California Code of Civil Procedure § 1021.5 (private attorney general statute) and/or other applicable state and federal law;

10) For such other and further relief as may be just and proper.

Date: August 24, 2009 MICHEL & ASSOCIATES, P.C.

/S/
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in his official capacity; POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-10,

Defendants.

Case No. C09-2143 PJH

DECLARATION OF MARIA PROTTI IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION,
Fed. R. Civ. P. 12(b)(1)

Hearing Date: September 23, 2009
Time: 9:00 a.m.
Place: Courtroom 5, 17th Floor

I, MARIA PROTTI, declare as follows:

1. I have personal knowledge of the facts stated below, except those facts stated on information and belief, which I believe to be true.

2. I am employed by the City and County of San Francisco ("the City") in the Office of the City Attorney. I have been a Deputy City Attorney in that Office since 1996, and have been Director of that Office's Law Libraries since 2000. I hold a Masters Degree in Library and Information Science, as well as a Juris Doctor degree and a Masters Degree in Public Administration. I am a member of the California Bar.

3. In my current employment capacity, my daily duties include searching legal databases such as Lexis and Westlaw and more general informational databases available on the internet. I have been using both Lexis and Westlaw on a regular basis since 1979.

4. I have taught numerous classes in legal research at the University of Oklahoma College of Law, including a course entitled "Computer Assisted Legal Research" and courses in advanced legal research. I also have taught a seminar in Law Library Information Management at the University of Oklahoma Graduate School of Library and Information Studies.

5. I understand that the plaintiffs in this lawsuit challenge Sections 613.10(g), 1290, and 4512 of the San Francisco Police Code.

6. Between July 6 and July 9, 2009, I ran computerized searches through a number of Westlaw databases for court decisions or other documents evidencing or suggesting any person has ever been prosecuted under any of these Police Code sections. Specifically, I ran searches in (1) a database composed, *inter alia,* of reported and unreported decisions and orders issued by the California state cases from 1850 to date, or by the United States Supreme Court, the Ninth Circuit Court of Appeals, or the United States District Courts located in California; (2) a database composed of opinions of the California Attorney General; and (3) a database composed of secondary California legal sources. I ran each of the aforementioned Westlaw searches using as search terms the specific code sections the plaintiffs in this suit challenge. (In the case of Police Code Section 613.10(g), I searched for any and all subsections of 613.10, rather than only for 613.10(g), because subsection (g) previously bore a different subsection designation under a prior version of 613.10.) In the

aforementioned searches, I also used as search terms descriptors derived from the subjects of the three challenged ordinances, such as "handgun," "firearm," "revolver," "locked container, and "trigger lock." These searches did not locate any decision, order, or other document that evidenced or suggested any person has ever been prosecuted for an alleged violation of Sections 613.10(g), 1290, and/or 4512 of the San Francisco Police Code.

7. Also between July 6 and July 9, 2009, I ran computerized searches through a number of Lexis databases for documents evidencing or suggesting anyone has ever been prosecuted under Sections 613.10(g), 1290, and/or 4512 of the San Francisco Police Code. Specifically, I ran searches in (1) a Lexis database analogous to the Westlaw database composed of reported and unreported California state or federal decisions; (2) a database composed of opinions of the California Attorney General; and (3) a database composed of secondary California legal sources. I ran each of the aforementioned Lexis searches using the same substantive search terms as I had used in the Westlaw searches. (I modified the format, although not the substance, of some search terms because Lexis and Westlaw each employ somewhat different search parameters, such as punctuation). As with my Westlaw searches, none of my Lexis searches located any decision, order, or other document that indicated or suggested any person has ever been prosecuted under Sections 613.10(g), 1290, and/or 4512 of the San Francisco Police Code.

8. Within the same timeframe, I also ran computerized searches in a historical San Francisco Chronicle newspaper database, and in a database composed of articles published in the San Francisco Chronicle from 1995 onward. These searches employed the same search terms as I had used in searching the Westlaw and Lexis databases. Again, in neither San Francisco Chronicle database did I locate any article or other document that indicated that anyone has ever been prosecuted under Sections 613.10(g), 1290, and/or 4512 of the San Francisco Police Code.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed this 9 day of July, 2009, at San Francisco, California.

Maria Protti
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HEATHER FONG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESPANOLA JACKSON, PAUL COLVIN, THOMAS BOYER, LARRY BARSETTI, DAVID GOLDEN, NOEMI MARGARET ROBINSON, NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in his official capacity; POLICE CHIEF HEATHER FONG, in her official capacity, and Does 1-10,

Defendants.

Case No. C09-2143 PJH

MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION, Fed. R. Civ. P. 12(b)(1)

Hearing Date: September 23, 2009
Time: 9:00 a.m.
Place: Courtroom 5, 17th Floor

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

San Francisco Statutes, Codes & Ordinances

Rules

Constitutional Provisions

NOTICE AND MOTION

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD: Defendants hereby move to dismiss the complaint in this matter in its entirety under Rule 12(b)(1) for lack of subject matter jurisdiction. Specifically, Plaintiffs fail to demonstrate both constitutional and prudential standing, and the face of their complaint reveals that their claims are unripe. The hearing on the motion will take place at 9:00 a.m. on September 23, 2009, or as soon thereafter as may be heard, before the Honorable Phyllis J. Hamilton in Courtroom 5 at the United States District Court, San Francisco Division, 450 Golden Gate Ave., San Francisco, California. The motion shall be based on this memorandum of points and authorities, the accompanying request for judicial notice and proposed order, the arguments of counsel at the hearing, and any such further matters as the Court deems appropriate.

STATEMENT OF ISSUES TO BE DECIDED

1) Do Plaintiffs have standing to make a pre-enforcement challenge to local criminal laws if they do not allege that they are being prosecuted or face a threat of imminent prosecution under those laws, if they have no concrete plans to violate the challenged laws, and if they do not demonstrate a robust history of enforcement for each law?

2) Should the Court grant prudential standing to Plaintiffs, who ask this Court to declare three local gun-related laws unconstitutional without the aid of a developed factual record, when the federal courts have a strong prudential concern in avoiding any unnecessary constitutional questions, there are serious questions about how the challenged ordinances would actually be enforced, and so little Second Amendment jurisprudence currently exists that no one knows the proper standard of review for the laws the Plaintiffs seek to challenge?

3) Are the Plaintiffs' claims ripe where, in a pre-enforcement challenge such as this one, the same considerations governing standing also govern the ripeness inquiry?

INTRODUCTION

Just last year, for the first time in the Nation's history, the Supreme Court announced that each individual has a Second Amendment right to bear arms: specifically, the right to keep and use handguns in the home for self-defense. *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008). In the giddy aftermath of that decision, the National Rifle Association and others with similar interests appear to have embarked on a campaign to identify local gun-control laws that they could challenge under *Heller* to cleanse them from the books. Or at least that's the most likely explanation for this complaint.

Because as it turns out, the three local gun-related ordinances that the Plaintiffs challenge here have never been enforced, or even inspired any threat of enforcement, against any of the Plaintiffs. They have no personal stake in the matter. Yet that type of personal, actual or imminent injury-in-fact is constitutionally required for a litigant to have standing—and for the Court to have subject matter jurisdiction to hear the complaint. The injury-in-fact requirement also serves the important purpose of separating those plaintiffs with a real story to tell and the pressing need to tell it from the ideologues, who bring to court only their debates and policy preferences.

Plaintiffs' failure to allege that they have suffered any actual or imminent injury from the ordinances they challenge reveals them as cause-based crusaders. There is nothing wrong with that, but in the absence of injury-in-fact, the Constitution says they have no business in federal court. This Court should dismiss their complaint for lack of subject matter jurisdiction.

BACKGROUND

On May 15, 2009, the National Rifle Association (NRA) along with six San Francisco residents and the San Francisco Veteran Police Officers Association (SFVPOA) (collectively, Plaintiffs) filed suit against the City and County of San Francisco, San Francisco Mayor Gavin Newsom, and Chief of Police Heather Fong (collectively, Defendants or the City). Plaintiffs' suit is a pre-enforcement challenge to three local criminal ordinances, each of which, in their view, violates the Second Amendment.

The first, San Francisco Police Code section 4512 (the "safe storage law"), allows San Francisco residents to carry their handguns freely in their homes at all times. *See* Police Code §

4512(c)(1). But when they are not carrying their weapons, the safe storage law requires gun owners to apply a trigger lock or store the handgun in a locked container. *See id*. § 4512(a). Plaintiffs assert that this ordinance violates the Second Amendment because the handgun might be unavailable in a self-defense emergency for the time it takes to unlock it. Compl. ¶ 4.

Second, Plaintiffs also challenge a somewhat unusual section of the Police Code that, in one breath, prohibits firing both firearms and fireworks. Police Code § 1290 ("No person or persons, firm, company, corporation or association shall fire or discharge any firearms or fireworks of any kind or description" within City limits.) This section and its precursors hail back more than a century, to at least 1892, when the provision was Section 22 of General Order 1,587 of the Board of Supervisors. *See* Request for Judicial Notice, Ex. A at 35-36. Old Section 22 delimited a central area in the City bounded by various City streets within which one could not discharge any "firearms, firecrackers, bombs or fireworks," though every person explicitly retained the right to "shoot[] destructive animals within or upon his own inclosure." *Id* at 36. This prohibited shooting-bombing-exploding area also extended to within "300 yards from any public highway, or upon any ground set apart as a cemetery or public square, or park, or within three hundred yards of any dwelling-house." *Id*. Plaintiffs charge that section 1290 violates the Second Amendment because it lacks an explicit exception for discharging handguns inside the home for lawful self-defense purposes. Compl. ¶ 5.

Third, plaintiffs attack Police Code section 613.10(g), which prohibits San Francisco gun shops from selling "cop-killer" type ammunition, such as fragmenting bullets, expanding bullets, bullets that project shot or disperse barbs into the body, or other bullets that serve no sporting purpose. *See* Police Code § 613.10(g)(1)-(3). Baldly asserting that any ammunition lacking a sporting purpose must be "self-defense ammunition," and implicitly claiming that they cannot adequately defend themselves with more conventional ammunition, Plaintiffs allege that the ordinance violates the Second Amendment because it bans "the sale of ammunition specifically designed for self-defense." Compl. ¶ 6. Plaintiffs also allege that this sales ban on unusually dangerous ammunition is unconstitutionally vague and overbroad, in violation of their rights to due process. Compl. ¶ 7.

Notably, the complaint lacks any allegations that Plaintiffs themselves have ever been threatened with prosecution, much less charged or prosecuted, under any of these ordinances.[1] Rather, the complaint identifies the individual plaintiffs simply as San Francisco residents who keep handguns in their homes (Compl. ¶¶ 13-18) and who believe that their Second Amendment rights are broader in scope than the ordinances allow. Compl. ¶ 34. One plaintiff, David Golden, alleges that he "has been harassed by city agencies regarding the manner of storage of firearms in his home," (Compl. ¶ 17) but he does not allege that the safe storage law was implicated, nor that he was threatened with arrest or prosecution under that law. Beyond that, Plaintiffs make no allegations of individualized injuries. Rather, they locate their shared injury in the generalized allegation that the City "continues to enforce" the ordinances, and "Plaintiffs continue to face the potential for criminal prosecution" if they disobey the ordinances to act in harmony with their own interpretation of the Constitution. Compl. ¶¶ 34-35. Nowhere do they allege that they actually intend to engage in unlawful acts. Nor do they allege any specific action that the City has taken to "enforce" any of the ordinances, whether against Plaintiffs or anyone else.

ARGUMENT

Because the Plaintiffs do not allege imminent and individualized injuries-in-fact that flow from any of the ordinances, the complaint must be dismissed in its entirety. Plaintiffs do not meet the criteria for Article III standing, and prudential standing concerns also counsel strongly against entertaining plaintiffs' challenge to the ordinances. For the same set of reasons, plaintiffs' claims must also be dismissed as unripe.

I. PLAINTIFFS MUST ALLEGE FACTS SUFFICIENT TO SHOW THIS COURT HAS SUBJECT MATTER JURISDICTION AND STAND READY TO PROVE THEIR ALLEGATIONS AS THE COURT DIRECTS.

Federal Rule of Civil Procedure 12(b)(1) provides that a complaint must be dismissed if the plaintiffs' allegations fail to establish subject matter jurisdiction, including standing. "The federal

[1] The NRA and SFVPOA allege no closer connection to the ordinances than the individual Plaintiffs. Plaintiff David Golden is alleged to be a member of the NRA, and the SFVPOA claims Plaintiff Larry Barsetti. Compl. ¶¶ 19-22.

courts are presumed to lack jurisdiction, unless the contrary appears affirmatively from the record." *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) ("*Gun Rights Committee*") (internal quotation marks omitted). The burden of establishing standing rests solely on the plaintiffs. *Renne v. Geary*, 501 U.S. 312, 316 (1991).

Unlike a motion to dismiss for failure to state a claim under Rule 12(b)(6), the allegations in the complaint need not be assumed to be true. Rather, in support of a motion to dismiss for lack of standing under Rule 12(b)(1), "the moving party may submit 'affidavits or any other evidence properly before the court…. It then becomes necessary for the party opposing the motion to present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction.' " *Colwell v. Dept. of Health & Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (quoting *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)). This Court may also use its inherent power to independently assess the truth of the jurisdictional allegations. *Poe v. Ullman*, 367 U.S. 497, 501 (1961). It is not bound to accept the complaint's allegations as true, because implausible allegations, even if not disputed by the defendant, are "too fragile a foundation for indulging in constitutional adjudication." *Id*.

II. THE COMPLAINT MUST BE DISMISSED FOR LACK OF STANDING BECAUSE PLAINTIFFS HAVE NOT ALLEGED THAT THEY FACE PROSECUTION OR AN IMMINENT THREAT OF PROSECUTION UNDER THE CHALLENGED ORDINANCES.

Under Article III of the U.S. Constitution, the judicial branch is empowered to adjudicate only "Cases" or "Controversies." U.S. Const. Art. III, § 1. This limitation defines and safeguards the separation of powers between the judiciary and coordinate branches of government by preventing such intrusions as advisory opinions or preemptive injunctions, and it necessarily circumscribes the kinds of disputes the federal courts can hear and resolve. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Although portions of the standing doctrine reflect prudential considerations rather than constitutional requirements, "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Id*.

Accordingly, a plaintiff who seeks to invoke the jurisdiction of a federal court must demonstrate standing. One "irreducible constitutional minimum of standing" is injury-in-fact, which

requires every plaintiff to show "an invasion of a legally protected interest which is (a) concrete and particularized … and (b) 'actual or imminent, not "conjectural" or "hypothetical." ' " *Id*. (citations omitted). A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Id*. at 561 n.1. If the plaintiff has not yet suffered an actual injury from the complained-of law or conduct, "imminent" injury may also be sufficient to show injury-in-fact. Imminence exists where plaintiff can show that the injury is "*certainly* impending" or has a "high degree of immediacy, so as to reduce the possibility of deciding a case in which no injury would have occurred at all." *Id*. at 564 n.2 (emphasis in original) (internal quotation marks and citation omitted).

In the context of constitutional challenges to criminal laws, these standing concerns require the plaintiff to show that he or she is actually being prosecuted or, at a minimum, has received an individualized threat of imminent prosecution under the challenged law.[2] "The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy with the meaning of Article III." *Stoianoff v. State of Montana*, 695 F.2d 1214, 1223 (9th Cir. 1983). Nor does standing flow from a simple "ideological" interest in seeing the statute invalidated. *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908, 918 (9th Cir. 2004).

But at the other end of the spectrum, neither is it necessary "that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights," so long as he or she faces an individualized threat of imminent prosecution. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Steffel challenged the constitutionality of a criminal trespass statute that the police had twice invoked to stop him from passing out handbills against the Vietnam War in front of a local shopping mall. Unwilling to be arrested, Steffel complied both times the police warned him to stop handbilling or face arrest and prosecution. In contrast, his companion on the second occasion continued handbilling—and was promptly arrested and arraigned on a criminal trespass charge. Moreover, during the course of the litigation, the defendant officials stipulated that Steffel would likewise be arrested for criminal trespass if were ever to ignore the order to cease

[2] This rule has been relaxed for First Amendment and abortion-related cases due to their unique considerations. See, *e.g., Doe v. Bolton*, 410 U.S. 179 (1973) (abortion); *Planned Parenthood of Idaho v. Wasden*, 376 F.3d 908, 917 (9th Cir. 2004) (same); *Washington Mercantile Assoc. v. Williams*, 733 F.2d 687, 688-89 (9th Cir. 1984) (First Amendment).

handbilling. *Id*. at 455-56. On these facts, the Court found a sufficiently concrete and imminent threat of prosecution under the challenged law to support standing. *Id*. at 459.

In *Carey v. Population Services International*, 431 U.S. 678, 682 (1977), plaintiff Population Planning Associates, Inc. (PPA), a mail-order contraceptives distributor in North Carolina, brought a challenge to the constitutionality of a New York criminal statute prohibiting the display, distribution, and advertising of contraceptives under certain circumstances. PPA did business in New York and routinely violated the New York restrictions. Various officials became aware of these violations, and PPA received two letters documenting violations and requesting future compliance. The second letter also threatened PPA, warning that its continued failure to comply would result in the matter being referred to the Attorney General for legal action. In addition, PPA received a report from inspectors at the State Board of Pharmacy. This report again documented that PPA had violated the law and been warned to stop. *See id.* at 682-83. In reliance on *Steffel*, the Court found these threats of enforcement sufficiently imminent to support standing, even though no legal action had yet been initiated against PPA. *Id*. at 684 n.3.

In *Poe*, in contrast, the Supreme Court denied standing to plaintiffs seeking a similar declaration that a Connecticut statute prohibiting the use of contraceptives was invalid. 367 U.S. at 501. Unlike PPA and its history of actual tangles with officials, the plaintiffs in *Poe* alleged only that the State's Attorney had declared that he intended to prosecute any violations of Connecticut law, including the use of and advice concerning contraceptives. *Id*. at 500-01. The Court suggested that such an allegation is insufficient to show standing, because it lacks the required immediacy. *Id*. at 501. In addition, the Court noted that the challenged statute, which had been on the books since 1879, appeared to have gone unenforced but for a single prosecution twenty years earlier, even though it was common knowledge that contraceptives were widely sold at Connecticut drug stores. *Id*. at 501-02. In the Court's view, the fact that the statute had so rarely been used made it highly improbable that the plaintiffs faced an imminent threat of prosecution. *Id*. at 502.

In *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1, 4 (9th Cir. 1974), plaintiffs were again denied standing for lack of an imminent threat of enforcement. The Band sought a declaratory judgment and injunction against the San Diego County gambling ordinance so that it

could establish a card room on its reservation. To show injury-in-fact, the Band alleged that (1) even before its decision to open a card room, several tribe members had been arrested for impromptu gambling at their annual fiestas; (2) Sheriff's Department representatives had informed individual tribe members that gambling on the reservation was illegal, and that the San Diego gambling ordinance would be enforced against the Band; and (3) after the Band requested a written statement of the county's view of its jurisdiction to enforce the gambling ordinance on reservation land, the Sheriff responded that all gambling laws would be enforced on the reservation to the same extent as in the rest of the county. *Id*. at 3-4. On these facts, and in reliance on *Poe v. Ullman*, the court concluded that the threat alleged by the Band "is clearly of a general nature." *Id*. at 4. Even though the threats were directed to plaintiff, and even though they addressed the very law under dispute, at bottom they boiled down to nothing more the assertion that the authorities would enforce the law. That proposition is insufficient to confer standing as a matter of law. *Id.*

These decisions and the distinctions they draw together provide the foundation for a case with facts so similar to the case at bar that it directly controls this lawsuit. In *Gun Rights Committee*, 98 F.3d 1121, three individual and two associational plaintiffs brought a facial constitutional challenge to a federal law banning semiautomatic assault weapons and large capacity ammunition feeding devices for a period of ten years. *Id*. at 1124. Like the Plaintiffs here, none of the individual plaintiffs had been arrested or prosecuted under the challenged law, though they wished to engage in conduct it prohibited. And taking it one step further than Plaintiffs here, they also alleged that they actually intended to do so. *Id*.

Even so, the Ninth Circuit held that the *Gun Rights Committee* plaintiffs lacked standing. Rejecting their argument that they were injured simply by "the chilling of their desire and ability" to engage in the prohibited conduct (*id*. at 1129), the Court explained that " '[a]llegations of a subjective "chill" are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.'" *See id*., quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) and further citing to *Steffel*, 415 U.S. at 476 (Stewart, J. concurring). Chilling effect aside, plaintiffs, again like the Plaintiffs here, were left with complaints about the "mere existence of a statute, which may or may not ever be applied to plaintiffs." *Gun Rights Committee*, 98 F.3d at 1121. That, admonished the court,

was not enough to support standing. *Id*. (citing *Stoianoff*, 695 F.2d at 1223); *see also id*. ("[T]he mere possibility of criminal sanctions applying does not of itself create a case or controversy" (internal quotation marks omitted)).

Further, the *Gun Rights Committee* plaintiffs, like the Plaintiffs here, failed to establish a specific threat of an imminent intent to prosecute sufficient to satisfy the irreducible injury-in-fact component of standing.[3] *Id*. at 1127-28. None of them demonstrated that they had been threatened with arrest or prosecution under the challenged law, again leaving nothing but a constitutionally inadequate claim that they, at most, might possibly be prosecuted if and when they broke the challenged law. *Id*. at 1127-28 (relying *inter alia* on *Poe*, *Steffel*, and *Rincon Band*).

Finally, the court took the plaintiffs to task for failing to meet their burden of alleging past prosecutions under the challenged law, which is also a requirement for standing. *Id*. Here too, Plaintiffs allege in the most general terms that the City enforces the challenged ordinances, but they fail to allege the existence of past prosecutions. And, in fact, after a diligent search of the available sources for evidence of prosecutions under any of the three ordinances or their precursors, there appear to be none. *See* Declaration of Maria Protti at ¶¶ 4-8. This preliminary evidence of the absence of past prosecutions shifts the burden to the Plaintiffs to produce evidence, not just further allegations, that for each ordinance such past prosecutions do exist. *See Colwell*, 558 F.3d at 1121.

Summing it all up, the *Gun Rights Committee* Court remarked: "Indeed, it would be difficult to imagine a circumstance under which plaintiffs could have made a more feeble showing of injury-in-fact." 98 F.3d at 1133. Here, by failing to allege that they ever intend to violate the ordinances and

[3] In the case at bar, Plaintiff David Golden has alleged that he "has been harassed by city agencies regarding the manner of storage of firearms in his home." (Compl. ¶ 17) This language falls considerably short of meeting his burden to allege sufficient injury to demonstrate standing, because he does not even allege that the safe storage law was at issue, much less that he was threatened with arrest or prosecution under that ordinance. But in the event the Court considers indulging the deficient allegation, it should require at least a curative affidavit showing that the constitutionally mandatory underlying facts truly exist. Because Golden is the only Plaintiff who alleges any sort of individualized contact with City authorities that might possibly involve one of the challenged ordinances, his is the only claim with even a remote possibility of survival. As such, and given the marked vagueness of his allegation, the Court should assure itself of its jurisdiction before undertaking further proceedings.

thereby dispelling the notion that a threat of prosecution is even possible, Plaintiffs have made a showing of injury-in-fact so feeble that it puts the Ninth Circuit's is collective imagination to the test.

III. THE COURT ALSO SHOULD DENY STANDING FOR PRUDENTIAL REASONS TO AVOID UNNECESSARY CONSTITUTIONAL QUESTIONS ABSENT FURTHER DOCTRINAL DEVELOPMENTS OR A BETTER DEVELOPED FACTUAL RECORD.

Prudential concerns as well as constitutional requirements must guide the courts in evaluating standing when a plaintiff makes a constitutional challenge to a criminal statute without showing at least a threat of imminent prosecution under the statute. *See Poe*, 367 U.S. at 502 . The Supreme Court has "developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing on a large part of all the constitutional questions pressed upon it for decision." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 341, 346 (1936).

The need to avoid the unnecessary consideration of constitutional challenges is particularly acute where, as here, a federal court is asked to strike down a legislative enactment. That awesome power to nullify an act of a coordinate branch of government, and sometimes the act of a separate if also subordinate government, must be wielded cautiously. That is why a federal court " 'can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here.' " *Poe* at 504 (quoting *State of Georgia v. Stanton*, 6 Wall. 50, 75 (1868)). For this prudential reason, courts should wait to adjudicate such constitutional questions until the decision becomes one of "strict[] necessity," that is, "only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action." *Poe* at 504 (internal quotation marks omitted). A party seeking a declaratory judgment cannot "invoke the power of [the Supreme] Court to obtain constitutional rulings in advance of necessity." *Id*. at 506. This prudential consideration, standing alone, should close the courthouse door to Plaintiffs' complaints.

Moreover, courts should also use their prudential power to avoid adjudicating facial challenges to criminal statutes whenever possible. According to the Supreme Court,

> [F]acial challenges are best when infrequent. See, *e.g., United States v. Raines*, 362 U.S. 17, 22 (1960) (laws should not be invalidated by 'reference to hypothetical cases'); *Yazoo & Mississippi Valley R. Co. v. Jackson Vinegar Co.*, 226 U.S. 217, 219-220 (1912) (same). Although passing on the validity of a law wholesale may be efficient in the abstract, any gain is often offset by losing

> the lessons taught by the particular, to which common law method normally looks. Facial adjudication carries too much promise of 'premature interpretatio[n] of statutes' on the basis of factually barebones records. *Raines*, *supra*, at 22.

Sabri v. United States, 541 U.S. 600, 609-610 (2004).

That is certainly the case here. Without any sort of factual record to guide the Court, it is impossible to know how the challenged ordinances operate outside the realm of hypothetical vagaries. When, for example, a gun owner shoots an intruder in self-defense in his or her home, is that person actually threatened, charged with, or prosecuted for a safe storage violation if the police find no evidence that the gun was either carried by the owner or secured when the intruder broke in? Unless the authorities at least threaten to enforce the law in a way that might violate the Second Amendment, there can be no prudential standing to challenge that law. Similarly, do the police ever arrest, or do prosecutors ever bring prosecutions under Police Code section 1290 for discharging a firearm, much less for doing so indoors in self-defense? There is clearly an implicit exception for some kinds of discharges; the police may fire their weapons in an otherwise lawful manner without consequence, and so, apparently, may the target shooters at San Francisco's firing ranges. Why not also those firing in self-defense in their homes? Moreover, given the pairing of firing with fireworks, and the initial perceived need to reserve the right to shoot animals outdoors, the most reasonable interpretation is that section 1290 only applies outdoors—if, in current times, at all. Without a factual record demonstrating the ordinance's actual, modern operation, the Court would be forced to answer these questions in a vacuum. Finally, without knowing what kind of ammunition forms the factual basis for an actual threat to enforce the sales ban on unusually dangerous ammunition, nor whether the affected gun shop owner had reasonable commercial knowledge or made reasonable inquiries into whether such ammunition was prohibited, this Court would be left guessing how the ordinance may or may not comport with Second Amendment guarantees and due process notice requirements in its real-life application. That is no way to settle delicate constitutional questions, nor to use federal courts' judicial muscle to invalidate state and local laws.

Such factual uncertainties are particularly ill-advised in Second Amendment jurisprudence, which faces many as-yet-unresolved questions in the wake of *District of Columbia v. Heller*, 128

S.Ct. 2783 (2008). Indeed, no one knows for sure whether Second Amendment rights are even incorporated to apply to the States (and, hence, these ordinances). The Ninth Circuit says yes (*Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009)), the Seventh Circuit says no (*National Rifle Association v. City of Chicago*, 567 F.3d 856 (7th Cir. 2009)), and so far the Supreme Court has expressly reserved the question (*Heller*, 128 S.Ct. at 2813 n.23). Nor is it yet clear what standard of review to apply to laws alleged to violate the Second Amendment. The Supreme Court has eliminated the rational basis test and a balance-of-interests test as contenders (*id*. at 2817 n.27) , but no one knows more than two things that the standard of review is *not*. Likewise, there is no indication as of yet how far the Second Amendment might extend beyond the core right to keep handguns in the home for self-defense purposes. We don't even know whether handguns can lawfully be curtailed when a gun owner is outdoors—even if only in the yard. This remarkably undeveloped area of constitutional law is treacherous terrain for fact-free adjudication. If any field of law currently calls out for cautious, fact-driven, common-law-style doctrinal development, it is this one.

Again borrowing the court's words in *Gun Rights Committee*, "[t]o grant plaintiffs standing to challenge the constitutionality of the [gun law] in the circumstances of this case would … throw all prudential caution to the wind." 98 F.3d at 1133. Indeed.

IV. THERE IS NO TRUE CASE OR CONTROVERSY TO ADJUDICATE BECAUSE, WITHOUT AT LEAST A SPECIFIC AND INDIVIDUALIZED THREAT OF ENFORCEMENT, THE CLAIMS ARE UNRIPE.

Plaintiffs' complaint must also be dismissed for lack of subject matter jurisdiction because, in a case of this nature, the same concerns that underlie the standing inquiry also determine ripeness. "[W]here it is impossible to know whether a party will ever be found to have violated a statute, or how, if such a violation is found, those charged with enforcing the statute will respond, any challenge to the statute is premature." *Alaska Airlines, Inc. v. City of Long Beach*, 951 F.2d 977, 986 (9th Cir. 1991).

Sitting en banc, the Ninth Circuit has explained that in a case in which the court must measure whether an injury is real and concrete rather than hypothetical or speculative, the ripeness and standing inquiries will yield the same result. *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). In that case, landlords objected for religious reasons to an Alaska law

prohibiting housing discrimination on the basis of marital status. They sought a declaratory judgment and injunction halting enforcement of the law under the First Amendment. However, although they alleged that they had violated the law in the past and would violate it again in the future, they could identify no would-be tenants they had turned away on the basis of marital status, nor had any prospective tenant complained to the authorities. They faced no realistic, much less immediate threat of enforcement. *Id*. at 1137-38, 1140.

Looking largely to *Gun Rights Committee* and other standing cases, the court distilled the factors used to test the genuineness of a threat of prosecution: (1) whether the plaintiffs allege a concrete plan to violate the statute; (2) whether the authorities have made a specific threat to initiate enforcement proceedings against the plaintiffs; and (3) evidence of a history of past enforcement actions or prosecutions under the statute. *Thomas*, 220 F.3d at 1139. To demonstrate ripeness, a plaintiff must satisfy all three elements of the test. *See Sacks v. Office of Foreign Assets Controls*, 466 F.3d 764, 773 (9th Cir. 2006).

As do the Plaintiffs in this case, the landlords in *Thomas* roundly failed this inquiry. Although the Thomas plaintiffs alleged they intended to violate the law at some unspecified time in the future, the court rejected those allegations as too speculative. Echoing *Lujan*, 504 U.S. at 564, the court remarked that plaintiffs' "some day" intentions could "hardly qualify as concrete." *Thomas*, 220 F.3d at 1139-40. In this case, Plaintiffs' failure is more acute. They allege no intent to violate any of the ordinances, much less all three. Rather, they repeatedly assert that they cannot alter their behavior unless the Court first invalidates the ordinances. Compl. at ¶¶ 34, 36. Likewise, neither the *Thomas* plaintiffs nor the Plaintiffs here provided allegations or evidence that they had received specific threats of prosecution. *Id*. at 1140. Finally, the *Thomas* plaintiffs were able to show two prior instances of civil enforcement of the challenged law, but the court rejected this showing as inadequate because there was no record of any criminal enforcements. *Id*. Here, there is neither allegation nor evidence of prior enforcement actions or prosecutions, so again the *Thomas* plaintiffs' failed showing surpasses what Plaintiffs offer this Court. For each of these three reasons, Plaintiffs claims are not justiciable. Or, to be charitable, at least not yet.

As the *Gun Rights Committee* Court concluded its opinion, "to hold that [plaintiffs'] claims are ripe for adjudication in the absence of any factual context would essentially transform district courts into the general repository of citizen complaints against every legislative action." 98 F.3d at 1133. This case and its baldly hypothetical challenge to three gun-related restrictions that have not injured—only offended—the NRA and the other Plaintiffs, demonstrate the truth of the Ninth Circuit's remarks and one of the many powerful reasons why the Court must dismiss the complaint.

CONCLUSION

For all of the reasons set forth above, the City respectfully requests that the Court dismiss the complaint in its entirety for lack of subject matter jurisdiction.

Dated: July 9, 2009

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
SHERRI SOKELAND KAISER
Deputy City Attorneys

By: /s/
SHERRI SOKELAND KAISER

Attorneys for Defendants City and County of San Francisco, Mayor Gavin Newsom and Police Chief Heather Fong

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:09-cv-02143-RS

Jackson et al v. City and County of San Francisco et al
Assigned to: Hon. Richard Seeborg
Cause: 42:1983 Civil Rights Act

Date Filed: 05/15/2009
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

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Defendant

Gavin Newsom
Mayor, in his official capacity
TERMINATED: 11/08/2011

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Defendant

Heather Fong
Police Chief, in her official capacity
TERMINATED: 08/24/2009

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TERMINATED: 11/08/2011

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Sherri Sokeland Kaiser
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Defendant

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San Francisco Police Chief

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Sherri Sokeland Kaiser
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Date Filed	#	Docket Text
05/15/2009	1	COMPLAINT against City and County of San Francisco, Gavin Newsom, Heather Fong (Filing fee $ 350, receipt number 34611032225.). Filed byThomas Boyer, Larry Barsetti, Espanola Jackson, David Golden, Noemi Margaret Robinson, National Rifle Association of America, Inc., San Francisco Veteran Police Officers Association, Paul Colvin. (far, COURT STAFF) (Filed on 5/15/2009) (far, COURT STAFF). (Entered: 05/19/2009)
05/15/2009		CASE DESIGNATED for Electronic Filing. (far, COURT STAFF) (Filed on 5/15/2009) (Entered: 05/19/2009)
05/15/2009	2	ADR SCHEDULING ORDER: Case Management Statement due by 8/20/2009. Case Management Conference set for 8/27/2009 02:30 PM. (Attachments: # 1 Standing Order) (far, COURT STAFF) (Filed on 5/15/2009) (Entered: 05/19/2009)
05/15/2009	3	Summons Issued as to City and County of San Francisco, Gavin Newsom, Heather Fong. (far, COURT STAFF) (Filed on 5/15/2009) (far, COURT STAFF). (Entered: 05/19/2009)
05/15/2009	4	Certificate of Interested Entities by Thomas Boyer, Larry Barsetti, Espanola Jackson, David Golden, Noemi Margaret Robinson, National Rifle Association of America, Inc., San Francisco Veteran Police Officers Association, Paul Colvin (far, COURT STAFF) (Filed on 5/15/2009) (Entered: 05/19/2009)
06/12/2009	5	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association re 3 Summons Issued, 2 ADR Scheduling Order, 1 Complaint, *Notice of Filing Proof of Service For City and County of San Francisco For the Summons, Complaint and Supporting Documents* (Michel, Carl) (Filed on 6/12/2009) (Entered: 06/12/2009)
06/12/2009	6	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco

		Veteran Police Officers Association re 3 Summons Issued, 2 ADR Scheduling Order, 1 Complaint, *Notice of Filing Proof of Service For San Francisco Mayor Gavin Newsom For The Summons, Complaint and Supporting Documents* (Michel, Carl) (Filed on 6/12/2009) (Entered: 06/12/2009)
06/12/2009	7	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association re 3 Summons Issued, 2 ADR Scheduling Order, 1 Complaint, *Notice of Filing Proof of Service For San Francisco Chief of Police Heather Fong For Summons, Complaint and Supporting Documents* (Michel, Carl) (Filed on 6/12/2009) (Entered: 06/12/2009)
07/06/2009	8	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *NOTICE OF FIRM NAME CHANGE* (Michel, Carl) (Filed on 7/6/2009) (Entered: 07/06/2009)
07/09/2009	9	MOTION to Dismiss for Lack of Jurisdiction , *Fed. R. Civ. P. 12(b)(1)* filed by City and County of San Francisco, Heather Fong, Gavin Newsom. Motion Hearing set for 9/23/2009 09:00 AM in Courtroom 5, 17th Floor, San Francisco. (Kaiser, Sherri) (Filed on 7/9/2009) (Entered: 07/09/2009)
07/09/2009	10	Request for Judicial Notice re 9 MOTION to Dismiss for Lack of Jurisdiction , *Fed. R. Civ. P. 12(b)(1)* MOTION to Dismiss for Lack of Jurisdiction , *Fed. R. Civ. P. 12(b)(1)* filed byCity and County of San Francisco, Heather Fong, Gavin Newsom. (Attachments: # 1 Exhibit A)(Related document(s) 9) (Kaiser, Sherri) (Filed on 7/9/2009) (Entered: 07/09/2009)
07/09/2009	11	Declaration of Maria Protti in Support of 9 MOTION to Dismiss for Lack of Jurisdiction , *Fed. R. Civ. P. 12(b)(1)* MOTION to Dismiss for Lack of Jurisdiction , *Fed. R. Civ. P. 12(b)(1)*, 10 Request for Judicial Notice, filed byCity and County of San Francisco, Heather Fong, Gavin Newsom. (Related document(s) 9 , 10) (Kaiser, Sherri) (Filed on 7/9/2009) (Entered: 07/09/2009)
08/06/2009	12	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Kaiser, Sherri) (Filed on 8/6/2009) (Entered: 08/06/2009)
08/06/2009	13	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options *ADR CERTIFICATION BY PARTIES AND COUNSEL* (Michel, Carl) (Filed on 8/6/2009) (Entered: 08/06/2009)
08/12/2009	14	STIPULATION and Proposed Order selecting Mediation by Larry Barsetti, Thomas Boyer, City and County of San Francisco, Paul Colvin, Heather Fong, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Gavin Newsom, Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Stipulation And [Proposed] Order Selecting ADR Process* (Michel, Carl) (Filed on 8/12/2009) (Entered: 08/12/2009)
08/12/2009	15	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Telephonic Appearance Request for Initial Case Management Conference* (Michel, Carl) (Filed on 8/12/2009) (Entered: 08/12/2009)
08/14/2009	16	ORDER DENYING REQUEST TO APPEAR BY TELEPHONE re 15 Notice (Other), Notice (Other) filed by Thomas Boyer, Noemi Margaret Robinson, Paul Colvin, Espanola Jackson, David Golden, Larry Barsetti, National Rifle Association of America, Inc., San Francisco Veteran Police Officers Association. Signed by Judge Phyllis J. Hamilton on 8/14/09. (nah, COURT STAFF) (Filed on 8/14/2009) (Entered: 08/14/2009)
08/20/2009	17	JOINT CASE MANAGEMENT STATEMENT *JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc.,

		Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 8/20/2009) (Entered: 08/20/2009)
08/24/2009	18	AMENDED COMPLAINT *AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF* against City and County of San Francisco, Gavin Newsom. Filed byPaul Colvin, Thomas Boyer, David Golden, San Francisco Veteran Police Officers Association, Noemi Margaret Robinson, Espanola Jackson, Larry Barsetti, National Rifle Association of America, Inc.. (Attachments: # 1 Exhibit A)(Michel, Carl) (Filed on 8/24/2009) (Entered: 08/24/2009)
08/27/2009	19	MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 10/21/2009 09:00 AM in Courtroom 5, 17th Floor, San Francisco. (Michel, Carl) (Filed on 8/27/2009) (Entered: 08/27/2009)
08/27/2009	20	Declaration of C. D. Michel in Support of 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DECLARATION OF C. D. MICHEL IN SUPPORT OF MOTION TO STAY* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Related document(s) 19) (Michel, Carl) (Filed on 8/27/2009) (Entered: 08/27/2009)
08/27/2009	21	Proposed Order re 20 Declaration in Support,, 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [PROPOSED] ORDER GRANTING MOTION TO STAY* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 8/27/2009) (Entered: 08/27/2009)
08/27/2009	22	Minute Entry: Initial Case Management Conference held on 8/27/2009 before Phyllis J. Hamilton (Date Filed: 8/27/2009). (Court Reporter Not Reported.) (nah, COURT STAFF) (Date Filed: 8/27/2009) (Entered: 08/27/2009)
09/04/2009	23	CLERKS NOTICE Effective September 14, 2009, Judge Phyllis Hamilton's courtroom and chambers will be located in the Oakland Courthouse, Courtroom #3, 3rd floor, 1301 Clay Street, Oakland, California 94612. On or after September 14, 2009, all filings for matters pending on Judge Hamiltons docket, all court appearances, and all deliveries of chambers' copies of documents must be made at the Oakland Courthouse. The days and times for law and motion calendars and all currently scheduled proceedings remain unchanged. Please note that all of Judge Hamilton's case files will be moved to the Oakland Courthouse, therefore all cases numbers assigned to her will be changed slightly to reflect the correct venue. Previously, all case numbers started with "3:" to indicate the San Francisco office (Example: 3:09-cv-12345-PJH). As of September 14th, 2009, all of Judge Hamilton's case files will begin with "4:" to indicate the Oakland office, but everything else will stay the same (Example: 4:09-cv-12345-PJH). When e-filing, using the short case number format will always avoid problems when searching for the correct case: 09-12345 (YY-NNNNN)

		For information on the Oakland Courthouse's accessibility, parking, driving directions, public transit, hotels and other helpful links, please visit our website: http://www.cand.uscourts.gov, click on "Court Information" on the right hand side of our main page, then select the Oakland link under "Address and Jurisdiction". The main telephone number for the Oakland Division is 510 637-3530. (cp, COURT STAFF) (Filed on 9/4/2009) (Entered: 09/04/2009)
11/02/2009	24	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Notice of Related Cases* (Michel, Carl) (Filed on 11/2/2009) (Entered: 11/02/2009)
11/05/2009	25	MOTION to Relate Case , *Memorandum in Support of Motion* filed by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 11/5/2009) (Entered: 11/05/2009)
11/20/2009	26	ORDER by Judge Hamilton denying 25 Motion to Relate Case (pjhlc1, COURT STAFF) (Filed on 11/20/2009) (Entered: 11/20/2009)
03/18/2010	27	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Richard Seeborg for all further proceedings. Judge Hon. Phyllis J. Hamilton no longer assigned to case. Signed by Richard Wieking for the Executive Committee on 3/18/2010. (vlk, COURT STAFF) (Filed on 3/18/2010) (Entered: 03/18/2010)
04/02/2010	28	JOINT CASE MANAGEMENT STATEMENT filed by City and County of San Francisco, Heather Fong, George Gascon. (Kaiser, Sherri) (Filed on 4/2/2010) (Entered: 04/02/2010)
06/17/2010	29	MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* filed by Espanola Jackson. Motion Hearing set for 7/22/2010 01:30 PM in Courtroom 3, 17th Floor, San Francisco. (Michel, Carl) (Filed on 6/17/2010) (Entered: 06/17/2010)
06/17/2010	30	Declaration of C.D. Michel in Support of 29 MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* filed byEspanola Jackson. (Related document(s) 29) (Michel, Carl) (Filed on 6/17/2010) (Entered: 06/17/2010)
06/17/2010	31	Proposed Order re 29 MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* by Espanola Jackson. (Michel, Carl) (Filed on 6/17/2010) (Entered: 06/17/2010)
07/01/2010	32	Memorandum in Opposition re 29 MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* filed byCity and County of San Francisco, Heather Fong, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 7/1/2010) (Entered: 07/01/2010)
07/08/2010	33	RESPONSE to re 32 Memorandum in Opposition, *to Motion for Relief from Stay* by Espanola Jackson. (Michel, Carl) (Filed on 7/8/2010) (Entered: 07/08/2010)

07/22/2010	34	Minute Entry: Motion Hearing held on 7/22/2010 before Judge Richard Seeborg; Matter Submitted. (Date Filed: 7/22/2010) re 29 MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* MOTION for Relief from Stay re 19 MOTION to Stay *NOTICE OF MOTION AND MOTION TO STAY PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF* filed by Espanola Jackson.(Court Reporter Sahar McVickar.)(cl, COURT STAFF) (Date Filed: 7/22/2010) (Entered: 07/22/2010)
07/22/2010	35	NOTICE by Espanola Jackson *of Previous Ruling* (Michel, Carl) (Filed on 7/22/2010) (Entered: 07/22/2010)
07/23/2010	36	Letter from Counsel for Defendants *Objecting to Plaintiffs' Notice of Previous Ruling [Doc. No. 35].* (Kaiser, Sherri) (Filed on 7/23/2010) (Entered: 07/23/2010)
09/13/2010	37	ORDER RE: 29 GRANTING MOTION TO LIFT STAY. Signed by Judge Richard Seeborg on 09/13/2010. (rslc3, COURT STAFF) (Filed on 9/13/2010) (Entered: 09/13/2010)
09/22/2010	38	MOTION to Enlarge Time to Respond to First Amended Complaint and Exceed Otherse Applicable Page Limits filed by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 9/22/2010) Modified on 9/23/2010 (slh, COURT STAFF). (Entered: 09/22/2010)
09/22/2010	39	Declaration of Sherri Sokeland Kaiser in Support of 38 MOTION to Enlarge Time to Respond to First Amended Complaint and Exceed Otherse Applicable Page Limits filed by City and County of San Francisco, George Gascon, Gavin Newsom. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Related document(s) 38) (Kaiser, Sherri) (Filed on 9/22/2010) Modified on 9/23/2010 (slh, COURT STAFF). (Entered: 09/22/2010)
09/22/2010	40	Proposed Order re 38 MOTION to Enlarge Time to Respond to First Amended Complaint and Exceed Otherse Applicable Page Limits by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 9/22/2010) Modified on 9/23/2010 (slh, COURT STAFF). (Entered: 09/22/2010)
09/24/2010	41	Statement of Non-Opposition *to 38 Motion to Enlarge Time to Respond to Amended Complaint and Exceed Otherwise Applicable Page Limits* filed by Espanola Jackson. (Michel, Carl) (Filed on 9/24/2010) Modified on 9/27/2010 (slh, COURT STAFF). (Entered: 09/24/2010)
09/27/2010	42	ORDER RE: 38 MOTION TO EXTEND RESPONSE TIME AND PAGE LIMITS. Signed by Judge Richard Seeborg on 9/27/10. (rslc3, COURT STAFF) (Filed on 9/27/2010) (Entered: 09/27/2010)
09/27/2010	43	MOTION to Consolidate Cases filed by City and County of San Francisco, George Gascon, Gavin Newsom. Motion Hearing set for 12/9/2010 01:30 PM in Courtroom 3, 17th Floor, San Francisco. (Attachments: # 1 Appendix A, # 2 Appendix B, # 3 Appendix C)(Kaiser, Sherri) (Filed on 9/27/2010) (Entered: 09/27/2010)
09/27/2010	44	Declaration of Sherri Sokeland Kaiser in Support of 43 MOTION to Consolidate Cases filed byCity and County of San Francisco, George Gascon, Gavin Newsom. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Related document(s) 43) (Kaiser, Sherri) (Filed on 9/27/2010) (Entered: 09/27/2010)
09/27/2010	45	Proposed Order re 43 MOTION to Consolidate Cases by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 9/27/2010) (Entered: 09/27/2010)
09/27/2010	46	CERTIFICATE OF SERVICE by City and County of San Francisco, George Gascon, Gavin Newsom re 43 MOTION to Consolidate Cases *on Counsel in Pizzo v. Newsom; C09-04493*

		CW (Kaiser, Sherri) (Filed on 9/27/2010) (Entered: 09/27/2010)
11/08/2010	47	STIPULATION *And Order Re: Dismissal Of Plaintiffs' Fifth Claim For Relief* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 11/8/2010) (Entered: 11/08/2010)
11/18/2010	48	Memorandum in Opposition re 43 MOTION to Consolidate Cases *Plaintiffs' Opposition To Defendants' Motion To Consolidate; Declaration of Clinton B. Monfort In Support Thereof* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit B, # 2 Exhibit C)(Michel, Carl) (Filed on 11/18/2010) (Entered: 11/18/2010)
11/18/2010	49	Request for Judicial Notice re 48 Memorandum in Opposition, *Request For Judicial Notice In Support of Plaintiffs' Opposition to Defendants' Motion to Consolidate* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A)(Related document(s) 48) (Michel, Carl) (Filed on 11/18/2010) (Entered: 11/18/2010)
11/24/2010	50	Reply Memorandum re 43 MOTION to Consolidate Cases filed byCity and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 11/24/2010) (Entered: 11/24/2010)
11/29/2010	51	CERTIFICATE OF SERVICE by City and County of San Francisco, George Gascon, Gavin Newsom re 50 Reply Memorandum (Kaiser, Sherri) (Filed on 11/29/2010) (Entered: 11/29/2010)
11/29/2010	52	STIPULATION *AND [PROPOSED] ORDER EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' FIRST AMENDED COMPLAINT* by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 11/29/2010) (Entered: 11/29/2010)
11/29/2010	53	STIPULATION AND ORDER EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS FIRST AMENDED COMPLAINT. Signed by Judge Richard Seeborg on 11/29/10. (cl, COURT STAFF) (Filed on 11/29/2010) (Entered: 11/29/2010)
12/09/2010	54	Minute Entry: Motion Hearing held on 12/9/2010 before Judge Seeborg; Matter Submitted. (Date Filed: 12/9/2010) re 43 MOTION to Consolidate Cases filed by Gavin Newsom, George Gascon, City and County of San Francisco.(Court Reporter Kathy Wyatt.)(cl, COURT STAFF) (Date Filed: 12/9/2010) (Entered: 12/09/2010)
12/16/2010	55	ORDER RE: 43 DENYING MOTION TO CONSOLIDATE. Signed by Judge Richard Seeborg on 12/16/2010. (rslc3, COURT STAFF) (Filed on 12/16/2010) (Entered: 12/16/2010)
12/16/2010	56	ORDER RE: 55 SETTING DEADLINE TO RESPOND TO THE COMPLAINT. Signed by Judge Richard Seeborg on 12/16/10. (rslc3, COURT STAFF) (Filed on 12/16/2010) (Entered: 12/16/2010)
12/29/2010	57	STIPULATION AND ORDER RE: DISMISSAL OF PLAINTIFFS' FIFTH CLAIM FOR RELIEF. Signed by Judge Richard Seeborg on 12/29/10. (cl, COURT STAFF) (Filed on 12/29/2010) (Entered: 12/29/2010)
01/27/2011	58	STIPULATION *AND [PROPOSED] ORDER EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' FIRST AMENDED COMPLAINT* by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 1/27/2011) (Entered: 01/27/2011)
01/27/2011	59	Declaration of Sherri Sokeland Kaiser in Support of 58 Stipulation *and [Proposed] Order*

		Extending Time for Defendants to Respond to Plaintiffs' First Amended Complaint filed byCity and County of San Francisco, George Gascon, Gavin Newsom. (Related document(s) 58) (Kaiser, Sherri) (Filed on 1/27/2011) (Entered: 01/27/2011)
01/28/2011	60	STIPULATION AND ORDER RE 58 EXTENDING TIME FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' FIRST AMENDED COMPLAINT. Stipulation filed by Gavin Newsom, George Gascon, City and County of San Francisco. Signed by Judge Richard Seeborg on 1/28/11. (cl, COURT STAFF) (Filed on 1/28/2011) (Entered: 01/28/2011)
02/10/2011	61	MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities* filed by City and County of San Francisco. Motion Hearing set for 4/7/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Kaiser, Sherri) (Filed on 2/10/2011) (Entered: 02/10/2011)
02/10/2011	62	Request for Judicial Notice re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities* filed byCity and County of San Francisco. (Attachments: # 1 Exhibit A)(Related document(s) 61) (Kaiser, Sherri) (Filed on 2/10/2011) (Entered: 02/10/2011)
02/10/2011	63	Proposed Order re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities* by City and County of San Francisco. (Kaiser, Sherri) (Filed on 2/10/2011) (Entered: 02/10/2011)
02/17/2011	64	Renotice motion hearing re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities* filed byCity and County of San Francisco. Motion Hearing set for 4/14/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Kaiser, Sherri) (Filed on 2/17/2011) (Entered: 02/17/2011)
03/23/2011	65	RESPONSE (re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities*) *Plaintiffs' Opposition to Defendants' Motion to Dismiss* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 3/23/2011) (Entered: 03/23/2011)
03/23/2011	66	Request for Judicial Notice *Request for Judicial Notice In Support of Plaintiffs' Opposition To Defendants Motion to Dismiss* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Michel, Carl) (Filed on 3/23/2011) (Entered: 03/23/2011)
03/24/2011	67	Plaintiffs' Objections To Defendants' Request for Judicial Notice In Support of Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 3/24/2011) Modified on 3/25/2011 (slh, COURT STAFF). (Entered: 03/24/2011)
03/31/2011	68	REPLY (re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities*) filed byCity and County of San Francisco. (Attachments: # 1 Appendix) (Kaiser, Sherri) (Filed on 3/31/2011) (Entered: 03/31/2011)
04/08/2011	69	ORDER CONTINUING HEARING DATE AND REQUEST FURTHER BRIEFING. Motion Hearing set for 4/28/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Signed by Judge Richard Seeborg on 4/8/11. (cl, COURT STAFF) (Filed on 4/8/2011) (Entered: 04/08/2011)
04/15/2011	70	Plaintiffs' Supplemental Brief In Support of Opposition to Defendants' 61 MOTION to Dismiss (Pursuant To The Court's Order) by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi

		Margaret Robinson, San Francisco Veteran Police Officers Association (Michel, Carl) (Filed on 4/15/2011) Modified on 4/19/2011 (slh, COURT STAFF). (Entered: 04/15/2011)
04/15/2011	71	DECLARATION of Clinton B. Monfort in Opposition to 70 Notice (Other), Notice (Other) *Declaration of Clinton B. Monfort In Support In Support of Plaintiffs' Supplemental Brief In Opposition To Motion To Dismiss* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A) (Related document(s) 70) (Michel, Carl) (Filed on 4/15/2011) (Entered: 04/15/2011)
04/26/2011	72	Letter from Sherri Kaiser *to The Honorable Richard Seeborg*. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Kaiser, Sherri) (Filed on 4/26/2011) (Entered: 04/26/2011)
04/27/2011	73	Letter from Wayne Snodgrass *[Emergency Request for Continuance of April 27, 2011 Motion Hearing]*. (Kaiser, Sherri) (Filed on 4/27/2011) (Entered: 04/27/2011)
04/28/2011	74	Renotice motion hearing re 61 MOTION to Dismiss for Lack of Jurisdiction *; Memorandum of Points and Authorities* filed byCity and County of San Francisco, George Gascon, Gavin Newsom. Motion Hearing set for 5/5/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Related document(s) 61) (Kaiser, Sherri) (Filed on 4/28/2011) (Entered: 04/28/2011)
05/02/2011	75	Letter from C. D. Michel *To The Honorable Richard Seeborg*. (Michel, Carl) (Filed on 5/2/2011) (Entered: 05/02/2011)
05/02/2011	76	OBJECTIONS to *Evidence* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/2/2011) (Entered: 05/02/2011)
05/03/2011	77	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Statement of Recent Decision In Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss* (Attachments: # 1 Exhibit A)(Michel, Carl) (Filed on 5/3/2011) (Entered: 05/03/2011)
05/03/2011	78	MOTION for Leave to File *Plaintiffs' Notice of Motion and Motion For Leave to File Supplemental Complaint* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 6/9/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. (Michel, Carl) (Filed on 5/3/2011) (Entered: 05/03/2011)
05/03/2011	79	Declaration of Clinton B. Monfort in Support of 78 MOTION for Leave to File *Plaintiffs' Notice of Motion and Motion For Leave to File Supplemental Complaint Declaration of Clinton B. Monfort In Support of Plaintiffs Motion for Leave to File Supplemental Complaint* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A)(Related document(s) 78) (Michel, Carl) (Filed on 5/3/2011) (Entered: 05/03/2011)
05/05/2011	80	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed byCity and County of San Francisco. (Attachments: # 1 Attachment)(Related document(s) 74) (Kaiser, Sherri) (Filed on 5/5/2011) (Entered: 05/05/2011)
05/05/2011	81	Minute Entry:Motion Hearing held on 5/5/2011 before Judge Richard Seeborg; MOTION TAKEN UNDER SUBMISSION (Date Filed: 5/5/2011).(Court Reporter Jim Yeomans.) (cl, COURT STAFF) (Date Filed: 5/5/2011) (Entered: 05/05/2011)
05/06/2011	82	ORDER RE 78 MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

		Signed by Judge Richard Seeborg on 5/6/11. (cl, COURT STAFF) (Filed on 5/6/2011) (Entered: 05/06/2011)
07/09/2011	83	MOTION Administrative *Unopposed Motion for Administrative Relief For Leave to File Statement of Recent Decision* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 7/18/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Responses due by 7/15/2011. (Attachments: # 1 Exhibit 1)(Michel, Carl) (Filed on 7/9/2011) (Entered: 07/09/2011)
07/09/2011	84	STIPULATION re 83 MOTION Administrative *Unopposed Motion for Administrative Relief For Leave to File Statement of Recent Decision Stipulation and Order Re: Administrative Relief For Leave to File Statement of Recent Decision* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 7/9/2011) (Entered: 07/09/2011)
07/11/2011		***Deadlines terminated*** Case Management Statement Due date of 08/20/2009 Date Terminated: 2 ADR Scheduling Order. (gba, COURT STAFF) (Filed on 7/11/2011) (Entered: 07/11/2011)
07/11/2011	85	NOTICE by City and County of San Francisco *OF UNAVAILABILITY OF COUNSEL* (Kaiser, Sherri) (Filed on 7/11/2011) (Entered: 07/11/2011)
07/12/2011	86	STIPULATION AND ORDER RE: ADMINISTRATIVE RELIEF FOR LEAVE TO FILE STATEMENT OF RECENT DECISION. Signed by Judge Richard Seeborg on 7/12/11. (cl, COURT STAFF) (Filed on 7/12/2011) (Entered: 07/12/2011)
07/12/2011	87	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d *Statement of Recent Decision In Support of Plaintiffs' Opposition To Defendants' Motion to Dismiss For Lack of Jurisdiction* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A)(Michel, Carl) (Filed on 7/12/2011) (Entered: 07/12/2011)
09/16/2011	88	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Notice of Submitted Matter* (Attachments: # 1 Exhibit A)(Michel, Carl) (Filed on 9/16/2011) (Entered: 09/16/2011)
09/27/2011	89	ORDER DENYING MOTION TO DISMISS FOR LACK OF STANDING, GRANTING LEAVE TO AMEND MOOT CLAIM. Case Management Conference set for 11/3/2011 10:00 AM in Courtroom 3, 17th Floor, San Francisco. Signed by Judge Richard Seeborg on 9/26/11. (cl, COURT STAFF) (Filed on 9/27/2011) (Entered: 09/27/2011)
10/04/2011	90	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Notice of Intention To Not Amend Complaint And Request For Court Order Setting Deadline For Responsive Pleading* (Michel, Carl) (Filed on 10/4/2011) (Entered: 10/04/2011)
10/06/2011	91	ORDER SETTING DEADLINE TO RESPOND TO THE COMPLAINT. Signed by Judge Richard Seeborg on 10/6/11. (cl, COURT STAFF) (Filed on 10/6/2011) (Entered: 10/06/2011)
10/17/2011	92	ANSWER to 18 First Amended Complaint by City and County of San Francisco, George Gascon, Gavin Newsom. (Kaiser, Sherri) (Filed on 10/17/2011) Modified on 10/18/2011 (gba, COURT STAFF). (Entered: 10/17/2011)

10/26/2011	93	STIPULATION *and Proposed Order Continuing Case Management Conference* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 10/26/2011) (Entered: 10/26/2011)
10/26/2011	94	CLERKS NOTICE Case Management Conference set for 11/17/2011 10:00 AM in Courtroom 3, 17th Floor, San Francisco. (rslc3, COURT STAFF) (Filed on 10/26/2011) (Entered: 10/26/2011)
11/07/2011	95	STIPULATION *Stipulation And [Proposed] Order Substituting Parties* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 11/7/2011) (Entered: 11/07/2011)
11/07/2011	96	MOTION to Strike *Notice of Motion And Motion To Strike Portions Of Defendants' Answer; Points And Authorities In Support* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 12/15/2011 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Responses due by 11/21/2011. Replies due by 11/28/2011. (Attachments: # 1 Declaration Clinton B. Monfort)(Michel, Carl) (Filed on 11/7/2011) (Entered: 11/07/2011)
11/07/2011	97	Proposed Order *Granting Motion To Strike Portions of Defendants' Answer* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 11/7/2011) (Entered: 11/07/2011)
11/08/2011	98	STIPULATION AND ORDER SUBSTITUTING PARTIES. Signed by Judge Richard Seeborg on 11/7/11. (cl, COURT STAFF) (Filed on 11/8/2011) (Entered: 11/08/2011)
11/10/2011	99	JOINT CASE MANAGEMENT STATEMENT *Joint Case Management Statement* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 11/10/2011) (Entered: 11/10/2011)
11/17/2011	100	Minute Entry: Further Case Management Conference held on 11/17/2011 before Judge Richard Seeborg (Date Filed: 11/17/2011). (Court Reporter Not reported.) (cl, COURT STAFF) (Date Filed: 11/17/2011) (Entered: 11/17/2011)
11/18/2011	101	CASE MANAGEMENT SCHEDULING ORDER. Further Case Management Conference set for 8/23/2012 10:00 AM.; Pretrial Conference set for 2/14/2013 10:00 AM; Jury Selection set for 2/25/2013 09:00 AM; Jury Trial set for 2/25/2013 09:00 AM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Signed by Judge Richard Seeborg on 11/18/11. (cl, COURT STAFF) (Filed on 11/18/2011) (Entered: 11/18/2011)
11/21/2011	102	RESPONSE (re 96 MOTION to Strike *Notice of Motion And Motion To Strike Portions Of Defendants' Answer; Points And Authorities In Support*) filed byCity and County of San Francisco. (Kaiser, Sherri) (Filed on 11/21/2011) (Entered: 11/21/2011)
11/23/2011	103	Transcript of Proceedings held on 05/05/11, before Judge Richard Seeborg. Court Reporter/Transcriber James Yeomans, Telephone number (415) 863-5179. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction.After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 2/21/2012. (jjy, COURT STAFF) (Filed on 11/23/2011) (Entered: 11/23/2011)
11/28/2011	104	REPLY (re 96 MOTION to Strike *Notice of Motion And Motion To Strike Portions Of Defendants' Answer; Points And Authorities In Support*) *Plaintifffs' Reply To Opposition To*

		Motion To Strike Portions of Answer filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A, # 2 Declaration Of Clinton B. Monfort)(Michel, Carl) (Filed on 11/28/2011) (Entered: 11/28/2011)
12/12/2011	105	ORDER DENYING MOTON TO STRIKE. by Judge Richard Seeborg (cl, COURT STAFF) (Filed on 12/12/2011) (Entered: 12/12/2011)
02/17/2012	106	NOTICE of Change In Counsel by Christine Van Aken (Van Aken, Christine) (Filed on 2/17/2012) (Entered: 02/17/2012)
02/22/2012	107	NOTICE of Change In Counsel by Christine Van Aken *CORRECTED NOTICE OF REASSIGNMENT OF ATTORNEY* (Van Aken, Christine) (Filed on 2/22/2012) (Entered: 02/22/2012)
03/29/2012	108	NOTICE by City and County of San Francisco *NOTICE OF UNAVAILABILITY OF COUNSEL FOR DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO, ET AL.* (Van Aken, Christine) (Filed on 3/29/2012) (Entered: 03/29/2012)
05/17/2012	109	MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 7/12/2012 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Responses due by 5/31/2012. Replies due by 6/7/2012. (Michel, Carl) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/17/2012	110	Declaration of Espanola Jackson in Support of 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Related document(s) 109) (Michel, Carl) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/17/2012	111	Declaration of David Golden *In Support of 109 Motion For Partial Judgment On The Pleadings* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) Modified on 5/18/2012 (gba, COURT STAFF). (Entered: 05/17/2012)
05/17/2012	112	Declaration of Larry Barsetti *In Support of 109 Motion For Partial Judgment On The Pleadings* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) Modified on 5/18/2012 (gba, COURT STAFF). (Entered: 05/17/2012)
05/17/2012	113	Declaration of Noemi Margaret Robinson *In Support of 109 Motion for Partial Judgment On The Pleadings* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) Modified on 5/18/2012 (gba, COURT STAFF). (Entered: 05/17/2012)
05/17/2012	114	Declaration of Paul Colvin *In Support of 109 Motion For Partial Judgment On The Pleadings* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) Modified on 5/18/2012 (gba, COURT STAFF). (Entered: 05/17/2012)
05/17/2012	115	Declaration of Thomas Boyer *In Support of 109 Motion For Partial Judgment On The*

		Pleadings filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) Modified on 5/18/2012 (gba, COURT STAFF). (Entered: 05/17/2012)
05/17/2012	116	Request for Judicial Notice re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings Plaintiffs' Request for Judicial Notice In Support Of Motion For Partial Judgment On The Pleadings; Declaration of Clinton B. Monfort In Support; Part 1 of 2;Exhibits A - I* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Related document(s) 109) (Michel, Carl) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/17/2012	117	EXHIBITS re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings Plaintiffs' Request For Judicial Notice In Support Of Motion For Partial Judgment On The Pleadings; Declaration of Clinton B. Monfort In Support; Part 2 of 2; Exhibits J-T* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 J, # 2 K, # 3 L, # 4 M, # 5 N, # 6 O, # 7 P, # 8 Q, # 9 S, # 10 T)(Related document(s) 109) (Michel, Carl) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/17/2012	118	Proposed Order re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings Granting Motion For Partial Judgment On The Pleadings* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 5/17/2012) (Entered: 05/17/2012)
05/18/2012	119	ERRATA re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings Notice of Errata To Plaintiffs' Request For Judicial Notice In Support of Motion for Partial Judgment On The Pleadings; Declaration of Clinton B. Monfort In Support Part 2 of 2; Exhibits J -T* by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit R, # 2 Exhibit R Continued)(Michel, Carl) (Filed on 5/18/2012) (Entered: 05/18/2012)
05/23/2012	120	STIPULATION WITH PROPOSED ORDER *EXTENDING BRIEFING SCHEDULE ON PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS* filed by City and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 5/23/2012) (Entered: 05/23/2012)
05/23/2012	121	Declaration of Christine Van Aken in Support of 120 STIPULATION WITH PROPOSED ORDER *EXTENDING BRIEFING SCHEDULE ON PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS* filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Related document(s) 120) (Van Aken, Christine) (Filed on 5/23/2012) (Entered: 05/23/2012)
05/23/2012	122	STIPULATION AND ORDER RE 120 EXTENDING BRIEFING SCHEDULE ON PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS. Signed by Judge Richard Seeborg on 5/23/12. (cl, COURT STAFF) (Filed on 5/23/2012) (Entered: 05/23/2012)
05/24/2012	123	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *Plaintiffs' Notice of Re-Assignment of Counsel Hidalgo*

		The Same Office (Michel, Carl) (Filed on 5/24/2012) (Entered: 05/24/2012)
06/06/2012	124	STIPULATION WITH PROPOSED ORDER *EXTENDING PRETRIAL AND TRIAL DEADLINES AND ADVANCING FURTHER CASE MANAGEMENT CONFERENCE* filed by City and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 6/6/2012) (Entered: 06/06/2012)
06/06/2012	125	Declaration of CHRISTINE VAN AKEN in Support of 124 STIPULATION WITH PROPOSED ORDER *EXTENDING PRETRIAL AND TRIAL DEADLINES AND ADVANCING FURTHER CASE MANAGEMENT CONFERENCE* filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Related document(s) 124) (Van Aken, Christine) (Filed on 6/6/2012) (Entered: 06/06/2012)
06/07/2012	126	CLERKS NOTICE RESCHEDULING CASE MANAGEMENT CONFERENCE. Further Case Management Conference set for 7/12/2012 01:30 PM in Courtroom 3, 17th Floor, San Francisco. (cl, COURT STAFF) (Filed on 6/7/2012) (Entered: 06/07/2012)
06/07/2012	127	RESPONSE (re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings*) *CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS* filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 6/7/2012) (Entered: 06/07/2012)
06/07/2012	128	Appendix re 127 Opposition/Response to Motion, *APPENDIX OF SELECTED AUTHORITIES IN SUPPORT OF SAN FRANCISCO'S OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS* filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Attachments: # 1 EXHIBITS TO APPENDIX) (Related document(s) 127) (Van Aken, Christine) (Filed on 6/7/2012) (Entered: 06/07/2012)
06/07/2012	129	Proposed Order re 127 Opposition/Response to Motion, *[PROPOSED] ORDER DENYING PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS* by City and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 6/7/2012) (Entered: 06/07/2012)
06/21/2012	130	REPLY (re 109 MOTION for Judgment on the Pleadings *Notice of Motion and Motion for Partial Judgment On The Pleadings*) *Plaintiffs' Reply To Defendants' Opposition To Motion For Partial Judgment On The Pleadings; Exhibits "A-I"* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Franklin, Scott) (Filed on 6/21/2012) (Entered: 06/21/2012)
06/21/2012	131	Request for Judicial Notice re 130 Reply to Opposition/Response,, *Plaintiffs' Request For Judicial Notice In Support of Reply To Defendants' Opposition To Motion for Partial Judgment on The Pleadings* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Exhibit U) (Related document(s) 130) (Franklin, Scott) (Filed on 6/21/2012) (Entered: 06/21/2012)
07/06/2012	132	CASE MANAGEMENT STATEMENT *Joint CMC statement* filed by City and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 7/6/2012) (Entered: 07/06/2012)
07/12/2012	133	Minute Entry: Further Case Management Conference held on 7/12/2012 before Judge Richard Seeborg (Date Filed: 7/12/2012), Motion Hearing held on 7/12/2012 before Judge Richard Seeborg (Date Filed: 7/12/2012). (Court Reporter Kathy Wyatt.) (cl, COURT STAFF) (Date Filed: 7/12/2012) (Entered: 07/12/2012)
08/17/2012	134	ORDER by Judge Seeborg denying 109 Motion for Judgment on the Pleadings (ER

		COURT STAFF) (Filed on 8/17/2012) (Entered: 08/17/2012)
08/28/2012	135	Transcript of Proceedings held on 7-12-12, before Judge Richard Seeborg. Court Reporter/Transcriber Katherine Wyatt, Telephone number 925-212-5224. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction.After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 11/26/2012. (kpw, COURT STAFF) (Filed on 8/28/2012) (Entered: 08/28/2012)
08/30/2012	136	MOTION for Preliminary Injunction *Notice of Motion and Motion For Preliminary Injunction; Memorandum of Points And Authorities In Support* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 10/4/2012 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Responses due by 9/20/2012. Replies due by 9/27/2012. (Attachments: # 1 Declaration Declaration of Clinton B. Monfort In Support of Motion For Preliminary Injunction, # 2 Declaration Declaration of David Golden In Support of Motion For Preliminary Injunction, # 3 Declaration Declaration of Espanola Jackson In Support of Motion For Preliminary Injunction, # 4 Declaration Declaration of Larry Barsetti In Support of Motion For Preliminary Injunction, # 5 Declaration Declaration of Noemi Margaret Robinson In Support of Motion For Preliminary Injunction, # 6 Declaration Declaration of Sheldon Paul Colvin In Support of Motion For Preliminary Injunction, # 7 Declaration Declaration of Thomas Boyer In Support of Motion For Preliminary Injunction, # 8 Declaration Declaration of Anna M. Barvir In Support of Motion For Preliminary Injunction, # 9 Exhibit A, # 10 Exhibit B, # 11 Exhibit C, # 12 Exhibit D, # 13 Exhibit E, # 14 Exhibit F, # 15 Exhibit G, # 16 Exhibit H, # 17 Exhibit I, # 18 Exhibit J, # 19 Exhibit K, # 20 Exhibit L, # 21 Exhibit M, # 22 Exhibit N, # 23 Exhibit O, # 24 Exhibit P Part 1, # 25 Exhibit P Part 2, # 26 Exhibit Q, # 27 Exhibit R, # 28 Exhibit S, # 29 Exhibit T, # 30 Exhibit U, # 31 Exhibit V, # 32 Exhibit W)(Michel, Carl) (Filed on 8/30/2012) (Entered: 08/30/2012)
09/05/2012	137	NOTICE by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association *of Need For Setting of Further Case Management Conference Pursuant to Court's Instruction* (Attachments: # 1 Proposed Order Granting Motion for Further Case Management Conference)(Michel, Carl) (Filed on 9/5/2012) (Entered: 09/05/2012)
09/06/2012	138	CLERKS NOTICE SCHEDULING A FURTHER CASE MANAGEMENT CONFERENCE. Further Case Management Conference set for 10/4/2012 01:30 PM in Courtroom 3, 17th Floor, San Francisco. (cl, COURT STAFF) (Filed on 9/6/2012) (Entered: 09/06/2012)
09/13/2012	139	RESPONSE (re 136 MOTION for Preliminary Injunction *Notice of Motion and Motion For Preliminary Injunction; Memorandum of Points And Authorities In Support*) filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Van Aken, Christine) (Filed on 9/13/2012) (Entered: 09/13/2012)
09/13/2012	140	Declaration of Cathy Garza in Support of 139 Opposition/Response to Motion, filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Related document(s) 139) (Van Aken, Christine) (Filed on 9/13/2012) (Entered: 09/13/2012)
09/13/2012	141	Declaration of Daniel W. Webster in Support of 139 Opposition/Response to Motion, filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Attachments: # 1 Exhibit 1) (Related document(s) 139) (Van Aken, Christine) (Filed on 9/13/2012) (Entered: 09/13/2012)

09/13/2012	142	Appendix re 139 Opposition/Response to Motion, filed byCity and County of San Francisco, Edwin Lee, Greg Suhr. (Attachments: # 1 Attachments)(Related document(s) 139) (Van Aken, Christine) (Filed on 9/13/2012) (Entered: 09/13/2012)
09/20/2012	143	REPLY (re 136 MOTION for Preliminary Injunction *Notice of Motion and Motion For Preliminary Injunction; Memorandum of Points And Authorities In Support*) *Plaintiffs' Reply To Defendants' Opposition To Motion For Preliminary Injunction* filed byLarry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Declaration Of Massad Ayoob In Support of Plaintiffs' Reply To Defendants' Opposition To Motion For Preliminary Injunction)(Michel, Carl) (Filed on 9/20/2012) (Entered: 09/20/2012)
09/25/2012	144	MOTION to Appear by Telephone *Telephonic Appearance Request For Plaintiffs' Motion For Preliminary Injunction and Further Case Management Conference* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 9/25/2012) (Entered: 09/25/2012)
09/27/2012	145	JOINT CASE MANAGEMENT STATEMENT *And [Proposed] Order* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Michel, Carl) (Filed on 9/27/2012) (Entered: 09/27/2012)
10/03/2012	146	MOTION to Dismiss *Plaintiffs' Notice of Unopposed Motion and Motion to Dismiss Plaintiff Paul Colvin; Notice of Motion and Motion to Dismiss Plaintiff Thomas Boyer; Points and Authorities In Support; Declaration of Clinton B. Monfort* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Motion Hearing set for 11/8/2012 01:30 PM in Courtroom 3, 17th Floor, San Francisco before Hon. Richard Seeborg. Responses due by 10/25/2012. Replies due by 11/1/2012. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Declaration of Thomas Boyer In Support of Motion to Dismiss Plaintiff Thomas Boyer, # 4 Proposed Order)(Michel, Carl) (Filed on 10/3/2012) (Entered: 10/03/2012)
10/04/2012	147	Minute Entry: Further Case Management Conference held on 10/4/2012 before Judge Richard Seeborg (Date Filed: 10/4/2012), Motion Hearing held on 10/4/2012 before Judge Richard Seeborg; MATTER TAKEN UNDER SUBMISSION. (Date Filed: 10/4/2012) re 136 MOTION for Preliminary Injunction *Notice of Motion and Motion For Preliminary Injunction; Memorandum of Points And Authorities In Support* filed by Thomas Boyer, Noemi Margaret Robinson, Paul Colvin, Espanola Jackson, David Golden, Larry Barsetti, National Rifle Association of America, Inc., San Francisco Veteran Police Officers Association. (Court Reporter Connie Kuhl.) (cl, COURT STAFF) (Date Filed: 10/4/2012) (Entered: 10/04/2012)
10/15/2012	148	MOTION to Withdraw *Plaintiffs' Notice of Withdrawal of Unopposed Motion to Dismiss Plaintiff Paul Colvin and Motion to Dismiss Plaintiff Thomas Boyer; Declaration of Clinton B. Monfort In Support* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. Responses due by 10/29/2012. Replies due by 11/5/2012. (Michel, Carl) (Filed on 10/15/2012) (Entered: 10/15/2012)
10/23/2012	149	Transcript of Proceedings held on 10-04-2012, before Judge Richard Seeborg. Official Court Reporter Connie Kuhl, CSR, RPR, RMR, CRR, Telephone number 415-431-2020. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 1/22/2013.

		(ck, COURT STAFF) (Filed on 10/23/2012) (Entered: 10/23/2012)
11/26/2012	150	ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION. by Judge Richard Seeborg (cl, COURT STAFF) (Filed on 11/26/2012) (Entered: 11/26/2012)
12/21/2012	151	NOTICE OF APPEAL to the Ninth Circuit Court of Appeals Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association.(Appeal fee of $455 receipt number 0971-7363849 paid.) *Plaintiffs' Notice of Appeal and Representation Statement* (Attachments: # 1 Exhibit Order Denying Plaintiffs' Motion for Preliminary Injunction)(Michel, Carl) (Filed on 12/21/2012) Modified on 12/31/2012 (gbaS, COURT STAFF). ***12-17803*** (Entered: 12/21/2012)
12/27/2012	152	STIPULATION WITH PROPOSED ORDER *Stipulation of Parties to Stay Further District Court Proceedings Pending Appeal of Court's Order Denying Motion for Preliminary Injunction* filed by Larry Barsetti, Thomas Boyer, Paul Colvin, David Golden, Espanola Jackson, National Rifle Association of America, Inc., Noemi Margaret Robinson, San Francisco Veteran Police Officers Association. (Attachments: # 1 Proposed Order Proposed Order Staying Further District Court Proceedings)(Michel, Carl) (Filed on 12/27/2012) (Entered: 12/27/2012)
12/27/2012	153	Transcript Designation and Ordering Form for proceedings held on 5/5/2011, 7/12/2012, 10/4/2012 before Judge Richard Seeborg, (Michel, Carl) (Filed on 12/27/2012) (Entered: 12/27/2012)
12/31/2012	154	STIPULATION AND ORDER RE 152 STAYING FURTHER DISTRICT COURT PROCEEDINGS. Signed by Judge Richard Seeborg on 12/31/12. (cl, COURT STAFF) (Filed on 12/31/2012) (Entered: 12/31/2012)
01/25/2013	155	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 151 Notice of Appeal. (Attachments: # 1 Notice of Appeal Notification Form) (gba, COURT STAFF) (Filed on 1/25/2013) (Additional attachment(s) added on 1/25/2013: # 2 Docket Sheet) (gba, COURT STAFF). (Entered: 01/25/2013)
01/25/2013		Copy of Notice of Appeal and Docket sheet mailed to all non-efilers. (gba, COURT STAFF) (Filed on 1/25/2013) (Entered: 01/25/2013)

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