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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

U.S. FIREARMS COMPANY LLC, a)
limited liability company; ERIC W.)
FISHER; and THE NATIONAL)
SHOOTING SPORTS)
FOUNDATION, INC., a non-profit)
trade association,)

Petitioners,)

v.)

CITY OF SUNNYVALE; THE)
SUNNYVALE CITY COUNCIL; and)
DOES 1 through 30, inclusive,)

Respondents.)

CASE NO. 113CV257353

**REPLY MEMORANDUM IN SUPPORT OF
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Date: January 13, 2014
Time: 9:00 a.m.
Dept: 20
Judge: Hon. Kevin E. McKenney

Action Filed: December 9, 2013
Trial Date: None

1 Petitioners reply as follows to Respondent's Opposition To Order To Show Cause
2 Re: Preliminary Injunction dated December 30, 2013:

3 **A. Petitioners Have Demonstrated a Likelihood of Success on the Merits.**

4 **1. State Firearms and Ammunition Laws Preempt Section 9.44.060.**

5 Respondents' argue that the Anti-Gang Act has no preemptive effect (Opp. 2:5-12),
6 but ignore Petitioners' earlier argument and authority that the Anti-Gang Act's preemptive
7 effect continues even though the law was been invalidated and enjoined by *Parker v.*
8 *State* (2013) 221 Cal.App.4th 340, because: (1) the Act is further evidence that the
9 Legislature intended to (and did, in fact) occupy the field; and (2) under California law, an
10 invalidated statute is not void *ab initio*, but is simply unenforceable (TRO Reply 3:13-
11 5:16). *Kopp v. Fair Pol. Practices Comm'n.* (1995) 11 Cal.4th 607, 623.

12 Supreme Court review in *Parker* is more likely than in most cases because the
13 issues raised are important and there was a dissenting opinion. Grant of review would
14 nullify the *Parker* decision. *Knowles v. Super. Ct.* (2004) 118 Cal.App.4th 1290.
15 Respondents apparently concede that if the Supreme Court accepts review and reverses,
16 Section 9.44.060 would be preempted. But, even if *Parker* stands, the Legislature
17 explicitly occupied the field when it enacted the Anti-Gang Act.¹ "Whenever the
18 Legislature has seen fit to adopt a general scheme for the regulation of a particular
19 subject, the entire control over whatever phases of the subject are covered by state
20 legislation ceases as far as local legislation is concerned." *Am. Fin. Services Ass'n. v.*
21 *Oakland* (2005) 34 Cal.4th 1239, 1253.

22 Respondents rely heavily on an outdated and inapposite 1994 California Attorney
23 General opinion concluding that a city could adopt an ammunition registration ordinance,²
24 77 Ops.Cal.Atty.Gen. 147 (1994), 1994 WL 323316. When the Attorney General reached
25 this opinion, regulation of ammunition sales by the State was far less extensive than it is

26 _____
27 ¹ In 2011, Governor Brown vetoed a bill which would have amended the unconstitutionally vague provisions
of the Anti-Gang Act to permit *Parker* litigation to run its course (Supp. RJN ¶ 6).

28 ² The Attorney General's opinion is not binding on this Court, and is, at best, persuasive authority. *Sanchez*
v. Unemployment Ins. Appeals Bd. (1977) 20 Cal.3d 55, 66.

1 today. Penal Code sections 30215 (exception for tracing ammunition used in a shotgun);
2 30290 (declaring certain ammunition to be a nuisance); 30300 (offenses for selling to a
3 minor); 30305 (possession of ammunition by a prohibited person); 30306 (supply of
4 ammunition to a prohibited person); 30310 (prohibiting ammunition on school grounds);
5 30312 (requiring face-to-face transfer of handgun ammunition); and 30340 (manufacturing
6 of ammunition for government agencies) were enacted after the opinion and indicate a
7 State concern that will not tolerate local action.

8 Secondly, the opinion conflicts with the Legislature's current expressed intent to
9 occupy the field of ammunition sales and to prevent a patchwork of local ordinances
10 where a person can easily avoid the recordkeeping requirement of one city by buying in
11 another. When enacting the Anti-Gang Act in 2009, the Legislature recognized that
12 "[e]xisting law generally regulates the sale of ammunition." (See Supp. RJN ¶¶ 1, 3, 5;
13 Exs. N, P, and R.) Identical references can be found in proposed legislation at least as
14 early as 2004. *Id.* Since 2006, the Legislature and the Governor (acting in his legislative
15 capacity), have sought to create uniform state laws on ammunition sales and continue to
16 emphasize that firearms and ammunition sales are a matter of statewide concern, which
17 would be undermined by a patchwork of local laws (*Id.* at ¶¶ 1-7). In 2006, the Governor
18 vetoed a Bill prohibiting delivery of ammunition by common carrier, in part because "this
19 Bill would allow local governments to enact their own measures governing the sale of
20 ammunition. . . ." (*Id.* at ¶ 4). In 2009, the Legislature approved, and the Governor
21 signed, the current law on ammunition registration being challenged in *Parker*, in part
22 because the ordinance would "fix" the problem of flawed local programs, *Parker*, 221
23 Cal.App.4th at 378 (Cornell, J. dissenting). Finally, in vetoing a Bill which would have
24 amended the Anti-Gang Act during *Parker's* pendency, the Governor raised the prospect
25 of future amendments by saying, "Let's keep our powder dry on amendments until the
26 court case runs its course." (Supp. RJN ¶ 6.) If the preemption doctrine means anything,
27 it is that local governments should not interfere with the Legislature's attempts to craft
28 uniform policy through a "broad, evolutionary statutory regime," *Fiscal v. San Francisco*

1 (2008) 158 Cal.App.4th 895, 911, 918-919, as exists with ammunition sales.

2 Later courts have rejected the Attorney General's reasoning,³ finding that Section
3 53071 embraces local government regulation of firearms and ammunition sales. See
4 *Fiscal*, 158 Cal.App.4th at 911-15 (Section 53071 and Penal Code preempt local law
5 banning sale and transfer of firearms and ammunition); see also *Montgomery Cnty. v. Atl.*
6 *Guns, Inc.* (1985) 302 Md. 540, 549 ("The provisions of State law that preempt local
7 regulation of handguns can only be effectuated if they are understood to preempt local
8 regulation of handgun ammunition as well.").

9 Respondents' legislative history arguments do not consider the foregoing evidence
10 of Legislative intent and recent cases (Opp.3:14-4:15). Rather, they speculate as to the
11 Legislative's subjective intent in referring to *Fiscal*. The Senate Public Safety Committee
12 report establishes that the Legislature adopted *Fiscal's* Section 53071 preemption
13 analysis (see RJN, Ex. K at 19), which, among other things, concluded that the statute's
14 "broad language" applied to all laws "relating to" the registration and licensing of firearms
15 and ammunition, and that local governments should "tread lightly" before legislating in an
16 area of statewide concern and disrupting uniform statewide policy. *Fiscal*, 158
17 Cal.App.4th at 907, 910-911, 919.

18 Respondents rely upon Gov. Schwarzenegger's signing message but omit the key
19 sentence:

20 **Unfortunately, even the most successful local program is flawed;**
21 **without a statewide law, felons can easily skirt the recordkeeping**
22 **requirements of one city by visiting another. [The Anti-Gang Act] will**
fix this problem by mandating that all ammunition vendors in the state
keep records on ammunition sales.

23 *Parker*, 221 Cal.App.4th at 378 (Cornell, J. dissenting). Because ammunition sales are a
24 matter of statewide concern, the Legislature left "no room for further regulation at the local

25 _____
26 ³ In 1994, the Attorney General did not have the benefit of *District of Columbia v. Heller* (2008) 554 U.S.
27 570 and *McDonald v. City of Chicago* (2010) ____ U.S. ____, 130 S.Ct. 3020, which declare that the Second
28 Amendment guarantees an individual right for law-abiding, responsible citizens to keep and bear arms. In
light of this precedent, the modern trend is to construe firearms and ammunition as inextricably intertwined.
See *Parker*, 221 Cal.App.4th 340, 367-368 (the Anti-Gang Act's ammunition registration provisions
implicate individual Second Amendment right because ammunition is necessary for meaningful self-
defense); *Bateman v. Perdue* (E.D.N.C. 2012) 881 F.Supp.2d 709, 714.

1 level." *Fiscal*, 158 Cal.App.4th at 918.

2 Finally, Respondents misread *Suter v. City of Lafayette* (1997) 57 Cal.App.4th
3 1109 (Opp. 6:5-21). While "state law does not preempt the broad field of sales of firearms
4 or regulation of firearm dealers," *Suter* holds that Section 53071 "expressly provides that
5 the whole field of licensing and registration is occupied by state law." *Id.* at 1122, 1124.

6 Contrary to Respondents, Section 9.44.060 is a "registration" law in that it is a
7 recordkeeping and reporting law imposed on firearms dealers. *Galvan v. Superior Court*
8 (1969) 70 Cal.2d 851, 857-858, *abrogated by Gov't. Code* § 53071 *as stated in Great*
9 *Western Shows, Inc. v. Los Angeles* (2002) 27 Cal.4th 853, 862. Indeed, Section
10 9.44.060 is also a form of *firearms* registration law because it permits Respondents to
11 create a database on firearms ownership by collecting information on owners' ammunition
12 purchases. By inference, the ammunition caliber information could alert Respondents to
13 types of firearms probably possessed by the purchaser. Section 53071 precludes
14 Respondents' backdoor attempts at firearms registration. *Graber v. Upland* (2002) 99
15 Cal.App.4th 424, 434 (ordinance cannot do indirectly what general laws prohibit directly).

16 **2. The CCRA Preempts Section 9.44.060.**

17 According to Respondents, the CCRA does not preempt Section 9.44.060 because
18 it does not address local ammunition registration laws (Opp. 6:24-7:12). The CCRA
19 obligates businesses to prevent unauthorized⁴ access, use, or disclosure of customers'
20 personal information. Civ. Code § 1798.81.5(b). When it enacted the CCRA, the
21 Legislature found that consumer privacy "is increasingly at risk due to the ever more
22 widespread collection of personal information by the . . . public sector," and chose to
23 deprive Respondents of the authority to regulate in the area (RJN Ex. L). Because laws
24 must be construed to protect the constitutional right of privacy, *Perkey v. DMV* (1986) 42
25 Cal.3d 185, 194, Respondents' argument must be rejected.

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27
28 ⁴ Respondents previously noted that other state-wide privacy statutes define "authorized" access or disclosure to require customer's written consent, legal process, or when disclosure is compelled by state, not local law (see TRO Reply 6:22-7:13).

1 **3. Section 9.44.060 Invades Privacy Rights.**

2 **a. Petitioners Have Standing to Challenge Section 9.44.060.**

3 Contrary to Respondents (Opp. 7:20-8:2), Petitioners have standing to challenge
4 Section 9.44.060 on behalf of their clients because they are losing sales and face criminal
5 liability if they do not comply with the law. *Ballard v. Anderson* (1971) 4 Cal.3d 873, 877;
6 4 Witkin, *Cal. Proc.* (5th ed. 2008) *Pleading*, § 126, p. 195. *Novartis Vaccines and*
7 *Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th
8 1284, 1297-1299; *Andal v City of Stockton* (2006) 137 Cal.App.4th 86, 94-95. Petitioners
9 also have standing per the public-interest exception for writ of mandate proceedings
10 under Code of Civil Procedure section 1086. *Green v. Obledo* (1981) 29 Cal.3d 126, 144.

11 **b. Petitioners Have Established a Prima Facie Case, and**
12 **Respondents Fail to Meet their Burden.**

13 It is well settled that laws authorizing privacy invasions must be justified by
14 compelling state interest and satisfy the strict scrutiny test. *Board of Medical Quality*
15 *Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 679. Respondents have elected to
16 forego bearing this burden with regard to Section 9.44.060, and instead mount
17 unsuccessful attacks on threshold questions devoid of context.

18 First, Petitioners met their burden to establish a *prima facie* case under *White v.*
19 *Davis* (1975) 13 Cal.3d 757, 773 (Mot. 12:16 - 13:19). Respondents seek to minimize the
20 seriousness of Section 9.44.060's intrusions by arguing that warrantless, regulatory
21 inspections of purchaser personal information are "a far cry" from the compiling of police
22 dossiers on college students in *White* (Opp. at 9:19-23). Courts have rejected this
23 argument. Government administrators are "not in a special or privileged category, exempt
24 from the right of privacy requirements which must be met and honored generally by law
25 enforcement officials." *Gherardini*, 93 Cal.App.3d at 679-80 (regulatory inspections of
26 medical records do not override patient privacy interests).

27 Second, Respondents argue that Petitioner Fisher and other ammunition
28 purchasers do not have a protectable privacy interest in Section 9.44.060 registration

1 information because they have already disclosed the same information on state-
2 mandated Dealer's Record of Sale (DROS) forms⁵ incidental to firearms purchases (Opp.
3 8:5-27). But they fail to cite any authority that DROS information is not private.

4 To the contrary, State regulations expressly provide that DROS information is
5 confidential and require firearms sellers to comply with the Information Practices Act
6 ("IPA"), Civ. Code § 1798 *et seq.* See Cal. Code Regs. tit. 11, § 4035. The Legislature
7 enacted the IPA in 1977 to implement the constitutional privacy right in state government
8 operations, and the IPA limits the state agencies' ability to collect, retain, and disclose
9 personal information. *Perkey*, 42 Cal.3d at 191-192.

10 Moreover, the privacy right protects not only against government snooping, but
11 also against overbroad collection and misuse of information, *Gherardini*, 93 Cal.App.3d at
12 677, and "unwarranted compelled disclosure of certain private information" by the State,
13 *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 357.
14 Respondents' argument that Section 9.44.060 can compel disclosure of personal
15 information because such information was previously disclosed to the State violates these
16 basic principles underlying the state privacy right.⁶ Indeed, Section 9.44.060 registration
17 forms run afoul of the criminal prohibitions on the collection and compilation of certain
18 DROS information by Respondents and their agents (TRO Reply 10:7-19).

19 Third, Respondents argue that the ammunition purchaser information they seek is
20 not private because it merely amounts to information otherwise found on, or collected for,
21 a driver's license (Opp. 8:28-9:11). But, the DMV must maintain driver's license
22 information private (TRO Reply 8:18 – 9:1), which is consistent with ammunition
23 purchasers having a protected privacy interest in that information.⁷

24 _____
25 ⁵ Respondents also point to Federal Form 4473. This form is maintained by the firearms seller and not
disclosed to the government, except in connection with a criminal investigation.

26 ⁶ Making matters worse, Respondents are under no obligation to maintain this information confidential, as
the Sunnyvale Municipal Code does not contain an IPA analogue.

27 ⁷ Respondents fail to acknowledge that whether certain information contained on driver's licenses is entitled
28 to privacy protection depends on the results of the Court's balancing of interests in a strict scrutiny analysis.
Compare Cal DOT v. Superior Court (1985) 37 Cal.3d 847, 858 (DMV may disclose accident reports only if
personally identifying information redacted); *Perkey*, 42 Cal.3d at 194 (while DMV could collect drivers'

1 Finally, Respondents cite *Folgelstrom v. Lamps Plus, Inc.* (2011) 195 Cal.App.4th
2 986, 992 to argue that a merchant's collection of zip code information does not represent
3 a sufficiently serious privacy invasion for legal remediation (Opp. 9:12-19). *Folgelstrom* is
4 inapposite because that case concerns private conduct and State collection of residential
5 information is considered "serious." See *County of Los Angeles v. Los Angeles County*
6 *Employee Relations Comm'n.* (2013) 56 Cal.4th 905, 927. These violations are
7 egregious, as the collection and compilation of certain DROS firearms information is a
8 crime (TRO Reply 10:7-19).

9 **4. Section 9.44.060 Violates the Fourth Amendment.**

10 **a. Petitioners' Claim is Justiciable.**

11 According to Respondents, Petitioners' claim is not justiciable because Section
12 9.44.060's warrantless searches are conjectural and may never occur and Fourth
13 Amendment injunctions are "inherently problematic" (Opp. 10:3-18).

14 To the contrary, Mr. Fisher has been advised by the Sunnyvale Department of
15 Public Safety that it will conduct a background search on all ammunition purchasers.
16 (Fisher Supp. Dec., ¶ 7.) Furthermore, the right of citizens to mount taxpayer and public
17 interest lawsuits to "challeng[e] the legality of ongoing police investigatory activities has a
18 long and firmly established heritage in this state." *White*, 13 Cal.3d at 763 (collecting
19 cases). Courts do not hesitate to enjoin statutes that authorize invalid warrantless
20 searches. *Marshall v. Barlow's, Inc.* (1978) 436 U.S. 307, 325 (enjoining 29 U.S.C. §
21 657(a) OSHA warrantless inspections).

22 **b. Petitioners' Warrantless Search Claim Will Prevail.**

23 Warrantless searches are presumably unreasonable, and Respondents bear the
24 burden of proving their validity. *People v. Williams* (1999) 20 Cal.4th 119, 127; *Vale v.*

25
26 thumbprints, information is confidential) with *Stackler v. DMV* (1980) 105 Cal.App.3d 240, 247 (DMV could
27 require photographs on licenses because licensee controls who sees picture). The same is true for
28 residential information. Compare *Planned Parenthood*, 83 Cal.App.4th at 368-370 (employee and volunteer
identities, home addresses and telephone numbers not discoverable by antiabortion group) with *Los Angeles County Employee Relations Comm'n.*, 56 Cal.4th at 927-932 (employee home addresses and telephone numbers discoverable by union).

1 *Louisiana* (1970) 399 U.S. 30, 34. Respondents contend, in conclusory fashion, that
2 Section 9.44.060's warrantless searches are valid under the "heavily regulated business"
3 exception to the Fourth Amendment (Opp. 10:19-12:7).

4 Respondents fail to show – and cannot show – that Section 9.44.060's
5 programmatic purposes are distinct from the general interest in crime control (Mot. 15:6-
6 17). *City of Indianapolis v. Edmond* (2000) 531 U.S. 32, 45-46. To the contrary, Section
7 9.44.060 is intended to give police officers a tool for obtaining evidence for criminal
8 prosecution of other crimes (Fisher Supp. Decl. ¶ 7; see also RJN ¶ 9, Exs. G-H, Fisher
9 Decl. ¶ 7, Ex. B), a point which Respondents concede (Opp. 11:18-21). Because Section
10 9.44.060's programmatic purpose is to deter and gather evidence for prosecuting other
11 crimes, it is not a valid inspection regime under the Fourth Amendment. See *id.* at 48; *cf.*
12 *People v. Maikhio* (2011) 51 Cal. 4th 1074, 1092-1093.

13 Moreover, Respondents fail to address or controvert Petitioners' arguments that
14 Section 9.44.060 falls outside of the heavily-regulated business exception because the
15 law delegates the authority to determine the "reasonableness" of the inspection to
16 inspecting officers and subjects law-abiding citizens to searches for engaging in lawful
17 activity (Mot. 15:1-5, 17-20). Yet this is precisely the type of abusive conduct the Fourth
18 Amendment was adopted to proscribe.⁸ See *Steagald v. U.S.* (1981) 451 U.S. 204, 220.

19 **B. The Balance of Interim Harms Favors Petitioners.**

20 **1. Petitioners Have Shown Irreparable Injury.**

21 Respondents argue that the law cannot be enjoined unless and until they
22 completely destroy U.S. Firearms' business (Opp. 13:1-14:10).

23 ⁸ Recent case law has clarified that a Fourth Amendment search occurs when the government, for the
24 purpose of obtaining information: (1) physically intrudes upon persons, houses, papers, and effects; or (2)
25 violates a reasonable expectation of privacy. *Patel v. City of Los Angeles* (9th Cir., Dec. 24, 2013) 08-
26 56567, 2013 WL 6768090 *2 (citing *U.S. v. Jones* (2012) — U.S. —, 132 S.Ct. 945, 949–51). The
27 *Jones* tests are supplementary, not alternative. *Id.*, 132 S.Ct. at 952. Crucially, the heavily regulated
28 business exception is premised entirely on the 1960's reasonable expectation of privacy test. See *U.S. v.*
Biswell (1972) 406 U.S. 311, 316. In contrast, the trespassory test arose out of the common law and as a
response to the generalized, suspicionless searches of Colonial merchants' goods and premises pursuant
to certain English revenue measures. *Marshall*, 436 U.S. at 311. Since Respondents have not shown that
the Eighteenth Century warrant requirement had a heavily regulated business exception, Section 9.44.060
must fail. *Jones*, 132 S.Ct. at 953-954 (Fourth Amendment "must provide at a *minimum* the degree of
protection it afforded when it was adopted").

1 Respondents are simply wrong on the law and the equities. The irreparable injury
2 requirement was met in *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1812-13
3 & n.2, where street food vendors were threatened by the "loss of their livelihoods, in
4 whole or in part" by an invalid city ordinance. Such irreparable injury falls far short of
5 complete destruction.⁹ See also *Am. Trucking Assn's, Inc. v. Los Angeles* (9th Cir. 2009)
6 559 F.3d 1046, 1059 (damages caused by preempted law constitute irreparable harm).

7 In any event, Respondents concede that there is no adequate remedy at law for
8 the damages that U.S. Firearms has admittedly suffered (Supp. Opp. 6:25-27). This is
9 plainly sufficient, see *DVD Copy Control Ass'n. Inc. v. Bunner* (2004) 116 Cal.App.4th
10 241, 250 (where no adequate legal remedy, only interim harm, not irreparable injury,
11 required).

12 As to the constitutional violations, Respondents contend that Petitioners suffer no
13 injury apparently because they have waived their constitutional protections by buying
14 firearms at some point in their lives (Opp. 14:11-21).

15 Respondents cite no authority for this sweeping proposition, because it is not the
16 law. An "alleged constitutional infringement will often alone constitute irreparable harm,"
17 particularly where city officials are threatening or engaging in systematic violations of
18 Fourth Amendment rights, *Lavan v. City of Los Angeles* (C.D. Cal. 2011) 797 F.Supp.2d
19 1005, 1019, *aff'd* (9th Cir. 2012) 693 F.3d 1022, *cert. denied*, (2013) 133 S.Ct. 2855, or
20 privacy invasions, *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 207; *Garrett v. City of*
21 *Escondido* (S.D. Cal. 2006) 465 F.Supp.2d 1043, 1052. Here, Respondents intend to
22 enforce the Ordinance vigorously (Fisher Supp. Decl. ¶ 7).

23 As to the contention that Petitioners are not harmed because they can always
24 travel to another jurisdiction, it is based on the "profoundly mistaken assumption" that "the

25
26 ⁹ Respondents also attempt to factually distinguish *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400,
27 418. However, that case stands for the proposition that the loss of business goodwill is a statutory ground
28 for an injunctive relief under Code of Civil Procedure section 526(a)(4), (5). See 2 *Cal. Judges Benchbook*
Civ. Proc. Before Trial (2008) § 14.15; 6 Witkin, *Cal. Proc.* (5th ed. 2008) *Provisional Remedies*, § 294; see
also *Rent-A-Center, Inc. v. Canyon Tele. & Appliance Rental, Inc.* (9th Cir.1991) 944 F.2d 597, 603
("[I]ntangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable
harm.").

1 harm to a constitutional right is measured by the extent to which it can be exercised in
2 another jurisdiction." *Ezell v. City of Chicago* (7th Cir. 2011) 651 F.3d 684, 697
3 (availability of target ranges outside city did not alleviate Second Amendment violation).

4 **2. Respondents Have Made No Evidentiary Showing of Interim Harm.**

5 According to Respondents, they will suffer significant harm if Section 9.44.060 is
6 enjoined because prohibited persons will rush to Sunnyvale to purchase ammunition
7 during the period while the injunction is in place (Opp. 14:22-15:23).

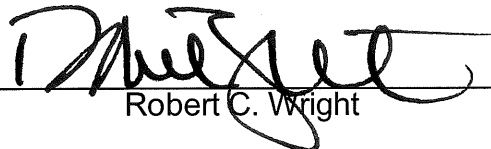
8 Respondents must adduce substantial and admissible evidence in support of their
9 factual showing of harm but have none. *Shapiro v. San Diego City Council* (2002) 96
10 Cal.App.4th 904, 912. To the contrary, the Sunnyvale City Planning staff found that there
11 is no empirical evidence supporting the crime-prevention claims of ammunition sales laws
12 promoters (Schouten Decl. ¶ 4, Ex. C at 1, 5-6, 10-11). Weighing Section 9.44.060's
13 marginal and speculative effects against the serious harms to Petitioners, the balance of
14 harms favors Petitioners. *Am. Acad. of Pediatrics v. Van de Kamp* (1989) 214 Cal.App.3d
15 831, 838 (balance of harms favored plaintiffs where government's claimed harm "either
16 was unfounded, or would not be alleviated by the new law").

17 **CONCLUSION**

18 Based on the foregoing, Petitioners have established a "reasonable probability" of
19 success on the merits and that they will suffer more harm from the denial of an injunction
20 than Respondents will from its grant. Under these circumstances, the Court should grant
21 Petitioners their requested preliminary injunction. *MaJor v. Miraverde Homeowners*
22 *Ass'n.* (1992) 7 Cal.App.4th 618, 624.

23 WRIGHT & L'ESTRANGE
24 Attorneys for Petitioners

25
26 Dated: January 6, 2014

27 By  _____
28 Robert C. Wright