

No. 14-15408

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEONARD FYOCK, et al.,
Plaintiffs-Appellants,

v.

CITY OF SUNNYVALE, et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(CV 13-05807-RMW)

APPELLANTS' EXCERPTS OF RECORD VOLUMES V of V

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Pursuant to Ninth Circuit Rule 30-1, Plaintiffs-Appellants Leonard Fyock, Scott Hochstetler, William Douglas, David Pearson, Brad Seifers, and Rod Swanson, by and through their counsel of record, hereby confirm to the contents and form of Appellants' Excerpts of Record on appeal.

Date: May 16, 2014

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for *Plaintiffs-Appellants*
Leonard Fyock, Scott Hochstetler,
William Douglas, David Pearson,
Brad Seifers, and Rod Swanson

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2014, an electronic PDF of **APPELLANTS' EXCERPTS OF RECORD VOLUMES V of V** 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: May 16, 2014

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/s/ C. D. Michel

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARD FYOCK, SCOTT) **CASE NO: CV13-05807 RMW**
HOCHSTETLER, WILLIAM DOUGLAS,)
DAVID PEARSON, BRAD SEIFERS, and) **DECLARATION OF GARY KLECK**
ROD SWANSON,) **IN SUPPORT OF MOTION FOR**
) **PRELIMINARY INJUNCTION**
)
Plaintiffs)
)
vs.)
)
THE CITY OF SUNNYVALE, THE)
MAYOR OF SUNNYVALE, ANTHONY)
SPITALERI in his official capacity, THE)
CHIEF OF THE SUNNYVALE)
DEPARTMENT OF PUBLIC SAFETY,)
FRANK GRGURINA, in his official)
capacity, and DOES 1-10,)
)
Defendants.)
)

DECLARATION OF GARY KLECK

My Qualifications

1
2
3 1. I am a Professor of Criminology and Criminal Justice at Florida State
4 University. I received my doctorate in Sociology from the University of Illinois in 1979,
5 where I received the University of Illinois Foundation Fellowship in Sociology. I am
6 currently the David J. Bordua Professor of Criminology at Florida State University, where I
7 have been on the faculty since 1978. My research has focused on the impact of firearms and
8 gun control on violence, and I have been called “the dominant social scientist in the field of
9 guns and crime” (Vizzard, 2000, p. 183).
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12 2. I have published the most comprehensive reviews of evidence concerning guns
13 and violence in the scholarly literature, which informs and serves as part of the basis of my
14 opinions. I am the author of Point Blank: Guns and Violence in America, which won the
15 1993 Michael J. Hindelang Award of the American Society of Criminology, awarded to the
16 book of the previous several years which "made the most outstanding contribution to
17 criminology." More recently, I authored Targeting Guns (1997) and, with Don B. Kates, Jr.,
18 The Great American Gun Debate (1997) and Armed (2001).
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22 3. I have also published scholarly research in all of the leading professional
23 journals in my field. Specifically, my articles have been published in the American
24 Sociological Review, American Journal of Sociology, Social Forces, Social Problems,
25 Criminology, Journal of Criminal Law and Criminology, Law & Society Review, Journal of
26 Research in Crime and Delinquency, Journal of Quantitative Criminology, Law &
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1 Contemporary Problems, Law and Human Behavior, Law & Policy Quarterly, Violence and
2 Victims, Journal of the American Medical Association, and other scholarly journals.

3
4 4. I have testified before Congress and state legislatures on gun control issues,
5 and worked as a consultant to the National Research Council, National Academy of
6 Sciences Panel on the Understanding and Prevention of Violence, as a member of the U.S.
7 Sentencing Commission's Drugs-Violence Task Force, and, most recently, as a member of
8 the Institute of Medicine and National Research Council Committee on Priorities for a
9 Public Health Research Agenda to Reduce the Threat of Firearm-Related Violence. I am a
10 referee for over a dozen professional journals, and serve as a grants consultant to the
11 National Science Foundation.

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15 5. Finally, I teach doctoral students how to do research and evaluate the quality of
16 research evidence, and have taught graduate courses on research design and causal
17 inference, statistical techniques, and survey research methodology. My current curriculum
18 vitae is attached.

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20 6. I am being compensated for my work at the rate of \$350 per hour.

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22 **Opinions and Supporting Evidence**

23
24 7. Criminals rarely fire large numbers of rounds in a given crime incident, so
25 possession of magazines capable of holding more than ten rounds of ammunition (termed
26 “large-capacity magazines” by the Sunnyvale ordinance and thus referred to as “LCMs”
27 hereafter) merely provides surplus rounds that are not fired and thus rarely can injure
28

1 additional victims.

2 8. Supporting Evidence: A study of Jersey City, NJ, found that offenders did not
3 even fire a single shot in over two-thirds of crimes in which the offender was armed with a
4 handgun (Reedy and Koper 2003, p. 153). Of all violent crimes in which handguns *were*
5 fired, only 2.5-3.0% involved more than 10 rounds being fired by the offender (p. 154).
6 Even if limited just to incidents in which semi-automatic pistols *were* fired, only 3.6-4.2%
7 of the incidents involved over 10 rounds being fired, which is just 1.7-2.0% of *all* handgun
8 violent crimes (whether the gun was fired or not). The average number of rounds fired was
9 3.23-3.68 in semi-automatic pistol incidents in which the gun was fired, and 2.30-2.58 in
10 revolver incidents in which the gun was fired. Likewise, a study of gun homicides in
11 Philadelphia found even fewer shots fired per incident than in the Jersey City study – only
12 2.7 shots per semi-automatic pistol killing in 1990 (McGonigal et al. 1993).

13 9. The only kind of shootings in which large numbers of rounds are commonly
14 fired are mass shootings, incidents that involve many victims. Mass shootings fortunately
15 are quite rare in absolute terms. For the most recent ten-year period for which we have
16 complete data, 2003-2012 inclusive, there were 31 incidents with more than 6 persons shot
17 (see Appendix) – about three per year in the United States (none occurring in Sunnyvale).
18 Further, mass shootings account for only a very tiny share of all the homicides in the U.S.
19 For the 2003-2012 period, mass shootings resulted in the murder of 233 persons (see
20 Appendix), while FBI data indicate that there were a total of 159,927 murders and non-
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1 negligent manslaughter committed in the U.S. over that same period (U.S. FBI 2013).
2 Thus, mass shootings were responsible for just 1/7th of 1% of the nation's criminal
3 homicides, whether committed with a gun or not. Even as a share of gun homicides, mass
4 shootings account for well under 1% of the killings.
5

6 10. Even in the extremely rare mass shootings in which large numbers of victims
7 were shot, the shooters virtually never needed LCMs to injure or kill as many victims as
8 they did, because they either (a) possessed multiple guns, (b) possessed multiple magazines,
9 or (c) had ample time and opportunity to reload, using smaller-capacity magazines.
10 Therefore, even the hypothetical potential for reducing harm or improving the public's
11 safety by limiting magazine capacity to no more than 10 rounds can be fairly described as
12 being limited to no more than a very small subset of already very rare events.
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16 11. A study of every mass shooting (more than six victims wounded or killed) that
17 occurred in the United States over a ten year period (1984-1993 inclusive) found that
18 offenders possessed multiple guns in thirteen of the fifteen incidents (about 87%), and in
19 one of the two remaining cases (the Colin Ferguson case in New York in 1993) the offender
20 reloaded at least once. Thus, the killers in mass shootings did not need LCMs to quickly fire
21 large numbers of rounds or wound large numbers of victims – they either just switched
22 loaded guns or reloaded their guns without interference from bystanders (Kleck 1997, pp.
23 124-126, 144).
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27 12. I have updated the analysis of mass shootings beyond this published analysis
28

1 covering 1984-1993. All shooting incidents involving more than six victims shot (fatally or
2 non-fatally, not including the offenders) for the period 1994 through July 2013 inclusive
3 were examined based on news media accounts, and occasionally official reports. The
4 incidents were confined to those involving more than six victims because the proposition
5 that the use of LCMs affects the number of people killed or wounded is most likely to be
6 supported in incidents with many victims. The cut-off of six victims was chosen because it
7 would be virtually impossible to shoot more than six victims using a typical 6-shot revolver
8 without reloading.
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12 13. I supplemented my list of mass shootings with a list of mass shootings that
13 involved use of LCMs compiled by the Violence Policy Center, an advocacy organization
14 that favors strong gun control laws and specifically supports bans on LCMs. They gathered
15 an arguably comprehensive set of shootings in which magazines of capacity 15 or more
16 were used by the shooters (Violence Policy Center 2013). I used this list to supplement my
17 list because VPC was well-motivated to locate every mass shooting involving the use of an
18 LCM, as they clearly favored the notion that use of LCMs leads to a larger death toll in
19 mass shootings (Violence Policy Center 2011). Thus, I sought to compile as comprehensive
20 a list of such incidents as possible.
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24 14. The updated results (see Appendix) confirmed the conclusions of the 1984-
25 1993 analysis – LCMs were not needed for mass shooters to kill or injure as many victims
26 as they did. The killer in every single mass shooting was either armed with multiple guns,
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1 had multiple magazines, or actually reloaded during the incident. There were a total of 57
2 mass shootings (i.e., incidents with more than 6 victims killed or wounded in a single
3 incident) in the U.S. in 1994-2013 – none of which occurred in Sunnyvale. The shooters
4 used one or more magazines with a capacity of 15 or more rounds in 22 of these incidents;
5 no LCM was used in the other 35 incidents (or about 61%). Of the 22 mass shootings in
6 which LCMs were used, the shooter possessed only one gun in just four, or perhaps five,
7 incidents (see, in Appendix, those dated 11-2-96, 12-5-07, 1-8-11, 9-6-11, and possibly 3-
8 12-05). In the other 17 or 18 incidents, the shooter possessed multiple guns and therefore
9 could continue firing large numbers of rounds simply by switching guns, even if they had
10 not possessed an LCM. Of the 22 mass shootings in which LCMs were used, the shooter
11 possessed only one magazine in just *one* incident (dated 2-7-08). In the other 21 LCM
12 incidents, the shooter possessed multiple magazines, and could therefore continue firing
13 large numbers of rounds simply by switching magazines. *There was not a single mass*
14 *shooting in which the offender used an LCM, and was known to have possessed just one gun*
15 *and just one magazine in his immediate possession.* Thus, even if LCMs had not been
16 available, all of the shooters could have fired large numbers of rounds simply by firing
17 multiple guns or using a single gun but changing smaller capacity magazines.

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24 15. One circumstance in which use of an LCM could affect the number of
25 casualties even if the shooter possessed multiple guns or multiple magazines is if there were
26 bystanders willing to tackle the shooter during his attempt to change magazines or firearms.
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1 The use of an LCM prior to that time could affect the number of victims shot, since the
2 killer could have fired more rounds before needing to reload or switch guns. The only mass
3 shooting in this 20-year period in which this definitely occurred was the Springfield,
4 Oregon murders on May 21, 1998, in which the shooter (Kip Kinkel) used an LCM, but was
5 tackled while attempting to reload. In this single case, the shooter's possession of an LCM
6 may have affected the number of casualties because he was able to fire more rounds before
7 needing to reload, and there were bystanders willing and able to intervene when he did try
8 to reload. Thus, merely having multiple smaller capacity magazines would not have been,
9 in this incident, a complete substitute for an LCM, since the casualty count was a function
10 of the capacity of the magazine used before bystanders stopped the shooter.
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14 16. There was also one other mass shooting in this period in which bystanders
15 intervened, but key details are in dispute, making it unclear whether bystanders intervened
16 while the shooter was reloading. In the Tucson, Arizona shooting in January 2011 in which
17 Rep. Gabrielle Gifford was wounded, the shooter was tackled by bystanders. Some
18 eyewitnesses stated, however, that the shooter was already trying to leave the scene when he
19 was tackled by bystanders, in which case the bystanders did not interrupt the shooting while
20 the shooter was trying to reload (*New York Times* January 10, 2011, p. A1). There were no
21 other mass shootings known to me in this 20-year period in which the shooter was disrupted
22 by bystanders while attempting to reload or switch guns.
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26 17. In sum, use of large-capacity magazines arguably affected the number of
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1 persons killed or wounded in just one, or possibly two, of the 57 mass shootings occurring
2 in the U.S. in 1994-2013. Synopses of the mass shootings for 1994-2013, and sources relied
3 upon, can be found in the Appendix.
4

5 18. It might be speculated that the total number of rounds fired, and thus the
6 number of victims shot, might be increased by an offender's use of an LCM rather than a
7 smaller capacity magazine because use of the LCM would not require a magazine change so
8 soon or so often. Thus, the absence of LCMs would slow the shooter's rate of fire and
9 extend the time the killer was not shooting, allowing some prospective victims to take
10 additional evasive or defensive actions they otherwise would not have been able to take.
11 While this has some hypothetical plausibility, it is inconsistent with the rates of fire
12 sustained in actual mass shootings. A change of the box-type magazines used in semi-
13 automatic pistols and rifles takes no more than 2-4 seconds, depending on the shooter's
14 skill. Mass killers, however, virtually never fire at a rate of even one round every 2
15 seconds, and usually fire at even slower rates.
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20 19. Table 1 summarizes data on all 21 of the 57 total mass shootings summarized
21 in the Appendix for which news media accounts provided information on both the number
22 of shots fired and the time span in which shots were fired, thereby allowing reasonable
23 computation of rates of fire. Only 2 shooters of the 21 total took less than 2 seconds per
24 shot fired, and only 5 took under 4 seconds. Even with this handful of incidents with
25 unusually rapid fire, however, the difference between the 1.4 seconds per shot and 1.6
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1 seconds per shot observed in two incidents with the highest rates of fire, and the 2-4 seconds
2 that it takes to change a box-type magazine is not likely to even be perceptible to
3 prospective victims. That is, they would be unlikely to even be aware of the very slight
4 slowing of the killer's rate of fire necessitated by his changing of magazines. In sum, even
5 if LCM bans forced some mass shooters to use smaller capacity magazines and therefore
6 change magazines earlier and/or more often, it is unlikely that it would perceptibly reduce
7 those offenders' rate of fire and thereby allow victims to take any additional evasive or
8 defensive actions that they otherwise would not have been able to take. Only in the rare
9 cases in which shooters took an unusually long time to reload might there be an opportunity
10 for victims to take additional defensive or evasive actions that they would not have taken,
11 but for the magazine change.
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16 20. On the other hand, limits on magazine capacity are likely to sometimes impair
17 the ability of citizens to engage in lawful self-defense, in those crime incidents necessitating
18 that the victim fire many rounds in order to stop the aggressive actions of offenders. In
19 contrast to mass shooters, victims of crimes generally cannot plan for or anticipate crimes to
20 occur at a specific time and place – these things are beyond their control. Therefore, they
21 ordinarily cannot plan, like an intentional mass shooter, to routinely have many loaded guns
22 and/or numerous magazines with them at the times and places in which particular crimes
23 against them might occur. Victims usually have to make do with a single available gun and
24 its ammunition capacity. Consequently, if their one gun or magazine's capacity was limited
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1 to 10 or fewer rounds, this means they cannot do what mass-shooters do and simply plan to
2 have multiple guns and magazines ready for their use. Further, persons who are law-
3 abiding would be unlikely to simply violate the law and acquire banned LCMs, as criminals,
4 by definition, freely do.
5

6 21. Some defensive gun uses (DGUs) are likely to require large numbers of rounds
7 being fired either because (a) the crime victim faces multiple offender adversaries who will
8 not stop their aggression unless shot or fired upon, and/or because (b) the victim will, under
9 the stressful conditions of a crime victimization, miss with most of his or her shots.
10

11 22. Regarding the first point, the 2008 U.S. Department of Justice's National
12 Crime Victimization survey, indicated that 17.4% of violent crimes in the United States
13 involved two or more offenders, and that nearly 800,000 violent crimes occurred in 2008 in
14 which the victim faced multiple offenders. Thus, crime victims would need to fire larger
15 numbers of rounds to protect themselves because they would face multiple criminal
16 adversaries. Regarding the second point, a reasonable estimate of the marksmanship of
17 crime victims using guns for self-defense can be inferred from a review of the many
18 detailed studies that have been done of shootings by police officers in which the officers
19 were trying to shoot criminal adversaries. In many of these shootings, the officers fired
20 large numbers of rounds. Yet, in 63% of the incidents, the officers failed to hit even a single
21 offender with even a single round (Geller and Scott 1993).
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27 23. Police officers have the experience, training, and temperament to handle
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1 stressful, dangerous situations, so it might be argued that marksmanship among civilians
2 using guns for self-protection is lower than the 37% “hit rate” of police. (“Hit rate” here
3 means the percent of incidents in which the police officer achieved at least one hit, not the
4 percent of shots fired that hit the criminal.) Certainly there is no reliable empirical evidence
5 that civilian marksmanship in such situations is better than that of police officers. Thus,
6 these data indicate that the typical crime victim would have to fire at least three rounds in
7 order to successfully wound each offender they tried to shoot. Crime victims facing four or
8 more offenders would therefore statistically need at least 12 rounds or more to even wound
9 all of them. A ban on magazines with more than 10 rounds would make it impossible to fire
10 this many rounds with a single magazine.
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14 24. Although we do not know the number of DGUs by crime victims that involved
15 use of LCMs or the firing of more than 10 rounds, the number is likely to be larger than the
16 number of crimes in which LCM- use caused a larger number of victims to be injured or
17 killed, for two reasons. First, the number of criminal uses fitting this latter description is, as
18 previously noted, close to zero, so even a tiny number of DGUs requiring an LCM would
19 outnumber criminal uses requiring an LCM. Second, the *total* number of defensive uses of
20 guns by crime victims, without regard to number of rounds fired or use of LCMs, is far
21 larger (perhaps five times larger) than the total number of crimes committed by offenders
22 using guns.
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26 25. Regarding the second point, the most detailed survey of DGUs, based on the
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1 largest sample of U.S. adults (n=4,977), was conducted in 1993. The researchers found that
2 1.32% of U.S. adults (age 18+) had used a gun defensively, either firing the gun at, or
3 threatening, a criminal offender in the preceding 12 months. Multiplying this times the size
4 of the adult population yielded an estimate of 2.55 million DGUs in the preceding year
5 (Kleck and Gertz 1995). This estimate was consistent with estimates derived from many
6 other, smaller scale, surveys (Kleck 2001). (Criticism of this estimate has been
7 uninformative due to an exclusive one-sided focus on errors tending to make the estimate
8 too large, while ignoring well-known factors discouraging the reporting of crimes in
9 general, and possession or use of guns in particular - see Kleck 2001).

13 26. In that same year, there were no more than 554,000 crimes committed in which
14 offenders fired a gun or used it to threaten a victim (Kleck and Gertz 1995, pp. 169-170),
15 indicating there were about five times as many DGUs as there were crimes in which
16 offenders used guns. At least 18 other national surveys have likewise yielded estimates of
17 the national total of DGUs that exceeded the NCVS estimates of criminal uses of guns
18 (Kleck 2001).

21 27. Some law-abiding citizens, like many criminals, might acquire multiple smaller
22 capacity magazines as a substitute for banned larger capacity magazines. This development
23 would to some extent defeat the purpose of the magazine capacity limit. Some crime
24 victims, however, will not be able to make effective use of multiple magazines. Under the
25 intense emotional stress of a crime victimization, when the victim's hands are likely to be
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1 shaking violently, it will often be impossible for victims to eject the expended magazine and
2 insert a new one quickly enough to make effective use of the second magazine. Further,
3 elderly or physically handicapped persons may find it physically impossible for them to
4 quickly change magazines.
5

6 28. By definition, criminals obey laws at a lower rate than non-criminals, so
7 violation of legal limits on magazine capacity are likely to occur at a higher rate among
8 criminals than among non-criminals. That is, such a law will reduce possession of LCMs
9 more among law-abiding citizens than among criminals, and thus more among non-criminal
10 victims and prospective victims than among criminal offenders.
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13 29. Points (24)-(28) in combination logically lead to the conclusion that a law
14 limiting the maximum capacity of magazines to no more than 10 rounds will reduce (a)
15 DGUs by victims who needed to fire large numbers of rounds to effectively defend
16 themselves and were able to successfully do so more than it will reduce (b) criminal attacks
17 in which offender use of LCMs caused larger numbers of victims to be killed or injured.
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20 30. Victim DGU is generally effective: it makes it less likely the victim will be
21 injured or lose property. Consequently, a law that obstructs DGU by crime victims impairs
22 their capacity for effective self-protection and increases the likelihood of the victims
23 suffering injury or property loss.
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26 31. Analyses of data generated by the U.S. Census Bureau's National Crime
27 Victimization Survey (NCVS) have consistently indicated that crime victims who use guns
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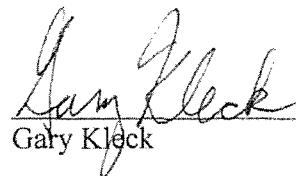
1 for self-protection are less likely to be injured or lose property than victims who do not
2 (Kleck 1988; Kleck and DeLone 1993; Southwick 2000; Kleck 2001, Chapter 7; Tark and
3 Kleck 2004). More specifically, DGU is more effective in preventing serious injury than
4 any other victim self-protection strategy, among the 16 strategies covered in the NCVS
5 (Tark and Kleck 2004, pp. 891-894).
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8 32. Opinions 29 through 31 in combination logically lead to the conclusion that a
9 law limiting magazine capacity to no more than ten rounds will do more harm than good,
10 because it will reduce (a) the harm-*preventing* effects of victim DGU more than it will
11 reduce (b) the extremely rare harm-*causing* effects of offender use of LCMs.
12

13 33. This conclusion not only follows logically from opinions 29 through 31, but is
14 also supported by actual experience with the federal ban on LCMs (also defined as holding
15 over 10 rounds) that was in effect nationwide from 1994 to 2004. A U.S. Department of
16 Justice-funded evaluation found that there was “no discernible reduction in the lethality or
17 injuriousness of gun violence during the post-ban years” (Koper 2013, p. 165; see also
18 Koper 2004, p. 96). The author of the evaluation argued that the federal ban would
19 eventually have benefits if it were allowed to persist long enough. This claim, however,
20 was basically speculative, not based on any actual observed changes in violence.
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24 34. In sum, the best available evidence indicates that Sunnyvale’s ban on LCMs is
25 more likely, on net, to harm the safety of its citizens than to improve it.
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1 I declare under penalty of perjury that the foregoing is true and correct. Executed within the United
2 States on December 23, 2013.

3
4 
5 Gary Kleck

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8
9 **References**

10 Geller, William A. and Michael S. Scott. 1993. Deadly Force: What We Know.
11 Washington, D.C.: Police Executive Research Forum.

12 Kleck, Gary. 1997. Targeting Guns: Firearms and their Control. NY: Aldine de Gruyter.

13 Kleck, Gary. 2001a. "The frequency of defensive gun use: evidence and disinformation."
14 Chapter 6 in Armed, by Gary Kleck and Don B. Kates. NY: Prometheus Books.

15 Kleck, Gary. 2001b. "The nature and effectiveness of owning, carrying, and using guns for
16 self-protection." Chapter 7 in Armed, by Gary Kleck and Don B. Kates. NY: Prometheus
17 Books.

18 Kleck, Gary, and Miriam DeLone. 1993. "Victim resistance and offender weapon effects in
19 robbery." Journal of Quantitative Criminology 9(1):55-81.

20 Kleck, Gary, and Marc Gertz. 1995. "Armed resistance to crime: the prevalence and nature of
21 self- defense with a gun." Journal of Criminal Law and Criminology 86:150-187.

22 Koper, Christopher. 2004. An Updated Assessment of the Federal Assault Weapons Ban.
23 Report to the National Institute of Justice. Philadelphia: Jerry Lee Center of Criminology.
24 Available online at <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>.

25 Koper, Christopher. 2013. "America's experience with the federal assault weapons ban, 1994-
26 2004." Pp. 157-171 in Reducing Gun Violence in America, edited by Daniel W. Webster and
27 Jon S. Vernick. Baltimore: Johns Hopkins University Press

28 McGonigal, M.D., Cole, J., Schwab, C.W., Kauder, D.R., Rotondo, M.F., and Angood, P.B.

1 1993. "Urban firearm deaths: a five-year perspective." The Journal of Trauma 35:532-537.

2 Reedy, D. C., and C. S. Koper. 2003. "Impact of handgun types on gun assault outcomes." Injury Prevention 9:151-155.

3

4 Southwick, Lawrence. 2000. "Self-defense with guns: The consequences." Journal of Criminal Justice 28:351-370.

5

6 Tark, Jongyeon, and Gary Kleck. 2004. "Resisting crime: the effects of victim action on the outcomes of crimes." Criminology 42:851-908.

7

8 U.S. Bureau of Justice Statistics, 2013. Data from the 2008 National Crime Victimization Survey, on the BJS website at <http://bjs.gov/content/pub/pdf/cvus08.pdf>, Table 37.

9

10 U.S. Federal Bureau of Investigation. 2013. Crime in the United States, 2012 (Uniform Crime Reports). Available online at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls.

11

12

13

14 Violence Policy Center 2011. "High-capacity ammunition magazines: the common thread that runs through mass shootings." Press release dated January 11, 2011, available online at <http://www.vpc.org/press/1101az2.htm>.

15

16

17 Violence Policy Center. 2013. Mass Shootings in the United States Involving High-Capacity Ammunition Magazines. Washington, D.C.: Violence Policy Center. Available online at http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

18

19

20 Vizzard, Willaim J. Shots in the Dark: The Policy, Politics, and Symbolism of Gun Control. NY: Rowman & Littlefield.

21

22 Table 1. Rates of Fire in Mass Shootings (over 6 casualties), 1994-2013

Date of Incident	Shots Fired ^a	Time of Firing (minutes)	Shots per minute	Seconds per Shot
6-20-94	>50	c. 5	>10	<6.0
2-28-97	1,101	44	25	2.4
4-20-99	188	49	3.8	15.6
9-15-99	>100	10	>10.0	>6.0
11-2-99	10	<30	<0.3	>180.0
5-24-00	c.5	<90	>0.06	<1080.0

1	9-22-00	9+	<10	>0.9	<66.7
	12-26-00	37	5-8 (6.5)	5.7	10.5
2	2-5-01	25-30 (27.5)	8-15 (11.5)	2.4	25.1
3	3-5-01	c. 24	6	c. 4.0	c. 15.0
	3-12-05	22	<1	>22/0	<2.7
4	3-21-05	45	9	5.0	12.0
5	3-25-06	8+	c. 5	>1.6	<37.5
	10-2-06	17-18 (17.5)	c. 2	c. 8.75	c. 6.9
6	4-16-07	c. 174	156	c. 1.11	c. 53.8
7	10-7-07	30	c. 1	c. 30.0	c. 2.0
	12-5-07	>30	c. 6	> 5.0	<12.0
8	2-14-08	56	5	11.1	5.4
9	8-3-10	19	3	6.3	9.5
	9-6-11	60+	1.42	42.3+	1.4
10	12-14-12	154+	4	38.5+	1.6

Note:

a. Where a range was provided in news media accounts, the midpoint of the range (shown in parentheses) was used in rate-of-fire computations.

Source: Appendix synopses of mass shootings.

Appendix - Synopses of Mass Shootings, 1994-July 2013, in Chronological Order

(Mass shooting = more than six victims killed or wounded in a single incident)

Mass Shootings in 1994

- The Washington Post: “5 Arrested in Shooting at Market; NE Men Charged with First Degree Murder,” April 11, 1994
- Date: March 31, 1994
- Shooters: Unknown (Up to 4)
- Number of Guns in Shooter’s Immediate Possession: Unknown
- Types of Guns Used: Tec-9 semi-automatic (found but no confirmation it was used during the shooting)
- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: 30+
- Did Offender Reload: Unknown
- Time from Start to End: Unknown
- How Gun was Acquired: Unknown

- Number Killed: 1
- Number Wounded: 9
- Notes: This was a gang related incident. Some reports indicate that other guns were found and there was more than one shooter but nothing was confirmed. The shooters had 5 specific targets, 4 of which they hit.
- The New York Times: “Gunman Kills 2 and Hurts 19 on Air Force Base,” June 21, 1994
- New York Times “An Airman's Revenge: 5 Minutes of Terror,” June 22, 1994; Seattle Times “Man Bent on Revenge Kills 4, Hurts 23,” June 21, 1994.
- Date: June 20, 1994 Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 2
- Type of Gun Used: MAK-90 rifle, another “unspecified 'single shot' weapon (unused)
- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine(s): 70
- Number of Shots Fired: Over 50
- Did Offender Reload: Unknown
- Time From Start to End: Unknown – 5 minutes?
- How Gun Was Acquired: Legally purchased from licensed dealer
- Number Killed: 4 (5 including gunman)
- Number Wounded: 23
- The Washington Post: “Gunman Kills 2, Wounds 5 in Attack on Abortion Clinics,” December 31, 1994
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 1-2 (A second was found at the scene but unused)
- Type of Gun Used: .22 caliber rifle, miscellaneous handgun
- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: Unknown
- Time from Start to End: Unknown
- How Guns were Acquired: Unknown
- Number Killed: 2
- Number Wounded: 5
- Notes: This was targeted at two abortion clinics with no specific individual target.

Mass Shootings in 1995 - none

Mass Shootings in 1996 – none

Mass Shootings in 1997

- 1 • CNN: “Gunman Shoots 7, Kills Self at Empire State Building,” February 24, 1997.
- 2 • Date: February 23, 1997
- 3 • Shooters: 1
- 4 • Number of Guns in Shooter’s Immediate Possession: 1
- 5 • Type of Gun Used: .380 caliber Beretta
- 6 • Number of Magazines: Unknown
- 7 • Maximum Capacity of Largest Magazine: Unknown
- 8 • Number of Shots Fired: Unknown
- 9 • Did Offender Reload: Unknown
- 10 • Time from Start to End: Unknown
- 11 • How Gun was Acquired: Purchased in Florida (Legality unknown)
- 12 • Number Killed: 1 (2 including gunman)
- 13 • Number Wounded: 6

14 Police Magazine: “5 Gunfights That Changed Law Enforcement,” May 4, 2011.

15 Date: February 28, 1997

16 Shooters: 2

17 Number of Guns in Shooter’s Immediate Possession: At least 4

18 Types of Guns Used: Fully automatic AIM AK-47, Norinco Type 56 S-1, semi-automatic
19 HK-91, and a Bushmaster XM15 E2S (modified)

20 Number of Magazines: Unknown Maximum Capacity of Largest Magazine: Unknown (at
21 least 3,300 rounds in box and drum magazines)

22 Number of Shots Fired: 1,101

23 Did Offenders Reload: Yes

24 Time from Start to End: 44 minutes

25 How Guns were Acquired: Unknown

26 Number Killed: 0 (2 including gunmen)

27 Number Wounded: 18

28 Notes: The shooters had an arsenal that the police could not compete with. Many of their
weapons were fully automatic and the magazines were likely high capacity. Accounts differ
on the number of shots fired.

29 • The Associated Press: “Man to be Executed Friday for Plant Shootings,” October 30,
30 2005

31 • Date: September 15, 1997

32 • Shooters: 1

33 • Number of Guns in Shooter’s Immediate Possession: 1

34 • Type of Gun Used: semi-automatic pistol

- 1 • Number of Magazines: 4 empty
- 2 • Maximum Capacity of Largest Magazine: 8 rounds
- 3 • Number of Shots Fired: Unknown
- 4 • Did Offender Reload: Yes
- 5 • Time from Start to End: 2.5 hours
- 6 • How Gun was Acquired: Unknown
- 7 • Number Killed: 4
- 8 • Number Wounded: 3
- 9 • Notes: The shooter was fired and sought revenge. By some accounts he had four other
- 10 magazines for a total of 8 magazines with 8 rounds.
- 11 • Reuters News: “Six Charged in Mississippi High School Shooting,” October 7, 1997
- 12 • Date: October 1, 1997
- 13 • Shooters: 1
- 14 • Number of Guns in Shooter’s Immediate Possession: 1
- 15 • Type of Gun Used: Rifle
- 16 • Number of Magazines: Unknown
- 17 • Maximum Capacity of Largest Magazine: Unknown
- 18 • Number of Shots Fired: Unknown
- 19 • Did Offender Reload: Unknown
- 20 • Time from Start to End: Unknown
- 21 • How Gun was Acquired: Unknown (possibly from parents)
- 22 • Number Killed: 2 (3 if mother included in separate killing, no gun used)
- 23 • Number Wounded: 7
- 24 • Notes: Six were charged, but with conspiracy. There was only one shooter and his
- 25 target
- 26 was an ex-girlfriend.
- 27 • The New York Times: “Gunfire Inside a School Kills 3 and Wounds 5,” December 2,
- 28 1997
- Date: December 1, 1997
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 5
- Type of Guns Used: .22 caliber handgun (shooter also had two rifles and two shotguns)
- Number of Magazines: More than 1
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: Unknown
- Did Offender Reload: No
- Time from Start to End: Unknown
- How Guns were Acquired: Unknown
- Number Killed: 3
- Number Wounded: 5

1 • Notes: According to a CNN article entitled “Kentucky School Shooter 'Guilty but
2 Mentally Ill,” October 5, 1998, the shooter stole the guns from different homes. According
3 to The St. Petersburg Times: “Programmed to Kill,” December 1, 1997, the shooter shot 8
4 to 10 rounds. According to The New York Times: “Forgiveness, After 3 Die in Shootings in
5 Kentucky,” printed on December 3, 1997, the shooter shot up to 12 rounds.

6 • The New York Times “Dismissed Worker Kills 4 and Then Is Slain,” December 20,
7 1997;

8 Los Angeles Times “Aftermath of Killer's Fury,” December 20, 1997

- 9 • Date: December 18, 1997
- 10 • Shooters: 1
- 11 • Number of Guns in Shooter’s Immediate Possession: 3
- 12 • Type of Gun Used: AK-47, shotgun, and handgun
- 13 • Number of Magazines: Unknown
- 14 • Maximum Capacity of Largest Magazine(s): Unknown
- 15 • Number of Shots Fired: 70
- 16 • Did Offender Reload: Unknown
- 17 • Time from Start to End: Unknown
- 18 • How Gun was Acquired: Unknown
- 19 • Number Killed: 4 (5 including gunman)
- 20 • Number Wounded: 3

21 • Notes: Employer was dismissed from Caltran's and a subsequent job. He then returned
22 to the work site and randomly shot employees. He battled with police as well, for at least a
23 minute, before his was killed.

24 **Mass Shootings in 1998**

25 • The New York Times: “From Wild Talk and Friendship to Five Deaths in a schoolyard
26 March 29, 1998

- 27 • Date: March 24, 1998
- 28 • Shooters: 2
- Number of Guns in Shooter’s Immediate Possession: At least 4 (shooters had access to
10 guns and a crossbow)
- Type of Guns Used: Remington .30-60 hunting rifle, Ruger .44 Magnum rifle
- Number of Magazines: 3 .30 caliber magazines (19 .44 caliber shells, 41 .357 shells,
49 .380 shells, 16 .30 special shells, 26 .357 magnum shells, 6 .30 caliber shells)
- Maximum Capacity of Largest Magazine(s): 30 round
- Number of Shots Fired: At least 26
- Did Offenders Reload: Unknown
- Time from Start to End: Unknown
- How Guns were Acquired: Stolen From Parents

- Number Killed: 5
- Number Wounded: 11 (15 hit)
- Notes: The History Channel has an article entitled “A School Shooting in Jonesboro, Arkansas, Kills Five. This article states that the two youths had “thirteen fully loaded guns including three semi automatic rifles, and 200 rounds of ammunition.” The weapons were taken from the Golden family's home.

- The New York Times: “Sorrowful Town Honors Teen-Ager Killed in School Shooting,” May 26, 1998.

- Date: May 21, 1998 Location: Springfield, Oregon
- Shooters: 1 (Kip Kinkel)
- Number of Guns in Shooter’s Immediate Possession: 3
- Type of Guns Used: .22 caliber semi-automatic rifle, 9 mm Glock semi-automatic pistol, .22 caliber Ruger semi-automatic pistol
- Number of Magazines: At least 3
- Maximum Capacity of Largest Magazine: 50
- Number of Shots Fired: 51
- Did Offender Reload: Attempted to do so, **tackled by bystanders**
- Time from Start to End: Unknown
- How Guns were Acquired: From Parents
- Number Killed: 2 (4 including the parents who were killed the night before)
- Number Wounded: 22
- Notes: According to PBS' Frontline (<http://www.pbs.org/wgbh/pages/frontline/shows/kinkel/kip/cron.html>) the shooter “carried 3 guns: a .22 caliber semi-automatic Ruger rifle, his father's 9mm Glock pistol and a .22 caliber Ruger semi-automatic pistol.” The article states that he used a 50 round magazine and injured 25 students.

Mass Shootings in 1999

- The New York Times: “3 are Killed and 5 Hurt in Shootout in Utah City,” April 16, 1999
- Date: April 15, 1999
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 1
- Type of Gun Used: .22 caliber semi-automatic handgun
- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: Unknown
- Did Offender Reload: Unknown
- Time from Start to End: 1-2 hours

- 1 • How Gun Was Acquired: Unknown
- 2 • Number Killed: 2
- 3 • Number Wounded: 5
- 4 • Notes: Numerous other sources list the wounded as 4 and not 5. According to The
5 South Florida Sun-Sentinel: “Gun Sale Issues Raised After Salt Lake City Shooting,” the
6 shooter likely purchased the gun, a .22 caliber Ruger and had previously had a gun
7 confiscated due to a misdemeanor gun offense.
- 8 • CNN Special: Using a copy of the Jefferson County Website with Details about the
9 Columbine Massacre.
10 (http://www.cnn.com/SPECIALS/2000/columbine.cd/Pages/EQUIPMENT_TEXT.htm)
- 11 • Date: April 20, 1999
- 12 • Shooters: 2 (Dylan Klebold and Eric Harris)
- 13 • Number of Guns in Shooter’s Immediate Possession: 4
- 14 • Types of Guns Used: Intratec TEC-DC-9 9-mm semi-automatic handgun, Hi-Point 995
15 9mm carbine rifle, Savage-Springfield 67H 12 gauge pump action shot gun, Stevens
16 311D double barreled shot gun.
- 17 • Number of Magazines: Unknown
- 18 • Maximum Capacity of Largest Magazine: Unknown
- 19 • Number of Shots Fired: 188
- 20 • Did Offenders Reload: Yes
- 21 • Time from Start to End: 49 minutes
- 22 • How Guns were Acquired: From Friends
- 23 • Number Killed: 13 (15 including shooters)
- 24 • Number Wounded: 21
- 25 • Notes: This is one of the most reported and well known mass shootings. Details are
26 solidified through official reports by the Jefferson County Sheriffs' Department and the FBI.
27 Some of the above information was taken from additional published sources.
- 28 • CNN: “‘Mental Breakdown’ Defense Hinted in Georgia School Shooting,” May 24,
1999
- Date: May 20, 1999
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 2
- Types of Guns Used: .22 caliber rifle, .357 magnum handgun
- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: 14
- Did Offender Reload: No
- Time from Start to End: Unknown
- How Guns were Acquired: Stolen from parents
- Number Killed: 0
- Number Wounded: 6

- 1 • Notes: None
- 2 • The New York Times: “Shootings in Atlanta: The Overview; Gunman in Atlanta Slays
- 3 9, then Himself,” July 30, 1999
- 4 • Date: July 29, 1999
- 5 • Shooters: 1
- 6 • Number of Guns in Shooter’s Immediate Possession: 2
- 7 • Types of Guns Used: 9mm semi-automatic pistol, .45 caliber handgun
- 8 • Number of Magazines: Unknown
- 9 • Maximum Capacity of Largest Magazine: Unknown
- 10 • Number of Shots Fired: Unknown
- 11 • Did Offender Reload: Unknown
- 12 • Time from Start to End: 5.5 hours
- 13 • How Guns were Acquired: Unknown
- 14 • Number Killed: 9 (13 including family, but they were not shot, 14 including gunman
- 15 who shot himself)
- 16 • Number Wounded: Unknown
- 17 • Notes: CNN: “Shooter Lost \$105,000 in Month, but Motive Still a Mystery,” July 30,
- 18 1999 states that 13 were wounded. This same article claims there were a total of four guns
- 19 in the car with over 200 rounds of ammunition. There was a Glock 9mm handgun, a Colt
- 20 .45 handgun, a H&R .22 caliber revolver, and a Raven .24 caliber pistol. The H&R was
- 21 legally purchased by the shooter in a pawn shop in 1976 and someone else purchased the
- 22 Raven from another pawn shop in 1992. The Glock and Colt were used during the shootings
- 23 but there is no information regarding how they were obtained.
- 24 • Time Magazine: “Terror In The Sanctuary,” September 20, 1999
- 25 • Date: September 15, 1999
- 26 • Shooters: 1
- 27 • Number of Guns in Shooter’s Immediate Possession: 2
- 28 • Types of Guns Used: 9-mm semi-automatic handgun and a .380 caliber handgun
- Number of Magazines: 3
- Maximum Capacity of Largest Magazine: 15
- Number of Shots Fired: Unknown
- Did Offender Reload: Yes
- Time from Start to End: Unknown
- How Guns were Acquired: Purchased (Unknown source)
- Number Killed: 7 (8 including the gunman)
- Number Wounded: 7
- Notes: According to a Houston Press article entitled “Faith's Fusillade” from
- November 4, 1999, the gunman had purchased the guns seven years before the shooting in
- Grand Prairie. He took 10 magazines with him. They state that the 9mm gun was a Ruger
- and that the event lasted 10 minutes. According to the official Wedgwood Baptist Church
- website, the gunman fired over 100 rounds.

- 1 • The New York Times: “Man Opens Fire in Xerox Office, Killing 7,” November 3, 1999.
- 2 • Date: November 2, 1999
- 3 • Shooters: 1
- 4 • Number of Guns in Shooter’s Immediate Possession: 1
- 5 • Types of Gun Used: 9mm pistol
- 6 • Number of Magazines: 3
- 7 • Maximum Capacity of Largest Magazine: 15
- 8 • Number of Shots Fired: Unknown
- 9 • Did Offender Reload: Unknown
- 10 • Time from Start to End: Less than 30 minutes
- 11 • How Guns were Acquired: Legally Purchased and Registered 17 of the 18
- 12 • Number Killed: 7
- 13 • Number Wounded: 0
- 14 • Notes: The shooter was a registered owner of 17 guns, but 18 were recovered from his home including 11 handguns, 5 rifles and 2 shotguns. According to The Honolulu Advertiser's article “No Closure Yet for Families Suing Uyesugi” published on November 1, 2004, the gun was a Glock. According to TruTV's Crime Library in an article entitled “Examining Workplace Homicide: The Xerox Murders,” the shooter fired 10 rounds.
- 15 • The New York Times: “Gunman Kills 5 in Rampage Starting at Florida Hotel,” December 31, 1999
- 16 • Date: December 30, 1999
- 17 • Shooters: 1
- 18 • Number of Guns in Shooter’s Immediate Possession: 2
- 19 • Types of Guns Used: 9mm semi-automatic handgun, .38 caliber handgun
- 20 • Number of Magazines: Unknown but more than one
- 21 • Maximum Capacity of Largest Magazine: Unknown
- 22 • Number of Shots Fired: Unknown
- 23 • Did Offender Reload: Yes
- 24 • Time from Start to End: Unknown
- 25 • How Guns Were Acquired: Legally purchased at a flea market and a local store
- 26 • Number Killed: 5
- 27 • Number Wounded: 3
- 28 Notes: None

Mass Shootings in 2000

- 25 • *The Baltimore Sun* “Police Arrest Teen Suspect in National Zoo Shooting,” April 26, 2000
- 26 • Date: April 24, 2000
- 27 • Shooters: 1
- 28 • Number of Guns in Shooter’s Immediate Possession: 1

- 1 • Types of Guns Used: 9mm (Gun was never recovered, but 9mm shells were found on the scene along with a holster)
- 2 • Number of Magazines: Unknown
- 3 • Maximum Capacity of Largest Magazine: Unknown
- 4 • Number of Shots Fired: According to a witness 6-8 (See video here: <http://www.c-spanvideo.org/program/156805-1>)
- 5 • Did Offender Reload: Unknown but unlikely
- 6 • Time from Start to End: Unknown
- 7 • How Gun was Acquired: Unknown (Since the shooter was a minor it was likely illegally obtained)
- 8 • Number Killed: 0
- 9 • Number Wounded: 7
- 10 • Notes: Two groups of teens had a fight early in the day and this event was believed to be related and some form of retaliation.
- 11 • *CNN* “Two Suspects in Wendy's Shootings Arrested,” May 26, 2000
- 12 • Date: May 24, 2000
- 13 • Shooters: 2
- 14 • Number of Guns in Shooter’s Immediate Possession: 1
- 15 • Types of Guns Used: Bryco-Jennings .380 caliber semi-automatic pistol
- 16 • Number of Magazines: Unknown
- 17 • Maximum Capacity of Largest Magazine: Unknown
- 18 • Number of Shots Fired: Unknown (Each victim was shot once in the head so likely 5)
- 19 • Did Offender Reload: Unknown but unlikely
- 20 • Time from Start to End: Less than 1.5 hours
- 21 • How Gun was Acquired: Unknown
- 22 • Number Killed: 5
- 23 • Number Wounded: 2
- 24 • Notes: This was connected to a robbery, but the shooters knew ahead of time that they would execute each of the employees.
- 25 • *The Washington Post* “Gay Shooting Said Linked to Jokes,” September 27, 2000
- 26 • Date: September 22, 2000
- 27 • Shooters: 1
- 28 • Number of Guns in Shooter’s Immediate Possession: 1
- Types of Guns Used: 9mm Ruger semi-automatic handgun
- Number of Magazines: 1
- Maximum Capacity of Largest Magazine: Unknown but more than 9
- Number of Shots Fired: Unknown (Victims suffered wounds from at least 9 shots see *Roanoke Times* “Grand Jury Indicts Suspect in Bar Shootings if Convicted on All Charges, He Could Face 180-Year Sentence,” 2000

- Did Offender Reload: No
- Time from Start to End: Less than 10 minutes
- How Gun was Acquired: Unknown
- Number Killed: 1
- Number Wounded: 6
 - Notes: A Vietnam vet who suffered from post traumatic stress disorder who was unable to get medication hated that his last name was “Gay” and that people teased him for that.
- *The New York Times* “A Deadly Turn to a Normal Work Day,” December 28, 2000, *Boston Herald* “Wakefield Massacre; Accused Shooter Amassed Arsenal at His Home, Work”, December 28, 2000
- Date: December 26, 2000
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 3
- Types of Guns Used: AK-47 style rifle, a Winchester 12 gauge pump-action shotgun and a .32 caliber semi-automatic pistol
- Number of Magazines: 4+
- Maximum Capacity of Largest Magazine: 30
- Number of Shots Fired: 37
- Did Offender Reload: Yes
- Time from Start to End: 5-8 minutes
- How Guns were Acquired: Unknown
- Number Killed: 7
- Number Wounded: 0
 - Notes: The shooter claimed that he heard voices and that his victims were Nazis from the past. The jury didn't believe he was mentally ill and the prosecution showed he was intelligent and executed this plan targeting specific people and it was due to owing upwards of \$5,000 in back taxes that were to be garnished from his wages.

Mass Shootings in 2001

- *ABC News* “Ex-Employee Kills 4, Self in Rampage,” February 6, 2001, *Chicago Tribune* “Navistar Gunman Got Past Cracks in Gun Law,” February 7, 2001, *Chicago Tribune* “Weapon Used at Navistar Traced to Shorewood Man,” March 1, 2001
- Date: February 5, 2001
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 4
- Types of Guns Used: SKS semi-automatic rifle, Remington shotgun, .30 caliber

- 1 hunting rifle, .38 caliber revolver
- 2 • Number of Magazines: Unknown
- 3 • Maximum Capacity of Largest Magazine: Unknown
- 4 • Number of Shots Fired: 25-30
- 5 • Did Offender Reload: Unknown
- 6 • Time from Start to End: 8-15 minutes
- 7 • How Guns were Acquired: The Remington shotgun and .30 caliber hunting rifle were
- 8 purchased legally in 1993 from a dealer. The SKS rifle was transferred illegally.
- 9 • Number Killed: 4 (5 including shooter)
- 10 • Number Wounded: 4

Notes: The shooter claimed that he heard voices and that his victims were Nazis from the past. The jury didn't believe he was mentally ill and the prosecution showed he was intelligent and executed this plan targeting specific people and it was due to owing upwards of \$5,000 in back taxes that were to be garnished from his wages.

- 11 • *ABC News* "Exclusive: Santana School Shooter," October 10, 2001
- 12 • Date: March 5, 2001
- 13 • Shooters: 1
- 14 • Number of Guns in Shooter's Immediate Possession: 1
- 15 • Types of Guns Used: .22 caliber revolver
- 16 • Number of Magazines: N/A
- 17 • Maximum Capacity of Largest Magazine: N/A
- 18 • Number of Shots Fired: ~24
- 19 • Did Offender Reload: Yes
- 20 • Time from Start to End: 6 minutes
- 21 • How Guns were Acquired: Stolen from shooter's father
- 22 • Number Killed: 2
- 23 • Number Wounded: 13

Notes: The shooter was a 15 year old freshman who claimed he was bullied and wanted to prove that he was strong enough to fend for himself. He reloaded the revolver three times and had a total of 40 bullets with him at the time.

Mass Shootings in 2002 – none

Mass Shootings in 2003

- 24 • *The New York Times* "Man Kills 5 Co-Workers at Plant and Himself," July 9, 2003,
- 25 *The Clarion-Ledger* "Meridian Rampage: Investigation Winds Down," November 17,
- 26 2003
- 27 • Date: July 8, 2003
- 28

- 1 • Shooters: 1
- 2 • Number of Guns in Shooter's Immediate Possession: 2 (Shooter had a total of 5, 3 in his car)
- 3 • Types of Guns Used: Winchester 12 gauge pump-action shotgun (did not fire but had a Mini-14 .223 semi-automatic; in the car he had a .22 Magnum derringer, a .45
- 4 caliber Ruger, and a .22 rifle)
- 5 • Number of Magazines: Unknown (He wore a bandolier to store ammunition)
- 6 • Maximum Capacity of Largest Magazine: Unknown
- 7 • Number of Shots Fired: Unknown
- 8 • Did Offender Reload: Yes
- 9 • Time from Start to End: ~10 minutes
- 10 • How Guns were Acquired: Unknown
- 11 • Number Killed: 6 (7 including the shooter)
- 12 • Number Wounded: 8

Notes: This was a racially motivated work place shooting. The shooter was heavily armed but used only the pump-action shotgun during the shooting.

13 **Mass Shootings in 2004**

- 14 • *The Associated Press* "Suspect Says Hunters Shot at Him First," November 23, 2004,
- 15 *Duluth News Tribune* "Timeline of Sunday's Shootings," November 23, 2004, *The*
- 16 *Associated Press* "Murder Trial of Hmong Immigrant Accused of Killing Six Hunters
- 17 Opens in U.S.," September 10, 2005
- 18 • Date: November 21, 2004
- 19 • Shooters: 1
- 20 • Number of Guns in Shooter's Immediate Possession: 1
- 21 • Types of Guns Used: SKS 7.62mm semi-automatic rifle
- 22 • Number of Magazines: 1-2
- 23 • Maximum Capacity of Largest Magazine: 10 rounds
- 24 • Number of Shots Fired: 20+
- 25 • Did Offender Reload: Yes
- 26 • Time from Start to End: Unknown (Captured four hours after the shooting)
- 27 • How Guns were Acquired: Unknown
- 28 • Number Killed: 6
- Number Wounded: 2

Notes: Some accounts claim that the shooter had a 20 round magazine. However, the AP report states that prosecutors displayed a 10 round magazine in court and claimed that he shot at least 20 rounds.

1 **Mass Shootings in 2005**

- 2 • *The New York Times* “Police Search for Answers in Wisconsin Shooting,” March 13,
3 2005, *The New York Times* “After Shootings in Wisconsin, a Community Asks
4 'Why,’” March 14, 2005
5 • Date: March 12, 2005
6 • Shooters: 1
7 • Number of Guns in Shooter’s Immediate Possession: 1
8 • Types of Guns Used: 9mm semi-automatic handgun
9 • Number of Magazines: 2
10 • Maximum Capacity of Largest Magazine: Unknown (Based on shots fired, they must
11 have been 11+)
12 • Number of Shots Fired: 22
13 • Did Offender Reload: Yes
14 • Time from Start to End: Less than a minute
15 • How Guns were Acquired: Unknown
16 • Number Killed: 7 (8 including shooter)
17 • Number Wounded: 4

18 Notes: None.

- 19 • *CBS News* “Red Lake Massacre Took 3 Minutes,” February 11, 2009
20 • Date: March 12, 2005, *CNN Anderson Cooper 360 Degrees*, Aired March 22, 2005
21 • Shooters: 1
22 • Number of Guns in Shooter’s Immediate Possession: 3
23 • Types of Guns Used: Ruger .22 caliber semi-automatic handgun, Glock .40 caliber
24 semi-automatic handgun, Remington 12 gauge shotgun (The brands were listed on
25 Wikipedia but the articles only list the caliber and types)
26 • Number of Magazines: Unknown
27 • Maximum Capacity of Largest Magazine: Unknown
28 • Number of Shots Fired: 45 (13 more were used to kill his grandfather and his friend)
• Did Offender Reload: Unknown
• Time from Start to End: 9 minutes (This is for the school shooting. He killed his
grandfather and his grandfather's friend that morning as well)
• How Guns were Acquired: Stolen from grandfather
• Number Killed: 7 (9 including grandfather and grandfather's friend, 10 including
shooter)
• Number Wounded: 5

Notes: Another school shooting by a troubled teen. He killed his grandfather by shooting him twice in the head and ten times in the chest with the .22. He then shot and killed his grandfather's friend before going to the school.

1
2 **Mass Shootings in 2006**

- 3 • *Panel Report on the Shooting* (See
4 <http://seattletimes.nwsourc.com/ABPub/2006/07/17/2003133196.pdf>)
5 • Date: March 25, 2006
6 • Shooters: 1
7 • Number of Guns in Shooter’s Immediate Possession: 2 (Others found in his car)
8 • Types of Guns Used: Winchester Defender pump-action 12 gauge shotgun, Ruger P-
9 94 .40 caliber handgun (He had an AR-15 in his car)
10 • Number of Magazines: 2 bandoliers containing 15 rounds of 00 buckshot shotgun and
11 3 total magazines for the Ruger (Shotgun was reloaded twice with 8 rounds and the
12 handgun was reloaded once)
13 • Maximum Capacity of Largest Magazine: Unknown
14 • Number of Shots Fired: 9+ from the shotgun (one to kill himself) 8+ from the Ruger
15 • Did Offender Reload: Yes
16 • Time from Start to End: ~5 minutes
17 • How Guns were Acquired: Purchased legally
18 • Number Killed: 7
19 • Number Wounded: 2
20 Notes: Perhaps one of the most detailed shootings given the full report. The
21 magazines seemed to hold less than 15 rounds given the number fired and when they
22 were reloaded. Most of the damage was done with the shotgun, but the shooter did
23 use both guns on victims who didn't die. It is unknown why he didn't use the AR-15
24 but carried ammunition for it.
25 • *The Washington Post* “Pa. Killer had Prepared for 'Long Siege,’” October 4, 2006,
26 *Fox News* “Gunman Reportedly Bent on 'Revenge' Kills Girls, Self at Amish
27 School,” October 3, 2006, *Vancouver Sun* “Man Takes Own Life at End of Killing
28 Spree,” October 3, 2006
• Date: October 2, 2006
• Shooters: 1
• Number of Guns in Shooter’s Immediate Possession: 3
• Types of Guns Used: Springfield 9 mm semi-automatic pistol, a Ruger .30-06 bolt-
action rifle and a Browning 12 gauge pump action shotgun)
• Number of Magazines: Unknown (Shooter had a bag with over 600 rounds)
• Maximum Capacity of Largest Magazine: Unknown
• Number of Shots Fired: 17-18 rounds (One coroner report lists at least 24 shots in one
child, which differs from the police reports)
• Did Offender Reload: Unknown

- Time from Start to End: c. 2 minutes
- How Guns were Acquired: 9mm purchased legally, others unknown
- Number Killed: 5 (shooter killed himself, bringing the total to 6)
- Number Wounded: 5

Notes: The shooter broke into the school, forced the boys and older women to leave and then made the remaining ten girls line up facing the chalkboard. He planned on molesting the girls, but attempted to execute them all instead.

Mass Shootings in 2007

- *The New York Times* “After a Rampage, Trying to Grasp What Led a Son to Kill,” February 20, 2007, *The Associated Press* “Agents Say Pistol had Changed Hands Many Times,” March 29, 2007, *Desert Morning News* “Gun Dealer to Plead in Trolley Square Gun Case,” November 20, 2007, *The Associated Press* “Man Pleads Guilty to Selling Handgun to Mall Shooter,” October 25, 2007
- Date: February 12, 2007
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 2
- Types of Guns Used: Maverick Arms Model 88 12 gauge shotgun, Smith and Wesson .38 caliber pistol
- Number of Magazines: N/A (Shooter had “backpack full of ammunition” and “bandolier of shotgun shells”)
- Maximum Capacity of Largest Magazine: N/A
- Number of Shots Fired: Unknown
- Did Offender Reload: Unknown but unlikely
- Time from Start to End: 6 minutes
- How Guns were Acquired: Shotgun purchased legally, handgun stolen from a man's father to trade for drugs and eventually sold to shooter(Sources differ on the shotgun's legality. The shotgun had a pistol grip and the shooter was 18 thus making it illegal. If that is the case, both guns were illegally possessed by the shooter)
- Number Killed: 5 (6 including shooter)
- Number Wounded: 4
 - Notes: The shooter went to Trolley Square and opened fire with no known motive. An off-duty police officer fired at him and stopped him from killing others until the SWAT team showed up and killed the shooter.
- *Virginia Tech Review Panel* (See <http://www.governor.virginia.gov/TempContent/techPanelReport.cfm>)
- Date: April 16, 2007
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 2

- 1 • Types of Guns Used: Glock 19 9mm semi-automatic pistol, Walther P22 .22 caliber
pistol
- 2 • Number of Magazines: 19
- 3 • Maximum Capacity of Largest Magazine: 15 rounds
- 4 • Number of Shots Fired: ~174
- 5 • Did Offender Reload: Yes
- 6 • Time from Start to End: 2 hours 36 minutes
- 7 • How Guns were Acquired: The Walther P22 was purchased online and picked up at a
pawn shop, the Glock 19 was purchased at a gun shop.
- 8 • Number Killed: 32 (33 including shooter)
- 9 • Number Wounded: 23 (17 by gunfire)
 - 10 ◦ Notes: The VA Tech shooting was as highly or more highly publicized than the
Columbine shooting. All the information here is taken from the official panel
review. The panel review also states that if Cho had only used 10 round
magazines, it was unlikely that the outcome would have been different.
- 11 • *CNN* “Computers May Yield Clues About Mall Shooter,” December 7, 2007, *The*
12 *New York Times* “Details of Omaha Shooting Emerge,” December 6, 2007
- 13 • Date: December 5, 2007
- 14 • Shooters: 1
- 15 • Number of Guns in Shooter’s Immediate Possession: 1
- 16 • Types of Guns Used: AK-47 style semi-automatic rifle
- 17 • Number of Magazines: 2 (Some reports indicate that the magazines were taped
together “jungle style”)
- 18 • Maximum Capacity of Largest Magazine: 30 rounds
- 19 • Number of Shots Fired: ~30
- 20 • Did Offender Reload: Unknown but likely (Police report that the shooter likely shot
more than 30 rounds)
- 21 • Time from Start to End: ~6 minutes
- 22 • How Guns were Acquired: Stolen from father
- 23 • Number Killed: 8 (9 including shooter)
- 24 • Number Wounded: 5
- 25 Notes: A depressed and suicidal teen randomly picked this mall and opened fire.

26 There is no clear motive.

- 27 • (A shooting on December 10, 2007 was a spree killing not a mass shooting. 12 hours
28 Shootings took place over a 12-hour period, were in two different locations about 75
miles apart. Shooter posted threats online between shootings)

27 **Mass Shootings in 2008**

- 28 • *St. Louis Dispatch* “Thornton Used Stolen Gun in Kirkwood Killings,” February 28,

1 2008, *The Los Angeles Times* “Killer of Five Left Note: 'Truth will win' The Gunman
2 ha a Long-Running Feud with City Officials,” February 9, 2008

- 3 • Date: February 7, 2008
- 4 • Shooters: 1
- 5 • Number of Guns in Shooter’s Immediate Possession: 2
- 6 • Types of Guns Used: .44 caliber revolver (article claims gun's make and model
7 cannot be identified), Smith and Wesson .40 caliber semi-automatic pistol
- 8 • Number of Magazines: 1 (Based on the fact that shooter stole the gun from police
9 officer)
- 10 • Maximum Capacity of Largest Magazine: Unknown (15 would be likely)
- 11 • Number of Shots Fired: 15+
- 12 • Did Offender Reload: Unknown but unlikely
- 13 • Time from Start to End:
- 14 • How Guns were Acquired: .44 caliber revolver was stolen over ten years before the
15 shooting (shooter may not have known it was stolen), the .40 caliber handgun was
16 stolen from a police officer the shooter shot
- 17 • Number Killed: 6 (7 including shooter)
- 18 • Number Wounded: 1
 - 19 ◦ Notes: The shooter used all six rounds in his gun, shooting a police officer and
20 taking his gun. It is unknown exactly how many shots he fired from it, but he shot
21 at least 15 total.
- 22 • *U.S Fire Administration/Technical Report Series* (See here
23 http://www.usfa.fema.gov/downloads/pdf/publications/tr_167.pdf) *Report of the*
24 *February 14, 2008 Shootings at Northern Illinois University* (See
25 <http://www.niu.edu/feb14report/feb14report.pdf>)
- 26 • Date: February 14, 2008
- 27 • Shooters: 1
- 28 • Number of Guns in Shooter’s Immediate Possession: 4 (Reports indicate that he had
4 but may have only used two; the Remington and the Glock)
- Types of Guns Used: Sig Sauer P232 9mm semi-automatic pistol, HiPoint CF380
.380 caliber semi-automatic pistol, Glock 19 9mm pistol, Remington Sportsman 48
12 gauge shotgun
- Number of Magazines: At least 6
- Maximum Capacity of Largest Magazine: 33 (Shooter had 2 15 round magazines and
2 33 round magazines for the Glock)
- Number of Shots Fired: 56 (6 rounds from the shotgun, 50 rounds from the Glock)
- Did Offender Reload: Yes
- Time from Start to End: 5 minutes
- How Guns were Acquired: Legally purchased from gun store

- 1 • Number Killed: 5 (6 including shooter)
- 2 • Number Wounded: 21
- 3 • Notes
- 4 ◦ Both reports indicate that he fired with the Glock and Remington. Two fully loaded
- 5 .380 magazines were found on the floor. The shooter was diagnosed with
- 6 schizophrenia, depression, anxiety and had delusions. It is somewhat unclear what the
- 7 motive for the killings was. (An incident occurring on September 2, 2008 was a spree
- 8 killing, not a mass shooting.)
- 9 • *The Associated Press* “Santa Gunman Had Lost Job, Wife Before Gory Attack,”
- 10 December 27, 2008
- 11 • Date: December 24, 2008
- 12 • Shooters: 1
- 13 • Number of Guns in Shooter’s Immediate Possession: 4
- 14 • Types of Guns Used: semi-automatic handguns
- 15 • Number of magazines: Unknown
- 16 • Maximum Capacity of Largest Magazine: Unknown
- 17 • Number of Shots Fired: Unknown (One news account stated that all four guns were
- 18 emptied)
- 19 • Did Offender Reload: Unknown but unlikely
- 20 • Time from Start to End: Unknown
- 21 • How Guns were Acquired: Purchased (Unknown if legal or not)
- 22 • Number Killed: 9 (10 including shooter)
- 23 • Number Wounded: 2
- 24 ◦ Notes: There aren't any news reports indicating the brand or model of the guns or
- 25 the size of the magazines.

26 **Mass Shootings in 2009**

27 *New York Times*, March 10, 2009

28 Location: Geneva County, AL

Date: March 10, 2009

Number of Guns in Shooter’s Immediate Possession: 4

Types of Guns Used: Bushmaster AR-15, SKS rifle, shotgun, and .38 caliber pistol

Number of Magazines: Unknown

Maximum Capacity of Largest Magazine: Unknown

Number of Shots Fired: Unknown

Did Offender Reload: Unknown

Time from Start to End: Unknown

How Guns Were Acquired: Unknown

Number Killed: 10

Number Wounded: 0

Fayetteville Observer, "Carthage Killings: A Key Eyewitness Speaks," March 31, 2009

Location: Carthage, NC

Date: March 29, 2009

Shooters: 1

Number of Guns in Shooter's Immediate Possession: 2+

Types of Guns Used: Shotgun, at least one other gun

- Number Magazines: Unknown
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: Unknown
- Did Offender Reload: Unknown
- Time from Start to End: 15 minutes?
- How Guns were Acquired: Unknown
- Number Killed: 8
- Number Wounded: 3
- *The New York Times* "Shooting in Binghamton, N.Y.," April 3, 2009; *Bloomberg* "Binghamton Killer Fired 99 Shots from Two Handguns, Police Say," April 8, 2009
- Date: April 3, 2009
- Shooters: 1
- Number of Guns in Shooter's Immediate Possession: 2
- Types of Guns Used: Beretta .45 caliber semi-automatic pistol, Beretta 9mm semi-automatic pistol
- Number of Magazines: 3+
- Maximum Capacity of Largest Magazine: 30
- Number of Shots Fired: 99
- Did Offender Reload: Yes
- Time from Start to End: Minutes (It took police hours to secure the building)
- How Guns were Acquired: Legally purchased (Shooter had a license for the two guns)
- Number Killed: 13 (14 including shooter)
- Number Wounded: 4
 - Notes: A somewhat deranged individual who believed police were secretly harassing him entered the immigration office and started shooting. The motive is unclear due to his mental condition and rambling letter. The number of magazines isn't exact, but at least two 30 round magazines were discovered for the 9mm and only 11 shots were fired from the .45.

Pittsburgh Tribune-Review, "Gunman Kills 3, Wounds 9 Before Killing Himself at Collier Fitness Center," August 5, 2009

1 Location: Collier, PA

2 Date: August 4, 2009

3 Shooters: 1

4 Number of Guns in Shooter’s Immediate Possession: 4

5 Types of Guns Used: 2 x 9 mm pistols, .45 caliber pistol, .32 caliber pistol

6 Number of magazines: 2+

7 Maximum Capacity of Largest Magazine: 30

8 Did Offender Reload: Unknown

9 Number of shots fired: 50

10 Time from start to end: Unknown

11 How Guns Were Acquired: Unknown

12 Number Killed: 3

13 Number Wounded: 9

- 14 • *ABC News* “Alleged Fort Hood Shooter Nidal Malik Hasan was 'Calm,' Methodical During Massacre,” November 6, 2009, *The Dallas Morning News* “Investigators Detail Ammo Found at Fort Hood Shooting Scene,” October 21, 2010 (Updated November 26, 2010)

- 15 • Date: November 5, 2009

- 16 • Shooters: 1

- 17 • Number of Guns in Shooter’s Immediate Possession: 1-2

- 18 • Type of Gun Used: FN Herstal 5.7 tactical pistol (Smith and Wesson .357 magnum was found but not used in the shooting)

- 19 • Number of Magazines: 15 (6 loaded with 177 rounds, 6 empty with 146 spent casings, 3 empty with 68 casings)

- 20 • Maximum Capacity of Largest Magazine: 20-30

- 21 • Number of Shots Fired: 214

- 22 • Did Offender Reload: Yes

- 23 • Time from Start to End: Minutes (It took police hours to secure the building)

- 24 • How Guns were Acquired: Legally purchased

- 25 • Number Killed: 13

- 26 • Number Wounded: 38

- 27 ◦ Notes: The widely covered Fort Hood shooting.

28 **Mass Shootings in 2010**

St. Louis Post-Dispatch, “Why the Rampage? Police Plan to Interview Family of Gunman, Co-workers at ABB Plant,” January 9, 2010

Date: January 7, 2010

Location: St. Louis, MO

Shooters: 1

1 Number of Guns in Shooter's Immediate Possession: 3 or 4
2 Type of Guns Used: Romarm AK-47-style rifle, Tristar 12 gauge shotgun, Hi-Point
3 .40 caliber pistol, possibly one other pistol
4 Number of magazines: 2
5 Maximum Capacity of Largest Magazine: "Banana-style" magazines – probably
6 LCMs
7 Did offender reload? Unknown
8 Number of shots fired: "Over 100"
9 Time from Start to End: Unknown
10 How Guns Were Acquired: Unknown
11 Number Killed: 3
12 Number Wounded: 5
13 Notes: Workplace shooting by disgruntled employee

14 *The Lynchburg News & Advance*, "Law Officers Maintained Dark Vigil to Wait Out
15 Appomattox Shooting Suspect."

16 Date: January 19, 2010

17 Shooters: 1

18 Number of Guns in Shooter's Immediate Possession: Unknown

19 Types of Guns Used: "High-powered rifle"

20 Number of Magazines: Unknown

21 Maximum Capacity of Largest Magazine: Unknown

22 Number of Shots Fired: Unknown

23 Time from Start to End: Unknown

24 How Guns Were Acquired: Unknown

25 Number Killed: 8

26 Number Wounded: 0

27 *Washington Times*: "Three are Arrested in Drive-by Shooting," April 1, 2010

28 Date: March 30, 2010

Shooters: 3

Number of Guns in Shooter's Immediate Possession: 3

Types of Guns Used: AK-47 "assault rifle," 9 mm semiautomatic pistol, .45 caliber
semiautomatic pistol

Number of Magazines: Unknown

Maximum Capacity of Largest Magazine: Unknown

Did Offender Reload: Unknown

Number of Shots Fired: Unknown

Time from Start to End: Unknown

How Guns Were Acquired: Unknown

Number Killed: 4

1 Number Wounded: 5

2 *Miami Herald* "Massacre in Hialeah Captured by Cameras," June 9, 2010.

- 3 • Date: June 6, 2010
- 4 • Shooters: 1
- 5 • Number of Guns in Shooter's Immediate Possession: 1
- 6 • Types of Guns Used: .45 caliber semi-automatic handgun
- 7 • Number of Magazines: Unknown
- 8 • Maximum Capacity of Largest Magazine: Unknown
- 9 • Number of Shots Fired: Unknown
- 10 • Did Offender Reload: Unknown
- 11 • Time from Start to End: Unknown
- 12 • How Guns were Acquired: Unknown
- 13 • Number Killed: 4
- 14 • Number Wounded: 3
- 15 • The *Associated Press* "Police Report: No Racism Before Conn. Shootings," May 12,
- 16 2011, *The Hartford Courant* "Shooter had a Plan, Police: Mass Murderer hinted at
- 17 His Intentions to Kill Co-Workers," May 13, 2011, *The Associated Press* "Cops:
- 18 Conn. Gunman May Have Targeted Some Victims," August 4, 2010
- 19 • Date: August 3, 2010
- 20 • Shooters: 1
- 21 • Number of Guns in Shooter's Immediate Possession: 2 (Shooter also had an unused
- 22 shotgun in his car)
- 23 • Type of Gun Used: 2 x Ruger 9mm semi-automatic handguns
- 24 • Number of Magazines: 3-4 (Uncle stated that he saw 4 17 round magazines the night
- 25 before the shooting but some reports say there was only 1 extra magazine)
- 26 • Maximum Capacity of Largest Magazine: 17 rounds
- 27 • Number of Shots Fired: 19
- 28 • Did Offender Reload: Unknown (Reports seem to indicate that he only used one of
- the guns. If so, he reloaded)
- Time from Start to End: 3 minutes
- How Guns were Acquired: Legally registered
- Number Killed: 8 (9 including shooter)
- Number Wounded: 2
- Notes: Eyewitness accounts state that he used one gun while carrying his lunchbox
- which held the other gun, magazines and extra ammo.

26 *The Buffalo News* "Two more sought in shootings," August 20, 2010
27 Buffalo, NY

1 Date: August 14, 2010

2 Shooters: 1

3 Number of Guns in Shooter’s Immediate Possession: Unknown

4 Type of Guns Used: Unknown

5 Number of magazines: Unknown

6 Maximum Capacity of Largest Magazine: Unknown

7 Number of Shots Fired: Unknown

8 Did Offender Reload? Unknown

9 Time from Start to End: Unknown

10 How Guns Were Acquired: Unknown

11 Number Killed: 4

12 Number Wounded: 4

13 **Mass Shootings in 2011**

- 14 • *NBC News* “Tucson Shooting with High-Capacity Magazines Reignites Gun Debate,” January 9, 2011, *Reuters* “TIMELINE: Tucson Shooting Rampage as it Unfolded,” January 14, 2011; *New York Times* January 10, 2011, p. A1

- 15 • Date: January 8, 2011

- 16 • Shooters: 1

- 17 • Number of Guns in Shooter’s Immediate Possession: 1

- 18 • Types of Guns Used: Glock 19 9mm semi-automatic handgun

- 19 • Number of Magazines: 4

- 20 • Maximum Capacity of Largest Magazine: 2 x 33, 2 x 15

- 21 • Number of Shots Fired: Unknown

- 22 • Did Offender Reload: Not successfully. Witness reports conflict as to exactly what happened.

- 23 • Time from Start to End: 5 minutes

- 24 • How Guns were Acquired: Legally purchased

- 25 • Number Killed: 6

- 26 • Number Wounded: 13

- 27 • *Mlive* “Felon Linked to Stolen Gun in Rodrick Dantzler's Killing Spree Pleads to Firearms Charge,” June 11, 2013, *The Grand Rapids Press* “Wife's Intent to Leave May have Set Off Killer, Police Say Gun was Stolen from a Kent County Home, but Motivation Remains Elusive,” July 10, 2011, *Wood TV Channel 8* “Man to Plead to Selling Dantzler a Gun,” June 27, 2013

- 28 • Date: July 7, 2011

- Shooters: 1

- Number of Guns in Shooter’s Immediate Possession: 1

- Types of Guns Used: Glock 9mm semi-automatic handgun

- Number of Magazines: 2+

- 1 • Maximum Capacity of Largest Magazine: 1x 12 round (One report indicates that
- 2 police had reason to believe he had an “extended” magazine)
- 3 • Number of Shots Fired: Unknown
- 4 • Did Offender Reload: Yes
- 5 • Time from Start to End: 8 hours (4 hour standoff with police and hostages before
- 6 committing suicide)
- 7 • How Guns were Acquired: Stolen
- 8 • Number Killed: 7 (8 including shooter)
- 9 • Number Wounded: 2
- 10 ◦ Notes: No clear motive and not much evidence regarding the magazines or their
- 11 capacity.
- 12 • *CNN* “Gunman Kills 3, Wounds Other at Nevada IHOP,” September 7, 2011
- 13 • September 6, 2011, *RGJ* “IHOP Shooting One Year Later: 85 Seconds that Changed
- 14 Carson City,” September 12, 2012
- 15 • Date: September 6, 2011
- 16 • Shooters: 1
- 17 • Number of Guns in Shooter’s Immediate Possession: 1
- 18 • Types of Guns Used: Norinco MAK 90 (Illegally modified to be fully automatic)
- 19 • Number of Magazines: 3
- 20 • Maximum Capacity of Largest Magazine: 2x 30, 1x Unknown (likely 30)
- 21 • Number of Shots Fired: 60+
- 22 • Did Offender Reload: Yes
- 23 • Time from Start to End: 1 minute 25 seconds
- 24 • How Guns were Acquired: Unknown
- 25 • Number Killed: 4 (5 including shooter)
- 26 • Number Wounded: 14
- 27 ◦ Notes: Shooter had been diagnosed with paranoid schizophrenia at age 18 and had
- 28 used medication. The toxicology reports show no medication in his system.
- *The Los Angeles Times* “Prosecutors Seek Death Penalty in Salon Shooting Case,”
- October 15, 2011, *The Press Telegram* “DA to Seek Death Penalty for Alleged Seal
- Beach Shooter,” October 14, 2011
- Date: October 14, 2011
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 3
- Types of Guns Used: Springfield 9mm semi-automatic handgun, Heckler and Koch
- .45 caliber handgun, Smith and Wesson .44 Magnum
- Number of Magazines: 5+ (Reports say he had “extra magazines”)
- Maximum Capacity of Largest Magazine: Unknown
- Number of Shots Fired: Unknown

- Did Offender Reload: Yes
- Time from Start to End: 2 minutes
- How Guns were Acquired: Legally purchased and registered
- Number Killed: 8
- Number Wounded: 1
 - Notes: Upset over a custody battle, the father executed his ex-wife and several employees at a salon. It is unclear how many magazines he had at the time or their capacities. It is also unclear how many shots were fired.

Mass Shootings in 2012

- *Reuters* “Accused Gunman in Oakland Shooting Unfit for Trial: Judge,” January 7, 2013, *The San Jose Mercury News* “California's Tough Gun Laws Could Not Prevent East Oakland Tragedy,” April 5, 2012
- Date: April 2, 2012
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 1
- Types of Guns Used: Unknown .45 caliber handgun
- Number of Magazines: 4
- Maximum Capacity of Largest Magazine: Unknown (News sources described them as “fully loaded”)
- Number of Shots Fired: Unknown
- Did Offender Reload: Yes
- Time from Start to End: Minutes (Shooter was apprehended 2 hours later)
- How Guns were Acquired: Legally purchased (Police are still confirming the gun they found that has a matching serial number to the one purchased by the shooter was used in the murders)
- Numbers Killed: 7
- Number Wounded: 3
 - Notes: The *San Jose Mercury News* states that the magazines were 8 round magazines. California law prohibits magazines larger than 10 rounds. The shooter has been diagnosed as paranoid schizophrenic and is currently unfit to stand trial.
- *The Denver Post* “12 Shot Dead, 58 Wounded in Aurora Movie Theater During Batman Premier,” July 21, 2012, *ABC Channel 7 News* “Aurora, Colo Theater Shooting Timeline, Facts,” July 26, 2012
- Date: July 20, 2012
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 3
- Types of Guns Used: Remington tactical shotgun, Smith and Wesson M&P semi-

automatic rifle, Glock .40 caliber semi-automatic handgun

- Number of Magazines: Unknown
- Maximum Capacity of Largest Magazine: 1 x 100 round magazine, which jammed; others unclear
- Number of Shots Fired: Unknown
- Did Offender Reload: Yes
- Time from Start to End: ~6 minutes
- How Guns were Acquired: Purchased legally
- Numbers Killed: 12
- Number Wounded: 58
 - Notes: Some information has not been released or determined yet. While the shooter had purchased 6,295 rounds (2,600 for the Glocks, 375 for the Remington, and 3,370 for the Smith and Wesson) it is unknown how many were with the shooter at the time, how many magazines were with him, and how many shots were fired.
- *The Los Angeles Times* “Sikh Temple Shooting: Gun Shop Owner Says Wade Page Seemed Normal,” August 8, 2012; “7 Shot Dead at Sikh Temple,” August 6, 2012.
- Date: August 5, 2012
- Shooters: 1
- Number of Guns in Shooter’s Immediate Possession: 1
- Type of Gun Used: Springfield Armory XDM 9mm semi-automatic handgun
- Number of Magazines: 3
- Maximum Capacity of Largest Magazine: 19
- Number of Shots Fired: 19+ (50-60 according to one witness)
- Did Offender Reload: Yes
- Time from Start to End: Unknown
- How Guns were Acquired: Purchased legally
- Numbers Killed: 6 (7 including shooter)
- Number Wounded: 3
 - Notes: The final FBI report has not been released yet. Several news outlets describe “several empty clips” but there is no evidence suggesting how many, how large or how many rounds were fired.

Associated Press, Minnesota state wire 9-29-12

Date: 9-27-12

Shooters: 1

Number of Guns in Shooter’s Immediate Possession: 1

Types of Guns Used: Glock 9 mm semiautomatic pistol

Number of Magazines: Unknown

Maximum Capacity of Largest Magazine: Unknown

1 Number of shots fired: At least 46

2 Did Offender Reload: Yes

3 Time from Start to End:

4 How gun was acquired: Legally purchased at gun store a year earlier

5 Number killed: 6

6 Number wounded: 2

7 • *The New York Times* “Children were All Shot Multiple Times with a Semiautomatic, Officials Say,” December 15, 2012; *CNN* “Newton Shooting Details Revealed in Newly Released Documents,” March 29, 2013; Office of the State’s Attorney, Judicial District of Danbury, *Report of the State’s Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012*, available online at <http://www.thecrimereport.org/news/inside-criminal-justice/2013-11-report-newtown-massacre-was-over-in-minutes>

8 • Date: December 14, 2012

9 • Location: Newtown, CT

10 • Shooters: 1

11 • Number of Guns in Shooter’s Immediate Possession: 3

12 • Types of Guns Used: Bushmaster XM15-E2S.223 caliber semi-automatic rifle, Glock 20 10 mm semi-automatic pistol, Sig Sauer P226 9 mm semi-automatic pistol (not used in shootings)

13 • Number of Magazines: 12+

14 • Maximum Capacity of Largest Magazine: 10 x 30 round, 2+ others of unknown

15 • Number of Shots Fired: 154+

16 • Did Offender Reload: Yes

17 • Time from Start to End: c. 4 Minutes

18 • How Guns were Acquired: Stolen from mother

19 • Numbers Killed: 26 (27 including shooter's mother, 28 including shooter)

20 • Number Wounded: 2

21 ◦ Notes: The shooter seemed to have used mostly the Bushmaster, and 154 casings for it were found. That is the minimum number of shots fired. (Considering he shot himself with the Glock, 155 would be the minimum) Of the 30 round magazines, 3 were found completely full, three were completely empty, and the others had 10, 11 or 13 rounds left in them.

25 **Mass Shootings in 2013 (January 1 through July 31) - None**

26 (A Santa Monica shooting on 6-7-13 was a spree shooting, not a mass shooting –
27 killer shot 9 people in 3 different locations.)

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

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

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

14 Plaintiffs

15 vs.

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

21 Defendants.
22

CASE NO: CV13-05807 RMW

DECLARATION OF BRAD SEIFERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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DECLARATION OF BRAD SEIFERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Brad Seifers, Declarant

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

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

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

14 Plaintiffs

15 vs.

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

21 Defendants.
22

CASE NO: CV13-05807 RMW

**DECLARATION OF WILLIAM
DOUGLAS IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

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DECLARATION OF WILLIAM DOUGLAS

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

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

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

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

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

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

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

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

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

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

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

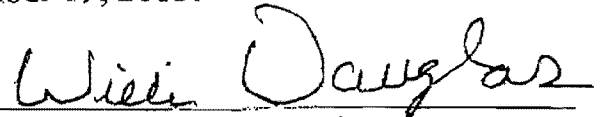
16 12. But for SMC section 9.44.050, I would immediately and continuously
17 possess a magazine capable of holding more than ten rounds within the City of
18 Sunnyvale for lawful purposes, including in-home self-defense. If this court
19 declares SMC section 9.44.050 invalid or otherwise enjoins its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

22 13. Because SMC section 9.44.050 requires that I cease possessing within
23 the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be
24 continuously and irreparably harmed by the ongoing deprivation of my individual,
25 fundamental right to possess and use commonly possessed firearm magazines for
26 lawful purposes, including in-home self-defense, without risking criminal
27 prosecution.
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I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on December 19, 2013.


William Douglas, Declarant

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

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

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

14 Plaintiffs

15 vs.

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

21 Defendants.
22

CASE NO: CV13-05807 RMW

**DECLARATION OF DAVID
PEARSON IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF DAVID PEARSON

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

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

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

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

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

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

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

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

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

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

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

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

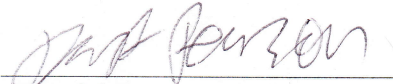
22 13. Because SMC section 9.44.050 requires that I cease possessing within
23 the City of Sunnyvale any magazine prohibited by SMC section 9.44.050, I will be
24 continuously and irreparably harmed by the ongoing deprivation of my individual,
25 fundamental right to possess and use commonly possessed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

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

Executed within the United States on December 20, 2013.



David Pearson, Declarant

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

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

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

14 Plaintiffs

15 vs.

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

21 Defendants.
22

) **CASE NO: CV13-05807 RMW**
)
) **DECLARATION OF ROD**
) **SWANSON IN SUPPORT OF**
) **MOTION FOR PRELIMINARY**
) **INJUNCTION**

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DECLARATION OF ROD SWANSON

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

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

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

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

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

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

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

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

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

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

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

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

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

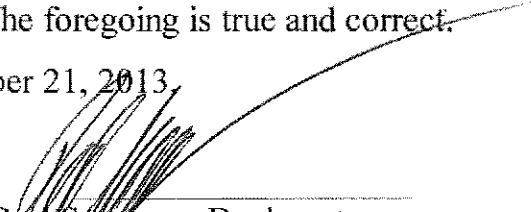
17 13. But for SMC section 9.44.050, I would immediately and continuously
18 possess a magazine capable of holding more than ten rounds within the City of
19 Sunnyvale for lawful purposes, including in-home self-defense. If this court declares
20 SMC section 9.44.050 invalid or otherwise enjoins its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

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

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

Executed within the United States on December 21, 2013.



Rod Swanson, Declarant

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

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

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

14 Plaintiffs

15 vs.

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

21 Defendants.
22

CASE NO: CV13-05807 RMW

**DECLARATION OF LEONARD
FYOCK IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

DECLARATION OF LEONARD FYOCK

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

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

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

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

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

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

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

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

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

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

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

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

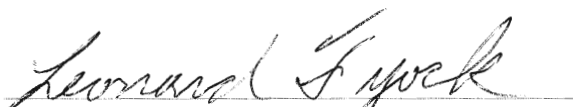
20 13. In accordance with SMC section 9.44.050, I intend to cease possessing
21 any magazine prohibited by SMC section 9.44.050 within the City of Sunnyvale on
22 or before March 6, 2013.

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

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

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


Leonard Fyock, Declarant

1 C. D. Michel - S.B.N. 144258
Clinton B. Monfort - S.B.N. 255609
2 Sean A. Brady - S.B.N. 262007
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6
7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 LEONARD FYOCK, SCOTT)
12 HOCHSTETLER WILLIAM)
13 DOUGLAS, DAVID PEARSON,)
BRAD SEIFERS, and ROD)
14 SWANSON,)

15 Plaintiffs

16 vs.

17 THE CITY OF SUNNYVALE, THE)
MAYOR OF SUNNYVALE,)
18 ANTHONY SPITALERI in his)
official capacity, THE CHIEF OF)
19 THE SUNNYVALE DEPARTMENT)
OF PUBLIC SAFETY, FRANK)
20 GRGURINA, in his official capacity,)
and DOES 1-10,)
21

22 Defendants.

CASE NO: CV13-05807 RMW

**DECLARATION OF JAMES
CURCURUTO IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

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DECLARATION OF JAMES CURCURUTO

1
2 1. I, James Curcuruto, am not a party in the above-titled action. I am over
3 the age of 18, have personal knowledge of the facts and events referred to in this
4 Declaration, and am competent to testify to the matters stated below.

5 2. I am the Director, Industry Research and Analysis, at the National
6 Shooting Sports Foundation (“NSSF”). The NSSF is the trade association for the
7 firearms industry. Its mission is to promote, protect and preserve hunting and the
8 shooting sports. Formed in 1961, NSSF has a membership of 10,000 manufacturers,
9 distributors, firearms retailers, shooting ranges, sportsmen’s organizations and
10 publishers.

11 3. In my position as Director, Industry Research and Analysis, I am
12 responsible for most of the research activities at NSSF, and I direct the activities of
13 an internal research coordinator and outside companies retained to conduct research
14 and gather market and consumer information useful to NSSF members.

15 4. Many NSSF members manufacture, distribute and/or sell firearms and
16 shooting and hunting-related goods and services, and as is usual and customary for
17 trade associations, the NSSF collects and disseminates industry-specific,
18 non-sensitive data reflecting consumer preferences, market trends and other
19 information for use in their business decisions. Among the shooting and
20 hunting-related goods and services manufactured, distributed and sold by NSSF
21 members are ammunition magazines.¹ Research conducted by the NSSF and under
22 my direction demonstrates that detachable ammunition magazines are very popular

23
24 _____
25 ¹ A “magazine” is a receptacle for a firearm that holds a plurality of
26 cartridges or shells under spring pressure preparatory for feeding into the chamber.
27 <http://saami.org/glossary/display.cfm?letter=M>, Glossary of Terms, Sporting Arms
28 and Ammunition Manufacturers’ Institute (SAAMI). While magazines take many
forms – box, drum, rotary, tubular, etc. and may be fixed or removable – from the
materials I considered and firearms industry professionals I consulted, the figures
discussed in this declaration generally (if not exclusively) concern detachable, box
magazines.

1 and are commonly owned by millions of persons in the United States for a variety
2 of lawful purposes, including, but not limited to, recreational and competitive target
3 shooting, home defense, collecting and hunting.

4 5. In addition to ammunition magazines accompanying firearms that
5 utilize them at the time of sale, such magazines are also widely available for sale as
6 a stand-alone item to individuals who need a replacement, different-capacity, and/or
7 additional magazine.

8 6. I am not aware of any singular public source providing reliable figures
9 identifying exactly how many ammunition magazines are manufactured or imported
10 for sale within the United States each year. There are, however, data available to me
11 from which estimations of the amount of magazines that have been sold to the
12 general population, as well as how many of those have a capacity for ammunition
13 exceeding ten rounds, can be calculated within a reasonable degree of certainty.

14 7. Using such data, I have, in the normal scope of my duties on behalf of
15 the NSSF, calculated estimations of the total number of magazines possessed by
16 consumers in the United States, as well as how many of those have a standard
17 capacity for ammunition exceeding ten rounds. These estimations are published in
18 the NSSF Magazine Report attached as Exhibit "A."

19 8. The NSSF Magazine Report estimates that 158 million pistol and rifle
20 magazines were in the possession of United States consumers between 1990 and
21 2012. The data supporting the Report further shows magazines capable of holding
22 more than 10 rounds of ammunition accounted for approximately 75 million or
23 approximately 47 percent of all magazines owned.

24 9. Sources used to compile the NSSF Magazine Report include the
25 Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Annual Firearms
26 Manufacturers and Exports Reports (AFMER), U.S. International Trade
27 Commission (ITC), as well as, opinions of firearms industry professionals. To
28 prepare the NSSF Magazine Report, only the number of pistols and rifles was used

1 while revolver and shotgun data was excluded as revolvers and the vast majority of
2 shotguns do not utilize magazines.

3 10. The ATF AFMER data provide historical figures for pistols by caliber
4 (i.e., the specific ammunition cartridge for which a firearm is chambered) and rifles
5 produced in the United States for consumer purchase. The ITC data provides
6 historical figures for pistol and rifles imported to and exported from the United
7 States for consumer purchase. The total number of firearms available for consumer
8 purchase 1990 through 2012 was calculated by adding the total U.S-production of
9 firearms with the total firearms imported and then subtracting total firearms
10 exported.

11 11. The ATF AFMER and ITC data provided estimates of approximately
12 50 million pistols and 33 million rifles available to United States consumers
13 between 1990 and 2012. Firearms industry professionals with knowledge of the
14 pistol and rifle magazine market then allocated magazines to the totals to complete
15 the data provided in the NSSF Magazine Report .

16 12. It can be assumed that many more such magazines were manufactured
17 in the United States or imported to the United States for sale in the commercial
18 marketplace both prior to 1990 as well as after 2012.

19 13. While the figure of 75 million standard capacity magazines holding
20 over 10 rounds in circulation is an estimation based on extrapolation from indirect
21 sources and cannot be confirmed as unequivocally accurate, it is safe to say that
22 whatever the actual number of such magazines in United States consumers' hands
23 is, it is in the tens-of-millions, even under the most conservative estimates.

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

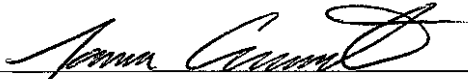
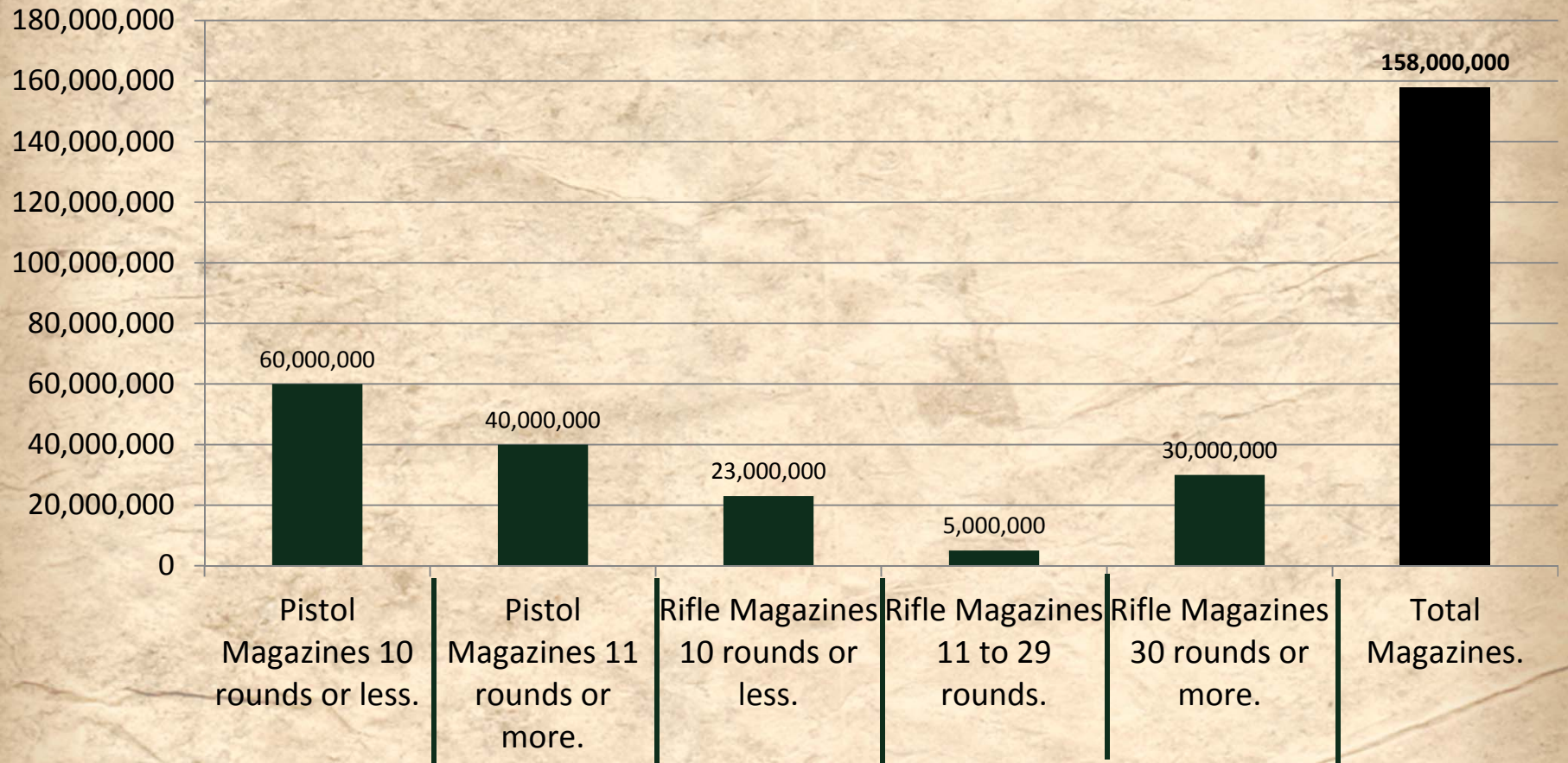
26
27 
28 James Curcuruto

EXHIBIT A

Estimated 158 Million Pistol and Rifle Magazines in U.S. Consumer Possession 1990 – 2012.



Sources: ATF AFMER, US International Trade Commission figures combined with NSSF and Firearms Industry estimates.

PROMOTE PROTECT PRESERVE



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CASE NO: CV13-05807 RMW

**DECLARATION OF STEPHEN
HELSLEY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF STEPHEN HELSLEY

1
2 1. I am a retired peace officer from the California Department of Justice
3 (DOJ). The bulk of that career was in drug enforcement. The last three positions I
4 held were Chief of the Bureau of Narcotic Enforcement, Chief of the Bureau of
5 Forensic Services and finally Assistant Director of the Division of Law
6 Enforcement. As Assistant Director, I was responsible for the department's
7 criminal, civil and controlled substance investigations as well as law enforcement
8 training, intelligence gathering and our forensic laboratory system. In my executive
9 level positions, I had occasion to review special agent-involved shootings and a
10 wide range of homicides involving firearms. I have qualified as an expert in both
11 criminal and civil matters. I was the department's principal firearms instructor for
12 many years and am an FBI certified range master. I also participated in the firearm
13 training that was part of the FBI National Academy Program in Quantico, Virginia.
14 Additionally, I am a member of the American Academy of Forensic Sciences and a
15 technical advisor to the Association of Firearm and Tool Mark Examiners. I have
16 co-authored five books on firearms and have authored or co-authored more than
17 fifty firearm-related articles for US and Russian journals. For the past twenty years,
18 I was first a state liaison and, then later, a consultant to the National Rifle
19 Association. Throughout my adult life I have been an active participant in handgun,
20 rifle and shotgun competitions. I have also been a firearm collector and ammunition
21 reloader since the early 1960s. Finally, I am a collector of firearm related books –
22 of which I have approximately three thousand. Included in my book collection are
23 forty nine different issues of *Gun Digest*, the earliest of which is from 1944. It is a
24 standard resource that is widely used by gun dealers and buyers alike. *Gun Digest*
25 has traditionally provided a comprehensive overview of the firearms and related
26 items available to retail buyers.

27 2. The combination of my consulting work, writing and free time activities
28 puts me in constant contact with gun stores, shooting ranges, gun shows and gun

1 owners. I am also in frequent contact with retirees from DOJ and other law
2 enforcement agencies. It is clear to me from my collective experiences that
3 handguns with a potential magazine capacity of more than 10-rounds are a common
4 choice for self-protection.

5 3. The standard magazine for a given firearm is one that was originally
6 designed for use with that firearm, regardless of whether its capacity is six, ten,
7 fifteen, or twenty rounds. Various popular handgun models originally came from
8 the manufacturer standard, free from artificial influences like laws restricting
9 capacity, with magazines exceeding ten rounds. Examples include, but are in no
10 way limited to, the Browning High Power (13 rounds) c.1954, MAB PA-15 (15
11 rounds) c.1966, Beretta Models 81/84 (12/13 rounds) c.1977, S&W Model 59 (14
12 rounds) c.1971, L.E.S P-18 (18 rounds) c.1980 aka Steyr GB, Beretta Model 92 (15
13 rounds) c.1980s, and Glock 17 (17 rounds) c.1986. I know there to be many more
14 examples not listed here.

15 4. Firearms with a capacity exceeding 10-rounds date to the ‘dawn of
16 firearms.’ In the late-15th Century, Leonardo Da Vinci designed a 33-shot weapon.
17 In the late 17th Century, Michele Lorenzoni designed a practical repeating flintlock
18 rifle. A modified 18th Century version of Lorenzoni’s design, with a 12-shot
19 capacity, is displayed at the NRA’s National Firearms Museum. Perhaps the most
20 famous rifle in American history is the one used by Lewis and Clark on their ‘Corps
21 of Discovery” expedition between 1803 and 1806 -- the magazine for which held
22 twenty-two .46 caliber balls.

23 5. Rifles with fixed magazines holding 15-rounds were widely used in the
24 American Civil War. During that same period, revolvers with a capacity of 20-
25 rounds were available but enjoyed limited popularity because they were so
26 ungainly.

27 6. In 1879, Remington introduced the first ‘modern’ detachable rifle
28 magazine. In the 1890s, semiautomatic pistols with detachable magazines followed.

1 During WWI, detachable magazines with capacities of 25 to 32-rounds were
2 introduced. As those magazines protruded well below the bottom of the pistol's
3 frame, they weren't practical for use with a belt holster – and by extension
4 concealed carry for self-defense.

5 7. In 1935, Fabrique Nationale introduced the Model P-35 pistol with its
6 fully internal 13-round magazine. It would become one of the most widely used
7 military pistols of all time. During WWII, magazine capacity for shoulder-fired
8 arms was substantially increased while most pistols (excluding the P-35) remained
9 at 10-rounds or less. In the mid-1950s the P-35 was rebranded the High Power and
10 imported to the US.

11 8. This transition of a firearm from military to civilian use for sport or self-
12 defense is very common. The standards of WWI – the 1903 Springfield rifle and the
13 Colt M1911 pistol are but two of many examples. Civilian sales of both began
14 immediately after the war ended. The Springfield would become the standard for
15 both rifle hunting and target competition. Likewise, the M1911 Colt pistol was a
16 target shooting standard for a half-century or more and popular for self-defense.

17 9. Between the two world wars, double-action semiautomatic pistols like
18 the Walther PPK and P-38 were introduced. The double-action feature allowed the
19 first shot to be fired in a manner similar to a revolver. Law enforcement agencies in
20 the United States had traditionally used revolvers. However, in the early 1970s, a
21 confluence of events changed that: training funds became widely available and so
22 did the first double action semiautomatic pistol (the S&W M59) with a 14-round
23 magazine. Soon major agencies were transitioning to the M59 and the legion of
24 other makes that followed – CZ, Colt, HK, Sig-Sauer, Glock, Beretta, Ruger, Smith
25 & Wesson, etc. Pistols with magazine capacities as large as 19-rounds quickly
26 replaced the six-shot revolver.

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1 10. Law enforcement demand for the new generation of semiautomatic
2 pistols helped create an increased demand in the civilian market. Comparing 1986
3 and 2010 handgun sales, one can see evidence of that change. According to the
4 Bureau of Alcohol Tobacco Firearms and Explosives, in 1986, 663,000 pistols were
5 sold in the United States versus 761,000 revolvers. In 2010, revolver sales had
6 dropped to 559,000 while pistol sales had grown to 2,258,000. *See* United States
7 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
8 Firearms Commerce in the United States, Annual Statistical Update (2012).¹ The
9 result of almost four decades of sales to law enforcement and civilian clients is
10 millions of semiautomatic pistols with a magazine capacity of more than ten rounds
11 and likely multiple millions of magazines for them. My associates who have such
12 pistols also have a significant number of spare magazines for them. In my case, I
13 have one 19-round and eight 17-round magazines for my Glock.

14 11. The retired peace officer, concealed weapon permit holder and the
15 home-owner wants a pistol that can hold significantly more cartridges than a
16 revolver for the same reason a law enforcement officer or soldier wants one – to
17 increase his or her chances of staying alive. Gunfights frequently involve a lot of
18 ‘missing.’ This can be the result of improper aim or impact with barriers such as
19 vehicles or walls. One would be hard pressed to find someone who had been in a
20 gunfight that complained about having too much ammunition.

21 12. Some believe that anyone defending themselves can just “shoot to
22 wound.” Those who grew up in the 1950s likely watched Roy Rogers shoot the gun
23 out of an evildoers hand - or if things got really serious – let loose a grazing wound
24 to the arm to settle matters. Such ideas are a fantasy. Equally as silly is the well-

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26
27 ¹ Report available at
28 <http://www.atf.gov/files/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf>

1 known 'fact' that a bullet from a .45ACP cartridge will knock someone to the
2 ground no matter where it strikes them.

3 13. The notion that a bullet can 'knock-down' a person is a largely
4 Hollywood-inspired myth. Most of us learned in school about Sir Isaac Newton's
5 *Third Law of Motion* that states - "For every action, there is an opposite and equal
6 reaction." Put another way -If the recoil of the firearm doesn't knock you down,
7 neither will the bullet. Bullets can penetrate skin, cut arteries, break bones or
8 interrupt nerve function to accomplish what is generally described as 'stopping
9 power.' A bullet that severs the spine or strikes a certain area of the brain will
10 almost certainly stop an attacker instantly. Bullet design and/or increased velocity
11 may improve performance but placement is still the most critical factor. A hit, or
12 even multiple hits, to less vital areas of the body may allow an attacker to continue
13 the assault. This phenomenon is extensively documented in the citations for
14 American heroes who were awarded the Congressional Medal of Honor. Many of
15 these men continued to fight after suffering multiple gunshot wounds, being struck
16 by shrapnel or having an arm or leg severed. *See, e.g., The Congressional Medal of*
17 *Honor, The Names, The Deeds* 28-29, 52-53, 284-85 (Sharp & Dunnigan, 1984). A
18 fighter who has overcome fear and is motivated to continue an attack can be
19 difficult to stop. In the infamous 1986 FBI shoot-out with two Florida bank robbers,
20 one of the suspects, Michael Platt, sustained 12 gunshot wounds before dying.
21 Jamie Frater, Top 10 Most Audacious Shootouts in US History, Listserve (October
22 14, 2009)
23 <http://listverse.com/2009/10/14/top-10-most-audacious-shootouts-in-us-history/>.

24 14. "Knockdown" and "Stopping Power" are things I know from personal
25 experience. During my early years as a narcotic agent with the California
26 Department of Justice, I was conducting an undercover investigation of a
27 significant heroin dealer. After purchasing an ounce and a half of heroin from him
28 and the arrest was initiated, he shot me with a .45 first breaking my left arm and

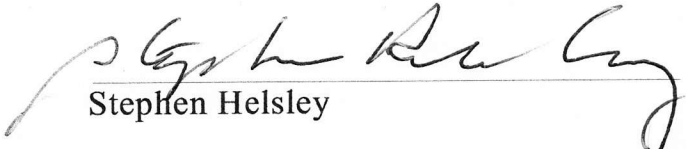
1 severing an artery (Note: I wasn't 'knocked down.') and then bouncing another
2 round off my spine that exited my right leg. From a prone position I returned fire at
3 the suspect who was mostly concealed by the trunk of his car. My shots that struck
4 the vehicle failed to penetrate sufficiently to reach him. In the exchange that
5 followed I had another round pass through my right leg, while another entered my
6 left side and lodged in the disc between L3 and L4 - where it remains today. Having
7 emptied the 8 rounds in my pistol, I tried to reload. However, with a broken arm
8 and temporary paralysis from the waist down, I was unable to reach my spare
9 magazine in my left rear pants pocket. Fortunately, at that time the suspect quickly
10 surrendered to my converging surveillance team. Very little pain was initially
11 associated with my wounds and I could have 'fought on' if more ammunition had
12 been available. A total of 18-rounds were fired.

13 15. Four years later, I was making an undercover cocaine purchase with a
14 new member of my team. I had involved myself to evaluate his performance. The
15 three suspects, two of whom were armed (initially unbeknownst to us) had decided
16 that robbery was a better option than delivering the cocaine. The junior agent was
17 taken hostage and was being held in the state undercover car with a sawed-off rifle
18 to the back of his head and a revolver held against his right side. I was across the
19 street in another undercover car with the money the suspects wanted. I informed the
20 surveillance team that I was going to approach the other vehicle to see what I could
21 do. When I got to the car it was difficult to determine what was happening, as it was
22 a dark, rainy night. I told the agent to exit the vehicle and as he opened the car door
23 and dived out, two shots were fired at him – both missed. I returned fire at the area
24 of the muzzle flash inside the car. Of the eight rounds I fired, the automobile glass
25 defeated most. However, one .45 bullet hit the suspect holding the rifle, causing
26 him serious internal injuries. The suspect with the revolver came out of the
27 passenger door and was struck through the shin with a .45 bullet from a member of
28 the surveillance team who had quietly closed-in on the vehicle. After a short pause

1 the suspects were ordered out of the vehicle. Both of those with gunshot wounds
2 came out fighting. A flashlight to the chin produced the 'stopping power' for the
3 suspect with the internal wound. The suspect with the leg wound was unaware of
4 his injury until he saw the massive blood loss – whereupon he exclaimed "I'm
5 bleeding" and passed out. Twenty-eight rounds were fired into the vehicle with only
6 two hits. For my actions in this incident I was awarded the department's Medal of
7 Valor. The 'take away' from these incidents is that serious bullet wounds aren't
8 necessarily incapacitating and that gunfights can require lots of ammunition.

9 16. By the time I retired from DOJ, I had switched to a Glock 17 with a 19-
10 round magazine as my duty and then personal defense weapon. I purchased it from
11 the department with a compliment of magazines and have carried it, so equipped,
12 ever since. I am authorized to carry a loaded and concealed firearm pursuant to
13 Penal Code Sections 25455 and 25460. Should my travels take me into Sunnyvale, I
14 would be prohibited from using my magazines for such travel because I transited
15 that city.

16
17 I declare under penalty of perjury that the foregoing is true and correct.
18 Executed within the United States on December 23, 2013.

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20 
21 Stephen Helsley

1 C. D. Michel - S.B.N. 144258
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19 GRGURINA, in his official capacity,)
and DOES 1-10,)

20 Defendants.)
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CASE NO: CV13-05807 RMW

**DECLARATION OF MASSAD
AYOOB IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

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DECLARATION OF MASSAD AYOOB

1. I, Massad Ayoob, am not a party in the above-titled action. I am over the age of 18, have personal knowledge of the facts and events referred to in this Declaration, and am competent to testify to the matters stated below.

2. I have been a competitive handgun shooter since the late 1960s, a published writer in the field of defensive firearms since 1971, and a firearms instructor since 1972. My resume is attached. I have served for more than thirty years each as handgun editor for Guns magazine and law enforcement editor for American Handgunner magazine. I served for 19 years as chair of the Firearms and Deadly Force Training Committee for the American Society of Law Enforcement Trainers, and have served for ten years on the advisory board of the International Law Enforcement Educators and Trainers Association. I have served as an expert witness on firearms, firearms training standards, deadly force training standards, dynamics of violent encounters, and related subject matter areas since 1979. I have also been an instructor in disarming and firearm retention (i.e., the countering of a disarming attempt) since 1980 and became a trainer of other instructors in those disciplines in 1990.

3. In my role as a self-defense and weapons expert, including as an expert witness, I have researched incidents of defensive gun uses by law-abiding citizens, including by both private citizens and law enforcement officers. My opinions about defensive guns uses provided herein are based, in part, on the information I have learned during such research.

**Ten Round Magazine Limit: Disparate
Impact on Law-Abiding Citizens**

4. Limiting the law-abiding citizen to a magazine of ten rounds or less will clearly limit their ability to protect themselves from violent criminals in certain situations. Such limits on magazine capacity are likely to impair the ability of citizens to engage in lawful self-defense in those crime incidents necessitating that

1 the victim fire many rounds in order to stop the aggressive actions of offenders.

2 5. An illustrative, real-world example is the case of Susan Gonzalez. She
3 and her husband were attacked by two intruders within their home one night. The
4 attackers shot both of them multiple times, but she was able to escape to their
5 bedroom where she located her husband's semi-automatic pistol, while her husband
6 bravely physically fought the attackers off into the front room. She entered the
7 room where the attackers were struggling with her husband, and, not wanting to
8 shoot her husband, discharged three warning shots in the air, hoping the attackers
9 would flee. They did not.

10 6. One attacker charged toward her, causing her to flee back to the
11 bedroom. From an opening in the bedroom she could see the attacker lying in wait
12 for her in the kitchen. So she used her knowledge of the house to exit the bedroom
13 from and approach the attacker from behind via another door leading to the kitchen.
14 She pointed the pistol at the attacker and discharged seven rounds in his direction,
15 gravely wounding him, but not immediately killing him.

16 7. The wounded attacker was still able to exit the house aided by his
17 accomplice. The other attacker reentered the house and demanded Mr. Gonzalez
18 give him keys to an automobile to escape. During his search for keys in the
19 bedroom he located Mrs. Gonzalez who was out of ammunition. He put the gun to
20 her temple and demanded the keys, which she gave him.

21 8. Fortunately, the attacker decided to spare Mrs. Gonzalez's life, but he
22 could have just as easily pulled the trigger. Had she had more rounds in her
23 magazine, maybe she would not have had to leave her fate to chance. It is
24 impossible to say how many more cases where victims lost (or almost lost, as in
25 Mrs. Gonzalez's case), due to having an insufficient amount of ammunition readily
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1 available in a self-defense firearm.¹

2 9. The published account of this shooting has Mrs. Gonzalez firing three
3 shots into the ceiling, then seven at the homicidal intruder, and then running dry.
4 This would indicate only ten cartridges at her disposal. The gunfight occurred
5 during the ten-year period when the Federal "high capacity magazine ban" was in
6 force. The Ruger 9mm pistol she used, designed to hold fifteen cartridges in the
7 magazine and one more in the firing chamber, was sold during that ten year period
8 of that ban with magazines which could only hold ten rounds. In such a situation,
9 five more shots can make the difference between neutralizing the murderous threat,
10 and being rendered helpless with an empty guns at the hands of a law-breaking,
11 homicidal, heavily armed felon.

12 10. It is difficult to say exactly how many private citizens have actually
13 fired more than ten rounds in a self-defense shooting, because the amount of rounds
14 fired in self-defense shoots, from my experience in researching such incidents, is
15 very often an omitted fact in written accounts of such defensive gun uses.
16 Oftentimes the accounts just say "multiple shots fired." That could mean more or
17 less than ten, it just cannot be known. This does not seem to be the case, however,
18 with shootings involving police officers, for which, generally the number of shots
19 that were fired is documented. In my experience researching such shootings,
20 officers often fire more than ten rounds. And, cases where an individual officer
21 fired less than 10 rounds, but there were multiple officers shooting, can be fairly
22 characterized as involving more than ten rounds if the multiple officers involved
23 fired over ten rounds in aggregate.

24 11. Officer-involved shootings are relevant in evaluating private citizen
25 shootings, for the simple reason that private citizens arm themselves for protection

26

27 ¹ Robert A. Waters, *Guns Save Lives: True Stories of Americans Defending*
28 *Their Lives with Firearms* 149-59 (2002).

1 against the exact same criminals the police are armed to deal with. Tim Gramins of
2 the Skokie, Illinois police department was in a shootout with an armed robber
3 whose car he had pulled over. The gunman came out shooting. The gunman was
4 armed with two semiautomatic pistols, one on his person and one snatched from his
5 car, both of which he fired during the gun battle. He also had in his possession a
6 semiautomatic rifle in his car, which he did not deploy. Gramins fired 33 rounds
7 before the gunman, now fatally wounded, stopped firing. The suspect had absorbed
8 16 hits by the time he was neutralized, and the officer had been forced to reload
9 twice. The officer was armed with a Glock Model 21 .45 caliber pistol, loaded with
10 a 13 round magazine and a fourteenth in the firing chamber. The officer was down
11 to the last few cartridges in his last magazine at the time he finally won the
12 gunfight. Gramins was wounded in the shooting. As a result of this incident, he
13 now carries a higher-capacity handgun with more spare magazines.²

14 12. While, as mentioned, the number of rounds fired in a self-defense shoot
15 involving a private citizen is usually not documented, there are nevertheless various
16 accounts of private citizens discharging more than ten rounds during a criminal
17 attack. A South Carolina gun store owner who lived in the rear of his shop was
18 awoken by three men, at least one of them armed, crashing a van into his store.
19 When going to investigate, one of the robbers yelled to another to kill him, so the
20 owner opened fire, discharging thirty rounds, hitting all three attackers, mortally
21 wounding one and causing the rest to flee.

22 13. There is also the account of Travis Dean Neel. While sitting in a traffic
23 jam behind an officer with a car pulled over, an occupant emerged from the

24
25 ² Charles Remsberg, Why one Cop Carries 145 Rounds of Ammo on the Job,
26 Police One
27 [http://www.policeone.com/patrol-issues/articles/6199620-Why-one-cop-carries-145-r
28 ounds-of-ammo-on-the-job/](http://www.policeone.com/patrol-issues/articles/6199620-Why-one-cop-carries-145-rounds-of-ammo-on-the-job/) last updated April 17, 2013).

1 detained vehicle and opened fire on the officer. Neel responded by retrieving his
 2 pistol with three magazines from his backseat and opened fire on the assailant,
 3 which resulted in him being fired upon and an ensuing gunfight, during the course
 4 of which he prevented the assailants from “finishing off” the officer and (with
 5 assistance from an off-duty police officer who joined him in the gunfight with his
 6 own handgun) from car-jacking a woman to get away, which may have saved that
 7 woman's life. Despite Neel using all three of his fifteen-round magazines, and the
 8 several shots fired by the off-duty officer, the assailants were still able to flee, but
 9 could just as easily decided to continue their attack and overcome Neel.³

10 14. Ronald Honeycutt was delivering pizzas when approached by a man
 11 with a gun from behind. He turned and fired when he saw a gun in the man's hand,
 12 discharging all of his magazine's fifteen rounds, which still did not immediately
 13 stop the threat, as the attacker remained upright with the gun pointed at him. But the
 14 attacker eventually succumbed to his wounds before being able to rack a round into
 15 the firing chamber of his pistol, which he had forgotten to do, and is probably why
 16 he was pointing the gun at Honeycutt but never discharged a single round.⁴

17 15. Additionally, in California, consider the well-documented multiple
 18 gunfights with armed robbers experienced by Los Angeles watch shop owner Lance
 19 Thomas.⁵ More than one of his five shooting incidents required him to fire more
 20 than the Sunnyvale ordinance would allow to be in any one handgun. In one of
 21 those incidents, Thomas had to fire nineteen shots before the last of his multiple

22
 23 ³ Robert A. Waters, The Best Defense: True Stories of Intended Victims Who
Defended Themselves with a Firearm, 23-40 (1998).

24
 25 ⁴ Chris Bird, Thank God I Had A Gun: True Accounts of Self-Defense
 251-274 (2007).

26
 27 ⁵ Gun shop owner shoots, kills man during attempted robbery, WIS TV (Aug.
 28 9, 2012, 7:54 AM),
<http://www.wistv.com/story/19236842/gun-shop-owner-shoots-kills-man-during-attempted-robbery> (last updated Aug. 19, 2012, 8:22 AM).

1 opponents ceased attempting to murder him.⁶

2 16. Thomas' strategy was to stage multiple loaded handguns every few feet
3 in his workspace. He could do this, as a sole proprietor with a small shop, a
4 workspace closed to the public, and with buzz-in entry. A pair of brothers used the
5 same strategy in defending themselves against two violent career criminals robbing
6 their Richmond, Virginia jewelry store. They went through multiple firearms staged
7 throughout the store placed in anticipation for such an event.⁷ The strategy of
8 staging multiple firearms employed by these shopkeepers is a unique circumstance,
9 however. It would not be practical or safe for most shopkeepers or for homeowners,
10 due to the danger of unexpected children wandering behind the counter or
11 unexpectedly arriving at the given home. Thus, most private citizens could not be
12 expected to have multiple handguns in multiple locations in their home or on their
13 person in order to engage in a defensive gun use.

14 17. The homeowner who keeps a defensive firearm and is awakened in the
15 night by an intruder is most unlikely to have time to gather spare ammunition. The
16 sudden and unpredictable nature of such attacks, and their occurring in relatively
17 confined spaces, generally do not permit gathering multiple firearms or magazines.
18 Ideally, one hand would be occupied with the handgun itself, and the other, with a
19 telephone to call the police. And, assuming they even had time for a magazine
20 change, most people do not sleep wearing clothing that would allow them to stow
21 spare magazines, etc. on their person. They would have only what was in the gun.

22 18. Most plainclothes police officers do not find it practical to carry
23 multiple handguns, let alone private citizens. Any suggestion that private citizens

24
25 ⁶ See
26 http://articles.latimes.com/1992-02-21/local/me-2663_1_watch-shop-owner;
27 <http://backwoodshome.com/blogs/MassadAyooob/2012/12/29/why-good-people-need-semiautomatic-firearms-and-high-capacity-magazines-part-i/>

28 ⁷ *Id.*

1 simply get more guns or more ammunition feeding devices would, for the reasons
2 stated above, be impractical.

3 19. Criminals bent on causing harm, on the other hand, even assuming they
4 were impeded from obtaining magazines holding over ten rounds due to the
5 ordinance, could simply arm themselves with multiple weapons, and often do.

6 20. Criminals have time to assess and plan shootings, whereas victims do
7 not. Whitman, the Texas Tower mass murderer, literally brought a large box of
8 rifles, handguns, a shotgun and ammunition to his sniper perch.⁸ Harris and
9 Klebold had four firearms between them at Columbine.⁹ Holmes in Aurora brought
10 rifle, shotgun, and pistol into the theater.¹⁰ Hassan was armed with a pistol and a
11 revolver at the Fort Hood.¹¹ Lanza entered the elementary school in Newtown,
12 Connecticut armed with a rifle and two pistols, leaving a shotgun in his car.¹² The
13 mass murderer Cho entered Virginia Tech armed with two pistols and a backpack
14 full of magazines.¹³

15 21. None of these murderers' victims had planned to repel an attack by a
16 perpetrator with multiple firearms.

17 22. The likelihood of the mass murderer arriving on scene with multiple

18 ⁸ <http://www.texasmonthly.com/topics/ut-tower-shooting>

19 ⁹ <http://extras.denverpost.com/news/shot0427a.htm>

20 ¹⁰
21 <http://www.latimes.com/news/nation/nationnow/la-na-nn-dark-knight-shooting-2012-0720,0,2147749.story#axzz2nDkU7CWB>

22 ¹¹
23 <http://www.nydailynews.com/news/national/ft-hood-shooter-nidal-hasan-private-legally-bought-pistol-military-weapon-rampage-article-1.414799>

24 ¹² <http://www.cnn.com/2012/12/18/us/connecticut-landa-guns/>

25 ¹³ [Virginia Tech Review Panel, Report of the Review Panel at pg. 89 available at,http://www.governor.virginia.gov/tempcontent/techPanelReport-docs/FullReport.pdf](http://www.governor.virginia.gov/tempcontent/techPanelReport-docs/FullReport.pdf)

1 firearms also largely negates the theory that with fewer rounds in the gun, the killer
2 could be more easily disarmed and subdued by unarmed citizens when he first ran
3 empty, before he could reload. Hassan, Holmes, Lanza, or Cho simply could have
4 drawn a second (or third) gun that they had on their persons and shot whoever
5 attempted to grab the empty one.

6 23. The virtuous citizen, by contrast, cannot practically be expected to have
7 accessible that many guns or that much ammunition at a moment's notice. The
8 victimized citizen is the one who is, therefore, most deleteriously impacted by the
9 magazine capacity limitation. If he or she must use the gun to protect self and
10 family, they will most likely have only the ammunition in the gun with which to
11 fend off determined, perhaps multiple, attackers.

12 24. Virtuous citizens buy their guns to protect themselves from the same
13 criminals police carry guns to protect the citizens, the public, and themselves from.
14 Therefore, armed citizens have historically modeled their choice of firearms on
15 what police carry. The vast majority of California law enforcement agencies,
16 including those in the Bay Area, carry pistols with double-stack magazines whose
17 capacities exceed those of the Sunnyvale ordinance. While on-duty police are
18 exempt from the Ordinance, it is unclear to me whether off duty officers are.

19 25. The on-duty, uniformed police officer generally will be armed with a
20 service pistol containing a detachable magazine holding more than ten rounds, and
21 generally two spare magazines holding more than ten rounds on the uniform belt.
22 He or she will normally be wearing body armor, have immediate access to a loaded
23 shotgun and/or loaded patrol rifle with magazines holding more than ten rounds in
24 the patrol car, and will have instant radio access to fellow officers and dispatch if
25 help is needed.

26 26. The off-duty officer and the law-abiding citizen alike are not likely to
27 have that volume of spare ammunition on their person or elsewhere readily
28 accessible. They are not likely to be wearing body armor, nor to be in reach of a

1 rifle or shotgun. Their only communication to potential backup will be by phone,
2 relayed through Police Dispatch to responding officers. Thus, for them, the ability
3 to have a pistol already loaded with a significant amount of ammunition is all the
4 more important.

5 27. It takes even a world champion speed shooter a full second to reload
6 with a fresh magazine. A highly skilled police officer or competitive shooter may
7 be able to accomplish a reload in two seconds. Most people take considerably
8 longer; especially someone who is under the mental duress typically experienced
9 during an attack. Changing a magazine is a fine motor skill, the type of skill which
10 degrades severely in human beings under stress due to vasoconstriction (loss of
11 blood flow to the extremities) and also due to tremors induced by
12 internally-generated adrenaline (epinephrine). This is a well-known physiological
13 reaction that has been in the medical literature and training literature for a century
14 or longer, defined as "fight or flight" response by Dr. Walter Cannon at Harvard
15 Medical School before World War I.

16 28. By contrast, simply pulling the trigger again on a pistol that still has
17 more ammunition in it can be accomplished in a fraction of a second. Based on my
18 experience in self-defense scenarios, fractions of seconds can mean the difference
19 between the victim successfully repelling an attacker and the victim being subdued.
20 Thus, a magazine change for the person being attacked could be the difference
21 between life and death.¹⁴ The same, however, is not generally true for the attacker.
22 The loss of time for a magazine change is generally of little consequence for the
23 attacker. This is because it is the attacker who gets to choose when, where, how,
24 and whom to attack. So the attacker is not burdened by the surprise and shock
25 factor that the victim is, and, as explained above, is generally prepared for the

26 14

27 <http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits>

1 confrontation with large amounts of arms and ammunition. This is demonstrated by
 2 the multiple mass shootings where the attacker made magazine changes without
 3 being subdued. The most illustrative example is the Virginia Tech shooting, where
 4 the attacker carried with him seventeen magazines for his two semi-automatic
 5 pistols, from which he fired 174 rounds.¹⁵ At least five of those magazines had a
 6 capacity of only ten rounds and would be legal under the challenged ordinance.¹⁶
 7 While it cannot be said exactly how many magazine changes he made during what
 8 was the deadliest mass shooting in the country's history, based on the number of
 9 rounds fired and the fact that authorities found seventeen empty magazines at the
 10 scene, he had to have made several reloads.¹⁷

11 29. Supporters of the magazine capacity limitation will undoubtedly point
 12 to some firearm expert who is comfortable with an eight- or nine-shot pistol, or
 13 even a five- or six-shot revolver. It should be noted, however, that the operative
 14 term there is "expert." The individual who has spent a lifetime training in shooting,
 15 and may fire hundreds or even thousands of shots on the range per month, has
 16 developed a level of skill and confidence that is not practical to expect from the
 17 average police officer, let alone the average law-abiding citizen who keeps a
 18 firearm in the home or on his person for protection of self and family.

19 30. I would also be remiss to fail to also consider the needs of retired law
 20 enforcement officers and corrections officers, and the families of such personnel,
 21 whether retired or still employed in the justice system. It is common for violent
 22 criminals to threaten revenge on the families of law enforcement personnel, and it is
 23 my experience that these people more often than not keep firearms at home for
 24 defensive use by their spouses and other responsible family members, should such

25 ¹⁵ Virginia Tech Review Panel, *Report of the Review Panel* at pg. 92.

26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

1 threats of vengeance be acted out. For the reasons described above, the Sunnyvale
2 ordinance puts those innocent people at an unfair tactical disadvantage.

3 **Disparate Impact on the Disabled**

4 31. A particular subset of law-abiding citizens who are disparately,
5 negatively impacted by the Sunnyvale ordinance is the physically disabled. This is
6 true of many categories of the physically challenged.

7 32. Over the last twelve years, we have seen many war veterans joining the
8 amputee community. Those who have lost fingers or a hand will have great
9 difficulty reloading an empty gun if a ten-round magazine does not prove sufficient
10 to defeat an attacker. Work-related injuries such as carpal tunnel syndrome can
11 greatly slow ability to reload. So can many of the infirmities of age: rheumatism,
12 arthritis, bursitis, etc.

13 33. The wheelchair-bound individual, and many more mobility-challenged
14 individuals (back issues, ankle issues, knee issues, etc.), cannot run to cover to
15 reload. They will be caught in the open if they have to reload in a fight with one or
16 more armed criminals, and thus will become totally helpless as soon as their
17 ordinance-mandated ten-shot magazine is depleted.

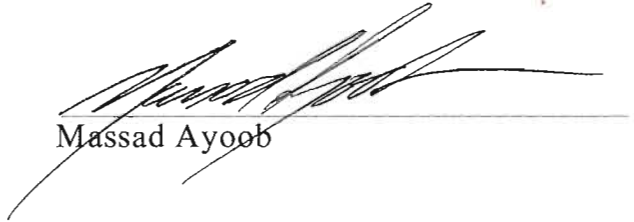
18 34. Thus, in conclusion, study of events in the real world indicates that the
19 Sunnyvale ordinance as related to magazine capacity can be expected to have little,
20 if any, effect in reducing casualties due to intentional mass murder. However,
21 law-abiding citizens, off-duty and retired criminal justice personnel, families of
22 criminal justice personnel, recipients of death threats, stalking victims, and people
23 working in places of business prone to armed robbery, will be severely
24 disadvantaged by this ordinance in terms of their ability to lawfully protect
25 themselves and others. This impact will be particularly severe upon members of
26 such groups who are physically disabled.

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

Executed within the United States on December 22, 2013.



Massad Ayoub

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7 Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 LEONARD FYOCK, SCOTT)
12 HOCHSTETLER, WILLIAM DOUGLAS,)
13 DAVID PEARSON, BRAD SEIFERS, and)
ROD SWANSON,)

14 Plaintiffs)

15 vs.)

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

20 Defendants.)

CASE NO: CV13-05807 RMW

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: February 7, 2014
Time: 9:00 a.m.
Location: San Jose Courthouse
Courtroom 6 - 4th Floor
280 South 1st Street
San Jose, CA 95113

1 *American public* dictates what is necessary and suitable for self-defense – not the City. In striking
 2 down D.C.’s handgun ban, the *Heller* Court made clear that the Second Amendment protects arms
 3 chosen *by the American people* for self-defense. 554 US at 628. It was not for the government to
 4 say the banned items are not well-suited to that purpose.

5 Nor may it be suggested that the chances are low that one would ever “need” firearms
 6 loaded with more than ten rounds for self-defense. Plaintiffs may never “need” to discharge a
 7 firearm for protection at all, but that does not extinguish their right to do so. The City’s belief that
 8 firearms holding fewer rounds are sufficient for self-defense in most cases, no matter how sincere,
 9 is *not* decisive. Second Amendment protection depends on the purposes for which types of arms
 10 are possessed by the law abiding, and it does not evaporate simply because other arms sufficient
 11 for those purposes might exist.

12 The City’s ordinance effectively bans firearms with magazine capacities over ten rounds.
 13 These arms are routinely, and on a massive scale, chosen and preferred by Americans for self-
 14 defense. Their Second Amendment protection cannot be credibly disputed.

15 **B. The Ordinance Prohibits Law-Abiding Citizens From Possessing Arms in**
 16 **Common Use for Lawful Purposes – It Is Thus Categorically Invalid**

17 Millions of law-abiding Americans possess firearms with magazine capacities over ten
 18 rounds for lawful purposes, including the core lawful purpose of self-defense. Protection for these
 19 arms under the Second Amendment is thus secure. Rather than regulate these protected arms, the
 20 City has flatly banned all law-abiding citizens from possessing them in their homes. The City’s
 21 ordinance is irreconcilable with Second Amendment protections under any test, and the Court
 22 need not select a level of scrutiny in declaring it invalid.

23 **1. Firearms Equipped With the Prohibited Magazines Are in Common**
 24 **Use for Lawful Purposes**

25 Firearms equipped with magazines prohibited by the Ordinance are “typically possessed
 26 by law-abiding citizens for lawful purposes,” including self-defense and sporting purposes. *See*
 27 *Heller*, 554 U.S. at 625. In fact, such magazines are *standard equipment* for many popular pistols
 28 and the predominant brands of semiautomatic rifles used for both self-defense and recreational

1 purposes. Curcuruto Decl. ¶ 6; Helsley Decl. ¶¶ 3, 10; Monfort Decl. ¶ 5; Ex. B; Ex. C. Standard-
2 issue magazines for very common semiautomatic pistols have capacities ranging from eleven to
3 twenty rounds, with many between fifteen and seventeen. Helsley Decl. ¶¶ 3, 5-9; *see also* Ex. D
4 (attached to Monfort Decl.). Examples of these common handguns include the Browning High
5 Power (13 rounds) c.1954, MAB PA-15 (15 rounds) c.1966, Beretta Models 81/84 (12/13 rounds)
6 c.1977, S&W Model 59 (14 rounds) c.1971, L.E.S P-18 (18 rounds) c.1980 aka Steyr GB, Beretta
7 Model 92 (15 rounds) c.1980s, and Glock 17 (17 rounds) c.1986. Helsley Decl. ¶ 3. And the
8 magazines for tens of millions of rifles are also over ten rounds. Curcuruto Decl. ¶ 8; Ex. A.
9 These are the “standard capacities” for many of the most popular firearms in American society.

10 Approximately one-third of the semiautomatic handgun models listed in *Gun Digest*, a
11 reference work that includes the specifications of currently available firearms, are normally sold
12 with magazines that hold more than ten rounds of ammunition. Helsley Decl. ¶ 1; Ex. B at 407-
13 39. And approximately two-thirds of the distinct models of semiautomatic, centerfire rifles listed
14 are regularly sold with detachable magazines that hold more than ten rounds. Ex. B at 455-64,
15 497-99. In both cases, but especially for handguns, these figures underestimate the market share
16 of magazines capable of holding more than ten rounds of ammunition, because they include many
17 of the rarer lower-capacity firearms offered by low-volume manufacturers.

18 A large percentage of pistols, perhaps a majority, are manufactured with magazines
19 holding more than ten rounds. Helsley ¶¶ 3, 9-11; Ex. A; *see also* Massad Ayoob, *The Complete*
20 *Book of Handguns* 87, 89-90 (2013). And millions of rifles equipped with such magazines are
21 privately owned throughout the United States. Curcuruto Decl. ¶¶ 8, 11-13; Ex. A.

22 At minimum, there are tens of millions of magazines capable of holding more than ten
23 rounds in the hands of the American public. Curcuruto Decl. ¶ 13. A 2004 report funded by the
24 Department of Justice estimated the number of such magazines to be 72 million – a figure that
25 does not include the millions that have been imported or manufactured in the ten years since the
26
27
28

1 federal ban expired in 2004.⁵

2 Far from being “highly unusual in society at large,” the evidence establishes that
3 magazines holding more than ten rounds are exceedingly common throughout the nation. The
4 overwhelming majority of states place no restrictions on standard-capacity magazines, let alone
5 force law-abiding citizens to surrender them or face criminal prosecution. It is the City’s ban, not
6 these magazines, that is “highly unusual.”

7 In considering a challenge to a similar magazine ban, the D.C. Circuit acknowledged the
8 commonality of the banned items: “We think it clear enough in the record that . . . magazines
9 holding more than ten rounds are indeed in ‘common use,’ as the plaintiffs contend.” *Heller II*,
10 670 F.3d at 1261. Despite this finding, the *Heller II* court improperly proceeded to further require
11 that such magazines be “well-suited to or preferred for the purpose of self-defense or sport,” a test
12 unsupported by *Heller*. See Part I.A., *supra*.

13 In any event, firearms with magazines capable of holding more than ten rounds are both
14 well-suited and preferred for self-defense in the home and for sport. This fact is self evident. The
15 availability of more ammunition in a firearm increases the likelihood of surviving a criminal
16 attack, while limiting the number of rounds available decreases one’s chances of survival. A
17 firearm’s ammunition capacity is thus directly related to its suitability for self-defense.

18 Evidence of this point is overwhelming. Massad Ayoob, renowned use-of-force expert and
19 a preferred defensive-gun-use trainer among law enforcement, describes the suitability of firearms
20 with increased ammunition capacities for self-defense:

21 [L]imits on magazine capacity are likely to impair the ability of citizens to engage
22 in lawful self-defense in those crime incidents necessitating that the victim fire
many rounds in order to stop the aggressive actions of offenders.

23 Ayoob Decl. ¶ 4; see also Ayoob Decl. at ¶¶ 4-16 (recounting, as examples, some of the many
24 instances where crime victims required more than ten rounds to fight off his or her attacker(s));

25
26 ⁵ Christopher S. Koper et al., *An Updated Assessment of the Federal Assault Weapons*
27 *Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Rep. to the Nat’l Inst. of Justice,
28 U. S. Dept. of Justice at 65 (2004) (hereafter, “2004 Koper Report”) (reporting industry
estimates that 25 million such magazines were available as of 1995, nearly 4.8 million were
imported for sale from 1994-2000, and an additional 42 million may have arrived after 2000).

1 Kleck Decl. ¶ 20.

2 The reasons a potential victim benefits from having more than ten rounds immediately
3 available in a self-defense emergency are many. 554 U.S. at 624-25, 627. For instance, the
4 presence of multiple attackers often requires far more defensive discharges to eliminate the
5 threat.⁶ Ayoob Decl. ¶¶ 4-16; Kleck Decl. ¶ 21. Second, the stress of a criminal attack greatly
6 reduces the likelihood that shots fired will actually hit a violent intruder.⁷ Kleck Decl. ¶¶ 21-23;
7 *see also* Ayoob Decl. ¶ 27. And it is rare that those hits will incapacitate the criminal intruder
8 before he can complete his attack. Ayoob Decl. ¶¶ 5-9, 11-14; Helsley Decl. ¶¶ 12-15 (debunking
9 the myth that a person, once shot, is generally immediately incapacitated).⁸

10 Given that criminal attacks occur at a moment's notice, taking the victim by surprise,
11 usually at night and in confined spaces, victims rarely have multiple magazines or extra
12 ammunition readily available for reloading. Ayoob Decl. ¶¶ 17-18; Kleck Decl. ¶ 20. Regardless,
13 the victim likely cannot hold a spare magazine as he or she scrambles for cover. Often both hands
14 will be on the firearm. If they are not, one hand is likely holding the phone to call the police.
15 Ayoob Decl. ¶ 17. And certainly most people do not sleep with back-up magazines or firearms
16 strapped to their bodies. Ayoob Decl. ¶ 17. Victims will typically have to make do with a single

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18 ⁶ Far from a rare occurrence, the 2008 National Crime Victimization survey indicates
19 that 17.4% of violent crimes in the U.S. involved two or more offenders. That year, victims of
20 nearly 800,000 violent crimes faced multiple offenders. Kleck Decl. ¶ 22; *see also* U.S. Dept.
21 of Justice, Bureau of Justice Statistics, National Crime Victimization Survey, *Criminal
Victimization in the United States, 2008 Statistical Tables*, Table 37 (Mar. 2009), available at
22 bjs.gov/content/pub/pdf/cvus08.pdf.

23 ⁷ The low hit-rate among trained law enforcement officers underscores this point. Even
24 at close range, officers miss their target far more often than they hit it. Kleck Decl. ¶¶ 22-23.
25 Considering that even law enforcement often struggle to hit a target under stress at close range,
26 it is no surprise that law-abiding citizens overwhelmingly choose standard-capacity magazines
27 holding more than ten rounds for in-home self-defense. This is especially true since civilians
28 rarely have the benefit of a bullet proof vest, a secondary weapon, extra magazines, or a partner
for backup. Ayoob Decl. ¶¶ 25-26.

⁸ Even assuming a generous 37 percent “hit rate,” Kleck Decl. ¶ 23, for a civilian
facing three attackers and the ability to incapacitate each aggressor with just two bullets, the
victim, limited to ten rounds, would be about seven bullets short – and left defenseless to ward
off any remaining attackers while reloading.

1 available gun and its ammunition capacity. Ayooob Decl. ¶¶ 17, 23; Kleck Decl. ¶ 20. Limited to
 2 just ten rounds by the City’s law, victims will be left defenseless against their attackers should
 3 they be unable to neutralize their attackers with just ten bullets.

4 Even if additional magazines are available, it is extremely difficult – and potentially
 5 deadly – to stop to change magazines under the stress of a criminal attack. As Mr. Ayooob
 6 explains:

7 A highly skilled police officer or competitive shooter may be able to accomplish a
 8 reload in two seconds. Most people take considerably longer; especially someone
 9 who is under the mental duress typically experienced during an attack. **Changing**
 10 **a magazine is a fine motor skill, the type of skill which degrades severely in**
 human beings under stress due to vasoconstriction (loss of blood flow to the
 extremities) and also due to tremors induced by internally-generated adrenaline
 (epinephrine).

11 Ayooob Decl. ¶ 27 (emphasis added); *see also* Kleck Decl. ¶ 27. In sum, forcing law-abiding
 12 citizens to change magazines while attempting to defend against a criminal attack could cost them
 13 their lives, particularly if they are facing multiple armed assailants.

14 It is undeniable that magazines capable of accepting more than ten rounds are well-suited
 15 to and effective for self-defense in the home and elsewhere.⁹ Firearms with capacities of more
 16 than ten rounds were developed for that very reason. Helsley Decl. ¶¶ 4-11. Manufacturers
 17 specifically market them for self-defense. Monfort Decl. ¶ 5; Ex. C. And, as evidenced by the fact
 18 that U.S. consumers acquire these firearms specifically developed and marketed for personal
 19 defense on a massive scale, Curcuruto Decl. ¶¶ 8, 11-13; Ex. A, they are preferred by millions of
 20 Americans for that reason. The entire consumer firearm market has transitioned from revolvers to
 21 pistols in large part because semiautomatic pistols allow for more rounds to be immediately
 22 available in a self-defense emergency. Helsley Decl. ¶¶ 9-11.

23 _____
 24 ⁹ The banned magazines are also essential in the most popular competitive shooting
 25 sports in America. Standard ammunition capacities are required when proceeding through
 26 multi-target stages of competitions sponsored by the highly popular International Practical
 27 Shooting Federation (which has tens of thousands of members). *See* International Practical
 28 Shooting Federation, <http://www.ipsc.org>. They are also required for the famed “3-Gun
 Competition,” the fastest-growing shooting sport in America, where participants use standard-
 capacity magazines while testing their marksmanship skills using rifles, shotguns, and
 handguns. *See* Chad Adams, *Complete Guide to 3-Gun Competition* 89 (2012).

1 Civilians overwhelmingly prefer these firearms for the same reason active-duty officers do
 2 – to increase their chances of staying alive. Ayoob Decl. ¶ 24; Helsley Decl. ¶ 11; Fyock Decl. ¶¶
 3 6-11; Douglas Decl. ¶¶ 6-9; Pearsons Decl. ¶¶ 6-9; Seifers Decl. ¶¶ 6-11; Swanson Decl. ¶¶ 7-10.
 4 American citizens have thus historically modeled their choice of firearms on what police carry.
 5 Ayoob Decl. ¶ 24; Helsley Decl. ¶¶ 9-10. For example, Glock pistols, the most popular handguns
 6 among American law enforcement, are “hugely popular” for home and personal defense. Ayoob,
 7 *The Complete Book of Handguns* at 90. They come standard with fifteen- to seventeen-round
 8 magazines. *Id.*

9 In short, firearms with magazine capacities over ten rounds are among “the most preferred
 10 firearm[s] in the nation to ‘keep’ and use for protection of one’s home and family,” *Heller*, 554
 11 U.S. at 628-29; individuals are thus guaranteed the right to possess and use them for those
 12 purposes.

13 **2. Bans on Arms in Common Use for Lawful Purposes Are Categorically** 14 **Invalid Without Resort to Means-End Scrutiny**

15 The Ordinance is necessarily invalid because it imposes an outright ban on the possession
 16 and use of arms protected by the Second Amendment. It is a fundamental principle of both law
 17 and logic that, where the constitution protects the possession or use of an item, a total ban on such
 18 possession or use will be an unconstitutional infringement of that right, regardless of the level of
 19 judicial scrutiny applied. To this end, the courts may forego adoption of any particular standard of
 20 review when striking flat prohibitions on constitutionally protected conduct and items.

21 This was precisely the approach taken by the Supreme Court in *Heller*. There, the
 22 Supreme Court found a ban on handguns, arms the Court found to be in common use for self-
 23 defense, necessarily violates the Second Amendment. 554 U.S. at 635. While *Heller* stated the
 24 ban would fail “any of the standards of scrutiny that [the courts have] applied to enumerated
 25 constitutional rights,” *id.* at 628, the Court made a point of *not* applying any of those standards.
 26 Instead, *Heller* categorically invalidated the handgun ban because it prohibited a class of arms
 27 “overwhelmingly chosen by American society for [the] lawful purpose” of self-defense. 554 U.S.
 28 at 628-29. That the Court did so without selecting a level of scrutiny is unsurprising. For the

1 Second Amendment would mean little if the application of a particular test would permit the
2 government to ban the very arms the Second Amendment protects.

3 A categorical approach to bans on protected arms is also consistent with the framework
4 adopted by the Ninth Circuit in *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013). In
5 deciding whether arms restrictions for convicted domestic violence misdemeanants violates the
6 Second Amendment, the *Chovan* panel applied a two-step test for Second Amendment
7 challenges. *Id.* at 1136. The approach asks first whether the challenged law burdens protected
8 conduct. *Id.* If it does, the appropriate level of heightened scrutiny is selected based on “how
9 close the law comes to core of the Second Amendment” and “the severity of the law’s burden on
10 the right.” *Id.* at 1138. *Chovan* does not foreclose the application of *Heller*’s categorical approach
11 to striking down as unconstitutional a law that flatly bans the possession of protected arms by
12 law-abiding citizens. As *Heller* made clear, such a law is necessarily unconstitutional regardless
13 of the level of scrutiny applied. 554 U.S. at 628-29. In short, there is no need to struggle with
14 selecting a level of scrutiny under *Chovan* when the Supreme Court has already instructed what
15 the outcome will be under any test.

16 Other circuits have acknowledged this principle. For example, the Seventh Circuit, in
17 striking down the State of Illinois’ flat ban on the protected activity of carrying firearms outside
18 the home, eschewed the levels of scrutiny analysis it had applied in other Second Amendment
19 contexts. *Moore v. Madigan*, 702 F.3d 933, 940, 941 (7th Cir. 2012). The Second Circuit
20 similarly recognized, “where a state regulation is entirely inconsistent with the protections
21 afforded by an enumerated right – it is an exercise in futility to apply means-end scrutiny.”
22 *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 n.9 (2d Cir. 2012).

23 This is also consistent with the Supreme Court’s approach in other rights contexts, where
24 it has repeatedly found bans on protected activity to be unconstitutional without resort to any
25 level of scrutiny. *See, e.g., Stanley v. Georgia*, 394 U.S. 557 (1969) (holding that a ban on the
26 private possession of obscene material violated the First and Fourteenth Amendments); *Griswold*
27 *v. Connecticut*, 381 U.S. 479, 485 (1965) (declaring a ban on contraceptives unconstitutional);
28 *Lamont v. Postmaster Gen. of the U.S.*, 381 U.S. 301 (1965) (holding that a ban on access to

1 materials deemed “communist political propaganda” violated the First Amendment).¹⁰

2 Here, the City’s magazine ban is inimical to the Second Amendment’s protections for
3 standard-capacity firearms and should be stricken without resort to any level of scrutiny. Like the
4 handguns at issue in *Heller*, firearms with magazines holding more than ten rounds are
5 overwhelmingly chosen by law-abiding citizens for the core lawful purpose of self-defense. And
6 like the District of Columbia, Sunnyvale flatly bans these protected arms, going so far as to force
7 law-abiding citizens, including active-duty law enforcement, to remove their standard magazines
8 from the City or face criminal prosecution.

9 Under *Heller*, the Ordinance is necessarily unconstitutional. The Court need not go any
10 further because the City’s ban on protected arms would fail “any of the standards of scrutiny that
11 [the courts have] applied to enumerated constitutional rights.” The City’s outright ban on the use
12 of standard-capacity firearms that are possessed by millions of law-abiding Americans for in-
13 home self-defense is plainly inconsistent with the Second Amendments’s protections for these
14 arms – making the application of means-end scrutiny a futile endeavor.

15 **C. If the Court Selects a Level of Means-End Review, Strict Scrutiny Must**
16 **Apply**

17 When a law interferes with “fundamental constitutional rights,” it generally is subject to
18 “strict judicial scrutiny.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973); *see*
19 *also, e.g., Clark v. Jeter*, 486 U.S. 456, 461 (1988). And “a law is subject to strict scrutiny . . .
20 when that law *impacts* a fundamental right, not when it *infringes* it.” *Tucson Woman’s Clinic v.*
21 *Eden*, 379 F.3d 531, 544 (9th Cir. 2004). In *McDonald*, the Supreme Court confirmed the right to

22 ¹⁰ *See also Lawrence v. Texas*, 539 U.S. 558 (2003) (ban on consensual, intimate
23 conduct in the home); *Butler v. State of Michigan*, 352 U.S. 380, 382-84 (1957) (ban on
24 material “tending to the corruption of the morals of youth”); *Reliable Consultants, Inc. v.*
25 *Earle*, 517 F.3d 738, 741, 747 (5th Cir. 2008) (ban on sale of sex toys). When courts have
26 applied a standard of review to laws directly contradicting or foreclosing the exercise of a
27 protected activity, such restrictions have been struck down regardless of the test applied. *See,*
28 *e.g., Brown v. Entm’t Merchants Ass’n*, 131 S. Ct. 2729, 2738-39 (2011) (ban on sale or rental
of “violent video games”); *Planned Parenthood v. Casey*, 505 U.S. 833, 898 (1992) (spousal
notice requirements to obtain abortion); *Carey v. Population Servs., Int’l.*, 431 U.S. 678, 689-
91 (1977) (ban on contraceptive sales); *Vincenty v. Bloomberg*, 476 F.3d 74, 85 (2d Cir. 2007)
(ban on spray paint sales).

1 hugely popular for self-defense and sport, strict scrutiny is appropriate even under the novel
2 requirement imposed by the *Heller II* panel. Part I.B.1, *supra*.

3 While bans on the possession of protected arms are categorically invalid under *Heller*, if
4 the Court opts to apply a level of scrutiny, it should keep Kipling’s six honest serving-men in
5 mind.¹³ Here, they each point directly to strict scrutiny. For, at all times (“when”), the law flatly
6 bans (“how”) the exercise of the core right of law-abiding citizens (“who”) to possess and use
7 protected arms (“what”) for the purpose of self-defense (“why”) in the sanctity of their homes
8 (“where”) – the Second Amendment interest that is “surely elevate[d] above all other[s].” *Heller*,
9 554 U.S. at 635.

10 **D. The Ordinance Is Unconstitutional Under Any Heightened Level of Review**

11 Under heightened scrutiny, whether intermediate or strict, a challenged law is *presumed*
12 unconstitutional, and the government bears the burden of justifying it. *See R.A.V. v. City of St.*
13 *Paul*, 505 U.S. 377, 382 (1992) (content-based speech regulations are presumptively invalid); *see*
14 *also United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010) (“unless the conduct is not
15 protected by the Second Amendment at all, the government bears the burden of justifying the
16 constitutional validity of the law”). Strict scrutiny requires that the City prove that its magazine
17 ban is “narrowly tailored” to serve a “compelling government interest.” *United States v. Playboy*
18 *Entm’t Grp., Inc.*, 529 U.S. 803, 804 (2000). Even under intermediate scrutiny, the City must
19 establish a “reasonable fit” or a “substantial relationship” between the ban and an important
20 government objective. *Chovan*, 735 F.3d at 1139. Such a fit requires that the law is “not more
21 extensive than necessary” to serve its interest. *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 825
22 (9th Cir. 2013) (citing *Central Hudson Gas & Elec. Corp. v. Pub. Serve Comm’n of N.Y.*, 447
23 U.S. 557, 566 (1980)). The Ordinance fails under either test.

24 The City seems to have enacted the Ordinance to reduce injuries resulting from the
25 criminal misuse of firearms. Sunnyvale, Ca., Measure C (2013) at 1 (attached to Compl. as

26 _____
27 ¹³ “I keep six honest serving-men (They taught me all I knew); Their names are What
28 and Why and When and How and Where and Who.” Rudyard Kipling, *The Elephant’s Child*, in
Just So Stories 31 (Acra Found. 2013).

1 “Exhibit A”). While the government has a compelling interest in promoting public safety and
 2 preventing crime, *see, e.g., Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 768 (1994), to
 3 satisfy even intermediate scrutiny the City must demonstrate the law is likely to advance that
 4 interest to some “material degree,” *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 505
 5 (1996). It cannot.

6 First, the City’s policy has already proven ineffective. The 1994 federal ban on standard-
 7 capacity magazines capable of holding more than ten rounds was so ineffective in reducing
 8 violent crime that it was allowed to expire in 2004. *See* H.R. 3355, 103rd Cong. § 110106. The
 9 Clinton-Reno Department of Justice selected researchers to study the impact of the nationwide
 10 ban.¹⁴ “There was no evidence that lives were saved [and] no evidence that criminals fired fewer
 11 shots during gun fights. . . .” Kopel Testimony, *supra* n. 14, at 11; *see also* Kleck Decl. ¶ 33. It
 12 was thus not surprising that Congress chose not to renew the 1994 ban. Kopel Testimony, *supra*
 13 n. 14, at 11.

14 Since 2004, *millions* of standard-capacity firearms have been purchased throughout the
 15 United States. 2004 Koper Report, n. 5, at 65; *see also* Ex. A. Violent crime has not increased in
 16 that period; in fact, it has steadily and significantly declined.¹⁵ And there is no evidence to suggest
 17 that criminals have fired more shots per incident in the years since the federal ban expired.

18 Empirical evidence demonstrates why restrictions on firearms with magazine capacities
 19 over ten rounds will not further public safety. Such a limit has no bearing on the overwhelming
 20 majority of gun crimes, as criminals rarely fire more than ten shots – and typically they fire fewer
 21 than four. Kleck Decl. ¶¶ 7-8; *see also* 2004 Koper Report, *supra* n. 5, at 90. Moreover, it is
 22

23 ¹⁴ *What Should America Do About Gun Violence?* Full Comm. Hr’g Before U.S. Sen.
 24 Jud. Comm., 113th Cong. at 11 (2013), available at <http://www.judiciary.senate.gov/pdf/1-30-13KopelTestimony.pdf> (hereafter, “Kopel Testimony”); 2004 Koper Report, *supra* n. 5, at 1.
 25

26 ¹⁵ Federal Bureau of Investigation, *Crime in the United States 2012*, Department of
 27 Justice (2012), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/violent-crime/violent-crime>; *id.* at Table 1, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls.
 28

1 unlikely that a ten-round limit would have any impact even in those rare instances that they do. A
2 study of “mass shootings” from 1984 to 1993 found that for those incidents where both the
3 number of rounds fired and the duration of the shooting were reported, the rate of fire was almost
4 never faster than about one round every two seconds. Kleck Decl. ¶¶ 18-19. And it was usually
5 much slower. Kleck Decl. ¶¶ 18-19, *see also* Kleck Decl. table 1. Thus, none of the mass shooters
6 maintained a sustained rate of fire that could not also have been maintained – even when
7 considering reloading time – with either multiple guns or with an ordinary six-shot revolver and
8 common speedloader. Gary Kleck, *Targeting Guns: Firearms and Their Control* 125 (Aldine De
9 Gruyter 1997).

10 As more recent incidents demonstrate, a mass shooter controlling the circumstances under
11 which he carries out his attack can easily change magazines each time one is spent. Ayoob Decl. ¶
12 28; Kleck Decl. ¶¶ 10-14. For instance, “[a]t Newtown, the murderer changed magazines many
13 times, firing only a portion of the rounds in each magazine.” Kopel Testimony, *supra* n. 14, at 19.
14 And, in the Virginia Tech murders, the perpetrator likewise changed magazines numerous times.
15 Ayoob Decl. ¶ 28. A criminal with multiple guns can avoid the need to reload altogether by
16 simply changing guns when the first runs out of ammunition. Ayoob Decl. ¶¶ 19-22; Kleck Decl.
17 ¶ 10-11. The perpetrators of the majority of mass shootings between 1984 and 1993 carried
18 multiple firearms and did just that. Kleck Decl. ¶11; Kleck, *Targeting Guns* at 125, 144 (table
19 4.2). The same is true of such attacks since that time. Ayoob Decl. ¶ 20; Kleck Decl. ¶¶ 12-14.

20 So, even if we seriously believe that the law would deter a criminal from obtaining the
21 banned magazines, the Ordinance is unlikely to serve the City’s public-safety objectives to any
22 “material degree.”

23 Instead, the City’s ban decreases public safety by restricting the self-defense capabilities
24 of the law abiding – as the time it takes to change magazines is much more likely to negatively
25 affect crime victims than criminal attackers. Ayoob Decl. ¶ 4, 23, 28-29, 31-34; Kleck Decl. ¶ 34.
26 Unlike violent criminals, victims do not choose when or where an attack will take place. Ayoob
27 Decl. ¶ 28. And they will often face multiple armed attackers at a moment’s notice. The burden of
28 changing or reloading a magazine (if extra magazines are even accessible) is far greater for a

1 victim under the emotional and physiological stress of an unannounced attack, especially in the
2 middle of the night. Ayoob Decl. ¶¶ 27-28, 34; Kleck Decl. ¶¶ 20-21, 27, 29, 34. Compare this
3 with violent criminals and mass murderers who can plan out their attacks and often carry multiple
4 firearms and magazines into settings where their victims are unarmed. Ayoob Decl. ¶¶ 28; Kleck
5 Decl. ¶¶ 10-11, 14, 19-20.

6 In light of these realities, it comes as no surprise that a 2013 poll of 15,000 law
7 enforcement professionals showed that an overwhelming majority of respondents (95.7%) did not
8 believe a federal ban on standard-capacity magazines would increase public safety.¹⁶

9 But even if restricting these magazines would promote public safety, the City’s chosen
10 means to accomplish its safety objectives are “substantially broader than necessary.” *Fantasyland*
11 *Video, Inc. v. Cnty. of San Diego*, 505 F.3d 996, 1004 (9th Cir. 2007) (quoting *Ward v. Rock*
12 *Against Racism*, 491 U.S. 781, 799-800 (1989)). Rather than develop policies to prevent access
13 by criminals, the City has opted to strip protected arms from the homes of *law-abiding* citizens.
14 The City attempts to accomplish its objective of reducing injuries from the criminal misuse of
15 firearms by banning the use of arms by the law abiding – not based on the harm they themselves
16 may cause, but based on the violence that may come from criminals *who might steal those*
17 *firearms from gun owners*.

18 But to ban certain arms because criminals might misuse them is to tell law-abiding
19 citizens that their liberties depend not on their own conduct, but on the conduct of the lawless.
20 Surely this cannot be. Courts have already rejected the notion that the government may ban
21 constitutionally protected activity on the grounds that the activity could lead to abuses. *See, e.g.*,

22
23
24
25 ¹⁶ *Gun Policy & Law Enforcement: Where Police Stand on America’s Hottest Issue*,
26 PoliceOne.com, http://ddq74coujkl1.cloudfront.net/pl_gunsurveysummary_2013.pdf
27 (accessed Dec. 19, 2013). With over 1.5 million unique visitors per month and more than
28 450,000 registered members, PoliceOne is becoming the leading destination for Law
Enforcement professionals. PoliceOne.com, About Us, <http://www.policeone.com/about/>
(accessed Dec. 19, 2013).

1 *New Albany DVD, LLC v. City of New Albany*, 581 F.3d 556, 560 (7th Cir. 2009).¹⁷

2 Ultimately, the City’s ban represents a policy choice as to the types of arms it desires its
3 residents to use. But *Heller* is clear that such policy choices are off the table when considering
4 commonly used, constitutionally protected arms. 554 U.S. at 636. There, D.C. sought to ban
5 handguns for the same reasons the City wishes to ban its residents from having standard-capacity
6 firearms and magazines – to decrease criminal misuse and prevent injuries through decreased
7 availability. *Id.* at 682, 694 (Breyer, J., dissenting). Despite these interests, the Supreme Court
8 explicitly stated that D.C.’s handgun ban would “fail constitutional muster” under “any of the
9 standards of scrutiny the Court has applied” to fundamental rights. *Id.* at 628-29.

10 If the D.C. handgun ban could not pass intermediate scrutiny (i.e., it was not “substantially
11 related” to public safety), it follows that the City’s ban on standard-capacity arms cannot survive
12 such scrutiny either.¹⁸ For if stopping law-abiding citizens from possessing protected items were a
13 valid method of reducing criminal access and violent crime, *Heller* would have been decided
14 differently. Certainly, the justifications for a ban on *handguns* are substantially *more* related to
15 the government’s public safety objectives than a ban on firearms with magazines holding over ten
16 rounds. While criminals might sometimes misuse these standard-capacity firearms, misuse of
17 handguns is off the charts. *Id.* at 697-99 (Breyer, J., dissenting) (from 1993 to 1997, a whopping
18 81% of firearm-homicide victims were killed by handguns). Indeed, handguns are
19 overwhelmingly preferred by criminals in nearly all violent gun crimes. But despite the
20 government’s clear interest in keeping concealable firearms out of the hands of criminals and
21

22 ¹⁷ Just as the First Amendment “knows no heckler’s veto,” the Second Amendment
23 cannot tolerate restrictions on law-abiding citizens’ right to keep and bear protected arms based
24 on the threat to public safety posed not by those citizens but by criminals who may obtain such
25 firearms illegally. *See Robb v. Hungerbeeler*, 370 F.3d 735, 743 (8th Cir. 2004).

26 ¹⁸ *Heller II*’s holding that D.C.’s magazine ban could survive intermediate scrutiny is in
27 direct conflict with *Heller*’s holding that banning law-abiding citizens from possessing and
28 using protected arms is not a valid means of promoting the government’s interest. *Heller*’s
approach and analysis is controlling – *Heller II*’s, whose analysis was poisoned by the court’s
mistaken assumption that standard-capacity firearms are not well-suited to or preferred for self-
defense or sport, is not.

1 unauthorized users, a ban on the possession of protected arms by the law abiding lacks the
2 required fit under any level of scrutiny. *Id.* at 628-29.

3 Here too, the City’s ban on the possession and use of protected arms is necessarily
4 unconstitutional no matter which test the Court may apply.

5 **II. THE REMAINING PRELIMINARY INJUNCTION FACTORS WARRANT RELIEF**

6 **A. Irreparable Harm Should Be Presumed Because the Ordinance Violates** 7 **Plaintiffs’ Second Amendment Rights**

8 Generally, once a plaintiff shows a likelihood of success on the merits of a constitutional
9 claim, irreparable harm is presumed. 11A Charles Alan Wright et al., *Federal Practice and*
10 *Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is
11 involved, most courts hold that no further showing of irreparable injury is necessary.”). The Ninth
12 Circuit has often imported the First Amendment’s “irreparable-if- only-for-a-minute” concept to
13 cases involving other rights and, in doing so, has held a deprivation of these rights constitutes
14 irreparable harm per se. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997). The
15 Second Amendment should be treated no differently. *See McDonald*, 130 S. Ct. at 3043, 3044;
16 *Ezell v. Chicago*, 651 F.3d 684, 700 (7th Cir. 2011) (a deprivation of the right to arms is
17 “irreparable and having no adequate remedy at law”).

18 Here, because Plaintiffs are likely to succeed on the merits of their Second Amendment
19 claim, irreparable harm is presumed. The harm is the denial of the exercise of Plaintiffs’
20 constitutional rights – namely, the right to use and possess protected arms for lawful purposes,
21 including self-defense within their homes, and the potentially *deadly* consequences that can arise
22 when one’s ability to use such arms in self-defense is restricted.

23 Plaintiffs have established a likelihood of success on the merits of their constitutional
24 claim; they have necessarily established irreparable harm warranting preliminary relief.

25 **B. Harms to Plaintiffs and to the Public Far Outweigh Any Harm to the City**

26 When plaintiffs challenge government action that affects the exercise of constitutional
27 rights, “[t]he balance of equities and the public interest . . . tip *sharply* in favor of enjoining the
28 ordinance.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (emphasis added).

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

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

14 Plaintiffs

15 vs.

16
17 THE CITY OF SUNNYVALE, THE
MAYOR OF SUNNYVALE,
18 ANTHONY SPITALERI in his
official capacity, THE CHIEF OF
19 THE SUNNYVALE DEPARTMENT
20 OF PUBLIC SAFETY, FRANK
GRGURINA, in his official capacity,
21 and DOES 1-10,

22 Defendants.
23

) CASE NO.

) CV 13-05807 PSG

) COMPLAINT FOR DECLARATORY
) AND INJUNCTIVE RELIEF

) SMC § 9.44.050: Violation of U.S. Const.,
) Amends. II & XIV

COPY

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1 Plaintiffs, by and through their undersigned attorneys, bring this Complaint
2 for Declaratory and Injunctive Relief against the above-named Defendants, their
3 employees, agents, and successors in office, and in support thereof allege the
4 following upon information and belief:

5
6 **INTRODUCTION**

7 1. Plaintiffs bring this suit to challenge the constitutionality of Sunnyvale
8 Municipal Code section 9.44.050 (“the Ordinance”), enacted and enforced by
9 Defendant City of Sunnyvale, its Mayor, Anthony Spitaleri, and its Chief of Police,
10 Frank Grgurina (collectively, “the City”). The Ordinance violates Plaintiffs’ rights
11 to keep and bear arms under the Second Amendment to the United States
12 Constitution.

13 2. The Ordinance bans the possession and use of common, standard-
14 capacity “ammunition feeding devices” or “magazines” capable of holding more
15 than ten rounds. Magazines prohibited by the Ordinance are in widespread,
16 common use throughout the United States. These magazines are typically
17 possessed by law-abiding citizens for lawful purposes, including in-home self
18 defense.

19 3. The City’s ban on the very possession of these magazines directly
20 violates Plaintiffs’ rights to keep and bear arms enshrined by the Second
21 Amendment.

22 4. Accordingly, Plaintiffs seek declaratory and injunctive relief to invalidate
23 and enjoin the City’s enforcement of the Ordinance.

24
25 **JURISDICTION AND VENUE**

26 5. The Court has original jurisdiction of this civil action pursuant to 28
27 U.S.C. § 1331 because the action arises under the Constitution and laws of the
28 United States, thus raising federal questions. The Court also has jurisdiction under

1 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983 in that this action seeks to redress the
2 deprivation, under color of the laws, statutes, ordinances, regulations, customs and
3 usages of the State of California and political subdivisions thereof, of rights,
4 privileges or immunities secured by the United States Constitution and by Acts of
5 Congress.

6 6. Plaintiffs' claims for declaratory and injunctive relief are authorized by
7 28 U.S.C. §§ 2201 and 2202, respectively.

8 9 **INTRADISTRICT ASSIGNMENT**

10 7. This action arises in the County of Santa Clara because a substantial part
11 of the events or omissions giving rise to the claims occurred in that County.
12 Pursuant to the Northern District's Local Rule 3-2(e), this action shall be assigned
13 to the San Jose division.

14 15 **PARTIES**

16 8. Plaintiff Leonard Fyock is a resident of Sunnyvale. Plaintiff Fyock is a
17 law-abiding citizen who is not prohibited from owning or possessing firearms
18 under state or federal law. He currently owns magazines prohibited by the
19 Ordinance capable of accepting more than ten rounds that were lawfully acquired
20 in accordance with state and federal law. Due to the City's enactment of the
21 Ordinance, Plaintiff Fyock is prohibited from possessing these magazines in the
22 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Fyock will comply
23 with this section to avoid prosecution and will not possess his magazines within
24 City limits. But for the City's enactment and ongoing enforcement of the
25 Ordinance, Plaintiff Fyock would immediately and continuously possess these
26 magazines within the City for lawful purposes, including in-home self-defense.

27 9. Plaintiff William Douglas is a resident of Sunnyvale. Plaintiff Douglas
28 is a law-abiding citizen who is not prohibited from owning or possessing firearms

1 under state or federal law. He currently owns magazines prohibited by the
2 Ordinance capable of accepting more than ten rounds that were lawfully acquired
3 in accordance with state and federal law. Due to the City's enactment of the
4 Ordinance, Plaintiff Douglas is prohibited from possessing these magazines in the
5 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Douglas will comply
6 with this section to avoid prosecution and will not possess his magazines within
7 City limits. But for the City's enactment and ongoing enforcement of the
8 Ordinance, Plaintiff Douglas would immediately and continuously possess these
9 magazines within the City for lawful purposes, including in-home self-defense.

10 10. Plaintiff Scott Hochstetler is a resident of Sunnyvale. Plaintiff
11 Hochstetler is a law-abiding citizen who is not prohibited from owning or
12 possessing firearms under state or federal law. He currently owns magazines
13 prohibited by the Ordinance capable of accepting more than ten rounds that were
14 lawfully acquired in accordance with state and federal law. Due to the City's
15 enactment of the Ordinance, Plaintiff Hochstetler is prohibited from possessing
16 these magazines in the City of Sunnyvale. If the Ordinance is not enjoined,
17 Plaintiff Hochstetler will comply with this section to avoid prosecution and will not
18 possess his magazines within City limits. But for the City's enactment and ongoing
19 enforcement of the Ordinance, Plaintiff Hochstetler would immediately and
20 continuously possess these magazines within the City for lawful purposes,
21 including in-home self-defense.

22 11. Plaintiff Brad Seifers is a resident of Sunnyvale. Plaintiff Seifers is a
23 law-abiding citizen who is not prohibited from owning or possessing firearms
24 under state or federal law. He currently owns magazines prohibited by the
25 Ordinance capable of accepting more than ten rounds that were lawfully acquired
26 in accordance with state and federal law. Due to the City's enactment of the
27 Ordinance, Plaintiff Seifers is prohibited from possessing these magazines in the
28 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Seifers will comply

1 with this section to avoid prosecution and will not possess his magazines within
2 City limits. But for the City's enactment and ongoing enforcement of the
3 Ordinance, Plaintiff Seifers would immediately and continuously possess these
4 magazines within the City for lawful purposes, including in-home self-defense.

5 12. Plaintiff Rod Swanson is a resident of Sunnyvale. Plaintiff Swanson is a
6 law-abiding citizen who is not prohibited from owning or possessing firearms
7 under state or federal law. He currently owns magazines prohibited by the
8 Ordinance capable of accepting more than ten rounds that were lawfully acquired
9 in accordance with state and federal law. Due to the City's enactment of the
10 Ordinance, Plaintiff Swanson is prohibited from possessing these magazines in the
11 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Swanson will comply
12 with this section to avoid prosecution and will not possess his magazines within
13 City limits. But for the City's enactment and ongoing enforcement of the
14 Ordinance, Plaintiff Swanson would immediately and continuously possess these
15 magazines within the City for lawful purposes, including in-home self-defense.

16 13. Plaintiff David Pearson is a resident of Sunnyvale. Plaintiff Pearson is a
17 law-abiding citizen who is not prohibited from owning or possessing firearms
18 under state or federal law. He currently owns magazines prohibited by the
19 Ordinance capable of accepting more than ten rounds that were lawfully acquired
20 in accordance with state and federal law. Due to the City's enactment of the
21 Ordinance, Plaintiff Pearson is prohibited from possessing these magazines in the
22 City of Sunnyvale. If the Ordinance is not enjoined, Plaintiff Pearson will comply
23 with this section to avoid prosecution and will not possess his magazines within
24 City limits. But for the City's enactment and ongoing enforcement of the
25 Ordinance, Plaintiff Pearson would immediately and continuously possess these
26 magazines within the City for lawful purposes, including in-home self-defense.

27 14. Each of the individual Plaintiffs identified above are residents and
28 taxpayers of the City of Sunnyvale who presently intend to possess their lawfully-

1 acquired, common magazines capable of holding more than ten rounds within the
2 City as is their right under the Second Amendment to the United States
3 Constitution – a right the City now denies them through the enactment and
4 enforcement of the Ordinance. Plaintiffs fear prosecution if they possess magazines
5 prohibited by the ordinance within the City of Sunnyvale.

6 15. Each of the individual Plaintiffs presently intend to and forthwith would
7 possess their magazines prohibited by the Ordinance within the City of Sunnyvale
8 if this Court declared the Ordinance void and unenforceable or otherwise enjoined
9 its enforcement.

10 16. Defendant City of Sunnyvale is a municipal corporation acting as such
11 by and under state law. Defendant City of Sunnyvale is a “person” acting under
12 color of state law within the meaning of 42 U.S.C. § 1983, and is principally
13 responsible for implementing and enforcing the Ordinance.

14 17. Defendant Anthony Spitaleri is the current Mayor and Chief Executive
15 Officer of Defendant City of Sunnyvale. Defendant Spitaleri is an agent, servant,
16 and/or employee of Defendant City of Sunnyvale, acting under color of state law as
17 that phrase is used in 42 U.S.C. § 1983, and is responsible for enforcing the
18 Ordinance. Defendant Spitaleri is sued in his official capacity.

19 18. Defendant Frank Grgurina is the Chief of the Department of Public
20 Safety of Defendant City of Sunnyvale. As Chief of the Department of Public
21 Safety, Defendant Grgurina is the chief law enforcement officer for Defendant City
22 of Sunnyvale. Defendant Grgurina is an agent, servant, and/or employee of
23 Defendant City of Sunnyvale, acting under color of state law as that phrase is used
24 in 42 U.S.C. § 1983, and is responsible for enforcing the Ordinance. Defendant
25 Grgurina is sued in his official capacity.

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GENERAL ALLEGATIONS

Sunnyvale Municipal Code Section 9.44.050:

19. On July 16, 2013, the Sunnyvale City Council adopted a resolution calling for a Special Municipal Election to be held on November 5, 2013, for the purpose of voting on various proposed amendments to the Sunnyvale Municipal Code, including a slate of local gun-control laws that would be presented to the voters as Measure C. The ballot measure asked voters to adopt, among other items, Sunnyvale Municipal Code section 9.44.050. (A copy of Sunnyvale Municipal Code section 9.44.050 is attached hereto as Exhibit "A" and incorporated herein.)

20. On November 5, 2013, a majority of the ballots cast voted to approve the adoption of Measure C and, effectively, to amend the Sunnyvale Municipal Code to include section 9.44.050.

21. On or about November 26, 2013, the City of Sunnyvale, through its legislative body the City Council of the City of Sunnyvale, "declared" the November 5 vote on Measure C pursuant to California Elections Code section 9217.

22. The Ordinance took effect on December 6, 2013, ten (10) days after the Sunnyvale City Council declared the vote.

23. The Ordinance prohibits any person, corporation, or other entity in the City of Sunnyvale from possessing ammunition magazines it refers to as "large-capacity magazines" or from possessing or using firearms equipped with these magazines.

24. The Ordinance defines a "large-capacity magazine" as an ammunition feeding device with the capacity to accept more than ten rounds.

25. The Ordinance provides that any person who possesses any magazines prohibited by the Ordinance prior to its effective date shall have ninety (90) days to cease possessing those magazines within the City of Sunnyvale.

26. Pursuant to the Ordinance, any person who is in lawful possession of

1 any “large-capacity magazines” prior to December 6, 2013, must surrender such
2 magazines to law enforcement for destruction, remove them from the City of
3 Sunnyvale, or transfer them to a licensed firearms dealer on or before March 6,
4 2014.

5 27. The Ordinance identifies a number of exceptions, including but not
6 limited to, possession by military and possession by law enforcement while acting
7 within “the course and scope of their duties.”

8 28. The Ordinance does not include an exception for possession by law-
9 abiding citizens for self-defense.

10 29. The Ordinance does not include an exception for law enforcement
11 officers who possess any prohibited magazines within their homes for self-defense
12 or at any other times when officers are not acting within “the course and scope of
13 their duties.”

14 30. Active police officers are forced to dispose of their personally owned,
15 lawfully acquired magazines with capacities of more than ten rounds that are
16 prohibited by the Ordinance, as set forth in that section and described in paragraph
17 26 of this Complaint.

18 31. The City has never informed Plaintiffs or the public that it does not
19 intend to enforce the Ordinance.

20 32. The City has no documents indicating that it does not intend to enforce
21 the Ordinance.

22 **Standard-Capacity Magazines Prohibited by the Ordinance**
23 **Are Protected Under the Second Amendment:**

24 33. On June 26, 2008, the United States Supreme Court confirmed in
25 *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008), that arms “typically
26 possessed by law-abiding citizens for lawful purposes” or those “in common use”
27 are protected under the Second Amendment.

28 34. On June 28, 2010, the Supreme Court confirmed that Second

1 Amendment protections are fully applicable to state and local governments by
2 virtue of the Fourteenth Amendment. *McDonald v. City of Chicago*, 130 S. Ct.
3 3020 (2010).

4 35. In the wake of *Heller* and *McDonald*, courts have evaluated Second
5 Amendment protections for ammunition, magazines, and firearm components
6 pursuant to the Supreme Court's "common use" standard described in *Heller*.

7 36. Magazines and firearms equipped with magazines that are in common
8 use for lawful purposes are protected by the Second Amendment.

9 37. A standard-capacity magazine is one containing the number of
10 cartridges the firearm was designed to operate with. Increased or "large-capacity"
11 magazines and feeding devices are those holding more cartridges than the firearm
12 was originally designed to use. Reduced or low-capacity magazines are those
13 whose capacity is artificially reduced from that which the firearm was originally
14 designed or intended to use.

15 38. Firearms with magazines capable of holding more than ten rounds can
16 be traced back to the era of ratification of the Fourteenth Amendment.

17 39. Millions of firearms that have been sold in the United States come stock
18 from the factory with magazines capable of holding more than ten rounds. These
19 include, but are not limited to: the Glock 17 (designed to hold 17 rounds), the
20 Beretta 92F (designed to hold 15 rounds), the M1 Carbine (designed to hold 15 or
21 30 rounds), and the Ruger Mini-14 (designed to hold 5 or 20 rounds).

22 40. Notwithstanding the City's description of the prohibited magazines as
23 being "large-capacity," magazines with capacities of more than ten rounds are
24 standard for many common handguns and long guns. For example, standard
25 capacity for firearms chambered in 9 mm is 15-17 rounds; standard capacity for
26 firearms chambered in .40 S&W is 15 rounds; standard capacity for firearms
27 chambered in .45 ACP is 7-13 rounds; standard capacity for firearms chambered in
28 5.56 mm is 20-30 rounds; and standard capacity for firearms chambered in .308 is

1 20 rounds.

2 41. Millions of firearms with standard-capacity magazines capable of
3 holding more than ten rounds that are prohibited by the Ordinance are currently
4 possessed by law-abiding citizens for a variety of lawful purposes in the United
5 States, including target practice, shooting competitions, and hunting.

6 42. Millions of firearms with standard-capacity magazines capable of
7 holding more than ten rounds that are prohibited under the Ordinance are currently
8 possessed by law-abiding citizens for the core lawful purpose of self-defense,
9 including in-home self-defense.

10 43. Self-defense is the “central component” of the Second Amendment right
11 to keep and bear arms, which is at its zenith within the home.

12 44. Millions of individual, law-abiding American citizens are currently in
13 possession of firearms with standard-capacity magazines that are capable of
14 holding more than ten rounds, that are now banned by the Ordinance.

15 45. Standard-capacity magazines that are prohibited by the Ordinance are
16 typically possessed by law-abiding citizens for lawful purposes, including in-home
17 self-defense.

18 46. Standard-capacity magazines capable of holding more than ten rounds
19 that are prohibited by the Ordinance are not “dangerous and unusual.”

20 47. The majority of pistol magazines currently manufactured in the United
21 States have capacities of greater than ten rounds.

22 48. There are currently tens of millions of rifle magazines that are lawfully-
23 possessed in the United States with capacities of more than ten rounds.

24 49. The use of standard-capacity firearms and magazines with capacities of
25 more than ten rounds increase the likelihood that a law-abiding citizen will survive
26 a criminal attack.

27 50. Firearms with standard-capacity magazines capable of holding more than
28 ten rounds are well-suited and preferred for self-defense.

1 51. Firearms with standard-capacity magazines capable of holding more than
2 ten rounds are well-suited and preferred for sporting purposes.

3 52. Banning the possession of standard-capacity magazines by law-abiding
4 citizens does not increase public safety.

5 53. Limiting magazine capacity for law-abiding citizens to ten rounds
6 decreases public safety by giving violent criminals an advantage and thus
7 decreasing the likelihood that a victim will survive a criminal attack.

8 54. The overwhelming majority of law enforcement officers in the United
9 States acknowledge that banning standard-capacity magazines capable of holding
10 more than ten rounds will not increase public safety.

11 **DECLARATORY JUDGMENT ALLEGATIONS**

12 55. Plaintiffs are responsible, law-abiding adults qualified to own firearms
13 under the laws of the United States and the laws of the State of California.
14 Plaintiffs seek to lawfully possess constitutionally protected magazines prohibited
15 by the Ordinance for self-defense and other lawful purposes.

16 56. Plaintiffs presently intend to exercise their rights to defend themselves,
17 their homes, and their families by keeping magazines prohibited by the Ordinance
18 and using them with their firearms for self-defense and other lawful purposes. The
19 City's policies under the Ordinance prevent them from doing so and criminalize the
20 exercise of Plaintiffs' Second Amendment rights.

21 57. Because the City has enacted and enforces the Ordinance, Plaintiffs face
22 potential criminal prosecution for exercising their Constitutional right to keep
23 common magazines capable of holding more than ten rounds for self-defense and
24 other lawful purposes.

25 58. There is an actual and present controversy between the parties hereto in
26 that Plaintiffs contend that the City's ordinance that forbids residents from
27 possessing and using common magazines violates the Second Amendment. The
28 City denies these contentions. Plaintiffs desire a judicial declaration of their rights

1 and the City's duties, namely, that the City's policy under the Ordinance violates
2 Plaintiffs' Second Amendment rights. Plaintiffs should not have to face criminal
3 prosecution by the City for exercising their constitutional rights to keep and bear
4 constitutionally protected arms or, alternatively, give up those rights to comply
5 with the Ordinance.

6 **INJUNCTIVE RELIEF ALLEGATIONS**

7 59. If an injunction does not issue enjoining the City from enforcing the
8 Ordinance, Plaintiffs will be irreparably harmed. Plaintiffs are continuously and
9 irreparably injured by the Ordinance insofar as it precludes them from exercising
10 rights guaranteed by the Second Amendment. The Ordinance denies Plaintiffs the
11 right to possess and use commonly possessed magazines within the City of
12 Sunnyvale for lawful purposes, including in-home self-defense, without risking
13 criminal prosecution.

14 60. Because the City has enacted and enforces the Ordinance, Plaintiffs are
15 subject to irreparable harm. If not enjoined by this Court, the City will continue to
16 enforce the Ordinance in derogation of Plaintiffs' Second Amendment rights.

17 61. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages
18 are indeterminate or unascertainable and would not fully redress any harm suffered
19 by Plaintiffs as a result of being unable to engage in activity protected by the
20 Second Amendment, namely the continued possession of their magazines that are
21 prohibited by the Ordinance.

22 62. The injunctive relief sought would eliminate that irreparable harm and
23 allow Plaintiffs to continue or resume exercising their Second Amendment rights to
24 possess magazines protected by the Second Amendment within the City of
25 Sunnyvale. Accordingly, injunctive relief is appropriate.

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28 ///

1 **CLAIM FOR RELIEF: VALIDITY OF SMC § 9.44.050**

2 **Violation of the Second Amendment Right to Keep and Bear Arms**

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

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

5 64. Sunnyvale Municipal Code section 9.44.050 violates the Second
6 Amendment on its face and as applied to Plaintiffs.

7 65. The Second Amendment protects the right to possess and use common
8 magazines capable of holding more than ten rounds and firearms equipped with
9 these magazines.

10 66. The City's prohibition on the possession of common magazines capable
11 of holding more than ten rounds by law-abiding citizens, including Plaintiffs,
12 directly conflicts with the right to keep and bear arms, rendering Section 9.44.050
13 unconstitutional.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE Plaintiffs pray for relief as follows:

17 1) For a declaration that Sunnyvale Municipal Code section 9.44.050 violates
18 the Second Amendment.

19 2) For a declaration that common ammunition feeding devices and magazines
20 capable of holding more than ten rounds prohibited by the Ordinance are protected
21 by the Second Amendment.

22 3) For a preliminary prohibitory injunction forbidding the City and its agents,
23 employees, officers, and representatives, from enforcing or attempting to enforce
24 the Ordinance.

25 4) For a permanent prohibitory injunction forbidding the City and its agents,
26 employees, officers, and representatives, from enforcing or attempting to enforce
27 the Ordinance.

28 5) For remedies available pursuant to 42 U.S.C. § 1983 and for an award of

1 reasonable attorneys fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and/or
2 other applicable federal law;

3 6) For such other and further relief as the Court may deem just and proper.

4 Date: December 16, 2013

MICHEL & ASSOCIATES, PC

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C. D. Michel
Attorney for Plaintiffs

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EXHIBIT A

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

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

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

CITY OF SUNNYVALE MEASURE C

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

Yes _____
No _____

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

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

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

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

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

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

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

9.44.030. Duty to report theft or loss of firearms.

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

9.44.040. Safe storage of firearms.

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

9.44.050. Possession of large-capacity ammunition magazines prohibited.

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

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

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

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

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

- (1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;
- (2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;
- (3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;
- (4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;
- (5) Any person who has been issued a license or permit by the California Department of Justice pursuant to Penal Code Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large capacity magazine is in accordance with that license or permit;
- (6) A licensed gunsmith for purposes of maintenance, repair or modification of the large capacity magazine;
- (7) Any person who finds a large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;
- (8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large capacity magazine solely for use with that firearm.
- (9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to the California Penal Code.

9.44.060. Ammunition Sales.

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

(b) Definitions:

- (1) "Ammunition" means any cartridge or encasement containing a bullet or projectile, propellant, or explosive charge, and a primer which is used in the operation of a firearm.
- (2) "Ammunition vendor" means any person engaged in the business of selling, leasing, or otherwise transferring firearm ammunition.
- (3) "Person" means a natural person, association, partnership, firm, corporation, or other entity.

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

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

- (3) The transferee's driver's license number, state identification card number, passport number, or other valid government-issued photographic identification;
- (4) The brand, type, and quantity of firearms ammunition transferred;
- (5) The identity of the person transferring the firearms ammunition on behalf of the ammunition vendor;
- (6) The transferee's signature and right thumbprint.

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

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

SECTION 2. SEVERABILITY.

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

ADRMOP,APPEAL,E-Filing,STAYED

**U.S. District Court
California Northern District (San Jose)
CIVIL DOCKET FOR CASE #: 5:13-cv-05807-RMW**

Fyock et al v. The City of Sunnyvale et al
Assigned to: Hon. Ronald M. Whyte
Referred to: Magistrate Judge Paul Singh Grewal
Cause: 42:1983 Civil Rights Act

Date Filed: 12/16/2013
Jury Demand: None
Nature of Suit: 950 Constitutional - State
Statute
Jurisdiction: Federal Question

Plaintiff

Leonard Fyock

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(See above for address)

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ATTORNEY TO BE NOTICED

V.

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Defendant

The Mayor of Sunnyvale

represented by **Roderick Manley Thompson**

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Defendant

Anthony Spitaleri

in his official capacity

represented by **Roderick Manley Thompson**

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Defendant

**The Chief of the Sunnyvale Department
of Public Safety**

represented by **Roderick Manley Thompson**

(See above for address)

LEAD ATTORNEY

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Defendant

Frank Grgurina
in his official capacity

represented by **Roderick Manley Thompson**

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/16/2013	<u>1</u>	COMPLAINT against Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale (Filing fee \$ 400.). Filed by Scott Hochstetler, William Douglas, Brad Seifers, Rod Swanson, Leonard Fyock, David Pearson. (cv, COURT STAFF) (Filed on 12/16/2013) (Additional attachment(s) added on 3/19/2014: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet) (cv, COURT STAFF). (Entered: 12/16/2013)
12/16/2013	<u>2</u>	Certificate of Interested Entities by Scott Hochstetler (cv, COURT STAFF) (Filed on 12/16/2013) (cv, COURT STAFF). (Entered: 12/16/2013)
12/16/2013	<u>3</u>	Summons Issued as to All Defendants. (cv, COURT STAFF) (Filed on 12/16/2013) (cv, COURT STAFF). (Entered: 12/16/2013)
12/16/2013	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 4/1/2014. Case Management Conference set for 4/8/2014 10:00 AM in Courtroom 5, 4th Floor, San Jose. (cv, COURT STAFF) (Filed on 12/16/2013) (Entered: 12/16/2013)
12/17/2013	<u>5</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Leonard Fyock.. (cv, COURT STAFF) (Filed on 12/17/2013) (Entered: 12/17/2013)
12/17/2013	<u>6</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge: All matters presently set before Magistrate Judge Paul S. Grewal are hereby vacated. Clerk to reassign case. (ofr, COURT STAFF) (Filed on 12/17/2013) (Entered: 12/17/2013)
12/18/2013	<u>7</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Ronald M. Whyte for all further proceedings and Magistrate Judge Paul Singh Grewal for all discovery matters. Signed by The Executive Committee on 12/18/2013. (gmS,) (Filed on 12/18/2013) (Entered: 12/18/2013)
12/19/2013		CASE DESIGNATED for Electronic Filing. (bwS, COURT STAFF) (Filed on 12/19/2013) (Entered: 12/19/2013)

12/23/2013	8	STIPULATION AND [PROPOSED] ORDER EXTENDING BRIEFING SCHEDULE ON PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Declaration of Anthony Schoenberg in support of stipulation)(Schoenberg, Anthony) (Filed on 12/23/2013) Text modified on 12/30/2013; incorrect event type used when posting Declaration (bwS, COURT STAFF).t (Entered: 12/23/2013)
12/23/2013	9	ADMINISTRATIVE MOTION AND [PROPOSED] ORDER TO CONSIDER WHETHER CASES SHOULD BE RELATED re 13-53351WHA filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Schoenberg, Anthony) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	10	NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. Motion Hearing set for 2/7/2014 09:00 AM in Courtroom 6, 4th Floor, San Jose before Hon. Ronald M. Whyte. Responses due by 1/12/2014. Replies due by 1/24/2014. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	11	DECLARATION OF MASSAD AYOOB IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	12	DECLARATION OF STEPHEN HELSLEY IN SUPPORT OF MOTION FOR \ PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	13	DECLARATION OF JAMES CURCURUTO IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	14	DECLARATION OF LEONARD FYOCK IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	15	DECLARATION OF ROD SWANSON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	16	DECLARATION OF ROD SWANSON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott

		Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	17	DECLARATION OF WILLIAM DOUGLAS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	18	DECLARATION OF BRAD SEIFERS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	19	DECLARATION OF GARY KLECK IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	20	DECLARATION OF CLINTON B. MONFORT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION re 10 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Exhibit B Part 1 of 2, # 2 Exhibit B Part 2 of 2, # 3 Exhibit C Part 1 of 2, # 4 Exhibit C Part 2 of 2, # 5 Exhibit D) (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/23/2013	21	(Proposed) Order Granting MOTION FOR PRELIMINARY INJUNCTION re 10 by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/23/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/23/2013)
12/26/2013	22	NOTICE of Appearance of Roderick Manley Thompson by defendants (Thompson, Roderick) (Filed on 12/26/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/26/2013)
12/27/2013	23	OPPOSITION TO DEFENDANTS ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED; DECLARATION OF ANNA M. BARVIR IN SUPPORT re 9 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 12/27/2013) Modified on 12/30/2013 (bwS, COURT STAFF). (Entered: 12/27/2013)
01/03/2014	24	NOTICE of Appearance of James H Baker by defendants (Baker, James) (Filed on 1/3/2014) Modified on 1/6/2014 (bw, COURT STAFF). (Entered: 01/03/2014)
01/03/2014	25	Administrative Motion to Enlarge Time for Hearing and Briefing Plaintiffs' Motion for Preliminary Injunction and for Expedited Discovery filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 (Proposed) Order)(Schoenberg, Anthony) (Filed on 1/3/2014) Modified on 1/6/2014 (bw, COURT STAFF). (Entered: 01/03/2014)

01/03/2014	26	Declaration of Anthony Schoenberg in Support of Administrative Motion to Enlarge Time for Hearing and Briefing Plaintiffs' Motion for Preliminary Injunction and for Expedited Discovery re 25 \ filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Schoenberg, Anthony) (Filed on 1/3/2014) Modified on 1/6/2014 (bw, COURT STAFF). (Entered: 01/03/2014)
01/07/2014	27	ORDER by Judge Ronald M. Whyte denying 9 Motion to Relate Case. (rmwlc1, COURT STAFF) (Filed on 1/7/2014) (Entered: 01/07/2014)
01/07/2014	28	OPPOSITION TO DEFENDANTS MOTION TO ENLARGE TIME FOR HEARING AND BRIEFING PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION AND FOR EXPEDITED DISCOVERY; DECLARATION OF CLINTON B. MONFORT IN SUPPORT; and DECLARATION OF ANNA M. BARVIR (re 25 filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Michel, Carl) (Filed on 1/7/2014) Modified on 1/8/2014 (bw, COURT STAFF). (Entered: 01/07/2014)
01/08/2014	29	NOTICE of Appearance of Evan Michael Engstrom by defendants (Engstrom, Evan) (Filed on 1/8/2014) Modified on 1/9/2014 (bwS, COURT STAFF). (Entered: 01/08/2014)
01/09/2014	30	ORDER by Judge Ronald M. Whyte GRANTING with Modifications 25 Motion to Enlarge Time for Hearing and Briefing Preliminary Injunction and DENYING Defendants' Motion for Expedited Discovery; GRANTING subject to revisions on motion for time 8 Stipulation. (rmwlc1, COURT STAFF) (Filed on 1/9/2014) (Entered: 01/09/2014)
01/13/2014	31	MOTION to Expedite <i>Plaintiffs' Administrative Motion for An Expedited Ruling on Plaintiffs' Motion for Preliminary Injunction; Declaration of Clinton B. Monfort In Support</i> filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 (Proposed) Order)(Michel, Carl) (Filed on 1/13/2014) Modified on 1/14/2014 (bwS, COURT STAFF). (Entered: 01/13/2014)
01/16/2014	32	Notice of Errata Re: Plaintiffs' Motion for Preliminary Injunction; Exhibit "A" by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Exhibit A) (Michel, Carl) (Filed on 1/16/2014) Modified on 1/16/2014 (bwS, COURT STAFF). (Entered: 01/16/2014)
01/16/2014	33	NOTICE of Appearance of Rochelle Woods by defendants (Woods, Rochelle) (Filed on 1/16/2014) Modified on 1/16/2014 (bwS, COURT STAFF). (Entered: 01/16/2014)
01/16/2014	34	ANSWER to Complaint for Declaratory and Injunctive Relief by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Schoenberg, Anthony) (Filed on 1/16/2014)

		Modified on 1/16/2014 (bwS, COURT STAFF). (Entered: 01/16/2014)
01/22/2014		Set/Reset Deadlines as to 10 MOTION for Preliminary Injunction ; <i>Memorandum of Points and Authorities In Support</i> . Motion Hearing set for 2/21/2014 09:00 AM in Courtroom 6, 4th Floor, San Jose before Hon. Ronald M. Whyte. (jgS, COURT STAFF) (Filed on 1/22/2014) (Entered: 01/22/2014)
01/29/2014	35	Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 10 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	36	Declaration of Lucy P. Allen in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Related document(s) 35) (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	37	Declaration of John J. Donohue III in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	38	Declaration of Frank Grgurina in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	39	Declaration of Christopher S. Koper in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F) (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	40	Declaration of Anthony Spitaleri in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	41	Declaration of James E. Yurgealitis in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014

		(bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	42	Declaration of Roderick M. Thompson in Support of Sunnyvale's Opposition to Plaintiff's Motion for Preliminary Injunction re 35 filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10 (part 1), # 11 Exhibit 10 (part 2), # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22, # 24 Exhibit 23, # 25 Exhibit 24, # 26 Exhibit 25, # 27 Exhibit 26, # 28 Exhibit 27, # 29 Exhibit 28) (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
01/29/2014	43	(Proposed) Order Denying Plaintiff's Motion for Preliminary Injunction re 35 by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 1/29/2014) Modified on 1/30/2014 (bwS, COURT STAFF). (Entered: 01/29/2014)
02/03/2014	44	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d <i>Relevant to Plaintiffs' Motion for Preliminary Injunction</i> filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Related document(s) 35) (Schoenberg, Anthony) (Filed on 2/3/2014) (Entered: 02/03/2014)
02/10/2014	45	REPLY (re 10 MOTION for Preliminary Injunction ; <i>Memorandum of Points and Authorities In Support</i>) filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Supplement Objections to Evidence of Defendants The City of Sunnyvale et al., # 2 Declaration Supplemental Declaration of Gary Kleck In Support of Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, # 3 Declaration Supplemental Declaration of Clinton Monfort In Support of Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, # 4 Exhibit Exhibit G, # 5 Exhibit Exhibit H, # 6 Exhibit Exhibit I, # 7 Exhibit Exhibit J, # 8 Exhibit Exhibit K, # 9 Exhibit Exhibit L, # 10 Exhibit Exhibit M, # 11 Exhibit Exhibit N, # 12 Exhibit Exhibit O)(Michel, Carl) (Filed on 2/10/2014) (Entered: 02/10/2014)
02/10/2014	46	Declaration of Massad Ayoob in Support of 45 Reply to Opposition/Response,, filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Attachments: # 1 Exhibit Exhibit E)(Related document(s) 45) (Michel, Carl) (Filed on 2/10/2014) (Entered: 02/10/2014)
02/18/2014	47	<i>Plaintiffs' Statement of Recent Decision</i> by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 2/18/2014) (Entered: 02/18/2014)
02/18/2014	48	OBJECTIONS to (45) <i>Reply Evidence and Motion to Strike Plaintiffs' Improper Objections to Evidence</i> by Frank Grgurina, Anthony Spitaleri, The Chief of the

		Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Thompson, Roderick) (Filed on 2/18/2014) Modified text to add linkage on 2/19/2014 (srm, COURT STAFF). (Entered: 02/18/2014)
02/19/2014	49	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d <i>Relevant to Plaintiffs' Motion for Preliminary Injunction</i> filed by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale. (Attachments: # 1 Exhibit A)(Related document(s) 35) (Thompson, Roderick) (Filed on 2/19/2014) (Entered: 02/19/2014)
02/19/2014	50	<i>Plaintiffs' Opposition to (48) Defendants' Motion to Strike Plaintiffs' Improper Objections to Evidence</i> filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson (Michel, Carl) (Filed on 2/19/2014) Modified on 2/20/2014 (srm, COURT STAFF). (Entered: 02/19/2014)
02/21/2014	51	Minute Entry: Motion Hearing held on 2/21/2014 before Ronald M. Whyte (Date Filed: 2/21/2014) re 10 MOTION for Preliminary Injunction ; <i>Memorandum of Points and Authorities In Support</i> filed by Rod Swanson, Scott Hochstetler, Leonard Fyock, Brad Seifers, David Pearson, William Douglas. (Court Reporter Summer Fisher.) (jgS, COURT STAFF) (Date Filed: 2/21/2014) (Entered: 02/21/2014)
02/21/2014	53	Minute Entry: Motion Hearing held on 2/21/2014 before Ronald M. Whyte (Date Filed: 2/21/2014) re 10 MOTION for Preliminary Injunction ; <i>Memorandum of Points and Authorities In Support</i> filed by Rod Swanson, Scott Hochstetler, Leonard Fyock, Brad Seifers, David Pearson, William Douglas. (Court Reporter Summer Fisher.) (jgS, COURT STAFF) (Date Filed: 2/21/2014) (Entered: 02/24/2014)
02/24/2014	52	CLERKS NOTICE OF SETTING CASE MANAGEMENT CONFERENCE: Joint Case Management Statement due by 3/21/2014. Case Management Conference set for 3/28/2014 10:30 AM in Courtroom 6, 4th Floor, San Jose. ***This is a text only docket entry, there is no document associated with this notice.*** (jgS, COURT STAFF) (Filed on 2/24/2014) (Entered: 02/24/2014)
03/03/2014	54	TRANSCRIPT ORDER by Frank Grgurina, Anthony Spitaleri, The Chief of the Sunnyvale Department of Public Safety, The City of Sunnyvale, The Mayor of Sunnyvale for Court Reporter Summer Fisher. (Woods, Rochelle) (Filed on 3/3/2014) (Entered: 03/03/2014)
03/05/2014	55	***FILED IN ERROR - DISREGARD*** TRANSCRIPT ORDER - CJA for Court Reporter Summer Fisher. (Michel, Carl) (Filed on 3/5/2014) Modified on 3/6/2014 (sp, COURT STAFF). (Entered: 03/05/2014)
03/05/2014	56	ORDER by Judge Ronald M. Whyte denying 10 Motion for Preliminary Injunction; finding as moot 31 Motion to Expedite. (rmwlc1, COURT STAFF) (Filed on 3/5/2014) (Entered: 03/05/2014)
03/05/2014	57	NOTICE OF APPEAL to the 9th CCA William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson.(Appeal fee of \$505 receipt number 0971-8426007 paid.) (Michel, Carl) (Filed on 3/5/2014) (Entered: 03/05/2014)

03/05/2014	59	USCA Scheduling Order as to 57 Notice of Appeal filed by Rod Swanson, Scott Hochstetler, Leonard Fyock, Brad Seifers, David Pearson, William Douglas. (srm, COURT STAFF) (Filed on 3/5/2014) (Entered: 03/06/2014)
03/06/2014	58	TRANSCRIPT ORDER by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson for Court Reporter Summer Fisher. (Michel, Carl) (Filed on 3/6/2014) (Entered: 03/06/2014)
03/07/2014	60	ORDER of USCA as to 57 Notice of Appeal filed by Rod Swanson, Scott Hochstetler, Leonard Fyock, Brad Seifers, David Pearson, William Douglas. Appellants emergency motion for an injunction pending appeal is denied. (srm, COURT STAFF) (Filed on 3/7/2014) (Entered: 03/07/2014)
03/07/2014	61	Transcript of Proceedings held on 02/21/14, before Judge Ronald M. Whyte. Court Reporter/Transcriber Summer Fisher, Telephone number 408-288-6150 summer_fisher@cand.uscourts.gov. 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 6/5/2014. (Related documents(s) 58) (Fisher, Summer) (Filed on 3/7/2014) (Entered: 03/07/2014)
03/21/2014	62	JOINT CASE MANAGEMENT STATEMENT filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 3/21/2014) (Entered: 03/21/2014)
03/21/2014	63	<i>Stipulation of Parties to Stay Proceedings and Proposed Order</i> filed by William Douglas, Leonard Fyock, Scott Hochstetler, David Pearson, Brad Seifers, Rod Swanson. (Michel, Carl) (Filed on 3/21/2014) Modified on 3/24/2014 (srm, COURT STAFF). (Entered: 03/21/2014)
03/27/2014	64	STIPULATION AND ORDER 63 of the Parties to Stay Proceedings. Case Stayed. Signed by Judge Ronald M. Whyte on 3/27/14. (jgS, COURT STAFF) (Filed on 3/27/2014) (Entered: 03/27/2014)

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