

# Stovall & Associates

## Attorneys at Law

September 1, 2020

Honorable Debra Strickland  
County Commissioner, District 5  
101 Radar Road  
P.O. Box 153  
Tonopah, Nevada 89049  
Phone: 775-482-8191  
dlstrickland@co.nye.nv.us

### **Re: September 1, 2020 Reopening of the Front Sight Training Facility**

Dear Commissioner Strickland,

Front Sight operates the premier firearms training facility in the United States. Front Sight is a privately owned firearms club. The Front Sight facilities are located in a remote rural area of Nye County, Nevada. Nye County has declared itself to be a Second Amendment sanctuary. Access and egress to the Front Sight facilities is limited and controlled. It is not open to the public. Participation Front Sight training activities are limited to individuals who meet rigorous admission standards and maintain high standards of personal conduct. Ultimately, the goal is to establish a solid foundation for Front Sight students to exercise their right to bear arms by teaching safe and responsible firearms use and ownership.

Unfortunately, individuals who oppose the constitutional right to bear arms are now exploiting the Covid- 19 pandemic as a means to suppress the outstanding firearms training programs provided by Front Sight. The opponents of firearms training are exploiting the Covid - 19 pandemic by insisting that the government's Covid-19 orders apply to Front Sight's firearms facility and programs. The purpose of this correspondence is it is to explain why the Covid 19 restrictions do not apply to Front Sight's training programs or facilities.

#### **A. Front Sight is recognized as part of the Essential Critical Infrastructure of the United States by the Department of Homeland Security.**

On August 18, 2020 Christopher Krebs, Director of Cyber Security and Infrastructure Security Agency's (CISA) of the United States Department of Homeland Security published an "Advisory Memoranda on Insuring Essential Critical Infrastructure Workers Ability to Work During The Covid – 19" and "Guidance on Essential Critical Infrastructure Workforce; Insuring Community and National Resilience in Covid – 19 Response Version 4.0." The stated purpose of Director Krebs advisory memoranda is:

The Cyber Security and Infrastructure Security Agency's (CISA) executes the Secretary of Homeland Security's authorities to secure critical infrastructure. Consistent with these authorities CISA has developed, in collaboration with other federal agencies, state and local governments, and the private sector, an essential critical infrastructure workforce advisory list.

# Stovall & Associates

## Attorneys at Law

This list is intended to help state, local, tribal, territorial officials and organizations endeavor to protect their workers and communities as they continue to reopen in a phased approach, coupled with the need to ensure continuity of functions critical to public health and safety, as well as economic and national security. (*Ibid*, p.1)

The Guidance on Essential Critical Infrastructure Workforce: Insuring Community and National Resilience In Covid – 19 Response states its purpose as:

Functioning critical infrastructure is imperative during the response to the Covid – 19 emergency to promote public health and security as well as community well-being. While stopping the spread of the virus and protecting the most vulnerable among us rightfully remain national priorities, a degradation of infrastructure operations and resilience only makes achieving those missions more difficult. Recognizing this, CISA published guidance identifying essential critical infrastructure workers at the outset of the Covid – 19 pandemic. This guidance was adopted broadly across the country and was subsequently updated as the response evolved. This update, Version 4.0, continues to advance the guidance considering developments in pandemic response to support a risk – based approach towards worker safety to ensure the continuity of critical functions. (*Ibid*, p. 3)

The Guidance on Essential Critical Infrastructure Workforce lists essential critical infrastructure workers in a diversity of industries across the United States. Included in this list under the category of law enforcement, public safety and other first responders are:

Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors and shooting ranges. (*Ibid*. page 9)

The Department of Homeland Security has recognized that shooting ranges, such as Front Sight, are part of essential critical infrastructure of the United States. This determination is critical in determining that the declaration of emergency directives issued by Nevada Gov. Sisolak do not apply to training activities and facilities of Front Sight.

### **B. The Governor's Declarations of Emergency for Covid – 19 Directives do not Apply to the Critical Essential Infrastructure Activities or Facilities of Front Sight.**

Declaration for Emergency for Covid – 19 – Directive 003 (hereinafter referred to as Executive Directives) specifically states that executive declarations shall not be construed to hinder the ability of industries identified in the US Department of Homeland Security Cyber and Infrastructure Security Agency Essential Critical Infrastructure Workforce memoranda dated March 19, 2020.

# Stovall & Associates

## Attorneys at Law

Executive Directive 007 which precludes public gatherings of more than 10 persons, states: “This provision shall not be construed to apply to the gatherings of persons living within the same household, or persons working at or patronizing essential licensed businesses are providing essential services to the public.”

Executive Directive 010, the stay-at-home order states that, “individuals may leave their residence to provide services or perform work necessary to the operations of Essential Infrastructure operations” and that “individuals may leave their residence perform work necessary or obtain services or goods necessary from other Essential Licensed businesses.” (*Ibid*, Sections 4 and 5)

Executive Directive 024, the facemask mandate, at Section 7 (4) declares that the mandatory provisions of this directive shall not apply to individuals for whom wearing a face covering would create a risk to the person related to their work. (*Ibid*, Sections 7)

It is clear that the Governor’s executive directives are not intended to hinder the operation of critical essential infrastructure activities and facilities such as Front Sight. Further, the specific provisions of the Governor’s executive directives exclude the activities and facilities of Front Sight from the restrictions imposed upon the general public and nonessential businesses and activities.

### **C. NRS 414.155 Precludes Application of the Governor’s Declaration of Emergency for Covid – 19 to the Activities and Facilities of Front Sight.**

The Governor’s Declaration of Emergency for Covid – 19 Directive 003 cited the Nevada Atty. Gen.’s Opinion 1995 – 03. In the Attorney General’s opinion county governments exceed their statutory authority in adopting emergency powers that prohibit the sale or distribution of guns, ammunition or explosives, or close businesses which sell guns, ammunition or explosives. Further, the Attorney General noted that, “neither political subdivisions nor the governor can waive constitutional requirements in the event of an emergency,” citing NRS 414.090(2). The right to bear arms is guaranteed in the Nevada and United States Constitutions.

The Nevada legislature expressly limited the governor’s authority to impair the right to bear arms during an “emergency” when it adopted NRS 414.155. NRS 414.155 states:

Pursuant to Amendment II of the Constitution of the United States and Section 11 of Article 1 of the Constitution of the State of Nevada, and notwithstanding any other provision of law, the emergency powers conferred upon the Governor and upon the executive heads or governing bodies the political subdivisions of this State must not be construed to allow:...

# Stovall & Associates

## Attorneys at Law

2. The imposition of additional restrictions to the lawful possession, transfer, sale, carrying, storage, display or use of:
  - a. Firearms;
  - b. Ammunition; or
  - c. Components of firearms or ammunition.

There are no reported cases interpreting the statutory limitation on the exercise of the governor's emergency powers under NRS 414.155. However, the legislative counsel's digest noted that this statute prohibited the Governor or any governing body from imposing "additional restrictions on certain aspects of trade, possession or use of firearms ammunition and components thereof." See, *2007 Nev. AB 95*. Also see, NRS 414.060(3)(a) and NRS 414.070(3) recognizing these limitations on the authority conferred upon the governor during emergencies.

However, firearms training is protected by the Second Amendment. The Seventh Circuit Court of Appeals has held, "that the core individual right of armed defense – as recognized in *Heller* and incorporated against the states in *McDonald* – includes a corresponding right to acquire and maintain proficiency in firearm use through target practice at a range... We explained that the core right to possess firearms for protection wouldn't mean much without the training and practice that makes it effective... Range training is not categorically outside the Second Amendment. To the contrary, it lies close to the core of the individual right of armed defense". *Ezell v. City of Chicago*, 846 F. 3rd 888, 892 – 93 (7th Cir. 2017).

### **D. Free Speech, Public Assembly and Association, and Governmental Takings.**

The Nevada Atty. Gen. Opinion 1995 – 03 stated that neither political subdivisions nor the governor can waive constitutional requirements in the event of an emergency. The Nevada Atty. Gen. cautioned that the exercise of emergency powers which restricted public gatherings and public travel raised First Amendment concerns. The Nevada Atty. Gen. also cautioned that the exercise of emergency powers that closed of legitimate businesses evoked Fifth Amendment concerns regarding governmental takings.

The membership of Front Sight supports the exercise of their Second Amendment rights to bear arms. The training members receive at Front Sight is an exercise of their Second amendment right to bear arms. The participation of members in the reopening of the Front Sight facility is also a public demonstration by Front Sight, Front Sight members and participants of their right to bear arms, to peacefully assemble and associate for this purpose, and to publicly demonstrate their support for these constitutional principles.

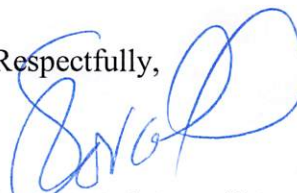
# Stovall & Associates

## Attorneys at Law

### E. Conclusion.

Front Sight is concerned with the safety of individuals who provide firearms training and those persons who participate in those training activities. However, due the unique characteristics of firearms training the general guidelines and directives from the government place both instructors and students at risk of injury. As a practicable matter government directives cannot be complied without risk of injury. As important, an analysis of the government directives pertaining to the Covid-19 pandemic determined that Front Sight's activities and facilities are exempt from the Covid-19 regulations.

Respectfully,



Leslie Mark Stovall, Esq.  
Stovall and Associates, and

John Whitehead, Esq., President  
The Rutherford Institute  
Co-Counsel

Douglas R. McKusick, Esq.  
Senior Staff Attorney  
The Rutherford Institute  
Co-Counsel

LMS:mh