

1 XAVIER BECERRA
Attorney General of California
2 State Bar No. 118517
MARK R. BECKINGTON
3 Supervising Deputy Attorney General
State Bar No. 126009
4 ANTHONY P. O'BRIEN
Deputy Attorney General
5 State Bar No. 232650
JOHN D. ECHEVERRIA
6 Deputy Attorney General
State Bar No. 268843
7 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
8 Telephone: (213) 269-6249
Fax: (213) 897-5775
9 E-mail: John.Echeverria@doj.ca.gov
Attorneys for Defendant Attorney General
10 Xavier Becerra

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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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16 **VIRGINIA DUNCAN, et al.,**

17 Plaintiffs,

18 v.

19 **XAVIER BECERRA, in his official**
20 **capacity as Attorney General of the**
21 **State of California; and DOES 1-10,**

22 Defendants.

17-cv-1017-BEN-JLB

**DECLARATION OF KEN JAMES
IN OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: April 30, 2018
Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

DECLARATION OF KEN JAMES

I, KEN JAMES, declare:

1. I am a retired law enforcement officer retiring from the Emeryville, California Police Department on June 30, 2015 after forty years of service. I served the last seventeen years of my career as the Chief of Police of the department. During my career I held a wide variety of assignments, including patrol officer, K-9 officer, and general assignment investigator. I rose through the ranks in the Department and served as a patrol and investigations sergeant, Captain of both the Patrol and Professional Services Divisions prior to my appointment as Chief. During my career I investigated and supervised the investigations of various gun related crimes.

2. I served as the Chair of the California Police Chief's Association's Firearms Committee. The California Police Chiefs Association represents the municipal Chiefs, and their seconds in command, of 332 cities who provide public safety services for over twenty-six million Californians. The Association promotes and advances the science and art of police administration and crime prevention, to develop and disseminate professional administrative practices, and to encourage the adherence of all police officers to high professional standards of conduct in strict compliance with the Law Enforcement Officer's Code of Ethics.

3. The Association's Firearms Committee is responsible for the formulation and review of the Association's positions on gun violence prevention, including developing and advocating for legislation to reduce and/or prevent gun violence. The Association adopted its initial position paper in 1995 and has updated and revised its position three times since. The initial paper identified six areas, including limiting magazine capacity, that would significantly impact gun violence in California.

1 4. I also serve as a committee member of the International Association of
2 Chiefs of Police's (IACP) Firearm Committee. The IACP represents over 15,000
3 professional law enforcement administrators worldwide and promotes the best
4 professionals policing practices. The Firearms Committee advises the IACP's
5 Board of Directors and Executive Board on national firearms issues.

6 5. The information stated in this declaration is based on my knowledge,
7 training, education, and experience.

8 6. In my opinion, the existence of high capacity magazines only serves to
9 enhance the killing and injuring potential of a firearm. I have attended debriefings
10 of several high profile mass shootings, including Columbine, Sandy Hook, Aurora
11 Colorado, San Bernardino, Orlando Nightclub, and the Christopher Dorner
12 shootings in Southern California. In each of these shootings high capacity
13 magazines were utilized allowing the shooter or shooters to move quickly through
14 an area dispensing a large number of bullets without slowing to reload, resulting in
15 mass casualties. I have drawn from these reviews that casualties would have been
16 significantly reduced if a shooter needed to slow or stop to reload after ten shots.

17 7. It is my opinion that possession and use of high capacity magazines by
18 individuals committing criminal acts pose a significant threat to law enforcement
19 personnel and the general public. I have been involved with and/or supervised the
20 investigation of gun violence crimes in which high capacity magazines were used.
21 For example, in a drive-by shooting in the City of Emeryville, the investigation
22 revealed that in excess of forty casings from two different guns were found at the
23 scene. The shooting resulted in the death of one individual, but fortunately, no
24 other injuries to individuals at the scene. Witnesses told officers that the shooting
25 lasted only a matter of seconds. The number of shots fired resulted in adjacent
26 occupied buildings being struck by stray bullets posing a significant threat to the
27 occupants of those buildings.

1 8. Also, it is my opinion that the use of high capacity magazines is not
2 necessary for self-defense. In my professional capacity as a police chief, Chair of
3 the California Police Chiefs Association's Firearms Committee and member of the
4 IACP's Firearms Committee, I have read and viewed news accounts of incidents in
5 which individuals have defended themselves from a criminal attacks and perceived
6 criminal attacks by using a firearm. I have performed these reviews to determine
7 whether a large number of rounds was necessary in those incidents for the victims
8 to defend themselves. I am not aware that in any of the accounts the victims fired
9 in excess of ten shots in their defense.

10 9. California's restrictions on the sale of high capacity magazines have been
11 in effect since 2000. Therefore, high capacity magazines have not been available
12 for sale in California for nearly two decades. Magazines holding ten rounds or less
13 have been available in the state since 2000.

14 10. The California Police Chiefs Association, in their initial position paper
15 on gun violence written in 1995 and in subsequent updates, have identified limiting
16 magazine capacities as an appropriate and necessary measure to reduce gun
17 violence. The Association adopted its initial position paper in 1995 and has
18 updated and revised its position three times since. The initial paper identified six
19 areas, including limiting magazine capacity, that would significantly impact gun
20 violence in California. Attached hereto as Exhibit A is a true and correct copy of
21 the Association's position paper adopted in May of 2013. The Association
22 supported legislation that resulted in the current laws regulating magazine capacity.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
2 foregoing is true and correct.

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4 Executed on: April 6, 2018


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7 KEN JAMES
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EXHIBIT A

**CALIFORNIA POLICE CHIEFS ASSOCIATION
POSITION PAPER**

May 31, 2013

SUBJECT: GUN VIOLENCE AND THE REGULATION OF FIREARMS

INTRODUCTION

The California Police Chiefs Association has long recognized that gun violence is a threat to the safety and well-being of the communities we serve and the officers committed to the protection of those communities. The Association is dedicated to its leadership role in identifying and implementing strategies to reduce gun violence. The Association's position is that while the right to bear arms is clearly articulated under the Second Amendment, reasonable regulations of firearms protect those rights. It is entirely appropriate to take reasonable steps that ensure responsible ownership while removing firearms from those who are prohibited by law from possessing them or who are intent on threatening the safety of our communities.

California has some of the strictest firearms regulations in the nation. These regulations have served law-abiding Californians well and clearly have not interfered with firearms ownership by responsible Californians. However, regulations prove ineffective unless those who are intent on threatening the safety of our communities are arrested, prosecuted, and sentenced to the fullest extent possible. Additionally, California's regulations are undermined if the ability of our federal law enforcement partners to effectively perform their designed function is restricted.

We cannot escape the fact that many firearm-related deaths and injuries do not occur as a result of intentional criminal misconduct. Far too often, gun related deaths and injuries occur between family, friends, unintended victims, and children. Therefore, it is the Association's position that responsible ownership, which includes safe storage and handling of firearms, is imperative as a means of reducing these tragic incidents.

Gun violence is a complex issue with a multitude of causative factors that must be addressed if we are to be successful in reducing gun violence in our communities. These factors include:

- Examining mental health issues, including how to eliminate the ability of those who are mentally incompetent from purchasing or possessing a firearm.
- Straw Purchases: the purchase of a firearm by someone legally capable for an individual who is prohibited from purchasing or possessing a firearm.

- Armed and Prohibited Individuals: prosecuting and proactively removing firearms and ammunition from individuals who are prohibited from owning and possessing them.
- Universal background checks: It is estimated that over 40% of all firearm sales occur without background checks. Weapons acquired through such sales are finding their way into the hands of individuals who are prohibited from possessing them or who are intent on affecting the safety of our communities
- Ammunition –The Association recommends the addition of a registration component, similar to the Dealer Record of Sale (DROS), to track ammunition sales. This would assist in the investigation of crimes committed with a firearm, ammunition straw purchases, and purchases by those prohibited from owning or possessing firearms or ammunition.

**Possession of armor piercing ammunition, which threatens the safety of police officers, should be made illegal.

- Concealed Weapons: the Association advocates that the ability to issue concealed weapons permits should remain at the discretion of the local chief or sheriff.
- High Capacity Magazines: Recognizing that justifiable reasons exist for limiting magazine capacity, we propose that no firearm magazine be lawfully possessed if it has a capacity of more than ten rounds of ammunition.
- The ability of the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) to track purchases and provide information to local law enforcement agencies across the country should be strengthened.
- Direct the Center for Disease Control (CDC) to conduct research for the purpose of determining the scope of the deaths and injuries which occur as a consequence of firearms.

CONCLUSION

The California Police Chiefs Association's position recognizes and supports the Second Amendment and the right of gun ownership provided to law abiding citizens. The Association also recognizes that delving into the mental health aspects of individuals associated with gun violence may conflict with currently enacted health and privacy laws, but if we are to have any impact on reducing gun violence, we must be a strong voice in addressing these issues that threaten the safety of our communities.