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Herrera calls on SFERS to examine investments, divest from gun companies

Call follows major announcement by equity firm this morning, responding to pressure from State Treasurer Lockyer, state employee retirement systems

SAN FRANCISCO (Dec. 18, 2012)—City Attorney Dennis Herrera today called on the San Francisco Employees' Retirement System to carefully examine its approximately \$16-billion investment portfolio, and to consider complete divestiture of local government employees' pension trust assets from all firearms-related interests.

Herrera's request comes in the wake of an announcement this morning by private-equity firm Cerberus Capital Management that it is selling its stake in the manufacturer of the Bushmaster AR-15 rifle used in Friday's massacre at Sandy Hook Elementary School in Newtown, Conn., which claimed the lives of 20 children and 6 adults. Cerberus's decision came hours after California Treasurer Bill Lockyer questioned the investments of two California state retirement systems in the equity firm and others interests invested in gun companies.

"Our national debate in the aftermath of the Sandy Hook Elementary School tragedy can't solely be limited to needed policy reforms—it must also include decisions for which we are all accountable as investors, retirees and consumers," said Herrera. "Treasurer Lockyer is right that public employee retirement funds should neither invest in nor profit from gun companies whose wares are illegal in California. And Cerberus is right to divest itself from the gun industry. San Francisco's leadership on gun control includes a safe storage law and a ban on the sale of highly-lethal bullets. That's why it's no accident that my office has for years battled against the National Rifle Association. San Francisco can again show leadership by joining with other public employee retirement systems to divest itself from interests related to the firearms trade. I ask the retirement board and SFERS staff to carefully examine its investments, and to take steps in accordance with its legal duties to divest its assets from gun companies."

SFERS is an investor in a Cerberus Capital Management fund that owns a portion of the Freedom Group. SFERS estimates that its indirect ownership in Freedom Group, which in turn owns Bushmaster Firearms International, is less than \$1 million. The retirement system also invests with a U.S. equity manager that holds firearms-related assets.

SFERS administers two benefit programs—a defined benefit Pension Plan and a Deferred Compensation Plan—serving more than 53,000 active and retired local government employees of the City and County of San Francisco, the San Francisco Unified School District, the San Francisco Community College District, and San Francisco Superior Courts.

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Herrera's office has been among the public law offices most extensively involved in federal legal battles over the scope of the Second Amendment, which evolved significantly with two recent decisions by the U.S. Supreme Court. The high court's 2008 ruling in *District of Columbia v. Heller* held that the Constitution protects an individual's right to possess firearms, and its subsequent holding in 2010's *McDonald v. Chicago* established that individual right as applicable to states and local governments. The two decisions opened the door to aggressive efforts by the NRA and other gun rights advocates to further push the limits of the Second Amendment, raising doubts about the legal viability of local gun control laws nationwide.

As recently as last month, Herrera's office beat back a legal push by the National Rifle Association to halt San Francisco's enforcement of its safe storage law, which requires handgun owners to keep guns locked when stored at home, and its ban on the sale of highly lethal bullets designed to maximize injury to the human body. The Nov. 27 decision by U.S. District Court Judge Richard Seeborg denied the NRA's motion for a preliminary injunction, finding that lawyers for the Fairfax, Va.-based gun lobby did not show a likelihood of succeeding on the merits of their case, and agreeing with Herrera's argument that City gun laws were reasonably intended to protect public safety without impinging on residents' right to bear arms under the U.S. Constitution's Second Amendment.

The case is: *Espanola Jackson v. City and County of San Francisco*, U.S. District Court for the Northern District of California, No. C 09-2143 RS.

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