

# Fyock v. City of Sunnyvale

James Browning Courthouse, 9th U. S. Circuit Court of Appeals, November 17, 2014

*Notes summarizing the proceedings by Carol Weiss*

Note: the case was heard by three judges. The one I refer to as judge 1 in my notes is Judge Johnnie Rawlinson from Arizona, I believe. Judge 2, from Nevada and Judge 3, if I recall correctly, is from Texas. (One part of Texas is apparently in the ninth circuit.) They are judges Michael Hawkins and Barbara Lynn.

## **Attorney for Fyock:**

Once something is put within the scope of the second amendment, as it was by the lower court, the city cannot completely prohibit this thing. These items, the magazines in question, are commonly possessed by people with law abiding purposes. District court analysis is faulty for allowing preliminary injunction.

This case is based on the 2nd amendment but judge 1 asked isn't this about granting the preliminary injunction? Attorney said district court stopped its analysis too soon. Judge 1 asked how they would tailor the approach? They said target the individuals who would use it. Judge 1 asked how would you do this? They said there are already the means to do this, by strengthening the restrictions on those with mental illness. If Sunnyvale restricted the number of rounds to 50 or more, that would make a harder case for this side to fight. 10, 15 are standard issue and there are a whole lot of them on the market.

Judge 1 asked what's wrong with Heller? Attorney says that whatever the reason, Americans prefer handguns to long guns, so they, handguns, should not be categorically prohibited.

They said this case follows naturally from the Heller decision and the Peruta v County of San Diego decision. (The right to carry a concealed weapon in public is covered by the second amendment.) They keep talking about a specifically tailored manner (?) under intermediate v strict scrutiny.

Judge 2 asked about if it is related to public safety.

They said it doesn't really relate to public safety, much less do it in a specifically tailored manner.

## **Sunnyvale case:**

Robert Thompson for city. Said this is an incremental regulation, does not categorically prevent anyone from possessing or using arms.

Large capacity mags have been illegal, in CA to make, sell, transport since 2000.

The result has been that manufacturers have produced CA compliant magazines (which have dates imprinted on them.)

You are within your rights to own as many ten round magazines in your home as you like.

Exemption for a citizen has existed before the ordinance and can still use after the ordinance, but must use this with CA compliant magazine.

Citizens of SV by a 2/3 vote passed this vote to protect themselves.

District court applied strict scrutiny.

Jackson case from SF is the one most applicable to this case. That case banned hollow tip ammo; this one, high capacity mags. Why? Because in both, these are more lethal.

Judge 3 asked what is the diff between 11 and 10 round mags?

Answer: ten round mags have become the standard. They are the standard capacity magazine in CA.

Every case (7) that has considered high capacity bans, has upheld high capacity ban, as Colorado outfitters case.

Heller says a variety of tools are still available to local gov'ts.

SV is just restricting a very specific type of accessory.

All the citizens of SV did was look to see what they could do to plug a loop hole. The fit is what was left out of state law.

**Fyock rebuttal:**

Says there is nothing incremental about a law that requires people to turn in something for confiscation. Heller sets forth principles for courts to apply. One is that if something is within the scope of the second amendment, it cannot be flatly prohibited. Question is whether prohibiting people from having these will achieve the purpose. Doesn't think exceptions make a difference, since they only apply to a small group of people. You can't possess the bigger mags for self defense purposes unless you are within this small group of exceptions. Something does not have to destroy the 2nd amendment completely to fall within its scope. This is the most extreme prohibition imaginable. City does not want these mags to be in the hands of any law abiding citizen.

The Law Center people with whom I spoke feel that it went very well for our side. They also seem pretty sure, that no matter which side wins, it will be appealed to the circuit court en banc (with all its judges hearing the case, not just three.) They also mentioned that the NRA is looking for a case to take to the Supreme Court and that this might be the one.