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November 24, 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' Notice of Additional Authorities

Dear Ms. Dwyer:

At oral argument on November 17, 2014, Appellees notified the Court of *Colorado Outfitters Ass'n v. Hickenlooper*, 2014 WL 3058518 (D. Colo. June 26, 2014), a district court opinion that rejected a Second Amendment challenge to a restriction on possession of magazines with a capacity of more than 15 rounds.

The statute at issue in *Hickenlooper* is distinguishable from the ordinance in this case in two respects. First, whereas the Colorado statute permits magazines with a capacity of 15 rounds, Sunnyvale has set the limit at 10 rounds—the lowest limit that any of the few states and municipalities that have adopted magazine restrictions has set. Second, the Colorado provision allows those who obtained magazines with a capacity of more than 15 rounds before July 1, 2013—as they were permitted under both federal and state law to do—to maintain possession of those magazines. The Sunnyvale ordinance, by contrast, confiscates magazines with a capacity of more than 10 rounds even from those who legally obtained them before the ordinance took effect. Accordingly, the Colorado statute only underscores the extreme nature of the Sunnyvale ordinance.

That said, the district court in *Hickenlooper* committed the same errors as the district court in this case in upholding the Colorado statute. The court first failed to recognize that *Heller* compels the result that something that falls within the scope of the Second Amendment may not be prohibited. And, even assuming that were not the case, the court failed to analyze whether the law was "closely drawn to avoid unnecessary abridgement" of Second Amendment rights. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1456-57 (2014). Had the court done so, it would have concluded that prohibiting *all* residents

from possessing magazines that are "typically possessed by law-abiding individuals for lawful purposes," *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008), is a dramatically overbroad means of attempting "to reduce the number and magnitude of injuries caused by . . . mass shootings." *Hickenlooper*, 2014 WL 3058518, at *16. Because Sunnyvale's prohibition is even more extreme than Colorado's, the same conclusion should follow here.

Respectfully Submitted,
Michel & Associates, P.C.

s/ C.D. Michel_____
C.D. Michel
Attorney for Plaintiffs-Appellants