

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
Shui W. Kwong, et al.,	:	Civil Action Number:
	:	11 cv 2356
Plaintiffs,	:	
	:	(Hon. John G. Koeltl)
-against-	:	
	:	
Michael Bloomberg, et al.,	:	
	:	
Defendants.	:	
-----X	:	

**INTERVENOR'S RESPONSE TO PLAINTIFFS' STATEMENT  
OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

**AND**

**INTERVENOR'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF INTERVENOR'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1 of the Civil Rules of the United States District Courts for the Eastern and Southern Districts of New York, Intervenor Attorney General Eric T. Schneiderman, Attorney General of the State of New York ("Intervenor"), submits the following response to the Plaintiffs' Statement of Undisputed Material Facts in Support of Plaintiff's Motion for Summary Judgment. Intervenor also submits this Statement Of Undisputed Material Facts In Support of Intervenor's Motion For Summary Judgment. Citations to exhibits in the Intervenor's Statement are to those annexed to the declarations submitted in support of the Intervenor's Motion for Summary Judgment.

Plaintiffs have moved for summary judgment before any discovery has taken place in this action. As a result, in response to some of Plaintiffs' asserted statements of undisputed facts, Intervenor must state that he can neither concede nor dispute the statement because of the lack of discovery. Intervenor submits that in those instances

where he cannot state whether he disputes a statement, the asserted facts are not material to Intervenor's Motion for Summary Judgment. Intervenor's responses bear the same paragraph numbers as used by Plaintiffs in their Statement of Undisputed Material Facts.

**INTERVENOR'S RESPONSES TO PLAINTIFFS' STATEMENT OF  
UNDISPUTED FACTS**

1. Plaintiff Shui W. Kwong is a union electrical contractor, husband, and father who immigrated to the United States from Hong Kong. Ex. 1, Declaration of Shui W. Kwong ("Kwong Dec.") ¶ 1.

RESPONSE 1: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

2. Plaintiff Nick Lidakis is a first-generation Greek American who serves the City as a paramedic. Ex. 2, Declaration of Nick Lidakis ("Lidakis Dec.") ¶ 1.

RESPONSE 2: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

3. Plaintiff Nunzio Calce is a first-generation Italian American who is a father and a certified public accountant. Ex. 3, Declaration of Nunzio Calce ("Calce Dec.") ¶ 1.

RESPONSE 3: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

4. Plaintiffs George and Daniela Greco have been married for 24 years and have two children. Ex. 4, Declaration of George Greco ("G. Greco Dec.") ¶ 1; Ex. 5, Declaration of Daniela Greco ("D. Greco Dec.") ¶¶ 1-2.

RESPONSE 4: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

5. Plaintiff Mr. Greco operates Midhattan Woodwork Corp., which is a successful third generation family woodworking business. Ex. 4, G. Greco Dec. ¶ 1.

RESPONSE 5: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

6. Plaintiff Mrs. Greco is a New York City public school teacher. Ex. 5, D. Greco Dec. ¶ 1.

RESPONSE 6: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

7. Plaintiff Glenn Herman is married and is a certified firearms safety instructor. Ex. 6, Declaration of Glenn Herman ("Herman Dec.") ¶ 1.

RESPONSE 7: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

8. Plaintiff Timothy Furey is an investment professional who serves clients throughout the world. Ex. 7, Declaration of Timothy Furey ("Furey Dec.") ¶ 1.

RESPONSE 8: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

9. Plaintiff Mr. Kwong holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 1, Kwong Dec. ¶¶ 2-4.

RESPONSE 9: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Kwong must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2) to renew his handgun license.

10. Plaintiff Mr. Lidakis holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 2, Lidakis Dec. ¶¶ 2-4.

RESPONSE 10: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Lidakis must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2), to renew his handgun license.

11. Plaintiff Mr. Calce holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 3, Calce Dec. ¶¶ 2-4.

RESPONSE 11: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Calce must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2) to renew his handgun license.

12. Plaintiff Mr. Greco holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 4, G. Greco Dec. ¶¶ 2-4.

RESPONSE 12: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Greco must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2) to renew his handgun license.

13. Plaintiff Mrs. Greco holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew her license in the future. Ex. 5, D. Greco Dec. ¶¶ 3-5.

RESPONSE 13: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mrs. Greco must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2) to renew her handgun license.

14. Plaintiff Mr. Herman holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 6, Herman Dec. ¶¶ 2-4.

RESPONSE 14: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Herman must comport with the fee rates as established by the City of New York, pursuant to New York City Administrative Code § 10-131(a)(2) to renew his handgun license.

15. Plaintiff Mr. Furey holds a New York City Residence Premises handgun license, has previously paid the \$340 fee, and will need to pay the \$340 fee in order to renew his license in the future. Ex. 7, Furey Dec. ¶¶ 2-4.

RESPONSE 15: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point, except to admit that Plaintiff Mr. Furey comport with the fee rates

as established by the City of New York, pursuant to New York Penal Law § 400.00(14) and New York City Administrative Code § 10-131(a)(2) to renew his handgun license.

16. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is organized under the laws of the State of Washington. Ex. 8, Declaration of Miko Tempski (“Tempski Dec.”) ¶ 3.

RESPONSE 16: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

16. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is organized under the laws of the State of Washington. Ex. 8, Declaration of Miko Tempski (“Tempski Dec.”) ¶ 3.

RESPONSE 16: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

17. SAF is a 501(c)(3) not-for profit member organization. Ex. 8, Declaration of Miko Tempski (“Tempski Dec.”) ¶ 3.

RESPONSE 17: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

18. SAF has over 650,000 members and supporters nationwide, including in the City and State of New York. Ex. 8, Tempski Dec. ¶ 4.

RESPONSE 18: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

19. SAF's core purposes include promoting both the exercise of the right to keep and bear arms, as well as education, research, publishing, and legal action focusing on the constitutional right to privately own and possess firearms. SAF publishes three

periodicals (The New Gun Week, Women and Guns, and The Gottlieb-Tartaro Report) and also publishes the academic publication Journal of Firearms and Public Policy. Ex. 8, Tempski Dec. ¶ 5.

RESPONSE 19: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

20. SAF sponsored and was a party to the McDonald v. Chicago litigation, and SAF has sponsored and continues to sponsor litigation that seeks to vindicate the constitutional right to keep and bear arms. Ex. 8, Tempski Dec. ¶ 6.

RESPONSE 20: Intervenor admits Plaintiffs' assertion that plaintiff SAF was a party to the McDonald v. Chicago litigation, but denies sufficient information to confirm or deny Plaintiffs' remaining assertions on this point.

21. Plaintiffs Nick Lidakis, Nunzio Calce, and Glenn Herman are members of SAF. Ex. 2, Lidakis Dec. ¶ 5; Ex. 3, Calce Dec. ¶ 5; Ex. 6, Herman Dec. ¶ 5.

RESPONSE 21: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

22. Plaintiff The New York State Rifle and Pistol Association, Inc. ("NYSRPA") is a 501(c)(4) not-for profit member organization that is organized under the laws of the State of New York as a non-profit corporation. Ex. 9, Declaration of Thomas H. King ("King Dec.") ¶ 3.

RESPONSE 22: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

23. NYSRPA has 22,000 members in the State of New York, including in New York City. Ex. 9, King Dec. ¶ 5.

RESPONSE 23: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

24. NYSRPA is the oldest firearms advocacy organization in the nation, being organized in 1871 in New York City. NYSRPA is the largest state-level firearms organization in the State of New York. Ex. 9, King Dec. ¶ 4.

RESPONSE 24: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

25. NYSRPA's core purposes include providing education and training in both firearms safety and firearms proficiency. NYSRPA actively promotes the shooting sports throughout the State of New York, and its membership includes affiliated hunting and shooting clubs in all regions. Another core purpose of NYSRPA is to promote the preservation of Second Amendment rights through both legislative and legal action. Ex. 9, King Dec. ¶ 6.

RESPONSE 25: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

26. Plaintiff Glenn Herman is a member of NYSRPA, and Plaintiff George Greco is a NYSRPA board member. Ex. 4, G. Greco Dec. ¶ 5; Ex. 6, Herman Dec. ¶ 5.

RESPONSE 26: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

27. The document attached as Ex. 11 is a copy of 1911 N.Y. Laws ch. 195, provided as a convenience to the Court. Ex. 10, Declaration of David Jensen ("Jense Dec.") ¶ .



RESPONSE 27: Paragraph 27 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

28. The document attached as Ex. 12 is a copy of § 1897 of the 1909 Penal Code of New York, provided as a convenience to the Court. Jensen Dec. ¶ 2.

RESPONSE 28: Paragraph 28 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

29. The document attached as Ex. 13 is a copy of “Instructions to All Handgun License Applicants” prepared by the New York City Police Department, available at <http://www.nyc.gov/html/nypd/downloads/pdf/permits/HandGunLicenseApplicationFormsComplete.pdf> (last visited Jun. 22, 2011). Jensen Dec. ¶ 5.

RESPONSE 29: Paragraph 29 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

30. At the present time, handgun license applicants in New York City must pay a fee of \$94.25 for fingerprinting and background checks conducted by the New York State Division of Criminal Justice Services. Jensen Dec. ¶ 5 & ex. 13.

RESPONSE 30: Intervenor admits that the State Division of Criminal Justice Services does charge a fee to run a fingerprint report in connection with gun license applications and that in that context, the Division uses the fingerprints to obtain a list of arrests in the State of New York and to obtain information from databases maintained by the Federal Bureau of Investigation.

31. The document attached as Ex. 14 is a copy of 1922 N.Y. Laws ch. 198, provided as a convenience to the Court. Jensen Dec. ¶ 2.

RESPONSE 31: Paragraph 31 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

32. The Consumer Price Index, maintained by the Bureau of Labor Statistics, increased in value by 1345.0% from 1922 to 2011. See generally Bureau of Labor Statistics, “Inflation Calculator,” available at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited Jun. 22, 2011).

RESPONSE 32: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

33. The document attached as Ex. 15 is a copy of 1938 N.Y. Laws ch. 374, provided as a convenience to the Court. Jensen Dec. ¶ 2.

RESPONSE 33: Paragraph 33 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

34. The document attached as Ex. 16 is a copy of A. 1526-1382, which is the “Bill Jacket” accompanying 1938 N.Y. Laws ch. 374, provided as a convenience to the Court. Jensen Dec. ¶ 4.

RESPONSE 34: Paragraph 34 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

35. The document attached as Ex. 17 is a copy of §§ B18-1.0(7) and 436-5.0(2) of the 1938 New York City Administrative Code, provided as a convenience to the Court. Jensen Dec. ¶ 3.

RESPONSE 35: Paragraph 35 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

36. The Consumer Price Index, maintained by the Bureau of Labor Statistics, increased in value by 1602.6% from 1938 to 2011. See generally Bureau of Labor Statistics, “Inflation Calculator,” available at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited Jun. 22, 2011).

RESPONSE 36: Paragraph 36 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

37. The document attached as Ex. 18 is a copy of the 1947 N.Y. Laws ch. 147, provided as a convenience to the Court. Jensen Dec. ¶ 2.

RESPONSE 37: Paragraph 37 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

38. The document attached as Ex. 19 is a copy of A. 499-497, which is the “Bill Jacket” accompanying 1947 N.Y. Laws ch. 147, provided as a convenience to the Court. Jensen Dec. ¶ 4.

RESPONSE 38: Paragraph 38 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

39. The document attached as Ex. 20 is a copy of New York City Local Law No. 32-1948, provided as a convenience to the Court. Jensen Dec. ¶ 3.

RESPONSE 39: Paragraph 39 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

40. The Consumer Price Index, maintained by the Bureau of Labor Statistics, increased in value by 937.6% from 1948 to 2011. See generally Bureau of Labor Statistics, “Inflation Calculator,” available at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited Jun. 22, 2011).

RESPONSE 40: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

41. The document attached as Ex. 21 is a copy of New York City Local Law No. 37-2004, provided as a convenience to the Court. Jensen Dec. ¶ 5.

RESPONSE 41: Paragraph 41 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

42. The document attached as Ex. 22 is a copy of the Fiscal Impact Statement for New York City Local Law No. 37-2004, provided as a convenience to the Court. Jensen Dec. ¶ 5.

RESPONSE 42: Paragraph 42 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

43. The document attached as Ex. 23 is a copy of pertinent excerpts from minutes of a hearing held by New York City Council on June 24, 2004, provided as a convenience to the Court. Jensen Dec. ¶ 5.

RESPONSE 43: Paragraph 43 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

44. The document attached as Ex. 24 is a copy of § 353 of the Greater New York Charter (1906), provided as a convenience to the Court. Jensen Dec. ¶ 3.

RESPONSE 44: Paragraph 44 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

45. The document attached as Ex. 25 is a copy of New York City Council Introduction 313-2010, provided as a convenience to the Court. Jensen Dec. ¶ 5.

RESPONSE 45: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

46. The document attached as Ex. 26 is a copy of the Report of the New York City Council Committee on Public Safety for Introduction 313-2010, dated Sept. 15, 2010, provided as a convenience to the Court. Jensen Dec. ¶ 5.

RESPONSE 46: Paragraph 46 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

47. The document attached as Ex. 27 is a copy of excerpts from the Nassau County, New York Police Department's "Pistol License Handbook" dated April 2010, available at [http://www.police.co.nassau.ny.us/pdf/InformationHandbookWebPage%20\\_2\\_.pdf](http://www.police.co.nassau.ny.us/pdf/InformationHandbookWebPage%20_2_.pdf) (last visited Jun. 22, 2011), which sets forth basic requirements to apply for a handgun license in Nassau County. Jensen Dec. ¶ 5.

RESPONSE 47: Paragraph 47 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

48. At the present time, handgun license applicants in Nassau County must pay \$200 for a license that is valid for 5 years. Jensen Dec. ¶ 5 & ex. 27 p. 5.

RESPONSE 48: Admitted.

49. The document attached as Ex. 28 is an excerpt from a webpage maintained by the New Jersey State Police entitled "Frequently Asked Questions," available at <http://www.njsp.org/faq.html#firearms> (last visited Jun. 22, 2011). Jensen Dec. ¶ 5.

RESPONSE 49: Paragraph 49 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

50. At the present time, a person seeking to purchase a handgun for the first time in New Jersey must pay \$60.25 for a background check. Jensen Dec. ¶ 5 & ex. 28 at Q5.

RESPONSE 50: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

51. The document attached as Ex. 29 is an excerpt from a webpage maintained by the Bureau of Firearms of the California Department of Justice entitled "Frequently Asked Questions," available at <http://ag.ca.gov/firearms/pubfaqs.php> (last visited Jun. 22, 2011). Jensen Dec. ¶ 5.

RESPONSE 51: Paragraph 51 is not an assertion of any fact to which Intervenor can either admit or deny. Further, said attached document speaks for itself.

52. At the present time, a person seeking to purchase a handgun in California must pay \$ 25 for additional state background check. Jensen Dec. ¶ 5 & ex. 29 at 13.

RESPONSE 52: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point.

\* \* \* \* \*

**INTERVENOR'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF INTERVENOR'S MOTION FOR SUMMARY JUDGMENT**

**I. New York's Handgun Licensing Scheme**

1. New York State does not ban handguns, but requires them to be licensed. Complaint ¶ 4; Penal Law § 265.00; § 400.00.

2. New York Penal Law provides for a number of different types of handgun licenses and sets forth the requirements for such licenses. Complaint ¶¶ 60-62; Penal Law § 400.00.

3. Applications for gun licenses must be made to the "licensing officer" in the city or county where the applicant in the city or county where the applicant resides. New York State licensing officers are judges or justices of a "court of record" except in New York City and Nassau and Suffolk Counties, where the "licensing officer" is the Police Commissioner or Sheriff. Penal Law § 265 (10).

4. Every application is investigated by "the duly constituted police authorities" of the locality where such application is made. Penal Law § 400.00 (4).

5. The investigation results are then reported to the licensing officer. Penal Law § 400.00 (4) and (4-a).

6. If the application is granted, the approved application must be filed with the County Clerk or other designee and the New York State Police. Penal Law § 400.00 (5).

7. New York Penal Law § 400.00(14) provides that in New York City the City Council and in Nassau County the Board of Supervisors shall fix the fee to be charged for a license to carry or possess a pistol or revolver, and that elsewhere in the state, the county legislative body of each county will set a fee for each license to carry or possess a pistol or revolver of not less than three dollars nor more than ten dollars to be collected and paid into the county treasury. Penal Law § 400.00(14).

8. The City Council for New York City enacted § 10-131 of the New York City Administrative Code establishing a license fee of \$340 for New York City. § 10-131 New York City Administrative Code § 10-131. Complaint ¶¶ 1, 8, 63, 66-69.

## **II. Legislative History of Penal Law § 400.00(14)**

9. New York's current handgun law was first codified on May 25, 1911 and was known as the Sullivan Law. See Connell Decl., Ex. B., 1911 N.Y. Laws Ch. 195. Intended to curb the "scourge" of handgun violence that was then sweeping the state, particularly New York City, the Sullivan Law has regulated the possession and carrying of handguns in New York State for a century. See Connell Decl., Ex. C.

10. The Sullivan Law has undergone amendment since it was first enacted. In 1922, the Legislature amended § 1897 to include a fee provision which imposed a fee of fifty cents for each gun license. See Connell Decl., Ex. D.

11. The 1922 amendment provided for a fee to help defray the costs incurred by the counties for administering the licensing programs. See Connell Decl., Ex. D, p. 6.

12. In 1938, § 1897 was amended. The fees for gun licensing were increased from 50 cents to not less than 50 cents and not more than \$1.50, with the actual amount to be determined by the local legislature. Such fees were charged to provide the county or City licensing officers with the necessary "provisions" in regard to gun licensing and were to be collected and deposited into the treasury of the county or City. State Assemblyman J. Edward Conway wrote in support of the bill, noting in a March 26, 1938 letter, that "much additional clerical assistance" was required in regard to gun licensing, and that it has been found that the fifty cent fee "does not cover the actual expense of the administration of the pistol permit bureau." See Connell Decl., Ex. E.



13. In 1947, the law was amended to permit New York City to set its own fees, with the intention that licensing program would be "self-sustaining". The legislative history demonstrates that the Legislature had received letters, including from the Mayor of the City of New York, William O'Dwyer, indicating that the then-current maximum fee of \$1.50 was "inadequate to compensate for the administrative expense entailed in the issuance of such licenses". The Mayor noted that before a license is issued, "the Police Department conducts an intensive investigation" to ensure that issuance of a license would not jeopardize the public safety and welfare. See Connell Decl., Ex. F, 1947 N.Y. Laws Ch. 147.

14. Since 1947, the New York City Council has been responsible for setting the fees for gun licenses in the City. See Connell Decl., F.

15. Subsequent amendments to the Penal Law similarly exempted Nassau County from the statutory cap when officials there complained that administering licenses was time-intensive and expensive and that the \$5.00 fee then charged in Nassau County was insufficient to cover the costs of the licensing program. See Connell Decl., Ex. G, 1973 N.Y. Laws Ch. 546.

16. In 1984, the current fee range was established in an attempt to make the fee more closely approximate actual cost of administration which can, "in some cases", could be as high as \$250 and to lessen the vast disparity in some counties between the cost of gun licensing and the fees collected. See Connell Decl., Ex H.

### **III. NEW YORK HAS A COMPELLING INTEREST IN REGULATING HANDGUNS**

17. There is a compelling and well recognized public interest in regulating handguns and in screening handgun license applicant because firearm-related violence is

a significant public health and safety concern. United States v. Salerno, 481 U.S. 739, 748-50 (1987); Schall v. Martin, 467 U.S. 253, 264 (1984); Heller v. District of Columbia (“Heller II”), 698 F.Supp.2d 179, 190-91 (D. D.C. 2010); U.S. v. Masciandaro, 648 F.Supp.2d 779, 789 (E.D. Va. 2009); U.S. v. Masciandaro, 638 F.3d 458, 471 (4th Cir. 2011); see also Peruta v. Cnty. of San Diego, 758 F.Supp.2d 1106, 1117 (S.D. Cal. 2010).

18. A vital part of this public interest is providing for public safety by handgun licensing regimes, including the need ensuring the performance of adequate investigation in connection with gun licenses. See, e.g., Osterweil v. Bartlett, 2011 WL 1983340 (N.D.N.Y. May 20, 2011); Peterson v. LaCabe, 2011 WL 843909, at \*5 (D. Colo. March 8, 2011); Com. v. Lee, 2011 WL 710997, at \*2 (Mass. Super. 2011); Bach v. Pataki, 408 F.3d 75, 92-93 (2d Cir. 2005); Mahoney v. Lewis, 199 A.D.2d 734, 735 (3d Dep’t 1993); Lederman v. N.Y. Police Dep’t, 2011 WL 1343558 (N.Y. Sup. Ct. 2011). See also Complaint ¶ 8.

19. Since 1960, more Americans have been murdered with guns than were killed in all the wars in the twentieth century combined. See David Hemenway, Private Guns, Public Health, 45 (University of Michigan Press 2004).

20. During the 1990s, firearms were used to kill more than ninety people and wound about three hundred more per day on average. See Hemenway, supra, 1.

21. In 2007, there were 18,361 criminal homicides, of which 69% were committed with guns, three quarters of those with handguns; emergency rooms treated nearly 50,000 nonfatal gunshot injuries; and there were over 300,000 assaults and robberies in which the perpetrator used a gun. See [http://www2.fbi.gov/ucr/cius2009/data/table\\_19.html](http://www2.fbi.gov/ucr/cius2009/data/table_19.html).

22. In New York State alone, 481 people were killed with firearms in 2009 (300 in New York City and 181 outside of New York City). United States Center for Disease Control, Nat'l Vital Statistics Report (2007); [http://www.cdc.gov/NCHS/data/nvsr/nvsr58/nvsr58\\_19.pdf](http://www.cdc.gov/NCHS/data/nvsr/nvsr58/nvsr58_19.pdf); see also, Murder: New York City, N.Y. Times, available at <http://projects.nytimes.com/crime/homicides/map> (last visited July 28, 2011).

23. More than 75% of all gun-related killings involve a handgun. Zimring & Hawkins, Crime Is Not the Problem: Lethal Violence in America, Chapters 1, 3 and 7; Zimring & Hawkins, The Citizen's Guide to Gun Control, New York, at Chapter 5, p. 38.

24. The presence of guns in the home has a substantial impact on the rate of completed suicide attempts. Empirical research demonstrates that having a gun in the home increases the risk of a suicide to between two to ten times of that in a home without a gun, not just in regard to the gun owner, but also to any spouse or children in the home. See Matthew Miller and David Hemenway, Guns and Suicide in the United States, 359 New Eng. J. Med. 989, 989-991 (September 4, 2008).

25. Of the 536 law enforcement officers who were feloniously killed in the United States between 2000 and 2009, 490 (91%) were with a firearm and 73 % of those were with a handgun. See [http://www2.fbi.gov/ucr/killed/2009/data/table\\_27.html](http://www2.fbi.gov/ucr/killed/2009/data/table_27.html).

26. On average, New York City processes 2,612 new handgun license applications and 9,522 renewal applications per year, many more than any other locality in the State by far, resulting in significant investigative and administrative costs. See Declaration of James Sherman, Ex. B; Declaration of Andrew Lunetta, filed in support of the Motion for Summary Judgment by the City Defendants, ¶ 3.

Dated: New York, New York  
July 28, 2011

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for State Defendants  
By:

/s/

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