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VIA ELECTRONIC CASE FILING (ECF)

Katherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Re: *Kwong v. Bloomberg*, no. 12-1578
Response to notice of supplemental authority

Dear Ms. Wolfe:

The decision in *National Rifle Ass'n of Am., Inc. v. McCraw*, no. 12-10091, 2013 U.S. App. LEXIS 10128 (5th Cir. May 20, 2013), does not support rational basis review in the present case. *McCraw* upheld a requirement that one be 21 years of age to obtain a license to carry a handgun in public. *See id.* at *4-5. Critically, the Court of Appeals for the Fifth Circuit found that this age limitation was a “longstanding prohibition” that was “likely outside the scope of the Second Amendment.” *Id.* at *17. A significant aspect of the court’s decision was that Circuit’s prior conclusion that the age of majority has historically been 21 years. *See National Rifle Ass'n of Am., Inc. v. BATF*, 700 F.3d 185, 201 (5th Cir. 2012); *see also McCraw*, 2013 U.S. App. LEXIS 10128 at *2 (relying on *NRA v. BATF* as binding circuit precedent).

The equal protection claim in *McCraw* was predicated on the result of this age limit – that is, the resulting distinction between those under and over 21 years. The Fifth Circuit applied rational basis review because this classification did not “implicate” or “impermissibly interfere” with the right to keep and bear arms. *See McCraw*, 2013 U.S. App. LEXIS 10128 at *25-26.

The case at bar is readily distinguished because it concerns the ability of law-abiding adults to keep guns in their homes. Moreover, the present case does not concern a classification that is simply the results of a single, generally applicable rule. Rather, this case concerns a state law that sets two different standards for two different groups of people. *See Reply Br.* pp. 13-15.

Respectfully submitted,



David D. Jensen

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The body of the foregoing letter is 270 words.