

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

OTIS McDONALD, et al.,	)	Case No. 08-C-3645
)	
Plaintiffs,	)	PLAINTIFFS' MOTION FOR INSTRUCTIONS
	)	RE: ATTORNEY FEES AND COSTS
v.	)	[LOCAL RULE 54.3(g)]
)	
CITY OF CHICAGO,)	
)	
Defendant.)	
)	
)	

**PLAINTIFFS' MOTION FOR INSTRUCTIONS RE:
ATTORNEY FEES AND COSTS**

NOW COME the Plaintiffs, OTIS McDONALD, ADAM ORLOV, COLLEEN LAWSON, DAVID LAWSON, SECOND AMENDMENT FOUNDATION, INC. and ILLINOIS STATE RIFLE ASSOCIATION, by and through LAW FIRM OF DAVID G. SIGALE, P.C. and GURA & POSSESSKY, PLLC, their attorneys, and, pursuant to Local Rule 54.3(g) move this honorable Court for instructions regarding their Motion for Attorney Fees and Costs.

In support of said motion, Plaintiffs aver:

1. On June 28, 2010, the Supreme Court entered a "judgment" for Plaintiffs and against Defendant; *see* Exhibit 1;
2. The Supreme Court had recently held that municipal handgun bans violate the Second Amendment. "Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid." *District of Columbia v. Heller*, 128 S. Ct. 2783, 2818 (2008);

3. The Supreme Court's opinion in this case held that the Second Amendment is "fully applicable" to Defendant. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 & 3046 (2010) (plurality); 130 S. Ct. at 3058 (Thomas, J.);
4. Recognizing that this opinion struck down its handgun ban, Defendant immediately repealed its handgun ban;
5. Notwithstanding the existence of other claims, the Seventh Circuit held the case was mooted by repealing legislation. On remand, the Seventh Circuit provided that "[i]f plaintiffs believe that the repeals entitle them to attorneys' fees under 28 [sic] U.S.C. §1988, they may file appropriate motions in the district court." The Seventh Circuit stated that it expressed no opinion on the availability of fees;
6. Pursuant to Local Rule 54.3, Plaintiffs had already begun negotiations regarding the amount of attorney fees and costs to which they are entitled under 42 U.S.C. § 1988. Requested settlement information was provided to Defendant on August 6 and again on August 30, and the parties discussed the provided information;
7. Despite numerous requests, Defendant steadfastly refused to respond to Plaintiffs' demands, other than to promise, repeatedly, that a substantive response was forthcoming and the numbers would be negotiated;
8. Notwithstanding its repeated promises to Plaintiffs, Defendant defaulted completely on its obligations under Local Rule 54.3;
9. Under Local Rule 54.3, Plaintiffs have until January 11, 2011 to file their motion for attorney fees and costs;

10. Plaintiffs in the related cases of *NRA v. City of Chicago* and *NRA v. Village of Oak Park* had sought a discovery and briefing schedule regarding their attorney fees and costs demands. Responding to that motion, this Court ordered the parties in those related cases to brief the issue of whether *NRA* Plaintiffs were prevailing parties;
11. Plaintiffs in this case were not provided with notice of the fee proceedings in the related cases;¹
12. Plaintiffs only learned of the fee proceedings in the related cases when, demanding Defendant's participation in the preparation of the joint statement envisioned by Local Rule 54.3(e), Defendant suddenly – for the first time – mentioned those proceedings as an excuse justifying their failure to abide by the requirements of Local Rule 54.3;
13. Plaintiffs immediately sought to have the related case proceedings held in abeyance pending their ability to be heard on the issue of whether they are prevailing parties;

¹The Court's order in the related *NRA* cases notes that *McDonald* counsel offered "vigorous criticism at having assertedly been kept out of the loop by *NRA*'s counsel." While *NRA* counsel should have provided *McDonald* counsel notice, the record will reflect that *McDonald* counsel are specifically criticizing *the City*'s counsel. Opposing counsel agreed to settlement negotiations, and played along with discussions of Plaintiffs' numbers while promising an eventual response, all the while litigating the issue in the related case without notice to *McDonald* plaintiffs. Indeed, the *City*'s counsel sought to avoid offering its settlement position until after the status conference in the related case would be conducted, and following the Court's decision in the related cases, predicted that Plaintiffs' fee petition would likewise be denied. Of course, the existence or litigation of the related *NRA* cases did not absolve the *City* of its obligations in this case.

14. The Court denied Plaintiffs' request, and promptly entered an order in the related cases that provides, inter alia, "the Supreme Court's decision in *McDonald* -- which, it will be remembered, resulted in no judicial implementation on remand -- did not meet the requirements of Section 1988 under [*Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001)];"
15. This Court nonetheless suggested that *McDonald* Plaintiffs might be able to distinguish their arguments from those offered by NRA;
16. Following the Court's suggestion, Plaintiffs now seek instruction pursuant to Local Rule 54.3(g) regarding the filing of their motion for attorney fees and costs. Plaintiffs hereby adopt the many excellent arguments offered by the NRA Plaintiffs as though fully stated herein, and of course, expect no different result here on the basis of these claims.
17. However, "our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Greenlaw v. United States*, 128 S. Ct. 2559, 2564 (2008). And *McDonald* Plaintiffs do have different, additional arguments to offer regarding prevailing party status.
18. This Court found that NRA "[sought] to put the old 'catalyst theory' wine into new bottles," and that NRA "demonstrate[d] its essential reliance on the 'catalyst theory.'" *McDonald* Plaintiffs' arguments are not solely dependent on the catalyst theory, and *Buckhannon* does not vitiate their prevailing party status.

19. In addition to adopting and endorsing the NRA's arguments, Plaintiffs claim:

I. Binding Chicago to Abide By Second Amendment Rights Changed the Legal Relationship Between the Parties

20. On June 28, 2010, the Supreme Court recognized, in the opinion issued in this case, that the Fourteenth Amendment altered the relationship between the parties with respect to Second Amendment rights. Recounting earlier decisions of the Supreme Court and of the Seventh Circuit, this Court had held that Defendant was not bound to recognize that Plaintiffs enjoyed any rights of the kind secured by the Second Amendment. That is now changed;
21. This changed legal status among the parties is a "judicially sanctioned change in the legal relationship of the parties," and is very much "the stuff of which legal victories are made." *Buckhannon*, 532 U.S. at 605 (citation omitted);
22. This Court has previously held that the *Buckhannon* dissent's description of the majority's holding governs interpretation of *Buckhannon*'s scope. Under that interpretation, a party prevails by "secur[ing] a court entry memorializing her victory. The entry need not be a judgment on the merits. Nor need there be any finding of wrongdoing." *Johnnie's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill.*, 2001 U.S. Dist. LEXIS 11671 at *9 (N.D. Ill. Aug. 7, 2001) (quoting *Buckhannon*, 532 U.S. at 622 (Ginsburg, J., dissenting));
23. Although the change in the legal relationship – recognition that Defendant is bound to recognize Second Amendment rights – qualifies Plaintiffs under the plain language of *Buckhannon*'s majority opinion, Plaintiffs further note that they

are prevailing parties under the interpretation of *Buckhannon* offered by the dissent, as previously accepted by this Court, in that the Supreme Court's opinion is "a document filed in court . . . memorializing [their] victory." *Buckhannon*, 532 U.S. at 622 (Ginsburg, J., dissenting).

II. The Supreme Court Struck Down Defendant's Handgun Ban

24. As noted *supra*, the Supreme Court had already held that handgun bans violate the Second Amendment. By holding that the Second Amendment "fully applies" to Defendant, there was nothing left to litigate with respect to the handgun ban. The matter was fully and finally terminated by the Supreme Court. The Supreme Court's decision rendered the handgun ban unenforceable; any person enforcing it as of June 28, 2010 would not have enjoyed qualified immunity from liability;
25. Any claim that the handgun ban could have been defended on remand is untenable. Indeed, as the NRA alluded to but failed to fully point out, the City took this position not merely in the media – but in the Supreme Court;
26. Chicago did not merely argue that the Fourteenth Amendment did not make the Second Amendment applicable to states and localities. Chicago addressed, head on, the constitutionality of the handgun ban itself. Having offered that it could reasonably conclude that "handgun bans . . . enhanc[e]. . . a system of ordered liberty," Respondents' Br. 4 (Exhibit 2), Chicago directly attacked *Heller*'s handgun ban holding: "Features that cause handguns to be regarded by many as the 'quintessential self-defense weapon' (*Heller*, 128 S. Ct. at 2818) also make

them attractive for criminal purposes, including homicide, suicide, and other violent crimes.” *Id.* 15;

27. Indeed, Chicago understood that the Supreme Court would be passing upon the constitutionality of its handgun ban. Chicago claimed that “[*McDonald*] Petitioners and NRA both limit their argument in this Court to handgun bans,” but then noted that “both [*McDonald* Petitioners and NRA] raised other issues.” *Id.* at 80 n.27. Describing these “other issues,” Chicago concluded, “If the judgment is reversed, the lower courts should be directed to address those claims in the first instance.” *Id.* at 81 n. 27;
28. Clearly, Chicago differentiated between the handgun ban, and the “other issues,” and acknowledged that there would be no need for the lower courts to address the handgun ban “in the first instance.” A clearer admission that the handgun ban was in fact being litigated before the Supreme Court could not have been offered;
29. The Supreme Court emphatically rejected arguments that the handgun ban was constitutional, arguments which it described as follows:

Municipal respondents . . . 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*. . . 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, that guarantee is *fully binding* on the States . . .

McDonald, 130 S. Ct. at 3046 (emphasis added) (footnote omitted);

30. Plainly, there was nothing voluntary about the handgun ban repeal – the City litigated its handgun ban before the Supreme Court, and asked the Court only to be allowed to defend the *other* challenged provisions should the Court hold – as it unmistakably did – that the full measure and content of the Second Amendment binds Defendant. As of June 28, there was nothing “potentially meritless,” *Buckhannon*, 532 U.S. at 606, about Plaintiffs’ challenge to the handgun ban. Nor would there have been anything “potentially” meritless about defending the handgun ban on remand; such defense would have been definitively frivolous, the issue having been *conclusively litigated and determined* by the Supreme Court, as acknowledged before the Supreme Court by Defendant;

III. Buckhannon Was Wrongly Decided

31. In addition to (1) adopting NRA’s positions, (2) asserting that the changed legal relationship at issue is the application of the Second Amendment to Defendant, and (3) pointing out that the Supreme Court actually did strike down the Chicago handgun ban, as Defendant acknowledged it would under any decision applying Second Amendment rights to Chicago, *McDonald* Plaintiffs respectfully reserve for a higher authority the position that *Buckhannon* is simply wrong, for the reasons ably offered by petitioners in that case, their amici, and the dissenters. *Buckhannon* must be overruled.

Conclusion

WHEREFORE, Plaintiffs maintain that they indeed prevailed, within the meaning of Section 1988 and even within the meaning of *Buckhannon*. Plaintiffs would ask only that they have until January 31 to file their motion for attorney fees and costs, which should not overly tax the Court's resources given Defendant's calculated decision to default on its Rule 54.3 obligations.

Wherefore, Plaintiffs respectfully request that the motion be granted.

Dated: December 27, 2010

Respectfully submitted,

Alan Gura (admitted *pro hac vice*)
Gura & Possessky, PLLC
101 N. Columbus Street, Suite 405
Alexandria, VA 22314

David G. Sigale (Atty. ID# 6238103)
Law Firm of David G. Sigale, P.C.
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703.835.9085/Fax 703.997.7665

630.452.4547/Fax 630.596.4445

By: /s/ Alan Gura
Alan Gura

By: /s/ David G. Sigale
David G. Sigale

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an attorney of record for the plaintiffs, hereby certifies that on December 27, 2010, he served a copy of the above motion and this certificate of service, on:

Michael A. Forti
Mardell Nereim
Andrew W. Worseck
William Macy Aguiar
City of Chicago Department of Law
Constitutional and Commercial Litigation Division 30
N. LaSalle Street, Suite 1230
Chicago, IL 60602

by electronic means pursuant to Electronic Case Filing (ECF). Pursuant to FRCP 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

The undersigned also effect service of the foregoing on:

Stephen A. Kolodziej (Counsel for Plaintiffs in *NRA v. City of Chicago*, No. 08-3697)
Brenner, Ford, Monroe & Scott
33 N. Dearborn Street, Suite 300
Chicago, IL 60602
Fax: 312-781-9202

Stephen Halbrook (Counsel for Plaintiffs in *NRA v. City of Chicago*, No. 08-3697) 10560
Main Street, Suite 404
Fairfax, VA 22030
Fax: 703-359-0938

by facsimile and by first class United States Mail, postage pre-paid.

/s/David G. Sigale
David G. Sigale

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

July 30, 2010

William K. Suter
Clerk of the Court
(202) 479-3011

Clerk
United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

**Re: Otis McDonald, et al.
v. City of Chicago, Illinois, et al.
No. 08-1521 (Your docket Nos. 08-4241, 08-4243, 08-4244)**

Dear Clerk:

Attached please find a certified copy of the judgment of this Court in the above-entitled case. You may obtain a copy of the opinion by visiting our website @www.supremecourt.gov.

Sincerely,

WILLIAM K. SUTER, Clerk

By 

Elizabeth Brown
Judgments/Mandates Clerk

Enc.
cc: All counsel of record

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

July 30, 2010

Mr. Alan Gura
Gura & Possessky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314

**Re: Otis McDonald, et al.
v. City of Chicago, Illinois, et al.
No. 08-1521**

Dear Mr. Gura:

A certified copy of the judgment of this Court in the above-entitled case was emailed to the Clerk of the United States Court of Appeals for the Seventh Circuit today.

The petitioners are given recovery of costs in this Court as follows:

Printing of record:	\$2,252.70
Clerk's costs:	<u>300.00</u>
Total:	\$2,552.70

This amount may be collected from the respondents.

Sincerely,

WILLIAM K. SUTER, Clerk

By 

Elizabeth Brown
Judgments/Mandates Clerk

cc: All counsel of record
Clerk, USCA for the Seventh Circuit
(Your docket Nos. 08-4241, 08-4243, 08-4244)

Supreme Court of the United States

No. 08-1521

OTIS McDONALD, ET AL.,

Petitioners

v.

CITY OF CHICAGO, ILLINOIS, ET AL.

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh Circuit.

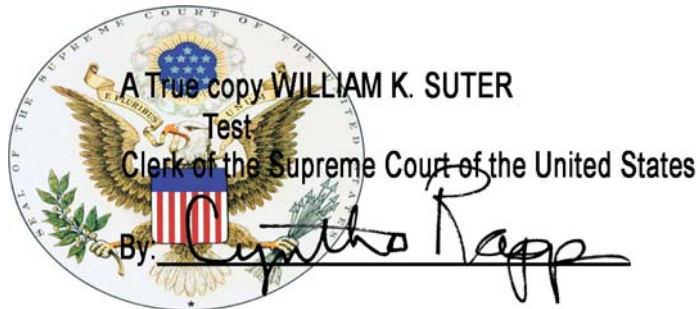
THIS CAUSE came on to be heard on the transcript of the record from the above court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court is reversed with costs, and the case is remanded to the United States Court of Appeals for the Seventh Circuit for further proceedings.

IT IS FURTHER ORDERED that the petitioners Otis McDonald, et al. recover from City of Chicago, Illinois, et al. Two Thousand Five Hundred Fifty-two Dollars and Seventy Cents (\$2,552.70) for costs herein expended.

June 28, 2010

Printing of record:	\$2,252.70
Clerk's costs:	<u>300.00</u>
Total:	\$2,552.70



No. 08-1521

IN THE
Supreme Court of the United States

OTIS McDONALD, *et al.*,
Petitioners,

v.

CITY OF CHICAGO,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

**BRIEF FOR RESPONDENTS CITY OF CHICAGO
AND VILLAGE OF OAK PARK**

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Counsel for the City of Chicago

[Additional Counsel Listed Inside Cover]

‘selective incorporation’ and “the Court has not telegraphed any plan to overrule *Slaughter-House* and apply all of the amendments to the states through the privileges and immunities clause, despite scholarly arguments that it should do this.” *Id.* at 5.

SUMMARY OF ARGUMENT

To address the problem of handgun violence in their communities, Chicago and Oak Park have enacted stringent firearms regulations prohibiting the possession of handguns by most individuals. The Court should reaffirm that the Second Amendment does not bind state and local governments. Neither the Court’s selective incorporation doctrine under the Due Process Clause nor the Privileges or Immunities Clause provides a basis for imposing the Second Amendment on the States and establishing a national rule limiting arms regulation.

I. Bill of Rights provisions are incorporated into the Due Process Clause only if they are implicit in the concept of ordered liberty. That is an exacting standard that appropriately protects federalism values at the root of our constitutional system and is particularly appropriate when addressing firearms regulation. Firearms are designed to injure or kill; conditions of their use and abuse vary widely around the country; and different communities may come to widely varying conclusions about the proper approach to regulation. Thus, Chicago and Oak Park may reasonably conclude that in their communities, handgun bans or other stringent regulations are the most effective means to reduce fear, violence, injury, and death, thereby enhancing, not detracting from, a system of ordered liberty. Although other approaches are possible and may be effective elsewhere, it cannot

best address the very serious problem of handgun crime and violence in their communities.⁴ That approach is at the very least a reasonable approach to a difficult social problem on which definitive answers remain elusive. Because that approach aims to protect personal security, it is consistent with, and supportive of, a free society and a system of ordered liberty.

Features that cause handguns to be regarded by many as the “quintessential self-defense weapon” (*Heller*, 128 S. Ct. at 2818) also make them attractive for criminal purposes, including homicide, suicide, and other violent crimes. Handguns can be stored where readily accessible; they are small and lightweight; they are easier to control if someone tries to take them away; and they can be pointed at someone with one hand while leaving the other hand free. See *ibid.*

Because handguns are so well adapted for the commission of crimes and the infliction of injury and death, stringent handgun regulations, including prohibitions, can be reasonably thought to create the conditions necessary to foster ordered liberty, rather than detracting from it. Enforcing handgun control laws can make a difference in curbing firearms violence. See, e.g., Lawrence Rosenthal, *Second Amendment Plumbing After Heller: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and Criminal Street Gangs*, 41 Urb. Lawyer 1, 30-44

⁴ The Chicago ordinance at issue in this case was adopted by the City Council. See p. 1, *supra*. The Oak Park ordinance was first adopted by the town council. The following year, the citizens of Oak Park voted in an advisory referendum. See Brief of Oak Park Citizens’ Committee for Handgun Control as *Amicus Curiae* in Support of Respondents.

Under similar circumstances, the Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), expressly refused to “turn the clock back to 1868” when reassessing *Plessy v. Ferguson*, 163 U.S. 537 (1896) (*Brown*, 347 U.S. at 492), stressing that, while some congressional members believed that the Amendment removed “all legal distinctions” based on race, others read it to have “the most limited effect” (*id.* at 489). With such varying views, “[w]hat others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.” *Ibid.* And recently, in *Boumediene v. United States*, 128 S. Ct. 2229 (2008), this Court declined to rest its decision about the scope of the protection of the writ of habeas corpus upon a historical understanding because the historical evidence “reveals no certain conclusions.” *Id.* at 2248. Likewise here, petitioners’ only argument for upsetting longstanding precedent is based upon a historical record that simply fails to reveal a unified public understanding that the Privileges or Immunities Clause would incorporate the Second Amendment. Petitioners’ argument should be rejected.²⁷

Rights, many other scholars have reached contrary conclusions. The claim of a “near unanimous” agreement on “the history and meaning of the Clause” (Brief of Constitutional Law Professors as *Amici Curiae* in Support of Petitioners 3) simply disregards a vast amount of scholarship finding a lack of evidence that Bill of Rights guarantees were considered privileges or immunities of national citizenship. See, e.g., Berger, *supra*, at 133-56; Currie, *supra*, at 406; Fairman, *supra*, at 139; Nelson, *supra*, at 123; Rosenthal, *New Originalism*, *supra*, at 27; Thomas, *Riddle*, *supra*, at 1628; see also Brief of Legal Scholars as *Amici Curiae* in Support of Respondents.

²⁷ Petitioners and NRA both limit their argument in this Court to handgun bans. In the courts below, both raised other issues. Petitioners challenged Chicago’s annual and pre-acquisition registration requirements and the penalty of unregistrability for failure to comply with those requirements. J.A. 27-

CONCLUSION

The judgment of the court of appeals should be affirmed.

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Respectfully submitted,
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Counsel for the Village of Oak Park

December 30, 2009

30. NRA's separate suits against Chicago and Oak Park, which are not before the Court, challenged Chicago's exceptions for handguns registered before the ban; owned by detective agencies and security personnel; and possessed by non-residents participating in or traveling to lawful firearm-related recreation, and Oak Park's exceptions for licensed firearm collectors and theater organizations. If the judgment is reversed, the lower courts should be directed to address those claims in the first instance.

**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

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City of Chicago
Richard M. Daley, Mayor

Department of Law

Mara S. Georges
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October 15, 2010

Jesse Panuccio
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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.

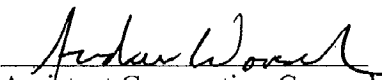
III. Rule 26(a)(1)(A)(iv).

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

Attorneys for Defendants

CERTIFICATE OF SERVICE

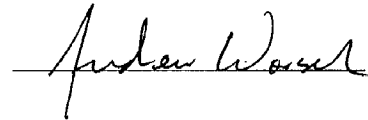
I, Andrew Worseck, an attorney, hereby certify that on this, the 15th day of September, 2010, I caused a copy of the forgoing **Defendants' Initial Disclosures Pursuant to Fed. R. Civ.**

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.

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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.

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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.

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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.