No. C18-0111-1

# In the
# Supreme Court of the United States

2018 TERM

COUNTY OF MOJAVE,
*Petitioner*,

v.

BROTHERHOOD OF STEEL, INC.,
AND
ROGER MAXSON
*Respondents*.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT*

## BRIEF FOR PETITIONER

TEAM 27
*Counsel for Petitioner*

## QUESTIONS PRESENTED

I. SECOND AMENDMENT CLAIMS AGAINST ZONING ORDINANCES REGULATING THE COMMERCIAL SALE OF FIREARMS SHOULD RECEIVE RATIONAL BASIS REVIEW UNLESS THE RIGHT TO KEEP AND BEAR ARMS IS SUBSTANTIALLY BURDENED

II. THE SECOND AMENDMENT DOES NOT SECURE A RIGHT TO SELL FIREARMS AND EVEN IF IT DID – LAWS REGULATING THE COMMERCIAL SALE OF FIREARMS ARE PRESUMED LAWFUL

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### United States Supreme Court Cases

**Federal Circuit Court Cases**

**Federal District Court Cases**

**State Supreme Court Cases**



**State Appellate Court Cases**



**Constitutional Provisions**



**Statutes**



**Local Zoning Ordinances**



**Rules**

## OPINIONS BELOW

The district court's opinion below is unreported but explained herein. The circuit court's opinion is also unreported but is attached herein as Appendix A-1.

## JURISDICTIONAL STATEMENT

This Court has appellate jurisdiction. U.S. CONST. art. III § 2, cl. 1. This matter was properly filed in the United States District Court for the Central District of New Tejas. The United States Fourteenth Circuit Court of Appeals reviewed the matter and this Court granted certiorari. 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS

This matter involves provisions from the Constitution of the United States of America, attached hereto in Appendix A-2.

## LOCAL ORDINANCES

The local zoning ordinances relevant herein, Mojave Cty., NTX., Code §§ 17.54.130 -17.54.131 are attached to Appendix A-3.

## STANDARD OF REVIEW

This Court reviews questions of law *de novo*. *Ashcroft v. Iqbal*, 556 U.S. 662, 674-75 (2009). Federal Rule of Civil Procedure 12(b)(6) provides that an action may be dismissed for failure to state a claim upon which relief can be granted. Courts may dismiss an action when it contains factual allegations insufficient to "raise a right of relief above the speculative." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2013). A claim is sufficiently pleaded when it is plausible on its face, such that the "factual content allows the court to draw the reasonable inference that the defendant is liable." *Iqbal*, at 678.

## STATEMENT OF THE CASE

### A. STATEMENT OF THE FACTS

What began as a simple zoning ordinance dispute has snowballed into a claim that the Second Amendment protects a corporation's right to open a gun store wherever it chooses.

Mojave County, New Tejas ("Mojave") is one of the most populated counties in the state with nearly half a million residents. Pet'r's App. A-1, 2 n.1. Half of them live in the city and the other half live throughout the unincorporated County. *Id.*[1] There are currently "three gun stores" and "two shooting ranges" operating in unincorporated Mojave County, which provide the one-hour training course required for a concealed carry permit under New Tejas law. *Id.* at 15, 6 n.4.

Mojave enacted a zoning ordinance ("Ordinance") which governs the unincorporated regions of the County.[2] The Ordinance requires firearm dealers to apply for a Conditional Use Permit ("Permit") before using a commercial property for several enumerated purposes, including the sale of firearms.[3]

On June 17, 2011, Roger Maxson ("Respondent Maxson") created Brotherhood of Steel, Inc., ("Respondent BOS") (collectively "Respondents"), with the intention of

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[1] Mojave has a population of 482,478. Unincorporated Mojave County is not contiguous but is separated by three towns. Pet'r's App. A-1, 2.

[2] Mojave Cty., NTX., Code §§ 17.54.130 - 17.54.131.

[3] The record does not specify what land uses, other than firearm sales, required a conditional use permit.

opening a gun store and shooting range in Mojave. *Id.* at 2.[4] He then conducted marketing research and found Mojave had a market for another gun store. Respondent contacted Mr. Gunther, the Chief Clerk of the Mojave Planning Department, who informed Respondent he would need to apply for a Permit before he could open a new gun store. *Id.* at 3. He explained the Ordinance required, among other things, that businesses selling firearms, in unincorporated Mojave, be located at least 800 feet from schools, day care centers, liquor stores or establishments serving liquor, other gun stores, and residentially zoned districts ("800-foot rule"). *Id.*[5]

However, Respondent Maxson leased the property at 2274 Helios Lane ("Helios") in unincorporated Mojave County, on August 13, 2011, before he applied for a Permit to open his gun store there. *Id.* at 4. The Helios property is in the "Hidden Valley" portion of unincorporated Mojave, nearest to the city of Sloan. *Id.* at 3. Respondent ordered a survey to be conducted on door-to-door measurements to determine whether the Helios property would comply with the Ordinance. *Id* at 4. Respondent waited almost three months before submitting his Permit application. *Id.* On November 11, 2011, the Planning Department reviewed Respondent's application. *Id.* In its initial report, the Planning Department recommended denying the Permit

[4] Respondent Maxson is a certified Red 888 Guns armorer and gunsmith.

[5] The Ordinance only grants a permit after a special review in which the County determines whether or not the proposed business: (1) is required by public need; (2) is properly related to other land uses and transportation and service facilities in the area; (3) if permitted, will materially and adversely affect the health or safety of persons residing or working in the vicinity; and (4) will be contrary to the specific performance standards established for the area. Pet'r's App. A-1, 3.

application. *Id* at 5. It found the Helios property failed to satisfy the Ordinance because it was approximately 736 feet from a church. *Id.* at 5.[6]

The Zoning Board hosted a public hearing regarding Respondent's Permit application. *Id.* Those in attendance were permitted to speak. *Id.* Fifteen people (15) spoke publicly in favor of Respondents' store and eight (8) spoke against it. *Id.* However, it is not clear whether the speakers were actually Mojave residents. *Id.*

On November 10, 2011, the Planning Department issued a revised report and acknowledged the ambiguity in the Ordinance regarding how the 800 feet should be measured for the purposes of determining compliance. *Id.* The revised report informed Respondent Maxson that his surveyor had incorrectly measured the distances from the door rather than from the nearest exterior property line. *Id.* Accordingly, the Planning Department recommended denying Respondent's Permit and variance because the Helios property was less than 800 feet from the nearest disqualifying property, whether measured from the exterior wall, front door, or property line of Respondents' proposed gun shop. *Id.*

The Zoning Board met again and passed a resolution on December 29, 2011, which granted Respondent a variance from the Ordinance and approved his Permit application. *Id.* at 6. It found the store would not be detrimental to the public welfare and that a variance was justified because a major highway separated the Helios property from the nearest disqualifying parcel. *Id.*

[6] The church is inactive but is currently owned by The Children of the Cathedral, a tax-exempt religious organization. However, Respondents concede the property is correctly categorized as a church for purposes of the Ordinance. Pet'r's App. A-1, 5 n.2.

On January 6, 2016, the Shady Sands Home Owners Association ("HOA") appealed the granting of the Permit, with the County Commissioners' Court. *Id.* at 6.[7] Meeting quorum, the County Commissioners' Court voted to sustain the appeal, overturning the Zoning Board's decision and revoking the Permit. *Id.* Respondent Maxson alleged he has since been unable to find any property in unincorporated Mojave County that satisfied the Ordinance. *Id.* at 7.[8] However, Mojave conducted a study that found fifteen percent (15%) of the available acreage in the unincorporated County complied with the Ordinance. *Id.*

## B. PROCEDURAL HISTORY

Respondents filed a complaint in The United States District Court for the Central District of New Tejas, challenging the County Commissioners' Court's decision to deny a variance and Conditional Use Permit and alleging Second Amendment, equal protection, and due process violations. Mojave moved to dismiss, and Respondents moved for a preliminary injunction arguing the Ordinance "is not reasonably related to any possible public safety concerns" and it "red-lines gun stores out of existence in unincorporated Mojave County." *Id.* at 7.[9] Mojave argued the Ordinance furthered its interest in "protecting public safety and preventing harm in populated, well-traveled, and sensitive areas such as residentially-zoned districts,"

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[7] Each of the five HOA board members are also members of the New Tejas Citizens Against the Second Amendment, a non-profit organization. Pet'r's App. A-1, 6.

[8] Respondent commissioned a study that concluded "there are no parcels in the unincorporated areas of Mojave which would be available and suitable for firearm retail sales." *Id.* at 7.

[9] When Respondent moved for preliminary injunction, he stipulated to the dismissal of his due process claim. *Id.* at 7.

"protecting against the potential secondary effects of gun stores, such as crime," "and preserving the character of residential zones." *Id.* at 13.

The district court denied Respondents' motion and dismissed the equal protection and Second Amendment claims with leave to amend and granted the County's motion under Federal Rule of Civil Procedure 12(b)(6) to dismiss for failure to state a claim upon which relief could be granted. *Id.* at 8.

On appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the dismissal of the equal protection claims and reversed the dismissal of the Second Amendment claims. *Id.*

## SUMMARY OF THE ARGUMENT

As to the first question, this Court should hold heightened scrutiny only applies when the conduct being regulated falls within the scope of the Second Amendment's protections, otherwise rational basis applies. The level of scrutiny applied to a law challenged as violative of the Second Amendment depends on the severity of the burden on the core individual right of a law-abiding citizen to keep and bear arms in their home for self-defense. Rational basis review applies to laws regulating conduct outside the scope of the Second Amendment's protections. Intermediate scrutiny applies to laws that regulate conduct within the scope of the Second Amendment and place a substantial burden on those rights. Strict scrutiny applies only to those laws banning or prohibiting the exercise of the right to keep and bear arms in the home.

Here, this Court should review the Ordinance under rational basis because the opening of a firearm dealership is not constitutionally protected conduct. Further,

rational basis is the only level of scrutiny consistent with the presumption of validity this Court has found is attached to laws imposing conditions and qualifications on the commercial sale of firearms. The presumption places the burden on the claimant to prove the law is unconstitutional. However, any level of heightened scrutiny would negate the presumption and place the burden on the government. Applying heightened scrutiny here would overturn the presumption of validity this Court has established through its Second Amendment jurisprudence.

Even if intermediate scrutiny applies, this Court should find the Ordinance is constitutional. Mojave is entitled to look to other major cities and pertinent case law for findings and policy to promote the public welfare and safety. Further, the Ordinance does not burden the rights of Mojave residents to purchase firearms because there are other firearm dealerships within the County.

As to the second question, this Court should find the Second Amendment does not secure a right to sell firearms. The Second Amendment's text neglects any mention of a right to sell, and throughout British and early American history, commercial firearm sales were heavily regulated. Regulations on firearm sales are the type of longstanding regulations this Court has held are presumptively valid. Further, a right to sell firearms would be contrary to the right to keep and bear arms. The right to keep and bear arms requires one to possess and control a firearm. When one sells a firearm, one necessarily *parts with* and relinquishes control of that firearm, at which point one can no longer keep and bear that arm.

The County of Mojave has the police powers to determine how its community will be zoned. It should be up to Mojave residents to vote for the local leaders that will create the community they envision. Mojave has chosen a reasonable path. It has placed presumptively valid conditions and qualifications on the commercial sale of firearms without banning possessing, purchasing, or opening a new store in a compliant retail location. Therefore, Respondent should look to Mojave voters for his remedy.

This Court need not break new ground here. This case is a simple zoning dispute dressed up as a Second Amendment claim. The principle that communities have the power to determine their own destinies within the bounds of the constitution is paramount. The County of Mojave has not touched the Second Amendment. This Court should find rational basis applies, reverse question two, and dismiss Respondents' claim.

## ARGUMENT

### I. SECOND AMENDMENT CLAIMS AGAINST ZONING ORDINANCES REGULATING THE COMMERCIAL SALE OF FIREARMS SHOULD RECEIVE RATIONAL BASIS REVIEW UNLESS THE RIGHT TO KEEP AND BEAR ARMS IS SUBSTANTIALLY BURDENED

The level of means-end scrutiny applicable to a Second Amendment claim depends on "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.'" *U.S. v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (*quoting Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011) ("*Ezell*"). The process should mirror how this Court addresses First Amendment claims. *D.C. v. Heller*, 554 U.S. 570, 595 (2008) ("*Heller*"); *Heller v. D.C.*,

670 F.3d 1244, 1253 (D.C. Cir. 2011) ("*Heller II*"). Heightened scrutiny is only appropriately applied to "regulations that substantially burden the Second Amendment." *U.S. v. DeCastro*, 682 F.3d 160, 164 (2d Cir. 2012). Strict scrutiny is reserved for laws that infringe on "the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family." *Heller*, at 635.[10]

Each circuit that has addressed this issue has applied a "two-step analytical framework" to determine the level of scrutiny applicable to a law touching upon the Second Amendment. *Mance v. Sessions*, 896 F.3d 390, 391 (5th Cir. 2018).[11] In the first prong, courts consider whether the law burdens conduct falling within the scope of the Second Amendment's protections. *U.S. v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). If the law does not burden such conduct, then the court's "inquiry is complete." *Id.* If the conduct does fall within the scope of the amendment, the court selects the level of scrutiny based on how severely the right is burdened. *Id.*; *see also U.S. v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (*quoting Ezell*, at 703). Laws that only regulate the "'manner in which persons may exercise their Second Amendment rights are less burdensome than those which bar firearm possession completely." *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 963 (9th Cir. 2014).

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[10] *See also Mance v. Sessions*, 896 F.3d 390, 397 n.10 (5th Cir. 2018) (denial of rehearing en banc); *Lane v. Holder*, 703 F.3d 668, 673 (4th Cir. 2012).

[11] (J. Higginson concurring in denial of rehearing en banc) (citing *NRA v. BATFE*, 700 F.3d 185, 194-98 (5th Cir. 2012); *see also Kolbe v. Hogan*, 849 F.3d 114, 132 (4th Cir. 2017) (en banc), cert. denied, –— U.S. ——, 138 S.Ct. 469, 199 (2017); *Chovan*, 735 F.3d at 1136; *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1261 n.34 (11th Cir. 2012); *United States v. Decastro*, 682 F.3d 160, 163-64 (2d Cir. 2012); *U.S. v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Heller II*, 670 F.3d at 1252; *Ezell*, 651 F.3d at 700-04;*U.S. v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *Marzzarella*, 614 F.3d at 89.

This is a case of first impression. This Court has not yet considered whether the Second Amendment secures a right to sell firearms, nor what level of scrutiny would apply to a law burdening such a right, if there were one. *Id.* Normally, this Court first determines whether a law impinges a right protected by the Second Amendment but where the existence of that right is uncertain, this Court should first determine which level of scrutiny would apply in either case. *Heller*, at 635.

As shown below, rational basis applies to laws that burden conduct falling outside the scope of the Second Amendment. *DeCastro*, 682 F.3d 167-68. Whereas, heightened scrutiny only applies to laws that substantially burden the Second Amendment's "core lawful purpose of self-defense." *Heller*, 554 U.S. at 630; *Heller II*, 670 F.3d at 1253.

### A. Rational Basis Applies Because Heightened Scrutiny Is Reserved For Laws That Substantially Burden Core Second Amendment Rights

Only laws that substantially burden an enumerated constitutional right receive heightened scrutiny. *Locke v. Davey*, 540 U.S. 712, 720 n.3 (2004); *See also Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 54 (1983); *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). This Court has held rational basis review is inappropriate where a law burdens the core Second Amendment right to keep and bear arms. *Heller*, at 628 n.27. Therefore, a rational basis review of gun regulations that do not burden core Second Amendment rights is consistent with this Court's holding in *Heller*. *See DeCastro*, at 166-67 n.5.[12]

[12] *See also Lewis v. U.S.*, 445 U.S. 55, 65 (1980) (holding rational basis review applied to a law prohibiting the possession of firearms by felons). *Heller* did not change this standard because this

Here, there is no claimant alleging the Ordinance substantially burdens their right to keep, bear, or purchase firearms. Rather, Respondent Maxson is a firearms retailer arguing the constitution secures the right of dealers to sell firearms for profit, without restriction.[13]

As shown below, courts have applied rational basis review to laws that, like the Mojave Ordinance here, do not substantially burden the right to keep and bear arms. However, even if this Court applied heightened scrutiny, Mojave's Ordinance should be found constitutional.

1. Rational Basis Applies Because the Ordinance Does Not Substantially Burden Respondents' Right to Keep and Bear Arms for Self-Defense.

Rational basis scrutiny applies to local ordinances that do not substantially burden the right to lawfully keep, bear, or purchase firearms. *Nordyke v. King*, 681 F.3d 1041, 1043 (9th Cir. 2012) ("*Nordyke VI*") (en banc) (*affirming Nordyke v. King*, 644 F.3d 776, 782-83 (9th Cir. 2011) ("*Nordyke V*"); *Kwong v. Bloomberg*, 723 F.3d 160, 169 (2d Cir. 2013); *DeCastro*, 682 F.3d at 168.[14] Under rational basis, the challenger has the burden of proving the law is not rationally related to a legitimate

Court did not extend the right to keep and bear arms to felons but rather, held such laws are presumed lawful. *Heller*, at 626.

[13] *See Mont. Shooting Sports Ass'n v. Holder*, 2010 WL 3926029 at *21 (D. Mont. Aug. 31, 2010) (finding *Heller* did not extend a right for retailers to sell firearms. "Instead, they are individuals who essentially claim they have the right to manufacture and sell firearms within the state of Montana without interference from the federal government. *Heller* said nothing about extending Second Amendment protection to firearm manufacturers or dealers. If anything, *Heller* recognized that firearms manufacturers and dealers are properly subject to regulation…").

[14] *See also NY State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 258 (2d Cir. 2015); *Kwong*, 723 F.3d at 170; *Heller II*, at 188; *U.S. v. Masciandaro*, 638 F.3d 458, 469–70 (4th Cir. 2011); *U.S. v. Chester*, 628 F.3d 673, 680–83 (4th Cir. 2010); *Marzzarella*, 614 F.3d at 89.

government interest, and the government need not present any evidence to prove its law is rational. *Heller v. Doe by Doe*, 509 U.S. 312, 312 (1993); *Koscielski v. City of Minneapolis*, 435 F.3d 898, 902 (8th Cir. 2006). If the challenger fails, then the law is constitutional. *Id.*

In *Koscielski*, the Eighth Circuit applied rational basis review to a zoning ordinance that when applied prohibited the plaintiff from opening a new gun store. 435 F.3d at 900. The zoning ordinance required prospective firearm retailers "to obtain conditional use permits and locate within particular zones and only in locations sufficiently distant from day care centers and churches." *Id.* The plaintiff sued the city alleging it was impossible to find a location that complied with its ordinance. *Id.* The court found that "because the operation of a firearms dealership is not a constitutionally-protected right, the [c]ity ordinance must be upheld 'if there is *any* reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Id.* at 901 (emphasis added). It held the plaintiff did not meet his burden because "[i]t is undisputed the purpose of the [c]ity's zoning ordinance, to protect public safety, is legitimate." *Id.* at 902.[15]

In *Nordyke VI*, the Ninth Circuit conducted a rational basis review of an ordinance prohibiting the possession of firearms on county property, effectively banning gun shows, and held it did not violate the Second Amendment. 681 F.3d 1041

[15] In *Koscielski*, the plaintiff brought equal protection and due process claims not a Second Amendment claim. *Id.* at 901-02. However, the level of scrutiny applied to Second Amendment claims mirrors those of other constitutional rights. *Id.* The *Koscielski* court applied rational basis to the claim and found the zoning ordinance served a legitimate government purpose. *Id.*

at 1044-45.[16] The plaintiffs were gun show promoters that challenged the law as violative of the Second Amendment because it prohibited them from selling firearms on county property. *Id.* at 1044. The court found rational basis review applied because the plaintiffs failed to "suggest plausibly that the [o]rdinance substantially burden[ed] [their] right to keep and bear arms." *Nordyke V*, at 788 (aff'd, in rehearing en banc *Nordyke VI*, 681 F.3d 1041). It reasoned that where laws restrict the "distribution of a constitutionally protected good or service . . . " courts consider whether the law "leaves open sufficient alternative avenues for obtaining the good or service." *Id.* at 787 (*citing Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Applying this procedure to laws restricting the sale of firearms, the court found it should ask whether the challenged law "leaves law-abiding citizens with reasonable alternative means for obtaining firearms sufficient for self-defense purposes." *Nordyke V*, at 787.[17] Further, the court reasoned a law is unlikely to place a substantial burden on a core Second Amendment right when it simply declines the use of government property for the exercise of that right. *Id.* at 788. The court concluded a law prohibiting firearm possession only when on county property did not

[16] *Nordyke* is a legal saga that began in California state court, reached its supreme court, and then to federal court. *Nordyke V*, 644 F.3d at 780. The California Supreme Court held that state law did not preempt an ordinance prohibiting the possession of firearms on county property. *Nordyke v. King*, 44 P.3d 133, 138 (Cal. 2002). The N.D. of California held for the county. *Nordyke V*, at 781. The Ninth Circuit held the law did not violate the Second Amendment, then remanded again for consideration in light of this Court's decision in *McDonald III, supra* at 791. At rehearing, the Ninth Circuit affirmed its holding the county ordinance did not violate the Second Amendment. *Nordyke VI*, at 1045.

[17] *Citing U.S. v Marzzarella,* 595 F. Supp. 2d 596, 606 (W.D. Pa. 2009) (finding that a ban on the sale of firearms with scratched serial numbers should be reviewed under a standard similar to the "applicable to content-neutral time, place and manner restrictions," in speech cases and upholding the ban partly because it leaves "open ample opportunity for law-abiding citizens to own and possess guns") (aff'd, 614 F.3d 85, 95 (3d Cir. 2010)).

substantially burden the plaintiffs' rights to *obtain* firearms elsewhere and therefore, rational basis was appropriate. *Id.*

In *DeCastro*, the Second Circuit held a federal law that prohibited the transportation of firearms obtained in another state into one's state of residence passed rational basis review. 682 F.3d at 168. Rational basis applied because a regulation limiting the "availability of firearms is not a substantial burden on the right to keep and bear arms if adequate alternatives remain for law-abiding citizens to acquire a firearm for self-defense." *DeCastro*, at 167-68.[18]

In *Kwong*, the Second Circuit held that a New York county ordinance raising residential handgun license fees did not violate the Second Amendment under rational basis review. 723 F.3d at 168-69. It found rational basis applied because a law that incidentally makes a right more difficult or expensive to exercise is not a substantial burden upon that right. *Id.* at 168 (*quoting Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 874 (1992)). Further, it found the law would have easily met intermediate scrutiny because it was "substantially related to the important governmental interest of promoting public safety and preventing gun violence." *Kwong*, at 168-69 (internal citations omitted).

Here, this Court should review the Mojave Ordinance under rational basis because it merely regulates where firearms are sold and does not substantially

[18] *See also Jackson*, 746 F.3d at 960-61 ("When ascertaining the appropriate level of scrutiny, just as in the First Amendment context, we consider: (1) how close the law comes to the core of the Second Amendment right and (2) the severity of the law's burden on the right." (internal citations omitted); *Norman v. State*, 215 So. 2d 18, 37 (Fla. 2017) ("However, if the regulation leaves open an alternative outlet to exercise the right, then the regulation is "less likely to place a severe burden on the . . . right than those which do not.").

burden Respondent's core Second Amendment right to keep and bear arms for the purposes of self-defense. Therefore, the Ordinance regulates conduct outside the scope of the Second Amendment. Like in *Nordyke V*, the Ordinance simply restricts where Respondents may *sell* firearms within the county, it does not prohibit nor substantially burden Respondents' rights to *obtain* firearms. Like in *Nordyke V* and *DeCastro*, the Ordinance leaves alternative avenues for both Respondent Maxson and Mojave residents to purchase firearms within the County. Therefore, the Ordinance does not substantially burden their right to purchase firearms elsewhere. In fact, the Mojave Ordinance is even less burdensome than the one in *Nordyke V* because the ordinance in that case prohibited firearm possession on county property. Mojave has not prohibited possession or purchase in any fashion.

Respondent Maxson and Mojave residents living in the Hidden Valley area may have to drive ten miles to the nearest gun store or twenty to the nearest shooting range. However, like in *Casey* and *Kwong*, the fact that minimal extra expense and time is used to exercise the right does not constitute a substantial burden. In fact, shooting ranges usually operate in the outskirts of most communities which Americans travel to everyday to practice shooting.

Like in *Koscielski*, the Ordinance prevents gun stores from opening in proximity to churches, and The Children of the Cathedral Church is only 736 feet from the Helios property. The church has been inactive, and its founder had committed tax evasion, however, the property is still owned by a religious

organization. Further, Respondent has not contested the categorization of that property as a church. *See* Pet'r's App. A-1, 5 n.2.

The Ordinance should be upheld if there is a reasonably conceivable set of facts that could provide a rational basis for the classification. It is undisputed that the purpose behind the Ordinance is Mojave's legitimate government interest of promoting public safety. Respondents' conclusory assertions that the Ordinance "is not reasonably related to any possible public safety concerns" is merely speculative and does not even allege a set of facts where that could be the case.

Finally, Respondents failed to meet their burden of alleging facts sufficient to show the Ordinance regulates conduct within the scope of the Second Amendment or substantially burdens their core right to purchase, keep, and bear arms for the purposes of self-defense. Therefore, rational basis review should apply to such zoning ordinance challenges, and Respondents' claim should be dismissed.

2. Rational Basis Would Also Apply if Respondents Asserted Third-Party Standing.

Firearm retailers and those that provide ancillary services may assert third-party standing to challenge a law as burdening their would-be customers' Second Amendment rights to use their services or purchase firearms. *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017); *see Carey v. Population Servs., Int'l*, 431 U.S. 678, 683-84 (1977); *Craig v. Boren*, 429 U.S. 190, 195 (1976); *Ezell*, 651 F.3d at 696. However, if individuals can purchase firearms within their respective jurisdictions then a law causing a "slight diversion off the beaten path" does not

violate that right. *Second Amend. Arms v. City of Chicago*, 135 F. Supp. 3d 743, 754 (N.D. Ill. 2015) ("*Arms*"); *see also Ezell*, at 699.

In *Teixeira*, the Ninth Circuit held a zoning ordinance, effectively preventing the plaintiff from opening a gun store in the county, was subject to rational basis review and did not violate the Second Amendment. 873 F.3d at 690. [19] The court found the plaintiff had third-party standing to "assert the subsidiary right to acquire arms on behalf of his potential customers." *Id.* at 678. However, the court found the plaintiff failed to sufficiently allege the law prevented residents from purchasing firearms within the entire county because there were thirteen other gun stores in Alameda County. *Id.* at 679-80. The court further found that "[i]n any event, gun buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained." *Id.* at 680 (*citing Arms*, 135 F. Supp. 3d at 754).

In *Arms,* the court dismissed an action for failing to sufficiently allege how a zoning ordinance, preventing the opening of the plaintiff's gun store, "unjustifiably burden[ed] the rights of citizens of Chicago to purchase firearms *within the City*." 135 F. Supp. 3d at 753 (emphasis added). It found *Heller* established a presumption of validity applicable to regulations on the commercial sale of firearms. *Id.* at 754. Therefore, the plaintiff failed to meet its burden of alleging facts sufficient "to create

[19] "The study found it virtually impossible to open a gun store in unincorporated Alameda County that would comply with the 500-foot rule due to the density of disqualifying properties." *Teixeira*, at 676 (internal quotations omitted).

a plausible inference that the zoning restrictions in question impair (or completely ban) the right to acquire firearms." *Arms*, at 754 (parenthetical in original).

Here, like in *Teixeira* and *Arms*, Respondents were required to plausibly allege the Ordinance substantially burdens their customers' rights to purchase firearms within the County. Respondents have failed. Nevertheless, such an allegation would fail on its own because "there are at least three gun stores and two shooting ranges already operating lawfully in Mojave County." [20] Further, Mojave's study showed fifteen percent (15%) of the parcels available in the unincorporated County were compliant with the Ordinance where Respondent Maxson could open his store. However, Respondent Maxson is adamant about operating out of the Helios property he leased before applying for his Permit, even though Mr. Gunther had previously informed him of the Ordinance's requirements.

The local support Respondent Maxson may have from some residents does not help him allege a claim because, like in *Teixeira*, the residents do not have a right to have a gun store in the place of their choosing. Therefore, there is no claim on behalf of Respondents' potential customers because there are alternative means by which Mojave residents can exercise their right to purchase firearms.

Mojave residents may have a right to Respondent Maxson's gunsmithing services because there are "[n]o other Red 888 Guns armorer and gunsmith[s] in the Mojave area." [21] They may also have an interest in having a new shooting range in

[20] Pet.r.'s App. at 5.

[21] *Id.* at 6

the Hidden Valley area because the nearest of the two ranges in Mojave is over twenty (20) miles away. However, while Respondents' customers indeed have a derivative Second Amendment right to gunsmithing services and shooting ranges, it would not make it such that it would allow Respondent Maxson to render his gunsmithing services *and* sell firearms. Respondent BOS is well within its rights to open a gunsmithing shop, shooting range, or both at the Helios location without violating the Ordinance, as long as it does not engage in firearm sales.

Here, like in *Nordyke V*, *DeCastro*, and *Kwong*, rational basis would apply because there are alternative means available where Mojave residents can purchase firearms within the County. There are at least three locations within the jurisdiction in which residents can purchase firearms or receive training. Like in *Arms*, a slightly further distance to travel to purchase guns or use ancillary services within a jurisdiction does not render a zoning ordinance unconstitutional, nor does it subject it to heightened scrutiny. The Ordinance does not substantially burden the rights of Mojave residents to purchase firearms and receive the training necessary to obtain a concealed weapon permit under New Tejas law. Therefore, rational basis would also apply to claims on behalf of customers with alternative means of acquiring firearms within the jurisdiction. Respondent BOS's claims on behalf of its would-be customers should be dismissed.

3. **Heightened Scrutiny Would be Incompatible with the Presumption of Lawfulness This Court Established in Heller.**

This Court was clear in *Heller*. Regulations that impose conditions or qualifications on the commercial sale of firearms are presumed lawful. *Heller*, at 626-

27, 627 n.26. Circuit courts have taken that to mean "that a longstanding presumptively lawful regulatory measure . . . would likely fall outside the ambit of the Second Amendment; that is, such a measure would likely be upheld at step one of [the two-step] framework." *Nat'l Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 205 (5th Cir. 2012) ("*NRA v. BATFE*") (*citing Heller II*, 670 F.3d at 1253). However, any level of heightened scrutiny places the burden on the government to prove lawfulness. *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989); *Silvester v. Harris*, 843 F.3d 816, 827 (9th Cir. 2016). Therefore, applying any level of heightened scrutiny to Respondents' claim would effectively overturn the presumption of lawfulness from *Heller*.

This Court does not acknowledge when a lower court, "by implication," overrules earlier precedent because only the Supreme Court can overrule its own precedent. *Agostini v. Felton*, 521 U.S. 203, 207 (1997). Here, the court below erred when it applied heightened scrutiny. Pet'r's App. A-1 at 14. It contradicted this Court and found regulations on the commercial sale of firearms were not presumptively lawful. Under *Heller*, Mojave's Ordinance is presumed lawful, which means Mojave does not have the burden of proving its lawfulness. Rather, Respondents have the burden to overcome the presumption.

### B. Even If Intermediate Scrutiny Applied – The Zoning Ordinance Is Constitutional Because It Is Substantially Related To An Important Government Interest

Intermediate scrutiny may be applied to laws that regulate conduct falling within the scope of the Second Amendment. *Jackson*, 746 F.3d at 963. A local

ordinance restricting a corporation's ability to sell firearms in a public retail location – where Second Amendment rights are not at their zenith – is reviewed under intermediate scrutiny and is constitutional if it is substantially related to achieving an important governmental interest. *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 89, 96 (2d Cir. 2012).[22]

1. The Ordinance is Lawful Because it is Substantially Related to the Important Governmental Interest of Public Safety.

Intermediate scrutiny requires the government to show its law is "reasonably adapted to an important government interest." *NRA v. BATFE,* 700 F.3d at 205. The government can satisfy this burden with relevant studies cited in pertinent caselaw. *Pena v. Lindley*, 898 F.3d 969, 979 (9th Cir. 2018) (*citing Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015)).

In *NRA v. BTAFE*, the Fifth Circuit held a federal law prohibiting the sale of firearms to minors passed intermediate scrutiny. 700 F.3d at 211. The court found the studies the government cited sufficiently showed the law reasonably fit its objective of reducing crime. *Id.*

[22] *See also Silvester*, 843 F.3d at 827; *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013) (holding concealed carry permit regulation was longstanding and presumptively lawful, withstanding intermediate scrutiny); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (upholding a Maryland statute, under intermediate scrutiny, requiring concealed carry permit applicant to provide a substantial reason for needing the permit); *NRA v. McCraw*, 719 F.3d 338 (5th Cir. 2013) (upholding Texas law barring minors from carrying handguns in public, under intermediate scrutiny); *Kachalsky*, *v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012) (upholding New York law, under intermediate scrutiny, which prevented individuals from obtaining a concealed carry permit, except to those demonstrating a special need for self-protection); *Heller II*, *supra* (finding an assault weapon ban passed intermediate scrutiny); *U.S. v. Yancey*, 621 F.3d 681 (7th Cir. 2010) (holding law prohibiting drug users from firearm possession passed intermediate scrutiny review).

In *Pena*, the Ninth Circuit applied intermediate scrutiny and held a California law prohibiting "unsafe" handgun models from being sold in the state did not violate the Second Amendment. 898 F.3d at 980, 987. The court found the government met its burden because its interest in prohibiting unsafe handguns to mitigate injury and crime was "undoubtedly adequate." *Id.* at 980.

In *Fyock*, the court upheld a city ordinance restricting possession of large capacity magazines under intermediate scrutiny. 779 F.3d at 995. The court found it "self-evident" that "promoting public safety and reducing violent crime are substantially important government interests." *Id.* at 1000. In reaching its conclusion the *Fyock* court noted several of this Court's decisions as a guide. *Id.*

This Court has held local communities are "entitled to rely on the experiences" of major cities and detailed findings in relevant case law when enacting zoning ordinances. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51 (1986). The prevention of crime is a "weighty social objective," that is both "legitimate and compelling." *U.S. v. Salerno*, 481 U.S. 739, 750 (1987); *Brown v. Texas*, 443 U.S. 47, 52 (1979). The "'legitimate and compelling state interest' in protecting the community from crime *cannot be doubted*." *Schall v. Martin*, 467 U.S. 253, 264 (1984) *(emphasis added)* (*quoting De Veau v. Braisted*, 363 U.S. 144, 155 (1960)).

This Court should note – the circuit court cases cited above applied intermediate scrutiny review to gun sale regulations because of the impact those laws had on the *individual purchaser's* right to keep and bear arms for self-defense, which is conduct that falls within the scope of the Second Amendment. Here, however,

Respondents are not individuals wishing to exercise their right to *purchase* firearms. Instead, Respondents are merchants asserting a constitutional right to *sell* firearms where they choose. That distinction is an important one.

Here, like in *City of Renton*, Mojave was entitled to rely on the experiences of other major cities as they relate to the number of gun stores and the connection to crime. Like in *Fyock*, Mojave's interest in promoting public safety is self-evident. This Court has upheld the constitutionality of zoning ordinances far stricter than Mojave's in cases dealing with government interests far less substantial than public safety and crime prevention.[23]

Gun store burglaries have been increasing and in 2015, over 12,000 firearms were stolen.[24] Recent studies have shown a correlation between a "disproportionately high number of [firearm retailers]" and "significantly higher rates of firearm homicide in major cities." [25] Researchers from Harvard University and Boston Children's Hospital have found "firearm assaults were 6.8 times more common in the states with

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[23] *See also City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (holding a city could rely on studies showing a correlation between the number of adult businesses and crime and held an ordinance prohibiting multiple adult businesses from operating in a single building did not violate the first amendment); *City of Renton*, 475 U.S. at 44 (upholding the constitutionality of a 1,000 feet restriction, preventing adult theatres from 95% of the city); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 62 (1976) (holding zoning ordinance to restrict adult theatres to 1,000 feet from any schools was constitutional. A municipality may control the location of theaters "as well as the location of other commercial establishments," by confining them to specified commercial zones or "by requiring that they be dispersed throughout the city." "The mere fact that the commercial exploitation of material protected by the First Amendment is subject to zoning and other licensing requirements is not a sufficient reason for invalidating these ordinances. *Id.*).

[24] Pierre Thomas et al., *More Than 500 Gun Store Burglaries Expected This Year, Says ATF*, ABC News (Nov. 30, 2016).

[25] Douglas J. Wiebe et al., *Homicide and Geographic Access to Gun Dealers in the United States*, BMC Public Health (2009).

the most guns versus those with the least." [26] The National Center for Biotechnology Information ("NCBI") studied the relationship between gun ownership and firearm homicide rates in the United States and found "[f]or each 1 percentage point [1%] increase in proportion of household gun ownership, firearm homicide rate increased by 0.9%." [27] The NCBI concluded, that although it could not determine causation, "states with higher levels of gun ownership had disproportionately large numbers of deaths from firearm-related homicides." [28]

Like in *NRA v. BTAFE*, *Pena*, and *Fyock,* Mojave's interest in promoting public safety, preventing harm, and reducing crime is important, legitimate, and self-evident. The County has the right to look to major cities and factual findings in case law as support for its position that the Ordinance is substantially related to achieving an important governmental interest. Mojave has balanced the interest of promoting safety and preventing crime with protecting its residents' Second Amendment rights. Studies are clear that higher rates of gun ownership correlate with increased rates of homicide, especially in heavily populated areas. Mojave is the tenth most populous county in New Tejas and must have the discretion to best organize its community to keep safe the nearly half a million people that call Mojave home.

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[26] Melinda Wenner Moyer, *More Guns Do Not Stop More Crimes, Evidence Shows*, Scientific American, 10/1/2017

[27] Michael Siegel, MD, MPH, corresponding author Craig S. Ross, MBA, and Charles King, III, JD, PhD, *The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States*, 1981–2010, NCBI, November 2013.

[28] *Id.*

2. Strict Scrutiny is Inappropriate Because the Ordinance Does Not Infringe on the Core Second Amendment Right.

Only laws that severely burden the core of the Second Amendment – like a complete ban on "the right of law-abiding, responsible citizens to use arms in defense of hearth and home" – would trigger strict scrutiny. *NRA v. BATFE*, 700 F.3d at 205 (*citing Heller,* 554 U.S. at 635). Under strict scrutiny, a law is constitutional only if it is narrowly tailored to serve a compelling governmental interest. *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 307-08 (2013).

In *NRA v. BATFE*, the court held strict scrutiny was inappropriate to review a federal law prohibiting firearm sales to minors because the "ban does not disarm an entire community, but instead *prohibits* commercial handgun sales to [minors] a discrete category." *Id.* at 206.

Here, strict scrutiny would be inappropriate for the following three reasons: (1) The Ordinance does not disarm an entire community; (2) The Ordinance does not severely burden *any* individual's core Second Amendment right to own a firearm in their home for self-defense; (3) The Ordinance is even less burdensome on that right than the law upheld in *NRA v. BATFE*, because that law categorically prohibited current and licensed firearm retailers from selling guns to a class of people. [29]

Mojave has a legitimate interest to promote safety and reduce crime by placing reasonable conditions and qualifications on the sale of firearms. Such measures should be subject to rational basis review. As a local county government, Mojave

[29] Respondents did not allege below how the Ordinance burdened either their rights or the rights of their customers to keep and bear arms in the home for self-defense.

should have the discretion to determine what regulations are best suited to achieving its goals. Mojave should not have the burden to prove its 800-foot rule is narrowly tailored to achieve its compelling interest of promoting public safety. And this Court need not burden itself with determining how many hundreds of feet would be considered narrowly tailored enough to survive such high scrutiny. Respondents' claims should be dismissed.

## II. THE SECOND AMENDMENT DOES NOT SECURE A RIGHT TO SELL FIREARMS AND EVEN IF IT DID – LAWS REGULATING THE COMMERCIAL SALE OF FIREARMS ARE PRESUMED LAWFUL

The Second Amendment secures the individual right to purchase, own, carry, and keep firearms at the ready for immediate self-defense in the home. *McDonald v. City of Chicago, III*, 561 U.S. 742, 791 (2010) ("*McDonald III*"); *Heller*, 554 U.S. at 635. However, the right to keep and bear arms "[is] not unlimited." *Id.* at 595. When this Court considers a claim that the Second Amendment secures a certain right, it looks to the text and historical background of the law. *Id.* at 592.

### A. Neither The Text Nor History Of The Second Amendment Secures a Right To Sell Firearms

When determining whether the Second Amendment protects a certain right, this Court first turns to the text. *Id.*, at 576; *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017) ("*Ezell II*"); *Chovan*, 735 F.3d at 1132-33. Then the Court turns to the historical background of the Second Amendment because it has been widely understood to have "codified a pre-existing right." *Heller*, at 592 (citing *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)). In that light, this Court determines whether a

right claimed to exist under the Second Amendment is evident in its text and its history. *Heller*, at 595. [30]

There is no doubt the Second Amendment secures the individual's right to keep and bear arms in their home for self-defense and that its protections extend to the states through the Fourteenth Amendment. *Heller*, at 595, *McDonald III*, at 791. However, the question here is whether the Second Amendment secures a freestanding right for a retailer to sell firearms, apart from an individual's right to purchase. As shown below, the text and history of the Second Amendment does not secure a Constitutional right to sell guns.

1. Text: The Text of the Second Amendment Does Not Secure a Right to Sell Firearms.

> **"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.**

In *Heller*, this Court broke the Second Amendment's text down into its two clauses: its operative clause and its prefatory clause. 554 U.S. at 579, 595.[31, 32] It held the amendment protected the rights of law-abiding citizens to keep and bear arms in

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[30] This Court's Second Amendment Jurisprudence has evolved as follows: *U.S. v. Miller*, 307 U.S. 174, 182 (1939) (holding the Second Amendment did not guarantee the right to transport a shotgun in interstate commerce that was not for the preservation of a militia). *Heller*, 554 U.S. at 635 (holding that a total ban on handguns and a requirement that firearms be kept nonfunctional violated Second Amendment). *McDonald III,* 561 U.S. at 858 (holding an ordinance banning possession of handguns by private citizens was unconstitutional because the Second Amendment was incorporated to the states by the Due Process Clause of the Fourteenth Amendment). *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1028 (2016) (holding stun guns are protected under the Second Amendment).

[31] The Prefatory Clause is: "A well regulated militia, being necessary to the security of a free state…"

[32] The Operative Clause is: "…right of the people to keep and bear arms, shall not be infringed."

their homes for lawful purposes. *Id.* at 576-605, 625. However, this Court did not review the amendment's text as it relates to commercial firearm sales. *Id.* at 626-27.

Only one circuit has conducted an in-depth review of whether the text and history of the Second Amendment suggests a freestanding right to sell firearms. *Teixeira v. Cty. of Alameda*, 873 F.3d 683-90 (9th Cir. 2017).[33] Using *Heller* as its guide, the court concluded that nothing in the text "suggests the Second Amendment confers an independent right to sell or trade weapons." *Teixeira,* at 683.

Here, the Court should apply the cannon of plain meaning and note the word "sell" does not appear in the text of the amendment. *See Caminetti v. U.S.*, 242 U.S. 470, 485 (1917). While the amendment also lacks any mention of buying or purchasing firearms, as explained below, that right is necessarily implied by the right to keep and bear arms. Whereas, the right to purchase does not necessarily imply the right to sell. Before that analysis, however, a historical review is required.

2. **History: There Is No Freestanding Right to Sell Firearms Because the Second Amendment was Codified at a Time When Firearm Sales Were Heavily Regulated.**

The second step in determining whether the scope of the Second Amendment protects a right to sell firearms is to conduct a historical analysis of laws regulating the sale of firearms. *Heller*, at 592; *Teixeira*, at 683. This Court has found the Second Amendment "codified a right 'inherited from our English ancestors.'" *Heller*, at 599 (*citing Robertson,* 165 U.S. at 281). Yet, there is no authority in the historical record "that remotely suggests that, at the time of its ratification, the Second Amendment

[33] (cert. denied sub nom. *Teixeira v. Alameda Cty., Cal.*, 138 S. Ct. 1988 (2018)).

was understood to protect an individual's right to *sell* a firearm." *U.S. v. Chafin*, 423 Fed. Appx. 342, 344 (4th Cir. 2011) (emphasis in original); *Teixeira*, 686-87.[34]

In *Teixeira*, the Ninth Circuit conducted a detailed analysis of various restrictions on the sale of firearms in the historical record. *Id.* at 683. The court began with the 1689 English Bill of Rights and found its provision on the right to keep arms was drafted for the "free enjoyment of personal security," not the right to sell firearms. *Id.* at 684.[35] It then considered the laws of early American colonies and found those governments exercised substantial control over firearms trade. *Id.* at 685. "The government provided and stored guns, [and] controlled the conditions of trade . . . ". *Id.*[36] The court specifically noted those early governments placed "restrictions on the commercial sale of firearms." *Id.* For example, several colonies made it a crime to sell firearms or ammunition to Native Americans. *Id.*[37] Other colonies controlled

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[34] In 1793, Thomas Jefferson wrote: "[o]ur citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them." (alteration in original) (quoting Thomas Jefferson, 3 *Writings* 558 (H.A. Washington ed., 1853)). However, it was a statement of fact, not of law, and it was "an imprecise one, as [the *Teixeira* court has] shown—not a prescriptive one. Jefferson's observation does not support the conclusion that the Founders understood the right to sell arms was to be independently protected by the Second Amendment." *Teixeira*, at 687 n. 20.

[35] This Court noted the 1689 English Bill of Rights is "understood to be the predecessor to our Second Amendment." *Heller*, 554 U.S. at 593. A historical review of that document suggests its gun rights were in place for the purposes of self-defense, similar to our Second Amendment. *Teixeira*, 873 F.3d at 684-85. Nothing in the historical record suggest the English understand their gun laws to secure a freestanding right to sell firearms. *Id.*

[36] *Citing* Solomon K. Smith, *Firearms Manufacturing, Gun Use, and the Emergence of Gun Culture in Early North America*, 49th Parallel, Vol. 34, at 6–8, 18–19 (2014).

[37] *See Acts of Assembly, Mar. 1657-8*, *in* 1 William Waller Hening, *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, at 441 (1823); 1 J. Hammond Trumbull, *The Public Records of the Colony of Connecticut, Prior to the Union with New Haven Colony, May, 1665*, at 49, 182 (1850); *Assembly Proceedings, February-March 1638/9*, *in Proceedings and Acts of the General Assembly of Maryland, January 1637/8—September*

where "settlers could transport or sell guns." *Id.* In fact, Virginia restricted the sale of firearms only to subjects of the British monarchy within its borders. *Id.* at 685 n.18. Therefore, the historical record does not suggest a freestanding right to sell firearms, which is consistent with this Court's ruling in *Heller*. *Teixeira*, at 687.

In *Drake v. Filko*, the Third Circuit held that a state handgun permit statute was constitutional because such longstanding laws were "presumptively lawful regulation[s] that regulated conduct falling outside the scope of the Second Amendment's guarantee." 724 F.3d 426, 434 (3d Cir. 2013). Further, it found this Court's definition of "longstanding" in *Heller* included even those regulations that "cannot boast a precise founding-era analogue." *Id.* at 451 (citing *NRA v. BATFE*, 700 F.3d at 196).[38]

In *Heller*, this Court noted the "longstanding" historical significance of mid-twentieth century laws banning the possession of firearms by felons (enacted in 1938) and the mentally ill (enacted in 1968), as well as regulations on the sale of firearms. *Id.* at 626-27; *see also NRA v. BATFE*, 700 F.3d at 196. In fact, laws regulating the commercial sale of firearms have an even longer standing history in the United States as several states had laws prohibiting the sale of firearms to nonresidents, as early

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*1664*, at 103 (William Hand Browne, ed., 1883); *Records of the Governor and Company of the Massachusetts Bay in New England* 196 (Nathaniel B. Shurtleff, ed., 1853). *Teixeira*, at 685.

[38] *See also Heller II*, 670 F.3d at 1253-54 (relying on early 20th-century state statutes the court held D.C. handgun registration requirement was "longstanding" and did not "impinge upon the right protected by the Second Amendment"); *U.S. v. Skoien*, 614 F.3d 638, 640-41 (7th Cir. 2010).

as 1909. *Mance*, 896 F.3d at 704.[39] Therefore, a law regulating the manner in which firearms were sold before 1938 would show such laws are longstanding, and therefore presumptively valid.[40]

Laws regulating the sale of firearms have a longstanding history throughout the states. Florida, Georgia, and North Carolina gave their local communities "the power to license, regulate, or even bar the commercial sale of firearms." [41] In 1917, New Hampshire required its firearm dealers to keep detailed records on their customers and keep those records ready for review by law enforcement.[42] West Virginia prohibited the "'public display' of any firearms for sale or rent . . . " and required gun sellers to submit to law enforcement the purchaser's name, address, and general appearance, in 1925.[43] In fact, the recent relaxation of gun laws throughout the United States leading to things like "the reduction of gun sale inspections," and "the rise of unregulated internet gun and ammunition sales . . . are a refutation of America's past, and a determined march away from America's gun regulation tradition." [44]

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[39] *See also U.S. v. Miller*, 307 U.S. 174, 179 (1939) (finding the historical record and legislation of Colonies and States show that militia members "were expected to appear bearing arms *supplied by themselves* and of the kind in common use at the time.") (emphasis added).

[40] The nature of a historical review makes it necessary to consider evidence outside of the record for those purposes alone.

[41] Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 75.

[42] *Id.*

[43] *Id.*

[44] *Id.*

In 1934, Congress passed the National Firearms Act ("NFA") which imposed a tax on any "persons [or] entities engaged in the business of importing, manufacturing, and dealing in NFA firearms." [45] Its purpose was to curtail gun sales because "Congress found [the] [enumerated] firearms to pose a significant crime problem because of their frequent use in crime." [46, 47]

The historical record is replete with gun sale regulations existing in America before and after the Second Amendment was ratified. This Court should find that the Second Amendment's history does not secure a freestanding right to sell firearms.

## B. THE SECOND AMENDMENT DOES NOT SECURE THE RIGHT TO SELL FIREARMS BECAUSE THE RIGHT TO PURCHASE DOES NOT IMPLY A RIGHT TO SELL AND EVEN IF IT DID – THE ORDINANCE IS PRESUMPTIVELY VALID

An individual is in actual possession of a firearm only when they have direct control over it. *Henderson v. U.S.*, 135 S. Ct. 1780, 1784 (2015). Logic proves the right to purchase does not necessarily imply a right to sell. To determine whether there is a right to sell, this Court should begin with clearly defined terms. To "purchase," is to engage in the act of "buying," which is to obtain a thing in exchange for payment.[48] To "sell," is to give up, handover, part with, or "dispose of" a thing in exchange for money. *Henderson*, at 1785.[49]

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[45] National Firearms Act, Bureau of Alcohol, Tobacco, Firearms and Explosives

[46] *Id.*

[47] The NFA was found unconstitutional on other grounds in *Haynes v. U.S.*, 390 U.S. 85 (1968).

[48] Merriam-Webster

[49] Merriam-Webster

1. **The Right to Keep and Bear Arms Implies the Right to Purchase but Not the Right to Sell Because a Right to *Part* with Firearms is Contrary to the Second Amendment.**

The core of the Second Amendment, the right to keep and bear arms for self-defense, "would [not] mean much" without the ability to purchase arms. *Teixeira*, 873 F.3d at 677. On the other hand, the decision to sell a firearm to another has no bearing on an individual's ability to possess firearms in their own right. *U.S. v. Conrad*, 923 F. Supp. 2d 843, 852 (W.D. Va. 2013). To keep or own necessarily requires the intent to obtain and control. *Henderson*, at 1784. The constitution grants the right to keep and bear arms, therefore, the government *must* secure lawful means of obtaining firearms. *McDonald III*, 561 U.S. at 750. In other words, there cannot be a right to keep firearms while all means of obtaining firearms are *prohibited*. To assert otherwise would be a contradiction.

In *Huddleston v. U.S.*, this Court found a law making it a crime for licensed firearm dealers to sell guns to felons also applied to pawn brokers. 415 U.S. 814, 833 (1974). This Court agreed with the government that its law making it a crime "to *sell* or otherwise *dispose of* any firearm to a convicted felon" was constitutional. *Id.* at 826-27.

In *Conrad*, the court found a statute prohibiting false statements in connection with the purchase of a firearm did not violate the Second Amendment. 923 F. Supp. 2d at 852. The court upheld the defendant's conviction for attempting to sell a firearm to a felon and rejected her argument that the constitution protected the right to sell firearms. *Id.* "Indeed, although the Second Amendment protects an individual's right

to bear arms, it does not necessarily give rise to a corresponding right to sell a firearm." *Id.* (*quoting Chafin*, 423 Fed. Appx. at 344).

Where the lawful means of obtaining a firearm is commerce, the right to exchange money to obtain that thing – the right to *purchase* – is also secured. In the United States, it is the means most people use to obtain the very firearms they have the right to keep. Therefore, in order to secure the right to keep and bear arms, the right to purchase firearms must also *necessarily* be secured. *McDonald III*, 561 U.S. at 750.

The next step is to inquire whether the right to purchase implies a right to sell. In order to sell a firearm, Respondents must first keep and bear that firearm. That is, Respondents must control or possess that firearm. This means Respondents have previously exercised their right to purchase or otherwise lawfully obtain that firearm. The act of selling a firearm is the act of *parting* with it in exchange for money. The seller transfers the ability to exercise the right to keep and bear that firearm to another. When Respondents *part* with a firearm, they can no longer exercise their right to keep and bear that firearm because it can only be exercised over one that is controlled or possessed. *Henderson*, at 1786.[50]

The next question is whether Respondents' right to keep and bear arms is violated if Respondents do not also enjoy a right to sell. Here, like in *Conrad*,

[50] *See also U.S. v. King*, 532 F.2d 505, 510 (5th Cir.1976); *Olympic Arms, et al. v. Buckles*, 301 F.3d 384 (6th Cir. 2002) (affirming *Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061, 1071 (E.D.Mich.2000)); *Gilbert Equip. Co. v. Higgins*, 709 F. Supp. 1071, 1080-81 (S.D. Ala. 1989).

Respondents' ability to *part with* firearms is in direct contradiction to their right to keep and bear arms. [51] Therefore, there is no freestanding right to sell a firearm separate from the individual's right to purchase a firearm. [52]

### 2. Cases Striking Commercial Firearm Sales Regulations are Easily Distinguishable.

The cases most often cited for the proposition that the Second Amendment secures a right to sell firearms are easily distinguished from the case at hand.

#### i. Laws Banning Individuals from *Purchasing* Firearms in their Jurisdictions

In *Ill. Ass'n of Firearm Retailers v. City of Chicago*, the court denied the city's motion for summary judgment holding that the individual right to purchase firearms fell within the scope of the Second Amendment. 961 F. Supp. 2d 928, 932 (N.D. Ill. 2014) ("*Retailers*"). The court granted the plaintiffs' injunction and held the city's prohibition on gun sales was unconstitutional. *Id.* at 947; *see also Pena*, 898 F.3d at 992; *Fyock*, 779 F.3d at 994; *NRA v. BATFE*, 700 F.3d at 188; *Radich v. Guerrero*, 2016 WL 1212437 (D. N. Mar. I. March 28, 2016) (collectively with *Retailers*, "*Retailer Cases*").

Cases like *Retailer* do not support the proposition that there is a constitutional right to sell firearms for the following three reasons: (1) The *Retailer Cases* involved *prohibitions* on the sale of firearms, which is necessarily a prohibition on the purchase or transfer of firearms within a jurisdiction; (2) Those courts are concerned with

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[51] Aristotle proved that "opposite assertions cannot be both true at the same time." (*Metaph* IV 6 1011b13–20).

[52] The same logic applies to the individual's right to train with their firearms or keep them at the ready for self-defense. None of those rights can be exercised over firearms the Respondent has parted with.

whether the individual's right to *purchase* firearms is unconstitutionally burdened; and (3) Those courts found there is a right to *purchase* firearms and that retailers have third-party standing to assert those rights for their customers, but have not held there is a freestanding right to sell firearms.

Here, Mojave has not prohibited the sale of firearms. To the contrary, Mojave conducted a study that identified fifteen percent (15%) of the unincorporated County is suitable for Respondents' store. Mojave has reasonably left alternative means available for its residents to purchase firearms and open firearm dealerships in compliant locations. Further, Mojave does not contest Respondents' standing. Rather, Respondents simply have not alleged facts from which this Court could plausibly infer that Mojave has infringed on any individual's Second Amendment rights.

**ii. State Court Cases Predating *McDonald III* and *Heller***

*Andrews v. State*, is most often cited for the following, as establishing a right to sell firearms: "The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair." 50 Tenn. 165, 178 (1871).

However, *Andrews* is not instructive for the following two reasons: (1) The *Andrews* court reviewed the law under Tennessee's Constitution, as the Second Amendment had not yet been held applicable to the states. *Id.* at 172; (2) The court found its state constitution protected the right to keep and bear weapons of "warfare."

*Id.* at 182. Whereas, in *Heller*, this Court found the Second Amendment protected the right to keep and bear arms "in common use at the time for lawful purposes like self-defense." *Heller*, at 624.

The passing dicta in state cases like *Andrews*, using words like "provide," do not support the proposition that those courts argued there was a right to sell protected under the Second Amendment. Further, other state cases restoring a felon's "right to sell" firearms are not instructive for the following two reasons: (1) Those state laws may grant more rights than are protected under the Second Amendment; (2) The "right" of a felon to sell a firearm, under state law, stems from the reinstatement of the felon's right to *possess* a firearm.[53]

**iii. Cases That *Avoid* Answering the Question**

In *Kole v. Village of Norridge*, a district court in Illinois denied cross-motions for summary judgment on a Second Amendment claim against a 500-foot zoning ordinance that prevented the plaintiff from opening a gun store. 2017 WL 5128989 (N.D. Ill. Nov. 6, 2017).

*Kole* is not helpful here for the following three reasons: (1) It did not decide whether there is a right to sell firearms; (2) It focused on the effect the ordinance had on the right to *purchase*. *Id.* at *12; and (3) It misapplied this Court's example of "longstanding" measures because it was not convinced by the government's example of gun sale regulations after the Second Amendment was adopted. *Id.* However, in

[53] *See Pa. v. Sherwood*, 859 A.2d 807, 808-09 (Pa. Super. Ct. 2004).

*Heller*, this Court found laws ratified in 1938 were "longstanding" and presumptively lawful, under the Second Amendment. *Heller*, at 626.[54]

Even further, *Kole* is distinguishable on a crucial fact. "[N]o Village resident could purchase firearms from a storefront anywhere in the Village." *Id.* at *13. The ordinance in *Kole* functionally "prohibited any retail gun store from operating in its boundaries." *Id.* Therefore, exercising the right to purchase "a firearm for self-defense in the Village was not a realistic possibility." *Id.* at *12.

Here, unlike in *Kole,* Mojave has not functionally banned firearm retailers. There are three gun stores and two shooting ranges currently operating in Mojave where its residents can go to exercise their Second Amendment rights. In fact, several compliant parcels remain where firearm dealers can open new stores.

3. Implications of Extending a Constitutional Right to Sell Firearms

Courts should exercise caution to avoid stepping onto a slippery slope in Second Amendment cases. *U.S. v. Jones*, 990 F.2d 1047, 1051 (8th Cir. 1993); *U.S. v. Morris*, 977 F.2d 617, 623 (D.C. Cir. 1992) (J. Silberman concurring). This Court's holding here will have a significant impact on the claims brought against local zoning ordinances in the future. Ruling for Respondent here would establish that an 800-foot zoning rule for gun stores is unduly burdensome on Second Amendment rights and would take from local governments the power to organize their communities.

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[54] *See NRA v. BATFE*, 700 F.3d 185, 196 (5th Cir. 2012) ("After all, *Heller* considered firearm possession bans on felons and the mentally ill to be longstanding, yet the current versions of these bans are of mid–20th century vintage."); *See also U.S. v. Booker*, 644 F.3d 12, 23-24 (1st Cir. 2011) (upholding U.S.C. § 922(g)(1), even though it "bears little resemblance to laws in effect at the time the Second Amendment was ratified." Explaining the bans *Heller* held were longstanding and presumptively lawful first appeared in 1938, was expanded to cover non-violent felonies in 1961, and was re-focused from receipt to possession in 1968).

With such a ruling, the judiciary will likely see some of the following issues emerge: (1) Whether a 600, 500, 400, or 300-foot zoning rule is unduly burdensome; (2) Whether a local government can control how many licensed firearm dealers may operate within its jurisdiction; (3) Whether the process by which to acquire a federal firearm dealer's license is a substantial burden on the right to sell; and (4) Whether a ban on the sale of certain firearms is lawful.

## C. EVEN IF THERE IS A RIGHT TO SELL FIREARMS – THE COUNTY OF MOJAVE ZONING ORDINANCE IS PRESUMED LAWFUL

There is no doubt that laws imposing conditions and qualifications on the commercial sale of arms are presumptively lawful. *Heller*, at 626 n.26. Regulations on the commercial sale of firearms enjoy this status because they are presumed to regulate conduct outside the scope of the Second Amendment. *Pena*, 898 F.3d at 976; *NRA v. BATFE,* 700 F.3d at 196.[55]

### 1. Respondents Have Failed to Sufficiently Allege the Ordinance Has More Than a De Minimis Effect on Their Second Amendment Rights.

It is the challenger's burden to rebut the presumption "by showing the regulation [has] more than a de minimis effect upon his right." *Heller II*, at 1253; *see also McDonald III*, 561 U.S. at 786. If the validity of a zoning classification is "fairly debatable, the legislative judgment must be allowed to control." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

[55] "Longstanding … necessarily means it has long been accepted by the public, is not likely to burden a constitutional right…" *Pena*, 898 F.3d at 1006; *see also Heller II*, at 1253.

In *Chicago Gun Club v. Village of Willowbrook, Ill.*, the court found the plaintiff failed to overcome the presumption that the local zoning restrictions, preventing the opening of a gun store, were lawful. 2018 WL 2718045, at * 5 (N.D. Ill. June 6, 2018). The court rejected the plaintiff's argument that the zoning restriction amounted to an outright ban on gun stores. *Id.* It found the plaintiff's grievance with "the zoning decision [did] not amount to a 'law challenged on Second Amendment grounds.'" *Id.* (*quoting Ezell II*, 846 F.3d at 893). Rather, it only stated a challenge to a single exercise of the 'undoubtedly broad' zoning authority vested in local governments." *Chicago Gun Club, at *5* (*quoting Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 (1981)).

In *Marzzarella II*, the Third Circuit upheld a law prohibiting possession of firearms with obliterated serial numbers as constitutional under the Second Amendment. 614 F.3d 85, 97 (3d Cir. 2010). The court compared the law to first Amendment cases and found a content-neutral zoning ordinance is likely constitutional where it leaves alternative channels available to exercise the right. *Id.* at 96.[56]

This case is easily distinguishable from *Ezell II*, where the Seventh Circuit held a city code limiting shooting ranges to manufacturing districts violated the Second Amendment. 846 F.3d 888, 894-96 (7th Cir. 2017). The zoning restrictions were such that "no publicly accessible shooting range yet [existed] in Chicago." *Id.* at 894. The court found the zoning scheme "severely restrict[ed] the right of Chicagoans

[56] *See also DeCastro*, 682 F.3d 167-68.

to train in firearm use at a range." *Id.* Further, the court found the government's witnesses testified to the lack of evidentiary support for its assertion that "shooting ranges cause airborne lead contamination." *Id.* at 895. Here, however, Mojave has not offered "shoddy data or reasoning" about gun stores or firing ranges causing illnesses. *Id.* Mojave has pointed to pertinent case law, as well as, reputable studies showing a correlation between the availability of firearms and increased homicide rates. Firearm retailers have not been banished from Mojave. There is plenty of space in unincorporated Mojave where a new store can open. There are three gun stores and two shooting ranges currently operating in unincorporated Mojave.

The members of the Home Owners' Association that appealed the Zoning Board's variance are members of an organization called New Tejas Citizens Against the Second Amendment, however, this fact alone is irrelevant to the Court's analysis for the following three reasons: (1) The HOA board did not draft, vote on, or pass the Ordinance; (2) The political leanings of the individual HOA board members has no bearing on the HOA's standing to appeal Respondents' variance; (3) The HOA is simply an interested party that exercised its right to appeal the variance because of the proximity to its residential area. Further, the highway separating the Helios property from the nearest residential area is irrelevant because the Ordinance does not have a highway exception to the 800-foot rule.

Respondent Maxson has not plausibly alleged how the Ordinance has more than a de minimis impact, if any, on his Second Amendment rights. Further, that argument would fail on its own for the following three reasons: (1) Fifteen percent

(15%) of unincorporated Mojave is comprised of compliant parcels the Respondents can use to open a new gun store; (2) Respondent Maxson is still able to purchase firearms inside Mojave County, at one of its other gun stores; (3) Respondents can partner with, or buy out, an existing firearms dealer in Mojave.

Even if Respondent Maxson had to open a retail store slightly smaller than the Helios location, his Second Amendment rights would not be restrained. In fact, Respondents may have more commercial success opening a store in one of the compliant parcels. Since Mojave County is not contiguous, Respondents can open a store that would attract individuals as they travel through the separate parts of the County and to the city of Sloan.

Here, like in *Marzzarella*, the Ordinance is constitutional because it leaves open ample opportunity for Respondent Maxson and other Mojave residents to purchase a gun. Absent Respondent Maxson's inability to open a retail location at the Helios property, his position has not changed. The Ordinance does not prevent him from purchasing a firearm at any of the other gun stores in Mojave. Nor does the Ordinance prevent Respondents from opening a store in any of the compliant parcels in unincorporated Mojave.

2. **Local Governments Have the Power to Determine the Zoning Regulations that are Best for their Communities.**

Zoning ordinances are not declarations that certain businesses are to be suppressed, "'but [are] part of the general plan by which the [county's] territory is allotted to different uses, in order to prevent, or at least to reduce, the congestion, disorder, and dangers which often inhere in unregulated municipal development.'"

*Euclid*, 272 U.S. at 392-93 (*citing City of Aurora v. Burns*, 149 N.E. 784, 787 (Ill. 1925)). Dividing land for particular uses is "the essence of zoning and decisions made by a community about how it wants parcels developed are generally presumed to be constitutional." *Litton Intern. Dev. Corp. v. City of Simi Valley*, 616 F. Supp. 275, 284 (C.D. Cali. 1985). "If a zoning ordinance is directed to the secondary effects of [a constitutional right]," the ordinance will pass constitutional muster. *City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425, 448 (2002). This Court does not "question the wisdom or good policy of municipal ordinances." *Euclid*, at 393. When the regulations are of a local nature the "inference is strongest that [those] policies are not to be thwarted." *De Veau v. Braisted*, 363 U.S. at 154. "If they are not satisfying to a majority of the citizens, their recourse is to the ballot-not the courts." *Euclid*, at 393. (*quoting State of La. ex rel. Civello v. City of New Orleans*, 97 So. 440, 444 (La. 1923)) (internal quotations omitted).

In *Chicago Gun Club*, the court highlighted the deference usually paid to local community zoning plans. 2018 WL 2718045 at *7. Using First Amendment cases as a guide, it found a local community is not required to "marshal its zoning power to bend the real estate market to [the] [p]laintiffs' business aims." *Id.*

In *Williamson v. Lee Optical of Okla., Inc.*, this Court found legislatures can make rules addressing different portions of an evil to remedy, as long as, "it might be thought that the particular legislative measure was a rational way to correct it." 348 U.S. 483, 488-89 (1955).

Even the Federal Gun-Free School Zones Act ("GFSZA") has been upheld against Second Amendment challenges. *U.S. v. Danks*, 221 F.3d 1037, 1038-39 (8th Cir. 1999). The GFSZA includes zoning restrictions far stricter than Mojave's Ordinance, making it a federal crime to *possess* a firearm within 1,000 feet of a school. 18 U.S.C. § 922(q)(2)(A). *See also U.S. v. Dorsey*, 418 F.3d 1038, 1045-46 (9th Cir. 2005) (holding Congress cured the jurisdictional deficiency that led to this Court striking the GFSZA in *U.S. v. Lopez*, 514 U.S. 549, 562 (1971)).

Here, Mojave has exercised its police power to tackle the legitimate public interest of reducing crime and injury, without encroaching on the right to keep and bear arms. Respondent argued below that the manner in which Mojave County determined distance for purposes of the Ordinance was improper. However, the plain meaning of the Ordinance makes it clear the measurements are to be done from the nearest exterior property line. The 800-foot rule reads: "That the subject premises is not within [eight] hundred (800) feet of any of the following . . .". The Ordinance uses the words "subject premises." A "premises" is defined as "a house or building and its grounds," which is its property line. The Ordinance does not qualify "premises" with anything suggesting a door or other entry way.

In the same way a county can restrict adult stores or bars from abutting a school, so to should Mojave be able to determine a gun store should not abut a school, church, or residential zone. The Ordinance has not infringed on *any* law-abiding individual's right to keep and bear arms in the home for self-defense. This Court should reverse and dismiss Respondents' claims.

## CONCLUSION

The Second Amendment does not grant a corporation the right to open a gun store in the retail location of its choice. Firearm dealers are subject to the same local police powers as other commercial businesses. Therefore, the Mojave County Ordinance should be reviewed under rational basis because it regulates conduct outside the scope of the Second Amendment. This case should establish the rule that heightened scrutiny is reserved for laws that substantially burden the right to keep and bear arms. Mojave has not burdened its residents' Second Amendment rights to keep and bear arms for self-defense. Mojave should not be enjoined from designing its community to its liking while maintaining alternative means for residents to purchase firearms. Respondent Maxson's proper recourse is the ballot box. This Court should reverse and dismiss Respondents' claims.

Respectfully Submitted,

**TEAM 27**
/s/ Counsel for Petitioner
*Counsel for Petitioner*

## CERTIFICATE OF SERVICE

(Submitted separately per MCNC Rule 2.6)

# APPENDIX TABLE OF CONTENTS

# APPENDIX "A-1"

## APPELLATE RECORD

(Omitted per MCNC Rule 2.11(c))

## APPENDIX "A-2"

## CONSTITUTIONAL PROVISIONS

"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.

# APPENDIX "A-3"

## LOCAL ORDINANCES

(Omitted per MCNC Rule 2.11(c))