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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 DARWOOD HANCE, et al.

17 Plaintiffs/Petitioners

18 vs.

19 CITY OF LOS ANGELES, et al

20 Defendants/Respondents

C. A. # BC ~~141695~~ 181327

DECLARATION OF EUGENE
WOLBERG IN SUPPORT OF
PETITION FOR WRIT OF MANDATE
AND FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION
Date: November 23, 1997
Time: 8:30AM
Dept: 85

FILED
LOS ANGELES SUPERIOR COURT

NOV 24 1997

JOHN A. CLARKE, CLERK
Darolyn Jensen
BY DAROLYN JENSEN, DEPUTY

1 Assault Weapon Identification.

2 4. For the last 18 years I have also been a reserve deputy
3 (sergeant) with the San Diego Sheriff's Department acting as a
4 Range Officer and firearms trainer for that Department.

5 5. My educational background includes a university degree in
6 Microbiology with minors in Chemistry and Biology and Evidence
7 Technology and courses in Medical Microbiology, Chemistry and
8 Biology, as well as courses and seminars given by the FBI and
9 police agencies and firearms companies regarding firearm
10 identification, use, training and wound analysis. I have myself
11 taught courses in these subjects for colleges, the U.S. Armed
12 Forces, various state and local law enforcement agencies and
13 private companies and for such agencies and companies in Canada and
14 Mexico. I have also presented and/or published numerous papers on
15 firearms issues in police and firearms seminars and technical
16 journals.

17 6. I have been qualified and testified as an expert in nearly
18 600 California state court cases and 15 or more times in federal
19 court cases. The subject matter for which I was qualified as an
20 expert in all of the federal cases involved firearms issues as did
21 my testimony in over 120 of the state court cases.

22

23 [UNIQUENESS OF LOS ANGELES ORDINANCE]

24 7. Those who authored Los Angeles Municipal Code § 55.13 (LAMC
25 § 55.13) may have acted under the misimpression that it dovetails
26 with or simply implements mainstream legislation against firearms
27 that are particularly deadly or against "assault weapons" that have

28

1 | been (mis)represented as such or (mis)represented as frequently
2 | being used in crime. If so, the authors are sadly deceived for LAMC
3 | § 55.13 is far broader than any comparable legislation with which
4 | I am familiar.

5 | 8. In its ban on certain feeding devices LAMC § 55.13 differs
6 | from the state Roberti-Roos Assault Weapons Control Act (Pen. C. §§
7 | 12275 ff.) which only names certain specific firearms and says
8 | nothing at all about feeding devices. LAMC § 55.13 differs from the
9 | federal assault weapon ban in that that ban (found in Title 18 USC
10 | § 921) does not apply to magazines manufactured before September,
11 | 1994; and it expressly does not apply to .22 tubular magazines. See
12 | Title 18 USC § 921 (a)(31). LAMC § 55.13 also differs from the
13 | CITY'S own prior assault weapon ban which is very limited in its
14 | application. It is defined to apply only to magazines of: 20 rounds
15 | or more which fit semi-automatic rifles manufactured after 1954.
16 | And it expressly excludes tubular rimfire (i.e. .22 caliber)
17 | weapons, lever action weapons, bolt action weapons, fully automatic
18 | weapons, handguns and curios and relics. LAMC § 55.05 (a)(1) and
19 | (c).

20 |
21 | [§ 55.13's OUTLAWING OF INNOCUOUS TARGET RIFLES]

22 | 9. For at least the past half-century many, if not most, .22
23 | caliber (rimfire) target and/or squirrel hunting rifles have been
24 | made to use an integral non-detachable tubular magazine whose
25 | capacity exceeds 10 rounds. That is true of lever action, pump
26 | action, bolt action and semi-automatic .22 rifles alike. On some of
27 | these rifles, dismantling them will allow the tubular magazine to

1 be removed. On others it is affixed to the barrel and could be
2 removed only with special tools or by sawing or cutting it off. In
3 either event, removal would make the rifle useless and unsalable.
4 Without the tubular magazine it either would not fire or would only
5 fire by use of a cumbrous single-shot loading procedure which the
6 rifle was never designed for.

7 10. LAMC 55.13 effectively bans the sale of these .22 target/-
8 squirrel rifles since there is no way to sell them that does not
9 involve the sale or transfer of the integral tubular magazine whose
10 capacity exceeds 10 rounds. That applies both to the sale of new
11 rifles and to the resale of used ones.

12
13 [DEVALUATION OF COLLECTIBLES]

14 11. The Winchester 73 lever action rifle made in .22 rimfire
15 and various higher (deer hunting) calibers from 1873 through 1924
16 came with an integral tubular magazine holding (depending on the
17 caliber) 15-17 rounds. Depending on their condition, particular
18 sub-models of the Winchester 73 have a collector's value of upwards
19 of \$100,000.00 or more. Under LAMC § 55.13 they are unsalable with
20 the integral tubular magazine. But with that magazine cut off these
21 rifles would have no value whatever. That is to say, no one would
22 have any use for them even as a used gun for, at best, they would
23 operate only as a cumbrously loadable single shot rifle.

24 12. The basic facts set out in the preceding paragraph apply
25 equally to the dozens of models of lever action hunting rifles that
26 have been made during the past 140 years, all the way back to the
27 Civil War Henry Repeating Rifle and the pre-Civil War Volcanic,
28

1 both of which have enormous collector value, of course. These
2 dozens of rifles whose sale is barred by LAMC § 55.13 also include
3 both replicas of the 19th Century Winchesters, Henry's and so on
4 (and some replicas have come to have collector value themselves)
5 and ordinary lever action hunting rifles that have used value but
6 are not collectibles.

7 13. LAMC § 55.13 also bars the sale of a few semi-automatic
8 used pistols like the French MAB PA-15 and the Spanish Star Model
9 30M for which no magazine of 10 or less rounds was ever made. (The
10 pistol itself could be sold, but not the 15 shot magazine, and both
11 these pistols have magazine disconnects, i.e., unless a magazine is
12 inserted they will not fire even a single shot.) Its more important
13 effect would be on the several collectible models of the Browning
14 M-1935. A 10 round magazine is made for the M-1935. But collectible
15 firearms are only collectible if they have all original parts.
16 Without its original magazine, a collectible M-1935 is just another
17 used Browning worth perhaps a quarter or a fifth of its value as a
18 collectible.

19

20 [PRECLUSION OF FULLY AUTOMATIC WEAPONS SALES/TRANSFERS]

21 14. The United States Department of the Treasury licenses
22 certain firearms dealers (Title III dealers) to sell full automatic
23 firearms, including machine guns, submachine guns, automatic rifles
24 and real assault rifles (i.e. intermediate powered rifles capable
25 of full auto fire) which I shall hereafter refer to jointly as
26 Title III weapons. The California Department of Justice licenses
27 civilians to possess Title III weapons for certain purposes.

28

1 Prominent among these purposes has always been licensing businesses
2 connected with the movie and entertainment industries to provide
3 Title III weapons in connection with cinematic productions of
4 various kinds.

5 15. Almost all Title III weapons come with feeding devices
6 that exceed ten rounds. Virtually without exception there is no
7 feeding device for any Title III weapon that takes 10 or less
8 rounds. Thus the effect of LAMC § 55.13 is to ban exactly what
9 state law licenses: the sale of fully automatic weapons and the
10 rental by prop houses of such weapons to the entertainment industry
11 which the Department of Justice has always regarded as a primary
12 purpose of the state Title III licensing law.

13
14 ["READILY CONVERTIBLE"]

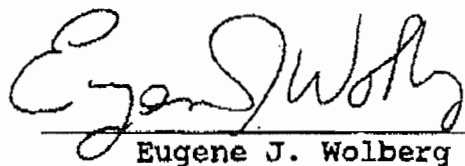
15 16. I question whether the authors had any idea how immensely
16 they were broadening LAMC § 55.13's reach by making it applicable
17 to magazines that are "readily convertible" to holding more than
18 ten rounds. The effect is to apply it to magazines for hundreds, if
19 not thousands, of different guns whose magazines were designed to
20 hold 10 or less rounds and whose owners have no idea that the
21 magazine is readily convertible to hold more. In fact, many or most
22 detachable magazines for rifles or handguns are readily convertible
23 to fire more than ten shots. Many fixed magazine shotguns and
24 rifles are also readily convertible to hold more than 10 shots.

25 17. Take, for example, a classic Olympic target pistol like
26 the Model 208 Hammerli. It would be absurd to devalue a \$2,000.00
27 Olympic target pistol by converting its 8-shot magazine to 16-shot.

1 But LAMC does not just ban magazines that have been so converted.
2 It bans magazines that can readily be so converted -- and the
3 Hammerli is one. To convert it requires just removing the floor
4 plate from the bottom of one Hammerli magazine, grinding the lips
5 off the top of another, cobbling their two springs together, and
6 then brazing the bottom of the one to the top of the other, thereby
7 producing a 16-shot magazine. The entire operation could probably
8 be done in an hour or less. And since it can readily be done, any
9 Model 208 owner who sells it is guilty of a violation of LAMC §
10 55.13 though he had no understanding that the 8-shot magazine he
11 was selling is readily convertible.

12
13 VERIFICATION

14 I declare under penalty of perjury under the laws of the State
15 of California that the foregoing is true and correct. Executed this
16 21 day of November, 1997, at San Diego, California.

17
18
19 
20 Eugene J. Wolberg