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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM WIESE, et al.,

Plaintiffs,

vs.

ROB BONTA, in his official capacity as
Attorney General of California, et al.,

Defendants.

Case No. 2:17-cv-00903-WBS-KJN

**DECLARATION OF RAYMOND M.
DIGUISEPPE IN SUPPORT OF PLAINTIFFS’
REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT, AND IN OPPOSITION TO
DEFENDANTS’ COUNTER MOTION FOR
SUMMARY JUDGMENT**

[FRCP 56]

Date: July 10, 2023
Time: 1:30 p.m.
Courtroom 5, 14th Floor
Judge: Hon. William B. Shubb

DECLARATION OF RAYMOND M. DIGUISEPPE

I, Raymond M. DiGuiseppe, declare as follows:

1. I am an attorney at law, in good standing, duly licensed to practice law in this state and to appear before its courts. I am admitted to the Eastern District of California. I am

1 counsel of record for Plaintiffs in this matter. I have personal knowledge of the facts stated in this
2 declaration, and if called as a witness, could competently testify thereto.

3 2. This declaration is executed in support of Plaintiffs' reply to Defendants' opposition to
4 Plaintiffs' motion for summary judgment and in support of Plaintiffs' opposition to Defendants'
5 counter-motion for summary judgment.

6 3. Attached hereto as Exhibit A is a true and correct copy of 1821 Me. L. chap. 25, p. 98-100.

7 4. Attached hereto as Exhibit B is a true and correct copy of 1832 Conn. L. chap. 25, p. 391-
8 392.

9 5. Attached hereto as Exhibit C is a true and correct copy of RANDOLPH ROTH,
10 AMERICAN HOMICIDE 180-83 (2009).

11 I declare under penalty of perjury that the foregoing is true and correct. Executed on
12 May 31, 2023

13 /s/ Raymond M. DiGuiseppe
14 Raymond M. DiGuiseppe

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EXHIBIT A

cial Court, to parties and witnesses, as are allowed in the regular Courts of law; and that the said two Justices, *quorum unus*, shall have the same fees, and be allowed the same sums for the trial aforesaid, as are allowed to Justices in the process of forcible entry and detainer.

[Approved March 8, 1821.]

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CHAPTER XXV.

An Act for the prevention of damage by Fire, and the safe keeping of Gun Powder.

Selectmen to make regulations as to the keeping of gun powder in certain towns.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Selectmen of each town within this State, containing not less than fifteen hundred inhabitants, be, and they hereby are, authorized and empowered to make rules and regulations, from time to time, in conformity with which, all gun powder which is or may be within such town, shall be kept, had or possessed therein; and no person or persons shall have, keep or possess within such town, any gun powder, in any quantity, manner, form or mode, other than may be prescribed by the rules and regulations aforesaid.

Penalty for violating such regulations.

SEC. 2. *Be it further enacted*, That any person or persons who shall keep, have or possess any gun powder, within any town, contrary to the rules and regulations which shall be established by the Selectmen of such town, according to the provisions of this Act, shall forfeit and pay a fine of not less than twenty dollars, and not exceeding one hundred dollars, for each and every offence, to be recovered by action of debt in any Court proper to try the same.

Mode of recovery.

Powder kept contrary to regulations may be seized and libelled.

SEC. 3. *Be it further enacted*, That all gun powder which shall be had, kept or possessed, within any town, contrary to the rules and regulations which shall be established by the Selectmen of such town, according to the provisions of this Act, may be seized by any one or more of the Selectmen of such town, and shall within twenty days next after the seizure thereof, be libelled, by filing with any Justice of the Peace in such town, a libel, stating the time, place and cause of seizure, and the time and place when and where trial shall be had before said Justice, and a copy of said libel shall be served by the Sheriff, or his deputy, on the person or persons, in whose possession the said gun powder shall have been seized, by delivering a copy thereof to each such person, or leaving such copy at his or her usual place of abode, seven days at least, before the time which shall be specified in said libel, for the trial thereof, that such person may appear, and show cause why the gun powder, so seized or taken, should not be adjudged forfeit; and if any person shall appear to show cause why the same should not be adjudged forfeit, such ap-

Proceedings on such libel.

FIRE... GUN POWDER

pearance shall be entered on record, by said Justice; and if the gun powder, seized as aforesaid, shall be adjudged forfeit, the person or persons, whose appearance shall have been recorded as aforesaid, shall pay all costs of prosecution, and execution shall issue therefor: *Provided however,* That the person or persons, whose appearance shall have been recorded, may appeal from the judgment rendered by said Justice of the Peace, to the next Court of Common Pleas to be holden for the County where such town is situated; and the party so appealing, before such appeal shall be allowed, shall recognize, with sufficient surety or sureties to the libellant, to prosecute his said appeal and to pay all such costs as may arise after said appeal; and no further proceedings shall be had upon the judgment appealed from; and in case the party appealing shall neglect to enter his appeal, the Court appealed to, may, upon complaint, proceed to affirm the judgment of the Justice, with additional costs.

Appeal from Justice's judgment,

after proceedings.

SEC. 4. *Be it further enacted,* That any person who shall suffer injury by the explosion of any gun powder, had or possessed, or being within any town, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, may have an action of the case in any Court proper to try the same, against the owner or owners of such gun powder, or against any other person or persons, who may have had the possession or custody of such gun powder, at the time of the explosion thereof, to recover reasonable damages for the injury sustained.

Persons damaged by explosion of powder illegally kept, may obtain redress.

SEC. 5. *Be it further enacted,* That it shall, and may be lawful for any one or more of the Selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefor according to law.

Selectmen may enter buildings to search for powder.

SEC. 6. *Be it further enacted,* That when any stove, chimney or stove pipe, within any town containing not less than fifteen hundred inhabitants, shall be defective, or out of repair, or so constructed or placed, that any building, or other property shall be in danger of fire therefrom, the Selectmen of said town shall give notice, in writing, to the possessor or possessors of such stove, chimney or stove pipe, to remove or repair the same; and if such possessor shall for the term of six days after the giving of such notice, unnecessarily neglect to remove, or effectually repair such stove, chimney or stove pipe, such possessor shall, for each and every such neglect, forfeit and pay a fine of not less than ten dollars, nor more than fifty dollars, to be recovered by action of the case, in any Court proper to try the same.

Penalty for suffering stoves, chimnies or stove pipes to be defective, &c.

Action of case.

SEC. 7. *Be it further enacted,* That the fines, forfeitures

Appropriation of fines, &c.

and penalties, which shall arise under this Act, shall accrue, one moiety thereof to the use of the town within which the offence shall be committed, and the other moiety to the use of the person who shall prosecute or sue for the same.

Above regulations not to be in force till published by Selectmen, &c.

SEC. 8. *Be it further enacted,* That the rules and regulations, which shall be established in any town, according to the provisions of this Act, shall be of no force or effect, until such rules and regulations, together with this Act, shall have been published by the Selectmen of such town, three weeks successively, by printing in some newspaper printed within the County, or by posting up attested copies in three several public places in said town.

[Approved March 19, 1821.]

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CHAPTER XXVI.

An Act to prevent damage from firing Crackers, Squibs, Serpents and Rockets, within this State.

Crackers, squibs, &c. not to be fired without license.

BE *it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall offer for sale, set fire to, or throw any lighted cracker, squib, rocket or serpent within this State, without the license of the Selectmen of the several towns, respectively, first obtained therefor, he shall forfeit, for every such offence, the sum of five dollars; one moiety to the use of the poor of that town, in which the offence shall be committed, and the other moiety to the use of the prosecutor; to be recovered by action of debt, or by information before any Justice of the Peace of the County, in which the offence shall be committed, with the costs of suit.

Punishment.

[Approved Feb. 20, 1821.]

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CHAPTER XXVII.

An Act more effectually to secure Fire Engines from being injured.

Persons wantonly injuring fire engines,

BE *it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall wantonly or maliciously, spoil, break, injure, damage or render useless, any engine, or any of the apparatus thereto belonging, prepared by any town, society, person or persons, for the extinguishment of fire, and shall be convicted thereof, before the Supreme Judicial Court, he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment, not exceeding two years, at the discretion of the Court; and be further ordered to recognize, with sufficient surety or sureties, for his good behaviour for such term as the Court shall order.

punished on conviction in S. J. Court.

[Approved March 2, 1821.]

EXHIBIT B

shall not be construed to apply or extend to any vessel arriving or coming from any foreign port, or place, or from any port or place in the United States, south of the Capes of the Delaware, which shall have entered any port or place in the United States, north of the said Capes of the Delaware, where there are quarantine regulations, and have been visited by a health officer, received a clean bill of health, and shall have been permitted to go to the wharves and unload thereat.

Limitation of former act.

Provided, such clean bill of health, or a certified copy thereof, shall be left with the collector of the port within twenty-four hours after the arrival of such vessel.

Proviso.

MARTIN WELLES,
Speaker of the House of Representatives.
THADDEUS BETTS,
President of the Senate.

May 31st, 1832—Approved.

JOHN S. PETERS

CHAP. XXV.

An Act regulating the mode of keeping of Gun Powder.

SEC. 1. **B**E it enacted by the Senate and House of Representatives, in General Assembly convened, That hereafter it shall be lawful for the select-men of each and every town within this State, or a majority of them, by their order, in writing, directed to the owners or persons having charge of the same, to cause to be removed to some safe and convenient place within said town, and within such time, as in said order may be prescribed, any quantity of gun powder so deposited or kept, within the limits of said town, as in the opinion of said select-men, or a majority of them, may endanger the persons or dwellings of any individuals whatsoever. Whereupon it shall become the duty of the persons thus notified, to remove the said gun powder within the time, and to the place specified in said order.

Order for removal of gun-powder.

Duty of persons notified.

SEC. 2. That in case the said gun powder shall not be removed pursuant to said order, as is hereinbefore prescribed, the said select-men, or a majority of them, may remove or cause the same to be removed to such place within said town, as in their opinion shall be deemed safe and convenient. And they shall have and retain a lien upon the said powder for all necessary expenses in removing and keeping the same.

Authority of select-men to remove.

Lien.

SEC. 3. That those persons who may hereafter wish to

Place of deposit for gunpowder, how designated. deposit, or keep, within the limits of any town in this State, gunpowder in quantity exceeding fifty pounds, may require the select-men of such town, or a majority of them to designate some safe and convenient place for that purpose; and it shall thereupon become the duty of such selectmen, or a majority of them, in writing, to designate and appoint a suitable place within their respective towns, for such purpose; at which place, thus designated, it shall be lawful thenceforth to deposit and keep gunpowder according to the true intent and meaning of this Act, until the select-men of said town, or a majority of them, for the time being, shall order the same to be removed pursuant to the foregoing provisions of this Act.

Penalty. SEC. 4. That if any person shall violate the provisions of this act as hereinbefore specified, he shall forfeit the sum of fifty dollars, one half thereof to the treasury of the town within which the offence is committed, and the other half to the person who may sue for and recover the same, in an action of debt.

Proviso. *Provided*, if any person shall consider himself aggrieved by the doings of the select-men, he may petition the next county court, which may grant the proper relief.

MARTIN WELLES,

Speaker of the House of Representatives.

THADDEUS BETTS,

President of the Senate.

May 30th, 1832—Approved.

JOHN S. PETERS.

CHAP. XXVI.

An Act in addition to an Act entitled "An Act to regulate the Inspection of Provisions."

Hundred of staves and hoops.

BE it enacted by the Senate and House of Representatives in General Assembly convened, That in all sales of staves or hoops which shall be made subsequently to the first day of July next, one hundred staves, and not the number of one hundred and twenty, and one hundred hoops, and not the number of one hundred and twenty, shall constitute the hundred of each of said articles; and the aliquot parts of a hundred shall be reckoned accordingly; any law, usage or custom to the contrary notwithstanding.

MARTIN WELLES,

Speaker of the House of Representatives.

THADDEUS BETTS,

President of the Senate.

May 31st, 1832—Approved.

JOHN S. PETERS.

CHAP. XXVII.

An Act in addition to an Act entitled "An Act to regulate the Inspection of Provisions and other articles of Commerce."

BE it enacted by the Senate and House of Representatives, in General Assembly convened, That the county courts in the several counties in this State be, and they hereby are authorized and empowered to appoint in each town in their respective counties, if they deem it expedient and necessary, one suitable person, in addition to the number already by law allowed, to be inspector and packer of beef, pork, butter and lard; and in all cases of appointments as above, the county court shall take bonds of each person so appointed, in the same manner as is provided in the act to which this is an addition.

Additional inspector and packer of beef, pork, &c.

MARTIN WELLES,
Speaker of the House of Representatives.
THADDEUS BETTS,
President of the Senate.

May 31st, 1832—Approved.

JOHN S. PETERS.

CHAP. XXVIII.

An Act to establish the Boundaries of Lands in certain cases therein mentioned.

BE it enacted by the Senate and House of Representatives in General Assembly convened, That whenever the boundaries of lands between any two or more adjoining proprietors shall have been lost, or by time, or accident, or any other cause, shall have become obscure, or uncertain, and the said adjoining proprietors cannot agree to fix and establish the same; it shall be lawful for any one, or more, of said adjoining proprietors, to make application to any justice of the peace, who by law may judge between the parties; and said justice shall summon all parties interested in said adjoining lands, to appear before him, (giving at least six days notice,) to be heard in the premises, and to agree upon three disinterested freeholders of the town or towns in which such lands are situated; and if the said parties cannot, or will not so agree, the said justice may appoint, and swear,

Proceedings to establish boundaries of lands.

EXHIBIT C

CHAPTER 5

The Emergence of Regional Differences

Homicide in the Postrevolutionary Period

Homicide rates increased in most American communities during and immediately after the Revolution, but as the long-term consequences of the Revolution became clear, they began to fall in the North and the mountain South. By the 1820s rates in the North were at historic lows that ranged from under 1 to just over 6 per 100,000 adults. They would remain at that level through the early 1840s. Those rates were comparable to rates in Canada, Sweden, and the Low Countries, and lower than rates in the rest of Europe. The United States would never see numbers that low again.¹

In the Ozark and Appalachian highlands of the South, where there were few slaves, homicide rates were as low as those in the rural Midwest by the 1830s and early 1840s. But the populations there were too small to affect the South's overall homicide rate. In slaveholding areas of the South, the homicide rate after 1800 ranged from 8 to 28 per 100,000 adults per year—at least twice what it had been for whites at its low point in the Chesapeake in the late 1750s and 1760s and three times what it had been for blacks in the 1780s and 1790s. After the Revolution homicide rates were thus most strongly linked to the presence or absence of slavery.²

It took time for these distinct patterns to take shape in the North, the mountain South, and the slave South. Backcountry violence was an interregional problem until the end of the War of 1812, when homi-

cide rates in Ohio finally fell below those in the Georgia Piedmont (Figures 4.1 and 4.2). Dueling was a national problem until the death of Alexander Hamilton in 1804, after which northerners made it clear that anyone who killed a man in a duel would be drummed out of public life. Homicide rates were high in northern and southern port cities through the War of 1812. Independence opened American ports to ships of all nations, and international tensions created hostility among American and foreign sailors, especially during the Napoleonic era. In Boston, for instance, in the decade after the British occupation, Portuguese, English, American, and French sailors were all involved in murders over women, national honor, or turf. In Savannah, Georgia, thirteen sailors were murdered from 1804 to 1815: a German, a Swede, a Norwegian, two Englishmen, two Frenchmen, two Irishmen, and four Americans. These homicides peaked in 1811–1813, when riots among sailors led to killings in New York, Norfolk, Charleston, Savannah, and New Orleans. The surge in such homicides subsided after the Napoleonic Wars as the maritime economy rebounded.³

After the War of 1812 it was clear even to contemporaries that homicide rates in the slave South were diverging from those in the rest of the nation. In the North and the mountain South the homicide rate among unrelated adults fell to its lowest level in American history as loyalist-patriot divisions disappeared and patriotism soared. People in those regions began to boast about America's superiority and to celebrate the unique character of America's political institutions. Edward Tiffin, Ohio's first governor, extolled the transformation of the government from one under which "we [could only] *breathe*, to one under which we may *live*." The Reverend Samuel Williams of Vermont was confident that Americans had devised the finest government in the world. It was, he said, a government that "reverences the people." He considered the United States "the best poor man's country," a place of opportunity where "the highest perfection and felicity, which man is permitted to hope for in the present life, may rationally be expected."⁴

Widespread self-employment and the removal of many legal and institutional barriers to advancement based on religion, class, or race, including slavery, persuaded the vast majority of northerners and whites in the mountain South that their social hierarchy was becoming more legitimate. A "Citizen of Color" captured the optimism of northern blacks when he wrote in 1814 that "we dwell in safety and pursue our

honest callings” with “none daring to molest us, whatever his complexion or circumstances.”⁵ Homicide was still a problem in urban neighborhoods where the level of self-employment was low and on frontiers that did not yet have effective governments, and the decline in self-employment that began in the 1820s and 1830s caused widespread anxiety and prompted riots that were responsible for a number of deaths in northern cities. But elsewhere in these regions homicides were rare.

The situation was very different in the slave South. Revolutionary ideas and aspirations wreaked havoc with the status hierarchy of slave society in a number of ways. Poor and middle-class whites were increasingly frustrated by their inability to rise in a society that remained class-bound and hierarchical. Prominent whites were subjected to the rough-and-tumble of democracy and were infuriated by the way they were treated. Blacks despaired over the failure of the abolition movement in the South, and whites were more fearful than ever of black rebellion. As a result, impatience with restraint and sensitivity to insult were more intense in the slave South, and during this period the region saw more than its share of deadly quarrels, property disputes, duels, and interracial killings.

People in the slaveholding South were also less likely than people in the North or the mountain South to trust the federal government and to identify with the new nation. Distrust blossomed in the 1820s and 1830s as proslavery southerners realized that the federal government had turned against them on a number of vital issues, including the admission of new slave states and territories and the suppression of abolitionist speech. The distrust may not have been strong enough to raise the homicide rate, but it was strong enough to nullify the dampening effect that the patriotism of the post-War of 1812 period should have had on the homicide rate among whites. In those decades, when American nationalism reached its nineteenth-century peak, identification with national heroes was weaker in the South than in the nation as a whole. The difference was so strong that a higher percentage of places were named in the North than in the South for the South’s national heroes, including Washington, Jefferson, and Jackson. Regional differences in national loyalty would become even more marked in the 1850s, of course, and again in the 1890s. But they were substantial enough in the postrevolutionary period to help raise the homicide

rate above the levels of the middle and late eighteenth century.⁶ The slaveholding South thus became the first region of the United States to deviate from the long-term trend toward lower homicide rates in North America and western Europe.

None of the correlates of lower homicide rates were present in the Southwest. In the Mexican borderlands rates tripled from the 1820s to the 1840s, probably reaching 40 per 100,000 adults per year in the Rio Grande Valley of New Mexico and in slaveholding areas of east Texas, and 100 or more per 100,000 in California and Hispanic areas of Texas. Mexico's war for independence from Spain (1810–1821) unsettled relations among classes and racial castes, just as the American Revolution had done in the slaveholding South, and led to murders that crossed class and racial lines. Government instability and frontier violence compounded the problem; Mexicans, Americans, and Native Americans killed one another over trade and territory. Mexico's counterrevolution of 1834 set off violent rebellions in nine of Mexico's twenty-seven states and territories, including Texas, California, and New Mexico, which led to a cycle of political killings, robbery murders, revenge murders, and vigilantism. Together, political instability, the failure of the federal and territorial governments to establish their legitimacy, the lack of national feeling, and the delegitimation of the social hierarchy made the Southwest one of the most homicidal regions in North America.

The Decline of Homicide in the North

The turning point in homicide rates in the northern backcountry and in northern ports like New York City was the end of the War of 1812 (Figures 4.2 and 5.1–5.3). Elsewhere in the North, particularly in southern New England and eastern Pennsylvania, the turning point had occurred in the late 1780s (Figures 1.2 and 2.2). Homicide rates declined as soon as political conflict subsided, the Constitution was ratified, and a stronger national government emerged. In Pennsylvania, for example, moderates were determined to build a stronger, more inclusive state government and to lay to rest the divisions of the war years. In 1786 moderate assemblymen altered the Test Act so that pietists could affirm their loyalty without swearing oaths. Two years later they gutted the Militia Act by suspending the fines for refusing