

PAGES 1 - 27

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

ESPANOLA JACKSON, ET AL.,)	
)	
PLAINTIFFS,)	
)	
VS.)	NO. C 09-2143 RS
)	
CITY AND COUNTY OF SAN)	
FRANCISCO, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

SAN FRANCISCO, CALIFORNIA
THURSDAY, MAY 5, 2011

TRANSCRIPT OF PROCEEDINGS

APPEARANCES :

FOR PLAINTIFF: MICHEL & ASSOCIATES, PC
 180 E. OCEAN BLVD.
 SUITE 200
 LONG BEACH, CA 90802
BY: **CLINTON B. MONFORT**
 ATTORNEY AT LAW

FOR DEFENDANT: OFFICE OF THE CITY ATTORNEY
 CITY & COUNTY OF SAN FRANCISCO
 #1 DR. CARLTON B. GOODLETT PLACE
 CITY HALL, ROOM 234
 SAN FRANCISCO, CA 94102
BY: **SHERRI SOKELAND KAISER**
 ATTORNEY AT LAW

REPORTED BY: JAMES YEOMANS, CSR 4039, RPR
 OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 THURSDAY, MAY 5, 2011

2:00 P.M.

2 (THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

3 **THE CLERK:** C 09-2143, JACKSON, ET AL. VERSUS CITY AND
4 COUNTY OF SAN FRANCISCO.

5 PLEASE STATE YOUR APPEARANCES.

6 **MS. KAISER:** GOOD AFTERNOON.

7 SHERRI KAISER FOR DEFENDANT CITY AND COUNTY OF SAN
8 FRANCISCO.

9 **MR. MONFORT:** GOOD AFTERNOON.

10 CLINTON MONFORT FOR THE PLAINTIFFS.

11 **THE COURT:** GOOD AFTERNOON.

12 LET ME MAKE SOME COMMENTS, PRELIMINARY COMMENTS. TO
13 SOME EXTENT A FORM OF A TENTATIVE RULING, OTHERS ARE SORT OF
14 OBSERVATIONS.

15 LET ME MENTION FIRST, THAT I RECEIVED A FLURRY OF
16 SUBMISSIONS IN ADDITION TO THE ACTUAL MOTION WHICH IS FOCUSED,
17 AS I UNDERSTAND IT, ON THE STANDING QUESTION, THE RIPENESS
18 QUESTION. I RECEIVED THIS SUBMISSION FROM THE CITY LAST WEEK
19 AND THEN ADDITIONAL ONE AS WELL TODAY.

20 I THINK, WITH RESPECT TO THE APPELLATE BRIEFING THAT
21 PLAINTIFFS' COUNSEL APPARENTLY ARGUED, POSITION THAT THE
22 DEFENDANTS THINK IS SOMEHOW INCONSISTENT WITH WHAT THE
23 POSITIONS THAT ARE BEING TAKEN HERE, POSITIONS PLAINTIFFS ARE
24 TAKING.

25 I DON'T THINK THERE IS, TO THE EXTENT THERE'S SUCH A

1 THING AS LAWYER ESTOPPEL, I DON'T THINK THAT CONCEPT WOULD
2 APPLY HERE, EVEN IF THE FACTS OF THE OTHER CASE WERE NOT
3 DISTINGUISHABLE, AND I THINK THAT THEY ARE.

4 I DON'T THINK THERE'S ANYTHING WRONG WITH AN ATTORNEY
5 ARGUING FOR DIFFERENT RESULTS, GOOD ATTORNEY SHOULD BE ABLE TO
6 DO THAT. SO I DON'T WANT TO DISCUSS THAT. I DON'T THINK
7 THAT'S WORTH OUR TIME.

8 IF A PARTY WANTS TO SUBMIT SOMETHING, THIS GOES TO THE
9 PROCESS QUESTION, AFTER REPLY BRIEF IS IN, YOU HAVE TO SEEK
10 LEAVE TO DO THAT.

11 AND UNDER OUR LOCAL RULES 7-3(D), WITH A COUPLE OF
12 EXCEPTIONS THERE THAT ARE MENTIONED IN THE RULE BUT DON'T APPLY
13 HERE, YOU GOT TO ASK FOR THAT, AND THE CITY'S SUBMISSION I
14 DON'T THINK WAS CONSISTENT WITH THOSE RULES.

15 THAT SAID, THE SUBMISSION WAS NOT, AS PLAINTIFFS
16 ARGUE, AN EX PARTE. THAT TERM IS SO MISUSED IN COURT BECAUSE
17 IT WAS SUBMITTED WITH NOTICE TO THE OTHER SIDE.

18 EX PARTE COMMUNICATIONS IS ONE WHERE ONLY ONE SIDE
19 SUBMITS SOMETHING, THE OTHER SIDE DOESN'T SEE IT. THAT DOES
20 OFTEN CREATE SOME ETHICAL ISSUES, VERY SELDOM IS -- THAT'S NOT
21 WHAT HAPPENED HERE.

22 THE BOTTOM LINE IS, I'M NOT GOING TO CONSIDER THE
23 SUBMISSION THE CITY MADE. I DON'T THINK IT'S RELEVANT TO ANY
24 OF THE ISSUES I HAVE TO DECIDE ON THIS MOTION. I JUST -- I
25 DON'T THINK IT'S PRODUCTIVE FOR US TO HEAR ANY ARGUMENT ON

1 THAT.

2 IN ADDITION TO THAT, I GOT A MOTION FROM PLAINTIFFS
3 THAT WAS FILED EARLIER THIS WEEK FOR LEAVE TO FILE A
4 SUPPLEMENTAL REPORT, AND THAT WAS NOTICED FOR HEARING IN JUNE,
5 UNNOTICED THAT.

6 THE PURPOSE OF IT IS TO APPARENTLY INCLUDE A NEW CLAIM
7 THAT PLAINTIFFS NOW WANT TO ADVANCE WITH RESPECT TO THE
8 AMENDMENTS TO THE DISCHARGE BAN, WHICH FORMALLY WAS SECTION
9 1290, NOW IT'S SECTION 4502 AND 4506, AND PLAINTIFFS WOULD THEN
10 ALSO DISMISS THE CLAIM IN THE PRESENT COMPLAINT THAT CHALLENGES
11 1290.

12 I THINK, PLAINTIFF IS PROBABLY CORRECT, TECHNICALLY A
13 SUPPLEMENTAL COMPLAINT WOULD BE PROPER. I THINK, RELATES TO
14 THE EVENTS THAT TOOK PLACE AFTER THE ORIGINAL COMPLAINT WAS
15 FILED, AMENDMENTS TO THE LAW, AND I DON'T WANT TO HAVE MORE
16 THAN ONE OPERATIVE PLEADING.

17 SO RATHER THAN A SUPPLEMENTAL PLEADING WHAT I'M
18 INCLINED TO DO, PUT ASIDE FOR A MOMENT THE STANDING ISSUE,
19 WHICH WE WILL GET TO, WHICH IF I WERE TO GRANT DEFENDANT'S
20 MOTION WOULD RENDER THIS SOMEWHAT ACADEMIC.

21 BUT LET'S PUT THAT ASIDE FOR THE MOMENT. TO HAVE THE
22 PLAINTIFFS ACCORDED LEAVE TO AMEND, TO SIMPLY AMEND AND HAVE
23 THIS UPDATED CLAIM, IF YOU WILL, RATHER THAN HAVE IT IN TWO
24 DIFFERENT PIECES, SO I WOULD BE INCLINED TO DO THAT.

25 SO THOSE ARE KIND OF THE PRELIMINARY THINGS. LET'S

1 TALK ABOUT THE MAIN ISSUES THAT WE'RE HERE TO DISCUSS. THAT'S
2 THE STANDING ISSUE AND THE RIPENESS QUESTION, WHICH I THINK IS
3 RELATED.

4 AND THAT'S REALLY THE ONLY THING I THINK WE'RE
5 FOCUSING ON HERE. FROM TIME-TO-TIME SEEMS TO BE SOME MERGING
6 INTO OTHER ISSUES IN THE CASE.

7 TO THE EXTENT I WERE TO DENY DEFENDANT'S MOTION, WE'LL
8 GET TO THOSE SUBSTANTIVE ISSUES, BUT AT THIS JUNCTURE ALL WE'RE
9 TALKING ABOUT IS STANDING.

10 DEFENDANTS ARE CONTENDING THAT THE PLAINTIFFS LACK
11 STANDING TO BRING THIS ACTION BECAUSE THE CLAIM, AS I
12 UNDERSTAND IT, THE ARGUMENT IS THAT PLAINTIFFS HAVE NOT
13 SUFFERED ANY INJURY IN FACT BY ARREST OR PROSECUTION UNDER THE
14 CHALLENGED LAW AND THEY REALLY COULD ONLY HAVE STANDING TO SHOW
15 EMINENT INJURY IN FACT.

16 I RECOGNIZE THAT IN MAKING THAT ARGUMENT THERE'S
17 RELIANCE ON THE SAN DIEGO GUN RIGHTS CASE. DEFENDANTS ARE
18 ARGUING THAT BASED ON THAT CASE IT'S SIMPLY NOT ENOUGH FOR
19 PLAINTIFFS TO ALLEGE THAT THEY WISH AND INTEND TO ENGAGE IN
20 CONDUCT PROHIBITED BY THE LAW IN DISPUTE, AFTER ALLEGED FACTS
21 THAT SHOW HOW AND IN WHAT FASHION THEY VIOLATED THE LAW, A
22 SPECIFIC THREAT THAT WOULD BE PROSECUTED.

23 AND DEFENDANTS CONTEND IT'S INSUFFICIENT BECAUSE IT'S
24 DEVOID OF ALLEGATION OF LAW ENFORCEMENT HAS MADE ANY SUCH
25 INDICATION THEY WERE GOING PROCEED IN THAT FASHION.

1 THAT SAID, GUN RIGHTS CASE WAS DECIDED PRIOR TO THE
2 SUPREME COURT DECISIONS IN HELLER AND MC DONALD. GUN RIGHTS
3 INVOLVE A CHALLENGE TO A FEDERAL LAW.

4 I THINK, PROHIBITED MANUFACTURE, TRANSFER, POSSESSION
5 OF SEMIAUTOMATIC WEAPONS, THE TRANSFER AND POSSESSION OF
6 AMMUNITION, ASSAULT WEAPONS BAN, AND IN THAT CASE THE
7 PLAINTIFFS HAVE ALLEGED THEY WISH -- THEY INTENDED TO ENGAGE IN
8 SOME CONDUCT.

9 I DON'T THINK IT WAS ARTICULATED AS TO WHAT WAS GOING
10 TO VIOLATE THE ACT POTENTIALLY, I THINK, BECAUSE IT DOES
11 PREDATE HELLER AND REALLY FOCUSES ON THE COMMERCE CLAUSE
12 QUESTION, THE POWER OF CONGRESS IN ENACTING ASSAULT WEAPONS
13 BAN.

14 I JUST DON'T THINK THAT IT IS REALLY UP TO DATE FOR
15 OUR PURPOSE IN TERMS OF CONSIDERING WHERE THINGS STAND IN THE
16 STANDING QUESTION.

17 AND I THINK IT'S ALSO UNDERCUT TO SOME LARGE EXTENT BY
18 THE MEDLMMUNE CASE SUPREME COURT BECAUSE IN THAT CASE THE COURT
19 INDICATED THE ANALYSIS HAS TO BEGIN WITH AN UNDERSTANDING. IF
20 THERE'S THREATENED ACTION BY THE GOVERNMENT THE PLAINTIFF IS
21 NOT REQUIRED TO EXPOSE THEMSELVES TO THE LIABILITY BEFORE
22 BRINGING SUIT TO CHALLENGE THE BASIS FOR THE THREAT.

23 SO I THINK THAT FURTHER, AS I SAY, SORT OF UNDERCUTS
24 FOR ITS STANDING PURPOSE THE QUESTION ELUCIDATED IN GUN RIGHTS.

25 I KNOW THAT DEFENDANTS ARE RELYING ON MISSION INDIANS

1 CASE. INTERESTING CASE. WHERE THERE WAS THIS GENERAL ISSUE
2 ABOUT POSSIBLY ENFORCING GAMBLING LAWS. BUT I THINK IT WAS
3 QUITE -- THAT THAT CASE QUITE AMORPHOUS AND I THINK WE'RE IN A
4 SOMEWHAT DIFFERENT POSTURE HERE.

5 SO I SUPPOSE MY SENSE IS THAT WE'RE IN A VERY
6 DIFFERENT WORLD, TO JUST SUMMARIZE, THEN WE WERE IN THE GUN
7 RIGHTS CASE, SAN DIEGO GUN RIGHTS AND THAT THE ARGUMENT AT THE
8 VERY LEAST FOR STANDING IS STRONGER IN THIS CASE.

9 SO I KNOW THAT'S A LONG WINDED QUASI TENTATIVE, BUT I
10 THOUGHT I'D START OUT AND GIVE YOU SOME OF MY THOUGHTS ON IT.
11 SO WHY DON'T I TURN FIRST TO MS. KAISER.

12 **MS. KAISER:** THANK YOU, YOUR HONOR.

13 I THINK, A FEW THINGS. ONE IS, IT MAY BE THE CASE, AS
14 YOU SAY, THAT DECISIONS BY THE NINTH CIRCUIT ARE SOMEHOW
15 OUTMODED OR OUTDATED, BUT THEY STILL CONTROL.

16 **THE COURT:** I WOULDN'T SAY OUTDATED. WHAT I'M SAYING
17 IS, WE DON'T LIVE IN A STATIC WORLD AND EVEN THE JUDGES IN THE
18 CIRCUIT WOULD SAY EVENTS MAY OCCUR IN THE FORM OF SUPREME COURT
19 DECISIONS THAT ONE HAS TO TAKE INTO ACCOUNT IN ASSESSING WHERE
20 THOSE OPINIONS STAND, AND THERE'S -- I THINK, WE ALL HAVE TO
21 AGREE IT'S A MAJOR C CHANGE, WHATEVER ONE MAY THINK IT MEANS IN
22 THE END IN TERMS OF SUBSTANTIVE ISSUES.

23 HELLER AND MC DONALD, IT'S A CHANGED CIRCUMSTANCE FROM
24 WHAT WAS THE STATE OF UNDERSTANDING OF THE LAW WHEN THE NINTH
25 CIRCUIT DEALT WITH THE SAN DIEGO CASE.

1 **MS. KAISER:** I ABSOLUTELY AGREE WITH YOU THERE HAS
2 BEEN A C CHANGE, I WOULD BE FOOLISH TO DENY IT. BUT THE
3 QUESTION ISN'T SIMPLY WHETHER THERE HAS BEEN A C CHANGE,
4 WHETHER THAT C CHANGE IS CLEARLY IRRECONCILABLE WITH PRIOR
5 NINTH CIRCUIT AUTHORITY.

6 I DON'T THINK THAT THRESHOLD IS MET HERE. I DON'T
7 THINK THERE'S ANY REASON WHY HELLER OR MC DONALD HAS TO BE READ
8 AS CONFLATING, ANTIDOTALLY CONFLICTING WITH THE PRIOR AUTHORITY
9 THE CITY RELIES ON.

10 AND THE FACT IS THAT HELLER AND MC DONALD ARE BOTH
11 VERY RECENT OPINIONS. SO IT'S NOT AS THOUGH THE CITY HAS A
12 WEALTH OF SUBSEQUENT CASE LAW TO RELY ON, IT'S SIMPLY THE
13 STANDING DOCTRINE LONG BEEN ESTABLISH IN THE NINTH CIRCUIT.

14 SO THE QUESTION HAS TO BE, HAVE HELLER AND MC DONALD
15 SO ALTERED THE LANDSCAPE IN REGARD TO THE --

16 **THE COURT:** IN ADDITION, AS I INDICATED BEFORE, IN
17 ADDITION TO THE CHANGED TERRAIN THAT HELLER AND MC DONALD
18 REPRESENTS, HOW MUCH MEDLMMUNE DECISION, THE MEDLMMUNE DECISION
19 REALLY DOES SEEM TO INDICATE THAT THE PLAINTIFF DOES NOT HAVE
20 TO PUT THEMSELVES IN POSITION OF HAVING VIOLATED THE LAW IN
21 ORDER TO HAVE STANDING.

22 AND HOW CAN WE RECONCILE THAT WITH SAN DIEGO GUN
23 RIGHTS FOR PURPOSE OF DETERMINING WHETHER OR NOT THERE'S
24 STANDING IN THE CASE.

25 **MS. KAISER:** WELL, I THINK THAT ACTUALLY THOSE CASES

1 ARE ALSO CONSISTENT WITH EACH OTHER. IT'S LONG BEEN THE FACT
2 YOU CAN BRING REINFORCEMENT CHALLENGES IF YOU HAVE STANDING TO
3 DO SO.

4 AND SO THE DOCTRINE HAS BEEN CLEAR FOR A LONG TIME,
5 YOU DON'T ACTUALLY HAVE TO BREAK THE LAW AND SUBJECT YOURSELF
6 TO PROSECUTION. THERE'S ACTUALLY NOTHING NEW WITH THAT IDEA.
7 THAT'S SIMPLY A RESTATEMENT OF PRE-ENFORCEMENT CHALLENGE
8 DOCTRINE.

9 BUT THE PROBLEM IS, EVEN IN TERMS OF A PRE-ENFORCEMENT
10 CHALLENGE THERE ARE STILL STANDING REQUIREMENTS THAT THE
11 PLAINTIFF MUST MEET AND THOSE INCLUDE ACTUAL OR EMINENT INJURY.

12 AND IN THE CASE OF EMINENT INJURY IN THE
13 PRE-ENFORCEMENT CHALLENGE DOCTRINE OTHER THAN IN FIRST
14 AMENDMENT CASES WHICH ARE SPECIAL CASES I'M HAPPY TO TALK
15 ABOUT.

16 **THE COURT:** I UNDERSTAND, I AGREE WITH YOUR ARGUMENT
17 THAT THOSE CASES HAVE A PARTICULAR CHILLING ISSUE THAT IS NOT
18 PRESENT WHEN ADDRESSING SOMETHING OTHER THAN THE FIRST
19 AMENDMENT. I THINK, THAT'S A LEGITIMATE ARGUMENT AND I'M AWARE
20 OF IT.

21 **MS. KAISER:** WELL, THEN THE ISSUE BECOMES WHETHER THE
22 INJURY, IF IT'S NOT -- IF CHILL DOESN'T SUFFICE, IS IT
23 SUFFICIENTLY EMINENT?

24 AND THAT'S WHERE THE ACTUAL CONDUCT IN WHICH THE
25 PLAINTIFF WISHES TO ENGAGE OR HAS ENGAGED, ATTRACTS THE

1 ATTENTION OF LAW ENFORCEMENT, TO THE EXTENT THAT LAW
2 ENFORCEMENT SAYS, HEY, IF YOU DO THAT YOU WILL BE PROSECUTED.

3 AND THERE ARE TWO THINGS THAT ARISE FROM THAT THAT ARE
4 VERY IMPORTANT FOR JUDICIAL DECISION MAKING. ONE IS A CLEAR
5 SET OF FACTS OF THE PLAINTIFFS' CONDUCT, IT'S THIS PARTICULAR
6 CONDUCT.

7 AND THE SECOND THING IS, IT'S A CLEAR STATEMENT OF HOW
8 THE JURISDICTION INTERPRETS. THE MAIN ARGUMENT REALLY AGAINST
9 ALL OF THE SAN FRANCISCO ORDINANCES IS THEIR EFFECT ON
10 SELF-DEFENSE, BUT THEY NEVER BEEN APPLIED IN A SELF-DEFENSE
11 CONTEXT.

12 WE DON'T KNOW WHAT PROSECUTORS WOULD DO IN SAN
13 FRANCISCO IN THE EVENT THAT IT WAS IN-HOME SELF-DEFENSE, YOU
14 KNOW, DIRECTLY UNDER THE RUBRIC OF HELLER.

15 I HAVE A HARD TIME IMAGING, FRANKLY, THE PROSECUTORS
16 WOULD IGNORE HELLER BASED ON A PORTION OF THE LAW THAT IS --
17 HAS BEEN EXPLICITLY PREEMPTED BY THE SUPREME COURT.

18 **THE COURT:** HOW ABOUT SAFE STORAGE ORDINANCE?

19 **MS. KAISER:** THE SAFE STORAGE ORDINANCE IS NOT
20 PREEMPTED BY HELLER BECAUSE THE STORAGE ORDINANCE IN HELLER
21 THAT IS CHALLENGED REQUIRED GUNS TO BE COMPLETELY INOPERABLE AT
22 ALL TIMES. EITHER DISASSEMBLED OR LOCKED. YOU COULD NEVER
23 EVER HAVE IT OUT.

24 HERE YOU CAN CARRY YOUR GUN AROUND YOUR HOUSE ALL DAY.
25 AND YOU CAN HAVE IT IN YOUR HOLSTER IF YOU WANT TO. YOU COULD

1 HAVE IT IN YOUR HAND, YOU COULD HAVE IT LOADED. YOU COULD BE
2 RUNNING. THE ONLY THING YOU CAN'T DO IS PUT IT DOWN AND WALK
3 AWAY, SO THAT IT'S AVAILABLE TO OTHER PEOPLE IN THE HOUSE TO --

4 **THE COURT:** YOU'RE ARGUING WHY -- WELL, THE STANDING
5 HURDLE IS ADDRESSED BY PLAINTIFFS, WE'LL GET TO THESE CONCERNS.
6 SOME OF THIS IS WHY YOU'RE SORT OF HEARING, YOU SAY WHY IT
7 SHOULD WITHSTAND SCRUTINY BECAUSE AN ORDINANCE HAS A GOOD
8 PURPOSE AND ALL THE REST OF IT.

9 BUT WE'RE TALKING NOW, I'M CONFINING ENTIRELY TO THE
10 QUESTION OF STANDING AND WHETHER OR NOT THERE IS ENOUGH OF A
11 CONCRETE ACTUAL POTENTIAL INJURY FOR THESE PLAINTIFFS TO BRING
12 FORWARD THE CLAIM.

13 NOT SO MUCH WHETHER OR NOT THE SAFE STORAGE IS
14 SOMETHING THAT IF IT IS LITIGATED WILL SURVIVE THE APPROPRIATE
15 LEVEL OF SCRUTINY.

16 **MS. KAISER:** I UNDERSTAND. I WAS ACTUALLY ANSWERING A
17 DIFFERENT QUESTION, WHETHER OUR ORDINANCE IS PREEMPT BY HELLER.
18 I DON'T BELIEVE IT IS FOR THOSE REASONS.

19 YES, SET THAT ASIDE. IN TERMS OF THE INJURY ANALYSIS
20 THEN UNDER THE SAFE STORAGE LAW ONE OF TWO THINGS WOULD HAVE TO
21 HAPPEN BASED ON THE STANDING CASE LAW.

22 THERE ACTUALLY HAS TO BE EITHER AN ACTUAL INJURY IN
23 TERMS OF AN ACTUAL UNCONSTITUTIONAL PROSECUTION THAT COUNTS OR
24 THE ACTUAL DENIAL OF THE USE OF A FIREARM IN SELF-DEFENSE IN
25 THE HOME WHEN YOU'RE UNDER ATTACK.

1 AND THAT'S A VERY SPECULATIVE INJURY IN THIS CONTEXT.
2 IT'S NOT LIKE SPEECH WHERE YOU DON'T DO IT YOU'RE INJURED.
3 HERE IN ORDER FOR THAT INJURY TO ARISE YOU HAVE TO HAVE --
4 LET'S EVEN ASSUME THAT THIS IS A PLAINTIFF WHO HAS A GUN AND
5 WANTS TO USE IT IN SELF-DEFENSE AT ALL TIMES, BUT HAS A TRIGGER
6 LOCK ON IT, IN ORDER FOR THAT ORDINANCE TO CAUSE INJURY THERE
7 WOULD HAVE TO BE A HOME INVADER, WHICH IS ALREADY FAIRLY
8 UNLIKELY.

9 THEY WOULD HAVE TO GIVE THE PLAINTIFF ENOUGH NOTICE
10 THEY WERE IN THE HOUSE, THAT THE PLAINTIFF COULD REACH THE GUN,
11 BUT NOT QUITE ENOUGH NOTICE THAT THEY COULD ALSO UNLOCK IT AND
12 FIRE IT.

13 THERE'S THIS LITTLE TINY WINDOW WHERE THE SAFE STORAGE
14 ORDINANCE MIGHT HAVE AN EFFECT. WHILE THE INJURY IS POSSIBLE,
15 ITS VERY SPECULATIVE AND THAT ISN'T ENOUGH FOR STANDING.

16 **THE COURT:** WELL, EXCEPT, I THINK, THE EXTENSION OF
17 YOUR ARGUMENT, I DON'T SEE A SCENARIO OTHER THAN THE ACTUAL
18 ARREST OR ENFORCEMENT OF THE PROVISION, THAT EVEN THOUGH YOU'RE
19 INDICATING, WELL, I ACKNOWLEDGE THAT MEDLMMUNE SAYS IT DOESN'T
20 HAVE TO BE, YOU HAVE TO BE ARRESTED OR THE LIKE. I DON'T SEE
21 WHERE ANYTHING BUT THAT WOULD BE ENOUGH FROM YOUR ANALYSIS TO
22 WARRANT STANDING.

23 I MEAN, I DON'T SEE THIS SORT OF ACKNOWLEDGE MENT
24 THAT, YES, WE DON'T, THE PLAINTIFF DOESN'T HAVE TO PUT HIM OR
25 HERSELF IN THAT POSITION, BUT THEN THE ARGUMENT SEEMS TO BE

1 THERE, UNTIL THEY'RE IN THAT POSITION THEY CAN NEVER HAVE
2 STANDING. THAT'S WHERE I'M HAVING SOME BE TROUBLE.

3 **MS. KAISER:** OKAY. I -- JUST TO CLARIFY MY POSITION,
4 WHICH I THINK YOU MAY HAVE UNDERSTOOD QUITE CORRECTLY, JUST TO
5 CLARIFY IT.

6 THERE ARE TWO KINDS INJURY YOU CAN SUFFER. ONE IS THE
7 ACTUAL DEPRIVATION OF THE RIGHT TO FIRE YOUR GUN IN
8 SELF-DEFENSE IN THE HOME, WE WERE JUST DESCRIBING THAT.

9 THE SECOND KIND OF ACTUAL INJURY THAT YOU CAN SUFFER
10 IS AN UNCONSTITUTIONAL PROSECUTION.

11 YOU DON'T HAVE OBVIOUSLY THE FIRST KIND WE WERE
12 DISCUSSING, IS VERY SPECULATIVE AND HYPOTHETICAL AND PROBABLY
13 NOT ENOUGH TO ANCHOR STANDING.

14 THE SECOND TYPE OF INJURY, THE UNCONSTITUTIONAL
15 PROSECUTION, THAT IS WHERE IT IS IMPORTANT THAT THERE'S AN
16 INDIVIDUALIZED REASON TO BELIEVE BASED, PERHAPS, ON THE PRIOR
17 CONDUCT OF THE PLAINTIFF.

18 MOST OF THE CASES WHERE THERE'S NOT A CLEAR THREAT OF
19 ENFORCEMENT DEAL WITH CONDUCT THE PLAINTIFF HAS ALREADY ENGAGED
20 IN MULTIPLE TIMES.

21 **THE COURT:** OR ALTERNATIVELY, I SUPPOSE, YOU COULD SAY
22 IF THERE'S A TRACK RECORD OF OTHERS BEING PROSECUTED.

23 **MS. KAISER:** OR A TRACK RECORD OF OTHERS BEING
24 PROSECUTED, SO WE KNOW HOW THE LOCALITY OR JURISDICTION
25 INTERPRETS AND ENFORCES ITS LAWS IN THE EVENT OF A CONDUCT

1 THAT'S BEING HYPOTHESIZED IN THE COMPLAINT.

2 HERE WE DON'T HAVE EITHER ONE OF THOSE THINGS. WE
3 NEITHER HAVE AN INDICATION OF CLEAR SET OF FACTS THAT SHOW WHAT
4 EXACTLY IS GOING TO HAPPEN SHOULD THIS SITUATION ARISE, WE
5 SIMPLY HAVE A GENERALIZED RECITATION OF WE INTEND TO DO WHAT
6 THE LAW SAYS WE SHOULDN'T DO AND WE REALLY WISH WE CAN DO IT TO
7 YOU IF THE LAW WERE THE OTHER WAY WE COULD.

8 **THE COURT:** WHAT SHOULD I MAKE, IF ANYTHING, OF THE
9 FACT THAT IN JUDGE WILKIN'S CASE THE, AS I UNDERSTAND IT, THE
10 CITY ANSWERED THE COMPLAINT AND DID NOT INVOKE A STANDING
11 QUESTION?

12 SHOULD I -- IS THAT A FAIR THING FOR ME TO TAKE INTO
13 ACCOUNT? AND IF IT IS, HOW SHOULD I TAKE IT INTO ACCOUNT?

14 **MS. KAISER:** OKAY. I PERSONALLY THINK NOW THE CASES
15 ARE NOT CONSOLIDATED AND THEY'RE COMPLETELY SEPARATE. THAT IT
16 REALLY SHOULDN'T MATTER IN THE COURTROOM.

17 I WOULD HAVE BEEN HAPPY TO BRING THEM TOGETHER TO
18 TREAT THEM THE SAME.

19 **THE COURT:** BUT UNLIKE A LAWYER OF STOCK HOLD SORT OF
20 NOTION, WHICH I DON'T THINK IS REALLY AN ARGUMENT THAT GOES
21 VERY FAR, BUT THE PARTY TAKING DIFFERENT POSITIONS IS SOMETHING
22 THAT, PERHAPS, THE APPROPRIATE CIRCUMSTANCE CAN BE TAKEN INTO
23 ACCOUNT, THERE IS A STANDING ARGUMENT TO BE HAD. ONE WOULD
24 EXPECT IT SHOULD BE ADVANCED IF THERE IS NO STANDING.

25 AND, I MEAN, I WOULD ASSUME THE CITY TAKEN THE

1 POSITION, THE CITY HAS ANSWERED THE COMPLAINT, SO WHETHER OR
2 NOT THE MATTERS WERE CONSOLIDATED, BOTH MATTERS WOULD GO IN
3 FRONT OF JUDGE WILKEN OR IN FRONT OF ME OR WHAT HAVE YOU.

4 THAT'S REALLY A CASE MANAGEMENT ISSUE, BUT THE
5 QUESTION IS SHOULD -- WHY SHOULDN'T, I GUESS, IS A BETTER WAY
6 TO PHRASE IT, WHY SHOULDN'T I CONSIDER THE CITY'S POSITION IN
7 THAT LITIGATION FOR PURPOSE OF DETERMINING WHETHER OR NOT THERE
8 IS A STANDING PROBLEM?

9 **MS. KAISER:** TWO THINGS. TO ANSWER YOUR QUESTION
10 DIRECTLY. THERE ARE ADDITIONAL CLAIMS IN PIZZO WHERE I BELIEVE
11 THE FACTS WILL SHOW ONCE WE ENTER DISCOVERY THAT THE PLAINTIFF
12 LACKS STANDING, AND BECAUSE OF SITUATION ABOUT THERE'S THIS
13 APPLICATION AND WHETHER IT WAS SUBMITTED, ET CETERA.

14 BUT THAT REQUIRES FACTUAL DISCOVERY. WHEREAS THESE
15 OTHER CLAIMS THAT I'M CHALLENGING RIGHT NOW IN JACKSON ARE THE
16 SOLE CLAIMS IN THE COMPLAINT AND NONE OF THEM REQUIRE FACTUAL
17 DISCOVERY, AT LEAST, FROM THE CITY'S SIDE.

18 IT MAY BE THAT THE PLAINTIFFS ARGUE THAT THEY CAN
19 BRING ADDITIONAL FACTS THAT WILL ESTABLISH STANDING BECAUSE OF
20 IMMEDIATE THREATS OF ENFORCEMENT MAYBE, BUT THE CITY DIDN'T
21 NEED ADDITIONAL FACTS IN ORDER TO BRING THE MOTION.

22 SO WE CAN BRING A FULLY DISPOSITIVE MOTION HEARING.
23 WE DIDN'T HAVE THAT OPPORTUNITY IN PIZZO AND SO WE DECIDED TO
24 REFRAIN AND BRING ALL OF OUR ARGUMENTS SIMULTANEOUSLY SIMPLY AS
25 A MATTER OF COMEDY. WE DON'T WAIVE OUR SUBJECT MATTER

1 JURISDICTION ARGUMENT BY WAITING FOR THE NEXT ROUND OF MOTIONS.

2 SECONDLY, I KNOW YOU DON'T WANT TO DISCUSS THIS, YOU
3 MENTIONED IT A FEW TIMES NOW, THE LETTER FROM THE CITY DOES NOT
4 ALLEGE, TRY TO BRING FORWARD ANY NOTION OF LAWYER ESTOPPEL.
5 ACTUALLY MAKES THE POINT THAT THE CLIENT FOR THE FIRST FILING
6 IS THE STATE ARM OF THE NRA WHICH IS THE PLAINTIFF HERE.

7 AND SO IT MAKES ACTUALLY THE PARTIES NOT THE LAWYER.
8 IT'S TRUE IT WAS THE SAME LAWYER BOTH TIMES, BUT IN FACT THESE
9 TWO PARTIES ARE IN PRIVACY, THAT IS THE POINT OF THE LETTER,
10 NOT THAT THE LAWYER DID SOMETHING IMPROPER.

11 **THE COURT:** OKAY. MR. MONFORT.

12 **MR. MONFORT:** TO THE EXTENT YOUR HONOR WILL BE
13 INCLINED TO DENY THE MOTION, I DON'T WANT TO TAKE UP TOO MUCH
14 OF YOUR TIME.

15 **THE COURT:** MS. KAISER INDICATED, MADE SOME POINTS
16 THAT I'D LIKE YOU TO ADDRESS.

17 **MR. MONFORT:** ABSOLUTELY. THANK YOU. JUST CHECKING
18 FIRST.

19 **THE COURT:** SMART MOVE. ALWAYS WANT TO MAKE SURE.

20 **MR. MONFORT:** SETTING ASIDE FOR A MOMENT THE CITY'S
21 CLAIMS REGARDING WHETHER OR NOT THE ALLEGED SECOND AMENDMENT
22 VIOLATIONS IN AND OF THEMSELVES WOULD CONSTITUTE THE HARM
23 GIVING PLAINTIFFS STANDING IN THE CASE, AND MOVING AHEAD TO THE
24 GUN RIGHTS CASE THE CITY RELIES ON IN REGARD TO THAT COURT'S
25 ANALYSIS OF PRE-ENFORCEMENT STANDING, THERE'S A COUPLE OF

1 DISTINGUISHING FACTORS THERE THAT, I THINK, ARE IMPORTANT FOR
2 YOUR CONSIDERATION.

3 FIRST, IN THAT CASE THE COURT TOOK TIME AS MEDLMMUNE
4 ALSO NOTED THE PLAINTIFFS HAD NO CONCRETE INTENTION TO ENGAGE
5 IN THE PROHIBITED CONDUCT.

6 CONVERSELY PLAINTIFFS IN THE CASE HAS ALLEGE EVIDENCE
7 THAT BUT FOR THE CHALLENGED PROVISION THEY WOULD IMMEDIATELY
8 ENGAGE IN THE CONDUCT PROHIBITED BY THE ORDINANCES THAT ARE
9 CHALLENGING.

10 **THE COURT:** IT'S TRUE, IS IT NOT, AS MS. KAISER SORT
11 OF SUGGESTED, ALTHOUGH, IT WAS MORE RESPONDING TO THE
12 THEORETICAL QUESTIONS, I SUPPOSE.

13 THERE'S NO TRACK RECORD HERE, THESE ARE RELATIVELY
14 KNEW, I SUPPOSE, THERE'S NO TRACK RECORD OF THE MUNICIPALITY
15 ENFORCEMENT OF ANY OF THESE PROVISIONS.

16 **MR. MONFORT:** WE'RE NOT AWARE OF ANY PROSECUTION. I'M
17 UNAWARE. I THINK, THIS MIGHT BE FLESHED OUT IN DISCOVERY
18 WHETHER IT'S BEEN USED IN TERMS OF PLEA AGREEMENTS, ANYTHING OF
19 THAT NATURE, AND ACTUALLY NOT AWARE OF THAT.

20 BUT I'M NOT AFFIRMATIVELY AWARE OF ANY ACTUAL
21 PROSECUTION. HOWEVER, IN THE SAN DIEGO GUN RIGHTS CASE ALL
22 NOTE A RIGHT OF ENFORCEMENTS IN THAT CASE, I THINK IT'S
23 DISTINGUISHABLE IN THE PRESENT CASE.

24 THERE THE CASE NOT ONLY THE CITY KIND OF THREATENED TO
25 ENFORCE THE ORDINANCES, THEY DONE SO PUBLICLY, BUT ALSO

1 PERSONALLY WITH RESPECT TO PLAINTIFFS, SHOWING UP ONE OF
2 PLAINTIFF'S HOMES TO MAKE SURE HE WAS COMPLYING WITH THE
3 ORDINANCE.

4 I'M NOT SURE HOW THEY CAN READ THAT AS ANYTHING OTHER
5 THAN ATTEMPT TO ENFORCE THE ORDINANCE.

6 AND WITH REGARD TO DISCHARGE ORDINANCE, PLAINTIFFS
7 HAVE BEEN TOLD BY CITY OFFICIALS WHEN ASKED IF THEY DISCHARGED
8 THEIR FIREARMS IN SELF-DEFENSE, WHETHER OR NOT THEY WOULD BE
9 PROSECUTED, THEY WERE TOLD, YES, THEY WOULD BE PROSECUTED,
10 UNLESS THEY ALLEGED THAT THE DISCHARGED OCCURRED ACCIDENTALLY,
11 AND OBVIOUSLY PLAINTIFFS ARE OF THE OPINION THAT SELF-DEFENSE
12 WOULD NEVER BE ACCIDENTAL.

13 SO THEY ARE FACED WITH HAVING TO LIE OR TO FACE
14 PROSECUTION UNDER THE ORDINANCE.

15 **THE COURT:** HOW ABOUT THE AMMUNITION SALE PROVISION?
16 POINTS OUT THAT FROM THEIR PERSPECTIVE THAT REALLY GOES TO GUN
17 SHOP OWNERS AND THAT'S NOT WHO THESE PLAINTIFFS ARE. HOW CAN
18 YOU BRING A CLAIM BASED ON THAT PARTICULAR PROVISION?

19 **MR. MONFORT:** RIGHT. IT'S INTERESTING, OBVIOUSLY,
20 PLAINTIFFS ARE NEVER GOING TO BE FACED WITH PROSECUTION FOR
21 ORDINANCE THAT CAN'T BE APPLIED TO THEM.

22 HOWEVER, THAT IS NOT TO SAY PLAINTIFFS DON'T SUFFER AN
23 INJURY AS A RESULT OF THE CITY'S ENFORCEMENT, ONGOING
24 ENFORCEMENT OF THE ORDINANCE.

25 **THE COURT:** YOUR ARGUMENT IS BECAUSE THE ENFORCEMENT

1 OF THAT PROVISION WOULD RESULT IN YOUR CLIENTS NOT BEING ABLE
2 TO BUY THE AMMUNITION, THEREFORE, THEY HAVE STANDING EVEN
3 THOUGH, AS YOU SAY, THEY'RE NEVER GOING TO BE SUBJECT TO ANY
4 PROSECUTION.

5 **MR. MONFORT:** THAT'S CORRECT. SETTING ASIDE, OF
6 COURSE, ANY POTENTIAL CONSPIRACY, SOMETHING LIKE THAT, BUT THAT
7 WOULD DENY THEM ACCESS.

8 THE PRIMARY HARM WOULD BE, YES, DENYING THEM ACCESS TO
9 AMMUNITION, AND PLAINTIFFS PUT FORTH A LITTLE BIT OF A
10 HYPOTHETICAL FOR THE COURT'S REVIEW THAT KIND OF PUTS IT IN
11 PERSPECTIVE FOR -- THE CITY THEN COULD, EACH CITY, CITY OF SAN
12 FRANCISCO BAN THE SALE OF THIS KIND OF SELF-DEFENSE AMMUNITION.

13 NOT AMMUNITION FOR SPORTING GUNS, SELF-DEFENSE
14 AMMUNITION. SELF-DEFENSE BEING A COMPONENT OF THE INDIVIDUAL
15 RIGHT TO KEEP AND BEAR ARMS, OTHER THEN SAY INCREMENTALLY BAN
16 THE SALE OF IT, SUCH THAT PLAINTIFFS WOULD BE DEPRIVED ACCESS
17 TO THE AMMUNITION, AS LONG AS THEY WOULD HAVE 10 PERCENT OF THE
18 CITIES IN AMERICA TO GO TO, 5 PERCENT, I DON'T KNOW WHAT LINE
19 WOULD, PLAINTIFFS WOULD BE HARMED. THEY WOULD BE LEFT WITHOUT
20 A WAY TO VINDICATE OUR RIGHTS UNLESS AND UNTIL A RETAILER
21 DECIDED TO CHALLENGE THE ORDINANCE INSTEAD OF THEM.

22 **MS. KAISER:** MAY I COMMENT?

23 **THE COURT:** LET ME ASK ONE MORE QUESTION. WITH
24 RESPECT TO THE RINCON BAND MICHIGAN INDIANS CASE, I RECOGNIZE
25 YOU'RE TALKING ABOUT TIMING BEING OF CONSEQUENCE AND THAT THIS

1 GOES A BIT FAR BACK AND THE FIRST TO ACKNOWLEDGE THAT.

2 BUT THE SENSE OF THAT CASE IT SEEMS TO BE THAT THERE
3 IS A SUGGESTION THAT THERE'S GOING TO BE ENFORCEMENT OF
4 GAMBLING LAWS AND THE COURT'S SAYS THAT'S NOT ENOUGH.

5 THAT'S FAIRLY GENERAL CONCERN THAT THIS AREA IS GOING
6 TO BE AN AREA SUBJECT OF ENFORCEMENT, ISN'T THAT PRETTY MUCH
7 WHAT WE HAVE HERE?

8 I MEAN, PUTTING ASIDE ALL OF THE INTERVENING DECISIONS
9 SPECIFIC TO GUN ISSUES AND NOT SPECIFIC TO GUN ISSUES LIKE
10 MEDLMMUNE, IN A SENSE THAT CASE IS THE CLOSEST TO OUR
11 SITUATION, ISN'T IT?

12 **MR. MONFORT:** I THINK, IT'S FACTUAL DISTINGUISHABLE IN
13 A SENSE THAT THE CITY HASN'T ALLEGED A GENERAL INTENT EVEN FOR
14 ENFORCEMENT FIREARM LAWS OR TO ENFORCE THE STATE FIREARM LAWS,
15 RATHER THIS CITY HAS SPECIFICALLY ENTERED PLAINTIFF'S HOME AND
16 MADE SURE HE WAS ENFORCING THE SPECIFIC LAW CHALLENGED IN THIS
17 LITIGATION.

18 SAME THING WITH RESPECT TO THE DISCHARGE BAN, THE ONLY
19 EXCEPTION BEING EXCEPT FOR NOT ENTERING THEIR HOME, BUT TELLING
20 THAT LAW WOULD BE ENFORCED AGAINST THEM IF DISCHARGED IN
21 SELF-DEFENSE AS OPPOSED TO ACCIDENTALLY, WITH THE EXCEPTION
22 BEING THE BAN ON SELF-DEFENSE AMMUNITION BECAUSE PLAINTIFFS
23 CAN'T BE PROSECUTED UNDER THAT THEMSELVES.

24 **THE COURT:** OKAY. MS. KAISER, YOU SAID YOU HAD
25 SOMETHING?

1 **MS. KAISER:** YES. I THINK, THAT PLAINTIFFS MAYBE
2 OVERSTATING THEIR ALLEGATIONS A LITTLE BIT.

3 IN TERMS OF THE AMMUNITION ALLEGATIONS, THERE'S NO
4 ALLEGATION ANYWHERE THAT ANY PLAINTIFF EVEN ATTEMPTED TO BUY
5 THE SORT OF AMMUNITION IN SAN FRANCISCO, THAT THEY COULDN'T BUY
6 IT.

7 AND IT'S CLEARLY THE CASE THAT THE ORDINANCE ITSELF
8 DOES NOT EFFECT OR OUTLAW THE USE OF SUCH AMMUNITION, THE
9 POSSESSION OF SUCH AMMUNITION.

10 THEY'RE CLAIMING THEY'RE BEING DEPRIVED OF THE RIGHT
11 TO POSSESS AND USE SUCH AMMUNITION, BUT THERE SIMPLY NO
12 ALLEGATION THAT SUPPORTS THAT.

13 AND IT NEEDS TO BE PARTICULAR TO THE PLAINTIFF.
14 STANDING DOCTRINE IS QUITE CLEAR THE GENERALIZED GRIEVANCES
15 THAT DON'T DISTINGUISH THE PLAINTIFF FROM ANY OTHER MEMBER OF
16 THE PUBLIC ARE INADEQUATE OR ELSE THE COURT WOULD ALREADY BE
17 DECIDING IDEOLOGICAL DISPUTES OR POLITICAL QUESTIONS.

18 THAT'S EXACTLY WANT YOU HAVE HERE WITH AMMUNITION,
19 ALLEGATION. I SUBMIT THAT'S ALSO THE CASE FOR THE REMAINING
20 ALLEGATIONS THAT PLAINTIFFS ARE DISCUSSING.

21 IN TERMS OF THE DA PRONOUNCEMENT ABOUT THE SAFE
22 STORAGE ORDINANCE, THAT WE CAN GO IN YOUR HOUSE ANY TIME AND
23 CHECK. THAT ACTUALLY THEIR OBJECTION SEEMS TO BE MORE TO THE
24 UNREASONABLE SEARCH AND SEIZURE NOTION WE CAN GO INTO YOUR
25 HOUSE ANYTIME.

1 YOU KNOW, THAT'S JUST A GENERALIZED WE CAN ENFORCE OUR
2 ORDINANCE NOT SPECIFIC IN ANY WAY TO THE PLAINTIFFS.

3 SECOND, THE EPISODE WITH PLAINTIFF GOLDEN.

4 **THE COURT:** HAVEN'T THE PLAINTIFFS, THOUGHT, ON THE
5 STORAGE ISSUE, ALLEGED THAT THEY -- WHAT THEY INTEND TO DO,
6 WHAT THEY -- THEY'RE FREE TO OPERATE WITHOUT THE SPECTER OF THE
7 ORDINANCE, THEY WANT TO ACT IN A CERTAIN FASHION, AND AGAINST
8 THAT THEY HAVE SOME INDICATION FROM THE LOCAL AUTHORITIES THAT
9 THE LOCAL AUTHORITIES FEEL THAT THEY ARE EMPOWERED TO ENFORCE
10 THAT PROVISION.

11 I MEAN, IT'S A BIT MORE CONCRETE AND SPECIFIC THAN I
12 THINK YOU'RE SUGGESTING.

13 **MS. KAISER:** I DON'T THINK IT'S MORE CONCRETE AND
14 SPECIFIC IN REGARD TO THE PARTICULAR PLAINTIFFS AND WHATEVER
15 CONDUCT IT IS THEY ALLEGED WHICH WE DON'T ACTUALLY KNOW ANY
16 CONCRETE WAY.

17 FOR EXAMPLE, WOULD IT BE THE CASE THAT THE PLAINTIFF
18 WOULD BE CARRYING THE WEAPON AS PERFECTLY ALLOWED, BUT HAS A
19 SHOWER, LOCKS THE -- PUTS THE GUN ON THE SINK, SOMEONE BREAKS
20 IN, THEY NEED TO SHOOT IN SELF-DEFENSE, THEY HAVE THEIR GUN
21 AVAILABLE, IS THAT PERSON GOING TO BE CHARGED?

22 BECAUSE, FIRST OF ALL, THEY'RE DOING, THEY ARE
23 ENGAGING IN CONDUCT PROTECTED BY HELLER.

24 SECOND OF ALL, THEY HAVE THEIR GUN IN A LOCKED
25 CONTAINER IN THE SENSE OF THE LOCKED ROOM WHERE NO ONE CAN COME

1 IN AND GET IT.

2 I DON'T KNOW, THE PROSECUTORS ARE FREE TO MAKE A
3 DECISION ABOUT THAT AND WE DON'T KNOW ENOUGH TO KNOW WHAT SORT
4 OF SITUATION IS REALLY BEFORE THE COURT. REALLY IT MIGHT BE
5 UNCONSTITUTIONAL.

6 THE SAME THING IS TRUE OF A SLEEPING PLAINTIFF, FOR
7 EXAMPLE, WHILE YOU'RE SLEEPING AND YOU WALK THROUGH THE DOOR
8 MAKE SURE THAT THE GUN IS INACCESSIBLE, ARE YOU GOING TO BE
9 CHARGED UNDER THE SAFE STORAGE LAW IF YOU SHOOT YOUR GUN IN
10 SELF-DEFENSE?

11 I HAVE A HARD TIME BELIEVING THAT, BUT MAYBE WE DON'T
12 KNOW IS THE POINT, THAT'S WHY THERE'S NO STANDING, THAT'S WHY
13 THE CASE IS UNRIPE AND THAT'S WHY IT HAS TO BE PARTICULAR TO
14 THE PLAINTIFFS.

15 BECAUSE IT HAS TO BE A SCENARIO THAT'S KIND OF ENOUGH
16 FOR THE COURT TO MAKE INFORMED JUDGMENT. PARTICULARLY IN A
17 DELICATE UNSETTLED AREA OF LAW LIKE THIS ONE WHERE THERE'S VERY
18 LITTLE PRECEDENT, THE LAW IS CHANGING QUICKLY.

19 YOUR HONOR WOULD BE MAKING DECISIONS THAT MAY ENCROACH
20 ON THE POLITICAL BRANCHES OF THE GOVERNMENT IF YOU ENGAGE IN
21 WHAT IS ESSENTIALLY AN ADVISORY OPINION HOW THESE THINGS SHOULD
22 BE APPLIED BEFORE THEY'RE ACTUALLY BEING APPLIED.

23 YOU MAY ALSO ENCROACH ON THE CONCEPT OF FEDERALISM IN
24 TERMS OF TAKING AWAY A POWER OF A LOCAL GOVERNMENT TO MAKE LAWS
25 UNDER THE CONSTITUTION.

1 **THE COURT:** A LOT OF THOSE ARGUMENTS ARE MERGING INTO
2 ARGUMENTS THAT, PERHAPS, YOU WOULD ADVANCE TO SAY YOU CAN'T ON
3 THE SUBSTANTIVE MERITS OF THE MATTER WEIGH IN BECAUSE IT WILL
4 HAVE THESE AFFECTS.

5 I'M NOT SURE ALL OF THAT GOES DIRECTLY TO THE STANDING
6 QUESTION. YOU'RE SAYING THERE'S A DANGER THAT BY EXAMPLE
7 YOU'RE GOING ENCROACH IN ANOTHER BRANCH IF YOU WEIGH INTO IT.
8 WELL, LEGITIMATE ISSUE, BUT PERHAPS NOT LEGITIMATE ISSUE FROM
9 THE STANDING PERSPECTIVE.

10 **MS. KAISER:** ACTUALLY, YOUR HONOR, THIS IT IS A VERY
11 LEGITIMATE ISSUE FROM THE STANDING PERSPECTIVE. THAT'S ONE OF
12 THE FUNCTIONS THAT THE STANDING DOCTRINE EXPLICITLY SERVES.

13 **THE COURT:** AGAINST ADVISORY OPINIONS.

14 **MS. KAISER:** AGAINST ADVISORY OPINIONS. AGAINST
15 REACHING OUT AND SETTLING GENERALIZE GRIEVANCES THAT ANY MEMBER
16 OF THE PUBLIC CAN BRING.

17 HERE WE HAVE ANY MEMBER OF THE PUBLIC WHO SAYS I WANT
18 TO HAVE MY GUN IN A WAY IN MY HOUSE, I WOULD -- ANY ONE OF THEM
19 CAN COME AND SUE IF THESE PLAINTIFFS HAVE STANDING.

20 NO MATTER WHAT THE CITY HAS DONE OR NOT DONE, NO
21 MATTER HOW THE CITY HAS RESPONDED TO INTERVENING OR HOW THAT
22 HAS SHAPED IT, NO MATTER WHETHER THIS COURT HAS A FULL SET OF
23 FACTS ON WHICH TO BASE ITS DECISION.

24 THAT'S THE CONCERN BY AN ADVISORY OPINION AND IT IS A
25 CONSTITUTIONAL CONCERN FOR THAT REASON. IT'S NOT JUST A

1 QUESTION OF SOUND JUDICIAL ADMINISTRATION, IT'S A
2 CONSTITUTIONAL QUESTION ABOUT THE PROPER AREA IN WHICH THE
3 JUDICIARY SHOULD FUNCTION.

4 **THE COURT:** ANY FINAL COMMENTS?

5 **MR. MONFORT:** SURE. I WOULD JUST LIKE TO ADD, THAT
6 SUBSEQUENT TO SAN DIEGO GUN RIGHTS AND AUTHORITY RELIED BY THE
7 CITY, THE NINTH CIRCUIT AND THE SUPREME COURT HAVE BOTH HELD
8 THAT THE ISSUE IN TERMS OF PRE-ENFORCEMENT CHALLENGES, IN
9 ARIZONA RIGHT TO LIFE THE COURT CONFIRMED IT'S SUFFICIENT FOR
10 STANDING PURPOSE.

11 PLAINTIFFS INTEND TO ENGAGE IN THE ART OF EFFECTIVE
12 CONDUCT ARGUABLE INFECTED WITH CONSTITUTIONAL INTEREST AND
13 THERE'S A CREDIBLE THREAT AS OPPOSED TO IMPUGNING PROSECUTION.

14 PLAINTIFFS HERE ALLEGES SPECIFIC INTENT TO ENGAGE IN
15 THE PROHIBITED ACTIVITY AND ALSO ALLEGE CREDIBLE THREAT OF THE
16 LAW ENFORCED AGAINST THEM.

17 THE SAME CONCEPT WAS POINTED OUT AS YOU EARLIER
18 ALLUDED TO GENERALLY, THE GOVERNMENT EFFECTIVELY COALESCES
19 BEHAVIOR ELIMINATING ANY THREAT OF PROSECUTION PLAINTIFFS DO
20 NOT LOSE STANDING.

21 AND THAT IS EXACTLY THE CASE HERE. PLAINTIFFS HAVE
22 HAD THEIR BEHAVIOR COERCED BY THE CITY'S ENACTMENT AND PROMISED
23 ENFORCEMENT OF THESE ORDINANCES.

24 AND THEN FINALLY WITH REGARD TO WHETHER OR NOT THE
25 CITY WILL ACTUALLY SEEK PROSECUTIONS OR ENFORCE THE ORDINANCES

1 AGAINST THE PLAINTIFFS IN THE MANNER FOR WHICH THEY ALLEGE THEY
2 WANT TO ENGAGE IN THE CONSTITUTIONAL CONDUCT, THE SUPREME COURT
3 IN 2010 OVER THE HUMANITARIAN LAW PROJECT FOUND STANDING WHERE
4 THERE WAS A CREDIBLE THREAT OF ENFORCEMENT.

5 AND THE COURT WENT ONTO NOTE PLAINTIFFS INTENDED TO
6 IMMEDIATELY ENGAGE IN PROHIBITED CONDUCT AS IS THE CASE HERE,
7 AND THE COURT ALSO NOTED THE GOVERNMENT NEVER ARGUED PLAINTIFFS
8 WILL NOT BE PROSECUTED IF THEY ENGAGE IN THAT ACTIVITY.

9 IT SOUND LIKE PLAINTIFFS' DEFENSE AT ISSUE WHAT TYPE
10 OF CONDUCT IS LAWFUL, WHAT WILL BE PROSECUTED, WHAT WILL NOT BE
11 PROSECUTED, AND THE CITY HAS GUARANTEED NOT BE PROSECUTED FOR
12 ENGAGING IN THE ALLEGED CONDUCT THEY WISH TO ENGAGE IN.

13 **THE COURT:** MS. KAISER'S POINT WAS JUST GOING TO THE
14 LAST THING YOU SAID. THERE ARE NO BOUNDARIES AT THE MOMENT AS
15 TO WHEN THE AUTHORITY WOULD PROSECUTE OR WOULDN'T PROSECUTE.

16 WE DON'T HAVE ANY INDICATION AS SHE WAS DESCRIBING
17 SELF-DEFENSE CIRCUMSTANCE, WE JUST DON'T KNOW WHAT THE POSITION
18 WOULD BE OF THE LAW ENFORCEMENT AUTHORITY BECAUSE WE HAVE NO
19 TRACK RECORD FOR THAT YET.

20 **MR. MONFORT:** I UNDERSTAND. IN THE MEANTIME
21 PLAINTIFFS ARE, HOWEVER, LEFT IN THE POSITION OF HAVING TO KIND
22 OF GUESS WHAT BEHAVIOR ISN'T CONSTITUTIONAL, AND ALL THEY HAVE
23 TO GO ON IS THEIR FIREARMS MUST BE STORED LOCKED UNLOADED OR
24 DISABLED WITH TRIGGER LOCK OR FACE PROSECUTION WITH THE
25 ORDINANCE.

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 21ST DAY OF NOVEMBER, 2011.

/S/ JAMES YEOMANS

JAMES YEOMANS, CSR, RPR