

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

NATIONAL ASSOCIATION FOR GUN RIGHTS,)	
ROBERT C. BEVIS, and)	
LAW WEAPONS, INC., d/b/a LAW WEAPONS &)	
SUPPLY, an Illinois corporation;)	Case No. 22-cv-04775
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF NAPERVILLE, ILLINOIS,)	
)	
Defendant.)	

MOTION TO MODIFY BRIEFING SCHEDULE

Plaintiffs move the Court to modify the briefing schedule regarding their motion for TRO. As grounds for this motion, they state.

CERTIFICATION. The undersigned has conferred with counsel for Defendant. Defendant opposes this motion.

1. On November 23, 2022, the Court entered an order directing the parties to submit supplemental briefing on the following questions: (1) whether the Second Amendment’s plain text covers the conduct at issue in Naperville’s ordinance banning the sale of so-called “assault weapons,” and (2) if so, whether the “regulation is consistent with this Nation’s historical tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022).

2. The Court ordered the supplemental briefs to be submitted simultaneously on December 5, 2022.

3. Plaintiffs respectfully assert that simultaneous submission of briefs is unfair to them and request the Court to modify the briefing schedule slightly.

4. In *Bruen*, the Court held that the government bears the burden of showing that its regulation is consistent with this Nation’s historical tradition of firearm regulation. *Bruen*, 142 S. Ct. at 2135. Plaintiffs do not have the burden of negating that proposition. This makes sense because the law has long recognized that proving a negative is next to impossible. *Lupyan v. Corinthian Colleges Inc.*, 761 F.3d 314, 322 (3d Cir. 2014), citing *Piedmont and Arlington Life–Ins. Co. v. Ewing*, 92 U.S. 377, 380 (1875); see also *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1295 n. 16 (7th Cir. 1977) (“almost impossible” to prove a negative).

5. Under *Bruen*, the City would lose if it were unable to demonstrate its regulation is consistent with this Nation’s historical tradition of firearm regulation. Therefore, it has the burden. *Auburndale State Bank v. Dairy Farm Leasing Corp.*, 890 F.2d 888, 893 (7th Cir. 1989) (“party who would lose if no evidence were presented has the burden”). See also *Friedman v. City of Highland Park, Illinois*, 784 F.3d 406, 415 (7th Cir. 2015) (Manion, J., dissenting) (in Second Amendment case “burden rests squarely on the government”).

6. As *Bruen* itself demonstrates, government defendants in Second Amendment cases often “appeal to a variety of historical sources,” *Id.*, 142 S.Ct. at 2135, that turn out not to support their assertion that an historical tradition of regulation exists. *Id.*, 142 S.Ct. at 2156 (“At the end of this long journey through the Anglo-American history of public carry, we conclude that respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement.”).

7. In summary, Plaintiffs are not required to prove a negative and Defendant is likely to appeal to historical sources that do not actually support its claim that a tradition exists. Therefore, instead of submitting a brief at the same time as defendant, Plaintiffs should be

given an opportunity to review and comment on the historical sources Defendant claims satisfy its burden.

8. Therefore, Plaintiffs respectfully move the Court to modify the briefing schedule as follows:

Defendant's supplemental brief due on December 5, 2022

Plaintiffs' reply to Defendant's brief due on December 9, 2022

Respectfully submitted this 25th day of November 2022.

/s/ Barry K. Arrington
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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2022, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing via email counsel of record:

/s/ Barry K. Arrington

Barry K. Arrington