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May 5, 2011

The Hon. Gino Agnello
Clerk, United States Court of Appeals
for the Seventh Circuit
Room 2722
219 S. Dearborn Street
Chicago, IL 60604

Re: *Ezell* v. *City of Chicago*
U.S. Court of Appeals for the Seventh Circuit No. 10-3525
Letter pursuant to Fed. R. App. P. 28(j)

Dear Mr. Agnello:

Appellee's citation of *Nordyke* v. *King*, No. 07-15763, 2011 WL 1632063 (9th Cir. May 2, 2011) is remarkably disingenuous. Were the *Nordyke* standard applied, Appellee would certainly lose.

Nordyke reasoned that *Heller* rejected interest balancing "because it would allow judges to constrict the scope of the Second Amendment in situations where they believe the right is too dangerous," at *4—precisely Appellee's argument concerning gun ranges.

Nordyke then offered that "[n]owhere did [*Heller*] suggest that some regulations might be permissible based on the extent to which the regulation furthered the government's interest in preventing crime. Instead, *Heller* sorted such regulations based on the burden they imposed on the right to keep and to bear arms for self-defense." *Id.*, at *5. This would render irrelevant Appellee's crime prevention claims.

Without specifying the level of heightened scrutiny, *Id.*, at *6 n.9, *Nordyke* held that "regulations which substantially burden the right to keep and bear arms trigger heightened scrutiny under the Second Amendment." *Id.* at *6.

Considering that live-fire practice and training are (1) core Second Amendment rights, (2) absolutely essential to the safe and effective keeping and bearing of arms, and (3) required by Appellee to own firearms, it is risible to suggest that banning all gun ranges does not "substantially burden" the Second Amendment right. In contrast, the *Nordyke* complaint (which may now be amended) "does not assert that the Ordinance makes it materially more difficult to obtain firearms" or "a shortage of places to purchase guns in or near Alameda County," and "[i]n

any event, the Ordinance does not prohibit gun shows, but merely declines to host them on government property." *Id.*, at *8. Appellee's range ban is plainly broader.

Finally, Appellee's claim that *Nordyke* adopted its standard is false. *Nordyke*'s heightened scrutiny never applies under Appellee's approach, which provides the legislature maximum deference for any regulation that does not go so far as to render the right "illusory," "nugatory," or "effectively destroyed." Appellee's Br. at 37 (citations omitted). Appellee's standard is also known as "reasonable regulation," Appellee's Br. at 36—and this *Nordyke* explicitly *rejected. Nordyke*, at *10.

Sincerely,

/s/ Alan Gura
Alan Gura

Counsel for Appellants

cc: Suzanne M. Loose

CERTIFICATE OF COMPLIANCE

This letter complies with the word count limitation of Fed. R. App. P. 28(j), as it contains 350 words in the body of the letter as automatically totaled by WordPerfect X4.

/s/ Alan Gura
Alan Gura

Counsel for Appellants