

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

NATIONAL RIFLE ASSOCIATION)	
OF AMERICA, INC., DR. KATHRYN TYLER,)	
VAN F. WELTON, and BRETT BENSON,)	
)	
Plaintiffs,)	
)	No. 08 CV 3697
v.)	
)	Honorable Milton I. Shadur
THE CITY OF CHICAGO,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ “PREVAILING PARTY”
STATUS IN RELATION TO THEIR MOTION FOR ATTORNEY’S FEES**

Pursuant to this Court’s order of October 26, 2010, Plaintiffs hereby submit this memorandum in support of their status as “prevailing parties” for purposes of an award of attorney’s fees under 42 U.S.C. § 1988.

Introduction

42 U.S.C. § 1988(b) provides in part: “In any action or proceeding to enforce a provision of section[] . . . 1983 . . . , the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs” The actions of plaintiffs National Rifle Association *et al.* (“NRA”) challenging Chicago’s and Oak Park’s handgun bans were brought to enforce a provision of § 1983, which allows an action for “deprivation of any rights, privileges, or immunities secured by the Constitution” Plaintiffs claimed that the bans infringed on the right of the people to keep and bear arms, which is guaranteed by the Second and Fourteenth Amendments.¹

¹*See Moore v. Muncie Police and Fire Merit Com’n*, 312 F.3d 322, 326 (7th Cir. 2002) (§ 1983 action requires showing of conduct “committed by a person acting under color of state law” which “deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States”).

McDonald v. City of Chicago, 130 S.Ct. 3020 (2010), in which the NRA plaintiffs were Respondents in Support of Petitioners, ruled that the Second Amendment applies to the States through the Fourteenth Amendment. Chicago and Oak Park immediately recognized that their handgun bans were indefensible after *McDonald*, which effectively struck them down. The repeals of their bans *after* the Supreme Court decision do not render the cases moot for purposes of recovery of attorney's fees. Accordingly, the NRA plaintiffs are prevailing parties.

I. THE NRA PLAINTIFFS ARE “PARTIES”

The NRA plaintiffs were “parties” in the District Court, the Court of Appeals, and the Supreme Court. *See National Rifle Ass’n v. Village of Oak Park*, 617 F. Supp.2d 752 (N.D. Ill. 2008), *aff’d sub nom.*, *National Rifle Ass’n v. City of Chicago*, 567 F.3d 856 (7th Cir. 2009), *rev’d sub. nom.*, *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), *cert. granted & remanded*, *NRA v. City of Chicago*, 2010 WL 2571876 (U.S. 2010).

The Supreme Court originally granted the petition for a writ of certiorari of the McDonald litigants, but not of the NRA litigants. In *McDonald*, the NRA litigants remained parties as “Respondents in Support of Petitioners.” As provided by Supreme Court Rule 12.6:

All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner’s time schedule for filing documents Parties who file no document will not qualify for any relief from this Court.²

The NRA litigants were “parties to the proceeding in the court whose judgment [was] sought to be reviewed,” i.e., *National Rifle Ass’n v. City of Chicago*, 567 F.3d 856 (7th Cir. 2009). As “parties entitled to file documents” in the Supreme Court, they were “respondent[s]

²*See Black v. United States*, 130 S.Ct. 2963, 2966 n.1 (2010) (noting party who “is a respondent in support of petitioners who qualifies for relief under this Court’s Rule 12.6”).

who support[ed] the position of [the] petitioner[s],” and thus met “the petitioner’s time schedule for filing documents.” Thus, they filed opening³ and reply briefs⁴ according to the petitioners’ time schedule.

The Court granted NRA’s motion for divided argument. *McDonald v. City of Chicago*, 130 S.Ct. 1317 (2010) (*mem.*). Oral argument on behalf of the NRA was conducted by Paul D. Clement, former U.S. Solicitor General. See *McDonald v. City of Chicago*, 2010 WL 710088, *17-28 (Oral Argument) (Mar. 2, 2010).

After rendering the *McDonald* decision, the Supreme Court entered the following order pursuant to NRA’s petition for a writ of certiorari:⁵ “The Court reversed the judgment below in *McDonald v. Chicago*, 561 U.S. ____ (2010). Therefore, the petition for a writ of certiorari is granted, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further proceedings.” *NRA v. Chicago*, 2010 WL 2571876 (U.S. 2010).

On remand, the Seventh Circuit issued the following order:

After the Supreme Court’s decision in *McDonald v. Chicago*, 130 S.Ct. 3020 (2010), both the City of Chicago and the Village of Oak Park repealed the ordinances that had been the subject of this litigation. Accordingly, we vacate the district court’s judgments and remand with instructions to dismiss as moot. See *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). . . .⁶

³See Brief for Respondents the National Rifle Association of America, Inc., *et al.*, in Support of Petitioners, 2009 WL 3844394 (Nov. 16, 2009).

⁴See Reply Brief for Respondents the National Rifle Association of America, Inc., *et al.* in Support of Petitioners, 2010 WL 581625 (Jan. 29, 2010).

⁵See NRA’s Petition for a Writ of Certiorari, 2009 WL 1556563 (Jun. 3, 2009), and NRA’s Reply to Brief in Opposition, 2009 WL 2491800 (Aug. 14, 2009).

⁶*Munsingwear* involved an injunction suit alleging violation of price controls which became moot on appeal when the prices were decontrolled. *Id.* at 37. “The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss.” *Id.* at 39.

If plaintiffs believe that the repeals entitle them to attorneys' fees under 28 U.S.C. §1988, they may file appropriate motions in the district court. We do not express any opinion on the question whether the repealers, enacted before the Supreme Court's decision could be implemented on remand, affect the availability of fees under the approach of *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001).

National Rifle Association of America, Inc., et al. v. City of Chicago, Ill., et al., Nos. 08-4241, 08-4243, & 08-4244 (7th Cir., Aug. 25, 2010).

As shown below, plaintiffs won prevailing-party status by the Supreme Court's decision that the Second Amendment is incorporated into the Fourteenth Amendment. Defendants recognized that this decision doomed their handgun bans and necessitated repeal thereof.

II. THE NRA PLAINTIFFS ARE "PREVAILING PARTIES" BASED ON MCDONALD'S HOLDING THAT THE SECOND AMENDMENT APPLIES TO THE STATES, RENDERING THE HANDGUN BANS INDEFENSIBLE

The McDonald Petitioners and NRA Respondents in Support of Petitioners are parties who prevailed in that they secured the Supreme Court decision that the Second Amendment applies to the States through the Fourteenth Amendment, thereby rendering the municipal handgun bans indefensible. As *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3021 (2010), states:

Two years ago, in *District of Columbia v. Heller*, 554 U.S. —, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia's, but *Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States*. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States. (Emphasis added.)

In holding that the Second Amendment is "fully" applicable to the States, *McDonald* rejected the municipalities' argument "to treat the right recognized in *Heller* as a second-class

right, subject to an entirely different body of rules than the other Bill of Rights guarantees” *Id.* at 3044. The Court noted: “Municipal respondents therefore urge us to allow state and local governments to enact any gun control law that they deem to be reasonable, including a complete ban on the possession of handguns in the home for self-defense.” *Id.* at 3046. In response, the Court explained:

Unless we turn back the clock or adopt a special incorporation test applicable only to the Second Amendment, municipal respondents' argument must be rejected. Under our precedents, if a Bill of Rights guarantee is fundamental from an American perspective, then, unless *stare decisis* counsels otherwise,⁷ that guarantee is fully binding on the States and thus *limits* (but by no means eliminates) their ability to devise solutions to social problems that suit local needs and values.

Id. at 3046.

Heller invalidated the handgun ban of a federal enclave, and the standard would be no different for the States: “The relationship between the Bill of Rights' guarantees and the States must be governed by a single, neutral principle.” *Id.* at 3032-33 (also rejecting “the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights.”) (citation omitted).⁸ Accordingly, *McDonald* concluded:

In *Heller*, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. Unless considerations of *stare decisis* counsel otherwise, a provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. . . . We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings.

⁷See *id.* at 30 (grand jury and civil jury provisions not incorporated).

⁸See also *id.* at 3104 (Stevens, J., dissenting) (“the gravamen of this complaint is plainly an appeal to keep a handgun or other firearm of one's choosing in the home.”).

Id. at 3050.

In sum, *McDonald* held that the Second Amendment fully applies to the States through the Fourteenth Amendment, rendering the handgun bans at issue indefensible. The NRA plaintiffs achieved their entire litigation goals with the judicial *imprimatur* of the Supreme Court, which in turn caused Chicago and Oak Park to repeal their handgun bans.

III. CHICAGO AND OAK PARK ACKNOWLEDGED THAT THE DECISION RENDERED THEIR HANDGUN BANS INDEFENSIBLE

In their brief to the Supreme Court, Chicago and Oak Park recognized that they could not prevail if the Second Amendment is incorporated. They conceded that their laws amounted to handgun bans, *see, e.g.*, Brief for Respondents City of Chicago *et al.*, No. 08-1521, *McDonald v. City of Chicago*, at 12 (“Chicago and Oak Park ban handgun possession nearly entirely”); *id.* at 14 (“[t]he people of Chicago . . . and Oak Park . . . have determined” to adopt “a handgun ban”). And they acknowledged that the Second Amendment as interpreted in *Heller* would be fatal to such sweeping restrictions. *See id.* at 23 (under *Heller*, “the federal government may not ban . . . handguns, no matter how dangerous they are in a particular community and no matter the benefits of doing so”); *see also id.* at 13 (“Second Amendment incorporation would severely limit such regulation”).

Before *McDonald* was rendered, Corporation Counsel Mara Georges advised: “If the Supreme Court were to find incorporation of the Second Amendment, the city’s handgun ban would be invalidated” City of Chicago, Committee on Police & Fire, Report of Proceedings, June 18, 2010, 5-6 (Appendix [“App.”] A herein). After the decision was announced, she recommended a new ordinance because “the section of our ordinance that prohibits the registration of handguns is unenforceable. It is clear that such a provision will ultimately be struck down based on the Supreme Court’s decision in the *Heller* case” *Id.*,

June 29, 2010, at 3-4 (App. B herein). Ms. Georges said that the proposed new ordinance was “drafted in response to the Supreme Court decision earlier this week in the *McDonald* case.” *Id.*, July 1, 2010, at 7 (App. C herein). She added that, on remand, “it really becomes impossible to defend it [the existing ordinance].” *Id.* at 21.⁹

Mayor Richard Daley stated: “‘It’s clear to all that our current handgun ordinance will soon be struck down by the 7th Circuit Court of Appeals. . . . With that in mind, today I want to announce our proposal to rewrite Chicago’s gun laws.’”¹⁰

In the ensuing session that repealed the handgun ban, Mayor Daley noted: “We’re here because the Supreme Court decision was rendered against the City of Chicago.” Special Meeting of the Chicago City Council (July 2, 2010).¹¹ Alderman Latasha Thomas added that “we’re following the dictates of our Supreme Court. We are responding to what they have told us we can and can’t do” *Id.* Alderman Toni Preckwinkle referred to “the Supreme Court justices that voted to strike down our handgun laws” *Id.* Alderman Ed Burke said the bill is “mandated by what the law is right now” *Id.*

Accordingly, the Chicago City Council unanimously repealed its handgun ban. Journal of Proceedings, July 2, 2010, at 96235. The enactment found: “On June 28, 2010 the Supreme Court issued its opinion in the *McDonald* case and ruled that the Second Amendment’s right to possess a handgun for self-defense in the home also applied to the states” *Id.* It stated that

⁹“What the Supreme Court has said is that the Second Amendment applies to the City, and the Second Amendment guarantees a right to a handgun in the home for self-defense. So in other words, a ban by the City on handguns will not withstand the *McDonald* decision.” *Id.*

¹⁰Mayor Daley Outlines Details of City’s New Gun Ordinance, July 1, 2010, http://mayor.cityofchicago.org/mayor/en/press_room/press_releases/2010/july_2010/0701_supreme_ct_gun.html.

¹¹http://www.chicityclerk.com/City_Council_Video/2010_Video_Meetings/July2_2010/.

“it is essential for the City Council of the City of Chicago to promptly pass an ordinance that provides for reasonable regulation of firearms *in compliance with the rulings of the United States Supreme Court . . .*” *Id.* (emphasis added).

On passage, Mayor Daley said that “Chicago’s new gun ordinance . . . addresses this week’s U.S. Supreme Court ruling The Court’s June 28 ruling effectively overturned Chicago’s previous handgun ban.”¹²

Oak Park’s voice in reaction to *McDonald* was Raymond L. Heise, Village Attorney of Oak Park, who was on the briefs as counsel in the Court of Appeals and the Supreme Court. Heise was quoted as acknowledging “a reality where Oak Park no longer has a handgun ban Heise, who as village attorney drafted Oak Park’s handgun ban in the 1980s, said Monday [June 28] that the decision means Oak Park will eventually have to rescind its ban on the possession of handguns in homes.”¹³

The proposed ordinance to repeal Oak Park’s handgun ban was on the Village’s Board agenda for July 19, 2010. The minutes reflect:

Mr. Heise gave a brief explanation of the Supreme Court decision regarding the case of *McDonald vs. Chicago, et. al.* Although the Village’s handgun ordinance was not overturned, the provision regarding the right to possess a handgun in one’s home for purposes of self defense was found to be unconstitutional. This amendment would ensure that the Village’s ordinance was in compliance with the law.¹⁴

¹²Mayor Daley Says City’s New Ordinance Addresses Supreme Court Ruling, July 2, 2010, http://mayor.cityofchicago.org/mayor/en/press_room/press_releases/2010/july_2010/0702_supreme_court.html.

¹³Marty Stempniak, “Top court kills Oak Park gun ban,” June 29, 2010, <http://www.wednesdayjournalonline.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=17855>.

¹⁴Approved Minutes - Regular Board Meeting, Village of Oak Park, July 19, 2010, p. 4, http://www.oak-park.us/public/pdfs/2010%20Minutes/07.19.10_minutes.pdf.

Ordinance 2010-0-47 repealing the handgun ban then passed unanimously.¹⁵

In sum, Chicago and Oak Park fully recognized that the ruling in *McDonald* required that they repeal their handgun bans.

IV. PLAINTIFFS PREVAILED BY SECURING A SUPREME COURT RULING WHICH NECESSITATED THE REPEAL OF THE ORDINANCES

McDonald definitively ruled that the Second Amendment applies to the States and it does so according to the same standards set forth in *Heller*, thereby rendering the handgun bans at issue impossible to defend. Recognizing that, Chicago and Oak Park prudently repealed them. Since the Supreme Court's decision materially altered the legal relationship of the parties, the repeal of the ordinances did not moot the cases for purposes of recovering attorney's fees.¹⁶

The seminal case on whether intervening legislation moots a case for "prevailing party" status is *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598, 600 (2001), which addressed the situation of "a party that has failed to secure a judgment on the merits or a court-ordered consent decree, but has nonetheless achieved

¹⁵*Id.* Heise was elsewhere quoted as saying that the "high court justices' message was clear on citizens' rights to have guns in their homes," "[t]he Supreme Court decision became the law of the land the day they released it," and the decision "found that a narrow provision of both the Chicago and Oak Park handgun ordinances was in fact unconstitutional." "Oak Park Gun Law Amended to Allow Guns in Registered Users' Homes," Sun-Times Media Wire, July 20, 2010, <http://www.myfoxchicago.com/dpp/news/metro/gun-law-legalized-oak-park-registered-users-homes-20100720>.

¹⁶As the cases discussed *infra* exemplify, a district court has collateral jurisdiction to consider petitions for attorney's fees after a case is dismissed as moot. "It is well established that a federal court may consider collateral issues after an action is no longer pending." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990). "[M]otions for costs or attorney's fees are 'independent proceeding[s] supplemental to the original proceeding and not a request for a modification of the original decree.'" *Id.* (citation omitted.) "No Article III case or controversy is needed with regard to attorney's fees as such, because they are but an ancillary matter over which the district court retains equitable jurisdiction even when the underlying case is moot. Its jurisdiction outlasts the 'case or controversy.'" *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1329 (9th Cir.1999). See also *Wisconsin v. Hotline Industries, Inc.*, 236 F.3d 363, 365 (7th Cir. 2000) ("district courts retain jurisdiction to consider collateral matters after remand and . . . attorney's fees may be awarded under a separate order").

the desired result because the lawsuit brought about a voluntary change in the defendant's conduct.” In that case, an assisted-living home failed an inspection under a State law and brought suit to challenge the requirement; the agency agreed to stay enforcement and then the State legislature repealed the requirement. The district court declared the case moot and denied fees. *Id.* at 600-01.

Precedent suggested that “a ‘prevailing party’ is one who has been awarded some relief by the court” *Id.* at 603. “[E]nforceable judgments on the merits and court-ordered consent decrees create the ‘material alteration of the legal relationship of the parties’” warranting a fee award, so that a prevailing party includes “a party who has established his entitlement to some relief on the merits of his claims, either in the trial court or on appeal.” *Id.* at 604 (citations omitted).

Buckhannon rejected the “catalyst theory” in which the mere filing of a lawsuit leads to a voluntary change by the defendant, as “there is no judicially sanctioned change in the legal relationship of the parties.” *Id.* at 605. “A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change.” *Id.* “Prevailing party” excludes “a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit (it will never be determined), has reached the ‘sought-after destination’ without obtaining any judicial relief.” *Id.* at 606.¹⁷

Plaintiffs here meet these standards. The decision in *McDonald* – not “the lawsuit” – “brought about” an *involuntary* “change in the defendant’s conduct.” 532 U.S. at 600. There

¹⁷Concurring, Justice Scalia noted that status as a prevailing party “*presumes* the existence of a judicial ruling.” *Id.* at 614 (Scalia, J., concurring). The term does not include a case in which “the merits of the plaintiff's case remain unresolved – when, for all one knows, the defendant only ‘abandon[ed] the fray’ because the cost of litigation – either financial or in terms of public relations – would be too great.” *Id.* at 617.

could be no higher “judicial *imprimatur* on the change” than the Supreme Court decision, which created the material alteration of the legal relationship of the parties. *Id.* at 605. It cannot be said that the NRA “simply fil[ed] a nonfrivolous but nonetheless potentially meritless lawsuit” which reached its objective “without obtaining any judicial relief.” *Id.* at 606. Chicago and Oak Park did not capitulate based on the mere filing of lawsuits, but fought hard all the way to the Supreme Court. Their frank concessions that *McDonald* left them no choice but to repeal their bans demonstrated a prudent desire to comply with the decision and to avoid potential future liability.¹⁸ The repeals were anything but “voluntary.”¹⁹

Buckhannon was applied in *Palmetto Properties, Inc. v. County of Dupage*, 375 F.3d 542 (7th Cir. 2004), which parallels this case. There, the district court ruled adult-entertainment zoning regulations to be unconstitutional. Like here, the County understood that the court ruling rendered its ordinance void and promptly repealed it. No need existing to enter a final judgment, the case was dismissed as moot. *Id.* at 543-46. The lack of a final judgment declaring the ordinance unconstitutional did not negate plaintiff’s prevailing party status:

It would defy reason and contradict the definition of “prevailing party” under *Buckhannon* and our subsequent precedent to hold that simply because the district court abstained from entering a final order formally closing the case – a result of the Defendant’s assertions that it would repeal the challenged portion of the ordinance – Palmetto somehow did not obtain a “judicially sanctioned change” in the parties’ legal relationship.

Id. at 549-50.

¹⁸Further enforcement of the handgun ban and failure to pass an ordinance to allow lawful handgun possession would have exposed Chicago and Oak Park to civil rights lawsuits without any qualified immunity defenses in that *Heller-McDonald* rendered handgun possession a “clearly-established right.” See *Baird v. Renbarger*, 576 F.3d 340, 345 (7th Cir. 2009) (“In ascertaining whether a right is clearly established, this court looks to controlling Supreme Court and 7th Circuit precedent.”).

¹⁹The Supreme Court routinely remands for the lower courts to engage in subsequent proceedings. *Buckhannon* does not suggest that after a locality loses on the dispositive issue in a higher court, it can then quickly capitulate to avoid fees.

Palmetto Properties noted that in *Buckhannon*, the repeal of the challenged law mooted the case “*before* the district court made *any* substantive rulings.” *Id.* at 550. *Buckhannon* thus “construed the change in the defendants’ conduct as *voluntary*, lacking the necessary judicial imprimatur.” *Id.* But here, the district court ruled favorably on the constitutional claims, and “the County repealed the ordinance only *after* that determination had been made and presumably *because of it*.” *Id.* “To be sure, the Defendants were free to moot the case *before* the summary-judgment ruling, in which case the action would have been voluntary. They did not. Hence, their action is most persuasively construed as involuntary – indeed exhibiting judicial imprimatur.” *Id.*

In short, “the County’s ‘voluntary cessation’ of the ‘challenged practice’ . . . was done *after* the district court determined its illegality.” *Id.* The plaintiff “secured a favorable substantive ruling from the district court, which, in turn, prompted the Defendants to repeal the zoning restriction.” *Id.* at 551. The plaintiff was thus a prevailing party entitled to attorney’s fees. *Id.* at 551-52. The same occurred here – the ordinances were repealed *after* the Supreme Court’s ruling.

Similarly, in *Southworth v. Board of Regents of University of Wisconsin System*, 376 F.3d 757, 768 (7th Cir. 2004), students obtained a court ruling that a university policy on student fees was not viewpoint neutral and violated the First Amendment. “[I]n response to that ruling, the University altered the mandatory fee system,” which thus “resulted from a court-ordered change in the legal relationship between the plaintiff and the defendant.” *Id.* (quotation marks deleted). The students were prevailing parties, and *Buckhannon* was inapplicable, because “the University substantially revised its funding system in response to a court ruling” *Id.* at 771. Again, Chicago and Oak Park repealed their handgun bans in response to a court ruling.

In *Young v. City of Chicago*, 202 F.3d 1000 (7th Cir. 2000), a preliminary injunction was issued to allow demonstrations at a political convention. The City appealed after the convention ended, and the court “dismissed the appeal as moot, the injunction having been limited to demonstrations at that convention.” *Id.* Attorney’s fees awarded on remand were proper:

The City appeals from that award, arguing that since the suit became moot before a definitive determination of its merits by this court, the plaintiffs cannot obtain fees. Not so. A defendant cannot defeat a plaintiff’s right to attorneys’ fees by taking steps to moot the case after the plaintiff has obtained the relief he sought, for in such a case mootness does not alter the plaintiff’s status as a prevailing party.

Id. at 1000-001.

While *Young* was decided before *Buckhannon*, its rule was reaffirmed in *Dupuy v. Samuels*, 423 F.3d 714, 720 (7th Cir. 2005), which explained: “We upheld the award despite the fact that a final judgment on the merits had not been entered. . . . In *Young*, the litigation manifestly had come to an end *despite* the lack of a final judgment on the merits.” This case is even clearer, in that the *McDonald* ruling was acknowledged by defendants themselves as a determination of the merits.

“A judgment in a party’s favor” constitutes a “material alteration of the legal relationship of the parties,” even where “everyone denies liability as part of the underlying settlement, and the judge takes no position on the merits.” *Riviera Distributors, Inc. v. Jones*, 517 F.3d 926, 928 (7th Cir. 2008) (consent decree). Where one party “obtained a favorable judgment” because the other party “threw in the towel,” that did not make the first party “less the victor than it would have been had the judge granted summary judgment or a jury returned a verdict in its favor.” *Id.*

Given their decisive defeat in the Supreme Court, it does not matter that the municipalities here, quite responsibly, threw in the towel before the cases were remanded.²⁰

By contrast, fees were denied in *Walker v. Calumet City, Ill.*, 565 F.3d 1031, 1032-33 (7th Cir. 2009), in which the City found plaintiff to be in compliance with challenged rental code provisions and assured her that they would not be enforced against her. (Here, defendants did not remotely suggest that the handgun bans would not be enforced.) *Walker* explicitly contrasted *Palmetto Properties*, where “prior to the change in circumstances, the court made a decision on the merits in favor of the plaintiff.” *Id.* at 1037.²¹

Finally, in *Federation of Advertising Industry Representatives, Inc. v. City of Chicago*, 326 F.3d 924, 933 (7th Cir. 2003), the plaintiff challenged Chicago’s advertising restrictions, but the opinion of the Court of Appeals “did not provide Federation any relief at all; rather, it further limited Federation’s ability to advertise.”²² After the plaintiff filed a motion for summary judgment but before Chicago responded, in a wholly separate case, the Supreme Court invalidated similar restrictions under the First Amendment. *Id.* at 928. The fact that Chicago then repealed its restrictions did not make the plaintiff a prevailing party, in that “neither Federation nor the City were parties to that case.” *Id.* at 933. Even if the Supreme Court

²⁰ Plaintiffs would not be prevailing parties if the defendant “changed its position without any judicial input.” *C.Z. ex rel. Ziemba v. Plainfield Community Unit School Dist. No. 202*, 680 F. Supp.2d 950, 955 (N.D. Ill. 2010) (citation omitted). However, where a favorable decision led to a change in policy and then a dismissal for mootness, it was “the height of absurdity” for a defendant to urge “the absence of court approval when any need for that was attributable to its own surrender” *Id.* at 956. It is “sufficient finality” that is “enough to trigger an award.” *Id.*

²¹ See also *Zessar v. Keith*, 536 F.3d 788, 797 (7th Cir. 2008) (fees denied where effect of partial summary judgment disputed, defendants sought an interlocutory appeal, and the law then changed. “Cases will sometimes arise where, despite there being no final judgment or consent decree, the legal relationship of the parties will be changed due to a defendant’s change in conduct brought about by a judicial act exhibiting sufficient finality. *Palmetto* was such a case.” *Id.* at 798).

²² See also *Franzen v. Ellis Corp.*, 543 F.3d 420, 431 (7th Cir. 2008) (“So far as the merits go, plaintiffs not only did not prevail but also suffered dismissal of their complaint with prejudice.”).

decision supported the plaintiff's position, "it was not a judgment that changed the legal relationship between the parties in *this* case – and that is what *Buckhannon* requires." *Id.* NRA is a prevailing party here because it *was* a party in *McDonald*, which changed the legal relationship between the parties in this case.

In sum, the NRA plaintiffs were prevailing parties in *McDonald*, which created the material alteration of the legal relationship of the parties by ruling that the Second Amendment applies to the States according to the same standards it applies to the federal government, thereby rendering the handgun bans indefensible. The repeals of the subject ordinances after the Supreme Court's ruling, based on the admissions of Chicago and Oak Park that compliance with the ruling required such repeals, thus does not moot the cases for purposes of recovery of attorney's fees.

CONCLUSION

This Court should find and decide that Plaintiffs National Rifle Association *et al.* are "prevailing parties" for purposes of an award of attorney's fees under 42 U.S.C. § 1988.

Dated: December 15, 2010.

**NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC., Dr. KATHRYN TYLER,
VAN F. WELTON and BRETT BENSON,**
Plaintiffs

BY: s/ Stephen A. Kolodziej
One of Their Attorneys

Stephen P. Halbrook
Attorney at Law
3925 Chain Bridge Road, Suite 403
Fairfax, VA 22030
Tel. (703) 352-7276
Fax (703) 359-0938

Stephen A. Kolodziej
Brenner, Ford, Monroe & Scott, Ltd.
33 North Dearborn Street, Suite 300
Chicago, IL 60602
Tel. (312) 781-1970
Fax (312) 781-9209

APPENDIX

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

NATIONAL RIFLE ASSOCIATION)	
OF AMERICA, INC., DR. KATHRYN TYLER,)	
VAN F. WELTON,)	
and BRETT BENSON,)	
)	
Plaintiffs,)	
)	
vs.)	No. 08 CV 3697
)	
)	Judge Milton I. Shadur
THE CITY OF CHICAGO,)	
)	
Defendant.)	

DECLARATION OF STEPHEN A. KOLODZIEJ

I, Stephen A. Kolodziej, am competent to state, and declare the following based upon my personal knowledge:

1. I am designated local counsel for the plaintiffs in the above-captioned matter.
2. I am also designated local counsel for plaintiffs in the case of *Benson, et al. v. City of Chicago, et al.*, No. 10-CV-4184, currently pending before the Honorable Judge Ronald A. Guzman of this Court.
3. Attached hereto is a copy of the City of Chicago's Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1)(A) that was served upon me by defendants on October 15, 2010 in the *Benson* matter. In item No. 1 of that disclosure, the City of Chicago identified the record of proceedings held by the Chicago City Council Committee on Police and Fire on June 18, June 29, and July 1, 2010, and a copy of that record was enclosed with the Disclosure.
4. Attached to the Memorandum in Support of Plaintiffs' "Prevailing Party" Status in Relation to their Motion for Attorneys' Fees that has been filed with this Court is an Appendix,

which consists of excerpts from the record of proceedings that was served upon me by the City of Chicago with its Rule 26(a)(1)(A) Disclosure in the *Benson* lawsuit, and that was identified in that Disclosure as the record of proceedings held by the Chicago City Council Committee on Police and Fire on June 18, June 29, and July 1, 2010.

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

Dated December 9, 2010.

s/ Stephen A. Kolodziej

Stephen A. Kolodziej
Brenner, Ford, Monroe & Scott, Ltd.
33 North Dearborn Street, Suite 300
Chicago, Illinois 60602
312-781-1970
skolodziej@brennerlawfirm.com



City of Chicago
Richard M. Daley, Mayor

Department of Law

Mara S. Georges
Corporation Counsel

Constitutional and Commercial
Litigation
Suite 1230
30 North LaSalle Street
Chicago, Illinois 60602-2580
(312) 744-4342
(312) 742-3925 (FAX)
<http://www.cityofchicago.org>

October 15, 2010

Jesse Panuccio
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
Delivered via U.S. Mail


Stephen Kolodziej
BRENNER FORD MONROE & SCOTT LTD.
33 N. Dearborn Street, Suite 300
Chicago, IL 60602
Delivered via messenger

Re: Benson v. City of Chicago, 10 C 4184

Dear Counsel:

Enclosed please find the Defendants' Rule 26(a)(1)(A) disclosures and the legislative record described therein.

Sincerely,


Andrew Worseck
312-744-7129



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

BENSON, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	No. 10-CV-4184
)	Judge Ronald A. Guzman
CITY OF CHICAGO, ET AL.,)	Magistrate Judge Geraldine Soat
)	Brown
Defendants.)	

DEFENDANTS' INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1)(A)

Defendants City of Chicago and Mayor Richard M. Daley, by and through their attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, hereby submit their Fed. R. Civ. P. 26(a)(1)(A) disclosures.

I. Rule 26(a)(1)(A)(i) & (ii).

Defendants state that in supporting their claims or defenses, they may use the record of proceedings held by the Chicago City Council Committee on Police and Fire ("Committee") on June 18, June 29, and July 1, 2010. A copy of that record is being produced herewith.

Defendants may also use the proceedings of the Chicago City Council on July 2, 2010. Those proceedings have not been transcribed but can be viewed at:

http://www.chicityclerk.com/City_Council_Video/2010_Video_Meetings/July2_2010/ .

Further, (1) without waiving any arguments as to the proper standard(s) of scrutiny that govern Plaintiffs' various claims, and the factual material that is relevant under a particular standard or to a particular claim, (2) reserving all objections to any discovery propounded by Plaintiffs upon Defendants or upon third-parties, including but not limited to the objections that

the discovery seeks irrelevant information, or improper or premature expert discovery, and (3) without warranting that the following individuals or subject matters are within the permissible bounds of discovery, Defendants state that the name, address and telephone number (if known), and subject matter of testimony of individuals who testified at the Committee proceedings identified above, or of individuals who authored studies, reports, or other documents that were discussed at or submitted during those proceedings, are contained within the record of the proceedings. Further, Defendants state that these disclosures are preliminary, that their investigation continues, and that they reserve the right to supplement these disclosures.

II. Rule 26(a)(1)(A)(iii).

Not applicable.

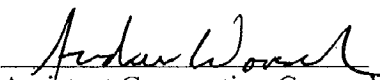
III. Rule 26(a)(1)(A)(iv).

Not applicable.

Dated: October 15, 2010

Respectfully submitted,

MARA S. GEORGES,
Corporation Counsel for the City of Chicago

By: 
Assistant Corporation Counsel

Michael A. Forti
Mardell Nereim
Andrew W. Worseck
William Macy Aguiar
Rebecca Alfert Hirsch
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division

30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 744-9018 / 6975 / 7129 / 4216

Attorneys for Defendants

CERTIFICATE OF SERVICE

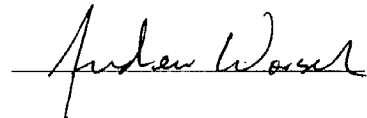
I, Andrew Worseck, an attorney, hereby certify that on this, the 15th day of September, 2010, I caused a copy of the forgoing **Defendants' Initial Disclosures Pursuant to Fed. R. Civ.**

P. 26(a)(1)(A), to be served by first-class United States mail, postage prepaid, on:

Charles J. Cooper
David H. Thompson
Jesse Panuccio
Cooper & Kirk, PLLC
1523 New Hampshire Ave., NW
Washington, DC 20036

and by messenger delivery on:

Stephen Kolodziej
BRENNER FORD MONROE & SCOTT LTD.
33 N. Dearborn Street, Suite 300
Chicago, IL 60602

A handwritten signature in cursive script, appearing to read "Andrew Worseck", written over a horizontal line.

APPENDIX A

ORIGINAL

1

CITY OF CHICAGO
COMMITTEE ON POLICE AND FIRE

RE: HEARING TO DISCUSS GUN VIOLENCE AND
FIREARM REGISTRATION REGULATION

REPORT OF PROCEEDINGS of a
meeting of the City of Chicago, Committee on Police
and Fire, taken on June 18th, 2010, 10:00 a.m.,
City Council Chambers, Chicago, Illinois, and
presided over by ALDERMAN ANTHONY A. BEALE,
Chairman.

Reported by: Bernice Betts, C.S.R.

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY 000001

1 ALDERMAN BEALE: It's 10:08, and the
2 Committee on Police and Fire will now come to
3 order. We have a public hearing today to discuss
4 gun violence and firearm registration regulation.
5 And we have quite a few people that want to
6 testify. If there's anyone who wishes to testify,
7 if you can please fill out the appropriate paper
8 work and get it turned in.

9 We're going to try to move this
10 hearing along as quickly as possible, because we
11 have a lot of testimony.

12 First, we want to bring Mara Georges
13 up from Corporation Counsel to discuss the
14 importance of having gun registration, and to
15 discuss some gun violence.

16 CORPORATION COUNSEL GEORGES: For the record,
17 my name is Mara Georges G-e-o-r-g-e-s. I'm the
18 Corporation Counsel for the City of Chicago.
19 Mr. Chair, Members of the City Council's Police and
20 Fire Committee and honored guests.

21 After a dully noted finding that
22 firearms, and especially handguns, play a major

1 role in the commission of homicides, aggravated
2 assaults and armed robberies on March 19th of 1982,
3 Alderman Edward M. Burke moved to pass, and the
4 Chicago City Council enacted, by a vote of 30 yeas
5 and 11 nays a firearms ordinance, which renders
6 most handguns unregistrable in the city of Chicago.

7 The ordinance, still in effect today
8 with modification, allows for the registration of
9 rifles and shotguns that are not sawed off, short
10 barreled or assault weapons. It requires
11 registrable firearms to be registered before being
12 possessed in Chicago and registration must be
13 renewed annually. Failure to renew shall "cause
14 the firearm to become unregistrable." The
15 ordinance provides that no person may possess "any
16 firearm which is unregistrable" within the city
17 confines.

18 On June 26th of 2008, 26 years after
19 the enactment of that handgun ban the Illinois
20 State Rifle Association and various other
21 Plaintiffs in the McDonald case filed in the
22 Federal District Court for the Northern District of

1 Illinois a challenge to the city's handgun ban and
2 certain registration requirements contained in the
3 ordinance.

4 The Plaintiffs in the McDonald case
5 alleged in pertinent part that Chicago's handgun
6 ban violates the Second Amendment as allegedly
7 incorporated into the 14th Amendment's due process
8 clause and privileges or immunities clause.

9 The following day, June 27th of
10 2008, the National Rifle Association filed two
11 similar lawsuits. One challenging Chicago's
12 handgun ban, and the other Oak Park's. McDonald
13 and the two NRA cases proceeded before the same
14 District Court Judge, and on December 18th of 2008,
15 Judge Milton I. Schader (phonetic) entered judgment
16 on the pleadings in favor of the city and Oak Park
17 in all three cases on the basis that the Second
18 Amendment does not apply to the states.

19 The Seventh Circuit Court of Appeals
20 consolidated the cases and affirmed the District
21 Court's decisions on June 2nd of 2009. The Court
22 held that it was bound by previous decisions of the

1 United States Supreme Court refusing to apply the
2 Second Amendment to the states.

3 The Supreme Court granted certiorari
4 in the McDonald case on September 30th of 2009 and
5 heard oral argument on March 2nd of 2010. The
6 issue of incorporation of the Second Amendment to
7 the states is the issue being considered by the
8 United States Supreme Court.

9 The Supreme Court has publicized
10 that opinions will be issued on Monday, June 21st
11 and Monday, June 28th, and experts believe the
12 court will also release opinions on Thursday,
13 June 24th, and Wednesday, June 30th.

14 When the Supreme Court issued its
15 opinion in the Heller case involving Washington,
16 D.C.'s handgun ban, the opinion was issued on the
17 last day of the term. If the Supreme Court were to
18 follow suit, that day would be June 30th of this
19 year.

20 If the Supreme Court were to find
21 incorporation of the Second Amendment, the city's
22 handgun ban would be invalidated. As the Court's

1 decision in Heller has already found a right to
2 possess a handgun in the home for self-defense
3 purposes.

4 Assuming hypothetically that the
5 city's handgun ban were to be invalidated, the city
6 could seek approval from the City Council for a new
7 ordinance regulating firearms. The Council could
8 consider limitations on number of firearms,
9 insurance and training requirements, ballistics
10 testing, and minimum qualifications for handgun
11 eligibility.

12 In today's hearing a number of
13 individuals who have spent years studying various
14 aspects of the firearms industry will testify.
15 These individuals have specific recommendations
16 regarding potential aspects of a new ordinance.
17 They realized that of the 412 homicides caused by
18 firearms in the city of Chicago during 2008, 98
19 percent of those or 402 resulted from handguns.
20 Thank you.

21 CHAIRMAN BEALE: Thank you. Any questions?
22 I'm sorry, not so fast. Alderman Rugai.

APPENDIX B

COPY

CITY OF CHICAGO
COMMITTEE ON POLICE AND FIRE

REPORT OF PROCEEDINGS of a
meeting of the City of Chicago, Committee on
Police and Fire, taken on June 29, 2010, 1:00
p.m., City Council Chambers, Chicago, Illinois,
and presided over by ALDERMAN ANTHONY BEALE,
Chairman.

Reported by: Donna T. Wadlington, C.S.R.

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000103

1 CHAIRMAN BEALE: It's 1:10. The
2 Committee on Police and Fire is now called to
3 order. We're going to go out of regular order
4 of business. Alderman Pope.

5 ALDERMAN POPE: Thank you,
6 Mr. Chairman.

7 I'd like to make a motion that
8 we reconsider the five items that were heard at
9 yesterday's hearing, all that were approved by
10 this body. So a motion to reconsider, please.

11 CHAIRMAN BEALE: There's a motion to
12 reconsider.

13 All in favor? All opposed?

14 The no's have it. Those items
15 will be reported out tomorrow at City Council.

16 The item before us now is off
17 the supplemental agenda regarding the gun ban.
18 We have expert testimony from quite a few
19 people. First, we're going to bring up Mara
20 George from Corporation Counsel.

21 CORPORATION COUNSEL GEORGES:
22 Alderman, do you mind if I turn this around?

1 CHAIRMAN BEALE: Sure. Do you want me
2 to get that for you?

3 CORPORATION COUNSEL GEORGES: Good
4 afternoon. My name is Mara Georges,
5 G-e-o-r-g-e-s. I'm the Corporation Counsel of
6 the City of Chicago.

7 Mr. Chair, members of the
8 Police and Fire Committee, yesterday in a
9 landmark five to four decision that reversed 130
10 years of case law, the United States Supreme
11 Court ruled that the Second Amendment of the
12 U.S. Constitution applies to state and local
13 governments, as well as the Federal Government.

14 As the Mayor said, this
15 decision was disappointing but not surprising
16 given the Court's ruling in the *Heller* case.

17 I'm sure that many of you have
18 questions about what this ruling means for
19 Chicago's current ordinance and the extent to
20 which we can regulate firearms in the future.

21 The Supreme Court did not
22 strike down any part of our ordinance. The

1 Court reversed the lower court decision
2 upholding our handgun ban and remanded the case
3 to the Seventh Circuit Court of Appeals for
4 further proceedings. Therefore, technically,
5 our current ordinance is still in effect until
6 the Seventh Circuit invalidates it. However, as
7 a practical matter, the section of our ordinance
8 that prohibits the registration of handguns is
9 unenforceable.

10 It is clear that such a
11 provision will ultimately be struck down based
12 on the Supreme Court's decision in the *Heller*
13 case, in which the Court ruled that Washington,
14 DC's handgun ban violated the Second Amendment.
15 Therefore, it is important that we continue to
16 work to craft a new ordinance that promotes safe
17 and responsible gun ownership and complies with
18 the Court's ruling in this case.

19 As we move forward, I want to
20 emphasize that the case before the Supreme Court
21 involved only the ban on the ownership of a
22 handgun in the home for self-defense purposes.

APPENDIX C

COPY

CITY OF CHICAGO
COMMITTEE ON POLICE AND FIRE

REPORT OF PROCEEDINGS of a
meeting of the City of Chicago, Committee on
Police and Fire, taken on July 1, 2010, 10:00
a.m., City Council Chambers, Chicago, Illinois,
and presided over by ALDERMAN ANTHONY BEALE,
Chairman.

Reported by: Donna T. Wadlington, C.S.R.

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000307

1 ALDERMAN BALCER: I'd like to call the
2 meeting to order of the Police and Fire
3 Committee.

4 And I'd also like to recess it
5 at this time until the Chairman returns.
6 Recessed until the Chairman gets here.

7 (WHEREUPON, the Committee is
8 in recess.)

9 CHAIRMAN BEALE: It's 11:25. The
10 Committee on Police and Fire will continue its
11 recessed meeting.

12 The sole purpose of this
13 meeting is to consider on the agenda an
14 ordinance introduced directly into Committee by
15 Corporation Counsel concerning responsible gun
16 ownership.

17 On June 18th and June 29th,
18 the Committee held a hearing on gun violence and
19 took testimony from experts on possible policies
20 to reduce such violence in our city. These
21 hearings contemplated the impact of the United
22 States Supreme Court's ruling -- *McDonald*

1 decision on the City's handgun ban and the
2 future policies the City can enact to address
3 gun violence.

4 More than 30 people testified
5 at the hearing. We heard from numerous experts
6 on gun violence from the Corporation Counsel,
7 other legal experts, from the Superintendent of
8 the Chicago Police Department, and other CPD
9 officers, from business owners, from leaders of
10 our faith-based community, community
11 organizations and others who have lost loved
12 ones to gun violence and even some from the
13 Plaintiffs in the *McDonald* case.

14 Among those experts testified
15 were Robyn Thomas, David Hemenway, Thom Mannard,
16 Tom VandenBerk, Mark Walsh, Dr. Marie Crandall,
17 Claude Robinson, Annette Holt, Juliet Leftwich,
18 and Daniel Webster.

19 I would also like to
20 acknowledge one of the experts we invited.
21 Dr. Jens Ludwig, a Professor of Social Service
22 Administration, Law and Public Policy at the

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000309

1 University of Chicago's Crime Lab, was unable to
2 testify but we also distributed -- more
3 testimony from -- his testimony was also
4 submitted to the record.

5 During prior hearings we also
6 distributed and placed on the record testimony
7 from several of our other experts, as well as
8 references from other work of numerous and other
9 studies in case and effect of gun violence and
10 recommend that we -- what we can do to address
11 the problem.

12 From the evidence that we
13 presented at the hearing, the Committee would
14 like to make the following findings:

15 Chicago, like other big
16 cities, have serious problems of gun violence.
17 The total economic and social costs of gun
18 violence in Chicago are substantial. Gun
19 violence severely impacts Chicago's criminal
20 justice and health care system. Gun violence
21 foment fears in Chicago's communities, which
22 can harm property value and drive residents from

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000310

1 -- and also fleeing our neighborhoods. It also
2 can increase -- I'm sorry.

3 An increase in the number of
4 guns in circulation can contribute to an
5 increase in the number of incidents of gun
6 violence. The presence of guns can also make
7 crime more lethal and would be -- also it can be
8 -- I'm sorry. I need some water.

9 An increase in the number of
10 guns in circulation contribute to an increase in
11 the number of incidents of gun violence. The
12 presence of guns makes crime more lethal than
13 others when guns are not present. Handguns are
14 extremely -- to an extreme degree
15 disproportionately contribute to gun violence
16 and death in Chicago.

17 A strong permitting system
18 from firearms owners is vital. A vigorous
19 firearm registration system is necessary.
20 Registration gives law enforcement essential
21 information about firearm ownership allowing
22 first responders to determine in advance whether

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000311

1 individuals may be -- may have firearms.

2 Shootings -- I'm sorry.

3 Shootings in the home are a major cause of
4 death, particularly in children and minors,
5 requiring owners to secure or store their
6 firearms when minors are present.

7 Requiring owners to quickly
8 notify law enforcement of the lost, theft or
9 destruction of their firearm aid law enforcement
10 in reducing illegal gun trafficking and
11 identifying the -- and prosecuting gun
12 traffickers.

13 Limiting the number of guns in
14 circulation is essential to public safety.
15 Limiting registration of handguns to one person
16 per month would help limit handgun injuries and
17 also reduce crime.

18 The carrying of firearms in
19 public should be prohibited. In a dense urban
20 environment like Chicago, public carrying
21 presents a high risk that everyday interpersonal
22 conflicts will result in injury.

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000312

1 The public safety requires a
2 ban on assault weapons.

3 Okay. Mara, suggested that I
4 submit the rest of this for the record, and we
5 will get right into testimony. Thank you.

6 Corporation Counsel, Mara
7 Georges. And I do apologize. I'm extremely
8 tired you all. It's been a long day.

9 CORPORATION COUNSEL GEORGES: Good
10 morning, Chairman Beale and members of the
11 Police and Fire Committee. My name is Mara
12 Georges, G-e-o-r-g-e-s. I'm the Corporation
13 Counsel for the City of Chicago.

14 With me and to my right is
15 Rose Kelly, who is the drafter of the
16 Responsible Gun Ownership Ordinance, which is
17 before you today and on which we urge your
18 support.

19 This was an ordinance drafted
20 in response to the Supreme Court decision
21 earlier this week in the *McDonald* case. We
22 believe that this ordinance effectively balances

1 the right to possess a gun in the home for the
2 purpose of self-defense, with the substantial
3 risks to public safety that are associated with
4 guns.

5 The proposed ordinance is
6 comprehensive. It regulates the sale and
7 possession of firearms, establishes a permit
8 process for gun owners, and includes a
9 registration requirement for guns that allows
10 for the registration of handguns.

11 First, I think it's easiest to
12 begin by describing what is banned under this
13 ordinance.

14 Banned are the sale of
15 firearms in the city of Chicago, certain types
16 of ammunition, including metal and armor
17 piercing bullets and 50 caliber bullets, the
18 sale of any ammunition to minors, laser-sight
19 accessories, silencers, and mufflers, certain
20 types of guns including sawed-off shotguns, 50
21 caliber rifles, machine guns, short-barreled
22 rifles and assault weapons, and handguns deemed

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000314

1 unsafe by the Police Superintendent.

2 These guns are unregistrable
3 and it is illegal to possess an unregistrable
4 weapon within the city of Chicago. Also banned
5 are shooting galleries and target ranges, except
6 for law enforcement purposes.

7 Consistent with the Supreme
8 Court's ruling, we are allowing the possession
9 of handguns in a limited circumstance. That is,
10 within the home for self-defense purposes.

11 So that there is no confusion
12 about the scope of handgun possession within the
13 city of Chicago, home is defined in the
14 ordinance as the inside of a person's dwelling
15 unit which is traditionally used for living
16 purposes. Not the garage, not porches, not the
17 stairs, not the back, side or front yard space.
18 Dormitories, hotels, and group living homes are
19 excluded from the definition of home within the
20 ordinance.

21 In addition, there is a two
22 step registration requirement for guns. The

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000315

1 first step requires individuals to obtain a
2 Chicago Firearm Permit, a CFP, prior to owning a
3 gun. And the second step requires gun owners to
4 obtain a registration certificate for each of
5 their firearms. Both the CFP and the
6 registration certificate are issued by the
7 Chicago Police Department.

8 The ordinance imposes
9 reasonable limitations on who can obtain a CFP.
10 For example, individuals must be at least 21
11 years of age or 18 to 20 years of age with
12 parental permission to be eligible for a CFP.
13 They must possess a valid Illinois FOID card.
14 They must not have been convicted of a violent
15 crime or of two or more offenses for driving
16 under the influence of alcohol or drugs.

17 They must not have been
18 convicted of an unlawful use of weapon charge
19 involving a firearm. They must not have
20 violated any other Municipal Code provision
21 regarding possession of laser-sight accessories,
22 silencers or mufflers, or unlawful sales of

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000316

1 firearms, or otherwise be ineligible to possess
2 a firearm under any law.

3 Individuals must demonstrate
4 that they've undergone firearm safety training
5 both in a classroom and on a firing range.

6 As I previously stated, the
7 CFP must be obtained prior to taking possession
8 of any gun, and it must be renewed every three
9 years.

10 As with our previous
11 ordinance, the responsible gun ownership
12 ordinance includes a registration requirement
13 for guns. The new ordinance, however, allows
14 for the registration of handguns. A
15 registration certificate is required for every
16 firearm. The application for the registration
17 certificate must be submitted no more than five
18 business days after taking possession of the
19 gun.

20 Each applicant will be issued
21 only one registration certificate per month for
22 a handgun which must be used for the home in

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000317

1 which the applicant resides. So, in other
2 words, we're limiting the amount of handguns to
3 one per month for use within the home.

4 Individuals have 90 days after
5 the effective date of the ordinance to register
6 weapons, including guns that were not previously
7 registered, like handguns. So we're urging
8 members of the public to come in within this
9 90-day period after the ordinance's effective
10 date, assuming that this body were to approve
11 it, and register their unregistered weapons.

12 The ordinance also contains a
13 procedure for individuals who are denied either
14 a CFP or a firearm registration certificate to
15 appeal such denials.

16 I'd like to briefly discuss
17 the regulations contained in the responsible gun
18 ownership ordinance regarding where guns can be
19 possessed. These regulations are in addition to
20 any applicable state laws.

21 As I previously mentioned,
22 handguns are only allowed in the registrant's

WADLINGTON REPORTING SERVICE, INC.
(312) 372-5561

CITY000318

1 home for self-defense purposes. Long guns are
2 only allowed in the individual's home or fixed
3 place of business. You cannot possess a gun in
4 your vehicle, unless it's broken down into a
5 non-functioning state.

6 Each person who keeps or
7 possesses a firearm in his or her home must keep
8 no more than one firearm in the home assembled
9 and operable. All other firearms must be broken
10 down in a non-functioning state or have a
11 trigger lock or other mechanism making the
12 firearm temporarily inoperable.

13 In homes with minors under the
14 age of 18, guns must be kept secured, secured on
15 the person of the registrant, with trigger locks
16 or in locked boxes.

17 This ordinance also
18 establishes a gun offender registry. Any gun
19 offender, a person convicted of a gun offense,
20 who lives, works or attends school in the city
21 must register with the Police Superintendent.
22 The registry will be posted on the Police

1 Department's website and available for review by
2 the public.

3 Consequences for violating the
4 responsible gun ownership ordinance are severe.
5 Penalties include fines of \$1,000 to \$5,000 and
6 incarceration for not less than 20, nor more
7 than 90 days for certain offenses. Subsequent
8 convictions are punishable by fines of \$5,000 to
9 \$10,000 and by incarceration of not less than 30
10 days, nor more than six months, the maximum
11 allowable under state law for the City to
12 impose.

13 Further, the ordinance
14 authorizes the seizure and destruction of any
15 weapons kept in violation of the chapter. This
16 ordinance was crafted through careful discussion
17 and review. We have listened to the Council and
18 tried to accommodate the Council's wishes in
19 crafting this ordinance.

20 Further, we are confident that
21 this ordinance is consistent with the Supreme
22 Court's rulings in the *Heller* and *McDonald*

1 decisions. We are hopeful that you will support
2 it. Thank you.

3 CHAIRMAN BEALE: Thank you.

4 Any questions from the
5 committee? Alderman Rugai.

6 ALDERMAN RUGAI: Thank you,
7 Mr. Chairman.

8 We heard it discussed this
9 morning that the ages of many that commit crimes
10 of handguns are 13 to 16 year olds, and there is
11 no real punishment for those youths. As in some
12 of our previous legislation perhaps for curfew,
13 for example, we have the parents responsible and
14 they are fined in that instance.

15 Have we ever looked at or are
16 we just prohibited from making the parents
17 responsible if those young people are arrested
18 and convicted of possessing a handgun and using
19 it?

20 CORPORATION COUNSEL GEORGES: It's a
21 good point, Alderman, but the problem is, of
22 course, if we were to prosecute a minor under

1 our ordinance, typically, that goes then to
2 juvenile court where we can't be imposing our
3 ordinance as a mechanism.

4 ALDERMAN RUGAI: And not this
5 ordinance. I mean, can we do something
6 separately to make parents responsible -- you
7 know, they are responsible for their children.
8 And if they -- their children were to be found
9 with guns, could they be prosecuted?

10 CORPORATION COUNSEL GEORGES: I think
11 you raise a very good point and we will look at
12 it.

13 ALDERMAN RUGAI: I mean, because it's
14 another side of our ordinance that's before us
15 today, but it was something that stuck in my
16 mind from the press conference this morning that
17 I thought we need to be attending to that side
18 of it as well.

19 CORPORATION COUNSEL GEORGES: Yes.
20 Good point.

21 ALDERMAN RUGAI: Thank you.

22 CHAIRMAN BEALE: Alderman Balcer.

1 ALDERMAN BALCER: Thank you,
2 Mr. Chairman.

3 What is the -- are there
4 provisions in here for retired police officers
5 --

6 CORPORATION COUNSEL GEORGES: Yes.

7 ALDERMAN BALCER: -- and their right
8 to carry a -- or have weapons?

9 CORPORATION COUNSEL GEORGES: We
10 exclude many classes of people from many of the
11 ordinance requirements, and many of those
12 exclusions apply to current police officers,
13 retired police officers, current military
14 personnel and the like. So we have tried to
15 accommodate what we heard from Chairman Burke
16 and the others in hearings, that many of these
17 provisions should not apply to retired CPD.

18 ALDERMAN BALCER: So we're not --
19 people can still defend their homes if they're
20 inside of their homes?

21 CORPORATION COUNSEL GEORGES: The idea
22 is that individuals have a right to a handgun

1 within the home for self-defense purposes, and
2 we're allowing them to register one per month;
3 one of those handguns per month to have within
4 their home to use for self-defense purposes.

5 ALDERMAN BALCER: For self-defense
6 purposes. No one's right is being taken away to
7 defend their home?

8 CORPORATION COUNSEL GEORGES: Correct.

9 ALDERMAN BALCER: Good. My next
10 question and I just -- you can have long rifles
11 and shotguns except sawed-off shotguns; am I
12 correct?

13 CORPORATION COUNSEL GEORGES: That is
14 correct. We allow rifles and other long guns.

15 ALDERMAN BALCER: And you can have
16 one, two, three, four -- you can have as many as
17 you want?

18 CORPORATION COUNSEL GEORGES: Correct.

19 ALDERMAN BALCER: And you can have a
20 pistol. You can buy one pistol per month?

21 CORPORATION COUNSEL GEORGES: Correct.

22 ALDERMAN BALCER: They can have twelve

1 in a year?

2 CORPORATION COUNSEL GEORGES: Yes.

3 Each qualified applicant.

4 ALDERMAN BALCER: Can have twelve in a
5 year?

6 CORPORATION COUNSEL GEORGES: Can have
7 twelve in a year. Yes.

8 ALDERMAN BALCER: I think that's quite
9 fair. I'll be honest. I think that's quite
10 fair to a person.

11 And right now you can have as
12 many rifles that meet the requirements and
13 shotguns if you -- if you want? And they are
14 registered and so on?

15 CORPORATION COUNSEL GEORGES: Correct.
16 And that continues. That it is an unlimited
17 number.

18 ALDERMAN BALCER: That continues.
19 That -- there's no -- nothing prohibiting that.
20 There's nothing saying you can't have one rifle,
21 one shotgun. You can have --

22 I'll be honest. I think

1 that's quite fair. And quite honest, if you
2 can't defend your home with umpteen rifles and
3 shotguns and a pistol, I don't see what else a
4 person can ask for in this. Thank you.

5 CORPORATION COUNSEL GEORGES: You're
6 welcome.

7 CHAIRMAN BEALE: Alderman Fioretti.

8 ALDERMAN FIORETTI: Thank you,
9 Mr. Chairman.

10 When we started the hearing
11 the other day, you described the -- still I want
12 to refer to the decision, that the mandate would
13 probably come down within 30 days give or take,
14 correct?

15 CORPORATION COUNSEL GEORGES: Correct.

16 ALDERMAN FIORETTI: And then you said
17 at that time that we can go into court to ask
18 for some kind of advisory assistance here in the
19 drafting of this -- of this ordinance. Wasn't
20 that correct?

21 CORPORATION COUNSEL GEORGES: I don't
22 believe that's what I said. No.

1 I said when the mandate came
2 back to the Court of Appeals, the Court of
3 Appeals may ask us for briefs, position papers,
4 kind of on where we stand, saying to us, all
5 right, now in light of the decision from the
6 Supreme Court in *McDonald*, saying you have a
7 right to a handgun in your home for
8 self-defense, City, how do you defend your
9 handgun ban? And at that point it really
10 becomes impossible to defend it.

11 ALDERMAN FIORETTI: Okay. And so what
12 was legal or what is illegal out of the
13 ordinance as it existed the day before the
14 decision was handed down?

15 CORPORATION COUNSEL GEORGES: What the
16 Supreme Court has said is that the Second
17 Amendment applies to the City, and the Second
18 Amendment guarantees a right to a handgun in the
19 home for self-defense.

20 So in other words, a ban by
21 the City on handguns will not withstand the
22 *McDonald* decision.