

12-1578

**In the United States Court of Appeals
for the Second Circuit**

SHUI W. KWONG; GEORGE GRECO; GLENN HERMAN; NICK
LIDAKIS; TIMOTHY S. FUREY; DANIELA GRECO; NUNZIO
CALCE; SECOND AMENDMENT FOUNDATION, INC.; THE
NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC.,

Plaintiffs-Appellants,

v.

MICHAEL R. BLOMBERG, in his Official Capacity as Mayor
of the City of New York; CITY OF NEW YORK,

Defendants-Appellees,

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Intervenor-Appellee,

ERIC T. SCHNEIDERMAN, in his Official Capacity as
Attorney General of the State of New York,

Defendant.

Appeal from a Judgment of the United States District Court
for the Southern District of New York; Hon. John G. Koeltl,
District Judge, District Court No. 11 Civ. 2356

JOINT APPENDIX: VOLUME IV (JA 563 – JA 656)

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Exhibit H (2)

CHAPTER 737

LAWS OF 19 84

SENATE BILL 8673

ASSEMBLY BILL _____

SENATE—ASSEMBLY

IN SENATE -- Introduced by Sen. PASLEY -- read twice and ordered
and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. C. W. [unclear] -- read once and referred
to the Committee on Codes

AM [unclear] and the penal law, to read as follows:

Bill compared by _____

DATE RECEIVED BY GOVERNOR: 7/12/84

ACTION MUST BE TAKEN BY: [Signature]

GOVERNOR'S ACTION: _____

2

SENATE VOTE 54 Y 2 N

HOME RULE MESSAGE ____ Y ____ N

Date 6/4/84

Bill is disapproved

ASSEMBLY VOTE 82 Y 64 N

Date 6/27/84

Counsel to Governor

1984

SENATE

SENATE JOURNAL

50

The Senate Bill
by Mr. BARCLAY
Entitled

Calendar No. 1115

Senate No. 8673
Assem. Rept. No.

8673 BARCLAY
An act to amend the penal law, in relation to
firearms

was read the third time

The President put the question whether the Senate would agree to the final passage of said bill the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	51	Mr. Anderson			8	Mr. Levy	
	48	Mr. Auer			49	Mr. Lombardi	
	17	Mr. Babbush			24	Mr. Marchi	
	46	Mr. Barclay			5	Mr. Marino	
	20	Mr. Bartosiewicz			21	Mr. Markowitz	
	9	Mrs. Berman			58	Mr. Masiello	
	33	Mr. Bernstein			30	Mrs. Mendez	EXCUSED
	29	Mr. Bagues	EXCUSED		23	Mr. Montalto	
	43	Mr. Bruno			42	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	
	25	Mr. Connor			14	Mr. Onorato	
	40	Mr. Cook			11	Mr. Padavan	
	61	Mr. Daly			54	Mr. Perry	
	47	Mr. Donovan			36	Mr. Pisani	EXCUSED
	6	Mr. Dunne			56	Mr. Present	
	44	Mr. Farley			50	Mr. Riford	
	60	Mr. Floss			41	Mr. Rollson	
	35	Mr. Flynn			32	Mr. Ruiz	
	31	Mr. Galiber			39	Mr. Schermerhorn	
	13	Mr. Gold			52	Mr. Smith	
	37	Mrs. Goodhue			19	Mr. Solomon	
	26	Mr. Goodman			57	Mr. Slachowski	
	18	Mr. Halperin			45	Mr. Stafford	
	22	Ms. Jefferson			12	Mr. Slavsky	EXCUSED
	10	Mr. Jenkins			55	Mr. Steinfeldt	EXCUSED
	4	Mr. Johnson			3	Mr. Trunzo	
	53	Mr. Kehoe			7	Mr. Tully	
	15	Mr. Knorr			59	Mr. Volkov	
	2	Mr. Lack			16	Mr. Weintraub	
	1	Mr. LaValle			38	Mrs. Whitman	
	28	Mr. Leichter					

NEW YORK STATE ASSEMBLY

REPRINT NO: 001
DATE: 06/27/34DATE: 06/27/1984
TIME: 09:50:04 PM

BILL: 58673(A10441)

R.R. NO: 946 SPONSOR: BARCLAY--

AN ACT TO AMEND THE PENAL LAW, IN RELATION TO FIREARMS

Y	ADAMSON, E	NAY	Hinnen, K	Y	PASSANNANTE, WF
Y	BARBARO, FJ	NAY	HARENBERG, PE	Y	PATTON, BA
NAY	BARNETT, HH	NAY	HARRIS, GH	NAY	Paxon, LH
NAY	BARRAGA, TF	Y	HARRISON, J	NAY	Plone, JM
NAY	BECKER, GR	NAY	HAWLEY, RS	Y	PILLITTERE, JT
NAY	BEHAN, JI	NAY	HEALEY, PB	Y	PORDUM, FJ
NAY	BENNETT, LE	Y	HEVEST, AG	Y	PROUD, G
NAY	BIANCHI, LW	Y	HIND, D	NAY	Rappleyes, CD
Y	BOYLAND, JF	Y	HINCHAY, MD	NAY	Retalliate, AP
Y	BRAGMAN, MJ	NAY	Hoblock, MJ	Y	RIVERA, J
Y	BRODEKY, RL	NAY	HOCHBRUECKNER, GJ	Y	ROBACH, RJ
NAY	Burrows, GH	Y	HOTT, WB	Y	ROBLES, VL
NAY	Bush, WE	Y	JACOBS, RS	NAY	RUGGIERO, RS
Y	BUTLER, DJ	NBS	JENKINS, C	NAY	Ryan, AH
NAY	Casale, AJ	Y	KEANE, RJ	NAY	RYAN, WJ
Y	CATAPANO, TF	NAY	Kelleher, NH	NAY	Saland, SH
NAY	Cheabro, FI	Y	KOPPELL, GO	Y	SANDERS, S
NAY	Cochrane, JC	Y	KREMER, AJ	NAY	Sawicki, J
NAY	CONNELLY, EA	NAY	Kuhl, JR	Y	SCHIMMINGER, RL
NAY	CONNERS, RJ	Y	LAFAYETTE, IC	EOR	SCHMIDT, FD
Y	CONNOR, F I	NAY	Lane, CD	NAY	Sears, WR
NAY	Cooke, AF	NAY	Larkin, WJ	NAY	SEMINERIO, AS
NAY	Coombs, RI	Y	LASHER, HL	Y	SERRANO, JE
NAY	Damato, AP	NAY	Leibell, VL	NAY	Sheffer, JB
NAY	DAndrea, RA	Y	LENTOL, JR	Y	SIEGEL, MA
Y	DANIELS, GL	NAY	Levy, E	Y	SILVER, S
Y	DAVIS, G	Y	LIPSCHUTZ, GE	Y	SLAUGHTER, LM
Y	DEWIE, JC	NAY	MacNeil, HS	NAY	Spino, NA
Y	DEL TORO, A	NAY	Madison, GH	NAY	Straniero, RA
Y	DIAZ, HL	Y	MARCHISELLI, VA	Y	SULLIVAN, EC
Y	DUANE, JF	Y	MARSHALL, HM	NAY	Sullivan, PM
Y	DUGAN, EC	Y	MAYERSOHN, N	Y	TALLON, JR
Y	ENGEL, EL	Y	MCCABE, JW	NAY	Talonia, FG
Y	EVE, AD	NAY	McCann, JW	NAY	Tedisco, J
Y	FARRELL, HD	Y	MCHULTY, MR	NAY	TONKO, PD
Y	FELDMAN, D	NAY	MCPHILLIPS, MM	Y	VANN, A
Y	FERRIS, J	NAY	Miller, HM	Y	VITALIANO, EN
NAY	Fanagan, JJ	Y	MILLER, MH	Y	WALDON, AR
Y	FREDA, L	Y	MURPHY, MJ	Y	WALSH, LB
Y	FRIEDMAN, G	Y	MURTAUGH, JB	NAY	Warren, GE
Y	GANTT, DF	Y	NADLER, J	Y	WEINSTEIN, HE
Y	GOLDSTEIN, R	NAY	Nagle, JF	Y	WEPRIN, S
Y	GORSKI, DT	Y	NEHBURGER, MM	NAY	Wertz, RC
Y	GOTTFRIED, RM	Y	NORMAN, C	NAY	Wesley, RC
NAY	GRABER, VJ	ELB	Nortz, HR	Y	WILSON, CE
Y	GRANNIS, A	NAY	Nozzolio, MF	NAY	Winner, GH
Y	GREEN, RL	NAY	ONeil, JG	Y	YEVOLI, LJ
Y	GREENE, A	Y	ORAZIO, AF	Y	YOUNG, GP
Y	GRIFFITH, E	Y	PARMENT, WL	Y	ZIMMER, MM
NAY	HALPIN, PG	NAY	Parola, FE		MR. SPEAKER

YEAS: 32

NAYS: 64

4

CONTROL: 03626310

CERTIFICATION

LEGEND: Y=YES, NAY=NO, ELB=EXCUSED
ELB=EXCUSED FOR NON-RESIDENT

MC
APPROVED: Senator James W. McGreevey

APPROVED: S. 8673 Senator Barclay

5-8673

MEMORANDUM

AN ACT to amend the Penal Law, in relation
to firearms

SUMMARY OF PROVISIONS

This bill amends Section 400.00(14) of the Penal Law to increase the various pistol license fees outside the City of New York and County of Nassau. The fees would be changed as follows:

1. Maximum license fee from \$5 to \$10 as set by the county legislative body
2. Each amendment to a license from \$1 to \$3 (and from \$2 to \$5 in Suffolk County)
3. For each license issued to a gunsmith from \$4 to \$10
4. Fee for a duplicate license from \$2 to \$5
5. Fee for processing a license transfer shall be set at \$5.

JUSTIFICATION:

The various fees for pistol licenses charged by the counties of the state have not been changed since their enactment in the Penal Law in 1965. There is substantial time and paperwork involved in processing these license applications, as well as processing amendments and transfers of those licenses.

Accordingly, this legislation provides for modest increases in these fees to more adequately compensate the counties for the time and work involved.

There are no fiscal implications for the state, since these fees are paid by the applicant for the license, and these fees remain with the county processing the application.

EFFECTIVE DATE:

The first day of November next succeeding the date on which it shall have become law.

FISCAL IMPLICATIONS:

None to the state; some increase in revenues to the counties of the state.

S-8673

B-20

TEN-DAY BILL
BUDGET REPORT ON BILLS

Session Year: 1984

SENATE

Introduced by:

ASSEMBLY

No.

4671

Senator Barclay

No.

Law:

Penal

Sections: 400.00 (14)

Division of the Budget recommendation on the above bill:

Approved:

Vote:

No Objection:

No Recommendation:

1. Subject and Purpose: This bill would increase various pistol and revolver license fees outside New York City and Nassau County to more closely approximate the actual cost of processing license applications. The bill would establish a new fee for processing a license transfer between counties.
2. Summary of Provisions: Existing law permits New York City and Nassau County to establish their own fee schedules for pistol and revolver licenses. New York City currently charges \$76 for a new license while Nassau County charges \$51. Effective November 1, 1984, this bill would institute the following fee changes in all other counties:
 - a) The maximum allowable license fee for a pistol or revolver would increase from five dollars to ten dollars.
 - b) The fee for amendments to licenses would increase from one dollar to three dollars except in Suffolk County where the increase would be from two dollars to five dollars.
 - c) The license fee for a gunsmith or firearms dealer would increase from four dollars to ten dollars.
 - d) The fee for a duplicate license would increase from two dollars to five dollars.
 - e) A new fee for processing a license transfer between counties would be established at five dollars.
3. Prior Legislative History: None.
4. Arguments in Support:
 - a) The various pistol and revolver license fees have not been increased outside of New York City and Nassau County since 1965 even though the cost of processing applications and amendments has increased during this period. According to the Division of State Police, the proposed fees more

Penal

-2-

\$400.00(14)

closely approximate the actual cost of processing license applications, transfers, amendments and the issuance of duplicate licenses. In some cases, the cost of completing a full character investigation required by law in consideration of a new license application or renewal can be as much as \$250 or, 25 times the proposed maximum fee.

- b) Establishment of a new fee for processing a license transfer between counties should encourage county cooperation in the timely transfer of license authority required under section 400 subdivision 5 of the Penal law when a pistol or revolver owner changes his county of residence.

5. Possible Objections:

- a) The measure of local discretion accorded to New York City and Nassau County in the establishment of pistol and revolver license fees has resulted in fees for those areas which more closely approximate the actual costs involved in license processing. Even given the increases in this legislation, other counties will be charging fees that remain considerably below New York City and Nassau County fees and below actual cost. It could be argued that all counties should establish license fees as a matter of local discretion rather than statutory action on the State level in order that fees do not significantly lag behind the actual costs of license processing.
- b) Applicants for pistol and revolver licenses will object to the fee increases since there will be no particular enhancement of the service of being furnished a license. License holders will point out that they must pay an additional fee for fingerprint processing as part of the application process and may in some areas be required to pay for a photograph thereby making the license a very expensive item for some individuals.

6. Other State Agencies Interested: The Division of State Police may be interested in this bill.

7. Known Position of Others: It is expected that the New York State Rifle and Pistol Association, the New York State Federation of Sportsmen and the New York State Conservation Council will all oppose the bill. The New York State Association of Counties is in favor of the bill.

8. Budgetary Implications: Since all fees are collected by counties and expended for county purposes, there are no fiscal implications for the State. All fees are paid by the license applicant.

Penal

- 3 -

\$400.00 (14)

9. Recommendation: Approve. An increase in pistol and revolver license fees is overdue since the current fee schedule has not been increased outside of New York City and Nassau County for nearly 20 years. The proposed fees more closely approximate the costs to counties of furnishing a full range of licensure services. There are no fiscal implications for the State.

Date: July 16, 1984

Examiner: *W. J. [Signature]*

Examiner: _____



S-8673

Memorandum

July 24, 1984

SENATE

ASSEMBLY

INTRODUCED BY

8073

Sen. BARCLAY

RECOMMENDATION:

NO OBJECTION

STATUTE INVOLVED:

PENAL LAW

EFFECTIVE DATE:

On the first day of November next
succeeding the date on which it shall
have become a law.

DISCUSSION:

This bill will amend the Penal Law, in relation to firearms.

The Division of State Police has no objection to passage of this
legislation.

Donald A. Chasman
Superintendent

CC: Honorable Lawrence Kurlander
Director of Criminal Justice

CC: Honorable Matthew Crosson
Assistant Counsel to the Governor



OFFICE OF THE ATTORNEY GENERAL

Memorandum

58673

July 24, 1984

SENATE

8673

ASSEMBLY

INTRODUCED BY

Sen. BARCLAY

RECOMMENDATION:

NO OBJECTION

STATUTE INVOLVED:

PENAL LAW

EFFECTIVE DATE:

On the first day of November next
succeeding the date on which it shall
have become a law.

DISCUSSION:

This bill will amend the Penal Law, in relation to firearms.

The Division of State Police has no objection to passage of this
legislation.

/s/ Donald O. Chesworth
Superintendent

CC: Honorable Lawrence Kurlander
Director of Criminal Justice

CC: ✓ Honorable Matthew Crosson
Assistant Counsel to the Governor



STATE OF NEW YORK
EXECUTIVE CHAMBER
MEMORANDUM

S. 8673

July 20, 1984

To: Gerald Crotty

From: Lawrence T. Kurlander *LTK*

Subject: S. 8673

This bill amends Penal Law Section 400.00(14) to authorize modest increases in pistol licensing fees. Despite rising administrative costs, these fees to the counties have not been increased since 1965. This bill will more accurately reflect current costs. I SUPPORT this legislation.



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12226

58673

THOMAS A. COUGHLIN III
COMMISSIONER

JUDITH LAPOOK
ASSOCIATE COMMISSIONER AND COUNSEL

July 12, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Crotty:

The following legislative proposals, passed by both houses of the Legislature, will have no effect on the operation of the Department of Correctional Services:

Senate

5603	Unjust conviction of Reda Lauer
7186	Unjust conviction of Ahmad Kassim
7449	Arraignment in adjoining town
8688	Utica peace officers
8673	Firearm registration fees
8744	Conditions of employment; non-judicial officers
9107	Prior approval of certain adjustments
9899-A	Additional state aid for youth bureaus
9954	Fort Drum cession of jurisdiction

Assembly

11793-A	Chemical test evidence
---------	------------------------

The Department of Correctional Services will take no position on these proposals.

Sincerely,

Judith LaPook
Associate Commissioner
and Counsel

JLP/DDM/840098

12

MC

S-8673



STATE OF NEW YORK
DIVISION OF SUBSTANCE ABUSE SERVICES
Office of Alcoholism and Substance Abuse
EXECUTIVE PARK SOUTH
ALBANY, NEW YORK 12203

JULIO A. MARTINEZ
Director

ROBERT A. BOSMAN
Chief Counsel
(518) 457-1788

July 12, 1984

Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
Albany, New York 12224

RE: S 8673

Dear Mr. Crotty:

The Division of Substance Abuse Services has reviewed Senate bill number 8673 and has no comment on this bill to increase localities' fees for gun permits.

Very truly yours,

A handwritten signature in cursive script that reads "Robert A. Bosman".
Robert A. Bosman

5. 8673

TO COUNSEL TO THE GOVERNOR

RE: SENATE 8673
ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon, at this time. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

ROBERT ABRAMS
Attorney General

Dated: 7-5-84

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S-8673-A

MEMORANDUM



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES

July 9, 1984

TO: Gerald C. Crotty
FROM: Jay M. Cohen
SUBJECT: S.8673-A/A.10441

This bill proposes to amend the handgun licensing law by increasing the maximum fees that can be set by all local legislative bodies outside of New York City and Nassau County. The sole exception to the uniform increase is to authorize Suffolk County to increase its fee for a license amendment from \$2 to \$5, while the same fee for other localities is increased from \$1 to \$3.

DCJS has voiced disapproval in the past where similar legislation was introduced to permit different license expiration periods in Suffolk, and to raise license fees to \$15. Such legislation has been vetoed by the Governor upon the recommendation of this agency and others, that it would encourage other counties to seek disparate treatment without justification.

The subject legislation is limited to a modest fee increment and is uniform in its application throughout the State outside of New York City and Nassau County, except for the Suffolk County provision, and even that is consistent with the existing law.

Therefore, DCJS has no objection to this bill.

js



S-8673

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PROBATION
60 SOUTH PEARL STREET
ALBANY, NEW YORK 12207

MARIO M. CUOMO

July 9, 1984

EDMUND P. WUTZER
State Director

M E M O R A N D U M

TO: Gerald C. Crotty, Counsel to the Governor
Matthew T. Crosson, Assistant Counsel to the Governor
Lawrence T. Kurlander, Director of Criminal Justice

FROM: Linda J. Valenti, General Counsel *LJV*
NYS Division of Probation

SUBJECT: S. 8673 (Barclay)
Licensing Fees

This legislation amends Section 400.00(14) of the Penal Law to increase various pistol license fees outside the City of New York and Nassau County. Additional language substitutes the term "legislative body" for "board of supervisors".

In recognition that licensing fees need to reflect current processing expenses and that not all counties have a board of supervisors, the Division of Probation recommends that the Governor sign S. 8673 into law.

cc: Edmund B. Wutzer, State Director

mc



RAMON J. RODRIGUEZ
CHAIRMAN

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PAROLE
97 CENTRAL AVENUE
ALBANY, NEW YORK 12206

S-8673

EDWARD ELWIN
EXECUTIVE DIRECTOR

July 10, 1984

Hon. Gerald C. Crotty
Executive Chamber
State Capitol
Albany, New York 12224

RE: S. 8673 A. 10441

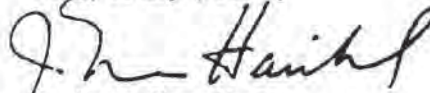
AN ACT to amend the penal law,
in relation to firearms

Dear Mr. Crotty:

I am in receipt of your recent correspondence indicating the above-referenced legislation has passed both houses of the Legislature and is now pending executive action by the Governor.

Pursuant to your request for this agency's comments and/or recommendations, please be advised that the Division of Parole takes no position with regard to such executive action.

Very truly yours,


J. Marc Hannibal
Counsel

JMH:md

mc



LEONARD G. DUNSTON
DIRECTOR

NEW YORK STATE EXECUTIVE DEPARTMENT
DIVISION FOR YOUTH
84 HOLLAND AVENUE
ALBANY, NEW YORK 12208

S. 8673

July 12, 1984

The Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Crotty:

Re: S. 8673/A. 10441. AN ACT to amend
the penal law, in relation to
firearms

Pursuant to your request, we have reviewed the above referenced
bill which is before the Governor for executive action.

This bill would provide for an increase in the maximum fees for a
license to carry or possess a pistol or a revolver.

Since we have insufficient knowledge of the potential impact upon
State and local governments, we make no recommendation on this bill.

Very truly yours,

Donald E. Urell

Donald E. Urell
General Counsel

DNG: gmh



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION

60 SOUTH PEARL STREET
ALBANY, NY 12207

CHAIRMAN
WILLIAM G. McMAHON

COMMISSIONER
KATHARINE WEBB

S.8673

July 9, 1984

Honorable Gerald Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.8673/A.10441: AN ACT to
amend the penal law, in
relation to firearms

Dear Mr. Crotty:

The Commission of Correction has reviewed the above referenced bill and has determined that it has no impact upon our operations. We, therefore, do not wish to comment on it.

Very truly yours,


GEORGE KING
COUNSEL

GK:mj

19



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CRIME VICTIMS BOARD
97 CENTRAL AVENUE
ALBANY, NEW YORK 12208
(518) 473-9849

BOARD MEMBERS

RONALD A. ZWEIBEL
Chairman

GENNARO A. FISCHETTI
GEORGE L. GROBE, JR.
DIANE McGRATH
ANGELO PETROMELIS
GERALDINE JORDAN
Executive Secretary

LEGISLATIVE MEMORANDUM

TO: HON. GERALD C. CROTTY
COUNSEL TO THE GOVERNOR

FROM: Paul S. Hudson, Counsel *PSH/pec*
Crime Victims Board

RE: S.8673, AN ACT to amend the penal law, in relation
to firearms

DATE: July 11th, 1984

This legislation has no known direct impact on crime victims or crime victims' compensation. The Board makes no recommendation to the Governor concerning this bill.

DIVISION FOR YOUTH

S-8673-A

LEONARD J. DUNSTON

July 12, 1984

The Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Crotty:

Re: S.8673/A.10441. AN ACT to amend
the penal law, in relation to
firearms

Pursuant to your request, we have reviewed the above referenced bill which is before the Governor for executive action.

This bill would provide for an increase in the maximum fees for a license to carry or possess a pistol or a revolver.

Since we have insufficient knowledge of the potential impact upon State and local governments, we make no recommendation on this bill.

Very truly yours,



Donald E. Urell
General Counsel

DNG:gmh

S - 8673



ROBERT L. SOSE
Court Administrator

STATE OF NEW YORK
UNIFIED COURT SYSTEM
OFFICE OF COURT ADMINISTRATION
270 BROADWAY
NEW YORK, NEW YORK 10007
(212) 587 2010

MICHAEL COLODNER
Counsel

May 7, 1984

MAY 8 1984

Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12223

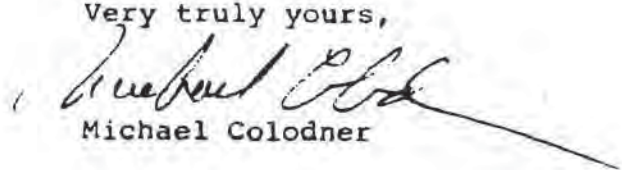
Re: Senate 8673
Assembly 10441

Dear Mr. Crotty:

Thank you for soliciting the views of this Office concerning this measure, which would amend section 400.00 of the Penal Law to increase pistol licenses fees outside the City of New York and the County of Nassau.

Inasmuch as this amendment would have no impact upon court administration, we take no position as to its merits.

Very truly yours,


Michael Colodner

MT:eas

S-8673



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY, NEW YORK
12236

EDWARD V. REGAN
STATE COMPTROLLER

July 10, 1984

The Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Crotty:

Thank you for requesting our comments regarding the bills listed below. Since these bills are not within an area of direct responsibility or interest of the Office of the State Comptroller we will offer no opinion in relation to their enactment.

<u>SENATE</u>	<u>SENATE</u>	<u>ASSEMBLY</u>	<u>ASSEMBLY</u>
2247-A	9508-B	3476-A	10596
4050-A	9512	5036-A	10954
4210-B	9967	5409-A	10986
6276-C	9997	6308-B	11037-A
7506	10010	6459-A	11092-B
8139-A	10018-A	6880-C	11360-A
8185-B	10035	8317-B	11439-A
8278-A	10040	8418-A	11782-A
8535-A	10041	8431	11830
✓ 8673	10042	8786-A	11831
8688	10052	9139-B	11832
8840-A	10063	9213-B	11833
8946-C	10073	9458	11843
9369-B	10079	9612-A	11855
	10083	10031-A	11869
		10168-B	11879-A

Very truly yours,

John F. Black
Assistant Counsel

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JFB:jd



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PROBATION
60 SOUTH PEARL STREET
ALBANY, NEW YORK 12207

MARIO M. CUOMO
Governor

July 9, 1984

EDMUND B. WUTZER
State Director

M E M O R A N D U M

TO: Gerald C. Crotty, Counsel to the Governor
Matthew T. Crosson, Assistant Counsel to the Governor
Lawrence T. Kurlander, Director of Criminal Justice

FROM: Linda J. Valenti, General Counsel *LLV*
NYS Division of Probation

SUBJECT: S. 8673 (Barclay)
Licensing Fees

This legislation amends Section 400.00(14) of the Penal Law to increase various pistol license fees outside the City of New York and Nassau County. Additional language substitutes the term "legislative body" for "board of supervisors".

In recognition that licensing fees need to reflect current processing expenses and that not all counties have a board of supervisors, the Division of Probation recommends that the Governor sign S. 8673 into law.

cc: Edmund B. Wutzer, State Director

MARCIA E. PLATO
Associate Legislative Counsel
One Elm Street
Albany, New York 12207
518-463-3200

S-8673-A

New York State Bar Association

July 11, 1984

Hon. Gerald L. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S. 8673/A. 10441

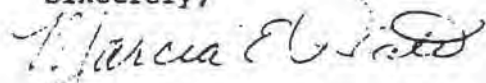
Dear Mr. Crotty:

You requested the views of this Association with respect to the above five-day bill pending before the Governor.

Please be advised that no Section or Committee of this Association deals with the subject matter of the measure.

Accordingly, we express no views thereon.

Sincerely,



Marcia E. Plato
Associate Legislative Counsel

MEP:jc

25



S-8673



New York State Association of COUNTIES

150 STATE STREET ALBANY, NEW YORK 12207 (518) 465-1473

July 12, 1984

PRESIDENT
Laure C. Nolan
Suffolk

EXECUTIVE DIRECTOR
AND ASSOCIATE COUNSEL
Edwin L. Crawford

COUNSEL
Herman S. Geist

VICE PRESIDENTS
John T. Grant
Rockland

John Kelly
Essex

Edward J. Rutkowski
One

TREASURER
Edward T. Stack
Albany

DIRECTORS
Bennett Abrams
St Lawrence

Edmund Armstrong
Greene

George Arney
Wayne

David D. Bruen
Putnam

Henry W. Dwyer
Nassau

Albert J. Evans
Chenango

Carolyn Rush
Oswego

James J. Snyder
Cattaraugus

John Stanwix
Monroe

Claudia Wagner
New York City

Honorable Gerald Crotty
Counsel to the Governor
The Executive Chamber
The Capitol
Albany, NY 12224

Re: S.8673/A.10441

Dear Gerry:

This letter is in response to your recent inquiry concerning the above-mentioned legislation recently passed by both houses of the Legislature and now before the Governor for executive action.

The New York State Association of Counties has no position on this legislation.

Please call on our office if we can be of any further assistance.

Yours very truly,

Edwin L. Crawford
Executive Director

ELC/RST/msc

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8th ANNUAL LEGISLATIVE CONFERENCE • March 4-6, 1984 Albany Hilton Hotel, Albany, NY

60th ANNUAL FALL SEMINAR • September 16-19, 1984 Grossinger's Hotel, Grossinger, NY

MC

S-8673

COUNTY OF SUFFOLK



PETER F. COHALAN
SUFFOLK COUNTY EXECUTIVE

HOWARD DEMARTINI
DEPUTY COUNTY EXECUTIVE
COMMUNICATIONS AND
INTERGOVERNMENTAL RELATIONS

ALICE A. AMMON
ASSISTANT DEPUTY COUNTY EXECUTIVE

July 19, 1984

Gerald C. Crotty, Esq.
Counsel to the Governor
Executive Chamber
Albany, New York 12224

Re: Senate 8673

Dear Mr. Crotty:

Suffolk County has reviewed Senate 8673 which is currently before the Governor for his action. This bill would allow a local legislative body to increase pistol or revolver license fees from a maximum of \$5 to a maximum of \$10; fees for each amendment to a license from \$1 to \$3; fees for gun smith licenses from \$4 to \$10; and fees for duplicate licenses from \$2 to \$5. Additionally, the bill would allow Suffolk County to increase its fee for an amended license from \$2 to \$5 and would allow counties to charge a \$5 fee for processing a license transfer between counties.

Suffolk County estimates that we presently spend \$750,000 annually to operate the Office of Pistol Permits within the Suffolk County Police Department. However, under the present fee schedule, we take in only \$50,000 annually in fees to offset this expenditure. Enactment of S.8673 should allow Suffolk to collect slightly more than double our present fee collection. While this will not totally offset the cost of the Office of Pistol Permits, it will slightly relieve the pressure on the general fund.

For the above stated reasons, Suffolk County urges the Governor to sign Senate 8673 into law.

Sincerely,

Howard DeMartini

Howard DeMartini
Deputy County Executive

HDM:mb

cc: Senator Barclay
Assemblyman McCabe

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STATE OF NEW YORK

S. 8673

A. 10441

SENATE—ASSEMBLY

March 26, 1984

IN SENATE -- Introduced by Sen. BARCLAY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. McCABE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to firearms

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision fourteen of section 400.00 of the penal law,
2 as amended by chapter five hundred forty-six of the laws of nineteen
3 hundred seventy-three, is amended to read as follows:

4 14. Fees. In the city of New York and the county of Nassau, the an-
5 nual license fee shall be twenty-five dollars for gunsmiths and fifty
6 dollars for dealers in firearms. In such city, the city council and in
7 the county of Nassau the Board of Supervisors shall fix the fee to be
8 charged for a license to carry or possess a pistol or revolver and
9 provide for the disposition of such fees. Elsewhere in the state, the
10 licensing officer shall collect and pay into the county treasury the
11 following fees: for each license to carry or possess a pistol or revol-
12 ver, not less than three dollars nor more than [five] ten dollars as may
13 be determined by the [board of supervisors] legislative body of the
14 county; for each amendment thereto, [one dollar] three dollars, and
15 [two] five dollars in the county of Suffolk: and for each license issued
16 to a gunsmith or dealer in firearms, [four] ten dollars. The fee for a
17 duplicate license shall be [two] five dollars. The fee for processing a
18 license transfer between counties shall be five dollars.

19 § 2. This act shall take effect on the first day of November next
20 succeeding the date on which it shall have become a law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14192-02-4

NYS Assembly

- 391 -

June 27, 1984

(The Clerk called the roll.)

Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Bill No. 10407, Rules Report No. 941, Lentol. An act to amend the Administrative Code of the City of New York, in relation to the crediting of prior service.

ACTING SPEAKER GRABER: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER GRABER: Call the roll.

(The Clerk called the roll.)

Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Bill No. 10441, Rules Report No. 946, McCabe. An act to amend the Penal Law, in relation to firearms.

MR. MC CABE: Substitute the Senate bill, Mr. Speaker.

ACTING SPEAKER GRABER: On the motion of Mr. McCabe the Senate bill is substituted, before the

NYS Assembly

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June 27, 1984

House and advanced.

MR. WERTZ: Mr. Speaker, will Mr. McCabe yield?

MR. MC CABE: Yes.

ACTING SPEAKER: GRABER: The gentleman yields.

MR. WERTZ: Mr. McCabe, can I ask you if who negotiated this bill?

MR. MC CABE: I think Senator Barclay.

MR. WERTZ: Can I blame it all on Doug?

MR. MC CABE: Yes.

MR. WERTZ: On the bill, Mr. Speaker.

ACTING SPEAKER GRABER: Mr. Wertz, on the bill.

MR. WERTZ: I am concerned, and I speak mainly to my colleagues from Suffolk County, as a delegation, as a bipartisan effort we have tried desperately for the last four years to negotiate an extension in the pistol license. And we have been willing, in those negotiations, to allow for the fee increase which is in this bill. I would assume that that is true of most of the other areas involved in this bill.

But to go from \$2 to \$5 with absolutely

NYS Assembly

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June 27, 1984

no quid pro quo solely to raise revenues, I think is wrong, too. It takes advantage of those rifle and pistol clubs. The sportsmen in our county will be up in arms, those of you that vote for the bill, and I intend to vote no, and I think it was poorly negotiated.

I think there was no problem in raising the fees if we were able to stop what is really a long and lengthy and timely bureaucratic boondoggle in the annual renewing of a pistol license.

I would urge a no vote on this bill because of that.

ACTING SPEAKER GRABER: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER GRABER: Call the roll.

(The Clerk called the roll.)

MR. P. M. SULLIVAN: Mr. Speaker, would you please withdraw the roll call?

ACTING SPEAKER GRABER: Mr. Pete Sullivan would like to ask Mr. McCabe some questions.

MR. P. M. SULLIVAN: If this question was asked before, I apologize for asking it again. Can

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June 27, 1984

you tell us what the justification of this is, Jim?

MR. MC CABE: Well, this bill was suggested originally to Senator Barclay by a clerk in one of the counties I represent. He asked me to carry it in this House, and it seems to be a reasonable bill because these fees have not been raised since 1965, and this is a modest increase to take care of the increased cost to process those permits.

MR. P. M. SULLIVAN: Thank you, Mr. McCabe.

On the bill, Mr. Speaker. It seems like a modest increase because what the heck, it is only going from \$5 to \$10, and that sure does not sound like a lot of money. First off the bat, they don't like to process these permits, they don't do it in a timely fashion in too many jurisdictions. They give the applicants a great deal of hassle.

If they were able to treat in a timely and prompt fashion, Mr. Speaker, they might be willing to pay \$50, but in the City of New York they pay that kind of money and they don't get treated courteously and promptly in any case.

In addition they have to pay substantial fees for fingerprinting, and I think it is really an

NYS Assembly

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June 27, 1984

unattractive, unreasonable, improper thing, and it is another fee increase. I thought we had found, in 1983, every single fee that we could increase. Mr. McCabe, I congratulate you because you found something that was not raised already.

Thank you, Mr. Speaker.

ACTING SPEAKER GRABER: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER GRABER: Call the roll.

(The Clerk called the roll.)

MR. HANNON: Party vote in the negative.

MR. WALSH: Party vote in the affirmative

ACTING SPEAKER GRABER: Announce the results and note the exceptions.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Bill No. 10806, Rules Report No. 948, Yevoli, Halpin, Bianchi, Harenberg. An act to amend the Environmental Conservation Law, in relation to land-use of tidal wetlands.

ACTING SPEAKER GRABER: Read the last

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-	:
	: DECLARATION OF
Michael Bloomberg, et al.,	: SGT. JAMES SHERMAN
	:
Defendants.	:
-----X	

James Sherman declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a member of the New York State Police, holding the rank of Technical Sergeant. I supervise the Pistol Permit Bureau in the agency's Office of Central Records.

2. The Pistol Permit Bureau is the repository for records concerning various classes of firearms and licenses in New York State. It provides assistance and guidance to persons charged with the responsibility of issuing firearms licenses, and to those seeking and holding pistol/revolver licenses.

3. My office gathers and maintains data regarding firearms licenses. Attached as Exhibit A is a summary of firearms license transactions received by the Pistol Permit Bureau from 1999 through 2009. The first substantive column represents the numbers of permit application that were approved at the county level and forwarded to the Bureau. The "Weapon Transaction" column lists the numbers of transactions, such as the purchase and sale of guns, so that the licensing official can monitor the number of handguns possessed by a licensee. Dealers also submit transaction reports, demonstrating

the whereabouts and disposition of guns they acquire. The number of these transactions is represented in the final column.

4. Attached as Exhibit B is a three-year breakdown, by county (with the five New York City counties combined), of the number of pistol permit applications approved at the county level and received by the Pistol Permit Bureau.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July __, 2011, Albany, New York


James Sherman

Exhibit A to Declaration of James Sherman

Ten Year Summary of Firearms License Transactions Received at the New York State Police Pistol Permit Bureau: 1999 – 2009

Year	Applications Received By PPB*	Weapon Transactions Received**	Amendments Received	Dealer Gunsmith Licenses Received	Dealer Gunsmith Transaction Reports
1999	10,388	215,897	65,632	833	77,423
2000	11,297	158,036	70,473	827	83,303
2001	10,858	174,584	69,827	829	90,477
2002	13,416	202,831	69,606	818	91,283
2003	11,989	275,122	68,970	791	104,168
2004	12,097	156,409	64,765	805	108,630
2005	10,589	118,555	65,636	736	86,853
2006	11,344	241,347	67,117	733	93,168
2007	12,307	278,832	71,587	701	107,052
2008	13,325	364,458	73,130	701	110,787
2009	18,577	254,543	93,028	705	118,314

*Only applications approved at the county level are forwarded to and received by the NYSP Pistol Permit Bureau

**This number can be affected by backlogs existing during that specific calendar year

New York City currently has 36,017 pistol/revolver licenses on file

Exhibit B to Declaration of James Sherman

APPLICATIONS RECEIVED BY COUNTY
2007

COUNTY	APPLICATIONS
ALBANY	119
ALLEGANY	73
BROOME	204
CATTARAUGUS	198
CAYUGA	106
CHAUTAUQUA	265
CHEMUNG	106
CHENENGO	61
CLINTON	107
COLUMBIA	105
CORTLAND	70
DELAWARE	100
DUTCHESS	544
ERIE	961
ESSEX	91
FRANKLIN	60
FULTON	93
GENESEE	73
GREENE	54
HAMILTON	27
HERKIMER	100
JEFFERSON	98
LEWIS	46
LIVINGSTON	116
MADISON	77
MONROE	606
MONTGOMERY	68
NASSAU	849
NEW YORK CITY	2,609 (38,187 Active)
NYSP	75
NIAGARA	244
ONEIDA	297
ONONDAGA	382
ONTARIO	130
ORANGE	487
ORLEANS	48
OSWEGO	146
OTSEGO	101
PUTNAM	199
RENSSELAER	164
ROCKLAND	304

COUNTY	APPLICATIONS
ST. LAWRENCE	192
SARATOGA	257
SCHENECTADY	108
SCHOHARIE	71
SCHUYLER	64
SENECA	38
STEUBEN	139
SUFFOLK	1,709
SULLIVAN	222
TIOGA	92
TOMPKINS	67
ULSTER	321
WARREN	79
WASHINGTON	77
WAYNE	242
WESTCHESTER	545
WYOMING	90
YATES	40
TOTAL	14,916

APPLICATIONS RECEIVED BY COUNTY
2008

COUNTY	APPLICATIONS
ALBANY	186
ALLEGANY	109
BROOME	219
CATTARAUGUS	277
CAYUGA	134
CHAUTAUQUA	271
CHEMUNG	112
CHENENGO	93
CLINTON	109
COLUMBIA	164
CORTLAND	83
DELAWARE	112
DUTCHESS	606
ERIE	811
ESSEX	64
FRANKLIN	59
FULTON	83
GENESEE	76
GREENE	108
HAMILTON	34
HERKIMER	93
JEFFERSON	195
LEWIS	85
LIVINGSTON	108
MADISON	83
MONROE	822
MONTGOMERY	81
NASSAU	896
NEW YORK CITY	2,276 (TOTAL ACTIVE – 36,937)
NYSP	78
NIAGARA	272
ONEIDA	289
ONONDAGA	356
ONTARIO	159
ORANGE	640
ORLEANS	76
OSWEGO	159
OTSEGO	136
PUTNAM	197
RENSSELAER	175
ROCKLAND	263

2

COUNTY	APPLICATIONS
ST. LAWRENCE	178
SARATOGA	282
SCHENECTADY	179
SCHOHARIE	54
SCHUYLER	48
SENECA	55
STEUBEN	140
SUFFOLK	1,518
SULLIVAN	298
TIOGA	70
TOMPKINS	47
ULSTER	319
WARREN	120
WASHINGTON	95
WAYNE	430
WESTCHESTER	447
WYOMING	127
YATES	45
TOTAL	13,325

APPLICATIONS RECEIVED BY COUNTY
2009

COUNTY	APPLICATIONS
ALBANY	193
ALLEGANY	178
BROOME	421
CATTARAUGUS	336
CAYUGA	190
CHAUTAUQUA	681
CHEMUNG	202
CHENENGO	116
CLINTON	120
COLUMBIA	215
CORTLAND	118
DELAWARE	215
DUTCHESS	678
ERIE	713
ESSEX	64
FRANKLIN	56
FULTON	139
GENESEE	185
GREENE	189
HAMILTON	37
HERKIMER	103
JEFFERSON	117
LEWIS	94
LIVINGSTON	216
MADISON	115
MONROE	1,239
MONTGOMERY	78
NASSAU	1,093
NEW YORK CITY	2,071 (TOTAL ACTIVE - 36,017)
NYSP	64
NIAGARA	382
ONEIDA	372
ONONDAGA	643
ONTARIO	281
ORANGE	917
ORLEANS	132
OSWEGO	300
OTSEGO	226
PUTNAM	352
RENSSELAER	248
ROCKLAND	410

COUNTY	APPLICATIONS
ST. LAWRENCE	270
SARATOGA	393
SCHENECTADY	214
SCHOHARIE	98
SCHUYLER	102
SENECA	73
STEUBEN	205
SUFFOLK	1,956
SULLIVAN	285
TIOGA	149
TOMPKINS	115
ULSTER	374
WARREN	137
WASHINGTON	175
WAYNE	690
WESTCHESTER	643
WYOMING	202
YATES	68
TOTAL	18,577 (DOES NOT INCLUDE NYC)

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 (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 (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 (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 (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.

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; 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.

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/

Monica Connell
Assistant Attorney General
120 Broadway - 24th Floor
New York, New York 10271
(212) 416 - 8965

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; GEORGE GRECO; GLENN
HERMAN; NICK LIDAKIS; TIMOTHY S.
FUREY; DANIELA GRECO; NUNZIO CALCE;
SECOND AMENDMENT FOUNDATION, INC.;
and THE NEW YORK STATE RIFLE & PISTOL
ASSOCIATION, INC.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG, in his Official
Capacity as Mayor of the City of New York; and
CITY OF NEW YORK,

Defendants.

-and-

ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Intervenor.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

**PLAINTIFFS' COUNTER-STATEMENT
OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 56.1 and Local Rule 56.1 of this Court, Plaintiffs respectfully submit that there is no dispute as to the following material facts:

1. Members of Plaintiff Second Amendment Foundation, Inc. ("SAF") have complained to the organization about the handgun license fees in the City of New York, including specifically the Residence Premises license fee, and have sought advice about the fee and any alternatives to the fee, as well as requesting that the organization take legal action to address the fee. Ex. 1, Supp. Declaration of Miko Tempski ("Supp. Tempski Dec.") ¶¶ 3-5.

2. SAF has expended its time, energy, and resources to respond to these inquiries and requests. SAF employees and volunteers have corresponded with individuals making these inquiries and requests by telephone and by e-mail, and the time that SAF employees have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of SAF. Supp. Tempski Dec. ¶ 6.
3. SAF has also prepared written materials regarding the amount of the license fee and proposals to change the license fee and distributed them on the internet for the benefit of its members and the inquiring public. SAF employees and volunteers have expended time, energy, and resources to prepare and distribute of these materials. Supp. Tempski Dec. ¶ 7.
4. Members of SAF live in New York City and have paid the \$340 fee. Declaration of Miko Tempski (Doc. No. 25-8) ¶ 7.
5. Members of Plaintiff The New York State Rifle & Pistol Association, Inc. (“NYSRPA”) have complained to the organization about the handgun license fees in the City of New York, including specifically the Residence Premises license fee, and have sought advice about the fee and any alternatives to the fee, as well as requesting that the organization take legal action to address the fee. Ex. 2, Supp. Declaration of Thomas H. King (“Supp. King Dec.”) ¶¶ 3-5.
6. NYSRPA has expended its time, energy, and resources to respond to these inquiries and requests. For example, NYSRPA and its volunteers have corresponded with individuals making these inquiries and requests by telephone and by e-mail. Supp. King Dec. ¶ 6.

7. NYSRPA publishes a web page at <http://www.nysrpa.org> that includes, *inter alia*, information on New York City firearms regulations, specifically including the \$340 license fee, and attempts to decrease that fee to a reasonable amount. NYSRPA has expended time, energy, and other resources to develop and publish these materials. Supp. King Dec. ¶ 7.
8. NYSRPA representatives have provided testimony to the New York City Council in favor of lowering the fee. The time that NYSRPA representatives have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of NYSRPA. Supp. King. Dec. ¶ 8.
9. Members of NYSRPA live in New York City and have paid the \$340 fee. Declaration of Thomas H. King (Doc. No. 25-9) ¶ 7.

Dated: New York, New York
August 24, 2011

DAVID JENSEN PLLC

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New York, New York 10017
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Fax: 917.591.1318
david@djensenpllc.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; et al.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG; et al.,

Defendants,

-and-

ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Intervenor.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

**SUPPLEMENTAL
DECLARATION OF
MIKO TEMPSKI**

I, Miko Tempski, declare as follows:

1. I live in Seattle, Washington. I am over 18 years of age and am competent to testify on my own behalf.

2. I submit this Declaration to supplement my previous declaration, dated June 16, 2011, on behalf of Plaintiff Second Amendment Foundation, Inc. ("SAF"). I am authorized to testify on SAF's behalf.

3. As I explained in my prior Declaration, members of SAF have complained to the organization about the handgun license fees imposed in the City of New York, including specifically the Residence Premises handgun license.

4. Members have also requested advice from SAF regarding the amount of the fee and whether there are any alternatives to paying the fee.

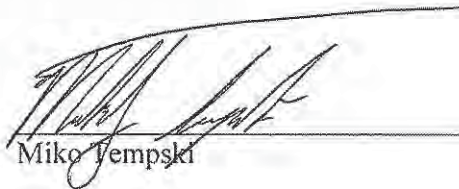
5. Finally, members have requested that SAF take legal action to address the amount of the fee.

6. SAF has expended its time, energy, and resources to respond to these inquiries and requests. SAF employees and volunteers have corresponded with individuals making these inquiries and requests by telephone and by e-mail, and the time that SAF employees have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of SAF.

7. SAF has also prepared written materials regarding the amount of the license fee and proposals to change the license fee and distributed them on the internet for the benefit of its members and the inquiring public. SAF employees and volunteers have expended time, energy, and resources to prepare and distribute of these materials.

I affirm all of the foregoing statements under penalty of perjury under the laws of the United States of America.

Dated: August RD23, 2011



Miko Tempuski

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; et al.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG; et al.,

Defendants,

-and-

ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Intervenor.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

**SUPPLEMENTAL
DECLARATION OF
THOMAS H. KING**

I, Thomas H. King, declare as follows:

1. I live in East Greenbush, New York. I am over 18 years of age and am competent to testify on my own behalf.
2. I submit this Declaration to supplement my previous Declaration, dated June 15, 2011, on behalf of Plaintiff The New York State Rifle and Pistol Association, Inc. ("NYSRPA"). I am authorized to testify on NYSRPA's behalf.
3. As I explained in my prior Declaration, members of NYSRPA have complained to the association about the handgun license fees imposed in the City of New York, including specifically the Residence Premises handgun license.
4. Members have also requested advice from NYSRPA regarding the amount of the fees and whether there are any alternatives to paying the fees.
5. Finally, members have requested that NYSRPA take both legislative and legal action to address the amount of the fee.

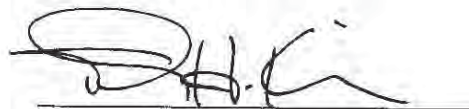
6. NYSRPA has expended its time, energy, and resources to respond to these inquiries and requests. For example, NYSRPA and its volunteers have corresponded with individuals making these inquiries and requests by telephone and by e-mail.

7. NYSRPA publishes a web page at <http://www.nysrpa.org> that includes, *inter alia*, information on New York City firearms regulations, specifically including the \$340 license fee, and attempts to decrease that fee to a reasonable amount. NYSRPA has expended time, energy, and other resources to develop and publish these materials.

8. Finally, NYSRPA representatives have provided testimony to the New York City Council in favor of lowering the fee. The time that NYSRPA representatives have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of NYSRPA.

I affirm all of the foregoing statements under penalty of perjury under the laws of the United States of America.

Dated: August 23, 2011


Thomas H. King

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; GEORGE GRECO; GLENN
HERMAN; NICK LIDAKIS; TIMOTHY S.
FUREY; DANIELA GRECO; NUNZIO CALCE;
SECOND AMENDMENT FOUNDATION, INC.;
and THE NEW YORK STATE RIFLE & PISTOL
ASSOCIATION, INC.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG, in his Official
Capacity as Mayor of the City of New York; and
CITY OF NEW YORK,

Defendants.

-and-

ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Intervenor.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

**PLAINTIFFS' RESPONSE TO CITY
DEFENDANTS' COUNTER-STATEMENT
OF UNDISPUTED MATERIAL FACTS**

Plaintiffs respond to the Statement of Undisputed Facts submitted by Defendants Michael
Bloomberg and City of New York (the "City") as follows:

1. All individually-named plaintiffs currently have valid New York City Police
Department issued Premises Residence licenses. See Plaintiffs' Rule 56.1 Statement,
¶¶ 9-15.

RESPONSE: Admitted.

2. All individually-named plaintiffs have paid the \$340 license fee to obtain their
Premises Residence handgun licenses. See Plaintiffs' Rule 56.1 Statement, ¶¶ 9-15.

RESPONSE: Admitted.

3. Defendant, Michael Bloomberg, sued in his official capacity as Mayor of the City
of New York, is currently the mayor of the City of New York. See Complaint, ¶ 55.

RESPONSE: Admitted.

4. Defendant, the City of New York, is a domestic municipal corporation organized and existing under the laws of the State of New York. See New York City Charter § 1.

RESPONSE: Not disputed.

5. The New York City Police Department, License Division (“NYPD”) processes applications for Premises Residence firearms licenses in the City of New York. See Declaration of NYPD License Division Commanding Office Andrew Lunetta, dated July 28, 2011 (“Lunetta Dec.”), ¶¶ 2-3.

RESPONSE: Not disputed.

6. The License Division issues licenses for Premises Residence firearms in the City of New York. See Lunetta Dec., ¶¶ 2-3, 9, 16-17.

RESPONSE: Not disputed.

7. The License Division conducts an investigation of all applicants for firearms licenses in the City of New York. See Lunetta Dec., ¶¶ 11-15.

RESPONSE: Not disputed.

8. In New York City, the License Division of the New York City Police Department is responsible for processing handgun license applications, including those for premises residence handgun licenses. See Penal Law §§ 400.00; 265.00(10); Lunetta Dec., ¶¶ 2-3.

RESPONSE: Not disputed.

9. The different firearms licenses and permits issued by the License Division, along with a description of the license type are codified in title 38, chapter 5 of the Rules of the City of New York (“RCNY”) (types of handgun licenses) and title 38, chapter 1 of the RCNY (rifle, shotgun, and longarm permits). See 38 RCNY §§ 5-01; 1-02; http://www.nyc.gov/html/nypd/html/permits/handgun_licensing_information.shtml (last visited July 7, 2011).

RESPONSE: Not disputed.

10. Holders of Premises Residence handgun licenses are restricted to possessing the licensed weapon at the specific home address designated on the licensee. See 38 RCNY § 5-01(a).

RESPONSE: Not disputed.

11. Premises Residence licensees are also authorized to transport the licensed handgun directly to and from an authorized small arms range/shooting club, secured and unloaded in a locked container. See 38 RCNY §§ 5-01(a); 5-22(a)(14).

RESPONSE: Not disputed.

12. Pursuant to Penal Law § 400.00(1), “[n]o license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true.” Article 400 of the Penal Law details the duties of the licensing officer which include, inter alia, determining whether the applicant meets the eligibility requirements set forth under Penal Law 400.00(1); inspecting mental hygiene records for previous or present mental illness; investigating the truthfulness of the statements in the application; and having the applicant’s fingerprints forwarded for review against the records of the New York State Division of Criminal Justice Services (“DCJS”) and the FBI “to ascertain any previous criminal record. See Penal Law § 400.00(1).

RESPONSE: Not disputed.

13. After an investigation, the licensing officer may not approve the application if, inter alia, “good cause exists for the denial of the license.” Penal Law § 400.00(1)(g).

RESPONSE: Not disputed.

14. In ensuring an applicant meets the requirements of Penal Law § 400.00, the License Division must conduct an investigation that requires an assessment of the applicant’s mental hygiene records for previous and present mental illness, an investigation of criminal records, and documentation of the applicant’s physical descriptive data. See Penal Law § 400.00(4).

RESPONSE: Not disputed that licensing officers must conduct an investigation, but Plaintiffs refer the Court to § 400.00(4) for the requirements of this investigation.

15. License Division staff review applications for completeness and accuracy, and investigate the information provided by the applicant License Division. See Lunetta Dec., ¶¶ 11-15. For example, investigators reach out to various federal, state, and city agencies for information about the applicant’s history, making requests for additional documentation to support statements made in the application, reviewing the DCJS fingerprint response, mental health checks, and requesting further information regarding any arrests or convictions reported therein, and interviewing the applicant. See id. The investigation often involves interviews of third parties to obtain relevant information. See Lunetta Dec., ¶¶ 12, 14

RESPONSE: Not disputed.

16. DCJS does not investigate applicants, the License Division does. DCJS runs a fingerprint report for all arrests in the State of New York and then sends the fingerprints to the FBI to check for out of state arrests and warrants. See Lunetta

Dec., ¶ 13, Exhibit “B,” http://criminaljustice.state.ny.us/pio/fp_services.htm; DCJS provides identifying information of arrestees, the date and location of all arrests, the arrest charges, and the Penal Law sections associated with the arrest. Lunetta Dec., ¶ 13.

RESPONSE: Not disputed that licensing officers must conduct an investigation, and that DCJS investigates background information, but Plaintiffs refer the Court to § 400.00(4) for the statutory requirements.

17. There are currently 36,077 active licenses that have been issued by the License Division for the possession of handguns in New York City; and 20,806 active permits for the possession of rifles and shotguns. Lunetta Dec., ¶ 2.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

18. The License Division, currently processes an average of 2,612 new applications and 9,522 renewal applications each year for the issuance and renewal of the various types of handgun licenses issued by the License Division. In addition, the License Division processes 973 applications for rifle and shotgun permits. Lunetta Dec., ¶ 3.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

19. Currently, the License Division has 79 employees. The License Division is divided into several different sections and units, and is overseen by a five member Executive Staff, that includes a director, deputy inspector (as commanding officer), a captain (as executive officer), and a lieutenant and sergeant (as Integrity Control Officer and Assistant). Lunetta Dec., ¶ 4.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

20. The License Division has sections of staff established for various tasks. For example, there is an Intake Section, New Applications Section, Carry Guard Section, Retired Law Enforcement Section, Rifle/Shotgun Section, Issuing Section, Incident Section, Cancellation Section, Renewal Section, Special Operations Section, and Administrative Hearing Section. Lunetta Dec., ¶ 5.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

21. A Premises Residence Unit was designated within the New Applications Section in 2009 so that the License Division could focus resources on investigating applications and recordkeeping with respect to Premises Residence licenses. Lunetta Dec., ¶ 6.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

22. The Premises Residence Unit is currently comprised of three staff members that are dedicated to investigating Premises Residence applications only. It is comprised of a sergeant who oversees the unit, and two full-time investigators. Other investigators assigned in the New Applications Section are assigned to investigate Premises Residence applications in addition to other applications for various business and carry licenses. Other License Division employees are also involved in the issuance and processing of Premises Residence handgun licenses, including the License Division Executive Staff, Police Administrative Aides and secretaries who are involved in assisting with specific investigative steps, maintaining records and statistics, and issuing the licenses. There is also intake administrative staff, and records room staff, among others. Lunetta Dec., ¶ 7.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

23. When the License Division and the New York City Office of Management and Budget (“OMB”) performed a User Cost Analysis in 2010, based on information provided by the License Division, the percentages of time spent for the various uniformed and civilian NYPD License Division staff directly involved in the issuance of Premises Residence Licenses totaled the FTE or “full-time equivalent” of 7.80 staff members. Lunetta Dec., ¶¶ 8, 39, Exhibit “F” (User Cost Analysis Fiscal Year 2010 for Premises Residence Licenses).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

24. In accordance with New York State Penal Law (“Penal Law”) § 400.00(14), the New York City Council is authorized to set the fees for the issuance and renewals of all pistol licenses issued in the City of New York. See Penal Law § 400.00(14).

RESPONSE: Admitted.

25. Penal Law § 400.00(14) provides, in relevant part, as follows:

Fees. In the city of New York and the county of Nassau, the annual license fee shall be twenty-five dollars for gunsmiths and fifty dollars for dealers in firearms. In such city, the city council and in the county of Nassau the Board of Supervisors

shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees. (Emphases added).

RESPONSE: Not disputed, but the quotation is selective and incomplete. Plaintiffs respectfully refer the Court to Penal Law § 400.00(14) for the full language.

26. Penal Law § 400.00(14) has provided the City of New York with the authority and discretion to set its own fees for the issuance and renewal of licenses to possess or carry a pistol through the City Council since 1947. See Penal Law § 400.00(14).

RESPONSE: Denied. The predecessor to Penal Law § 400.00(14) has provided *all* New York State licensing authorities, including New York City, with the authority and discretion to set their own handgun license fees since 1938. See 1938 N.Y. Laws ch. 374; Plaintiffs’ Rule 56.1 Statement ¶ 33 & ex. 15. The 1947 amendment referenced by the City operated to exempt the City of New York from the operation of the permissible fee range that the legislature had also enacted in 1938. See 1947 N.Y. Laws ch. 147; Plaintiffs’ Rule 56.1 Statement ¶ 37 & ex. 18.

27. In 1947, the New York State Legislature noted that the then-\$ 1.50 state-imposed fee was “inadequate to compensate for the administrative expense entailed in the issuance” of licenses to possess and carry handguns, particularly with respect to the need for the New York City Police Commissioner to conduct a thorough investigation into the “safety and welfare of the community.” See Declaration of Michelle Goldberg-Calm, dated July 28, 2011 (“Goldberg-Cahn Dec.”), Exhibit ‘A,’ at 2-3.

RESPONSE: Denied. The cited portion of the “Bill Jacket” is a letter from the Mayor of New York City, but is not a statement by the “Legislature” or even by a State legislator. Plaintiffs do not dispute the authenticity of the document.

28. The New York State legislature found that the City of New York was spending significantly more on its investigation than the costs received from the fees. See Goldberg-Calm Dec., Exhibit “A.”

RESPONSE: Denied. The cited portion of the “Bill Jacket” is a letter from the Mayor of New York City, but is not a statement by the “Legislature” or even by a State legislator. Plaintiffs do not dispute the authenticity of the document.

29. Since 1948, the City Council has enacted legislation establishing the fees for licenses to possess and carry handguns in the City of New York. See New York City Admin. Code § 10-131 (which amended Admin. Code § 436-5.0).

RESPONSE: Denied. The predecessor to § 400.00(14) has vested this authority in the City since 1938. See Response to ¶ 26, above.

30. Local Law 32 of 1948 increased the annual fee for a handgun license from \$1 to \$10 for the initial license, and \$5 for each renewal license in the City of New York. See Goldberg-Cahn Dec., Exhibit “B,” at 2 (Local Law 32/1948).

RESPONSE: Admitted.

31. In 1948, the New York City Police Commissioner submitted a memorandum to the Mayor in support of the increase fees. See Letter from Police Commissioner Wallander to Mayor O'Dwyer, dated February 16, 1948, Goldberg-Cahn Dec., Exhibit "B," at 7-9. The Police Commissioner's letter states, in relevant part, as follows:

I reiterate my statements made at the public hearing of the Committee on General Welfare of the council that the cost to the City of New York of investigation, processing, issuance of licenses, supervision, and maintenance of records exceeds by a large amount the present fees, and that because of the fact that the applicant for, and recipient of a pistol license is receiving a special service, distinguished from the service which the City and Police Department are bound by law to perform for all the citizens, a licensee should be required to defray a reasonable portion of the cost of this special service.

* * *

All of the taxpayers of the City should not be required to pay a majority of the cost for special services rendered to a certain class or group of people.

Goldberg-Calm Dec., Exhibit "B," at 7-8.

RESPONSE: Not disputed.

32. The Police Commissioner explained that the investigation is necessary to ensure firearms be kept out of the hands of unqualified persons. Goldberg-Cahn Dec., Exhibit "B," at 8. The Police Commissioner further stated that "[w]e are unwilling to sacrifice our present efficient method of issuing pistol licenses in the interest of decreasing the cost of licensing fees." Id.

RESPONSE: Not disputed.

33. In response to a request from the mayor for a memorandum from the police commissioner to ensure that the proposed fees were not in excess of costs, the NYPD Police Commissioner submitted a letter to the Mayor, dated May 13, 1948, which contained a detailed memorandum prepared by the NYPD explaining how license applications are processed in accordance with the NYPD regulations. See Goldberg-Cahn Dec., Exhibit "B," at 24-29. The memorandum details the application, interview, fingerprinting, and investigation process that was in effect at that time. See Goldberg-Cahn Dec. Exhibit "B," at 25-29.

RESPONSE: Not disputed.

34. The NYPD stated that, on average, NYPD personnel spent a total of 13 hours per application and that noted that even at wages of \$1.00 per hour, the cost would exceed the \$10 licensing fee. See Goldberg-Calm Dec., Exhibit "B," at 29.

RESPONSE: Not disputed.

35. In 1962, the City Council passed legislation, Local Law 47 of 1962, which increased pistol license application fees to \$20 for the issuance of the initial license and \$10 for each annual renewal license. See Goldberg-Cahn Dec., Exhibit “C” (Local Law 47 of 1962).

RESPONSE: Not disputed.

36. The legislative history for Local Law 47 of 1962 contains copies of a letter from Police Commissioner Murphy to Mayor Wagner, dated June 7, 1962, stating that the fees in effect prior to that time were insufficient because costs of labor, services, and supplies had increased each year. Goldberg-Cahn Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

37. The Police Commissioner noted that the increased costs were, in part, due to new procedures adopted in 1957 that require an “extensive and thorough” investigation of all applicants for the issuance or renewal of a license to possess or carry firearms. Goldberg-Cahn Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

38. The NYPD prepared a cost analysis in support of Local Law 47 of 1962 that demonstrated that the cost of an original application was \$19.67 and the cost of a renewal application was \$10.89. See Goldberg-Calm Dec., Exhibit “D,” at 7-8.

RESPONSE: Not disputed.

39. The City Council next amended the fees for pistol licenses in 1973. See Goldberg-Cahn Dec., Exhibit “E” (Local Law 78 of 1973). Local Law 78 of 1973 increased the fee to \$30 for the initial application and \$20 for renewal applications for up to two years. Renewal licenses for a period of one year or less would remain at \$10. Renewal licenses would now be valid for longer than one year. See Goldberg-Cahn Dec., Exhibit “E.”

RESPONSE: Not disputed.

40. Local Law 42 of 1979 amended Admin. Code § 436-5.0(a) to increase the license application fee for handgun licenses to \$50 for the initial application, and \$25 for renewals. Licenses were valid for a two year period. See Goldberg-Cahn Dec., Exhibit “F” (Local Law 42 of 1979).

RESPONSE: Not disputed.

41. The Report of the City Council Committee of Finance for Local Law 42 of 1979 noted that the “cost per service unit” was \$63.78. See Goldberg-Cahn Dec; Exhibit “F,” at 1822 (Comm. Rpt.).

RESPONSE: Not disputed.

42. The City Council enacted Local Law 37 of 1985, amending Admin. Code § 436-5.0 to increase the fee to \$100 for both the initial issuance and renewal applications for pistol licenses for a two year period. See Goldberg-Cahn Dec., Exhibit “G” (Local Law 37 of 1985).

RESPONSE: Not disputed.

43. The City Council Report of the Committee of Finance in support of Local Law 37 of 1985 stated that the average cost for processing handgun license applications and renewals to the City was \$102. See Goldberg-Cahn Dec., Exhibit “G,” at 31 (second page of exhibit).

RESPONSE: Not disputed.

44. In 1989, the City Council passed Local Law 51 of 1989 amending what had previously been renumbered as Admin. Code § 10-131(a)(2) to increase the fee for initial and renewal pistol license applications to \$135. The fees were for two year licenses. See Goldberg-Calm Dec., Exhibit “H” (Local Law 51 of 1989).

RESPONSE: Not disputed.

45. The Report of the City Council Committee of Finance for Local Law 51 of 1989 stated that the average cost of each application to the City of New York was \$134.88. Goldberg-Cahn Dec., Exhibit “I-I,” at 51 (third page of exhibit) (Report of the Committee of Finance for Local Law 51 of 1989).

RESPONSE: Not disputed.

46. In 1992, the City Council amended the fees for issuance and renewal of handgun licenses with Local Law 42. The City Council increased the fee from \$135 to \$170. See Goldberg-Cahn Dec., Exhibit “I” (Local Law 42 of 1992).

RESPONSE: Not disputed.

47. The City Council most recently amended the fees and the duration of firearms licenses in 2004 with Local Law 37. Local Law 37 extended the length of a handgun license from two to three years. In addition, the legislation increased the fees from \$170 for a two-year license, to \$340 for a three year license. See Goldberg-Cahn Dec., Exhibit “J” (Local Law 37 of 2004).

RESPONSE: Not disputed.

48. The Report of the Committee on Finance of the City Council in support of Local Law 37 of 2004, detailed the costs of the License Division of the NYPD. At the time of the report, the License Division had 40,400 total handgun licensees, 23,300 total rifle

and shotgun permit holders, and 4,173 Special Patrolmen. See Goldberg-Cahn Dec., Exhibit “K” (Committee Report for Local Law 37 of 2004).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

49. The Council Report found that the License Division incurred over \$6 million in personnel costs per year. See Goldberg-Cahn Dec., Exhibit “K,” at 2700. In 2004 alone, the License Division processed 3,900 handgun applications, 1200 rifle/shotgun permit applications, and 900 Special Patrolmen applications for that year. Id. The report set forth the Committee’s findings that the revenue collected by the License Division was \$3,350,000 annually for fees associated with processing applications and renewals of handgun licenses and rifle and shotgun permits, which was far less than the actual costs of licensing (including personnel costs, equipment, modernization costs, and costs to monitor compliance with the laws and rules of the City and State pertaining to guns). Id.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

50. The Committee on Finance in 2004 concluded that the license fee collected “does not reflect the actual costs of licensing, including the expenses for equipment and other resources necessary to process applications, handle investigations, address incidents, and monitor compliance with the laws and rules associated with city and state gun laws.” Goldberg-Calm Dec., Exhibit “K,” at 2700.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

51. Prior to the introduction of what became Local Law 37 of 2004, NYPD, with the oversight of the New York City Office of Management and Budget (“OMB”), prepared a detailed cost analysis of the cost of processing license applications processed by the NYPD License Division. See Lunetta Dec., ¶¶ 20-23, Exhibit “D,” annexed thereto (2004 User Cost Analysis); Declaration of Andy Shiwnarain, dated July 28, 2001 (“Shiwnarain Dec.”), ¶ 3.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

52. The OMB User Cost Analysis stated that the cost per service unit for each application processed by the NYPD License Division was \$343.49. See Lunetta Dec., ¶¶ 24, 31, Exhibit “D,” at 3 (fourth page).

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

53. As a result, OMB suggested to the City Council that the proposed permit fee should be increased to \$340.00 to cover the costs of processing the license. See Lunetta Dec., ¶¶ 32-34, Exhibit “D.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

54. Admin. Code § 10-131(a)(2), as amended by Local Law 37 provides:

2. Every license to carry or possess a pistol or revolver in the city may be issued for a term of no less than one or more than three years. Every applicant for a license to carry or possess a pistol or revolver in the city shall pay therefor, a fee of three hundred forty dollars for each original or renewal application for a three year license period or part thereof, a fee of ten dollars for each replacement application of a lost license.

Admin. Code § 10-131 (a)(2) (emphasis added).

RESPONSE: Not disputed.

55. The Laws of 1995, Chapter 503 amended Admin. Code § 10-131(a)(6) to provide for all fees collected by the NYPD for license applications to go to the NYPD “general fund,” instead of the NYPD “pension fund.” See Goldberg-Cahn Dec., Exhibit “L” (L. 1995. ch. 503).

RESPONSE: Not disputed.

56. Chapter 503 of New York Laws of 1995 shifted payments of fines and fees to go into the City of New York General Fund, rather than the Police Pension Fund. See Goldberg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

57. The legislation substituted an obligation for the City to fund the NYPD pension fund. See Goldberg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

58. Admin. Code § 13-203(11) refers to Admin. Code § 13-213.1(3)(c), which makes all monies received for fees payable to the general fund. See Admin. Code § 13-203(11).

RESPONSE: Not disputed.

59. Admin. Code § 13-213.1(3)(c) provides: “...on and after July first, nineteen hundred ninety-five, all moneys which otherwise would be paid to pension fund, subchapter one pursuant to the provisions of section 13-203 of this subchapter or any other provision of law, or from any other source whatsoever, shall instead be paid to the general fund of the city established pursuant to section one hundred nine of the New York city charter.” Admin. Code § 13-213.1(13).

RESPONSE: Not disputed.

60. In the summer of 2010, the NYPD, working together with OMB, analyzed the costs to the License Division for processing handgun license applications. NYPD and OMB analyzed the cost to the License Division by the various license types, NYPD prepared a User Cost Analysis for each of the different handgun licenses that it processes. See Lunetta Dec., ¶¶ 35-42. Exhibits “D” “E,” and “F,” annexed thereto; Shiwnarain Dec., ¶ 4-5.

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

61. The 2010 User Cost Analysis calculated the total cost to the License Division for each Premises Residence pistol license initial application as \$977.16. Lunetta Dec., ¶ 38, Exhibit “F.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

62. The 2010 User Cost Analysis calculated the total cost to the License Division for renewals of each Premises Residence license as \$346.92. Lunetta Dec., ¶ 38, Exhibit “G.”

RESPONSE: Plaintiffs have not had the opportunity to conduct discovery and cannot assess the validity of these assertions. To the extent these facts are outcome-dispositive, Plaintiffs are entitled to discovery. Otherwise, not disputed.

63. In September, 2010, the New York City Council introduced legislation to change the current application fee structure for pistol licenses to charge different fees for each type of handgun license types issued by NYPD. See Goldberg-Cahn Dec., Exhibit “N,” annexed thereto; Lunetta Dec., ¶ 35.

RESPONSE: Not disputed.

64. This 2010 legislation was proposed at the same time as the NYPD had enacted other changes in the pistol license application process to make the licensing process more efficient and “customer friendly” — i.e., utilizing technology to speed up the application and review process, providing copies of license applications online, accepting credit card payment, extending the hours of the License Division, among

other things. See Lunetta Dec., ¶ 37; see also Goldberg-Cahn Dec., Exhibit “O” (City Council Committee on Public Safety Report in Support of Int. 313, dated September 15, 2010).

RESPONSE: Not disputed.

65. City Council Introduction No. 313 of 2010 proposed to charge applicants a smaller percentage of the total costs to the NYPD for firearms licenses, by specific license type. See Goldberg-Cahn Dec., Exhibit “N,” annexed thereto (Int. 313 of 2010); Shiwnarain Dec., Exhibit A.” annexed thereto.

RESPONSE: Not disputed that Introduction 313-2010 sought to lower the license fees and authenticity not disputed; characterization of “costs” is disputed.

66. Specifically, the proposal sought to amend the fee to be 7% of the total cost to the License Division for all handgun licenses (or a 93% discount), and 5% of the cost for rifles, shotguns, and theatrical permits. See Shwinarain Dec., ¶ 5, Exhibit “A,” annexed thereto. Ultimately, the City Council Committee on Finance declined to move forward with the proposed legislation. See Goldberg-Cahn Dec., Exhibits “P” (transcript of City Council Committee September 15, 2010 hearing) and “Q” (City Council Committee meeting details), annexed thereto.

RESPONSE: Not disputed that Introduction 313-2010 sought to lower the license fees and authenticity of the document not disputed; characterization of “costs” and “discounts” is disputed.

67. The current fee for the issuance and renewal of a Premises Residence handgun license is \$340. See Admin. Code § 10-131(a)(2).

RESPONSE: Admitted.

68. The \$340 license application fee has been in effect since 2004. See Local Law 37 of 2004. See Admin. Code § 10-131(a)(2); Goldberg-Cahn Dec., Exhibits “J” (Local Law 37 of 2004) and “O” (Council Comm. Hrg. Tr.).

RESPONSE: Not disputed.

69. In addition, for initial applications, the applicant must pay a \$94.25 fee that is used for DCJS fingerprinting. Lunetta Dec., ¶¶ 9, 13.

RESPONSE: Not disputed.

70. The fingerprint fee is a one time fee; it is not paid for renewal applications. Lunetta Dec., ¶ 9.

RESPONSE: Not disputed.

71. The \$340 fee represents only 34.79% of the costs incurred as of 2010; and a 65.21% discount to the applicant. See Lunetta Dec., ¶ 19.

RESPONSE: Admitted that the fee is \$340; characterization of “costs” and “discounts” is disputed.

72. The fees received by the License Division for licenses to possess handguns are deposited in the New York City General Fund. See Admin. Code § 10-131(a)(6), 13-213.1(3)(c); Goldberg-Cahn Dec., Exhibit “L” (L. 1995. ch. 503); Lunetta Dec. ¶¶ 44-45, Exhibit “I,” annexed thereto (New York Cit Comptroller’s Comprehensive Annual Finance Report), at 175.

RESPONSE: Not disputed that the 1995 local law directed this change.

73. License application fee monies have been deposited in the City’s General Fund since 1996. See Admin. Code § 10-131(a)(6), 13-213.1(3)(c); Goldherg-Cahn Dec., Exhibit “L.”

RESPONSE: Not disputed.

Dated: New York, New York
August 24, 2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; GEORGE GRECO; GLENN
HERMAN; NICK LIDAKIS; TIMOTHY S. FUREY;
SECOND AMENDMENT FOUNDATION, INC.; and
THE NEW YORK STATE RIFLE & PISTOL
ASSOCIATION, INC.,

Plaintiffs,

-against-

MICHAEL BLOOMBERG, in his Official Capacity as
Mayor of the City of New York; CITY OF NEW YORK;
and ERIC SCHNEIDERMAN, in his Official Capacity as
Attorney General of the State of New York,

Defendants.

**CITY DEFENDANTS'
RESPONSES TO
PLAINTIFFS'
COUNTER-
STATEMENT OF
UNDISPUTED
MATERIAL FACTS**

11 Civ. 2356 (JGK)
ECF Case

Pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, defendants Michael Bloomberg in his official capacity as Mayor of the City of New York and the City of New York (collectively "City defendants") submit the following responses to Plaintiffs' Statement of Undisputed Material Facts, dated June 22, 2011, and following counter statement of undisputed material facts:

GENERAL STATEMENTS AND OBJECTIONS

City defendant's responses to Plaintiffs' Counter-Statement of Undisputed Material Facts, dated August 24, 2011 ("Plaintiffs' Counter-56.1 Statement"), are provided herein. Any statements that are not disputed are not disputed solely for purposes of this motion.

CITY DEFENDANTS' RESPONSES TO PLAINTIFFS' COUNTER 56.1 STATEMENT

City defendants respond to each of the paragraphs utilizing the numbering scheme set forth in Plaintiffs' Counter 56.1 Statement.

1. City defendants do not dispute the statements set forth in paragraph "1."
2. City defendants do not dispute the statements set forth in paragraph "2."
3. City defendants do not dispute the statements set forth in paragraph "3."
4. City defendants do not dispute the statements set forth in paragraph "4."
5. City defendants do not dispute the statements set forth in paragraph "5."
6. City defendants do not dispute the statements set forth in paragraph "6."
7. City defendants dispute the statements set forth in paragraph "7" to the extent that City defendants did not see any information on the City's license fee and attempts to decrease that fee on the cited website (www.nysrpa.org [last accessed October 3, 2011]), however, City defendants aver that such dispute is not material.
8. City defendants do not dispute the statements set forth in paragraph "8."
9. City defendants do not dispute the statements set forth in paragraph "9."

Dated: New York, New York
October 4, 2011

MICHAEL A. CARDOZO
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By: MICHELLE GOLDBERG-CAHN
Assistant Corporation Counsel

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' COUNTER-STATEMENT
OF UNDISPUTED MATERIAL FACTS.**

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"), hereby submits the following response to the Plaintiffs' second Counter-Statement of Undisputed Material Facts, dated August 24, 2011.

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.

1. Members of Plaintiff Second Amendment Foundation, Inc. ("SAF") have complained to the organization about the handgun license fees in the City of New York, including specifically the Residence Premises license fee, and have sought advice about

the fee and any alternatives to the fee, as well as requesting that the organization take legal action to address the fee. Ex. 1, Supp. Declaration of Miko Tempski (“Supp. Tempski Dec.”) ¶¶ 3-5.

RESPONSE 1: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiffs have failed to supply any specific information as to the identities of any members who have complained, when they complained, to whom they complained, and whether they were prevented from obtaining a premises license.

2. SAF has expended its time, energy, and resources to respond to these inquiries and requests. SAF employees and volunteers have corresponded with individuals making these inquiries and requests by telephone and by e-mail, and the time that SAF employees have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of SAF. Supp. Tempski Dec. ¶ 6.

RESPONSE 2: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiffs have failed to supply any specific information as to the identities of any members who have made inquiries, when they inquired, to whom they inquired, any response they received, and what resources were allegedly expended.

3. SAF has also prepared written materials regarding the amount of the license fee and proposals to change the license fee and distributed them on the internet for the benefit of its members and the inquiring public. SAF employees and volunteers have expended time, energy, and resources to prepare and distribute of these materials. Supp. Tempski Dec. ¶ 7.

RESPONSE 3: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiffs have failed to supply any specific information as to the resources allegedly expended or the written materials allegedly prepared and disseminated.

4. Members of SAF live in New York City and have paid the \$340 fee.
Declaration of Miko Tempski (Doc. No. 25-8) ¶ 7.

RESPONSE 4: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiffs have failed to specifically identify members who live in New York, and when they paid the \$340 fee and when such members joined SAF.

5. Members of Plaintiff The New York State Rifle & Pistol Association, Inc. (“NYSRPA”) have complained to the organization about the handgun license fees in the City of New York, including specifically the Residence Premises license fee, and have sought advice about the fee and any alternatives to the fee, as well as requesting that the organization take legal action to address the fee. Ex. 2, Supp. Declaration of Thomas H. King (“Supp. King Dec.”) ¶¶ 3-5.

RESPONSE 5: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiff has failed to supply any specific information as to the identities of any members who have complained, when they complained, to whom they complained, whether they were prevented from obtaining a premises license, and what advice they received.

6. NYSRPA has expended its time, energy, and resources to respond to these inquiries and requests. For example, NYSRPA and its volunteers have corresponded with

individuals making these inquiries and requests by telephone and by e-mail. Supp.

King Dec. ¶ 6.

RESPONSE 6: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and that Plaintiffs have failed to supply any specific information as to the resources allegedly expended or the written materials allegedly prepared and disseminated.

7. NYSRPA publishes a web page at <http://www.nysrpa.org> that includes, *inter alia*, information on New York City firearms regulations, specifically including the \$340 license fee, and attempts to decrease that fee to a reasonable amount. NYSRPA has expended time, energy, and other resources to develop and publish these materials. Supp. King. Dec. ¶ 7.

RESPONSE 7: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general and while NYSRPA claims that its website addresses licensing fees in New York City and efforts to lower those fees, a visit to its site, www.nysrpa.org, on September 23, 2011 failed to identify any such materials.

8. NYSRPA representatives have provided testimony to the New York City Council in favor of lowering the fee. The time that NYSRPA representatives have spent dealing with such inquiries and requests has prevented them from engaging in other work on behalf of NYSRPA. Supp. King. Dec. ¶ 8.

RESPONSE 8: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs' allegations are vague and general.

9. Members of NYSRPA live in New York City and have paid the \$340 fee.
Declaration of Thomas H. King (Doc. No. 25-9) ¶ 7.

RESPONSE 9: Intervenor denies sufficient information to confirm or deny Plaintiffs' assertion on this point but notes that Plaintiffs allegations are vague and general and that Plaintiff has failed to supply any specific information as to the identities of any members who live in New York and when they became members of the organization.

Dated: New York, New York
October 4, 2011

ERIC T. SCHNEIDERMAN
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By:

/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHUI W. KWONG; *et al.*,

Plaintiffs,

-against-

MICHAEL BLOOMBERG, *et al.*,

Defendants.

No. 11 Civ. 2356 (JGK) (DCF)

ECF Case

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs SHUI W. KWONG, GEORGE GRECO, GLENN HERMAN, NICK LIDAKIS, TIMOTHY S. FUREY, DANIELA GRECO, NUNZIO CALCE, SECOND AMENDMENT FOUNDATION, INC., and THE NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC. hereby appeal to the United States Court of Appeals for the Second Circuit from the Opinion and Order (Doc. No. 45) denying Plaintiffs' motion for summary judgment and granting Defendants' and Intervenor's cross-motions for summary judgment, entered in this action on the 26th day of March, 2012.

Dated: New York, New York
April 18, 2012

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CERTIFICATE OF SERVICE

On 29 June 2012 I served the foregoing Joint Appendix Vol. IV by electronically filing it with the Court's CM/ECF system, which generates a Notice of Filing and effects service upon counsel for all parties in the case.

I affirm the foregoing statement under penalty of perjury under the laws of the United States of America.

Dated: June 29, 2012

s/ David D. Jensen
David D. Jensen
Attorney for Plaintiffs-Appellants