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September 29, 2014

Molly Dwyer, Clerk of Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103  
**VIA E-FILING**

Re: **Fyock v. City of Sunnyvale, Case No. 14-15408**  
**Response to Appellees' September 22, 2014 Rule 28(j) Letter**

Dear Ms. Dwyer:

Appellees bring the Court's attention to *Friedman v. City of Highland Park*, No. 1:13-cv-9073 (N.D. Ill. 2014), yet another non-binding district court case that is largely distinguishable. *Friedman*'s laser-like focus on Highland Park's "assault weapons" ban and its inaccurate, incomplete application of binding precedent diminish any remaining persuasive value.

*Friedman* is essentially an "assault weapons" case. While it purports to consider a capacity-based magazine ban, the court makes only one (conclusory) statement about the banned magazines themselves. *See* Op. 19. Beyond that, it focused solely on "assault weapons"—whether they are prevalent in society, necessary for self-defense, and may be banned by the city. Op. 1-20. Highland Park's magazine ban simply rode the coattails of the "assault weapons" law. References to the banned magazines were an afterthought.

*Friedman* also inaccurately applies the Seventh Circuit's "not quite strict scrutiny" standard for Second Amendment challenges. Op. 18-20. The court did not rely, as it must, on empirical evidence establishing the law would satisfy the City's interests. *Ezell v. City of Chicago*, 651 F.3d 684, 709 (7th Cir. 2011). Instead, it found that the "otherwise lawful

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ownership of Assault Weapons and LCMs increase[d] the risk to the public to a degree that prohibiting them is justified” because of their “military heritage.” Op. 18-19.

Critically, *Friedman*’s “military heritage” test for determining which arms civilians may own is created of whole cloth. Many of the most popular and historic types of civilian firearms found in American households today have military origins. E.R. V 624. This is no doubt why the Supreme Court made clear the right to possess and use arms turns on whether those arms are “typically possessed by law-abiding citizens for lawful purposes”— not whether those arms were initially developed for military use. *District of Columbia v. Heller*, 554 U.S. 624-25.

Finally, *Friedman* focuses only on the offensive purpose of the prohibited items. Nowhere does it acknowledge that magazines over 10 rounds have important lifesaving *defensive* purposes for in-home use. Ignoring this, the court’s analysis is incomplete, resulting in its failure to apply the appropriate level of scrutiny.

Respectfully Submitted,

s/ C.D. Michel

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Attorney for Plaintiffs-Appellants