

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RHONDA EZELL, et al.,	)	Case No. 10-CV-5135
	)	
Plaintiffs,	)	
	)	
v.	)	MOTION FOR
	)	TEMPORARY RESTRAINING ORDER
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

COME NOW the Plaintiffs, Rhonda Ezell, Joseph I. Brown, William Hesperen, Action Target, Inc., Second Amendment Foundation, Inc., and Illinois State Rifle Association, by and through undersigned counsel, and move for the entry of a Temporary Restraining Order:

1. Enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code § 8-20-280, barring operation of gun ranges open to the public;

2. Enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code §§ 8-20-020, 8-20-030, 8-20-080, 8-20-100, 8-20-110, 8-20-140, and 8-24-010, or any other law, as against the ordinary operation and use of gun ranges open to the public and the loan or rental of functional firearms within gun ranges open to the public.

FURTHER, Plaintiffs respectfully request that upon issuance of the temporary restraining order, the Court set their motion for preliminary injunction for hearing pursuant to Fed. R. Civ. Proc. 65(b)(3).

Dated: August 22, 2010

Respectfully submitted,

Alan Gura (admitted pro hac vice)  
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By: /s/ Alan Gura/

By: /s/ David G. Sigale/

Alan Gura

David G. Sigale

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the plaintiffs, hereby certifies that on August 22, 2010, he served a copy of the above Motion for Temporary Restraining Order, and this certificate of service, on:

Andrew W. Worseck  
City of Chicago Department of Law  
30 N. LaSalle Street, Suite 900  
Chicago, IL 60602

by electronic means pursuant to Electronic Case Filing (ECF).

/s/ Alan Gura  
Alan Gura



**CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING**

**The undersigned certifies that:**

- 1. On August 22, 2010, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system; sending service to:**

**Andrew Worseck  
City of Chicago, Department of Law  
30 N. LaSalle Street, Suite 900  
Chicago, IL 60602**

- 2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.**

**/s/ David G. Sigale  
One of the Attorneys for Plaintiffs**



MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

There is little to add that is not contained in Plaintiffs' brief in support of the motion for preliminary injunction, filed and immediately delivered to opposing counsel on Monday, August 16. Gura Decl., ¶ 2. The evidence and argument supporting both motions are identical, and there is no need to burden the Court with repetitive filing. But Plaintiffs wish to explain why circumstances have changed, and more immediate relief is now requested.

Plaintiffs seeking preliminary injunctive relief must balance the imminence of irreparable harm against the strong professional and judicial interest in affording the Defendant notice and an opportunity to be heard. Although the irreparable harm in this case is severe, counsel believed that providing one week's notice of presentment of a motion, at which time a briefing schedule and argument date could be set, would be fair to the Defendant and assure the Court that it could consider both sides adequately prior to ruling.

However, Defendant has decided to oppose the motion not by responding to it on the merits, but rather, by pursuing a dilatory practice that would deprive Plaintiffs of a meaningful opportunity to be heard. When Defendant gave notice of its intent this past Friday, Plaintiffs immediately gave notice of this motion. Defendant essentially has had a week's notice of this motion for a temporary restraining order, which it should have foreseen once it determined to seek an indefinite delay of the motion for preliminary injunction.

A temporary restraining order now appears to be the safest avenue for bringing Plaintiffs a measure of relief, and could also serve to expedite the hearing on the motion for preliminary

injunction, Fed. R. Civ. Proc. 65(b)(3), at which time Plaintiffs could suggest, given the lack of a factual dispute and the purely legal nature of this case, that the Court consolidate the hearing with a trial on the merits per Fed. R. Civ. Proc. 65(a)(2).

#### STATEMENT OF FACTS

Gun training saves lives and prevents serious injuries. For this reason, the City of Chicago demands that firearm owners get trained at a gun range. Yet it bans the very ranges necessary to obtain the required training.

As detailed in the preliminary injunction papers, every day that passes without injunctive relief, people are liable to be killed or seriously injured for lack of adequate firearms proficiency, either due to accidents, or inability to exercise proper self-defense. Every day that passes without injunctive relief, people lose their Second Amendment rights because their registrations expire and they cannot timely obtain gun range training necessary for renewal. On October 8, Plaintiff Hespen's registration of 24 firearms will expire absent range training.

Every day that passes without injunctive relief, the city's October 12 deadline for grandfathered registration of already-acquired guns draws nearer, yet with the intended beneficiaries of this provision deprived of training opportunities. On October 12, Plaintiff Brown will lose the ability to register his firearm absent range training.

These deadlines are not at issue in this lawsuit, and remain in place even if Plaintiffs prevail, barring any additional relief. The longer it takes Plaintiffs to obtain injunctive relief, the larger the number of people who will forever lose their right to keep their firearms – even firearms currently registered under the previous ordinance. And of course, this is to say nothing of the tragedies that might be averted by ensuring people can learn and practice the safe use of firearms.

Plaintiffs did not waste time or attempt to surprise the city. The moving papers were emailed to opposing counsel immediately upon filing of the lawsuit last week. Gura Decl., ¶¶ 2-3. Defendant responded by giving notice mid-day Friday that it would seek to have this case re-assigned to Judge Guzman, because he was assigned an earlier-filed case, *Benson v. City of Chicago*, No. 10-CV-4184. Gura Decl., ¶ 4.

Plaintiffs would oppose the motion for judicial reassignment as it lacks merit,<sup>1</sup> but do not begrudge the city its ability to have the motion considered. What alarmed Plaintiffs was Defendant's notice that it would invoke the fact of its judicial reassignment motion in asking this Court to avoid ruling on Plaintiff's request for injunctive relief. Notice of this motion for temporary restraining order was immediately given. Gura Decl, ¶ 4. It is unclear how mere notice of a judicial reassignment motion can deprive a party of the right to be heard under Rule 65's provision authorizing relief from immediate, irreparable harm. Doing so would truly elevate process over substance, under circumstances where the rules clearly call upon the Court to resolve the urgent substantive issue.

For their part, the *Benson* plaintiffs "desire" to operate gun ranges in Chicago. First Am. Complaint, No. 10-CV-4184, at ¶¶ 56, 57. That is all. That simple conjectural expression of "desire" is the total substance of *Benson*'s challenge to the range ban. None of the *Benson* plaintiffs claim the range ban impacts their ability to register firearms; none have built or operated ranges in Chicago, or secured the imminent delivery of gun ranges to Chicago for training purposes. *Benson* plaintiffs raise no First Amendment argument, a critical component of this

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<sup>1</sup>The very fact that the reassignment motion is intended to cause delay suggests that it lacks merit, as a required element of obtaining such relief is a showing that it is "likely to result in a substantial saving of judicial time and effort." LR 40(b)(2).

lawsuit. Yet *Benson* raises numerous substantial constitutional issues having nothing to do with this case, relating to the carrying, transportation, storage, and sale of firearms.

And *Benson* is not yet at-issue. Asked when Defendant might respond to the *Benson* lawsuit, opposing counsel could only offer, “in due time.” Gura Decl., ¶ 5. Moreover, the city has not (yet) sought the relation of a third case that overlaps with *Benson*, but does not at all intersect with this case: *Second Amendment Arms v. City of Chicago*, No. 10-CV-4257 (assigned to Judge Dow), the complaint in which has not yet been served.

In other words, *merely because other people claim they “desire” to operate gun ranges*, Defendant avers that Plaintiffs must be indefinitely deprived of their ability to obtain injunctive relief. Plaintiffs will need time to oppose the judicial reassignment motion, and if this Court disagrees with Judge Guzman’s ruling, it could seek review before the Executive Committee. Local Rule 40.4(d). Yet every day of additional delay causes additional irreparable harm.

Plaintiffs would not seek to stop the city from having its motion heard “in due time.” They simply want the same consideration for their own motion, whose time has come.

#### ARGUMENT

It is the availability of immediate relief that could render the judicial reassignment motion pointless, and not the other way around. Defendant’s fear that immediate injunctive relief would moot their judicial reassignment motion is precisely why that motion should be denied, whenever it gets heard, and why Defendant should concentrate on addressing the merits of this case instead of chasing judicial reassignment.

For purposes of the matter at hand, it would be highly inefficient for the Court to decline ruling on a ripe, fully-briefed request for injunctive relief, where Plaintiffs will suffer irreparable

injury and have worked hard taking significant preparatory action pending the Court's decision, merely because another set of Plaintiffs have proffered a conjectural statement of "desire," in a case not at issue where nothing has happened for over a month, and nothing may yet happen anytime soon.

No reason supports delaying this case pending a ruling on the reassignment motion. *First*, regardless of which judge rules on Plaintiffs' motion, or how that motion is ruled on, such order would be appealable; the Seventh Circuit will take up the matter and likely decide it before any meaningful progress is achieved in *Benson*. Thus, even if the case is re-assigned, the interest in judicial economy is best served by having Judge Guzman hold the allegedly overlapping argument in the as-yet unanswered *Benson* matter in abeyance, not by delaying this lawsuit indefinitely while *Benson* catches up – if it ever does, which is not clear.

*Second*, regardless of which judge rules on Plaintiffs' motion, or how that motion is ruled on, any appeal of that result by either side would be interlocutory in nature. The District Court would retain concurrent jurisdiction to consider the reassignment motion, or engage in any other proceedings. Defendant's motion will thus be considered "in due time." But it would certainly save Judge Guzman a great deal of time to have the range ban determined and on appeal in the (unlikely) event he would then wish to relate these distant cases.

*Finally*, the rules themselves strongly suggest that it would be improper to defer a ruling on Plaintiffs' motion. Not only is there no obvious authority for delaying a case averring imminent, irreparable harm simply because the Defendant wishes to obtain a judicial reassignment, but Rule 65 contemplates that there is a class of cases where the evidence submitted at the preliminary injunction stage suffices to convert the matter into a trial on the merits. Fed. R. Civ.



CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the plaintiffs, hereby certifies that on August 22, 2010, he served a copy of the above Memorandum of Points and Authorities in Support of the Motion for Temporary Restraining Order, and this certificate of service, on:

Andrew W. Worseck  
City of Chicago Department of Law  
30 N. LaSalle Street, Suite 900  
Chicago, IL 60602

by electronic means pursuant to Electronic Case Filing (ECF).

/s/ Alan Gura

Alan Gura

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RHONDA EZELL, et al.,	)	Case No. 10-CV-5135
	)	
Plaintiffs,	)	
	)	[PROPOSED] ORDER
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**[PROPOSED] ORDER**

This matter came before the Court on Plaintiffs’ motion for the entry of a Temporary Restraining Order. Having considered the matter, the Court finds that Plaintiffs suffer and will continue to suffer irreparable harm in that they are unable to operate gun ranges; educate and train people in the safe use of firearms; and learn and practice the safe use of firearms; such prohibition frustrating compliance with the City of Chicago’s training requirement for the registration of firearms.

Defendant has received adequate notice of the Plaintiffs’ claim for injunctive relief, including notice of this motion.

Accordingly, the Court hereby issues this order temporarily

1. Restraining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code § 8-20-280, barring operation of gun ranges open to the public;

2. Restraining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code §§ 8-20-020, 8-20-030, 8-20-080, 8-20-100, 8-20-110, 8-20-140, and 8-24-010, or any other law, as against the ordinary operation and use of gun ranges open to the public and the loan or rental of functional firearms within gun ranges open to the public.

The Court finds that no security is required as the Defendant will not suffer financial harm by issuance of this order. FURTHER, this order shall expire by its own terms at \_\_\_\_\_ on \_\_\_\_\_, 2010, at which time the Court will hear argument on Plaintiffs' motion for preliminary injunction.

SO ORDERED.

This the \_\_\_\_ day of August, 2010, at \_\_\_\_\_ am/pm.

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The Hon. Virginia M. Kendall  
United States District Judge

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the plaintiffs, hereby certifies that on August 22, 2010, he served a copy of the above Proposed Order, and this certificate of service, on:

Andrew W. Worseck  
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by electronic means pursuant to Electronic Case Filing (ECF).

/s/ Alan Gura  
Alan Gura

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RHONDA EZELL, et al.,	)	Case No. 10-CV-5135
	)	
Plaintiffs,	)	DECLARATION OF ALAN GURA
	)	
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**DECLARATION OF ALAN GURA**

I, Alan Gura, am competent to state, and declare the following based on my personal knowledge:

1. I am counsel for the plaintiffs in the above-captioned action.
2. On the morning of Monday, August 16, 2010, at 10:41 Central Time, upon receiving word that this case had been filed, I immediately emailed Mara Georges, counsel for the City of Chicago, to advise her of the matter. I attached the complaint, moving papers, and all but one of the declarations that I did not have in final form.
3. I wrote Ms. Georges, in part: “The city may already have been served, but I wanted to give you a heads-up directly because we are seeking a preliminary injunction, and I don’t want to deprive the city of its time to review the matter and come up with an opposition, if any (I guess that you would oppose).” Ms. Georges later graciously acknowledged this email.

4. On Friday, August 20, 2010, at 12:55 pm Central Time, I received a voice mail message from Michael Forti of the City of Chicago's Law Department. Mr. Forti advised that the City had filed its motion to reassign the case, and would use the fact of that motion to argue against having the court proceed with the motion for preliminary injunction. I returned Mr. Forti's call at 1:19 pm Central Time, and advised Mr. Forti, and his co-counsel Andrew Worseck who had joined our call, that unless they heard differently later, that the City was on notice of our motion for temporary restraining order. We had a good conversation, but could not come to agreement. I reconfirmed this motion with Mr. Forti at 3:29 p.m. I advised that the grounds were the same as those in the motion for preliminary injunction.
5. I asked Mr. Forti whether the city planned to brief an opposition to the motion. He suggested the city would not file a brief. I asked Mr. Forti when the city might respond to the *Benson* matter. His answer was, "in due time."

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 22<sup>nd</sup> day of August, 2010

  
\_\_\_\_\_  
Alan Gura

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The undersigned, an attorney of record for the plaintiffs, hereby certifies that on August 22, 2010, he served a copy of the above Memorandum of Points and Authorities in Support of the Motion for, and this certificate of service, on:

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