UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., et al.,	)	
Plaintiffs,	)	
v.	)	No. 08 C 3696
VILLAGE OF OAK PARK, et al.,	)	
Defendants.	)	
NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., et al.,	)	
Plaintiffs,	)	
v.	)	No. 08 C 3697
CITY OF CHICAGO, et al.,	)	
Defendant.	)	

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS NATIONAL RIFLE ASS'N. *ET AL.* MOTION FOR ATTORNEY'S FEES

Introduction

Pursuant to this Court's order from the bench when this motion was presented at the status hearing on January 25, 2012, Plaintiffs hereby submit this supplemental memorandum. This Court sought clarification of the following two matters: (1) the time periods (historic or current) that are the basis of the various hourly rates being sought, and (2) the need for multiple attorneys and firms doing work on the litigation. As the following sets forth, the hourly rates being sought are based on the periods when the services were rendered rather than current rates. Further, this case was staffed according to an appropriate division of labor, without duplicative efforts, for a complex case litigated all the way to the Supreme Court and back.

I. HOURLY RATES FOR FEES BEING SOUGHT ARE BASED ON HISTORICAL RATES WHEN SERVICES WERE RENDERED, NOT CURRENT RATES

The hourly rates sought are the reasonable rates for the historical time periods in which services were actually rendered, not a higher, current rate reflecting the passage of time. Indeed, counsel in some instances reduced their hourly rates for this litigation or did the equivalent by disregarding time actually worked in the exercise of billing judgment. Counsel did not seek enhanced rates on the basis that being paid later has less value than being paid earlier, even though case law supports either such an enhancement or interest.

The hourly rates claimed for Goodwin Procter, which worked on this case only during the Supreme Court phase, were the standard hourly rates that the firm members charged commencing October 1, 2009. Those rates increased in 2010, but the increased rates are not sought here.[1]

For most of this litigation (104.1 hours), Paul Clement billed at the rate of $1020 per hour beginning on January 15, 2010, and concluding on February 10, 2011.[2] Three other attorneys in King & Spalding/Bancroft had modest increases in hourly rates over the same periods.[3]

The rates claimed for Cooper and Kirk were the rates actually charged by the firm at the time services were rendered.[4] While rates for two attorneys increased annually, those were the actual rates charged during each of those years.[5]

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[1]Exhibit 7, Martin Declaration ["Dec."] 4, Ex. C. Exhibits 1-8 were previously filed with the Motion for Attorney's fees. Exhibits 9 and 10 are filed herewith with this supplemental memorandum.

[2]Joint Statement Pursuant to Local Rule 54.3(e) at 2 ("Jt. State."), Ex. A to Motion for Attorney's Fees; Exhibit 8, Clement Dec., Ex. 1-A, at 2-3. Clement initially billed at $925 per hour for 15 hours beginning on December 1, 2009, and at $970 for 5 hours beginning January 4, 2010. Ex. 1-A, at 1.

[3]Jt. State. 2-3; Exhibit 8, Clement Dec., Ex. 1-A.

By way of comparison, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the three major firms representing D.C. had, during 2007-08, "standard rates" for attorneys "20 + years" out of law school of $760 to $950 per hour.[6] One of those firms, O'Melveny & Meyers, filed an amicus brief in the Supreme Court in this case, as did other firms charging as much as $750, $905, and $1,075 per hour.[7]

Based on all of the above comparative rates, which are based on the previous years identified and not today, and in recognition of his unique qualifications in this case, Stephen Halbrook claims $800 per hour as a reasonable fee. See Memo. in Support of NRA Motion for Attorney's Fees at 7, 11. Defendants may not take advantage of the low fee Halbrook actually charged NRA out of a partial pro bono motivation. As this Court noted in *Strama v. Peterson*, 561 F. Supp. 997, 998-99 (N.D. Ill.1983):

> Losing civil rights defendants have not been successful in challenging awards to lawyers acting pro bono, or salaried lawyers, on the ground plaintiffs would not in fact have had to pay the amount of fees actually awarded. . . . . Were the rule otherwise, the civil rights violator would stand to obtain a windfall from the fact the plaintiff had to resort to a Legal Assistance Foundation lawyer or an ACLU volunteer lawyer.

In its action against Oak Park, NRA was represented by Freeborn & Peters as local counsel. William Howard of that firm billed at a rate of $450 for 5.3 hours on August 14, 2008, but increased his rate to $475 for the bulk of his work (335.2 hours) hereafter. Jt. State. 4. These

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[4]Jt. State. 3; Exhibit 4, Thompson Dec. 4.

[5]David Thompson charged $515 (2009), $535 (2010), and $565 (2011), while Jesse Panuccio charged $335 (2008), $345 (2009), and $375 (2010). Exhibit 4, Thompson Dec., Ex. A at 6-7.

[6]Exhibit 3, Halbrook Dec. 9 (quoting D.C. filing in *Heller*).

[7]Exhibit 3, Halbrook Dec. 9. See *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3025 (2010).

were lower than his customary rates for the relevant years, which were $525 (2009), $540 (2010), and $545 (current).[8]

In its action against Chicago, NRA was represented by Brenner, Ford, Monroe & Scott as local counsel. Based on prevailing market rates during the years 2008-2011, Stephen Kolodziej of that firm would qualify for $475 per hour.[9]

In sum, to address this Court's concern, fees sought are based on the reasonable rates during the respective years of this litigation rather than at current market rates. Even so, as *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989), instructed:

> Clearly, compensation received several years after the services were rendered – as it frequently is in complex civil rights litigation – is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings. We agree, therefore, that an appropriate adjustment for delay in payment – whether by the application of current rather than historic hourly rates or otherwise – is within the contemplation of the statute.

Based on the above, *Shott v. Rush-Presbyterian-St. Luke's Medical Center*, 338 F.3d 736, 745 (7th Cir. 2003), more particularly explained:

> In recognizing and applying this principle, we have noted that a court may compensate for delay in one of two ways: (i) it may award fees based on the attorney's rates at the time of the award (the "current rate" method) or (ii) it may award fees based on the attorney's rates at the time the services were rendered and add prejudgment interest on that amount (the "historical rate plus interest" method). We have also stated that the historical-rate-plus-interest method is probably the most accurate and straightforward. (Citations omitted.)

Finally, it is not relevant whether counsel was actually paid when services were rendered by the prevailing party. As this Court noted in *Brandt v. Schal Associates, Inc.*, 131 F.R.D. 512, 521-22 n.18 (N.D. Ill.1990), *aff'd*, 960 F.2d 640 (7th Cir. 1992), "the delay factor that is

[8]Exhibit 9, Howard Supp. Dec. 2. Rachael Atterberry of that firm showed a minor fee increase from 2008 to 2009. Jt. State. 4.

[9]Exhibit 10, Kolodziej Supp. Dec., 2-3.

operative where lawyer nonpayment is involved translates directly into the additional real-world cost to the paying client that stems from its having been deprived of the use of money that it has been forced to pay to its lawyers, instead of that money's being available for all the client's other business purposes."

In sum, plaintiffs have appropriately sought fees at historical rates, not current rates, and thus are entitled to interest. That is the case regardless of the extent to which counsel may or may not have been paid a full market rate as the case progressed.

II. MULTIPLE COUNSEL PROVIDED SERVICES IN AN EFFICIENT DIVISION OF LABOR IN THIS COMPLEX LITIGATION

This Court directed counsel to explain the need for the number of attorneys and firms representing plaintiffs in these cases, and to address whether time spent conferring and reviewing work is chargeable to the non-prevailing party.

When this motion was presented, this Court referred to his Supreme Court experience while in private practice. In this connection, counsel reviewed *Government & Civic Employees Organizing Committee, CIO v. Windsor*, 353 U.S. 364 (1957) (*per curiam*), a challenge to labor union restrictions under the due process and equal protection clauses of the Fourteenth Amendment, which references "Mr. Milton I. Shadur, Chicago, Ill., for the appellants." The Brief of Appellants in that case, 1957 WL 87503, includes the names of some of the most distinguished lawyers of the time, and they were associated with four separate law firms. They included future Supreme Court Justice Arthur J. Goldberg and David E. Feller,[10] who were senior partners in Goldberg, Feller & Bredhoff, Washington, D.C.;[11] Herbert S. Thatcher, a

[10]Feller "argued a multitude of cases before the U.S. Supreme Court . . . ." http://www.law.berkeley.edu/news/2003/david%20feller.html.

[11]Goldberg was with that firm from 1952 to 1961, when he was appointed Secretary of Labor. http://goldberg.law.northwestern.edu/mainpages/bio.htm.

partner in Woll, Glen and Thatcher, Washington, D. C.;[12] and Milton I. Shadur, Chicago, who argued the case.[13] The names of all of these attorneys appear multiple times as counsel in Supreme Court litigation. Counsel also included Cooper, Mitch & Black, Birmingham. Partner Buddy Cooper had clerked for Justice Black, and the firm became "the leading law firm in the South representing labor unions and workers."[14]

The use of multiple firms and attorneys in the above case, all with Supreme Court experience, resembles that in the Supreme Court phase of this case. Also similar to this case, that case was litigated in the lower court by multiple firms and attorneys on behalf of the plaintiffs.[15] Both cases involved constitutional issues of supreme importance to millions of Americans – the First Amendment right to associate in a labor union in the former case, and the Second Amendment right to keep and bear arms in the latter. Such cases of the greatest public interest demand the highest performance by the most qualified counsel.

Plaintiffs have described in detail the course of this litigation and the role played by the different firms and attorneys at each stage. Memo. in Support of NRA Motion for Attorney's Fees 2-8 (detailing services and hours). They have further articulated the qualifications and

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[12]The firm was General Counsel to the American Federation of Labor. http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/nebklr32&div=9&id=&page=.

[13]At that time, apparently of a predecessor firm of Shadur, Krupp & Miller, probably Goldberg, Devoe, Shadur, & Mikva. See http://search.chicagolawbulletin.com/judge/gettoctext.cfm?t=2GbjEkMJMrA=.

[14]http://www.wdklaw.com/main.cfm?actionId=globalShowStaticContent&screenKey=cmpFirm&show=history&s=whatleydrake.

[15]"Arthur J. Goldberg, David E. Feller, and Thomas E. Harris, Washington, D.C., and Cooper Mitch & Black, Birmingham, Ala., for plaintiffs." *Government & Civic Employees Organizing Committee, CIO v. Windsor*, 146 F. Supp. 214, 215 (N.D. Ala. 1956).

contributions of each attorney. *Id*. at 8-12. While several attorneys from each firm are listed as having worked on the case, a careful review indicates that only a few attorneys accumulated a substantial quantity of hours. Jt. State. 2-4.

In the District Court, the Court of Appeals, and the cert. petition stage, lead counsel was Stephen Halbrook. Before this litigation commenced, William Howard represented the NRA in successfully negotiating with several Chicago area jurisdictions to modify their ordinances, thus avoiding the costs of litigation. However, Oak Park and the City of Chicago chose to defend their ordinances, forcing the NRA to expend legal fees to pursue this litigation. Mr. Howard's firm felt that it may have had a conflict in a suit against the City of Chicago, which was approached about waiving that conflict, but refused. Thus, Howard's firm represented the NRA only in the suit against Oak Park, while Stephen Kolodziej's firm was chosen to represent the NRA in the suit against Chicago.[16]

However, no duplication of services existed. Where otherwise similar research was needed or identical documents had to be prepared, Howard's firm usually provided the service and Kolodziej simply followed the same course or copied the pertinent document.[17] In particular, Howard's firm provided significant consultation regarding local rules and practices, managed the drafting and filing of multiple motions, conducted extensive legal research, and assisted in the preparation for oral argument in the Court of Appeals. It also spear-headed the procedural strategy which streamlined this litigation in the District Court via Rule 16(c)(2), F. R. Civ. P.[18] This strategy may have cut the work to be done on this matter by one-half or more.[19]

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[16]Exhibit 9, Howard Supp. Dec., 4-5.

[17]See Exhibit 3, Halbrook Dec., at 2-3.

[18]See NRA's Rule 16 Motion for Briefing and Disposition of Second Amendment Incorporation Issue and to Stay Discovery Pending Same. Docu. # 16.

Daniel Dooley of the same firm provided significant services at an appropriate lower rate; the others who billed in the same firm expended minimal hours providing specialized services.[20]

Besides the above, the only other counsel involved in the Court of Appeals was Cooper and Kirk, which expended just a handful of hours assisting Halbrook with strategy concerning an en banc petition and with a moot court, and later in the Supreme Court with revisions to the cert. petition and reply brief.[21]

In the Supreme Court, the NRA continued to be represented by Halbrook with the addition of the firm of Goodwin Procter, particularly attorneys Stephen Poss, Kevin Martin, and Joshua Lipshutz. This team collaborated to prepare NRA's opening brief.[22] Cooper and Kirk expended a meager seven hours offering revisions to the brief.[23]

Former U.S. Solicitor General Paul Clement was then retained by NRA to conduct its oral argument and to bring his expertise to bear in assisting Halbrook and Goodwin Procter with the drafting of the reply brief.[24] For the reply brief, counsel had to review not only the brief of respondents, but also a total of fifty *amici curiae* briefs. Cooper and Kirk did not participate in preparation of the reply brief but expended eight hours in matters related to the moot court for

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[19]Exhibit 9, Howard Supp. Dec., 3-4. Counsel in the McDonald suit piggy-backed onto this procedural strategy. *Id*. at 3.

[20]*Id*. at 3-4.

[21]Exhibit 4, Thompson Dec., Ex. A, at 2-3.

[22]Exhibit 3, Halbrook Dec. 3.

[23]Exhibit 4, Thompson Dec., Ex. A, at 3-4.

[24]Exhibit 3, Halbrook Dec. 4-5.

Clement.[25] As noted, Clement argued the case before the Supreme Court. Goodwin Procter's services ended with the conclusion of Supreme Court proceedings.[26]

When the Supreme Court reversed and remanded, these cases ended up back in this Court on NRA's motions for attorney's fees. Defendants argued that plaintiffs were not prevailing parties and were not entitled to fees under *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598 (2001). This Court ordered briefing by the parties, and Halbrook prepared the NRA briefs with the assistance of local counsel. After this Court ruled that plaintiffs were not prevailing parties, NRA appealed.

NRA's opening and reply briefs in the Seventh Circuit, which upheld NRA's prevailing-party status, were prepared by Halbrook, with insightful revisions provided by Paul Clement's firms.[27] Defendants contend that the issue was not sufficiently complex as to require the services of Clement and his firms. Jt. State. 8-9. The issue raised grave and novel questions under *Buckhannon*, as this Court's decision on the matter bears out. *NRA v. Village of Oak Park*, 755 F. Supp.2d 982 (N.D. Ill. 2010). Clement's participation was warranted, inasmuch as his own fees and those of all of the other attorneys for plaintiffs were at stake. Clement was well qualified to work on the issue, given that he had recently argued *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010), the Court's then-latest decision on fee recovery under 42 U.S.C. § 1988.

The Seventh Circuit decided that NRA is a prevailing party and remanded for determination of reasonable fees. Pursuant to Local Rule 54.3(d), each firm that participated in the case was

[25]Exhibit 4, Thompson Dec., Ex. A, at 4.

[26]Exhibit 7, Martin Affidavit, Ex. B, at 5.

[27]Exhibit 8, Clement Dec., Ex. 1-C (beginning with 1/11/11 entry), Ex. 2 (5/8-5/11/11 entries). As noted, Goodwin Procter was no longer working on the case at this point. Also, Cooper and Kirk later charged for time expended in preparing its declaration in support of fees, but did not bill for any work on the litigation over fee liability. See Exhibit 4, Thompson Dec., Ex. A, at 4-5.

required to review their time and work records, prepare declarations supporting the fees they thought reasonable to recover, and to submit the same to defendants.[28] Defendants have not questioned the reasonableness of the time expended by the firms representing plaintiffs in this regard.

Since this case was remanded for determination of reasonable fees, Halbrook and local counsel have carried out the obligations of plaintiffs under Local Rule 54.3, from the turning over of documents justifying the fees to defendants through the filing of the motion for fees.

The use of multiple lawyers "is a common practice, primarily because it often results in a more efficient distribution of work. . . . It allows more experienced, accomplished, and expensive attorneys to handle more complicated matters and less experienced, accomplished, and expensive counsel to handle less complicated ones." *Gautreaux v. Chicago Housing Authority,* 491 F.3d 649, 661 (7th Cir. 2007), citing *Kurowski v. Krajewski*, 848 F.2d 767, 776 (7th Cir.1988).[29] In *Gautreaux*, "the time spent on intra-team communications was compensable. There is no hard-and-fast rule as to how many lawyers can be at a meeting or how many hours lawyers can spend discussing a project." *Id*. *See Rabin v. Wilson-Coker*, 425 F. Supp.2d 269, 273-74 (D. Conn. 2006) ("extensive consultation among a team of attorneys was necessary because of the pace of the litigation, its complexity, and the intensity of the defendant's opposition," including for an attorney who "did not enter an appearance" but "consulted extensively with plaintiffs' counsel.").

[28]Since these fee proceedings are ongoing, plaintiffs are entitled to file supplemental documents showing further reasonable fees.

[29]Noting that use of multiple lawyers "tak[es] advantage of the division of labor," *Kurowski* added that in that case, "The scholar did the research, the litigator the litigating." *Id*. at 776. While that was not a precedent-setting case as was this one, an efficient division of labor here took advantage of Halbrook's scholarly background, Goodwin Procter's litigation expertise, and Clement's experience in Supreme Court advocacy.

Following *Roe v. Saenz*, 526 U.S. 489 (1999), which invalidated a state law under the Fourteenth Amendment, the district court held regarding the resultant fee petition: "Given that this case centered almost exclusively on complex constitutional questions, and that the majority of the hours billed by Roe's attorneys were for litigation at the Supreme Court level, it was appropriate to heavily staff the case with senior litigators." *Roe v. Saenz*, No. CIV-S-97-0529DFL JFM, 2000 WL 33128689, *3 (E.D. Cal. Nov. 20, 2000).

The attorney staffing in this case was less than or typical to that in many other Supreme Court cases involving civil rights in general and the Second Amendment in particular.[30] In *Heller*, three major law firms and the D.C. Attorney General's office represented the District.[31] Chicago and Oak Park fielded a respectfully-large team for this litigation led by experienced Supreme Court litigators such as James Feldman and Benna Ruth Solomon,[32] not to mention the armies of lawyers that filed fifty *amici curiae* briefs in this case.

[30] *E.g.*, see attorney and firm listings in *Lewis v. City of Chicago, Ill.*, 130 S. Ct. 2191, 2194-95 (2010), and *Perdue*, 130 S. Ct. at 1669.

[31] *See District of Columbia v. Heller*, 554 U.S. 570, 572 (2008) ("Thomas C. Goldstein, Christopher M. Egleson, Akin Gump Strauss Hauer & Feld LLP, Washington, DC, Walter Dellinger, Matthew M. Shors, Mark S. Davies, Brianne J. Gorod, . . . Joseph Blocher, . . . O'Melveny & Myers LLP, Washington, DC, Peter J. Nickles, Interim Attorney General, Todd S. Kim, Solicitor General, Counsel of Record, Donna M. Murasky, Deputy Solicitor, General, Lutz Alexander Prager, Office of the Attorney General for the District of Columbia, Washington, DC, Robert A. Long, Jonathan L. Marcus, Covington & Burling LLP, Washington, DC, for Petitioners.").

[32] *See McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 3025 (2010) ("James A. Feldman, Special Assistant, Corporation Counsel, Washington, D.C., Mara S. Georges, Corporation Counsel of the City of Chicago, Benna Ruth Solomon, Counsel of Record, Deputy Corporation Counsel, Myriam Zreczny Kasper, Chief Assistant Corporation Counsel, Suzanne M. Loose, Assistant Corporation Counsel, Andrew W. Worseck, Assistant Corporation Counsel, Chicago, Illinois, Counsel for the City of Chicago; Raymond L. Heise, Village Attorney of Oak Park, Oak Park, Illinois, Counsel for the Village of Oak Park, Hans Germann, Ranjit Hakim, Alexandra Shea, Mayer Brown LLP, Chicago, Illinois, for Respondents City of Chicago and Village of Oak Park.").

In sum, counsel litigated this complex case with efficiency and professionalism. A careful review of their declarations and supporting time and work sheets demonstrates appropriate divisions of labor and that they carried out necessary tasks without duplication.

CONCLUSION

The Court should grant plaintiffs' request for reasonable attorney's fees.

Dated: February 15, 2012.

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
Ford & Britton, P.C.
33 North Dearborn Street, Suite 300
Chicago, Illinois 60602
Tel (312) 924-7500
Fax (312) 924-7516

CERTIFICATE OF SERVICE

I, Stephen A. Kolodziej, an attorney, certify that on this, the 15th day of February, 2012, I caused a copy of the foregoing to be served by electronic filing on:

Michael A. Forti
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
Tel: (312) 744-4342
Fax: (312) 742-3925

and that I caused a copy to be served by U.S. Mail on:

Ranjit Hakim
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

s/ Stephen A. Kolodziej
Stephen A. Kolodziej
Counsel for Plaintiffs

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' NATIONAL RIFLE ASS'N. *et al.*. MOTION FOR ATTORNEY'S FEES

INDEX OF EXHIBITS

Exhibit	**Description**
9	Supplemental Declaration of William N. Howard dated February 15, 2012
10	Supplemental Declaration of Stephen A. Kolodziej dated February 10, 2012

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., *et al.*,	)	
Plaintiffs,	)	
v.	)	No. 08 C 3696
VILLAGE OF OAK PARK, et al.,	)	
Defendants.	)	

SUPPLEMENTAL DECLARATION OF WILLIAM N. HOWARD IN SUPPORT OF PLAINTIFFS NATIONAL RIFLE ASSOCIATION, *ET AL.* MOTION FOR ATTORNEY'S FEES

My name is William N. Howard. Pursuant to 28 U.S.C. § 1746, I make this Declaration on personal knowledge. I am an attorney of record in the above-entitled action. I am over the age of 18 years and competent to testify to the matters set forth herein.

1. I am an equity partner and attorney at the law firm of Freeborn & Peters LLP ("F&P") in Chicago, Illinois. I have been actively practicing law since 1985. (*See* Howard Declaration, Exhibit "A," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

2. I have overseen and supervised all activities by F&P related to representing National Rifle Association of America, Inc., Robert Klein Engler and Dr. Gene A. Reisinger ("Plaintiffs") in the above-referenced mater. Given my involvement in these proceedings, I am familiar with the work of my colleagues as well as the work I performed with respect to these proceedings. Our legal team was appropriately staffed. The tasks were distributed according to the experience level of the attorneys, and paralegals and other staff members were utilized appropriately. Although some tasks required more than one attorney due to the

complex nature of the legal issues or time constraints, we were careful to avoid duplication. In fact, care was taken to include associates with a lower billable rate to perform tasks commensurate with their experience such as discreet research assignments.

3. I am familiar with the manner in which F&P maintains its business records and generates its billing records. F&P attorneys and paralegals are required to maintain time records at or near the time that the work is performed. Throughout the course of this litigation, F&P has had the following billing policy: every Wednesday by 5:00 pm, every F&P attorney and paralegal is required to cause his/her time from the previous week to be inputted into F&P's electronic billing system. Within the first few business days of each month, a deadline is set by the Accounting Department by which all time entries, costs and disbursements from the previous month must be inputted in the electronic billing system to generate an invoice. By the 15th of each month, an invoice is generated to reflect all fees and costs incurred from the previous month. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

4. During my representation of Plaintiffs, I charged this client between $450.00 and $475.00 per hour. These rates are less than my current customary rate of $580.00 per hour; less than my customary rate during 2011, which was $545.00 per hour ; less than my customary rate for 2010, which was $540.00 per hour, and less than my customary rate during 2009, which was $525.00 per hour. (*See* Howard Declaration, Exhibit "C," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

5. During my representation of Plaintiffs on the above referenced matter, I charged Plaintiffs for 322 hours of work over approximately 35 months, from August 2008 through June 2011. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion

for Attorney's Fees.) I charged Plaintiffs $450.00 per hour for 5.3 hours of work during the first month of my representation and $475.00 per hour for 316.70 hours of work thereafter. *Id.* This increase was due to an overall increase in rates across the board at my Firm. In total, I charged Plaintiffs $152,817.50 in attorneys' fees. *Id.* This work was necessary to adequately represent Plaintiffs' interests. I provided significant consultation regarding local rules and practices, managed the drafting and filing of multiple motions, and conducted extensive legal research, and assisted in the preparation for oral argument. I also spear-headed the procedural strategy, specifically designed to reduce overall fees, time and expenses by implementing Rule 16 of the Federal Rules. This strategy, in my opinion, literally cut the work to be done on this matter by one-half, or more. Counsel in the *McDonald* matter piggy-backed onto the procedural strategy crafted and implemented.

6. Attorney Daniel Dooley was the senior associate attorney at F&P that primarily assisted me in the above-entitled action. Daniel Dooley has been actively practicing law for 10 years. His practice at the time consisted primarily of complex commercial litigation. (*See* Howard Declaration, Exhibit "D," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

7. Daniel Dooley provided significant consultation regarding local rules and practices, participated in the drafting and filing of multiple motions, conducted extensive legal research, and assisted in the preparation for oral argument. Daniel Dooley also participated in the preparation and filing of briefs with the Seventh Circuit Court of Appeals. Daniel Dooley billed 368.10 hours at $295.00, for a total charge to Plaintiffs of $108,589.50. His "standard" rate during this time ranged from $305 to $335 per hour. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

8. In addition, seven other attorneys from F&P each charged a relatively small amount of fees in the above referenced matter. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.) These attorneys provided legal research and consulted on discreet issues relating to the case for which they have particular expertise. For example, Michael P. Kornak and James M. Witz, who are partners at F&P, provided limited consultation, based on their expertise, that solely related to Seventh Circuit appellate issues. The remaining attorneys listed in Howard Declaration Exhibit "B" are associates at F&P who provided discreet legal research and performed other legal tasks at a lower billable rate that was commensurate with their experience. (*See* Howard Declaration, Exhibits "E" and "F," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

9. Debra O'Rourke, a legal assistant, charged 5.3 hours of work at $45.00 per hour, for a total of $238.50. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

10. My firm's office services department also billed .20 hours at $40.00 per hour, for a total of $8.00. (*See* Howard Declaration, Exhibit "B," previously filed as Exhibit 5 to NRA's Motion for Attorney's Fees.)

11. In addition to fees charged, my firm also charged Plaintiffs for necessary costs associated with bringing the above captioned action. Those costs, incurred over the 35 months this action has been pending amount to $36,430.72. Those costs include photocopying, court costs, electronic research, messenger services, a small amount of travel expenses, and other necessary incidental expenses.

12. In total, I and my firm charged the Plaintiffs $315,174.92 in fees and costs. These fees and costs were necessary to adequately represent Plaintiffs in this complex and important matter that addressed a fundamental constitution right.

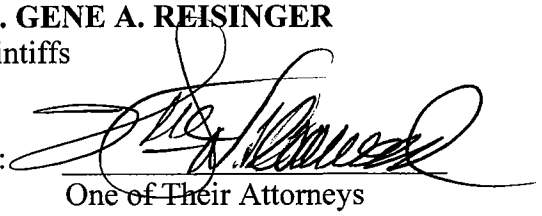
13. In addition to this case, I was also involved in the negotiation of settlements with several other municipalities adjacent to the City of Chicago. All of those municipalities agreed to withdraw or substantially modify their ordinances, thus avoiding the costs of litigation. However, Oak Park and the City of Chicago chose to attempt to defend themselves, forcing the NRA to expend legal fees and costs in furtherance of the protection of citizens' Second Amendment rights. Mr. Steve Kolodziej, counsel for the NRA in the suit against the City of Chicago, was retained because my Firm felt it may have a conflict. The City was approached about waiving that conflict, but refused.

14. Despite this separate representation, Mr. Kolodziej and my Firm did not incur unnecessary or duplicative legal fees on behalf of the NRA. In order to avoid the same, we regularly conferred to ensure that we did not duplicate efforts, and we also regularly conferred with lead counsel, Mr. Stephen Halbrook, in order to ensure we worked efficiently, discussed and planned for divisions of labor on substantive and procedural matters, and used our resources in both cases where appropriate and when able. The end result of these efforts was actually a cost-savings to the client and a more effective use of attorney time. Further, when appropriate and possible, my Firm would conduct research applicable to the Oak Park case, which could then be applied, when appropriate, by Mr. Kolodziej without duplication of effort, to the facts and circumstances presented in the Chicago case (where a separate and distinct ordinance with different provisions was involved).

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

Dated: February 15, 2012

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. and **DR. GENE A. REISINGER**
Plaintiffs

BY: 
One ~~of Their~~ Attorneys

William N. Howard, Esq.
Freeborn & Peters LLP
311 S. Wacker Dr., Suite 3000
Chicago, Illinois 60606
Tel (312) 360-6415
Fax (312) 360-6573

CERTIFICATE OF SERVICE

I, William N. Howard, an attorney, certify that I caused a copy of **Supplemental Declaration of William N. Howard in Support of Plaintiffs National Rifle Association, *et al.* Motion For Attorney's Fees** to be served upon the parties of record, as shown below, via the Court's CM/ECF filing system, on the 15th day of February, 2012.

Ranjit Hakim
Alexandra E. Shea
Mayer Brown LLP
71 S. Wacker Dr.
Chicago, IL 60606
e-mail: courtnotification@mayerbrown.com

Lance C. Malina
Jacob Henry Karaca
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Dr., Suite 1660
Chicago, IL 60606-2903
email: lcmailina@ktjnet.com
jhjaraca@ktjnet.com

and that I caused a copy to be served by U.S. Mail on:

Andrew W Worseck
William Macy Aguiar
City of Chicago, Department of Law
30 N. LaSalle St., Suite 900
Chicago, IL 60602

2485067v3

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.	)	

SUPPLEMENTAL DECLARATION OF STEPHEN A. KOLODZIEJ

I, Stephen A. Kolodziej, being duly sworn under oath, hereby state, and if called, could competently testify as follows:

1. I have practiced as a civil trial and appellate lawyer in Chicago continuously since 1993. Throughout that time, my practice has covered a wide variety of areas, including civil rights and constitutional litigation, employment discrimination, professional negligence, product liability, insurance coverage, commercial and contract litigation, and defamation and privacy torts. My clients include insurance companies, corporations, and private individuals.

2. Due to the wide variety and nature of the cases I handle and clients I represent, I do not have a standard, fixed hourly rate; rather, my practice has been to vary my fees depending upon the nature and complexity of the case, the identity, circumstances and needs of the particular client, and the client's goals in the litigation. Based upon my experience practicing in Chicago for 18

years, the market rate for attorneys with my level of experience handling a case of this nature in 2008-2011 was in the range of $450 to $500 per hour. [1]

3. Based upon the nature, complexity, and importance of the issues presented in this case of first impression, I charged the NRA a discounted rate of $300 per hour for my services. This rate was motivated by a desire to assist the NRA, which is supported by the hard-earned dollars of its members, in protecting the fundamental Second Amendment rights of the individual plaintiffs, NRA members, and Chicago residents generally.

4. Although two distinctly different ordinances were being challenged in the two separate cases against Chicago and Oak Park, I was aware at the time of my retention that there would undoubtedly be overlap in the legal research, substantive and procedural matters that both I and local counsel for the NRA in the Oak Park case would handle. In order to avoid incurring unnecessary legal fees and double charging the client for services performed in one case that could be duplicated in the other case, it was necessary throughout the case for me to frequently confer with the client and with attorney Stephen Halbrook, lead counsel in both cases, and attorney William Howard, local counsel in the Oak Park case, in order to discuss and plan for divisions of labor on those substantive and procedural matters where identical tasks such as legal research could be effectively performed in one case and utilized in the other case. Therefore, while the client incurred multiple charges for conferences and correspondence between counsel for this purpose, the

[1] According to the schedule of the Laffey Matrix of the U.S. Department of Justice, for 2010-11 an appropriate hourly rate for an attorney with my level of experience is $420 per hour. http://www.justice.gov/usao/dc/divisions/civil_Laffey_Matrix_2003-2012.pdf (visited Feb. 3, 2012). In my initial Declaration filed in support of plaintiffs' motion for attorney's fees, I inadvertently misstated the Laffey Matrix rate as $475, due to a misreading of the adjacent column on the Matrix. $475 is the rate for lawyers with 20+ years of experience, while the rate for attorneys with 10-19 years of experience is $420.

end result was a savings to the client and a more effective use of attorney time, because the coordination between attorneys prevented duplicative work in both cases. For example, where otherwise similar research was needed or identical documents had to be prepared in both cases, attorney Howard's office usually provided the service and I would simply adopt or utilize that research or copy those documents, and charge the client only for any additional supplementation or tailoring that was required due to the specifics of the Chicago case.

5. Based upon my knowledge and experience as a practicing attorney in Chicago, the Laffey Matrix, and the market rate for attorneys in Chicago from 2008 to 2011, I believe $475 is a reasonable hourly rate for my services in this case.

Under penalty of perjury, I hereby certify that the statements set forth in this Supplemental Declaration and true and correct to the best of my knowledge and belief.

Dated February 10, 2012.

Stephen A. Kolodziej