NO. 07-15763

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE, ET AL.,
PLAINTIFFS-APPELLANTS,
v.
MARY V. KING, ET AL.,
DEFENDANTS-APPELLEES.

APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
HON. MARTIN J. JENKINS
(CASE NO. CV-99-04389-MJJ)

BRIEF OF *AMICI CURIAE* LEGAL COMMUNITY AGAINST VIOLENCE, CALIFORNIA PEACE OFFICERS' ASSOCIATION, CALIFORNIA POLICE CHIEFS' ASSOCIATION, CALIFORNIA STATE SHERIFFS' ASSOCIATION, CITY OF OAKLAND, CITY AND COUNTY OF SAN FRANCISCO, VIOLENCE POLICY CENTER, AND YOUTH ALIVE! IN SUPPORT OF DEFENDANTS-APPELLEES ADDRESSING STANDARD OF SCRUTINY AND URGING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT - FEDERAL R. APP. P. 26.1

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), the undersigned counsel states that all *amici curiae* on whose behalf this brief is being filed either are not corporations or are otherwise nonprofit organizations with no parent corporations or publicly held company owning 10% or more of its shares.

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Date: August 18, 2010

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STATEMENT OF INTEREST AND AUTHORITY TO FILE

All parties have consented to the filing of this brief. *Amici curiae* submit this brief under Rule 29 of the Federal Rules of Appellate Procedure and this Court's July 19, 2010, supplemental-briefing order in an effort to assist the Court in developing the most appropriate Second Amendment scrutiny jurisprudence after *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). *Amici curiae* are actively engaged in efforts to reduce gun violence and the destructive impact it has on the local communities and urban centers they serve. A description of each *amicus* is set forth in Attachment A.

ARGUMENT

I. *McDONALD* AND *HELLER* LEAVE TO THE LOWER COURTS THE JOB OF DEVELOPING A SECOND AMENDMENT SCRUTINY JURISPRUDENCE.

McDonald v. City of Chicago holds that the Second Amendment right to keep and bear arms articulated in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), is fundamental and incorporated as against the states. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050 (2010) (plurality opinion of Alito, J.); *id.* at 3058-59 (Thomas, J., concurring). McDonald thus effectively affirms this court's holding on incorporation. *See Nordyke v. King*, 563 F.3d 439, 457 (9th Cir. 2009). But neither *McDonald* nor *Heller* spells out the tests that should be used for evaluating Second Amendment challenges to gun regulations. The job of developing Second Amendment doctrines is thus left for the lower courts.

II. A STRUCTURE FOR EVALUATING SECOND AMENDMENT CHALLENGES.

A. Categoricalism and Other Tools from *Heller*.

While *Heller* and *McDonald* leave much to the lower courts, they do not leave all. *Heller*'s use and discussion of certain methodological tools signal the contours of the claims-evaluation structure that the lower courts should use in deciding Second Amendment cases.

1. Categorical Boundaries.

Heller strongly suggests that categoricalism, the device in constitutional law by which boundaries of a right are defined through the identification of categories of conduct, people or things that fall within or without the right's protection, will play an important role in the development of Second Amendment doctrine. Categoricalism as a right-defining methodology stands in contrast to balancing tests, which choose between competing individual and governmental interests by applying standards (*i.e.*, strict, intermediate, reasonableness, or rational basis scrutiny) to challenged regulations. *See* Joseph Blocher, *Categoricalism & Balancing in First & Second Amendment Analysis,* 84 N.Y.U. L. Rev. 375, 381-82 (2009). Categoricalism and balancing both operate in First Amendment doctrine, *see id.* at 379, which *Heller* repeatedly invokes and analogizes to. *See, e.g., Heller,* 128 S. Ct. at 2791-92, 2799, 2821.

Heller sets a number of categorical Second Amendment boundaries. One is that "common-use" weapons[1] when used for lawful purposes are, as a category, within the protection of the Second Amendment. *Heller*, 128 S. Ct. at 2815-17. Thus, a complete ban on handguns – a class of common-use weapons – is "off the table." *Heller*, 128 S. Ct. at 2822. And since a requirement that arms be rendered and kept inoperable at all times in the home makes it *impossible* for citizens to use their arms for the core lawful purpose of self-defense in the home, that too necessarily violates the Second Amendment. *Id.* at 2818.

At the same time, "the right secured by the Second Amendment is not unlimited," and plainly does not encompass "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 128 S. Ct. at 2816. "Dangerous and unusual" weapons, therefore, are not protected by the Amendment. *Id.* at 2822. Nor does the Amendment protect the concealed carrying of firearms: "[T]he majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *Id.* And "nothing in [*Heller*] should be taken to cast doubt on" the following "presumptively lawful regulatory measures," which the Court identified not as an "exhaustive" list but as "examples

[1] The Court defined these as weapons typically possessed by law-abiding citizens for lawful purposes, such as self-defense in the home, and as excluding weapons like short-barreled shotguns. *Heller*, 128 S. Ct. at 2815-16.

only": (i) "longstanding prohibitions on the possession of firearms by felons and the mentally ill," (ii) "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," and (iii) "laws imposing conditions and qualifications on the commercial sale of firearms." *Id.* at 2817 & n.26; *see also McDonald,* 130 S. Ct. at 3036, 3047 (repeating *Heller's* holding, including the examples of presumptively lawful firearms regulations).

2. Some form of scrutiny must be applied.

Heller also anticipates the development of a scrutiny structure for evaluating laws that regulate (rather than prohibit in the home) protected arms and conduct, but the Court does not specify which test is to be used. *Heller* does, however, provide certain guideposts that lower courts would be wise to use in developing a scrutiny structure.

First, *Heller* makes plain that rational-basis scrutiny is out, as that test only applies, and only makes sense to apply, when the conduct at issue is not protected by a fundamental right. *Id.* at 2817-18 & n.27. Second, the *Heller* majority is unwilling to accept a non-traditional form of scrutiny that could be employed to do away with what the opinion identifies as the core right:

> Justice Breyer moves on to make a broad jurisprudential point: He criticizes us for declining to establish a level of scrutiny for evaluating Second Amendment restrictions. He proposes, explicitly at least, *none* of the traditionally expressed levels (strict scrutiny, intermediate scrutiny, rational basis), but rather a judge-empowering "interest-

> balancing inquiry" that "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests."
>
> * * *
>
> We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach. The very enumeration of the right takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.

Heller, 128 S. Ct. at 2821 (citing as analogous support First Amendment *Skokie* case striking down prohibition of peaceful neo-Nazi march).

Third, despite the Court's rejection of an "interest-balancing," disproportionate-"burden" test, it did not reject the use of burdensomeness as an element of testing: "Nothing about those fire-safety laws undermines our analysis; they do not remotely burden the right of self-defense as much as an absolute ban on handguns. Nor, correspondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents." *Id.* at 2819-20. In other words, regulatory burdens so great that they actually defeat the protected right to have a handgun for self-defense in the home are necessarily invalid, but lesser regulatory burdens are valid unless they fail one of the scrutiny tests. This suggests the Court had in mind a scrutiny structure of the sort used in other fundamental rights doctrines, such as the right to marry, free speech, free exercise of religion, and the right to privacy. The scrutiny test protecting each of those

rights first asks whether the law creates a "direct" or "substantial" burden on the exercise of the right. *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self Defense*, 56 U.C.L.A. L. Rev. 1443, 1454 (2009); Adam Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. 683, 698 (2007); Michael Dorf, *Incidental Burdens on Fundamental Rights*, 109 Harv. L. Rev. 1175, 1176-80 (1996); Alan Brownstein, *How Rights Are Infringed: The Role of Undue Burden Analysis in Constitutional Doctrine*, 45 Hastings L.J. 867, 893-94 (1994). If it does, then heightened scrutiny applies; if it does not, then rational-basis scrutiny or reasonableness scrutiny applies.

3. Strict scrutiny is out.

Under *Heller*, *McDonald* and the cases establishing that strict scrutiny governs certain fundamental rights, it is evident that strict scrutiny is not an appropriate test under the Second Amendment. As an initial matter, most constitutionally enumerated rights do *not* trigger strict scrutiny. The rights governed by strict scrutiny are the First Amendment's protection of the right of free speech, free exercise of religion, and freedom of association, the Fifth Amendment's implicit equal protection guarantee, and substantive due process rights (other than the Bill of Rights) applied to the states through the Fourteenth Amendment. Winkler, *Scrutinizing the Second Amendment*, 105 Mich. L. Rev. at 694. "Strict scrutiny is not applied in any doctrines arising out of the Third

Amendment, the Fourth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment or the Tenth Amendment." *Id.* Moreover, it is not true that all "fundamental" rights are governed by strict scrutiny. Many are not, and among those that are, strict scrutiny only occasionally applies. *Id.* at 697-98. For example, the right to free speech triggers strict scrutiny of content-based restrictions, but content-neutral time, place and manner restrictions receive intermediate scrutiny. *United States v. Marzzarella*, __ F.3d __, 2010 WL 2947233, at *7 (3d Cir. July 29, 2010); *see generally* Volokh, *Implementing the Right,* 56 U.C.L.A. L. Rev. at 1454-55, 1460.

Moreover, the conditions that historically justified applying strict scrutiny to laws governing other rights simply are not present with guns. Strict scrutiny presumes the law is *un*constitutional, yet the two theories supporting that presumption do not support extending it to the Second Amendment. The first is the invidious racial motive theory, which originated to tackle the problem of race discrimination. Racial classification laws were "immediately suspect" because the motives behind them overwhelmingly were "invidious" or improper: providing differential treatment based on race. *See, e.g., Adarand Constructors v. Pena,* 515 U.S. 200, 213-218 (1995) (tracing development of strict scrutiny standard and holding that *all* racial classifications are subject to strict scrutiny, even those ostensibly intended to help historically disadvantaged minorities, because race is

not a valid proxy for disadvantage); Winkler, *Scrutinizing the Second Amendment,* 105 Mich. L. Rev. at 700-01 (citing, *inter alia, Korematsu v. United States,* 323 U.S. 214, 216 (1944) and *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942)). Gun control laws do not fit in this category, as they are motivated by the need to protect public safety, one of government's essential duties. *Id.* at 701-03.

The second main theory comes from the free speech cases and rests on the judgment that some interests have such intrinsic value, and such instrumental value in preserving self-government, that they must be protected from all but the most exigent and compelling governmental infringements. *Id.* at 703-04; *see also* Dorf, *Incidental Burdens,* 109 Harv. L. Rev. at 1239-40. This does not describe the Second Amendment. As *McDonald* appeared to recognize, the right to arms is instrumental only. *McDonald,* 130 S. Ct. at 3047-48 (plurality opinion). Moreover, speech and guns are at loggerheads where it matters most: the right to free speech ends where speech turns to violence. *Brandenburg v. Ohio,* 395 U.S. 444 (1969). Yet the right to keep and bear arms begins with violence – or at least with potential violence. If the presumption *against* regulating speech disappears when speech turns to violence, then a presumption *in favor* of regulating guns must accompany the right to keep and bear arms, where violence is inherent. Strict scrutiny – which assumes that regulation is improper – is simply incompatible with the Second Amendment. *Cf. City of Cleburne v. Cleburne Living Center, Inc.,*

473 U.S. 432, 442-43 (1985) (recognizing the "legitima[cy]" of legislation in the area of disability classifications and thus the absence of the "predicate" for heightened scrutiny).

Heller may have anticipated something like the last point when the majority held that the District of Columbia's handgun ban would fail constitutional muster under *any* heightened standard of scrutiny that the Court applies to enumerated rights, *Heller*, 128 S. Ct. at 2817-18 & n.27, a statement that necessarily contemplates the possibility of applying intermediate scrutiny. Why would the Court even address intermediate scrutiny if it did not think it possible, or probable, that Second Amendment regulations, including even those regulating the "central" right to keep and bear handguns in the home for self-defense, would be governed by intermediate scrutiny?

B. A Two-Pronged Approach for Evaluating Second Amendment Claims.

From the preceding discussion, we offer what we believe is the most appropriate and constitutionally sound structure for evaluating Second Amendment challenges to gun regulations.

1. First: Determine whether the challenged law burdens conduct that falls within the scope of the Second Amendment.

As with claims based on other fundamental constitutional rights, the first question in any Second Amendment case is whether the challenged law burdens

conduct that falls within the scope of the asserted right. *E.g.*, *Marzzarella*, 2010 WL 2947233, at *2-3. This is a coverage question that in the context of this case asks (as this panel previously did): Does the Second Amendment right to keep and bear arms prevent the government from prohibiting or regulating the possession and use of guns on government-owned property? We believe the panel correctly distilled from existing Supreme Court privacy cases the principle that although the Constitution protects an individual right to engage in certain activity, such as choosing whether to obtain an abortion (or in the Second Amendment context, keeping a handgun in the home for self-defense), there is nothing that requires the government "to encourage, facilitate, or partake in such activity." *Nordyke*, 563 F.3d at 459. Where, as here, entry onto government-owned land is purely voluntary, there is no reason to think that the right to bear arms, even for self-defense, encompasses a right "to bring guns onto government owned property." *Id.* On this basis alone, the Court should conclude that the Ordinance does not burden Plaintiffs-Appellants' Second Amendment rights.

But the Court need not rely exclusively on the fact that the fairgrounds is government property. Separately, the fairgrounds is categorically excluded from Second Amendment coverage as a "sensitive place." *Heller*, 128 S. Ct. at 2817 & n.26; *cf. United States v. Williams*, __ F.3d __, 2010 WL 3035483, at *4-7 (7th Cir. Aug. 5, 2010) (holding that first part of Second Amendment inquiry requires courts

to evaluate whether categorical exclusions apply, based on *Heller*'s statement that "[a]ssuming that Heller *is not disqualified* from the exercise of Second Amendment rights, the District of Columbia must permit him to register his handgun and must issue him a license to carry it in the home").[2] We believe this court correctly tackled this issue in its prior decision as well.

As the panel recognized, the Supreme Court in *Heller* "assured that . . . '*laws forbidding the carrying of firearms in sensitive places* such as schools and government buildings'" are presumptively lawful. *Nordyke*, 563 F.3d at 459-60 (emphasis in original). In *United States v. Vongxay*, 594 F.3d 1111, 1114-18 (9th Cir. 2010), this court squarely held that *Heller*'s categorical exclusions were integral to the Supreme Court's holding and thus are binding on the lower courts. *See also United States v. Rozier*, 598 F.3d 768, 771 n.6 (11th Cir. 2010) (stating

[2] The Seventh Circuit panel in *Williams* included Justice O'Connor, who was sitting by designation.

that *Heller's* exclusions were not dicta).[3] In the Ninth Circuit, therefore, "sensitive places" are outside the scope of the right protected by the Second Amendment.[4]

The case for Alameda County's fairgrounds being a "sensitive place" historically beyond the scope of the right to keep and bear arms is remarkably straightforward. As commentators have noted, the 1328 Statute of Northampton

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[3] The Fifth Circuit has concluded that *Heller*'s discussion of categorical exclusions is dicta but that at least one exclusion, the federal felon-in-possession statute, passes constitutional muster. *United States v. Scroggins,* 599 F.3d 433, 451 (5th Cir. 2010); *see Marzzarella*, 2010 WL 2947233, at *12 n. 5 (following what it calls *Heller*'s dicta and collecting cases addressing whether it is dicta); *United States v. Williams*, __ F.3d __, 2010 WL 3035483, at *5 (7th Cir. Aug. 5, 2010) (referring to "Heller's dictum regarding disqualifications on firearm possession by felons").

[4] *Heller* did not directly address how categorical exclusions come into existence in the first place. Obviously, one set of exclusions can be found by examining whether the activity was understood to be within or without the right at the time the Constitution or Amendment was ratified. *E.g.,* Volokh, *Implementing the Right,* 56 U.C.L.A. L. Rev. at 1450, 1455 n.45, 1462. But it is clear that categorical exclusions are not limited to those understood to exist at the time of codification. Child pornography, for example, does not meet the historical definition of obscenity but nonetheless was added to the list of First Amendment exclusions in *New York v. Ferber,* 458 U.S. 747 (1982). In *Ferber,* the Court used strict scrutiny, the standard of review applicable to other content-based restrictions, to evaluate a statute criminalizing trafficking in child pornography, and determined that child pornography was categorically excluded from protected speech. Seemingly following *Ferber*'s lead, the Seventh Circuit recently upheld 18 U.S.C. § 922(g)(9) on the ground that persons convicted of misdemeanor crimes of domestic violence are categorically excluded from Second Amendment protection. Consistent with *Ferber,* the Seventh Circuit applied intermediate scrutiny, the same heightened level scrutiny the circuit apparently otherwise applies to Second Amendment claims involving laws that burden protected conduct, to evaluate whether the categorical exclusion for domestic violence misdemeanants was valid. *United States v. Skoien,* __ F.3d __, 2010 WL 2735747, at *3 (7th Cir. July 13, 2010) (en banc).

"prohibited subjects from appearing armed 'in fairs, markets, [and] in the presence of the justices or other ministers.'" *E.g.*, Carlton F.W. Larson, *Four Exceptions in Search of a Theory:* District of Columbia v. Heller *and Judicial* Ipse Dixit, 60 Hastings L.J. 1371, 1377 & n.46 (2009). An 1875 Missouri law that criminalized going "'into any school-room or place where people are assembled for educational, literary *or social purposes*, or to any election precinct on election day, having upon or about his person any kind of firearms'" was upheld by that state's Supreme Court because the "'statute is designed to promote personal security, and to check and put down lawlessness, and is thus in perfect harmony with the constitution.'" *Id.* (quoting *State v. Shelby*, 2 S.W. 468, 469 (Mo. 1886)). *Heller* and *McDonald* appear to have had precisely these, and similar, laws in mind when identifying "laws forbidding the carrying of firearms in sensitive places" as presumptively lawful. As this panel previously noted, the fairgrounds is a "gathering place[] where high numbers of people might congregate," and where a shooter easily could do great harm (and in the past has). *Nordyke*, 563 F.3d at 460. The fairgrounds thus fits perfectly within the historical "sensitive places" exclusion and is outside the bounds of the Second Amendment.

2. Second: Apply the appropriate level of scrutiny to laws that burden conduct within the Second Amendment.

If a challenged law reaches conduct within the scope of the Second Amendment, then the law must be evaluated under the level of scrutiny appropriate

to the burden. Drawing from the discussion in Section II.A., above, we believe that laws directly burdening or otherwise significantly burdening the exercise of the right to keep and bear common-use firearms for self-defense in the home are properly evaluated under intermediate scrutiny. Laws that do not directly or otherwise significantly burden the right should not be subject to any heightened form of scrutiny.[5]

The Nordykes concede that the Ordinance does not directly burden their right to keep and bear common-use arms for self-defense, arguing instead that it *in*directly burdens this right by making guns for self-defense more difficult to purchase because gun shows on other property are not as profitable. *Nordyke,* 563 F.3d at 458. But as Defendants-Appellees establish, there is no evidence that meaningfully supports this claim. Indeed, the evidence shows that there are many alternative local sources of firearms available and many alternative venues for gun shows. The argument borders on the frivolous. Plaintiffs-Appellants are not entitled to any heightened review.

[5] The Court has not yet decided whether and, if so, to what extent the Second Amendment protects interests other than the right to arms for self-defense in the home. We would expect the general constitutional principle that the farther one travels from the core right the less protection the right affords, *see, e.g.*, Blocher, *Categoricalism,* 84 N.Y.U. L. Rev. at 394, to apply with even more force in the Second Amendment context than in areas where the protected right has separate intrinsic value – the First Amendment, for example.

If somehow Plaintiffs-Appellants could surmount this hurdle (which they cannot), the intermediate-scrutiny test would apply. That test requires (1) that the asserted governmental interest be "important or substantial" or "significant," and (2) that the fit between the challenged regulation and the proffered objective be reasonable, not perfect. *E.g.*, *Marzzarella*, 2010 WL 2947233, at *9 (collecting various articulations of the test from First Amendment cases); *see also United States v. Skoien*, __ F.3d __, 2010 WL 2735747, at *3 (7th Cir. July 13, 2010) (en banc) (describing the test as whether the law is "substantially related to an important governmental objective," based on cases addressing First Amendment, marriage, and child bearing rights).

There is no question that government's interest in protecting against gun violence on the fairgrounds is important or significant. *E.g.*, *Skoien*, 2010 WL 2735747, at *3. Nor is there any genuine doubt that the Ordinance is a reasonable means of accomplishing that objective, or substantially related to it. Plaintiffs-Appellants themselves implicitly concede the law's relative narrowness by offering no argument that the law directly burdens their Second Amendment rights, and virtually no evidence that it substantially burdens them.

CONCLUSION

For all of the foregoing reasons, the court should affirm the judgment below.

Respectfully submitted,

Dated: August 18, 2010

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ATTACHMENT A – DESCRIPTIONS OF *AMICI CURIAE*

LEGAL COMMUNITY AGAINST VIOLENCE

Legal Community Against Violence ("LCAV") is a national law center dedicated to preventing gun violence. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV tracks and analyzes federal, state, and local firearms legislation, as well as legal challenges to firearms laws. As an amicus, LCAV previously filed an *amicus* brief (with others) in this case, and has provided informed analysis in a variety of firearm-related cases, including those brought on the basis of the Second Amendment. *See, e.g.*, *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008); *White v. United States*, No. 08 –16010-DD (11th Cir. filed Apr. 1, 2009).

CALIFORNIA PEACE OFFICERS' ASSOCIATION, CALIFORNIA POLICE CHIEFS' ASSOCIATION, AND CALIFORNIA STATE SHERIFFS' ASSOCIATION

California State Sheriffs' Association ("CSSA") represents each of the fifty-eight (58) elected California Sheriffs. California Police Chiefs' Association ("CPCA") represents virtually all of California's Municipal Chiefs of Police.

California Peace Officers' Association ("CPOA") represents more than four thousand peace officers, of all rank, throughout the State. The three associations

are interested in this case because the issue presented will have a profound impact on the members of each of the three Associations, as well as every employee under the command of the state's sheriffs and police chiefs. This includes the overwhelming majority of peace officers in the State of California.

The three Associations have identified this matter as one of statewide significance in which their expertise can be of assistance to the Court. This proposed brief offers a perspective of the three Associations as to the issues on appeal, namely the overarching impact of the Court's decision on law enforcement agencies generally and the officers who are potentially subjected to the unlimited and unfettered possession of handguns by individuals in government buildings and/or on government-owned properties. The need for government agencies to reasonably regulate the possession of such weapons in and on public property is of paramount importance for public safety.

CITY OF OAKLAND, CALIFORNIA, AND THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA

The City of Oakland, California and the City and County of San Francisco, California, have suffered extensive loss of life, threats to the safety and security of law enforcement personnel, and massive health care costs associated with gun violence. Each has developed regulatory programs to address the particular risks and threats posed by gun violence in its community. The cities thus have a critical

interest in ensuring that localities retain the flexibility to counter the risks of guns and to protect public safety through reasonable firearm regulations.

VIOLENCE POLICY CENTER

Violence Policy Center ("VPC") is a national nonprofit educational organization that conducts research and public education on firearms violence and provides information and analysis to policymakers, journalists, organizations, researchers, advocates, and the general public. VPC examines the role of firearms in the United States, analyzes trends and patterns in firearms violence and works to develop policies to reduce gun-related deaths and injuries. VPC has conducted numerous fact-based studies on a full range of gun violence issues. These studies have influenced congressional policy-making and shaped congressional debates over gun control as well as state regulation of firearms. VPC actively participates in the debate over the meaning of the Second Amendment by monitoring and joining in Second Amendment litigation throughout the country.

YOUTH ALIVE!

Youth ALIVE! is a non-profit public health agency founded in 1991 and dedicated to preventing youth violence and generating youth leadership in California communities experiencing high rates of violence. Youth ALIVE! advocates for strategies to reduce violence, and runs two programs in Oakland and Los Angeles: (i) CAUGHT IN THE CROSSFIRE, an intervention program that

works with youth who are hospitalized due to violent injuries, in order to reduce retaliation, re-injury, and arrest; and (ii) TEENS ON TARGET, a peer leadership and violence prevention program that trains young people from neighborhoods with high rates of violence to provide peer education to middle school students and to become advocates for violence prevention.

Gun violence is a leading killer of young people in this country, but is preventable. The young people of Youth ALIVE! are "urban messengers," bringing solutions to their peers, the media, policymakers, and the community.

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

I hereby certify that the forgoing brief complies with Circuit Rule 32-3(3) and with the page limitation in the Court's July 19, 2010 Order calling for supplemental briefs not longer than 15 pages. The brief uses a proportionally spaced font and contains 3146 words (excluding parts of the brief identified in Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure); when the word count is divided by 280 pursuant to Circuit Rule 32-3(3), the brief does not exceed 15 pages (3146 ÷ 280 = 11.23).

I further certify that this brief complies with the type-face requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure, and the type-style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure, because this brief has been prepared in a proportionally spaced 14-point Times New Roman font using Microsoft Word 2003.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 18, 2010.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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