

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREGORY T. ANGELO, *et al.*,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 22-CV-01878 (RDM)

**REPLY IN FURTHER SUPPORT OF DEFENDANTS’
PARTIAL CONSENT MOTION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFFS’ APPLICATION FOR PRELIMINARY INJUNCTION
AND TO HOLD DEFENDANTS’ RESPONSE DEADLINE IN ABEYANCE**

The Parties disagree whether Defendants should have until August 17, 2022, or until October 17, 2022, to respond to Plaintiffs’ motion for a preliminary injunction [6]. Because Defendants’ have shown good cause for having an additional 60 days to respond, *see* Motion [10], and because Plaintiffs have failed to identify any prejudice that would result during that period, *see* Opp’n at 4–5 [11], Defendants’ motion should be granted. In opposing Defendants’ request for an additional 60 days to respond to their motion for a preliminary injunction, Plaintiffs’ two main objections are that Defendants’ have not justified the need for additional time and that Plaintiffs will suffer undue prejudice during that time. Neither objection has merit.

With regard to Defendants’ need for additional time, Plaintiffs do not dispute—indeed, they concede—that Defendants are “entitled to proffer an historical analysis to attempt to show that the regulation is consistent with the nation’s historic tradition of firearms regulation,” but instead contend that Defendants should have initiated that examination years ago. Opp’n at 2. Plaintiffs argue further that “Defendants have failed to set forth any detailed discuss[ion] of exactly what it is that will require 90 days for them to prepare their response to the preliminary

injunction request.” Opp’n at 3. Plaintiffs’ reasoning, however, rests on the false premise that the Supreme Court’s recent decision in *New York State Rifle and Pistol Association v. Bruen*, 142 S. Ct. 2111, Case No. 20-843, slip. op. at 8 (June 23, 2022) was inconsequential. *See id.* at 2–3. It was not.

Bruen represents a significant departure from how courts, including the D.C. Circuit, have analyzed firearm regulations. The Supreme Court itself acknowledged the significance of *Bruen*. The Court explained that in recent years “the Courts of Appeals have coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combines history with means-end scrutiny,” and then rejected that approach. *Bruen*, slip op. at 8. The Court held that “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 10. But, contrary to Plaintiffs’ implication, the Court never suggested that such an analysis would be quick and easy. The Court said the opposite, explaining that “historical analysis can be difficult” and that “it sometimes requires resolving threshold questions, and making nuanced judgements about which evidence to consult and how to interpret it.” *Id.* at 16 (quotations and citations omitted). The Court also offered guidance with regard to future challenges to firearm regulations, noting that “[w]hile the historical analogues here and in [*District of Columbia v. Heller*, 554 U.S. 570 (2008)] are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Bruen*, slip op. at 18.

Defendants now seek the opportunity to conduct the historical analysis called for in *Bruen*. And, while Plaintiffs purport to have no idea as to what that historical analysis will entail, *see* Opp’n at 3, it should be self-evident to Plaintiffs. Defendants will need to spend time

identifying, collecting, and reviewing source material from more than 200 years ago. Defendants cannot simply use Google. Defendants will need to consult hard copy documents that are in many cases difficult to access because they are stored for preservation. Not only will that nationwide search take time, but Defendants will also likely need to retain historical experts to assist with identification and review of relevant material.

And, during the additional 60 days that Defendants are seeking to conduct that search, Plaintiffs will suffer no actual prejudice. This case is about Plaintiffs' ability to carry firearms on public transportation, which in the District, is the primary mode of transportation for school children, among others. The District's public transportation system also regularly operates during extremely large gatherings, *e.g.*, July 4th. Plaintiffs have operated under the current limitation for many years without incident and without complaint. No emergency or exigent circumstances prevent Plaintiffs from operating under that limitation for an additional brief period. To borrow Plaintiffs' words, allowing individuals to carry firearms on public transportation without first providing the District with sufficient time to defend its regulation could be "potentially catastrophic." *See* Opp'n at 5. Given the societal importance of the issues raised by Plaintiffs, the Court should have a full and fair presentation of the facts, including a thorough presentation of the relevant historical evidence. Plaintiffs' arbitrarily short timeframe would deprive this Court, and potentially the D.C. Circuit, of the benefit of that analysis.

CONCLUSION

For the foregoing reasons, Defendants' motion for extension should be granted.

Date: July 14, 2022.

Respectfully Submitted,

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* Admitted to practice only in the State of New York. Practicing in the District of Columbia under the direct supervision of Matthew Blecher, a member of the D.C. Bar, pursuant to LCvR 83.2(f) and D.C. Court of Appeals Rule 49(c)(4).