CAL☆FFL

Wednesday, July 2, 2014

VIA FAX AND CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED

Sheriff Stanley Sniff
Riverside County Sheriff's Department
4095 Lemon Street
Riverside, CA 92501

Dear Sheriff Sniff,

First, we would like to thank you for your opposition to Senate Bill 53, a measure that would undoubtedly infringe upon the Second Amendment rights of millions of Californians and California visitors. You quite aptly described the bill as "merely another way to decrease or eventually cut off legitimate firearms use or ownership completely to millions of our law-abiding citizens in California and infringes upon our Second Amendment, and in a state that is already one of the most heavily firearms-regulated in our nation."[1]

As some in our issue area have, *ad nauseam*, pointed us towards, your library of letters in opposition to gun control bills[2] is somewhat remarkable—but perhaps not for the reasons generally thought.

Just last September, you asked Governor Jerry Brown to veto Senate Bill 374 (Steinberg, 2013),[3] a bill that would do "nothing to deter crime, but would ban common hunting and recreational firearms, based on their shared characteristic

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[1] Letter dated June 30, 2014, from Stan Sniff, Riverside County Sheriff, to California Senator Kevin de León (voicing opposition to Senate Bill 53) located at http://www.riversidesheriff.org/pdf/sheriff/2014-0630-guns-Oppose-SB53-SenatorDeLeon.pdf, last visited July 2, 2014.

[2] *See* "Sheriff's Position on Gun Bills," located at http://www.riversidesheriff.org/firearms, last visited July 2, 2014.

[3] Located at http://www.riversidesheriff.org/pdf/sheriff/2013-0923-guns-veto-SB374-GovernorBrown.pdf, last visited July 2, 2014.

of having a detachable magazine" that "have been safely and responsibly owned by millions of American citizens for generations." And yet, it does not take an exhaustive search of court dockets to conclude that the Riverside County Sheriff's Department ("RCSD") enforces, to this day, California's irrational ban on exactly those same semi-automatic firearms in common use for lawful purposes like self-defense.[4]

In a May 2013 letter regarding Assembly Bill 48 (Skinner, 2013),[5] you opposed the measure because, among other things, it "adversely impacts the Second Amendment" in its ban of firearm magazine "conversion kits." Similarly, you opposed Senate Bill 396 (Hancock, 2013)[6] because of the measure's effective taking of personal property and outright ban on the possession of so-called "large capacity magazines" that would "criminalize a small minority of citizens in our communities that are not criminal, and should not be treated in this fashion." Certainly, we do not dispute the truth of your observations. But, given your apparent opposition to bans on standard, factory-capacity magazines capable of holding more than 10 rounds of ammunition (at least in part on Constitutional grounds), why would the RCSD be complicit in enforcing California's 14-year old unconstitutional ban on the manufacture, importation, sale, offering, giving, lending, and receiving "any large-capacity magazine....punishable by imprisonment in a county jail not exceeding one year or imprisonment...?"[7]

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[4] "The traditional militia was formed from a pool of men bringing arms in common use at the time for lawful purposes like self-defense." *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) at 2815. (Internal quotations omitted.) "In the colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *Id*, quoting *State v. Kessler*, 289 Ore. 359, 368, 614 P.2d 94, 98 (1980) (citing G. Neumann, Swords and Blades of the American Revolution 6-15, 252-254 (1973)).

[5] Located at http://www.riversidesheriff.org/pdf/sheriff/2013-0523-guns-Oppose-AB48-Assemblyman-Mike-Gatto.pdf, last visited July 2, 2014.

[6] Located at http://www.riversidesheriff.org/pdf/sheriff/2013-0530-guns-oppose-SB396-hancock.pdf, last visited July 2, 2014.

[7] *See*, Cal. Penal Code § 32310.

In your recent letter on Senator de León's proposed ammunition regulations, you cite its "infringement" on Second Amendment[8] rights—rights that are, as the United States Supreme Court has held, "fundamental" to our scheme of ordered liberty. ("Self-defense is a basic right, recognized by many legal systems from ancient times to the present day," and, moreover, "self-defense is the central component of the Second Amendment right." *McDonald, et al, v. City of Chicago, et al.,* 130 S.Ct. 3020 (2010) at 3036.)

Under the laws of our state, yours[9] is the role of gatekeeper to the exercise of a fundamental[10] individual right—the right to bear arms for self-defense outside our homes. ("At the time of the founding, as now, to bear meant to carry." *District of Columbia v. Heller*, 128 S. Ct. 2783 at 2793. Internal quotations omitted.)

In *Moore v. Madigan*, 702 F.3d 933 (2012), the United States Court of Appeals for the Seventh Circuit held that "[t]he Supreme Court has decided that the [Second] amendment confers a right to bear arms for self-defense, which is as important outside the home as inside." *Id.* at 942.

On February 13 of this year, the Ninth Circuit Court of Appeals held that San Diego County Sheriff William Gore's policy of denying issuance of licenses to carry law-abiding residents of San Diego unless the applicant's "good cause"

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[8] "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." (U.S. Const., amend II.)

[9] The State of California prohibits, generally, the carrying and transportation of handguns (loaded or unloaded), with few exceptions. One such exception to the State's general prohibition is a license to carry a handgun in public issued by a county sheriff. *See, e.g.,* Cal. Penal Code §§ 25655 and 26010.

[10] "In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald,* 130 S.Ct at 3042.

includes some acceptable "heightened need" is unconstitutional.[11] To put it plainly, the Court saidthat "...San Diego County's good cause permitting requirement impermissibly infringes on the Second Amendment right to bear arms in lawful self-defense."[12]

On March 10, 2014, reporter Reza Gostar of The Desert Sun published your response to a question on the landmark *Peruta* decision ("What is your stance as the Riverside County Sheriff on the 9th Circuit Court decision in February that found San Diego County's "good cause" requirement unconstitutional?"): "The 9th Circuit has stayed its order during the appeal by the State of California to the entire Court. In other words, the earlier Court decision is not yet law."[13] And, in spite of your access to government-paid lawyers (who are, at least, competent to offer sound and informed counsel) and the benefit of over three months to formulate a better policy, you told the Valley Times just last week that "[t]he Ninth Circuit decision is not the law at this point because it's under appeal.... For now, leaving the issuance of concealed-carry permits to the discretion of local police chiefs and sheriffs is the law in California."[14]

But, as is so often the case, you are wrong.

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[11] "Our conclusion that the right to bear arms includes the right to carry an operable firearm outside the home for the lawful purpose of self-defense is perhaps unsurprising — other circuits faced with this question have expressly held, or at the very least have assumed, that this is so." *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014) at 1166.

[12] *Id.* at 1179. (Internal quotations omitted.)

[13] *See* your response to the question "What is your stance as the Riverside County Sheriff on the 9th Circuit Court decision in February that found San Diego County's "good cause" requirement unconstitutional?" in "Sheriff Stan Sniff on conceal-carry weapons permit process," located at http://www.desertsun.com/story/news/crime_courts/2014/03/10/sheriff-stan-sniff-on-conceal-carry-weapons-permit-process/6273855, last visited July 2, 2014.

[14] *See* The Valley Times, "Groups, Sheriff Disagree on Gun Policy," located at http://www.myvalleynews.com/story/79089, last visited July 2, 2014.

In a May 1 Order Accepting Findings, Conclusions And Recommendations Of United States Magistrate Judge, United States District Court Judge S. James Otero said that, "Plaintiff asserts that the Ninth Circuit's recent decision in Peruta v. County of San Diego, 742 F.3d 1144 (9th Cir. 2014), has been stayed and is neither binding on this Court nor relevant to his claims. (Obj. at 8). Plaintiff is mistaken." *Nichols v. Harris*, 2014 WL 1716135, *1 (C.D. Cal. 2014). (Internal quotations omitted.) "A panel decision of the Ninth Circuit is binding on lower courts as soon as it is published, even before the mandate issues, and remains binding authority until the decision is withdrawn or reversed by the Supreme Court or an *en banc* court." *Id.* Stated simply, *Peruta* has been and remains binding precedent.

As of today, your policy and practices (both written and as-applied) appear to be the same, or materially the same, as the one struck down by the Ninth Circuit Court of Appeals.[15] And, if your recent comments on the matter are any indicator, you are not interested in changing your unconstitutional performance in spite of the law. Sadly, your track record and the data prove that, while you pay substantial lip service to Second Amendment rights, your actual interest is in maintaining policies and practices that [1] chill applicants from applying, and [2] improperly deny those that do not meet your arbitrary unconstitutional standards—at tension with the fundamental rights of Riverside County residents.

In your letter to Senator de León, you said that "an aging widow should not have to delay in obtaining an "ammunition purchase permit" to obtain needed ammunition in an emergency for home defense." That is true. Frustratingly,

[15] "Convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his/her spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm." Riverside County Sheriff's Department website, "Concealed Weapon (CCW) Permits - The Good Cause Requirement," located at http://www.riversidesheriff.org/firearms/ccw.asp, last visited June 2, 2014.

however, the point you make (and seem to miss at the same time) is that "an aging widow should not have to delay in obtaining" a license to carry for self-defense outside of her home, either. But that is exactly what your policies and practices do. RCSD's numerous local rules[16]—many of which are not only unconstitutional, but also expressly violate longstanding state laws[17]—deter applicants and delay carry license applicants by *months* (before the actual application and background check process even begins) by enforcing a improperly-limited appointment and "waiting list" policy that does not allow for timely access to the exercise of a right that is, as shown, fundamental.

As the chief law enforcement officer of Riverside County, your first responsibility is to "support and defend the Constitution of the United States." Accordingly, your enforcement policies must be crafted to first preserve fundamental individual liberties, such as those protected under the Second Amendment. Ask yourself, in each case: Is the underlying law constitutional? If it is not, then the analysis ends; there must be no enforcement of the law. But, if the answer is "in some cases, yes," your enforcement should be carefully tailored to avoid adverse impact to good, law-abiding people "that are not criminal, and should not be treated in [that] fashion."[18]

Being the elected sheriff "serving our 2.3 million residents in California's 4th largest county,"[19] one could reasonably expect that you would exercise your own authority in the manner you demand of the anti-gun senator from Los Angeles. Instead, it is my feeling that your policies are merely another way to decrease or eventually cut off legitimate firearms use or ownership completely to millions of our law-abiding citizens in California and infringe upon our Second

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[16] *See, e.g.*, "Concealed Weapon (CCW) Permits" at http://www.riversidesheriff.org/firearms/ccw.asp, last visited July 2, 2014.

[17] *See* Cal. Penal Code § 26150, *et seq.*

[18] *See* your letter on SB 396, *supra*.

[19] *See* your June 30, 2014, letter regarding SB 53, *supra*.

Amendment, in a state that is already one of the most heavily firearms-regulated in our nation.

You are not obligated to enforce unconstitutional laws, and yet you do so. Why?

You are not mandated to restrict or limit the issuance of carry licenses to law-abiding residents of Riverside County (who must pass a rigorous, "Live Scan" fingerprint-based background check), but you do. Why?

Perhaps it is because of your years of working in law enforcement, dealing in some cases with the worst kind of people society has to offer, that your views are so slanted towards authoritarianism and away from freedom. Perhaps the shield of qualified immunity acts as an unfortunate artificial reinforcement for plain old hubris and elitism. In any case, you and the RCSD must choose to exercise your authority with the greatest of care for and deference to individual rights—or be held to account for not.

We hope that you would reflect upon your policies and practices, compare them with those values you so visibly and vigorously claim to uphold, and reconcile their deficiencies with *the* Supreme law of our great nation: the United States Constitution.

Sincerely,

Brandon Combs
President

Cc: Riverside County Legislative Representatives
Riverside County Board of Supervisors