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January 15, 2013

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Council Member Ash Kalra
Council Member Sam Liccardo
Council Member Kansen Chu
Council Member Xavier Campos
Council Member Pierluigi Oliverio
Council Member Rose Herrera
Council Member Donald Rocha
Council Member Johnny Khamis
CITY OF SAN JOSE
MAYOR & CITY COUNCIL MEMBERS
200 E. Santa Clara St.
San José, CA 95113

VIA U.S. MAIL & E-MAIL

Re: Opposition to Proposed Gun Control Ordinance Affecting the Regulation of Assault Weapons

Honorable Mayor and Council Members:

We write on behalf of our clients, the National Rifle Association (NRA) and the California Rifle and Pistol Association (CRPA), as well as the hundreds of thousands of their members in California, including members in the City of San José.

It has come to our recent attention that the City Council will soon be considering a Proposed City Ordinance that further regulates the possession, registration, and storage of “assault weapons.” The ordinance apparently being considered by your honorable San José City

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proposes to: 1) prohibit persons who have mental illness, a violent disposition, or criminal record involving the use of weapons against others from owning an assault weapon; 2) require all persons cleared for assault weapon ownership to store weapons with the Police Department; 3) require the Police Department to solicit a justifiable, specified purpose in order to release the assault weapon to the certified owner; 4) to require the Police Department to deny the release of an assault weapon if the owner does not have a reasonable explanation for the weapon's use or does not provide adequate assurance that the weapon will only be used by the certified owner; 5) require background investigations to be conducted by the City of San José with reasonable cost allowed; and 6) classifies possession of an assault weapon that is not registered herein as a misdemeanor crime.

As I am sure you are aware, with the passage of the Roberti-Roos Assault Weapon Control Act of 1989 and the adoption of Penal Code section 30500 et seq. (previously Section 12276 et seq.) and its subsequent amendments, all local "assault weapon" ordinances are now preempted by state law. An ordinance is preempted and void if it duplicates or contradicts a state law, or if it is expressly or implicitly preempted by legislative intent. "If .. local legislation conflicts with state law, it is preempted by such law and is void ... '[where for instance, an] ordinance directly contradicts the operative language of the statute, e.g. by penalizing conduct which the state law expressly authorizes ...'" (*Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal. App. 4th 383, 396 [20 Cal. Rptr. 2d 164], quoting *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893,898 [16 Cal. Rptr. 2d 215 844 P. 2d 534]; see also *Yoshisato v. Superior Court* (1992) 2 Cal. 4th 978,995 [9 Cal. Rptr. 2d 102, 831 P. 2d 327], (dissenting opinion of Mosk, J.: "It is axiomatic that two provisions conflict when one authorizes what the other prohibits.")).

The Court of Appeal has declared laws like San José's to be preempted by state law, and has warned that "the goal of any local authority wishing to legislate in the area of gun control should be to accommodate the local interest with the least possible interference with state law. . . Therefore, when it comes to regulating firearms, local governments are well advised to tread lightly." See *Fiscal v. City and County of San Francisco*, (2008) 158 Cal. App. 4th 895, 919. Moreover, the Proposed Ordinance relates to the registration of firearms, and as such, it contravenes Government Code § 53071, which expressly prohibits local governments from enacting any regulation "relating to" firearms licensing or registration.

In light of the legal preemption issues, I would hope the San José City Council recognizes that, as a legal matter, the Proposed Ordinance cannot pass muster. In fact, every other city that had an ordinance like the Proposed Ordinance before the San José City Council has repealed the ordinance in recognition of this. San José's Proposed Ordinance should like those other ordinances be repealed.

Please contact me if you have further questions or concerns, and to advise me with regards to the City's intentions with respect to this ordinance. I appreciate your attention to this

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Weapons

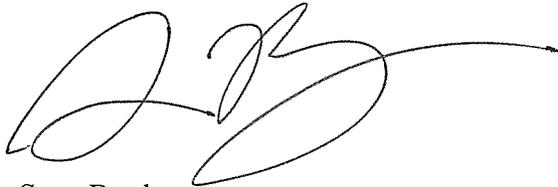
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matter and I look forward to hearing from you soon.

Sincerely,

MICHEL & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'S. Brady', with a long horizontal flourish extending to the right.

Sean Brady

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