

C. D. Michel - S.B.N. 144258
 Clinton B. Monfort - S.B.N. 255609
 Sean A. Brady - S.B.N. 262007
 Anna M. Barvir - S.B.N. 268728
 MICHEL & ASSOCIATES, P.C.
 180 E. Ocean Boulevard, Suite 200
 Long Beach, CA 90802
 Telephone: 562-216-4444
 Facsimile: 562-216-4445
 Email: cmichel@michellawyers.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

LEONARD FYOCK, SCOTT
 HOCHSTETLER, WILLIAM DOUGLAS,
 DAVID PEARSON, BRAD SEIFERS, and
 ROD SWANSON,

Plaintiffs,

vs.

THE CITY OF SUNNYVALE, THE
 MAYOR OF SUNNYVALE, ANTHONY
 SPITALERI, in his official capacity, THE
 CHIEF OF THE SUNNYVALE
 DEPARTMENT OF PUBLIC SAFETY,
 FRANK GRGURINA, in his official
 capacity, and DOES 1-10,

Defendants.

CASE NO: CV 13-05807 RMW

**PLAINTIFFS' OPPOSITION TO
 DEFENDANTS' MOTION TO
 ENLARGE TIME FOR HEARING
 AND BRIEFING PLAINTIFFS' MOTION
 FOR PRELIMINARY INJUNCTION
 AND FOR EXPEDITED DISCOVERY;**

**DECLARATION OF CLINTON B.
 MONFORT IN SUPPORT;**

**DECLARATION OF ANNA M. BARVIR
 IN SUPPORT**

INTRODUCTION

Defendants’ request to enlarge time and to take expedited discovery mis-characterizes the parties’ communications and inaccurately misrepresents Plaintiffs’ good faith efforts to accommodate an extended briefing schedule to the extent possible under the severe time constraints caused by *Defendants’* actions. Defendants have not demonstrated that substantial prejudice would result absent further modification to the already enlarged briefing schedule, and they fail to establish, as they must, any justifiable need for advanced discovery.

PROCEDURAL AND FACTUAL BACKGROUND

As an initial matter, Defendants improperly refer to Plaintiffs and their counsel as the NRA. Plaintiffs are six individual residents of the City of Sunnyvale – the NRA is not a party to this action. Plaintiffs could similarly refer to Defendants as Michael Bloomberg’s coalition of Mayors Against Illegal Guns (MAIG), or as the Law Center to Prevent Gun Violence (LCPGV), the two civilian disarmament advocacy groups assisting the City that have worked to ban law-abiding citizens from possessing handguns and to secure rulings eliminating individuals’ Second Amendment right to keep and bear arms. (Monfort Decl. ¶¶ 17-22; Exh. “C-E.”) Counsel for Sunnyvale has a preexisting relationship with LCPGV and in fact has directly represented them in the past. (Monfort Decl. ¶ 20.) The City’s inflammatory characterizations of Plaintiffs are irrelevant to this case, and are insulting to this Court. Plaintiffs will simply refer to Defendants as “the City.”

In November of 2013, Sunnyvale voters passed Measure C, which in part, bans the possession of firearm magazines capable of holding more than ten rounds (“the Ordinance”). The election results were scheduled to be certified by the City in January of 2014. (Monfort Decl. ¶ 3; Exh. “A.”) But on November 26, the City expedited the certification of the vote. This caused the ordinance to take effect nearly two months ahead of schedule on December 6, 2013, and gives Sunnyvale gun owners who own magazines capable of holding over ten rounds just ninety days, until March 6, 2014, to dispossess themselves of their previously lawfully possessed and constitutionally protected property.

On December 16, 2013, just ten days after the Ordinance took effect and nineteen days after the early certification vote, Plaintiffs filed their lawsuit. Within three days of filing the complaint, and shortly after learning which firm would be representing the City in this case, Plaintiffs contacted

1 defense counsel and informed them of the coming motion for preliminary injunction. (Monfort Decl.
 2 ¶ 4.) Plaintiffs contacted the Court to secure the first available hearing date of February 7, 2014,
 3 which is just twenty-seven days before the Ordinance takes effect. (Monfort Decl. ¶ 5.) Rather than
 4 waiting to file their motion and thereby shortening the briefing schedule, Plaintiffs told the City they
 5 would be filing their motion on December 23 and then offered to stipulate to an extended briefing
 6 schedule that would give the City twenty days to respond. (Monfort Decl. ¶ 6.) The City agreed and
 7 a stipulation was filed and signed by the Court.

8 After the motion was filed, the City requested more time and sought to take immediate
 9 discovery. (Monfort Decl. ¶ 7, 16; Exh. "B.") Although Plaintiffs' counsel would ordinarily agree
 10 to a further extension, the shortened time frame caused by the accelerated November certification of
 11 Measure C makes such an accommodation impossible in this case. Plaintiffs so informed the City.
 12 (Monfort Decl. ¶ 8; Exh. "B.") Nonetheless, in an effort to accommodate the City's requests without
 13 prejudicing Plaintiffs' constitutional rights, counsel offered to further extend briefing and to stipulate
 14 to some expedited discovery if the City would postpone enforcement for sixty days. (Monfort Decl.
 15 ¶ 9; Exh. "B.") Defense counsel did not inform Plaintiffs if this proposal was relayed to the City, but
 16 suggested there may be little interest in a temporary stay. (Monfort Decl. ¶ 10; Exh. "B.") Plaintiffs
 17 then informed the City to consider the meet and confer process concluded so they could get to work
 18 on their briefs. Plaintiffs' counsel repeatedly asked the City to inform Plaintiffs if and when the City
 19 expected to file a motion to extend the briefing schedule due to the short response time allowed.
 20 (Monfort Decl. ¶ 11; Exh. "B.") The City did not respond to Plaintiffs' requests and filed its motion
 21 after the close of business on Friday, January 3. (Monfort Decl. ¶ 11; Exh. "B.")¹

22 **I. THE COURT SHOULD DENY THE REQUEST TO FURTHER ENLARGE TIME**

23 Plaintiffs have reasonably and in good faith attempted to accommodate an extended briefing

24
 25 ¹ This marks the second time the City filed a motion with a four-day response
 26 time without discussing a filing timeline with Plaintiffs' counsel. On December 23, the
 27 City filed a motion to relate this case with *San Francisco Veteran Police Officers*
 28 *Association v. City and County of San Francisco*, Case No. 13-CV-05351 ("SVFPOA").
 That motion was improperly filed in this case and was later properly filed in San
 Francisco. Because the cases do not involve the same transaction or event, the *SVFPOA*
 court denied the motion before Plaintiffs filed an opposition in that case.

1 schedule under the limited time constraints resulting from the City's own actions. In light of this, and
 2 because the City has failed to identify any substantial prejudice, the Court should decline to further
 3 enlarge time.

4 The deadlines that the parties find themselves operating under are a direct result of *the City's*
 5 action in expediting certification of the Ordinance. Plaintiffs promptly prepared and filed their suit,
 6 secured a hearing date, and timely informed the City they would seek a preliminary injunction.
 7 Rather than minimally complying with the court's procedural timelines, Plaintiffs offered to file their
 8 motion early and to stipulate to a briefing schedule that gives the City twenty days to respond.

9 To accommodate the City, counsel offered to further extend the briefing schedule and to
 10 stipulate to expedited discovery if the City would briefly postpone enforcement. A temporary
 11 postponement would provide time for a further extension and some discovery, while also giving
 12 Plaintiffs time to take discovery on the City's evidence. Significantly, postponing enforcement would
 13 also give the Court more time to consider Plaintiffs' motion. But the City declined.

14 When it appeared the parties would not reach a compromise, Plaintiffs asked the City if and
 15 when it intended to file an administrative motion.² The City did not respond, and instead filed its
 16 motion on Friday night. The City's motion seeks a total of thirty-nine days to respond to the motion
 17 for preliminary injunction. This would push the hearing date back to just one week before residents'
 18 deadline to dispose of their constitutionally protected property. It would limit Plaintiffs to fifteen days
 19 to conduct discovery on the City's evidence (including depositions) and prepare a reply. And it would
 20 leave no time for an expedited appeal.

21 The City's motion should be denied because it fails to identify "the substantial harm or
 22 prejudice that would occur" if the Court does not enlarge time. Civil L.R 6-3. The City argues that
 23 additional time is needed to "prepare an opposition and gather evidence" and to "conduct discovery."
 24 (Defs.' Mot. 4.) But the City offers no argument why the current extended briefing schedule would
 25 result in substantial prejudice. Notably, in *SVFPOA*, after San Francisco learned of an anticipated
 26 motion for preliminary injunction, San Francisco proposed a briefing schedule that would afford a

27
 28 ² Plaintiffs considered joining an organizational plaintiff to alleviate the City's
 concerns about a potential stay, but Plaintiffs no longer intend to. (Monfort Decl. ¶ 12.)

twenty-one day response time. (Monfort Decl. ¶ 2.) To accommodate expanded briefing, San Francisco reasonably agreed to stay enforcement for thirty days. Sunnyvale now seeks nearly twice as long to respond, without any compromise regarding the forced dispossession date.

The City offers no real reason why it cannot postpone enforcement of the Ordinance, and defense counsel offers no reasons why they cannot complete their opposition in twenty days – a task that should not be that daunting given that defense counsels’ law firm has hundreds of lawyers at their disposal, as well as the attorneys working at or with MAIG and LCPGV who have been assisting Sunnyvale and San Francisco all along and who are familiar with similar cases raising similar issues in other circuits. (Monfort Decl. ¶¶ 17-22.)

II. THE COURT SHOULD DENY THE REQUEST FOR EXPEDITED DISCOVERY

A preliminary injunction preserves the status quo while litigation proceeds on the merits. *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (1963). Although there is usually a hold on discovery, Plaintiffs acknowledge that immediate discovery is *sometimes* appropriate. Here, however, it isn’t, and the City has failed to identify a justifiable need for expedited discovery.

The City cites *Stanley v. University of Souther California*, 13 F.3d 1313, 1326 (9th Cir. 1994), to suggest that parties may seek expedited discovery. But it fails to acknowledge that expedited discovery is proper if there is an urgent need for the information. *Stanley* provides:

[The plaintiff] could have moved, ex parte, for an order shortening time within which to conduct depositions. See Fed.R.Civ.P. 30(a); see also W. Swarzer, A.W. Tashima, J. Wagstaffe, Federal Civil Procedure Before Trial § 11:157 (1993) (Federal Rules of Civil Procedure require a court order if plaintiff desires to take a deposition during the first 30 days after service of the summons and complaint, and “*good cause [for such an order] may exist because of the **urgent need** for discovery in connection with an application for TRO or preliminary injunction*”) (internal quotations omitted).

Id.

The City offers no argument why it has an urgent need to take discovery before responding to Plaintiffs’ motion. Nor does it offer any argument that any need outweighs the prejudice to Plaintiffs and their constitutionally protected rights. *Semitoool, Inc. v. Tokyo Electronic America, Inc.*, 208 F.R.D. 273, 276 (2002). Although this alone should result in a denial of the City’s request, a review of the information sought by Plaintiffs further makes this point.

The City seeks immediate discovery to learn whether Plaintiffs have other arms (that aren’t

1 prohibited by the Ordinance) available to them to determine whether Plaintiffs will be irreparably
 2 harmed. (Defs.' Mot. 4.) But the City fundamentally misunderstands the irreparable harm that will
 3 occur if an injunction is not issued. Plaintiffs do not assert that the Ordinance deprives them of the
 4 ability to keep a firearm for self-defense. Rather, they have alleged that the Ordinance prevents them
 5 from possessing and using commonly owned firearms with magazines capable of holding more than
 6 ten rounds – and requires them to remove these protected magazines from their homes. (Mot. Prelim.
 7 Inj. 23.) As discussed in Plaintiffs' motion, once a plaintiff shows a likelihood of success on a
 8 constitutional claim, *irreparable harm is presumed*. 11A Charles Alan Wright et al., *Federal Practice*
 9 *and Procedure* § 2948.1 (2d ed. 1995). If Plaintiffs have a fundamental right to possess the prohibited
 10 magazines, denial of that right *is* the irreparable harm. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702,
 11 715 (9th Cir. 1997).

12 Because Plaintiffs do *not* suggest they will be irreparably harmed merely because the
 13 Ordinance would prevent them from using a firearm for self-defense, the discovery the City seeks is
 14 irrelevant to Plaintiffs' motion, and in no circumstance can the City's need for such information be
 15 described as "urgent." The Court should deny the request for expedited discovery.³

16 If the Court finds any reason to proceed with expedited discovery, it should limit the City to
 17 the discovery requested in its motion and appropriately divide time between the parties to allow
 18 Plaintiffs to take reciprocal discovery on the City's evidence before filing their reply.

19 CONCLUSION

20 For these reasons, the Court should deny the City's administrative motion.

21 Date: January 7, 2014

22 MICHEL & ASSOCIATES, P.C.

23 /s/ C. D. Michel

24 C. D. Michel

Attorney for Plaintiffs

25 ³ The City's claims that counsel submitted public records requests to take
 26 discovery or to find plaintiffs are patently false. Plaintiffs' counsel often submits records
 27 requests in connection with legislative and regulatory matters for various clients.
 28 Plaintiffs' motion did not rely on any such public records, nor were records sought for
 such purposes. (Barvir Decl. ¶¶ 2-8; Monfort Decl. ¶¶ 13-15.) In any event, that the
 government is subject to the Public Records Act does not entitle it to expedited discovery.

DECLARATION OF CLINTON B. MONFORT

I, Clinton B. Monfort, declare as follows:

1. I am an attorney licensed to practice law before the Northern District of California. I am an associate attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action and in *San Francisco Veteran Police Officers Association v. City and County of San Francisco* (“*SFVPOA*”), Case No. 13-CV-05351.

2. On December 13, 2013, after negotiations with plaintiffs’ counsel in *SFVPOA*, defendants’ counsel in *SFVPOA* filed a joint stipulation of the parties indicating that defendants would delay enforcement of San Francisco Police Code section 619, the magazine ban challenged in *SFVPOA*, by thirty (30) days to accommodate an extended briefing and hearing schedule on plaintiffs’ motion for preliminary injunction.

3. The election results for Measure C were scheduled to be certified by the City of Sunnyvale on January 7, 2014. A true and accurate copy of an e-mail exchange between the office of plaintiffs’ counsel and Lisa Natusch with the City of Sunnyvale documenting this timeline is attached hereto as Exhibit “A.”

4. Within three days of filing the complaint, and shortly after learning which firm would be representing the City in this case, Plaintiffs contacted defense counsel and informed them of the coming motion for preliminary injunction.

5. Plaintiffs contacted the Court to secure the first available hearing date of February 7, 2014, which is just twenty-seven days before the new law takes effect.

6. Rather than waiting to file their motion and thereby shortening the briefing schedule, Plaintiffs told the City they would be filing their motion on December 23 and then offered to stipulate to an extended briefing schedule that would give the City twenty days to respond. The parties agreed and entered into a stipulated briefing schedule that was signed by the Court.

7. After the motion for preliminary injunction was filed, the City requested more time to prepare its opposition and contacted plaintiffs about taking various forms of discovery, including depositions of plaintiffs and an expert.

8. Although Plaintiffs’ counsel would ordinarily have agreed to a further extension, the

1 shortened time frame caused by the accelerated November certification of Measure C makes such
2 an accommodation impossible in this case. Plaintiffs so informed the City.

3 9. To accommodate the City's requests without prejudicing Plaintiffs' constitutional
4 rights, I offered on behalf of Plaintiffs to further extend briefing and to stipulate to some
5 expedited discovery if the City would temporarily postpone enforcement for sixty days.

6 10. Defense counsel did not inform Plaintiffs if this proposal was relayed to the City, but
7 suggested there may be little interest in a temporary stay.

8 11. Plaintiffs then informed the City to consider the meet and confer process concluded
9 so they could get to work on their briefs. Plaintiffs' counsel repeatedly asked the City to inform
10 Plaintiffs if and when the City expected to file a motion to extend the briefing schedule due to the
11 short response time allowed. The City did not respond to Plaintiffs' requests for this information.

12 12. Plaintiffs briefly considered joining an organizational plaintiff to alleviate the City's
13 concerns about a potential stay, but Plaintiffs no longer intend to amend to do so.

14 13. In addition to my role as a litigator, I currently serve as Michel & Associates, P.C.'s
15 state and local legislative analyst. In that role, I regularly must weigh in on firearms laws pending
16 before various state and local governments. I also advise various clients, members of the public,
17 and active and retired law enforcement officials to guide their compliance with local and state
18 laws. To that end, I regularly submit or direct law clerks to submit requests for public records
19 (PRAR) go state and local government bodies and agencies.

20 14. In the normal course of my duties as Michel & Associates, P.C.'s legislative analyst, I
21 submitted or directed law clerks to submit PRARs to various Sunnyvale offices, including the
22 Mayor and Department of Public Safety.

23 15. For instance, on or about December 15, 2013, I directed my law clerk, Margaret Leidy,
24 to submit a PRAR to the City of Sunnyvale requesting various writings concerning the application
25 of Sunnyvale Municipal Code section 9.44.050 to law enforcement officers, who had inquired
26 with our office whether they must surrender their magazines under the law. Contrary to defense
27 counsel's unsupported allegations, these requests were not submitted to get a jump start on
28 discovery. This request was made so that I might be able to answer questions I was fielding from

1 law enforcement and the public in my role as compliance counselor for various clients. None of
2 the documents received were relied on in Plaintiffs' Motion for Preliminary Injunction.

3 16. A true and accurate copy of an e-mail exchange between the parties documenting the
4 parties' positions and meet and confer communications regarding plaintiffs' motion for
5 preliminary injunction and defendants' requests for a further enlargement of the briefing schedule
6 and expedited discovery is attached hereto as Exhibit "B."

7 17. Attached hereto as Exhibit "C" is a true and accurate copy of printout of a December
8 19, 2013 release found on the website of the Law Center to Prevent Gun Violence that describes
9 the affiliation between both defense counsel and the City of Sunnyvale in this case with the Law
10 Center to Prevent Gun Violence.

11 18. Attached hereto as Exhibit "D" is a true and accurate copy of a November 6, 2013
12 NBC Bay Area article that describes Mayor Anthony Spitaleri's ties to Micheal Bloomberg's
13 Mayors Against Illegal Guns coalition.

14 19. Attached hereto as Exhibit "E" is a true and accurate copy of a December 10, 2013
15 press release from the City of Sunnyvale described defense counsel's recognition by the Law
16 Center to Prevent Gun Violence and defense counsel's representation of the City in legal
17 challenges to Measure C.

18 20. In 2008, counsel for the City, Mr. Roderick Thompson, represented the Legal
19 Community Against Violence (now known as the Law Center to Prevent Gun Violence) as
20 amicus in *Fiscal v. City and County of San Francisco*, Cal. Ct. App. No. A115018, which
21 overturned the city's voter-enacted handgun ban as preempted by state law. LCAV's amicus brief
22 in support of the City and County of San Francisco can be viewed at the organization's website:
23 <http://smartgunlaws.org/fiscal-v-city-and-county-of-san-francisco-amicus-brief-3/> (last accessed
24 Jan. 7, 2014). LCAV's amicus letter to the California Supreme Court requesting the court grant
25 San Francisco's petition for review can be viewed at the organization's website:
26 <http://smartgunlaws.org/fiscal-v-city-and-county-of-san-francisco-amicus-brief-4/> (last accessed
27 Jan. 7, 2014).

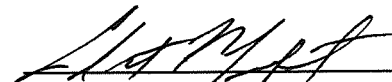
28 21. Along with "Major American Cities" and the United States Conference of Mayors,

1 the Legal Community Against Violence submitted an amicus brief in the United States Supreme
2 Court supporting the District of Columbia and Mayor Adrian M. Fenty in *District of Columbia v.*
3 *Heller*, Sup. Ct. No. 07-290. LCAV's amicus brief can be viewed at the organization's website:
4 <http://smartgunlaws.org/district-of-columbia-v-heller-amicus-brief/> (last accessed Jan. 7, 2014).

5 22. Along with various other organizations, the Legal Community Against Violence
6 submitted an amicus brief in the United States Supreme Court supporting the City of Chicago in
7 *McDonald v. City of Chicago*, Sup. Ct. No. 08-1521. LCAV's amicus brief can be viewed at the
8 organization's website: <http://smartgunlaws.org/mcdonald-v-chicago-amicus-brief/> (last accessed
9 Jan. 7, 2014).

10 23. Along with various other organizations, the Legal Community Against Violence
11 submitted an amicus brief in the United States District Court for the District of Connecticut
12 supporting defendants in *Shew v. Malloy*, USDC-Conn. No. 13-CV-739, a case challenging,
13 among other things, Connecticut's ban on magazines capable of holding more than ten rounds of
14 ammunition. LCAV's amicus brief can be viewed on the organization's website:
15 <http://smartgunlaws.org/amicus-brief-in-challenge-to-connecticuts-assault-weapons-ban/> (last
16 accessed Jan. 7, 2014).

17
18 I declare under penalty of perjury that the foregoing is true and correct. Executed within
19 the United States on January 7, 2014.

20 
21 Clinton B. Monfort

DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare as follows:

1. I am over the age of eighteen and not a party to this action. I am attorney licensed to practice law before the Northern District of California. I am an associate attorney at the law firm of Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts stated in this declaration and, if called to testify, could and would testify competently and under oath to these facts.

2. In addition to my role as a litigator, I currently serve as Michel & Associates, P.C.'s local legislative analyst. In that role, I regularly must weigh in on firearms laws pending before various California cities and counties. I also advise various clients (including retailers, organizations, and individuals) and members of the public to guide their compliance with previously enacted local laws. To that end, I regularly submit or direct law clerks to submit requests for public records (PRAR) from California cities and counties.

3. In the normal course of my duties as Michel & Associates, P.C.'s local legislative analyst, I submitted or directed law clerks to submit PRARs to various Sunnyvale offices, including the Mayor and Department of Public Safety.

4. For instance, on or about November 7, 2013, I directed my law clerk, Margaret Leidy, to submit a PRAR to Defendant Mayor Anthony Spitaleri requesting various communications with other cities' officials regarding the consideration and enactment of Measure C, which includes as only a part the ordinance challenged in this lawsuit. I requested these materials in light of statements Mr. Spitaleri made to the press regarding his communications with other cities seeking to adopt a package of gun control laws like the ones adopted through Measure C. This request was made so that I might be able to determine which cities would be considering similar laws in the future. It was not made in furtherance this litigation, and it was not made on behalf of any of the Plaintiffs.

5. On or about November 18, 2013, I submitted a PRAR to Defendant Frank Grgurina, Chief of the Department of Public Safety (DPS), requesting all communications to or from the DPS regarding any permit issued by the DPS pursuant to California Penal Code section

26150 (or former section 12050) et seq. At the request of the DPS, I narrowed that request and sought only a list of all individuals issued such permits, including retired law enforcement officers. Contrary to Mr. Schoenberg's improper characterization of my motives as "an apparent attempt to recruit plaintiffs," I made this request in conjunction with the preparation of a guide to compliance with Measure C that I was preparing at that time. I did not receive a substantive response to this PRAR until after Plaintiffs filed this lawsuit. The request was not made in furtherance this litigation, and it was not made on behalf of any of the Plaintiffs.

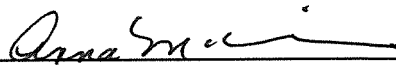
6. On or about November 26, 2013, I directed my law clerk, Rudy Klapper, to submit a PRAR to the DPS requesting a copy of any forms to be used in compliance with Sunnyvale Municipal Code § 9.44.060, Measure C's ammunition registration requirements. I requested these materials in response to concerns from members of the public regarding compliance with 9.44.060 in the absence of a DPS-approved form to be used for ammunition registration. This request was made so that I could respond to the various questions I was receiving regarding this issue. It was not made in furtherance this litigation, and it was not made on behalf of any of the Plaintiffs.

7. On or about November 26, 2013, I directed my law clerk, Rudy Klapper, to submit a PRAR to the DPS regarding its consideration and analysis of Measure C and any policies regarding enforcement of the various parts of Measure C. This request was made so that I could provide advice to clients and members of the public through the Measure C compliance guide that I was preparing at that time. I was specifically seeking guidance on various issues regarding Sunnyvale Municipal Code section 9.44.060, including proper storage methods for ammunition registration records. This request was not made in furtherance of this litigation, and it was not made on behalf of any of the Plaintiffs.

8. On or about January 2, 2014, I directed my law clerk, Rudy Klapper, to submit a PRAR to Defendant Mayor Anthony Spitaleri requesting various communications with other cities' officials regarding the consideration and enactment of Measure C, which includes as only a part the ordinance challenged in this lawsuit. I requested these materials in light of renewed statements Mr. Spitaleri made to the press regarding his communications with other cities seeking

1 to adopt a package of gun control laws like the ones adopted through Measure C. This request was
2 made so that I might be able to determine which cities would be considering similar laws in the
3 future. It was not made in furtherance this litigation, and it was not made on behalf of any of the
4 Plaintiffs.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed within
6 the United States on January 7, 2013.

7
8 
9 Anna M. Barvir

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LEONARD FYOCK, SCOTT) CASE NO: CV13-05807 RMW
HOCHSTETLER, WILLIAM DOUGLAS,)
DAVID PEARSON, BRAD SEIFERS, and)
ROD SWANSON,) CERTIFICATE OF SERVICE

Plaintiffs

vs.

THE CITY OF SUNNYVALE, THE)
MAYOR OF SUNNYVALE, ANTHONY)
SPITALERI, in his official capacity, THE)
CHIEF OF THE SUNNYVALE)
DEPARTMENT OF PUBLIC SAFETY,)
FRANK GRGURINA, in his official)
capacity, and DOES 1-10,)

Defendants.

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO
ENLARGE TIME FOR HEARING
AND BRIEFING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
AND FOR EXPEDITED DISCOVERY;**

DECLARATION OF CLINTON B. MONFORT IN SUPPORT;

DECLARATION OF ANNA M. BARVIR IN SUPPORT

1 on the following party by electronically filing the foregoing with the Clerk of the District Court
2 using its ECF System, which electronically notifies them.

3 Roderick M. Thompson
rthompson@fbm.com
4 Anthony P. Schoenberg
aschoenberg@fbm.com
5 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
6 San Francisco, CA 94104

7 I declare under penalty of perjury that the foregoing is true and correct. Executed on
8 January 7, 2014.

9 /s/ C. D. Michel
C. D. Michel
10 Attorney for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”

Clint B. Monfort

From: Lisa Natusch <lnatusch@sunnyvale.ca.gov>
Sent: Wednesday, November 13, 2013 11:23 AM
To: Rudy G. Klapper
Cc: Franco Simmons, Kathleen
Subject: Re: Sunnyvale Ballot Measures

Mr. Klapper,

I apologize for my delayed response. The Certification of Election Results for the measures on the November 5 ballot will go to Council on November 26, 2013. The measures will take effect 10 days after the vote is declared by Council.

If I can be of additional assistance, please let me know.

Thank you,

Lisa Natusch
Deputy City Clerk
City of Sunnyvale
408-730-7595
408-730-7619 Fax
lnatusch@sunnyvale.ca.gov

On Thu, Nov 7, 2013 at 8:58 AM, Rudy G. Klapper <RKlapper@michellawyers.com> wrote:

Hi Ms. Natusch,

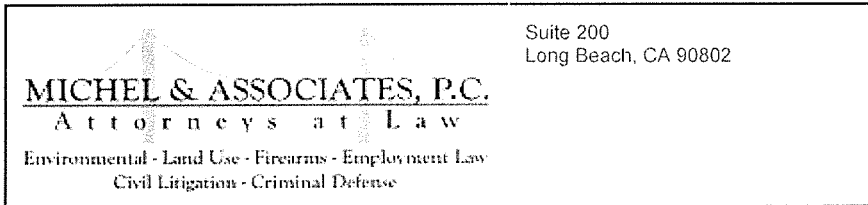
Following up on the e-mail below, I was just writing to confirm the effective date of the Sunnyvale ordinances. I was under the impression that Measures B and C would go into effect around January 17, 2014 (ten days after the certification of the election results tentatively scheduled for January 7). However, I've seen media reports that said these measures (specifically C) would go into effect as of January 1. Can you let me know the tentative effective date? Thanks!

<http://www.nbcbayarea.com/news/local/Sunnyvale-Passes-Strict-Gun-Control-Measure-C-NRA-Vows-to-Challenge-230776461.html>

Rudy G. Klapper
Law Clerk

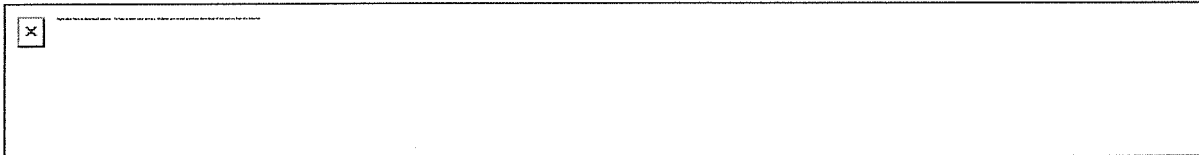
Direct: (562) 216-4465
Main: (562) 216-4444
Fax: (562) 216-4445
Email: RKlapper@michellawyers.com
Web: www.michellawyers.com

180 E. Ocean Blvd.



This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: City Clerk [mailto:cityclerk@ci.sunnyvale.ca.us]
Sent: Thursday, October 10, 2013 12:11 PM
To: Rudy G. Klapper
Subject: Re: Sunnyvale Ballot Measures



Mr. Klapper,

If the measures on the November 5, 2013 ballot pass, the measures take effect as follows:

Measure A (Charter amendment): Once accepted and filed by the Secretary of State pursuant to Government Code Section 34460.

Measures B and C: 10 days after the vote is declared by the legislative body pursuant to California Elections Code 9217. The certification of the election results is tentatively scheduled for January 7, 2014.

If I can be of additional assistance, please let me know.

Sincerely,

Lisa Natusch
Deputy City Clerk
City of Sunnyvale
408-730-7595
lnatusch@sunnyvale.ca.gov

----- Your Original Message -----

Request #: 28848

From: Rudy Klapper

Date: 10-08-13 11:02 am

Subject: Sunnyvale Ballot Measures

Message: Assuming any of the Sunnyvale ballot measures currently up for a vote in the November 5, 2013 elections successfully pass, at what date do the measures and the ordinances within them officially become law?

EXHIBIT “B”

Clint B. Monfort

From: Clint B. Monfort
Sent: Monday, January 06, 2014 6:07 PM
To: 'RThompson@fbm.com'; TSchoenberg@fbm.com
Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel
Subject: RE: Fyock v. Sunnyvale

Okay, thank you for the response.

I hope that in the future you will extend us the courtesy of responding to requests as to when you expect to file administrative motions.

Clint

Clint B. Monfort Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com
MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: RThompson@fbm.com [mailto:RThompson@fbm.com]
Sent: Monday, January 06, 2014 6:01 PM
To: Clint B. Monfort; TSchoenberg@fbm.com
Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel
Subject: RE: Fyock v. Sunnyvale

Clint, the City of Sunnyvale has no interest in staying enforcement.

Since you had stated several times that the meet and confer was concluded, and Plaintiffs would not agree to move the unilaterally-selected February 7 hearing date, we had no choice but to file the motion as provided by the Local Rules.

Rod

From: Clint B. Monfort [mailto:CMonfort@michellawyers.com]
Sent: Monday, January 06, 2014 4:03 PM
To: Thompson, Rod (27) x4445; Schoenberg, Tony (22) x4963
Cc: Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937; Anna M. Barvir; Sean Brady; C.D. Michel
Subject: RE: Fyock v. Sunnyvale

Gentlemen,

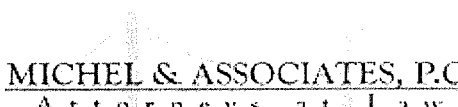
We have received your motion to enlarge time to respond to plaintiffs' pending MPI and for expedited discovery, filed after the close of business on Friday, January 3. In the future, I would appreciate a response to my (multiple) inquiries about the timing of such filings, particularly those with short, four-day turnarounds. This marks the second time in two weeks that you have filed such a motion without any notification of when the filing would be coming in. I hope that you will consider providing such minimal professional courtesies in the future, and we will certainly do the same.

I also write to follow up on our preliminary discussion concerning the potential filing of an amended complaint to add an organizational plaintiff. Our office was considering adding an organizational plaintiff to alleviate any concerns the City might have about staying enforcement of the ordinance to accommodate the City's requests for a further extended briefing schedule and expedited discovery (as a stipulated stay would be in response to litigation representing hundreds to thousands of individuals). Given that the City has no interest in temporarily postponing enforcement, and because our individual plaintiffs all have standing to challenge the standard magazine ban, we do not intend to amend the complaint to add an organizational plaintiff. Although we see no reason to amend, to the extent the existence of an organizational plaintiff might address any standing concerns the City may have, in the interest of judicial economy we will consider adding an organizational plaintiff if the City will stipulate that the amendment will not require plaintiffs' MPI to be refiled. If the City has any interest in this approach, please let me know.

You should receive our opposition to your motion sometime tomorrow.

Thank you,

Clint

<p>Clint B. Monfort Attorney</p>  <p>MICHEL & ASSOCIATES, P.C. Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com</p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
---	---

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: Clint B. Monfort

Sent: Tuesday, December 31, 2013 12:56 PM

To: 'RThompson@fbm.com'; TSchoenberg@fbm.com

Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel

Subject: RE: Fyock v. Sunnyvale

Rod,

Thank you for your response.

Preliminarily, I think we need to reiterate that the meet and confer process for your motion was satisfied as of last Friday. I don't want you to misconstrue our continuing attempt to find a way to accommodate your desire for a further extended briefing schedule as a reason to delay the preparation and filing of your motion papers (nor your opposition to our motion for that matter). Please let us know as soon as possible when you intend to file your motion and when you will ask the court to hear it.

We simply thought that extending the enforcement date might be a way to avoid the need for your motion, and to avoid the urgency for a hearing on our motion for preliminary injunction. It worked in San Francisco. But in light of the short timeline we are faced with, and the differences between the cases, we should not count on it working here.

In response to your specific question about the City's or the Court's authority to postpone enforcement of a ballot measure, as you of course know, courts generally have the authority to enjoin the enforcement of laws, whether on a preliminary or a permanent basis. Parties can stipulate to allow a court to enter an order to this effect. I'm not aware of any authority suggesting that is not the case if a law is passed as a ballot measure as opposed to via legislative enactment. You can research this further if you like, but I suspect there is no authority either way distinguishing the parties' ability or a court's authority concerning a ballot measure. Our clients are willing to stipulate, and certainly won't object, to postponing enforcement to accommodate your request to further extend the briefing schedule.

In considering what to recommend to your client, it may be helpful to recall that the voters voted in Measure C, but they did not vote on when the ordinance would go into effect. The City Council, apparently at the behest of the Mayor, who was the one pushing Measure C all along, voted to move up the certification date of the vote so that the ordinance took effect in March rather than in May. It seems the Mayor was prompted to take this action by the media reporting that Mr. Michel had said we would file suit against the law when the vote was certified. That was when the City opted to moved up the certification date.

Also, to the extent it might influence your analysis or the City's decision, please be advised that we are planning to amend our complaint to include an associational plaintiff this week. When you discuss the possibility of postponing enforcement with the City, you can let them know that it's no longer just the six current plaintiffs. A large number of Sunnyvale residents, along with gun owners in possession of prohibited magazines who travel through Sunnyvale with them, will now be represented in the suit through the association. I will send you a separate meet and confer correspondence on this in the next day or two.

Regarding the City's request that our office agree to some expedited discovery prior to a rule 26(f) conference, courts typically only grant such requests if there is an urgent need for the information sought, and we don't believe there is in this case. If enforcement is postponed, however, we are nonetheless willing to move forward with some limited discovery before the City's opposition brief is due. Of course, our office would likewise need additional time to take the deposition of the City's expert(s) after the City's opposition is filed. We can try to work out these details if the City agrees to postpone enforcement to allow the parties time to conduct this discovery under a further extended briefing schedule.

Again, the meet and confer requirement for a modification motion has been satisfied since last Friday. These subsequent e-mail exchanges are simply a continuing effort to accommodate the City's requests without sacrificing our clients' rights. So, if the City is not able to postpone enforcement to accommodate postponement of the MPI and you will be proceeding with your administrative motion, please let me know what your anticipated schedule is for that motion as soon as possible.

Thank you,

Clint

Clint B. Monfort

Attorney

Direct: (562) 216-4456
Main: (562) 216-4444
Fax: (562) 216-4445
Email: CMonfort@michellawyers.com
Web: www.michellawyers.com

MICHEL & ASSOCIATES, P.C.

A t t o r n e y s a t L a w

Environmental - Land Use - Firearm - Employment Law
Civil Litigation - Criminal Defense

180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: RThompson@fbm.com [<mailto:RThompson@fbm.com>]

Sent: Monday, December 30, 2013 8:33 PM

To: Clint B. Monfort; TSchoenberg@fbm.com

Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel

Subject: RE: Fyock v. Sunnyvale

Clint, due to the holidays, we do not have a response to your proposal.

We don't expect there to be any interest in defying the will of the voters, as you and your colleagues have suggested in court filings.

Do you have any authority supporting the request for a preliminary injunction enjoining the enforcement of a ordinance passed by the voters as to everyone affected based on a suit by a handful of individuals in a non-class action? Please let us know. Thanks.

Roderick M Thompson

Partner

rthompson@fbm.com

direct 415.954.4445

cell 415.509.1874

 **FARELLA BRAUN + MARTEL LLP**

Russ Building
235 Montgomery Street
San Francisco / CA 94104

T 415.954.4400
F 415.954.4480
www.fbml.com

From: Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

Sent: Monday, December 30, 2013 5:10 PM

To: Thompson, Rod (27) x4445; Schoenberg, Tony (22) x4963

Cc: Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937; Anna M. Barvir; Sean Brady; C.D. Michel

Subject: RE: Fyock v. Sunnyvale

Gentlemen,

I wanted to touch base to confirm you received our e-mail on Saturday. I'm still working on a response for you regarding the discovery you would like to take prior to before filing your MPI opposition.

Have you had a chance to discuss a potential stay of enforcement with the City?

I'll follow up Thursday (after the holidays) with a further response.

Clint

Clint B. Monfort Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com
MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: Clint B. Monfort

Sent: Saturday, December 28, 2013 1:02 PM

To: 'RThompson@fbm.com'; TSchoenberg@fbm.com

Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir; Sean Brady; C.D. Michel

Subject: RE: Fyock v. Sunnyvale

Rod and Tony,

Thank you for your response. I hope you all have been able to enjoy some time celebrating the holidays with your families this week as well.

I understand that your office, after a brief review of our moving papers, would like a further extension beyond the previously stipulated 20 day timeframe to respond to Plaintiffs' Motion for Preliminary Injunction. Given that the only claim in this case is already being litigated in other states, I believe that if you take a closer look at our Motion and the opposition briefs that have been filed in those cases, you will find that a substantial amount of your work has already been done for you. (See, e.g., *NYSRPA v. Cuomo*). Mayors for Illegal Guns and the Law Center to Prevent Gun Violence have been heavily involved in the passage and defense of magazine bans in those jurisdictions. The City of Sunnyvale has already been in communication with these organizations during the City's adoption of Section 9.44.050 as well. Given these resources being available to you, and that the issues in this case are in most respects similar to the issues being litigated in those cases, I believe that upon closer review of our Motion you will find that the extended 20 day briefing schedule is more than sufficient.

Given the short time frame we have to work with before the ordinance takes effect on March 6, our office prepared and filed our Motion for Preliminary Injunction as quickly as humanly possible. To clarify and reiterate, our timeframe was severely limited and we were forced to file our Motion as quickly as possible because the City opted to forego the typical process of approving a ballot measure in January, and instead verified the measure in November, thus significantly advancing the effective enforcement to March 6.

While we would normally be more than happy to accommodate your office's further extension request, the current pending enforcement date of March 6 unfortunately takes that option off the table for us. The current hearing date on Plaintiffs' Motion is February 7. The hearing date cannot be pushed back even closer to the enforcement date, as the Court will undoubtedly need time to consider and rule on the motion. In the event the court does not enjoin enforcement for any reason, we cannot stipulate away our clients' already scarce time to seek appropriate review of any district court ruling.

In the spirit of compromise, however, I would like to propose a further extended briefing schedule if your client is willing stay enforcement of the ordinance.

If the City will stay enforcement of the ordinance for 60 days, I propose the following schedule to allow the parties further time to prepare their respective briefs, and to give the court additional time to consider and rule on Plaintiffs' Motion:

Opposition Due Date: Friday January 27, 2014. (This provides the City with an additional 15 days, for a total of 34 days to prepare an opposition).

Reply Due Date: Monday February 10, 2014 (This provides Plaintiffs an additional 2 days, for a total for 14 days to prepare a Reply brief.)

Motion Hearing Date: Friday February 21, 2014

Please let me know if the City is willing to stay enforcement for 60 days so that we can adjust the briefing schedule accordingly to accommodate you.

If you intend to go through with the motion regardless, please let me know how and when you intend to move forward with that motion.

I will address your communications about anticipated discovery in this case on Monday, as some of them raise significant legal issues that I will need time to appropriately address.

I hope you enjoy your weekend and I look forward to hearing from you.

Clint

Clint B. Monfort Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com
MICHEL & ASSOCIATES, P.C. Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: RThompson@fbm.com [<mailto:RThompson@fbm.com>]

Sent: Friday, December 27, 2013 3:18 PM

To: Clint B. Monfort; TSchoenberg@fbm.com; Sean Brady; C.D. Michel

Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com; Anna M. Barvir

Subject: RE: Fyock v. Sunnyvale

Chuck, Clint and Sean:

We hope you've all had some time to enjoy the holidays. I'm interrupting mine, to try one last time to avoid a needless motion.

Late in the afternoon one week ago today, the Friday before Christmas, you first contacted Tony by email. You did not ask how much time we might need to respond or what hearing date would be convenient for us and our clients. Instead you simply notified us that the motion would be heard on January 31 and that our opposition motion would be due under the Local Rules two weeks after Monday December 23, the date you intended to file the

motion. Only because that hearing date proved to be unavailable with the Court, you scheduled the hearing for February 7, again without consulting with us. After Tony reached Chuck by phone late that day, you proposed only a four day extension for our opposition brief. Given the impending holidays we accepted subjected to review of your moving papers. As I told you immediately after reviewing the motion, it is clear a further extension is required to allow the minimum discovery we need to respond.

First, while you may have worked hard to prepare the motion for preliminary injunction to meet the self imposed deadline of December 23, filing on that day was your choice. As noted in the complaint and in your moving papers, the Sunnyvale ordinance does not become effective until March 6, almost a month after the selected hearing date. Therefore, there is no need for a hearing until shortly before March 6. As a compromise, we suggest the following extended briefing schedule for both sides (provided we obtain the minimum discovery requested below):

Opposition Due Date: Friday January 31, 2014

Reply Due Date: Monday February 10, 2014 (Could be as late as Friday February 14—your call)

Motion Hearing Date: Friday February 28, 2014

Second, we will need the deposition of Mr. Kleck. The fact that he may have been deposed in other cases (please provided copies of any such depositions), does not lessen the City of Sunnyvale's discovery rights. As I requested in my email Tuesday, sent immediately after reviewing your moving papers, please obtain Mr. Kleck's availability for deposition in San Francisco in January. We will also need the documents he considered or relied upon.

Third, we will need all documentation each plaintiff has in his possession custody or control that relates to each large capacity magazine he possesses, as well as documents showing all firearms of any kind he owns or has access to for use in any residence in Sunnyvale.

Please let us know if these terms are acceptable by 5 p.m. Monday December 30. If they are not, we will prepare a suitable administrative motion, which may request a longer extension and broader discovery. Let me or Tony know if you have any questions or wish to discuss.

Rod

P.S. I need not respond here to either your mischaracterizations of our client's motives or the legal merits of your motion. We will respond to those issues in our briefing.

Roderick M Thompson

Partner

rthompson@fbm.com

direct 415.954.4445

cell 415.509.1874

 FARELLA BRAUN + MARTEL LLP

Russ Building
235 Montgomery Street
San Francisco / CA 94104

T 415.954.4400
F 415.954.4480
www.fbm.com

From: Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

Sent: Friday, December 27, 2013 2:13 PM

To: Schoenberg, Tony (22) x4963; Sean Brady; Thompson, Rod (27) x4445; C.D. Michel

Cc: Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L.

(21) x4937; Anna M. Barvir
Subject: RE: Fyock v. Sunnyvale

Hi Tony,

I've been a little out of the loop this week but I've been watching the correspondence back and forth and I wanted to clarify a couple of points.

Since irreparable harm is presumed if plaintiffs are likely to succeed on the merits (i.e. our clients have a fundamental right to possess standard magazines in their homes), I'm not sure I see the urgency to depose our plaintiffs about how they intend to comply with the ordinance. Whether some of our plaintiffs will store their magazines outside of the City or surrender them does not alleviate the irreparable harm of not being able to possess them in their homes for self-defense. I just wanted to clarify that issue as you determine whether to ask for a postponement of our MPI to take the depositions of each of our plaintiffs on this point.

Can you please confirm if you are still planning to ask for an additional extension beyond the extended stipulated briefing schedule? If so, when do you expect you will file it? Do you intend to go in ex parte and will you be asking for a hearing?

As Sean mentioned, we will of course make a good faith effort to comply with discovery requests and make our plaintiffs and witnesses available for deposition. I just want to make sure that you haven't viewed any issue that was discussed this week as a reason to hold off on preparing your opposition to our MPI. As a side note, the City of San Francisco agreed to stipulate to stay enforcement of its ordinance for 30 days so that the City could have additional time to respond to our MPI in that case. San Francisco has 20 days to respond under that extended briefing schedule. In order to make sure Sunnyvale had the same timeframe to respond (without staying enforcement of the ordinance) my colleagues and I worked day and night through the weekends to get our motion filed.

I also want to let you know that we are planning to file a motion asking the court for an expedited ruling given the looming enforcement date that is just 27 days from the scheduled hearing date.

Thank you and I look forward to hearing from you.

-Clint

Clint B. Monfort
Attorney

Direct: (562) 216-4456
Main: (562) 216-4444
Fax: (562) 216-4445
Email: CMonfort@michellawyers.com
Web: www.michellawyers.com

MICHEL & ASSOCIATES, P.C.
Attorneys at Law

Environmental • Land Use • Firearms • Employment Law
Civil Litigation • Criminal Defense

180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: TSchoenberg@fbm.com [<mailto:TSchoenberg@fbm.com>]

Sent: Thursday, December 26, 2013 3:53 PM

To: Sean Brady; RThompson@fbm.com; Clint B. Monfort; C.D. Michel

Cc: LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com

Subject: RE: Fyock v. Sunnyvale

Sean – Thank you for the call just now. As we agreed and discussed, the parties are at an impasse on the question of extending the time deadlines related to plaintiffs' preliminary injunction motion, and the meet and confer is complete. Accordingly, we no longer need to schedule a call on Monday.

Regards,
Tony

Anthony P. Schoenberg
Attorney at Law

Farella Braun + Martel LLP
RUSS BUILDING
235 MONTGOMERY STREET
SAN FRANCISCO / CA 94104

T 415.954.4400
D 415.954.4963
F 415.954.4480
www.fbm.com

From: Sean Brady [<mailto:SBrady@michellawyers.com>]
Sent: Thursday, December 26, 2013 3:31 PM
To: Thompson, Rod (27) x4445; Clint B. Monfort; C.D. Michel; Schoenberg, Tony (22) x4963
Cc: Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937
Subject: RE: Fyock v. Sunnyvale
Importance: High

Mr. Thompson,

Mr. Monfort is out of the office today, so I write in his stead to provide a prompt response to your December 24 e-mail requesting an extension of time to file your opposition to our motion for a preliminary injunction.

As Mr. Monfort previously noted, while we would usually have no hesitation in extending you the professional courtesy of an extension, especially around this time of year, we simply can't in this case. The reason is that the ordinance being challenged was adopted via voter approval, not by the Sunnyvale City Council. So, as far as I understand, the Council is not authorized to amend the ordinance or postpone its implementation. This means that our clients (and any others in Sunnyvale in their situation) will be required to dispossess themselves of their constitutionally protected property (possibly indefinitely) per the ordinance by March 6, 2014. That is just 27 days from the currently scheduled February 7 hearing date on this motion. It is already questionable whether we will get a timely ruling from the court on our MPI with that hearing date.

It is unfortunate that the City of Sunnyvale put all of us in this position. Despite, and quite possibly because the City knew a legal challenge was inevitable, the city chose to move its certification of the election results from when it was originally scheduled for January of 2014 (i.e., after the holiday season) to November 27, 2013, apparently to expedite the ordinances' implementation. Neither our clients nor our office chose this timeline, your clients did. Frankly, we wish the City had not done so. Because the city expedited the certification of the referendum, our office was forced to dedicate multiple lawyers working extended hours including the weekends in order to complete the motion by December 23, 2013. That filing date was specifically chosen by us so that *your office* would have *more* days to respond than the local rules require. We have been forced to make an extra effort as a result of your client's decisions on the

timeline for implementing the challenged ordinance. Respectfully, your office, which certainly has more resources at its disposal than we do and whose client created this predicament, is going to have to do the same.

Given the nature of the constitutional right being protected here, an extension would materially prejudice our clients for the same reasons that the preliminary injunction has been sought: plaintiffs will be forced to surrender their right to use and possess protected arms for self-defense in their homes – a harm that is “irreparable” if even for just a minute. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997); *Ezell v. Chicago*, 651 F.3d 684, 700 (7th Cir. 2011). And it is all the more egregious because most residents will be dispossessed of their constitutionally protected property with no lawful way to replace it or be subjected to criminal prosecution. Under these circumstances, we simply cannot accommodate your request for an extension.

Of course, you are free to file a motion to postpone the hearing date and extend the briefing schedule, but, for the reasons stated, we will oppose any such motion.

Before you decide to take that approach, you might want to take a closer look at our filings. They are not nearly as extensive as your initial “skim” might suggest, and I do not believe that responding in the timeframe your office already agreed to is as daunting as you might think. The declarations you mention are actually quite concise. The “70 pages” of Mr. Kleck’s declaration are mostly references and his curriculum vitae. Only 15 of those pages are his proffered opinions and findings. Clint’s (Monfort of our office) declaration is only four pages explaining the sources of the exhibits we cite to, which merely show examples of advertisements and webpages showing firearms coming standard with over 10 round magazines for the purpose of self-defense. The “1/2 dozen other declarations” are from our plaintiffs swearing under penalty of perjury why they acquired their magazines legally and that they are affected by the ordinance, as well as two other relatively short expert declarations explaining, among other things, why magazines containing over ten rounds are good for self-defense.

Additionally, we understand you are receiving support from attorneys with the Law Center to Prevent Gun Violence. They are involved in similar cases all over the country and have seen most of these expert declarations (at least substantially similar ones), and know how others have responded to them. Also, most of the materials that we submitted are already available to you through other cases, and the lawyers with whom you are working at LCPGV are familiar with these arguments and counterarguments. LCPGV can assist you in filing counter-declarations similar to those filed in other cases that LCPGV is involved in.

In other words, there are a lot of materials already available to you, and much of your work is already done. You do not have to start from scratch.

Finally, while we are willing to accommodate any good faith discovery requests, I do not believe you are entitled to an extension to respond to a preliminary injunction in order to conduct a deposition of Mr. Kleck. Doing so would defeat the purpose of a preliminary injunction, which is to maintain the status quo while litigation on the ultimate merits (i.e., discovery and motion practice) continue. *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (1963) (“It is so well settled as not to require citation of authority that the usual function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.”). For your information, depositions of most of our experts have also been taken already in those other cases described above. LCPGV can point you to those I’m sure.

We wanted to alert you of our position as soon as possible so you would have adequate time to plan your schedules for responding. If you have any questions or concerns, please feel free to contact me at your convenience to discuss.

Regards,

Sean Brady

Direct: (562) 216-4464
Main: (562) 216-4444
Fax: (562) 216-4445

Attorney

Email: SBrady@michellawyers.com
Web: www.michellawyers.com

MICHEL & ASSOCIATES, P.C.
Attorneys at Law

Environmental - Land Use - Firearms - Employment Law
Civil Litigation - Criminal Defense

180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: <RThompson@fbm.com>

Date: December 24, 2013 at 2:11:03 PM PST

To: <CMonfort@michellawyers.com>, <CMichel@michellawyers.com>, <TSchoenberg@fbm.com>

Cc: <LJensen@fbm.com>, <CAyala@michellawyers.com>, <EEngstrom@fbm.com>, <JBaker@fbm.com>, <RWoods@fbm.com>

Subject: RE: Fyock v. Sunnyvale

Chuck and Clint, I have only had a chance to skim your moving papers received last night, but it is clear we will need additional time to respond. We will need to take at least the deposition of Gary Kleck, and perhaps others. Kleck's declaration is over 70 pages and Clint's is well over a hundred pages. There are ½ dozen other declarations, presumably each of the named plaintiffs. The motion itself is 25 pages. As you know, most everyone is out of the office this week and/or next.

Please check with Mr. Kleck on his availability for a deposition at our offices in January in San Francisco. Once we have found a convenient date for that deposition (which you may wish to coordinate with the case against the City of San Francisco, if as I suspect, he will also provide a declaration there), we can discuss appropriate adjustments to the briefing and hearing schedule.

We will study these moving papers more carefully and get back to you next week with a proposal. I wanted to alert you right away, however, that the existing schedule is not feasible given the length and complexity of the preliminary injunction motion filings. Enjoy your holidays.

Rod

From: Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]

Sent: Monday, December 23, 2013 12:32 PM

To: Thompson, Rod (27) x4445; C.D. Michel; Schoenberg, Tony (22) x4963

Cc: Jensen, Lauren (22) x3505; Claudia Ayala; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937

Subject: RE: Fyock v. Sunnyvale

Thank you, gentlemen.

You have our consent to file the stipulation with the third 'whereas' clause removed.


As Chuck alluded to previously, we are normally more than willing to accommodate schedules and we are happy to extend professional courtesies. The urgency created by the pending enforcement date and the City's expedited adoption of Measure C have unfortunately tied our hands to a large extent. Normally, we would not file on December 23, and we tried to reach out as quickly as we could after determining a filing timeline. Once we learned February 7 is the first available hearing date, rather than taking additional time with our motion and filing at a later date per local rules, we opted to go ahead and file early to help accommodate an extended briefing schedule as best as possible.

We will be filing our MPI via ECF this afternoon. If you enter an appearance by filing the stipulated briefing schedule, it is my understanding that ECF service of our MPI will suffice. If you will not be filing via-ECF for any reason today, please let me know so that we can arrange for formal service. In any event, we will always be sure to provide a courtesy copy.

We are happy to discuss any anticipated discovery, just give us a call. I will be out of the office until next week, but I will have access to e-mail and I think Chuck will be in the office Thursday and Friday.

Thank you and I hope you all enjoy your holidays.

Clint

Clint B. Monfort Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com
	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: RThompson@fbm.com [<mailto:RThompson@fbm.com>]

Sent: Sunday, December 22, 2013 9:19 PM

To: C.D. Michel; TSchoenberg@fbm.com

Cc: Clint B. Monfort; LJensen@fbm.com; Claudia Ayala; EEngstrom@fbm.com; JBaker@fbm.com; RWoods@fbm.com

Subject: RE: Fyock v. Sunnyvale

Chuck, we will file the stipulation without the third whereas clause mentioning discovery.

Please confirm we have your authorization to do so.

Since you asked for its deletion, we agree to take out that Whereas clause, though we hope that the parties will nonetheless be able to work out a mutually convenient discovery schedule that will timely provide the information needed under the proposed briefing schedule. We will evaluate the need for discovery after we receive your moving parties. If we are not able to reach agreement, Defendants may have to seek adjustment to the briefing schedule.

In the future, please consult with us first before reserving hearing dates, especially when you intend to file a motion on the Monday before Christmas that will have an obvious impact on our holiday plans. Speaking of which, enjoy your holidays.

Rod

Roderick M Thompson

Partner

rthompson@fbm.com

direct 415.954.4445

cell 415.509.1874



From: C.D. Michel [<mailto:CMichel@michellawyers.com>]

Sent: Sunday, December 22, 2013 7:36 PM

To: Schoenberg, Tony (22) x4963

Cc: Clint B. Monfort; Jensen, Lauren (22) x3505; Claudia Ayala; Thompson, Rod (27) x4445; Engstrom, Evan (27) x4945; Baker, James (21) x4965; Woods, Rochelle L. (21) x4937

Subject: Re: Fyock v. Sunnyvale

I did not agree to stip to discovery

In fact, we see little if any need for it.

Lets get a simple briefing schedule stip in tomorrow.

We can discuss the rest later

C.D. Michel

Senior Counsel

MICHEL & ASSOCIATES, P.C.

Attorneys at Law

180 East Ocean Blvd., Suite 200

Long Beach, California 90802

Email:cmichel@michellawyers.com Website:www.michellawyers.com

Phone: 562 216 4444

Fax:562 216 4445

On Dec 22, 2013, at 6:07 PM, "TSchoenberg@fbm.com" <TSchoenberg@fbm.com> wrote:

Clint – Attached is a stipulation containing the briefing schedule set forth in your email below. With your approval, we will file this tomorrow.

Regards,
Tony

Anthony P. Schoenberg
Attorney at Law

Farella Braun + Martel LLP
RUSS BUILDING
235 MONTGOMERY STREET
SAN FRANCISCO / CA 94104

T 415.954.4400
D 415.954.4963
F 415.954.4480
www.fbm.com

From: Clint B. Monfort [<mailto:CMonfort@michellawyers.com>]
Sent: Friday, December 20, 2013 7:49 PM
To: Jensen, Lauren (22) x3505; Schoenberg, Tony (22) x4963
Cc: Claudia Ayala; C.D. Michel
Subject: RE: Fyock v. Sunnyvale

Mr. Schoenberg,

Per your conversations with Chuck, I propose the following briefing schedule in light of the February 7 hearing date. Based on the additional week gained from the later hearing date, this would give the City 4 additional days and plaintiffs three additional days to file their briefs.

File/Serve Motion: Monday December 23, 2013
Opposition Due Date: Monday January 12, 2014
Reply Due Date: Monday January 24, 2014
Motion Hearing Date: Friday February 7, 2014

If you would like to agree to this extension, please prepare a stipulation to that effect for the court's approval we will sign off on it.

Thank you and I look forward to working with you in this matter.

-Clint

Clint B. Monfort Attorney	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com
	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not

copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: Clint B. Monfort
Sent: Friday, December 20, 2013 3:43 PM
To: ljensen@fbm.com; tschoenberg@fbm.com
Cc: Claudia Ayala; C.D. Michel
Subject: RE: Fyock v. Sunnyvale

Ms. Jensen,

Please pass this message along to Mr. Schoenberg at your earliest convenience.

We just spoke with the clerk and first available hearing date for our Motion for Preliminary Injunction is February 7, 2014. We have reserved that date for the hearing and still intend to file our motion on Monday, December 23.

If you have any questions or suggestions about the briefing for this motion please let us know.

Thank you,

Clint

Clint B. Monfort Attorney <image001.png>	Direct: (562) 216-4456 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMonfort@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
---	--

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: C.D. Michel
Sent: Friday, December 20, 2013 2:01 PM
To: ljensen@fbm.com
Cc: Claudia Ayala; Clint B. Monfort
Subject: FW: Fyock v. Sunnyvale

I got an oput of office reply when I sent this message to Mr. Schoenberg. Please make sure that Mr. Schoenberg gets this urgent message today.

C.D. Michel Senior Counsel <image001.png>	Direct: (562) 216-4441 Main: (562) 216-4444 Fax: (562) 216-4445 Email: CMichel@michellawyers.com Web: www.michellawyers.com 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
--	--

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

From: C.D. Michel

Sent: Friday, December 20, 2013 1:58 PM

To: tschoenberg@fbm.com

Cc: Clint B. Monfort; Claudia Ayala; C.D. Michel

Subject: Fyock v. Sunnyvale

Mr. Schoenberg:

I understand you are the lead attorney defending Sunnyvale in the above referenced lawsuit challenging the provision of Measure C banning the possession of magazines that hold over 10 rounds.

Please confirm that for us.

I am writing to let you know that we will be filing a motion for a preliminary injunction on Monday, December 23, and have a hearing date tentatively reserved for the first available date, Friday, January 31, 2014.

As we understand it, pursuant to USDC Northern District Local Rules the following will be the briefing schedule on our Motion:

File/Serve Motion: Monday December 23, 2013 file/serve)	(35 days
Opposition Due Date: Monday January 6, 2014 motion is filed)	(14 days after
Reply Due Date: Monday January 13, 2014 opposition is due)	(7 days after
Motion Hearing Date: Friday January 31, 2014	(this gives the court
18 days to consider the motion)	

Because of the urgency created by the fact that the ordinance requires Sunnyvale residents to dispose of these magazines by March 6, and anticipated potential expedited appeals, we do not expect that we will be able to postpone the hearing date, nor do much to alter this briefing schedule – a professional courtesy that we would ordinarily try to accommodate.

We would offer to extend the due date for your opposition until Wednesday January 8, if you allow us until Thursday January 17 to file our reply. If that helps, please prepare a stipulation to that effect for the court's approval.

We will provide you with timely courtesy electronic copies of our filings in an attempt to assist you in preparing your opposition, and would appreciate if you would do the same.

If you have questions or other suggestions in this regard, please let us know.

C.D. Michel
Senior Counsel

<image001.png>

Direct: (562) 216-4441
Main: (562) 216-4444
Fax: (562) 216-4445
Email: CMichel@michellawyers.com
Web: www.michellawyers.com

180 E. Ocean Blvd.
Suite 200
Long Beach, CA 90802

This e-mail is confidential and is legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. To do so could violate state and Federal privacy laws. Thank you for your cooperation. Please contact Michel & Associates, PC at (562) 216-4444 if you need assistance.

This e-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited.

If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

Farella Braun + Martel LLP

<4009118_1.pdf>

EXHIBIT “C”



SIGN UP >

DONATE >



Search

ABOUT US

LAWS &
POLICIESTHE SECOND
AMENDMENTSTUDIES &
STATISTICS

TAKE ACTION

Gun Lobby Challenge to Sunnyvale's New Voter-Supported Gun Law Fails Early Test

Posted on December 19, 2013

Tweet 101

Edit



When Sunnyvale, California's voters approved of Measure C, a new city ordinance with several commonsense gun safety measures, the gun lobby immediately attacked. Challengers to the new laws—a gun dealer and a gun industry lobbying group—sued the city with claims that Measure C's requirement that ammunition sellers keep records of their sales conflicted with California state law. Fortunately, yesterday, a California state court rejected that argument and denied the plaintiffs' emergency request that the law be put on hold while their lawsuit is decided.

Thanks to this initial ruling, Sunnyvale's law—which was approved by 66% of Sunnyvale voters—will be allowed to go into effect and will help to deter minors, convicted felons, the mentally ill, and other prohibited persons from purchasing ammunition.

California cities have broad authority to pass local ordinances to keep their communities safe from gun violence and the Sunnyvale ordinance is nothing out of the ordinary. In fact, more than a dozen other cities and two counties, including Los Angeles and San Francisco, have enacted similar laws requiring ammunition sellers to keep records of ammunition sales.

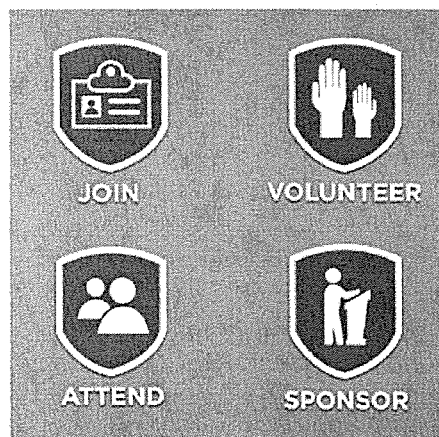
This portion of Sunnyvale's Measure C was based on the Law Center's model ammunition ordinance, and when the city was sued, the Law Center was able to secure the highly-regarded law firm [Farella Braun + Martel LLP](#) as pro bono counsel for Sunnyvale.

The gun lobby has a history of bullying cities to keep them from enacting new gun laws by threatening costly lawsuits. This time, the gun lobby failed to intimidate the people of Sunnyvale when they overwhelmingly voted for Measure C, and now they are also failing in their attempt to overturn the will of the people in court.

One of the plaintiffs in this case, the National Shooting Sports Foundation, headquartered in Newtown, Connecticut, less than 3 miles from Sandy Hook Elementary School, is notorious for challenging smart gun laws in small cities across the country.

NRA-backed plaintiffs also sued the City of Sunnyvale on Monday, December 16 in yet another frivolous

TAKE ACTION



WHAT THE STUDIES SHOW



KNOW YOUR GUN LAWS



THE TRUTH ABOUT THE SECOND AMENDMENT

LATEST TWEETS

lawsuit, claiming that another part of Measure C, which bans the possession of large capacity ammunition magazines, violates the Second Amendment.

Fortunately, a wide variety of gun regulations have been upheld by the courts, including similar laws that limit magazine capacity. **Since 2008, there have been over 800 [Second Amendment cases challenging gun laws nationwide](#), with an overwhelming majority—96%—of the lower court decisions upholding those laws.**

For more, read some of the recent [gun violence prevention success stories](#).

Tags: [ammunition](#), [ballot measure](#), [California](#), [Large Capacity Ammunition Magazine](#), [large capacity magazine ban](#), [Sunnyvale](#)

[PERMALINK](#)

Tweets

Follow



Smart Gun Laws

#WE ARE NEWTOWN

LISTEN: These inspiring #women went from being part of the problem to being part of the solution to end #gunviolence: n.pr/JFSdDL

[Show Summary](#)



Smart Gun Laws

#WE ARE NEWTOWN

COMING UP: Can't make it to our #LA panel event on Thurs? Be part of the convo & tune in to our #livestream: bit.ly/LA-Event

[Retweet](#)



Smart Gun Laws

#WE ARE NEWTOWN

TOMORROW: Remembering the #Tucson shooting 3 yrs later—"Tucsonans will never forget that day." bit.ly/1ge13Di

[Retweet](#)



Smart Gun Laws

#WE ARE NEWTOWN

NUMBER 1 #GUNLESSON OF #2013: Children and #guns don't mix: bit.ly/15UYcOI

[Retweet](#)



Smart Gun Laws

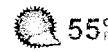
#WE ARE NEWTOWN

Educate yourself and share these FACTS about #backgroundchecks: bit.ly/11ejIW9

[Retweet to @smartgunlaws](#)

Copyright 2012 Law Center to Prevent Gun Violence. All Rights Reserved. [Legal Disclaimer](#), [Contact Us](#), Site by [Something in the Universe](#)

EXHIBIT “D”



Search


[HOME](#) | [NEWS](#) | [VIDEO](#) | [WEATHER](#) | [SUNNYVALE](#) | [LOCAL](#) | [ENTERTAINMENT](#) | [TRAFFIC](#) | [CONTESTS](#) | [CONTACT US](#)
[LOCAL](#) | [CALIFORNIA](#) | [U.S. & WORLD](#) | [SPORTS](#) | [HEALTH](#) | [TECH](#) | [WEIRD](#) | [WEATHER](#) | [BLOGS: PRESS HERE](#) | [THE COVE](#)


HOME > NEWS > LOCAL

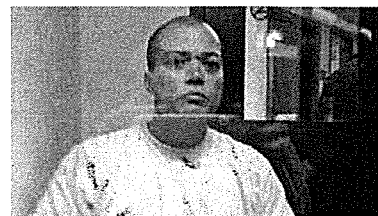
Sunnyvale Passes Strict Gun Control Measure C, NRA Vows to Challenge

By Lisa Fernandez and Chase Cain | Wednesday, Nov 6, 2013 | Updated 6:12 AM PST

View Comments (5) | Email | Print | Tweet 10 | Facebook 2 | Send 8+1 2



TOP STORIES

[TODAY](#) | [MOST WATCHED](#) | [MOST EMAILED](#)


Antioch Kidnap Suspect "Came Close" to Kidnapping Others



\$10K Reward for Androgynous Bank Robber



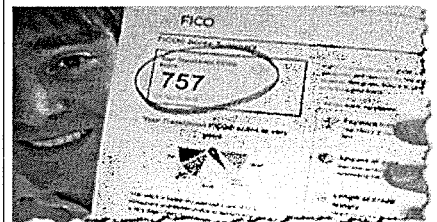
California Bishops Pray for Rain



Extreme Weather 2014

advertisement

Man Cheats Credit Score



1 simple trick & my credit score jumped 217 pts. Banks hate this! WATCH VIDEO

www.thecreditsolutionprogram.com

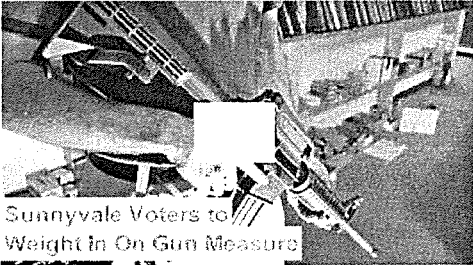
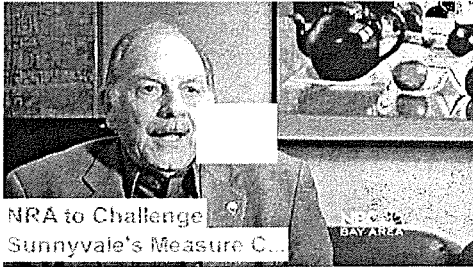
Sunnyvale voters on Tuesday overwhelmingly passed a strict gun control measure that has received the attention of supporter outgoing New York Mayor Michael Bloomberg and critics from the National Rifle Association.

With all 54 precincts reporting, 66 percent of voters supported Measure C, according to results from the Santa Clara County Registrar of Voters.

As of Jan. 1, the measure will require Sunnyvale gun owners to report firearms thefts to the police within 48 hours, lock up their guns at home and get rid of magazines that hold more than 10 rounds. Gun dealers would have to keep logs of ammunition sales.

Mayor Tony Spitaleri, a retired Palo Alto fire captain originally from the South Bronx, was

PHOTOS AND VIDEOS



More Photos and Videos

inspired to spearhead the measure after he signed onto a group called Mayors Against Illegal Guns while attending a mayors conference in Washington, D.C., in 2006. Bloomberg co-chairs that coalition, along with Boston Mayor Thomas Menino. It was the Newtown, Conn. massacre that got him thinking about what he could do locally about cracking down on guns.

• Bay Area Election Day Results

Bloomberg contributed \$3,000 to the Sunnyvale gun-control campaign.

The "no" group has just \$400 in its coffers. And none of that money came from the National Rifle Association, according to Dan Walsh, treasurer for the pro-gun group.

Despite its lack of financial backing, the NRA has threatened to sue if Sunnyvale's measure won, arguing that it violates the Second Amendment. An attorney for the group has suggested that it would pursue litigation all the way up to the Supreme Court. On its website, the NRA claims Measure C "would do nothing to reduce violent crime or firearm accidents in Sunnyvale." The NRA declined media requests for an interview.

"Sunnyvale taxpayers should consider whether they want to foot the legal bill to push the social agenda of New York Mayor Michael Bloomberg, whose gun control advocacy group is behind Measure C," NRA attorney Chuck Michel said in a statement on the group's website.

Part of the reason the "no" group doesn't like the measure, is that backers say Sunnyvale is already safe enough, and doesn't need extra laws. "There is no urgent problem which requires an emergency action such as this ballot measure," according to the argument against Measure C.

MORE: NRA Threatens to Sue Silicon Valley Suburb Over Bloomberg-Backed Gun Control Measure

According to FBI statistics, Sunnyvale has far fewer violent crimes than other cities with about the same population of 140,000. Sunnyvale reported 150 violent crimes including three homicides in 2011. Compare that to comparable-sized cities of Concord, which had 430 violent crimes and seven homicides; Corona, which had 430 violent crimes and two homicides; and Elk Grove, which had 523 violent crimes and three homicides, all reported two years ago.

That argument doesn't hold water with the gun-control advocates. Newtown, Conn., had a low crime rate. So did other cities where gunmen have pulled out firearm and blasted away others in the seemingly safe suburbs.

"We're a safe city, but it needs to start somewhere," Spitaleri said in a previous interview. "It's just like the ban on plastic bags -- it started somewhere."

NBC Bay Area's Marianne Favro contributed to this report.

More stories from NBC Bay Area:

- » \$10K Reward for Androgynous Robber
- » Kidnap Suspect "Did Take" Girl
- » 3D Printing Highlight of CES
- » Bay Area on Alert Following Antioch Kidnapping
- » Arrest in Chinese Consulate Fire
- » SFPD Seeks Help Solving 2007 Murder
- » Fake Signatures Taint Styrofoam Ban
- » Appeals Court Upholds Bag Ban
- » Delay in Jahi McMath's Autopsy
- » Stanford Receives \$90M for Cancer Research

Get the latest headlines sent to your e-mail.

EMAIL

SIGN UP

From Around the Web

Erin Andrews' Tongue Becomes the Topic of Conversation During Sunday Night Football (E! Online)

Digging Out the Most Shocking National Enquirer Covers of the 1960s (Photos) (National Enquirer)

6 Things You Didn't Know About Bonnie and Clyde (Ancestry.com)

New Rule for California Drivers (Lifestyle Journal)

This Is What Happens When a Minor League Hockey Team Lets Kids Paint Its Ice (Sports Illustrated)

Is This the Most Glamorous First Lady America has Ever Seen? (National Enquirer)

More From NBC Bay Area

Oakland Police Find Missing 5-Year-Old Boy Who Disappeared From Park

Abducted 7-Year-Old Antioch Girl Found Safe, Suspect Arrested

Slain Woman's Family Awaits Autopsy Results After Man's Body Found in Hawaii Lava Field

Man Reunited With Family After Photo Published

Wear It, Drive It -- Themes at CES 2014

San Francisco: Woman Says She Was Drugged, Kidnapped and Assaulted

[?]

View Comments (5) | Email | Print

Leave Comments



Add a comment...

☒ Post to Facebook

Posting as Clint Monfort (Not you?)

Comment



Brenton Adams · Top Commenter

See you in court. Just ask SF how well that worked out for them.

Reply · 5 · Like · Follow Post · November 6, 2013 at 7:02am

NEWS



LOCAL
Antioch Kidnap Suspect "Came Close"...



LOCAL
SFPD Seeks Public's Help Solving 2007 Murder



NATIONAL INTERNATIONAL
Lawyer for Indian Diplomat in NYC...

LOCAL



LOCAL
\$10K Reward for Androgynous Bank Robber



CALIFORNIA
California Bishops Pray for Rain



LOCAL
Grand Princess Crewmember Overboard...

PHOTOS AND VIDEOS



SPORTS
Red & Gold Pride!



LOCAL
Top 10 Bay Area News Stories of 2013



MULTIMEDIA
Top 10 Bay Area Sports Stories of 2013

News

Local

Multimedia

COMMUNITY



Bay Area Proud

Bay Area Proud is NBC Bay... Read more

FOLLOW US

Sign up to receive news and updates that matter to you.

CHECK OUT



Send Us Your Story Tips



NEWS

- Local
- California
- U.S. & World
- Sports
- Health
- Tech
- Weird
- Weather
- Press Here
- The Cove

WEATHER

- Forecast
- Maps & Radar
- Weather Alerts
- Weather News

ENTERTAINMENT

- Entertainment News
- The Scene
- Events
- Golden Globes
- The City
- Webb The Trip

CONTACT US

- Social Directory
- About Us
- Community
- TV Listings
- Careers

TRAFFIC

- FCC Independent Programming Report
- FCC News and Information Programming Report
- NBC Non-Profit News Partnership Reports
- KNTV Public Inspection File
- 21st Century Solutions

[Send Feedback](#) | [Terms Of Service](#) | [Privacy Policy](#)

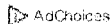


EXHIBIT “E”

NEWS



Contact:
Jennifer Garnett
Media cell: (408) 718-2601

FOR IMMEDIATE RELEASE:
December 10, 2013
Release # 12 02 13

NATIONALLY RECOGNIZED LAW FIRM PROVIDES PRO BONO DEFENSE OF GUN SAFETY ORDINANCE

SUNNYVALE, Calif. – The City of Sunnyvale has accepted an offer from the San Francisco-based law firm of Farella Braun + Martel LLP to provide pro bono legal defense services related to the City's new gun safety ordinance that went into effect December 6. The ordinance contains new requirements related to 1) reporting the loss or theft of firearms, 2) safe storage of firearms within residences, 3) prohibiting large-capacity magazines and 4) recordkeeping requirements for ammunition sales.

On December 10, a lawsuit was filed by Robert C. Wright of Wright & L'Estrange on behalf of National Shooting Sports Foundation, U.S. Firearms and its principal Eric Fisher. U.S. Firearms is a gun shop located in Sunnyvale. The lawsuit alleges that the requirement that fire arms dealers log and record ammunition purchases for use by law enforcement is preempted by state law and a violation of the Second Amendment. The first action by U.S. Firearms is the attempt to seek a temporary restraining order against the requirement to register and track all ammunition sales.

"Voters in Sunnyvale passed Measure C in November by a substantial majority, establishing reasonable and sensible restrictions – within the existing Constitutional framework – aimed at curbing gun violence. We plan to vigorously defend the City in this important matter," said Tony Schoenberg, attorney with Farella who will lead the legal team working on the case. Farella is a highly regarded law firm with practices and lawyers recognized as some of the best in the country as well as a long-standing commitment to the community through pro bono work. In 2009 and 2010, the Legal Community Against Violence recognized the firm for its "Outstanding Pro Bono Contribution."

~ more ~

The Legal Community Against Violence – now named the Law Center to Prevent Gun Violence – is a non-profit organization focused on providing comprehensive legal expertise in support of gun violence prevention and the promotion of smart gun laws. The City referred to some of the Center's model gun laws when drafting Measure C.

"Our community spoke loud and clear that we want to do what we can to prevent gun violence," said Sunnyvale Mayor Anthony (Tony) Spitaleri. "The threats of lawsuits and defense costs didn't stop them from doing what they felt was right and now we have one of the best law firms in the country prepared to defend us."

#