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ELECTRONICALLY FILED
Superior Court of California,
County of Orange
04/24/2018 at 02:05:59 PM
Clerk of the Superior Court
By Mary M Johnson, Deputy Clerk

5 Attorneys for Plaintiff,
6 CITY OF HUNTINGTON BEACH

[Exempt from filing fees pursuant
To Government Code Section 6103]

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10
11 CITY OF HUNTINGTON BEACH,) CASE NO. 30-2018-00988343-CU-JR-CJC
12)
13 Plaintiff,) **COMPLAINT FOR DECLARATORY**
14) **AND INJUNCTIVE RELIEF**
15 vs.)
16) **(Election Matter Entitled to Priority**
17) **Pursuant to Code of Civil Procedure § 35**
DANIEL HORGAN, and DOES 1 through 20,) **and Election Code § 13314)**
18)
19 Defendants.) Judge Unassigned

20 This Complaint for Declaratory and Injunctive Relief (“Complaint”) is brought by
21 Plaintiff, the City of Huntington Beach (“City”).

22 The City alleges as follows:

23 **I. PARTIES**

24 1. Plaintiff, the CITY OF HUNTINGTON BEACH (“City”) is and at all relevant
25 times has been a Charter City organized and existing under a freeholder’s charter and exercising
26 “home rule” authority over its municipal affairs.

27 2. Defendant, DANIEL HORGAN (“Horgan”) is and at all relevant times was a
28 resident of the City of Huntington Beach.

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1 3. The City does not know of the true names and capacities of those Defendants sued
2 herein as DOES 1 through 20, inclusive, and therefore sues those Defendants by such fictitious
3 names. The City will amend this Complaint to allege the true names and capacities of these
4 fictitiously named Defendants when the same have been ascertained.

5 **II. JURISDICTION AND VENUE**

6 4. Jurisdiction and venue lie in the Superior Court of the County of Orange pursuant
7 to Code of Civil Procedure §§ 35, 1060 and 1085, and Election Code § 13314.

8 **III. GENERAL ALLEGATIONS REGARDING INITIATIVE TO BAN SEMI-**
9 **AUTOMATIC AND AUTOMATIC WEAPONS**

10 5. This Complaint challenges both the form and validity of a proposed initiative that
11 its proponent Defendant Daniel Horgan (“Horgan”) seeks to qualify for the November 2018
12 Huntington Beach ballot. The Initiative, entitled “AN INITIATIVE MEASURE TO BAN THE
13 POSSESSION AND SALE OF SEMI-AUTOMATIC AND AUTOMATIC GUNS AND RIFLES
14 IN HUNTINGTON BEACH,” would declare that semi-automatic and automatic guns and rifles
15 are a clear and imminent danger to the community (the “Automatic Weapon Initiative”). The
16 Automatic Weapon Initiative bans the possession and sale of semi-automatic and automatic guns
17 and rifles within the City, and requires that all these weapons shall be turned into the City of
18 Huntington Beach Police Department effective January 1, 2019, subject to a three (3) month
19 probationary period to meet this deadline. The Automatic Weapon Initiative makes it a felony to
20 own, sell, or possess any and all semi-automatic and automatic guns and rifles within City limits
21 as of April 1, 2019.

22 6. Attached at Exhibits 1 through 3 are: (1) Notice of Intent to Circulate Petition for
23 Automatic Weapon Initiative, received 11/17/16; (2) Ballot Title and City Attorney Summary for
24 Initiative, mailed 12/3/17; and (3) Proof of Publication of Initiative, 12/14/17.

25 7. In *Farley v. Healey* (1967) 67 Cal.2d 325, 327, the Supreme Court held that where
26 an initiative is invalid beyond a doubt, a court may determine that it may be kept off the ballot. In
27 *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1153, the Supreme Court confirmed
28 the power of the courts to conduct a pre-election review to evaluate whether the petition may be

1 adopted by the voters. Likewise, in *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 389,
2 the Court held that “preelection review of ballot measures is appropriate where the validity of a
3 proposal is in serious question, and where the matter can be resolved as a matter of law before
4 unnecessary expenditures of time and effort have been placed into a futile election campaign.”

5 8. The Automatic Weapon Initiative is invalid in at least five separate, fundamental
6 respects.

7 A. The Initiative Fails To Present An Ordinance For Adoption.

8 9. The Automatic Weapon Initiative is not presented in a manner permitted under the
9 Elections Code. The power of initiative is the authority of the electorate to propose and adopt
10 legislation. Article II, Section 11(a) of the California Constitution provides that the “[i]nitiative
11 and referendum powers may be exercised by the electors of each city or county under procedures
12 that the Legislature shall provide.” Those powers are set forth at Elections Code Section 9200, *et*
13 *seq.*

14 10. Election Code Section 9200 provides that, by way of initiative, “ordinances may be
15 enacted by and for any incorporated city.” Once the initiative is circulated and the city clerk
16 determines that it has been signed by not less than 10 percent of the voters of the city, then the
17 City Council may “adopt the ordinance, without alteration, at the regular meeting at which the
18 certification of the petition is presented, or within 10 days after it is presented, or place it on the
19 next general election ballot. (Election C § 9215.)

20 11. However, nowhere does the Automatic Weapon Initiative present legislation that
21 can be adopted. For example, it does not state that a specific Section be added to the Huntington
22 Beach Municipal Code. Rather, it states that the “citizens of Huntington Beach propose a ban on
23 the possession and sale of semi-automatic and automatic guns and rifles,” but the Initiative is not
24 presented in a manner that the City Council could add the provision to the Municipal Code.

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1 B. The Initiative Invalidly Duplicates State Law.

2 12. The “Roberti-Roos Assault Weapons Control Act of 1989 and the .50 Caliber BMG
3 Regulation Act of 2004” occupies the field of the regulation of automatic and semi-automatic
4 firearms. (Penal C § 30500, *et seq.*) Local law may not duplicate State law. (*Pipoly v Benson*
5 (1942) 20 Cal.2d 366, 371.) Because the Automatic Weapon Initiative duplicates an area of law
6 the State had occupied, there is an “inevitable conflict of jurisdiction which would result from dual
7 regulations covering the same ground,” rendering the local law invalid.

8 C. The Initiative Is Unconstitutionally Vague.

9 13. To the extent the Automatic Weapon Initiative does not duplicate the Roberti-Roos
10 Act, it is unconstitutionally vague because it does not define what is a semi-automatic or
11 automatic gun or rifle.

12 D. The Initiative Operates As An Unconstitutional Taking Of Property.

13 14. By requiring that weapons be surrendered to the City Police Department by no later
14 than April 1, 2019, the Automatic Weapon Initiative operates as an unconstitutional taking of
15 property under the Fifth Amendment to the United States Constitution and Article I, Section 1 of
16 the California Constitution.

17 E. The City Lacks The Jurisdiction To Make a Violation of the Initiative A Felony.

18 15. Contrary to the Automatic Weapon Initiative making possession of an automatic or
19 semi-automatic weapon a felony, Government Code Section 36900(a) only allows violations of
20 municipal laws to be a misdemeanor or an infraction.

21 16. For all five of these reasons, the Automatic Weapon Initiative is unconstitutional,
22 invalid and not entitled to a place on the ballot. The law is clear that where, as here, an initiative is
23 beyond the power of the voters to enact, the courts have not only the power, but the duty, to order
24 that the measure not be placed on the ballot. As the Supreme Court held in *American Federation*
25 *of Labor v. Eu* (1984) 36 Cal.3d 687, 695, “[i]f it is determined that the electorate does not have
26 the power to adopt the proposal in the first instance, ... the measure must be excluded from the
27 ballot.” City therefore seeks issuance of a declaratory judgment and injunction prohibiting Horgan
28 from taking any action to obtain signatures to or certify the proposed Automatic Weapon Initiative

1 for the ballot or to hold an election thereon, and requests that judgment be entered declaring the
2 Initiative unconstitutional and invalid.

3 **FIRST CAUSE OF ACTION**

4 **(Declaratory Relief, Code Civ. Proc., § 1060)**

5 17. City realleges and incorporates by reference the allegations set forth in
6 paragraphs 1 through 16 above.

7 18. An actual controversy has arisen and now exists between City and Horgan
8 concerning the validity of the Automatic Weapon Initiative and City's rights and duties with
9 respect thereto. As set forth more fully above, City contends that the Automatic Weapon
10 Initiative is unconstitutional, invalid, and unenforceable, and that City has the obligation and
11 duty to refuse to certify the Automatic Weapon Initiative for the ballot, to refuse to hold an
12 election on the Automatic Weapon Initiative, and to refuse to give any effect to the Automatic
13 Weapon Initiative either prior to or following an election on the measure. On information and
14 belief, City alleges that Horgan contends in all respects to the contrary. A judicial
15 determination and declaration as to the constitutionality and validity of the Automatic Weapon
16 Initiative is therefore necessary and appropriate in order to determine the respective rights and
17 duties of the parties.

18 19. City has no plain, speedy, and adequate remedy in the ordinary course of law, in
19 that no damages or other legal remedy could compensate him and the voters and taxpayers of
20 California for the harm that they will suffer if Defendant is not ordered to refrain from certifying
21 or taking any other action to submit the Automatic Weapon Initiative to the voters.

22 **SECOND CAUSE OF ACTION**

23 **(Injunctive Relief, Code Civ. Proc., § 526)**

24 20. City realleges and incorporates by reference the allegations set forth in paragraphs
25 1 through 19 above.

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1 26. On each and every cause of action, that this Court grant such other, different or
2 further relief as the Court may deem just and proper.

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DATED: April 24, 2018

MICHAEL E. GATES, City Attorney

By: _____


MICHAEL E. GATES, City Attorney
Attorney for Plaintiff
CITY OF HUNTINGTON BEACH

EXHIBIT 1

Notice of Intent to Circulate Petition

Notice is hereby given by the person whose name appears hereon of his intention to circulate a petition within the City of Huntington Beach for the purpose of eliminating dangerous weapons that are in the possession of citizens and local businesses. A statement of the reasons of the proposed action as contemplated in the petition is as follows :

The citizens of Huntington Beach propose a ban on the possession and sale of semi-automatic and automatic guns and rifles. The citizens of Huntington Beach agree that these weapons are a clear and imminent danger to our community.

All semi-automatic and automatic guns and rifles shall be turned into the City of Huntington Beach Police Department effective January 1, 2019. There will be a 3 month probationary period to meet this deadline. As of April 1, 2019, it will be a felony to own, sell, or possess any and all semi-automatic and automatic guns and rifles within City limits.

Notice is also hereby given of a request for preparation, by the City Attorney, of a ballot title and summary.

Proponent of Measure

Daniel Horgan 11/16/17

Daniel Horgan

215 Wichita Avenue #203, Huntington Beach, CA 92648

RECEIVED
2017 NOV 17 AM 11:26
CITY CLERK
CITY OF
HUNTINGTON BEACH

EXHIBIT 2



City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648
(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk
Robin Estanislau, City Clerk

December 4, 2017

Daniel Horgan
213 Wichita Avenue, #203
Huntington Beach CA 92647

Re: Ballot Title and Summary Prepared by the City Attorney Pursuant to the Notice of Intent to Circulate Petition and Initiative Measure Regarding Proposed Ban on Automatic and Semi-Automatic Guns and Rifles Filed on November 17, 2017 with the City Clerk's Office

Mr. Horgan,

Please find attached, pursuant to Elections Code §9203, the Ballot Title and Summary prepared by the City Attorney relative to the above-referenced subject.

Sincerely,

Robin Estanislau, CMC
City Clerk

Enclosure: Ballot Title and Summary

Initiative Measure to be Submitted Directly to the Voters

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

BALLOT TITLE

AN INITIATIVE MEASURE TO BAN THE POSSESSION AND SALE OF SEMI-AUTOMATIC AND AUTOMATIC GUNS AND RIFLES IN HUNTINGTON BEACH

BALLOT SUMMARY

This initiative measure seeks to create a law to ban the possession and sale of semi-automatic and automatic guns and rifles in the City of Huntington Beach.

The stated intent of this proposed law is that residents of Huntington Beach agree that semi-automatic and automatic guns and rifles are a clear and imminent danger to the community.

The law would require that all semi-automatic and automatic guns and rifles be turned in to the City of Huntington Beach Police Department by January 1, 2019. The proposed new law would allow a 3-month probationary period to meet the deadline. As of April 1, 2019, the new law would make it a felony to own, sell, or possess any and all semi-automatic and automatic guns and rifles within the border of the City of Huntington Beach.

RECEIVED
2017 DEC -4 AM 10:43
CITY CLERK
CITY OF
HUNTINGTON BEACH

CERTIFICATION

This ballot title and summary are hereby submitted to the elections official in conformance with Section 9203 of the Elections Code of the State of California.

RECEIVED
2017 DEC -4 AM 10:43
CITY CLERK
CITY OF
HUNTINGTON BEACH

EXHIBIT 3

AFFIDAVIT OF PUBLICATION

STATE OF CALIFORNIA,)
) ss.
County of Orange)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the **Huntington Beach Wave**, a newspaper that has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, on July 1, 1998, Case No. A-185906 in and for the City of Huntington Beach, County of Orange, State of California; that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

December 14, 2017

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct":

Executed at Santa Ana, Orange County, California, on

December 14, 2017



Signature

**Huntington Beach Wave
2190 S. Towne Centre Pl.
Anaheim, CA 92806
(714) 796-2209**

Proof of Publication

Notice of Intent to Circulate Petition
Notice is hereby given by the person whose name appears hereon of his intention to circulate a petition within the City of Huntington Beach for the purpose of eliminating dangerous weapons that are in the possession of citizens and local businesses. A statement of the reasons of the proposed action as contemplated in the petition is as follows:
The citizens of Huntington Beach propose a ban on the possession and sale of semi-automatic and automatic guns and rifles. The citizens of Huntington Beach agree that these weapons are a clear and imminent danger to our community.
All semi-automatic and automatic guns and rifles shall be turned into the City of Huntington Beach Police Department effective January 1, 2019. There will be a 3-month probationary period to meet this deadline. As of April 1, 2019, it will be a felony to own, sell, or possess any and all semi-automatic and automatic guns and rifles within city limits.
Notice is also hereby given of a request for preparation, by the City Attorney, of a ballot title and summary.
Proponent of measure: Daniel Horan, 215 Wichita Ave #203, Huntington Beach, CA 92648
The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:
BALLOT TITLE
AN INITIATIVE MEASURE TO BAN THE POSSESSION AND SALE OF SEMI-AUTOMATIC AND AUTOMATIC GUNS AND RIFLES IN HUNTINGTON BEACH
BALLOT SUMMARY
This initiative measure seeks to create a law to ban the possession and sale of semi-automatic and automatic guns and rifles in the City of Huntington Beach.
The stated intent of this proposed law is that residents of Huntington Beach agree that semi-automatic and automatic guns and rifles are a clear and imminent danger to the community.
The law would require that all semi-automatic and automatic guns and rifles be turned in to the City of Huntington Beach Police Department by January 1, 2019. The proposed new law would allow a 3-month probationary period to meet the deadline. As of April 1, 2019, the new law would make it a felony to own, sell, or possess any and all semi-automatic and automatic guns and rifles within the border of the City of Huntington Beach.
CERTIFICATION
This ballot title and summary are hereby submitted to the elections official in conformance with Section 9203 of the Elections Code of the State of California.
Published: The Huntington Beach Wave December 14, 2017 11050230