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August 5, 2016

Mr. Frank A. McGuire
Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Sheriff Clay Parker, et al. v. The State of California, et al.*, Case No. S215265
Supplemental Letter Brief Regarding Effect of SB 1235

Dear Mr. McGuire:

Per this Court's July 20, 2016 order,¹ Plaintiffs-Respondents, Sheriff Clay Parker, et al. ("Parker"), submit this supplemental letter brief "addressing whether the passage of Senate Bill No. 1235 (2015-2016 Reg. Sess.) [hereafter "SB 1235"] has rendered moot the claims raised by the plaintiffs in this matter."

The parties appear to be in agreement that Parker's claims are not *currently* moot, but are on track to become moot soon, barring intervention by California voters. Parker's claims will be mooted unless a referendum repealing SB 1235 is successful and Proposition 63 is rejected by the voters. In the interests of judicial economy, Parker joins the state in respectfully urging the Court to await the outcome of the initiative and referendum processes before setting oral argument. Before Parker's claims become moot, however, any consideration of the proper disposition of this case due to mootness would be premature.

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CLERK SUPREME COURT

¹ That order provided an August 3, 2016 due date. An Application for Leave to File Late Brief on the grounds that Plaintiffs-Respondents did not receive notice of the Court's July 20, 2016 order is filed concurrently with this Supplemental Letter Brief.

Mr. Frank McGuire

August 5, 2016

Page 2 of 3

Re: *Sheriff Clay Parker, et al. v. State of California, et al.*

BACKGROUND

Plaintiffs' Lawsuit and SB 1235

Parker originally challenged Penal Code sections 12060, 12061, and 12318 (which have since been renumbered without substantive change to sections 30312 and 30345 through 30365 [Senate Bill No. 1080 (2009-2010 Reg. Sess.)]) as being void for vagueness under the due process clauses of the Fourteenth Amendment and the California Constitution because those sections impose criminal restrictions on activities involving “handgun ammunition,” the definition of which Parker contends does not give a reasonably intelligent person notice of what ammunition is contemplated. The trial court agreed with Parker, issuing a judgment permanently enjoining the State from enforcing “the versions of California Penal Code sections 12060, 12061, and 12318 in effect as of January 21, 2011 . . .” (Notice of Entry of Judgment at ex. A, p. 2, *Parker v. California* (Super. Ct. Fresno County, 2011, No. 10CECG02116).) The appellate court affirmed the judgment in a lengthy and comprehensive opinion. This Court accepted review upon request by the State.

Effective January 1, 2017, SB 1235 repeals the current versions of Penal Code sections 30312 and 30345 through 30365 (formerly found in sections 12060, 12061, and 12318) and replaces them with new provisions (albeit still utilizing the section numbers 30345 through 30365). The substance of the requirements and prohibitions found in the original versions of those statutes remain largely and effectively unchanged under SB 1235, with one dispositive distinction relevant to the question presented in this case—SB 1235’s provisions apply to *all* ammunition, rather than just “handgun ammunition,” the statutory definition of which was the basis for Parker’s vagueness challenge. So, upon taking effect, SB 1235 would resolve the vagueness problem Parker sought to remedy with this lawsuit.

Referendum to Repeal SB 1235

Parker’s claims will, therefore, become moot when SB 1235 takes effect on January 1, 2017—*unless* the campaign currently underway to qualify a referendum of SB 1235 for the 2018 ballot is successful. Qualification of that referendum would mean that SB 1235 will not take effect on January 1, 2017; instead, its implementation will be postponed to determine how the referendum is voted on by the people in November 2018. (Cal. Const., art. II, § 10, subd. (a).)

In order to qualify for the ballot, the proposed referendum’s proponents must obtain and submit to county election officials 365,880 valid signatures of registered voters by September 29, 2016. (Cal. Const., art. II, § 9, subd. (b).) If the proponents fail to submit the signatures by that date, then SB 1235 will take effect on January 1, 2017, mooting all of Parker’s claims at that time. If, however, the proponents timely submit the 365,880 signatures, the Secretary of State will determine whether the signatures are sufficient to qualify the referendum for the 2018 ballot by either December 12, 2016, or January 30, 2017, depending on whether a random sampling of the petition signatures is required. (*See* Elec. Code §§ 9030, 9031, 9033.)

Mr. Frank McGuire

August 5, 2016

Page 3 of 3

Re: *Sheriff Clay Parker, et al. v. State of California, et al.*

In sum, Parker's claims will become moot on January 1, 2017, unless the referendum to repeal SB 1235 qualifies for the 2018 ballot, which will be known by either September 29, 2016, December 12, 2016, or January 30, 2017.

Proposition 63

There is, however, one way that Parker's claims *may* become moot sooner than January 1, 2017, even if the referendum of SB 1235 qualifies for the ballot. Proposition 63, which has already qualified for the 2016 ballot, would moot Parker's claims immediately after the upcoming general election (November 9, 2016, assuming the vote count is complete by then) if passed by the voters of California. (See Cal. Const., art. II, § 10, subd. (a).)

Proposition 63 would make effectively identical changes to the law as SB 1235 with regard to the relevant provisions at issue in this litigation, but rather than repeal the statutes Parker challenges like SB 1235 does, Proposition 63 simply amends them to apply to *all* ammunition (as opposed to just statutorily defined "handgun ammunition"). (Prop. 63, pp. 13-24 (Dec. 4, 2016) <http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0098%20%28Firearms%29_0.pdf>.) The initiative would also postpone the statutes' effective dates to either January 1, 2018, or July 1, 2019, meaning that the provisions challenged here would no longer be in effect in the interim. (*Ibid.*)

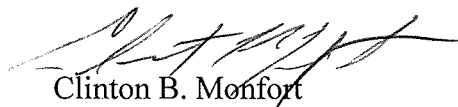
In sum, if Proposition 63 is approved by voters, it will moot Plaintiffs' claims on November 9, 2016 (or as soon thereafter as the vote count may be completed), regardless of what happens with the SB 1235 referendum.²

CONCLUSION

Unless California voters intervene, SB 1235 will moot Parker's claims on January 1, 2017. Adoption of Proposition 63 may accelerate mootness, and rejection of Proposition 63, coupled with the qualification of the SB 1235 referendum, may slow it down. In any event, it is too soon to decide the proper disposition of this case. In the interest of preserving judicial resources, the Court should refrain from taking oral argument until the outcome of the initiative and referendum processes become known. And, to avoid ruling on an issue that is not yet timely, the Court should wait to decide the final disposition of this appeal until the case has clearly become moot.

Sincerely,

Michel & Associates, P.C.



Clinton B. Monfort

² It does not appear that the analysis herein will change if both Proposition 63 and SB 1235 take effect, because whichever ends up controlling, both would moot Parker's claims.

DECLARATION OF SERVICE

I, Laura L. Quesada, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On August 5, 2016, I served the foregoing document(s) described as:

Supplemental Letter Brief Regarding Effect of SB 1235

on the interested parties in this action by placing
[] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED "SERVICE LIST"

— (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the addressee.

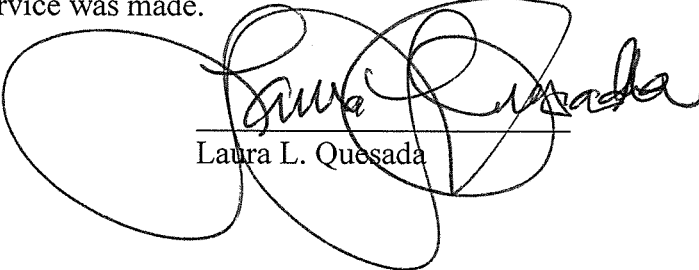
Executed on August 5, 2016, at Long Beach, California.

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on August 5, 2016, at Long Beach, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

— (FEDERAL) I declare that I am employed in the office of the member of the bar of this court at whose direction the service was made.



Laura L. Quesada

SERVICE LIST

SHERIFF CLAY PARKER ET AL. v. STATE OF CALIFORNIA ET AL.
CASE NO. S215265

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