IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

MOTION FOR ENTRY OF DEFAULT JUDGMENT

COMES NOW, Plaintiff, ERNEST TAYLOR**,** through undersigned counsel, who moves this Court pursuant to Fed. R. Civ. P. 55(b) for the entry of default judgment against defendants The City of Baton Rouge, Mary E. Roper, Carl Dabadie, Jr., Lisa Freeman, Patrick Wennemann, and James Thomas. Filed concurrently herewith is a memorandum in support of Plaintiff's motion, which is incorporated herein by reference.

WHEREFORE, Plaintiff, Ernest Taylor, prays that Default Judgment be entered of record against defendants, The City of Baton Rouge, Mary E. Roper; Carl Dabadie Jr., Lisa Freeman, Patrick Wennemann, and James Thomas on Plaintiff's claims for declaratory and injunctive relief. Pursuant to the Default Judgment, Plaintiff requests the entry of an order permanently enjoining the City of Baton Rouge from enforcing Baton Rouge Code of Ordinances §13:95.3 or prosecuting individuals alleged to have violated the provisions of §13:95.3. Plaintiff also requests the entry of an order directing The City of Baton Rouge to return Plaintiff's lawfully held firearms to his possession. Finally, Plaintiff respectfully requests that the Court sschedule a hearing pursuant to Fed. R. Civ. P. 55(b) for the purpose of determining the amount of monetary

damages to which Plaintiff is entitled.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
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Baton Rouge, Louisiana 70801
(225) 344-3555

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system, including those listed below, on this, the 30th day of May, 2014.

Office of the Parish Attorney
East Baton Rouge Parish
Attn: Mr. Tedrick Knightshead
222 Saint Louis Street, Room 902
Baton Rouge, LA 70821

s/ Terrence J. Donahue, Jr.
Terrence J. Donahue, Jr.

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MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

I. INTRODUCTION

Plaintiff, ERNEST TAYLOR moves this Court pursuant to Fed. R. Civ. P. 55(b) for the entry of a default judgment against defendants The City of Baton Rouge, Mary E. Roper, Carl Dabadie Jr., Lisa Freeman, Patrick Wennemann, and James Thomas (referred to collectively as "Defendants"). At issue in this case is the arrest and prosecution of Plaintiff Ernest Taylor, along with the confiscation of his lawfully held firearms, for the purported infraction of possessing a weapon in the parking lot of an establishment that either sells or serves alcohol.

Taylor asserts that the ordinance under which the Baton Rouge Police Department arrested him and confiscated his firearms, Baton Rouge Code of Ordinances §13:95.3 violates the United States Constitution, and numerous provisions of Louisiana law. Mr. Taylor further asserts that the City and its actors were aware that enforcement of the ordinance would violate long-established legal principles regarding civil liberties and individual rights, but despite this knowledge actively utilized the ordinance's provisions to deprive citizens of their constitutionally protected freedoms under the color of state law. Through this lawsuit Plaintiff

seeks injunctive and declaratory relief in addition to monetary damages for physical and emotional injuries, and the deprivation of his constitutional rights and lawfully held property

II. FACTS AND PROCEDURAL HISTORY

A. Facts

On October 13, 2012, Plaintiff Ernest Taylor ("Taylor") was arrested by officers of the Baton Rouge City Police Department and charged with violating three city ordinances. *See* [Doc. 1-1], Misdemeanor Affidavit and Police Report, attached to Verified Complaint; Certified Video of Taylor's Arrest, submitted separately as Exhibit A[1]. According to documents filed in connection with Taylor's arrest, Baton Rouge City Police Officers allegedly observed Taylor's vehicle leaving an establishment that served alcohol in the early morning hours of October 13, 2012, "without any lights on." [Doc. 1-1] at 10.[2] Officer James Thomas ("Thomas") then engaged the emergency lights of his police cruiser to initiate a traffic stop. James Thomas Dashboard Camera Video at 1:34:15 DST, *et seq.* Taylor promptly pulled his vehicle off of the main thoroughfare, and opened the driver's side door. *Id.* Thomas then told Taylor to "step out [of] the vehicle" and to "step to the front of [Thomas'] vehicle" – instructions with which Taylor complied. *Id.*

As Thomas was checking Taylor for the presence of concealed weapons, Corporal Patrick Wennemann ("Wennemann") of the Baton Rouge Police Department approached Taylor's vehicle and observed the presence of several weapons in plain view. *Id.* at 1:35:00, *et seq.* Upon seeing the weapons, Wennemann exclaims, "Shit, bruh, you've got a shotgun on the floor, you've got a rifle between the seats, you've got a pistol in there also." *Id.* Taylor told

[1] Plaintiff has sought leave to submit the video of Taylor's arrest through a separate motion, filed concurrently herewith.

[2] The video of Taylor's arrest does not corroborate the assertion that Taylor was traveling without his lights engaged.

Wennemann and Thomas that he "had papers" on the guns, and informed them of the presence of an additional gun in the trunk of the vehicle. *Id.* Thomas then told Taylor, "[i]t doesn't matter if you've got papers on them or not… you're not supposed to have weapons in your vehicle at a bar." *Id.* When Taylor insisted that he did not have any weapons with him inside of a bar, Thomas stated, "you had them in the parking lot."

Thereafter, Thomas stated to Taylor, "[l]ook dude, come take a seat in the back of my vehicle – you're not under arrest." *Id.* at 1:36:10, *et seq.* Thomas then forcefully grabbed Taylor and attempted to force him towards the back of his vehicle. *Id.* Taylor balked at Thomas' use of force, stating "[y]ou don't have to put your hands on me" and "[y]ou ain't gotta push me, I'm going." *Id.* In spite of Taylor's willingness to cooperate, and his agreement to follow Thomas' direction, Thomas stated, "I'm holding you… I'm gonna put you in fucking handcuffs." *Id.* Thomas then attempted to subdue Taylor through the use of force, eventually receiving assistance from Wennemann to place Taylor in handcuffs and under arrest. *Id.* Throughout the remainder of the arrest video, Wennemann and James can be heard making statements such as: "He's gonna take that ride, he came from a bar – you can't have that there;" "[y]ou ain't supposed to be with it [guns] at the bar, period. Even outside;" "[y]ou can't have a gun on the premises where alcohol is sold;" "[h]e shouldn't have been riding around with all that;" and "[h]e said he's been shot, that's why he carries guns around." Taylor was placed under arrest and booked into Parish Prison. *Id.*

On October 15, 2012, Taylor was released from jail after posting a $950.00 appearance bond. *See* Bond, attached hereto as Exhibit B. Taylor retained counsel to defend himself against the charges levied against him, and on October 29, 2013, a Motion to Quash the charges brought

by the City of Baton Rouge ("the City") was filed on his behalf. *See* Motion to Quash, attached hereto as Exhibit B. The City never filed a response to the motion to quash, which asserted that the ordinance under which Taylor was arrested was unconstitutional. *See id.* Instead, on April 28, 2014 - the date the motion to quash was to be heard, and the date of trial for the criminal charges, the City moved to dismiss all charges brought against Taylor as a result of the events of October 13, 2012. *See* Motion and Order of Dismissal, attached hereto as Exhibit C. The court granted the motion and dismissed the charges against Taylor in open court the same day. *Id.* Despite the dismissal of the charges against Mr. Taylor, and the repeated demand of counsel for the return of his guns, the weapons confiscated from Taylor on October 13, 2012 remain in the City's possession. *See* Affidavit of Terrence J. Donahue, Jr., attached hereto as Exhibit D.

B. Procedural History

Taylor instituted this action on September 3, 2013. [Doc. 1]. Defendants received copies of the Complaint, summons, and a form requesting waiver of service of process on September 10, 2013. [Doc. 23-2]. On October 22, 2013, service upon Defendants was waived by James L. Hilburn of the East Baton Rouge Parish Attorney's Office. [Doc. 3]. On April 16, 2014, Plaintiff moved for entry of default due to Defendants' failure to answer or otherwise defend against the lawsuit. [Doc. 15]. The Clerk granted Plaintiff's request for entry of default the same day. [Doc. 17].

Without first seeking leave of Court, Defendants then filed an Answer to Plaintiff's Complaint on April 17, 2014, more than seven months after first being notified of Plaintiff's claims, and after the Clerk's entry of default. [Doc. 20]. On April 22, 2014, Defendants also moved to have the Clerk's entry of default set aside pursuant to Fed. R. Civ. P. 55(c). [Doc. 22].

Plaintiff filed a response opposing Defendants' request to set aside the entry of default on May 3, 2014. [Doc. 23]. The same day, Taylor also filed a Motion to Strike Defendants' untimely answer. [Doc. 24]. Defendants filed an opposition to Plaintiff's request to strike their late-filed answer on May 8, 2014. [Doc. 25].

III. LAW AND ARGUMENT

A. Standard of Law

1. Entry of Default Judgment

The duty to respond to a complaint is triggered by the service of summons or lawful process, and the failure to do so may result in the entry of default or default judgment under Federal Rule of Civil Procedure 55. *Fagan v. Lawrence Nathan Assocs.,* 957 F.Supp.2d 784, 795 (E.D. La. 2013); citing *Rogers v. Hartford Life & Accident Ins. Co.,* 167 F.3d 933, 937 (5th Cir. 1999). Fed. R. Civ. P. 55 provides, in pertinent part:

> **(a)** Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
>
> **(b)** Entering a Default Judgment.
>
> > **(1)** ***By the Clerk.*** If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk--on the plaintiff's request, with an affidavit showing the amount due--must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.
> >
> > **(2)** ***By the Court.*** In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals--preserving any federal statutory right to a jury trial--when, to enter or effectuate judgment, it needs to:
> >
> > > **(A)** conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

Id.; Fed. R. Civ. P. 55.

Once the Clerk of Court has found a defendant to be in default, the Court must then determine whether entry of default judgment should follow. *Id.* at 796; citing *T-Mobile USA, Inc. v. Shazia & Noushad Corp.*, 2009 U.S. Dist. LEXIS 59014 at *2 (N.D. Tex. 2009). A judgment of default can be entered no sooner than 14 days after the Clerk's entry of default. MDLA L.R. 55.1. If the procedural prerequisites for entering a default judgment are met, the Court must then decide whether the plaintiff's requests for relief are appropriate. *Id.* Even if a party is technically in default, the party seeking entry of a default judgment is not entitled to default judgment as a matter of right. *Id.*, quoting *Ganther v. Ingle,* 75 F.3d 207, 212 (5th Cir. 1996). This is because default judgments are generally disfavored under the law. *Id.*

Whether to enter default judgment against a defendant "is committed to the sound discretion of the district court, and is afforded great deference upon review." *Id.* at 796. If an entry of default has been entered against a defendant, "the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *Id.* at 797, n.47; *see also Keating v. Compro Tax, Inc.*, 2011 U.S. Dist. LEXIS 97191, 3-4 (W.D. La. 2011); quoting 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*, §2688 (3d ed. 1998). In addition, the Fifth Circuit has identified the following factors as relevant in deciding whether the entry of default judgment is appropriate: (1) whether material issues of fact are at issue; (2) whether there has been substantial prejudice; (3) whether the grounds for default are clearly established; (4) whether the default was caused by good faith mistake or

excusable neglect; (5) the harshness of a default judgment; and (6) whether the court would think itself obliged to set aside the default on the defendant's motion. *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998); citing 10 Charles A. Wright et al., *Federal Practice and Procedure* §2685 (1981); *see also, Fagan*, 957 F.Supp. at 796.

2. Plaintiff's Claims

The Second Amendment to the United States Constitution provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." *See NRA of Am. v. Bureau of Alcohol*, 700 F.3d 185, 192 (5th Cir. 2012). In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court made clear that the Second Amendment codified a pre-existing individual right to keep and bear arms. *Id.* at 192-193. In *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), the Court further clarified that "the right to keep and bear arms [is] among those fundamental rights necessary to our system of ordered liberty," and is incorporated against the States via the Fourteenth Amendment. *Id.*

While *Heller* and *McDonald* settled certain important issues with respect to the Second Amendment, they did not set forth an analytical framework with which to evaluate firearms regulations in future cases. *NRA of Am.*, 700 F.3d at 194. In the absence of an explicit pronouncement from the Supreme Court, a two-step inquiry emerged as the prevailing approach – an approach adopted by the Fifth Circuit in *NRA of Am. v. Bureau of Alcohol*. *Id.* Under this approach, the first inquiry "is whether the conduct at issue falls within the scope of the Second Amendment right. *Id.;* citing *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010). To determine whether a law impinges on rights guaranteed by the Second Amendment, it must be

determined whether the law harmonizes with the historical traditions associated with the Second Amendment. *Id.* (citations omitted). If the challenged law burdens conduct that falls outside the Second Amendment's scope, then the law passes constitutional muster. *Id.* at 195, citing *United States v. Marzzarella,* 614 F.3d 85, 89 (3rd Cir. 2010).

If, however, the law burdens conduct that falls within the Second Amendment's scope, the "appropriate level of means-end scrutiny" must then be applied. *Id.* The appropriate level of scrutiny "depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *Id.,* quoting *Chester* at 682. Thus, a regulation that threatens a right at the core of the Second Amendment triggers strict scrutiny, while a regulation that does not encroach on the core of the Second Amendment would require an intermediate level of scrutiny. In no event would the least demanding "rational basis" review be appropriate, as *Heller* stated unequivocally that such review "could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right" such as "the right to keep and bear arms." *Id.,* quoting *Heller* at 628, n.27.

B. Baton Rouge Code of Ordinances §13.95.3 Violates the Constitutions of the United States and the State of Louisiana

1. The Development and Status of Federal and Louisiana Law[3]

On December 15, 1791, the Second Amendment to the United States Constitution came into effect after having been ratified by three-fourths of the States. The Second Amendment provides: "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The amendment did not create a right

[3] While the allegations set forth in Plaintiff's Complaint are to be taken as true since the Clerk has entered default, *see Keating, supra,* it is also noteworthy that Defendants do not dispute the status of the legal landscape as set forth in Plaintiff's Complaint. *See* Defendants' Late-Filed Answer, [Doc. 19], ¶¶24-25 (stating that the allegations in Plaintiff's Complaint relating to the development of the law "do not require a response").

that was dependent upon the Constitution for its existence, but rather only gave Constitutional protection to a fundamental individual right that pre-existed the Constitution's enactment. *See District of Columbia v. Heller,* 554 U.S. 591 (2008).

In 1850, the Louisiana Supreme Court determined that the Second Amendment to the United States Constitution guaranteed citizens the right to carry arms openly. *See State v. Chandler,* 5 La. Ann. 489, 490 (La. 1850). In rejecting a constitutional challenge to a law forbidding the possession of concealed weapons, the Court stated:

> This law became absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations upon unsuspecting persons. ***It interfered with no man's right to carry arms (to use its words) "in full open view," which places men upon an equality***. ***This is the right guaranteed by the Constitution of the United States,*** and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.

Id.; see also, District of Columbia v. Heller, 554 U.S. 570, 613 (U.S. 2008) (citing favorably to *Chandler*).

On July 23, 1879, the Louisiana Constitutional Convention adopted the Louisiana Constitution of 1879. Article 3 of the Constitution largely adopted the language of the federal government's Second Amendment: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed." Earlier versions of the Louisiana Constitution had provided that "free white men of the state shall be armed and disciplined for its defense." *See e.g.,* Louisiana Constitution of 1812, Article III, §22.

In 1951, the City of Baton Rouge ("the City") enacted the 1951 Baton Rouge City Code which criminalized certain conduct. In particular, Title 13, §83, entitled "Possession of

weapons where alcoholic beverages are sold and/or consumed" provided as follows:

> (a) It shall be unlawful for any person to have in his possession a firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon, in any premises where alcoholic beverages are sold and/or consumed on the premises except the owner or lessee of the premises, or their employees, sheriffs, deputy sheriffs, state police, city police, constables, town marshals, or persons vested with police power when in the actual discharge of their duties.
>
> (b) Any sheriff, deputy sheriff, state police, city police, constables, town marshals, or persons vested with police power, may search any person found in any place where alcoholic beverages are sold and/or consumed on the premises, and shall confiscate any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon which such peace officer may find; this search shall be limited to only weapons, unless there is probable cause for a wider search. Any person who enters a place where alcoholic beverages are sold and/or consumed on the premises does, by the mere fact of entering, consent to a search of his person for any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon while on said premises, by any sheriff, deputy sheriff, state police, constable, town marshal or persons vested with police power, without a warrant.
>
> (c) The phrase, "… premises where alcoholic beverages are sold and/or consumed on the premises" shall include all of the licensed premises, including the parking lot.
>
> (d) Any gun or other instrumentality customarily used or intended for probable use as a dangerous weapon found on any person while on the premises of a place where alcoholic beverages are sold and consumed may be used as evidence in court.
>
> (e) Whoever commits the crime of possession of a weapon where alcoholic beverages are sold and/or consumed shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than six (6) months, or both. Additionally, the court may order the forfeiture of the weapon in accordance with law.

By its clear and unambiguous language, the ordinance forbid possession of any weapon (not just a firearm), on the premises of any establishment that either sold *or* permitted consumption of alcoholic beverages – even where the weapon was located inside a parked vehicle outside the

establishment.

In 1962 the City enacted the 1962 East Baton Rouge Parish Code, which reenacted Title 13, §83 of the 1951 Baton Rouge City Code, redesignating it as Title 13, §205. The ordinance first appearing as Title 13, §83 in the 1951 Baton Rouge City Code still exists and has not been amended. It appears in the current version of the Code of Ordinances of the City of Baton Rouge as Title 13, Section 95.3 ("the ordinance"). Taylor was arrested for violating this ordinance on October 13, 2012.

On April 20, 1974, Louisiana Voters ratified the 1974 Louisiana Constitution, which became effective January 1, 1975. Article I, Section 11 of the 1974 Constitution made clear that the right to keep and bear arms was one granted to individual citizens: "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person."

On January 12, 1979, the Louisiana Supreme Court stated unequivocally that each citizen was guaranteed the right to keep and bear arms. Confronted with a situation in which an individual was arrested for possessing firearms in the parking lot of a drug store, the Court stated: "The carrying of an unconcealed weapon is not a special privilege or advantage enjoyed by a police officer. Each citizen is guaranteed the right to keep and bear arms not concealed on his person." *State v. Nelson*, 367 So. 2d 317, 318 (La. 1979).

On October 9, 1984, the Louisiana First Circuit Court of Appeal struck down Louisiana Revised Statute §56:330 (forbidding possession of firearms while frog hunting) as being in direct conflict with Louisiana Constitution Article I, §11. The court determined that a prohibition against possessing a firearm while engaged in certain acts bore no rational relationship to any

legitimate state interest. The court also stated that the statute presented a "clear illustration" of the reason for recognizing a broad right of citizens to keep and bear arms – an individual capturing game at night "could be attacked" and "needs to protect himself." *State v. Chaisson,* 457 So.2d 1257 (La.App. 1 Cir. 1984).

On December 28, 1984, the Louisiana First Circuit Court of Appeal determined that reliance upon subsection (b) of the Baton Rouge Code Sec. 13:95.3 (the ordinance at issue), when applied to individuals who were located on the "premises," but not actually inside the establishment that served or sold alcoholic beverages, violated the individual's rights under the Fourth and Fourteenth Amendments to the United States Constitution. *State v. Garrett,* 461 So.2d 651 (La.App. 1 Cir. 1984).

Shortly after the *Garrett* decision, in 1985, the Louisiana Legislature passed Act. No. 765, enacting Louisiana Revised Statute 14:95.5, which applied similar restrictions to the possession of firearms as §13:95.3, but in a much narrower set of circumstances. Specifically, the statute, titled "Possession of Firearm on Premises of Alcohol Beverage Outlet" provides:

> **A.** No person shall intentionally possess a firearm while on the premises of an alcoholic beverage outlet.
>
> **B.** "Alcoholic beverage outlet" as used herein means any commercial establishment in which alcoholic beverages of either high or low alcoholic content are sold in individual servings for consumption on the premises, whether or not such sales are a primary or incidental purpose of the business of the establishment.
>
> **C.** The provisions of this Section shall not apply to the owner or lessee of an alcoholic beverage outlet, or to an employee of such owner or lessee, or to a law enforcement officer or other person vested with law enforcement authority acting in the performance of his official duties.
>
> **D.** Whoever violates the provisions of this Section shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

La. R.S. §14:95.5 limited its application to "firearms" in the possession of persons on the premises of "commercial establishments in which alcoholic beverages … are sold in individual servings for consumption on the premises" and contained no provision that would include areas outside the establishment, such as the parking lot, in the definition of "premises." By its unambiguous language, §14:95.5 applied only to possession of firearms (not all "instrumentalities customarily used or intended to be used as a weapon") and only where alcohol was sold for consumption on the premises (not where alcohol was "sold and/or consumed"), and the statute did not include parking lots in the definition of "premises."

On March 12, 1986, the City enacted Ordinance No. 8118, containing Title 13, §95.4, which reproduced verbatim the more narrowly tailored provisions appearing in La. R.S. §14:95.5, and which currently still appears in the City's Code of Ordinances, under the same title and section.

On June 26, 2008, the United States Supreme Court issued its decision in *District of Columbia v. Heller,* 554 U.S. 570 (2008), wherein it confirmed that, like Article I, Section 11 of Louisiana's Constitution, the Second Amendment to the United States Constitution protects an individual's right to possess firearms.

On April 4, 2008, the United States District Court for the Western District of Louisiana determined that an officer's search for and seizure of firearms from an individual who was in lawful possession constituted a violation of the U.S. Constitution's Fourth and Fourteenth Amendment's protection against unwarranted searches and seizures sufficient to sustain a cause of action under 42 U.S.C. §1983. *Club Retro, L.L.C. v. Hilton*, 2008 U.S. Dist. LEXIS 35231, 39 (W.D. La. 2008).

On July 2, 2008, Louisiana Governor Bobby Jindal signed into law Act 684, codified at La. R.S. 32:292.1, titled "Transportation and Storage of Firearms in Privately Owned Motor Vehicles." §32:292.1 explicitly provides that "a person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area."

On May 6, 2009 the United States Court of Appeals for the Fifth Circuit upheld the district court's decision in the *Club Retro LLC* case identified *supra.* The Fifth Circuit stated that the defendant police actors had "wisely conceded" at oral argument that the searches, seizures, and arrests made pursuant to gun possession charges "violated clearly established constitutional rights of which a reasonable person would have known." *Club Retro LLC v. Hilton,* 568 F.3d 181, 203, n.17 (5th Cir. 2009).

On March 2, 2010, the United States Supreme Court reaffirmed its earlier decision in *Heller,* and determined that "it is clear" that the provisions of the Second Amendment to the United States Constitution are fully applicable to the States by virtue of the Fourteenth Amendment. *McDonald v. City of Chicago,* 130 S.Ct. 3020 (2010).

On November 6, 2012 the citizens of the State of Louisiana voted to further buttress the protections provided by the State's Constitution with respect to the right of its citizens to keep and bear arms. In its current form, Art. 1, §11 provides: "The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny." The provision became effective December 10, 2012.

2. The Right to Keep and Bear Arms Extends Beyond the Home

As shown above, the Louisiana Supreme Court acknowledged that the U.S. Constitution guaranteed an individual's right to openly carry firearms more than 150 years ago. Still, while

Heller confirmed the long-standing interpretation that the Second Amendment to the U.S. Constitution guaranteed a pre-existing personal right, it did so only in the context of a regulation addressing firearm possession within a citizen's home. *See Heller* at 583 ("[w]e consider whether a District of Columbia prohibition on the possession of usable handguns in the home violates the Second Amendment to the Constitution"). Thus, in *Heller's* wake, numerous courts have been asked to determine whether the Second Amendment also protects an individual's right to bear arms *outside* the home. *See e.g., Kachalsky v. County of Westchester,* 701 F.3d 81 (2nd Cir. 2012); *Moore v. Madigan,* 702 F.3d 933 (7th Cir. 2012); *Woollard v. Gallagher,* 712 F.3d 865 (4th Cir. 2013); *Drake v. Filko,* 724 F.3d 426 (3rd Cir. 2013); *Peruta v. County of San Diego,* 742 F.3d 1144 (9th Cir. 2014).

No court has determined that the Second Amendment guarantees identified in *Heller* and *McDonald* apply solely within the confines of a person's home. Rather, in the vast majority of cases where courts have been asked to decide the issue, they have simply assumed that the Second Amendment provides some level of protection outside the home. *See Kachalsky,* 701 F.3d at 89 ("… the Amendment must have ***some*** application in the very different context of the public possession of firearms"); *Moore,* 702 F.3d at 942 ("[t]he Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside"); *Woollard,* 712 F.3d at 876 ("… we merely assume that the *Heller* right exists outside the home…"); *Drake,* 724 F.3d at 431 ("[w]e do, however, recognize that the Second Amendment's individual right to bear arms *may* have some application beyond the home"). Only the recent Ninth Circuit decision in *Peruta v. County of San Diego,* discussed below, has actually undertaken to determine whether and to what extent the Second Amendment applies

outside the home.

As stated by the *Peruta* court in its opinion, the issue to be decided was "whether a responsible, law-abiding citizen has a right under the Second Amendment to carry a firearm in public for self-defense." 742 F.3d at 1147. In particular, the court was considering a constitutional challenge to a San Diego County policy which precluded individuals from carrying a firearm unless they could establish "circumstances that distinguish [them] from the mainstream" justifying a need to carry a gun. *Id.* at 1148. While stating that the Supreme Court's decisions in *Heller* and *McDonald* "direct the analysis" to be applied to a Second Amendment constitutional challenge, the *Peruta* court also acknowledged that those decisions did not resolve the issue before the court:

> It doesn't take a lawyer to see that straightforward application of the rule in *Heller* will not dispose of this case. It should be equally obvious that neither *Heller* nor *McDonald* speaks explicitly or precisely to the scope of the Second Amendment right outside the home or to what it takes to "infringe" it. Yet, it is just as apparent that neither opinion is silent on these matters, for, at the very least, the Supreme Court's approach points in a general direction.

Id. at 1150 (internal quotations and citations omitted). The court then stated it would use the analysis adopted by the Fifth Circuit in *NRA of Am. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives* in making its determination. *Id.*

The first question identified by the *Peruta* court under the two-step analysis was:

> Does the restricted activity – here, a restriction on a responsible, law-abiding citizen's ability to carry a gun outside the home for self-defense – fall within the Second Amendment right to keep and bear arms for the purpose of self-defense?

Id. The court noted that the Supreme Court in *Heller* and *McDonald* were "hardly shy" about the methods by which the scope of the right protected by the Second Amendment must be discerned – "we must consult 'both text and history.'" *Id.;* citing *Heller,* 554 U.S. at 595; *McDonald,* 130

S.Ct. at 3047. The court then began its analysis "by examining the text of the amendment in its historical context." *Id.* at 1152. Borrowing heavily from *Heller,* the court stated:

> "At the time of the founding, as now, to 'bear' meant to 'carry.'" Yet, not "carry" in the ordinary sense of "convey[ing] or transport[ing" an object, as one might carry groceries to the check-out counter or garments to the laundromat, but "carry for a particular purpose – confrontation." The "natural meaning of 'bear arms,' according to the *Heller* majority, was best articulated by Justice Ginsburg in her dissenting opinion in *Muscarello v. United States*: to "'wear, bear, or carry … upon the person or in the clothing or in a pocket, for the purpose of being armed and ready for offensive or defensive action in a case of conflict with another person.
>
> Speakers of the English language will all agree: "bearing a weapon inside the home" does not exhaust the definition of "carry." For one thing, the very risk occasioning such carriage, "confrontation," is "not limited to the home." One needn't point to statistics to recognize the prospect of a conflict – at least, the sort of conflict for which one would wish to be "armed and ready" – is just as menacing (and likely more so) beyond the front porch as it is in the living room. For that reason, "[t]o speak of 'bearing' arms within one's home would at all times have been an awkward usage." To be sure, the idea of carrying a gun "in the clothing or in a pocket, for the purpose … of being "armed and ready," does not exactly conjure up images of father stuffing a six-shooter in his pajama's pocket before heading downstairs to start the morning's coffee, or mother concealing a handgun in her coat before stepping outside to retrieve the mail. Instead, it brings to mind scenes such as a woman toting a small handgun in her purse as she walks through a dangerous neighborhood, or a night-shift worker carrying a handgun in his coat as he travels to and from his job site.

Id. at 1151-52 (internal citations omitted). Having considered the text of the Second Amendment in its historical context, the court determined that "the Second Amendment right 'could not rationally have been limited to the home." *Id.* at 1153; quoting *Moore,* 702 F.3d at 936.

The *Peruta* court then analyzed "the original public understanding of the Second Amendment right as evidence of its scope and meaning" as identified by the writings of "important founding-era legal scholars." *Id.* at 1153-54; quoting *Heller,* 554 U.S. at 600-03. The court determined that "[t]he commonsense reading of 'bear Arms' previously discussed finds support in several important constitutional treatises in circulation at the time of the Second

Amendment's ratification." *Id.* Similarly, the court found that the relevant legal precedent supported Second Amendment protection for bearing arms outside of one's home:

> In keeping with views of the important late-eighteenth century commentaries, the great weight of nineteenth-century precedent on the Second Amendment or its state-law analogues confirms the *Heller*-endorsed understanding of "bear arms." In fact, as we will show, many of the same cases that the *Heller* majority invoked as proof that the Second Amendment secures an individual right may just as easily be cited for the proposition that the right to carry in case of confrontation means nothing if not the general right to carry a common weapon outside the home for self-defense.

Id. at 1155. The court then engaged in a lengthy exegesis of relevant case law interpreting the scope of the protection afforded by the Second Amendment, including the 1850 Louisiana case of *State v. Chandler,* cited in *Heller,* and discussed above. *See id.* at 1155-160. The court concluded its review by stating:

> Thus, the majority of nineteenth century courts agreed that the Second Amendment right extended outside the home and included, at minimum, the right to carry an operable weapon in public for the purpose of lawful self-defense.

Id. at 1160.

Once again taking its cues from the Supreme Court's analysis in *Heller,* the *Peruta* court next reviewed "the post-Civil War legislative scene." *Id.* The court again found support for extending Second Amendment rights outside of the home:

> Perhaps unsurprisingly, our review suggests that their understanding comports with that of most nineteenth-century courts: then, as at the time of the founding, "[t]he right of the people … to bear arms meant to carry arms on one's person."
> …
> Just as it was "plainly the understanding in the post-Civil War Congress that the Second Amendment protected an individual right to use arms for self-defense," it appears that the right was also understood to encompass carrying weapons in public in case of confrontation.

Id. at 1161,1163 (internal citations omitted). The last sources consulted by the court in its textual

and historical analysis were the writings of "the major post-Civil War commentators," which were likewise found to support a right to bear arms outside of one's home:

> The weight of authority suggests that the right to bear arms, as understood in the post-Civil War legal commentary, included the right to carry weapons outside the home for self-defense, which, as shown, is consistent with the understanding of the right articulated in most eighteenth-century commentary, nineteenth-century court opinions, and by many post-Civil war political actors.

Id. at 1166. The court concluded its "analysis of text and history" by stating explicitly that "the carrying of an operable handgun outside the home for the lawful purpose of self-defense … constitutes 'bear[ing] arms" within the meaning of the Second Amendment." *Id.*

C. §13:95.3 Infringes Constitutionally Protected Rights

As the Ninth Circuit determined in *Peruta,* "the Second Amendment does require that the states permit *some form* of carry for self-defense outside the home." *Id.* at 1172. The *Peruta* court also indicated that determining the scope of the rights secured by the Second Amendment is a necessary prerequisite to determining whether a challenged regulation violates its protection:

> Understanding the scope of the right is not just necessary, it is key to our analysis. For if self-defense outside the home is part of the core right to "bear arms" and the California regulatory scheme prohibits the exercise of that right, no amount of interest-balancing under a heightened form of means-end scrutiny can justify San Diego County's policy.

Id. at 1167; citing *Heller,* 554 U.S. at 634 ("The very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is *really worth* insisting upon"). The court then outlined the means by which courts commonly determine whether a given regulation infringes the Second Amendment:

> To determine what constitutes an infringement, our sister circuits have grappled with varying sliding-scale and tired-scrutiny approaches, agreeing as a general matter that "the level of scrutiny applied to gun control regulations depends on the

> regulation's burden on the Second Amendment right to keep and bear arms." Under this general approach, severe restrictions on the "core" right have been thought to trigger a kind of strict scrutiny, while less severe burdens have been reviewed under some lesser form of heightened scrutiny.

Id. at 1167-68 (internal citations omitted); *see also, NRA of Am.,* 700 F.3d at 198 ("we believe that a law impinging upon the Second Amendment right must be reviewed under a properly tuned level of scrutiny – i.e. a level that is proportionate to the severity of the burden that the law imposes on the right"). The *Peruta* court stated the relevant inquiry as follows:

> Clearly, the California scheme does not prevent every person from bearing arms outside the home in every circumstance. But the fact that a small group of people have the ability to exercise their right to bear arms does not end our inquiry. Because the Second Amendment "confers an individual right to keep and bear arms," we must assess whether the California scheme deprives any individual of his constitutional rights. Thus, the question is not whether the California scheme (in light of San Diego County's policy) allows *some* people to bear arms outside the home in *some* places at *some* times; instead, the question is whether it allows the typical, responsible, law-abiding citizen to bear arms in public for the lawful purpose of self-defense.

Id. at 1169.

Under this analysis, it is clear that §13:95.3 of the Baton Rouge Code of Ordinances infringes upon the right to "keep and bear" arms guaranteed by both the United States and Louisiana Constitutions. As written, the clear language of §13:95.3 prohibits the possession of firearms in any parking lot of an establishment that sells alcohol. Whatever burden the ordinance placed on individuals' Second Amendment rights at the time of its passage in 1951, there can be no doubt that its current enforcement and prosecution imposes a substantial burden on these rights. Under the clear language of the ordinance, any law-abiding citizen who exercises his right to keep or bear arms within the confines of his own personal vehicle will violate §13:95.3 anytime he stops to refuel his vehicle at a service station that sells alcohol. Similarly, the ordinance's text would prohibit the act of purchasing (and therefore possessing) firearms at any

establishment that sells alcohol, rendering every sale of a gun at establishments such as Wal-Mart a criminal act. The result is that the law prevents the typical, law-abiding citizen of Baton Rouge from bearing arms in public for the purpose of self-defense, and therefore infringes the rights guaranteed by the United States and Louisiana Constitutions.

No matter what level of scrutiny is applied in evaluating the constitutionality of §13:95.3, the simultaneous existence of the more narrowly-tailored provision appearing at §14:95.5 clearly indicates that §14:95.3 would not pass constitutional muster. Under a strict scrutiny analysis, the relevant inquiry would be "whether the law is narrowly tailored to serve a compelling government interest." *See United States v. Marzzarella,* 614 F.3d 85, 96, n.14 (3rd Cir. 2010); citing *United States v. Playboy Entm't Group,* 529 U.S. 803, 813 (U.S. 2000). On the other hand, using intermediate scrutiny, the relevant inquiry is "whether there is a reasonable fit between the law and an important government interest." *NRA of Am.,* 700 F.3d at 207; citing *Marzzarella,* 614 F.3d at 98. In other words, "the government must show that the law is reasonably adapted to an important government interest." *Id.* As shown previously, the City adopted the narrower restrictions appearing in §13:95.5 after the Louisiana First Circuit Court of appeals determined that searches and seizures permitted by §13:95.3 violated the United States Constitution. *See State v. Garrett, supra.* It is clear that the provisions of §13:95.5 are the more "narrowly tailored" and also that it is a "reasonable adaptation" of the overly restrictive provisions found in §13:95.3. Thus, Baton Rouge Code of Ordinances §13:95.3 fails to pass constitutional muster.

D. Entry of Default Judgment Is Appropriate With Respect to Plaintiff's Claims for Declaratory and Injunctive Relief

As shown above, whatever level of scrutiny is applied in evaluating the constitutionality of §13:95.3, Defendants bear the burden of showing that the ordinance is either "narrowly

tailored" or "reasonably fit[s] … an important government objective." *See NRA of Am.,* 700 F.3d at 207. Despite this fact, Defendants have presented no argument or evidence in defense of the constitutionality of the challenged ordinance. As detailed above, when faced with a motion to quash the criminal charges against Taylor on the grounds that §13:95.3 was unconstitutional, the City mounted no defense, and instead dismissed all charges. In its late-filed answer, the City provides no defense of the constitutionality of §13:95.3, instead providing only general denials and defenses. *See generally,* [Doc. 19]. Likewise, in their response to Plaintiff's Motion to Strike their Answer, which consists almost entirely of argument and assertions that are irrelevant to the resolution of the motion, Defendants put forth no defense of §13:95.3's constitutionality, despite devoting numerous pages to the alleged immunity of certain defendants against Plaintiff's claims for monetary damages. *See* [Doc. 25].

Thus, utilizing the Fifth Circuit's criteria, default judgment is appropriate in this case. First, as discussed in Plaintiff's Response in Opposition to Defendants' Motion to Set Aside Clerk's Entry of Default [Doc. 23], Defendants have come forth with nothing to show that its default was the result of a good faith mistake or excusable neglect. *See Fagan,* 957 F.Supp.2d at 797. With respect to the second factor, Defendants' failure to participate in this litigation has substantially prejudiced Plaintiff's interest in resolving his claims against Defendants and having his lawfully-possessed firearms returned to him. *Id.; see also, United States v. Fincanon,* 2009 U.S. Dist. LEXIS 8721 (N.D. Tex. 2009) (holding that a plaintiff's interests were prejudiced because the defendant's failure to respond to the complaint halted the adversary process). Furthermore, entry of default judgment on Plaintiff's claims for declaratory and injunctive relief would not be overly harsh, as Defendants have done nothing to defend the constitutionality of

§13:95.3, and as there is absolutely no justification for the continued retention of Taylor's property given the dismissal of all criminal charges levied against him. The fourth factor – whether there exist any material issues of fact – also favors the entry of default as Defendants "fail[ed] to place any material facts in dispute, and are barred from contesting on appeal the facts as established by the participating party's pleadings." *Id.*, citing *Nishimatsu Constr. Ltd. v. Houston Nat. Bank,* 515 F.2d 1200, 1206 (5th Cir. 1975); *Thomson v. Wooster,* 114 U.S. 104 (1885). As to the fifth factor, Plaintiff has clearly established the grounds for entry of a default judgment by having the Clerk place Defendants in default, and allowing the requisite amount of time to pass before seeking entry of default judgment. *Id.* Finally, the fifth factor also weighs in favor of entering default judgment, as the Court would not be obligated to set the default aside for the reasons stated herein, along with those stated in Plaintiff's Response in Opposition to Defendants' Motion to Set Aside Clerk's Entry of Default. [Doc. 23].

In short, the City and its actors have come forth with nothing identifying "an important government objective" served by the enforcement and prosecution of §13:95.3 in cases such as this. Nor have these defendants made even the slightest attempt to justify the ordinance's infringement of Plaintiff's constitutionally-protected rights. The egregious disregard defendants continue to show for Plaintiff's rights is made abundantly clear by the the City's continued refusal to restore Taylor to possession of his lawfully-held firearms. As the City and its actors have failed entirely to defend the constitutionality of §13:95.3, and as there exists absolutely no basis upon which these defendants may continue to exercise possession and control over Taylor's guns, entry of default judgment with respect to Plaintiff's claims for declaratory and injunctive relief is appropriate.

E. A Hearing Is Appropriate Regarding Plaintiff's Claims for Monetary Damages

As stated in Fed. R. Civ. P. 55(b)(2), "[t]he court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when to enter or effectuate judgment, it needs to: conduct an accounting; determine the amount of damages; establish the truth of any allegation by evidence; or investigate any other matter." In this case, Taylor's damages continue to accrue each day the City and its actors retain possession of is wrongfully-seized firearms in derogation of his constitutional rights. Likewise, the total amount of reasonable attorney's fees to which Taylor is entitled cannot be determined until such time as the issues in this suit have been resolved. As a result, it would be impractical to enter judgment on Plaintiff's claims for monetary damages without first conducting a hearing or receiving evidence regarding the amount of monetary damages to which Taylor is entitled. Plaintiff further suggests that a pre-hearing conference may be appropriate for the purpose of setting appropriate deadlines, such as for the submission of evidence prior to the hearing.

IV. CONCLUSION

For those reasons appearing above, Plaintiff, Ernest Taylor, respectfully requests that the Court enter default judgment with respect to Plaintiff's claims for declaratory and injunctive relief. Specifically, Plaintiff requests that the Court issue an order declaring §13:95.3 of the Baton Rouge Code of Ordinances unconstitutional, and permanently enjoining Defendants from enforcing the ordinance or prosecuting individuals alleged to have violated its provisions. In addition, Plaintiff respectfully requests that the Court set a hearing to determine the amount of monetary damages to which Plaintiff is entitled.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
TERRENCE J. DONAHUE, JR.
McGLYNN, GLISSON, & MOUTON
340 Florida Street
Baton Rouge, Louisiana 70802-1909
(225) 344-3555
Bar Roll No.: 32126

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system, including those listed below, on this, the 30th day of May, 2014.

Office of the Parish Attorney
East Baton Rouge Parish
Attn: Mr. Tedrick Knightshead
222 Saint Louis Street, Room 902
Baton Rouge, LA 70821

s/ Terrence J. Donahue, Jr.
Terrence J. Donahue, Jr.

AMERICAN PRESS A+ STAMP • BATON ROUGE, LA • (225) 275-7831

APPEARANCE BOND (2 Bonds)

DEFENDANT: Taylor, Ernest (LAST) (FIRST) (MIDDLE)

DATE OF ARREST: 10/13/12

RACE: B SEX: M DOB: [redacted]

SSN: [redacted]

DL #: [redacted]

SID #: 000-104-631

ARRESTING AGENCY/NO.: BRPD/12-100139

CHARGES	AMOUNT OF BAIL
13:95.3 Poss of FTA where Alcohol Sold	
13:108 Resist/Hinder Officer	
~~14:98 Headlights Req~~	
☐ ADDITIONAL CHARGES TOTAL	950.00

COURT:

- ☐ 19TH JUDICIAL DISTRICT COURT — 300 NORTH BLVD, BATON ROUGE, LA 70802
- ☑ BATON ROUGE CITY COURT — 233 ST LOUIS STREET, BATON ROUGE, LA 70802
- ☐ BAKER CITY COURT — 1330 ALABAMA STREET, BAKER, LA 70714
- ☐ ZACHARY CITY COURT — 4510 MAIN STREET, ZACHARY, LA 70791
- ☐ OTHER: _____

JUDGE: [illegible]

COURT DATE: 12/14/12 ☐ ON NOTICE

TYPE OF BAIL:

- ☑ COMMERCIAL SURETY (ATTACH POWER OF ATTORNEY)
- ☐ SECURED PERSONAL SURETY (LA RESIDENCE & PROPERTY REQUIRED; ATTACH PROOF OF SECURITY INTEREST)
- ☐ UNSECURED PERSONAL SURETY (COURT ORDER & LA RESIDENCE REQUIRED)
- ☐ BAIL WITH OUT SURETY (ROR – COURT ORDER REQUIRED)
- ☐ CASH DEPOSIT ATTACHED: RECEIPT # 91438

☐ PROTECTIVE ORDER; ☐ BAIL ORDER; ☐ DRUG COURT ORDER

IF THE DEFENDANT DOES NOT APPEAR IN COURT WHEN REQUIRED, THE DEFENDANT AND SURETY WILL BE REQUIRED TO PAY THE FULL AMOUNT OF THE BOND WITH JUDICIAL INTEREST, COURT COSTS AND ATTORNEY FEES.

ALL NOTICES WILL BE MAILED OR SERVED TO THE ADDRESSES INDICATED HEREIN UNLESS THE COURT IS NOTIFIED IN WRITING OF A CHANGE IN ADDRESS.

THE DEFENDANT PROMISES TO

- APPEAR WHENEVER REQUIRED BY THE COURT AND AT ALL STAGES OF THE PROCEEDING
- SUBMIT TO THE ORDERS OF THE COURT
- NOT LEAVE THE STATE WITHOUT WRITTEN PERMISSION OF THE COURT
- COMPLY WITH ANY RESTRICTIONS OR CONDITIONS OF BAIL AND ALL ATTACHED ORDERS OF THE COURT

82508

THE UNDERSIGNED HEREBY AFFIRMS, UNDER PENALTY OF CONTEMPT, THAT HE/SHE CAN BE NOTICED AT THE ADDRESS LISTED BELOW.

X Ernest Taylor
DEFENDANT'S SIGNATURE

(PLEASE PRINT)

ADDRESS: [redacted]

PHONE#: X [redacted]

☐ DEFENDANT UNABLE TO FILL IN INFORMATION AND INFORMATION WAS FILLED IN BY A DEPUTY.

THE UNDERSIGNED HEREBY FUTHER AFFIRMS, UNDER PENALTY OF PERJURY, THAT HE/SHE IS AN AUTHORIZED REPRESENTATIVE OF THE INDICATED COMMERCIAL SURETY COMPANY, WHICH IS AUTHORIZED TO DO BUSINESS IN THE STATE OF LOUISIANA.

COMMERICAL SURETY AGENT SIGNATURE

(PLEASE PRINT)

AGENT NAME: R Branum

AGENT ADDRESS: 8520 Vet Memorial Blvd

LA 70807

PHONE #: [redacted]

AGENCY NAME: Bail Link

AGENCY ADDRESS: 8520 Vet Memorial Blvd.

LA 70807

POWER OF ATTORNEY #: BR2810099

Accredited

IF LESS THAN 100%, AMOUNT FOR WHICH SURETY IS OBLIGATED: _____

THE UNDERSIGNED PERSONAL SURETY HEREBY FURTHER AFFIRM, UNDER PENALTY OF PERJURY, AS FOLLOWS:

- I AM A RESIDENT AND CITIZEN OF THE STATE OF LOUISIANA, AND AM NOT AN ATTORNEY, JUDGE, NOR MINISTERIAL OFFICER OF ANY COURT (CLERK, REPORTER, DEPUTY SHERIFF OR POLICE OFFICER)
- I HAVE NOT RECEIVED, AND WILL NOT RECEIVE, ANY FEE OR OTHER COMPENSATION FOR POSTING THIS BOND.
- I HAVE A NET WORTH (VALUE OF PROPERTY LESS DEBTS) EQUAL TO THE AMOUNT OF THIS BOND, AND CERTIFY AS CORRECT THE ATTACHED LISTING OF PROPERTY AND DEBTS.
- IF THIS BOND IS UNSECURED, I FURTHER AFFIRM THAT I AM THE PERSON AUTHORIZED BY COURT ORDER TO EXECUTE THIS BOND.
- I ACKNOWLEDGE THAT ANY FALSE OR FRAUDULENT STATEMENTS HEREIN MAY SUBJECT ME TO CRIMINAL PROSECUTION AND PENALTIES, INCLUDING FINE AND IMPRISONMENT, FOR CONTEMPT OF COURT.

PERSONAL SURETY SIGNATURE

(PLEASE PRINT)

ADDRESS: _____

PHONE#: _____

RACE: _____ SEX: _____ DOB: _____

SSN: _____

DL#: _____

IF LESS THAN 100%, AMOUNT FOR WHICH SURETY IS OBLIGATED: _____

CASH DEPOSIT RECEIVED:

AMOUNT: $ _____ DATE: _____

FROM: ☐ DEFENDANT ☐ OTHER (IF OTHER, COMPLETE BELOW)

SIGNATURE: _____

NAME: _____

ADDRESS: _____

PHONE #: _____

DOB: _____ SSN: _____

(ATTACH ADDITIONAL SURETY PAGE IF NEEDED FOR MULTIPLE SURETIES)

SHERIFF'S FEE:

☐ $15 PAID ☐ WAIVED (DISTRICT COURT ORDER REQUIRED)

BOND FEE:

☑ $15 PAID

SWORN TO AND SIGNED BEFORE ME, AND BOND ACCEPTED ON THIS 15 DAY OF October 2012

D. Larkin

A TRUE COPY

MAY 21 2014

Admin. Spec. I Of City Court
Chief Dpy. Clerk Of Court

BATON ROUGE CITY COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CITY OF BATON ROUGE **CASE: 12-CR-106939S**

VERSUS

ERNEST TAYLOR **JUDGE ALEXANDER**

****

MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes defendant, Ernest Taylor ("Taylor"), who moves to quash the indictments filed in connection with this case as follows:

1.

Count 1 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor's violation of Baton Rouge City Ordinance §13:95.3 (POSS OF WEAPONS WHERE ALC BEV SOLD/CONSUMED) on October 13, 2012.

2.

Baton Rouge Code of Ordinances §13:95.3 is unconstitutional on its face and/or as applied in this case, as it seeks to prohibit conduct protected by the Louisiana Constitution, and laws passed pursuant to the Louisiana Constitution, namely Article I, Section 11 of the Louisiana Constitution of 1974 and La. R.S. 32:292.1.

3.

Count 2 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor's violation of Baton Rouge City Ordinance §13:108 (RESISTING AN OFFICER) on October 13, 2012.

4.

Count 2 of the Misdemeanor Affidavit does not give a plain, concise and definite written statement of the essential facts constituting the offense charged. The Affidavit does not allege facts that, if proven, would establish a violation of §13:108. Rather, the facts memorialized in the arresting officer's narrative establish that Taylor did not violate §13:108.

5.

Count 3 of the Misdemeanor Affidavit filed in connection with this case alleges Taylor's violation of Baton Rouge City Ordinance §11:283 (FAIL. TO DIM HEADLIGHT) on October 13, 2012.

6.

Count 3 of the Misdemeanor Affidavit does not give a plain, concise and definite written statement of the essential facts constituting the offense charged. The Affidavit does not allege facts that, if proven, would establish a violation of §11:283.

WHEREFORE DEFENDANT PRAYS that the indictments in this case be quashed.

Respectfully Submitted,

Christopher D. Glisson
Terrence J. Donahue Jr.
McGlynn, Glisson & Mouton
340 Florida Street
Baton Rouge, LA 70801
Phone: (225) 344-3555
Fax: (225) 344-3666
chris@mcglynnglisson.com
joe@mcglynnglisson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Motion to Quash has been filed with the Clerk for Baton Rouge City Court on October 29, 2013, and that a copies were sent to the City Prosecutor's Office by facsimile transmission to (225) 389-7656.

Terrence J. Donahue, Jr.

FILED
BATON ROUGE CITY COURT
CRIMINAL/TRAFFIC DIVISION
2013 OCT 29 PM 1:50
DEPUTY CLERK OF COURT

CERTIFIED
TRUE COPY
OCT 31 2013
By:
Deputy Clerk

BATON ROUGE CITY COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CITY OF BATON ROUGE **CASE: 12-CR-106939S**

VERSUS

ERNEST TAYLOR **JUDGE ALEXANDER**

****

ORDER

Considering the foregoing Motion to Quash:

IT IS ORDERED that the Motion to Quash is set for the 8th day of November, 2013 in Room No. 321 of Baton Rouge City Court. @ 10 a.m.

Signed on this 30th day of October, 2013 at Baton Rouge, Louisiana.

William M. Alexander
JUDGE

FILED
BATON ROUGE CITY COURT
CRIMINAL/TRAFFIC DIVISION
2013 OCT 29 PM 1:50
Elizabeth Sanders 82879
DEPUTY CLERK OF COURT

CERTIFIED
TRUE COPY
OCT 31 2013
By: Deputy Clerk

BATON ROUGE CITY COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CITY OF BATON ROUGE CASE: 12-CR-106939S

VERSUS

ERNEST TAYLOR JUDGE ALEXANDER

****

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

NOW INTO COURT, through undersigned counsel comes defendant, Ernest Taylor ("Taylor"), who respectfully submits this Memorandum in Support of his Motion to Quash, submitted concurrently herewith.

I. Introduction

On October 13, 2012, defendant Ernest Taylor ("Taylor") was arrested by officers of the Baton Rouge City Police Department and charged with violating three city ordinances. *See* Misdemeanor Affidavit and Police Report, attached as Exhibit A. Taylor was cited with a violation of Baton Rouge Code of Ordinances §13:95.3, and had three lawfully possessed firearms confiscated, based solely on the alleged presence of his vehicle in the parking lot of an establishment that sells alcohol. Taylor was also charged with violating Baton Rouge Code of Ordinances §13:108, despite the fact that the arresting officer's report makes clear that Taylor had not been placed under arrest at the time of his alleged "resistance." Finally, Taylor was charged with violating Baton Rouge Code of Ordinances §11:283, which requires the operator of a motor vehicle to use the lowermost distribution of light when approaching or following other vehicles. For the reasons that follow, each of these indictments should be quashed.

II. Facts

Accompanying the misdemeanor affidavit charging Taylor with violations of the Baton Rouge Code of Ordinances is a non-notarized Affidavit of Probable Cause signed by Corporal Patrick Wenneman, and a police report providing a narrative of the events of October 13, 2012. *See* Ex. A, pp. 3,12.[1] According to these documents, Baton Rouge City Police Officers allegedly observed Taylor's vehicle leaving an establishment that served alcohol in the early morning hours of October 13, 2012. *Id.* While Officer Wennemann approached and inspected Taylor's

[1] Defendant disputes the facts appearing in the affidavit of probable cause and the police report, but will assume their accuracy solely for the purpose of the present Motion.

vehicle, Officer James Thomas escorted Taylor to the rear of his police cruiser. *Id.* at 12. When Thomas "grabbed" Taylor's arm for the purpose of "escorting" him, Taylor backed away, but did not flee. *Id.* Thomas and Wennemann then placed Taylor under arrest, applied handcuffs, put Taylor in the back of Thomas' cruiser, and read him his Miranda rights. *Id.* The officers confiscated three of Taylor's rifles – two that had been in plain sight upon approaching the vehicle, and one that was located in the trunk. *Id.*

III. Law and Argument

An individual's criminal prosecution is instituted by the filing of an information or affidavit (referred to as an "indictment"), which is designed to serve as the basis of a trial. La. C.Cr.P. 934(6),(7). An indictment is a plain, concise, and definite written statement of the essential facts constituting the offense charged. La. C.Cr.P. Art. 464. When an indictment fails to charge an offense that is punishable under a valid statute or ordinance, the defendant is entitled to have the indictment quashed. La. C.Cr.P. Art. 532(1)

A. §13.95.3 Is Unconstitutional

Baton Rouge is a municipality that has a home rule charter that pre-dates the enactment of the Louisiana Constitution of 1974. *See City of Baton Rouge v. Williams,* 661 So.2d 445, 447 (La. 1995). A preexisting home rule charter's powers to initiate legislation is limited by the constraint that the local government may not exercise its power inconsistently with the Louisiana Constitution. *New Orleans Campaign for a Living Wage v. City of New Orleans,* 825 So.2d 1098, 1103 (La. 2002); citing *City of New Orleans v. Board of Comm'rss of Orleans Levee Dist.,* 640 So.2d 237, 242 (La. 1994). Thus, "home rule" municipalities do not enjoy complete autonomy from the State government, but are rather limited "by the constitution, laws permitted by the constitution, or its own home rule charter. *Id.; citing Morial v. Smith & Wesson Corp.,* 785 So.2d 1, 14 (La. 2001). Where a local ordinance conflicts with a provision of the State constitution, or with a statute that was passed pursuant to a reasonable exercise of the State's police power, it is rendered invalid. *Id.* at 1105. In the present case, there can be no doubt that §13.95.3 conflicts with both provisions of the Louisiana Constitution, and with at least one statute passed pursuant to a reasonable exercise of the State's police power.

§13.95.3, entitled "Possession of weapons where alcoholic beverages are sold and/or consumed" provides as follows:

> (a) It shall be unlawful for any person to have in his possession a firearm, or other instrumentality customarily used or intended for probable use as a dangerous weapon,

in any premises where alcoholic beverages are sold and/or consumed on the premises except the owner or lessee of the premises, or their employees, sheriffs, deputy sheriffs, state police, city police, constables, town marshals, or persons vested with police power when in the actual discharge of their duties.

(b) Any sheriff, deputy sheriff, state police, city police, constables, town marshals, or persons vested with police power, may search any person found in any place where alcoholic beverages are sold and/or consumed on the premises, and shall confiscate any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon which such peace officer may find; this search shall be limited to only weapons, unless there is probable cause for a wider search. Any person who enters a place where alcoholic beverages are sold and/or consumed on the premises does, by the mere fact of entering, consent to a search of his person for any firearm or other instrumentality customarily used or intended for probable use as a dangerous weapon while on said premises, by any sheriff, deputy sheriff, state police, constable, town marshal or persons vested with police power, without a warrant.

(c) The phrase, "... premises where alcoholic beverages are sold and/or consumed on the premises" shall include all of the licensed premises, including the parking lot.

(d) Any gun or other instrumentality customarily used or intended for probable use as a dangerous weapon found on any person while on the premises of a place where alcoholic beverages are sold and consumed may be used as evidence in court.

(e) Whoever commits the crime of possession of a weapon where alcoholic beverages are sold and/or consumed shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than six (6) months, or both. Additionally, the court may order the forfeiture of the weapon in accordance with law.

By its clear and unambiguous language, §13.95.3 forbids possession of any weapon (not just a firearm), on the premises of any establishment that either sells or permits consumption of alcoholic beverages – even where the weapon is located in a vehicle in the establishment's parking lot.

From January 1, 1975 to December 5, 2012, Article I, Section 11 of the Louisiana Constitution of 1974 stated that "[t]he right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person." The Louisiana Supreme Court subsequently made clear that this provision guaranteed each citizen the right to possess firearms that were not concealed on his person. *See State v. Nelson,* 367 So.2d 317, 318 (La. 1979) ("The carrying of an unconcealed weapon is not a special privilege or advantage enjoyed by a police officer. Each citizen is guaranteed the right to keep and bear arms not concealed on his person."). In addition, on July 2, 2008, La. R.S. §32:292.1 became effective. This statute, entitled "Transportation and Storage of Firearms in Privately Owned Motor Vehicles" provides that "a person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area. Finally, on December 10, 2012, Art. I, §11 of the Louisiana Constitution was amended to provide that "[t]he right of each citizen

to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny."

Clearly, the provisions of §13.95.3 serve to restrict rights guaranteed to Louisiana citizens by virtue of the Louisiana Constitution and La. R.S. 32:292.1. While the laws of the State guarantee that individuals will be able to transport their lawfully-possessed firearms inside their vehicles, §13.95.3 purports to give officers of the Baton Rouge City Police the discretion to arrest individuals who choose to exercise this right, and to also confiscate their firearms. There is an undeniable conflict between §13.95.3 and the laws of the State of Louisiana, and in the face of such conflict the ordinance must give way. It is of no moment that §13.95.3 applies only where a firearm is being possessed on the "premises" of an establishment that either serves or sells alcohol. The ordinance explicitly includes the parking lot in the definition of "premises," and as evidenced by this case, §13.95.3 is actually *enforced* in situations where the weapons never left the owner's vehicle. As the vast majority of gas stations within East Baton Rouge Parish sell alcoholic beverages, any citizen that exercises the right to transport and store firearms in a personal vehicle would be subject to arrest, and their firearms subject to seizure pursuant to §13.95.3, anytime they stopped to get gas. As §13.95.3 conflicts with Art. I, §11 of the Louisiana Constitution, and with La. R.S. 32:292.1, Count 1 of the Misdemeanor Affidavit should be quashed.

B. Taylor Did Not Violate §13:108

Count 2 appearing in the Misdemeanor Affidavit charges Taylor with violating §13:108 of the Baton Rouge Code of Ordinances, entitled "Resisting an officer." Specifically, the affidavit charges that Taylor "did intentionally resist, oppose or obstruct OFC. J. THOMAS acting in his official capacity and authorized to make a lawful arrest when ERNEST TAYLOR knew or had reason to know he was acting in his official capacity. §13:108 provides as follows:

> (a) Resisting an officer is the intentional opposition or resistance to, or obstruction of, an individual acting in his official capacity and authorized by law to make a lawful arrest, lawful detention or seizure of property, or to serve any lawful process or court order, when the offender knows or has reason to know that the person arresting, detaining, seizing property, or serving process is acting in his official capacity.
>
> (b) The phrase "obstruction of" as used herein shall, in addition to its common meaning, signification and connotation mean the following:
>
> 1) Flight by one sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest;
>
> 2) Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is incarcerated in jail;

3) Refusal by the arrested or detained party to give his name and make his identity known to the arresting or detaining officer or providing false information regarding the identity of such party to the officer;

4) Congregates with others on a public street and refuses to move on when ordered by the officer.

(c) The word "officer" as used herein means any peace officer, as defined in R.S. 40:2402, and includes deputy sheriffs, municipal police officers, probation and parole officers, firefighters, and wildlife enforcement agents.

(d) Whoever commits the crime of resisting an officer shall be fined not more than five hundred dollars ($500.00) or be imprisoned for not more than six (6) months, or both.

As the text of §13:108 makes evident, in order for an individual to violate its provisions, the officer who is resisted must be "authorized by law to make a lawful arrest, lawful detention or seizure of property." As set forth in the previous section, however, the officers were not authorized by law to arrest Taylor or confiscate his firearms on the basis of §13.95.3, as his right to possess and transport lawfully-owned firearms is guaranteed by the laws of the State of Louisiana.

In addition, the facts as stated in the Police Report narrative provide further justification for quashing Count 2. The facts delineated in the Police Report narrative clearly establish that Taylor allegedly resisted Officer Thomas' "escort" prior to being placed under arrest, and does not indicate that Taylor made any attempt to flee. As Taylor was not attempting to flee from the officers after being notified that he was being placed under arrest, he would not be in violation of §13:108(b)(1). Similarly, as Taylor had not been placed under arrest prior to allegedly "resisting" Officer Thomas' escort, he would not be in violation of §13:108(b)(2). As with Count 1, Count 2 of the Misdemeanor Affidavit should be quashed.

C. Taylor Did Not Violate §11:283

Count 3 appearing in the Misdemeanor Affidavit charges Taylor with violating §11:283 of the Baton Rouge Code of Ordinances, entitled "Headlamps; when low beam required." §11:283 states as follows:

> Whenever a motor vehicle is being operated on a street of this city between sunset and sunrise, or at such times as atmospheric conditions require the use of headlamps on the vehicle, the operator of such vehicle must dim the lights to the lowermost distribution of light when approaching an oncoming vehicle within five hundred (500) feet, or when following another vehicle within two hundred (200) feet to the rear.

By its plain language, §11:283 serves to require the operator of a vehicle to "dim the lights to the lowermost distribution of light" when approaching or following vehicles within certain distances. Neither the Misdemeanor Affidavit, nor any other source of information identifies any vehicle

that Taylor was either approaching or following, and §11:283 is therefore inapposite. For that reason, Count 3 of the Misdemeanor Affidavit must also be quashed.

IV. Conclusion

For those reasons appearing above, Defendant Ernest Taylor respectfully requests that Counts 1 - 3 appearing in the Misdemeanor Affidavit issued in connection with this case be quashed.

Respectfully Submitted,

Christopher D. Glisson
Terrence J. Donahue Jr.
McGlynn, Glisson & Mouton
340 Florida Street
Baton Rouge, LA 70801
Phone: (225) 344-3555
Fax: (225) 344-3666
chris@mcglynnglisson.com
joe@mcglynnglisson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Memorandum in Support of Motion to Quash has been filed with the Clerk for Baton Rouge City Court on October 29, 2013, and that a copies were sent to the City Prosecutor's Office by facsimile transmission to (225) 389-7656.

Terrence J. Donahue, Jr.

CERTIFIED
TRUE COPY
OCT 31 2013
By: _____
Deputy Clerk

FILED
BATON ROUGE CITY COURT
CRIMINAL/TRAFFIC DIVISION
2013 OCT 29 PM 1:50
Elizabeth Sanders 8287
DEPUTY CLERK OF COURT

CR/DISM

CITY OF BATON ROUGE

versus

4/28/14	Ernest Taylor	14-CR-1069395
DATE	DEFENDANT	NUMBER

NOW INTO COURT, through the City Prosecutor's Office, comes the City of Baton Rouge, and with respect, moves to dismiss the charge(s) in the above styled and numbered case, for the reason that:

1._____ The evidence obtained thus far is insufficient to justify prosecution.
2._____ The complaining witness has requested that the prosecution be discontinued - see signed statement.
3._____ Citation or affidavit is inconsistent with evidence obtained.
4._____ The defendant is deceased. See attached.
5._____ The defendant has been advised to refrain from any other violations of this nature in the future. If billed or summoned again, all charges will be considered for prosecution.
6.✓ _____

_____

_____

WHEREFORE, the City of Baton Rouge respectfully prays that the aforesaid be dismissed, as indicated above on this 28 day of April, 2014.

Lisa Freeman, City Prosecutor	**Anderson Dotson, 1st Asst. Pros.**	**Devon Bardin, Asst. Pros.**	**Joseph Scott, Asst. Pros.**
Ayn Stehr, Asst. Pros.	**Brandi Lawrence, Asst. Pros.**	**Granton Miller, Asst. Pros.**	**Paolo Messina, Asst. Pros.**
Blake Pino, Asst. Pros.	Jeff Traylor		

ORDER

The matter having been submitted to the Court, it is ordered that the motion to dismiss, filed herein by the prosecution, is **GRANTED** or **DENIED** and the case is further ordered **DISMISSED**.

Baton Rouge, Louisiana, this 28th day of April, 2014.

Hilton M. Alexander
JUDGE, BATON ROUGE CITY COURT

A TRUE COPY

MAY 21 2014

E. Milton #9159

Admin. Spec. 1 Of City Court
Chief Dpy. Clerk Of Court

03/2014

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

EXHIBIT A
AFFIDAVIT OF TERRENCE J. DONAHUE, JR.

I, Terrence J. Donahue, Jr., declare as follows, under penalty of perjury:

1. I am over eighteen years of age and a resident of Baton Rouge, Louisiana. Unless I state otherwise, I have personal knowledge of the matters stated in this affidavit, and, if called as a witness, I could competently testify to the facts appearing herein..

2. I am an attorney licensed to practice law in the State of Louisiana, and represent Plaintiff, Ernest Taylor, in the above-captioned lawsuit.

3. This declaration is offered in support of Plaintiffs' Motion for Entry of Default Judgment and Memorandum in Support, filed concurrently herewith.

4. Beginning at least as early as July 19, 2013, counsel for Ernest Taylor began requesting the return of firearms owned by Taylor which had been confiscated by the Baton Rouge Police Department on October 13, 2012. *See* July 19, 2013 Letter, attached hereto as Exhibit 1; E-mail chain from July 30-31, attached as Exhibit 2.

5. Numerous additional requests for the return of Taylor's firearms were made to individuals acting on behalf of the City of Baton Rouge, including an explicit request to Mr. Tedrick Knightshead, counsel for the City of Baton Rouge, on April 28, 2014.

6. In a phone conversation on April 28, 2014, I indicated to Mr. Knightshead that the criminal charges levied against Ernest Taylor by the City of Baton Rouge had been dismissed by Judge Yvette Alexander of Baton Rouge City Court that same day, and once again requested the return of Mr. Taylor's firearms.

7. Several weeks later, on May 22, 2014, I sent written correspondence to Mr. Knightshead, again requesting the return of Mr. Taylor's firearms. *See* May 22, 2014 Correspondence, attached hereto as Exhibit 3.

8. As of today, May 30, 2014, the guns seized by the Baton Rouge Police Department from Ernest Taylor on October 13, 2012 have still not been returned.

9. All of the statements appearing above are true and correct to the best of my knowledge.

Dated this 30th day of May, 2014 in Baton Rouge, Louisiana.

Terrence J. Donahue, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME on the 30 day of MAY, 2014, to certify which witness my hand and official seal.

Notary Public in and for the
State of Louisiana Eric Edward Hebert #28605

My Commission Expires at death

Daniel J. McGlynn
Christopher D. Glisson
Benjamin P. Mouton

John R. Morganti
Paul B. Lauve
Terrence J. Donahue, Jr.
Eric E. Helm
Amanda Washington

Of Counsel

Patrick B. Kennedy

McGlynn Glisson & Mouton
Attorneys at Law

340 Florida Street
Baton Rouge, Louisiana 70801
Mailing Address: Post Office Box 1909
Baton Rouge, LA 70821
Telephone: 225.344.3555
800.725.3555
Fax 225.344.3666

Mickey Skyring
Office Manager

Writer's E-mail Address:
chris@mcglynnglisson.com

July 19, 2013

Lisa Freeman
City Prosecutor
Baton Rouge City Prosecutor's Office
233 St. Louis St., Room 255
Baton Rouge, LA 70802

RE: City of Baton Rouge v. Ernest Taylor
Case No.: 09-CR-105976S

Dear Freeman:

I have been retained by Ernest Taylor to represent him in connection with the above-referenced matter. I am enclosing a copy of the Incident Report for your review. You will notice that Mr. Taylor was charged with Municipal Ordinance 13:95.3 (Possession of Weapon Where Alcoholic Beverages as Sold and/or Consumed). In connection with this Citation, the Baton Rouge City Police seized two (2) guns: a Hi Point 9mm and a Squires Bingham .22 caliber.

A review of the Ordinance under which Mr. Taylor is charged is clearly overly-broad. Further, while the wording of the Ordinance is unconstitutionally overly-broad, the application by your office is also overly-broad.

In Mr. Taylor's instance, he is being charged with having guns in his car in the parking at a bar. He is not being charged because he brought the guns into the establishment, only that he simply had the guns in his car. A review of this Ordinance would prohibit anyone from pulling into the parking lot where alcohol is sold. This

would include hunters stopping for gasoline at a convenience store that sold beer. It would also prevent someone from going to a supermarket while having guns in their vehicle. This Statute is absolutely over-broad and unconstitutional.

Please accept this letter as our request for immediate return of the weapons seized. Should you be willing or unable to return Mr. Taylor's weapons immediately, we will accept that as proof of deprivation of his constitutional rights under color of State law and immediately file a 1983 action against the City of Baton Rouge.

Awaiting your word, I am

Very sincerely yours,

Christopher D. Glisson

cc: Ernest Taylor

CDG:Scs
Enclosure

Sheila

From: Lisa Freeman [LFreeman@brgov.com]
Sent: Wednesday, July 31, 2013 3:05 PM
To: Sheila
Subject: RE: Taylor 09-CR-105976S

Got it. We will contact your office later today.
Thank you.

Lisa Freeman
City Prosecutor
Baton Rouge City Court
233 St. Louis Street,
Suite 255
Baton Rouge, LA 70802
225-389-3119 Office Phone
225-389-7604 Office Fax

From: Sheila [mailto:Sheila@mcglynnglisson.com]
Sent: Wednesday, July 31, 2013 9:44 AM
To: Lisa Freeman
Cc: Chris Glisson
Subject: FW: Taylor 09-CR-105976S

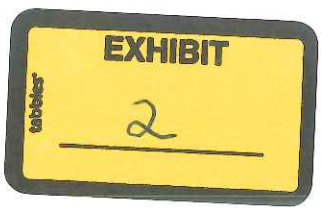
Lisa, please see attached.

Sheila Coleman-Smith
Paralegal
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: sheila@mcglynnglisson.com

From: Chris Glisson
Sent: Tuesday, July 30, 2013 4:39 PM
To: Sheila
Subject: Fwd: Taylor 09-CR-105976S

Please scan and send letter with attachments.

Christopher D. Glisson
McGlynn Glisson & Mouton
340 Florida St.
Baton Rouge, La. 70801
(225) 344-3555



Begin forwarded message:

From: Lisa Freeman <LFreeman@brgov.com>
Date: July 30, 2013, 4:32:48 PM CDT
To: Chris Glisson <Chris@mcglynnglisson.com>
Cc: Pat Johnson <PJOHNSONCP@brgov.com>
Subject: RE: Taylor 09-CR-105976S

Chris,
I do not have your request on behalf of Mr. Taylor. I will check with my assistant prosecutors to see where this is and get back to you.
I'd be more than happy to meet with you about this. Thanks for your patience.
Lisa

(Pat: Please have the prosecutors locate this file along with Mr. Glisson's request for return of seized property—thanks)

Lisa Freeman
City Prosecutor
Baton Rouge City Court
233 St. Louis Street,
Suite 255
Baton Rouge, LA 70802
225-389-3119 Office Phone
225-389-7604 Office Fax

From: Chris Glisson [mailto:Chris@mcglynnglisson.com]
Sent: Tuesday, July 30, 2013 9:40 AM
To: Lisa Freeman
Cc: Joe Donahue; Sheila
Subject: Taylor 09-CR-105976S

Lisa
On July 19th I sent you a request for the return of my clients guns improperly seized pursuant to Municipal Ordinance 13:95.3. As of todays date I have not heard any response from your office. I would appreciate the opportunity to speak with you concerning this matter.

Please give me a call so we can discuss this further.

McGlynn Glisson Mouton

Christopher D. Glisson
MCGLYNN, GLISSON & MOUTON
340 Florida Street
Baton Rouge, LA 70801
Phone: 225-344-3555
Fax: 225-344-3666
Email: chris@mcglynnglisson.com

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Paul B. Lauve
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Eric E. Helm
Amanda Washington

Of Counsel

Patrick B. Kennedy

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Mailing Address: Post Office Box 1909
Baton Rouge, LA 70821
Telephone: 225.344.3555
800.725.3555
Fax 225.344.3666

Mickey Skyring
Office Manager

May 22, 2014

VIA U.S. MAIL, FACSIMILE, and ELECTRONIC MAIL

Tedrick K. Knightshead
Special Assistant Parish Attorney
Office of the Parish Attorney – Litigation Division
10500 Coursey Blvd., Ste. 205
Baton Rouge, LA 70816
Fax: (225) 389-8736
Knightsheadlaw@gmail.com

RE: ***Ernest Taylor v. City of Baton Rouge, et al.***
Case No. 3:13-CV-579-BAJ-RLB
USDC – Middle District of Louisiana

Dear Mr. Knightshead:

This letter is being sent in further follow-up to our telephone conversation several weeks ago relating to the Baton Rouge Police Department's arrest of Mr. Ernest Taylor. Despite repeated requests for information relating to this incident, and assurances that information would be provided, to date I have received nothing from your office. As you should be aware, the allegations made against your clients are very serious in nature, and the refusal to engage in attempts to resolve these issues serves only to further complicate the matter. If you have any information relating to Mr. Taylor being taken into custody by officers of the Baton Rouge Police Department in April, 2014, I ask that you provide it to me immediately.

Furthermore, as you are also aware, the criminal charges levied against Mr. Taylor by the City of Baton Rouge were dismissed by Judge Alexander on April 28, 2014. *See* Order, attached as Exhibit A. As a result, there is absolutely no

EXHIBIT
tabbies
3

justification for the persistent refusal of your clients to place Mr. Taylor back into possession of his lawfully-held firearms. Still, despite repeated amicable demands to return Mr. Taylor's wrongfully-taken firearms, the property remains in the possession of the City of Baton Rouge.

Each day that your clients deprive Mr. Taylor of the rights guaranteed to him under the Constitutions of Louisiana and the United States of America increases the damages for which they will eventually be held responsible. I cannot fathom the reasoning by which your clients continue to withhold Mr. Taylor's property, nor your continued refusal to address this issue. In the event that your clients wish to return Mr. Taylor's property, I ask that delivery be made to me at the address indicated at the top of this correspondence. Given the continued harassment of Mr. Taylor by individuals employed by the Baton Rouge Police Department, I think further interaction between our clients would be ill-advised.

Please feel free to contact me at (225) 344-3555 or through e-mail at joe@mcglynnglisson.com to set up a time to deliver Mr. Taylor's property, or if you have any questions. Thank you very much for your attention to this matter.

Regards,

Terrence J. Donahue, Jr.
Counsel for Ernest Taylor