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January 25, 2017

**VIA CM/ECF**

Ms. Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *Teixeira v. County of Alameda*, No. 13-17132  
Rehearing en banc granted Dec. 27, 2016  
Oral Argument scheduled for week of Mar. 20, 2017

Dear Ms. Dwyer:

Alameda County submits this response to Plaintiffs' Rule 28(j) letter citing *Ezell v. City of Chicago*, Nos. 14-3312 & 14-3322 (7th Cir. Jan. 18, 2017) ("*Ezell II*"). In *Ezell II*, a divided panel of the Seventh Circuit invalidated Chicago's "regulations governing shooting ranges," including zoning restrictions, under heightened Second Amendment scrutiny. Slip op. 2-3.

*Ezell II* does not bear on this case for two main reasons. First, the central question here is whether heightened scrutiny applies to Alameda County's Ordinance in the first place, because it is a "condition[] and qualification[] on the commercial sale of arms" that is "presumptively lawful" under *Heller*. See Pet. 6-11. That *Heller* exemption was not at issue in *Ezell II*, which did not address any regulation of commercial sales.

Second, Chicago's zoning restrictions were so severe "that no publicly accessible shooting range yet exists" in the city, even "years after" the Seventh Circuit had struck down Chicago's total ban on shooting ranges. Slip op. 10. The new, de facto ban on shooting ranges implicated the core of the Second Amendment right because Chicago requires "one hour of range training as prerequisite to a

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permit” for lawful gun possession. Slip op. 2. Here, in contrast, ten gun stores operated within Alameda County as of 2011, including four in the unincorporated areas governed by the Ordinance. ER 121, 179. Accordingly, this case involves no “honest-to-God resident of Alameda County complaining that he or she cannot lawfully buy a gun nearby.” Panel Dissent 36.

Plaintiffs also invoke *Ezell II*'s statement that forbidding shooting ranges within a radius around residential districts “is flatly inconsistent with *Heller*, which was explicit that possession of firearms in the home for self-defense is the core Second Amendment right.” Slip op. 12. But *Ezell II* made that observation in the context of rejecting Chicago’s reliance on *Heller*’s exemption for “prohibitions on the carrying of firearms ... in sensitive places.” *Id.* Where individuals may carry guns for self-defense says nothing about where “the commercial sale of arms”—a distinct activity that *Heller* stressed could be regulated—may take place.

Respectfully submitted,

*/s/ Brian P. Goldman*

Brian P. Goldman

cc: Counsel of Record (via CM/ECF)