

No. 10-3525

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

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RHONDA EZELL, WILLIAM HESPEN, JOSEPH BROWN,  
ACTION TARGET, INC., SECOND AMENDMENT FOUNDATION, INC.,  
AND ILLINOIS STATE RIFLE ASSOCIATION,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

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Appeal from an Order of the United States District Court  
for the Northern District of Illinois  
The Hon. Virginia M. Kendall, District Judge  
District Court No. 10-CV-5135

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APPELLANTS' SEPARATE APPENDIX

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## SEPARATE APPENDIX

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4. Plaintiff Action Target, Inc., is a Delaware corporation having its primary place of business in Utah. Action Target is a leading designer and builder of gun ranges, and renowned manufacturer and seller of gun range equipment and supplies. Action Target is engaged in the gun range business throughout the United States, including in Chicago, where it recently constructed a gun range on the seventeenth floor of the Federal Reserve Bank of Chicago, located at 230 South LaSalle Street; a gun range for the United States Postal Inspectors at 743 South Canal Street; and a gun range for Brinks, located at 4420 S. Tripp Avenue. Action Target has bid on the retrofitting of two other gun ranges within Chicago currently being operated by the federal government.

5. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including many in Chicago. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control. SAF brings this action on behalf of itself and its members.

6. Plaintiff Illinois State Rifle Association (“ISRA”) is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois, including many in Chicago. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation. ISRA brings this action on behalf of itself and its members.

7. Defendant City of Chicago is a municipal entity organized under the Constitution and laws of the State of Illinois.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

### **STATEMENT OF FACTS**

#### *Gun Ranges' Role in American Tradition and Chicago's Safety Policy*

10. Familiarity with firearms, and proficiency in their use, promotes public safety. Gun owners trained in and familiar with the operation of their guns are less likely to be involved in accidental shootings, and more likely to successfully use their firearms in self-defense in case of need.

11. Recreational shooting is a traditional lawful use of firearms in the United States.

12. The promotion of civilian marksmanship has been a priority of the federal government throughout American history, beginning with the Second Militia Act of 1792 and continuing through today with the modern implementation of the Civilian Marksmanship Program through the federally-chartered Corporation for the Promotion of Rifle Practice and Firearms Safety, 36 U.S.C. §§ 40701, et seq.

13. Defendant City of Chicago recognizes the value of firearms training and proficiency. The City mandates, as a condition of firearms ownership, that all individuals undergo at least one hour of firearms training on a gun range.

14. Chicago residents wishing to lawfully possess firearms in the city must first obtain a Chicago Firearms Permit (“CFP”). Chi. Mun. Code § 8-20-110(a).

15. An application for a CFP “shall include . . . (7) an affidavit signed by a firearm instructor certified by the State of Illinois to provide firearm training courses attesting that the applicant has completed a firearm safety and training course, which, at a minimum, provides one hour of range training . . .” Chi. Mun. Code § 8-20-120(a).

16. Chicago firearm registrants whose registrations precede Chicago’s adoption of the CFP requirement must obtain a CFP, and the requisite training, in order to renew their firearm registration. Chi. Mun. Code § 8-20-110(d). If a registration is not timely renewed, the subject firearm may become unregistrable to the current owner and must be disposed of. Chi. Mun. Code §§ 8-20-140(d), 8-20-170(c).

17. Owing to, and as part of Chicago’s recent changes to its firearms laws, the City of Chicago enacted a ninety day grandfathering period wherein it will allow the registration of firearms previously acquired, but not registered, by city residents. This period will expire on October 12, 2010. Any individual wishing to take advantage of this opportunity must, by October 12, 2010, obtain a CFP and thus, must undergo at least one hour of range time by that date.

18. Gun ranges open to the public exist in virtually every major American city in a variety of architectural settings.

19. Properly designed and operated, gun ranges are compatible with many typical commercial uses of property.

20. At least eleven gun ranges currently operate within the City of Chicago. However, none are open to the public. Five ranges are operated by the Chicago Police Department. The

federal government maintains four gun ranges. And each of two private security companies operate gun ranges for their own purposes.

21. Historically, gun ranges open to the public have operated in Chicago.

*Chicago's Prohibition of Gun Ranges, Recreational Shooting,  
and Firearms Training*

22. Chicago Municipal Code § 8-20-280, "Prohibition on shooting galleries and target ranges," provides: "Shooting galleries, firearm ranges, or any other place where firearms are discharged are prohibited; provided that this provision shall not apply to any governmental agency. The discharge of a firearm in an area where hunting is permitted shall not be a violation of this section."

23. A variety of Chicago ordinances, individually and as a whole, bar the temporary lending and borrowing of firearms for purposes of training and shopping at a gun range. These include: Chi. Mun. Code §§ 8-20-020 (barring possession of handguns outside the home), 8-20-030 (barring possession of long guns outside one's home or fixed place of business), 8-20-080 (barring possession of ammunition without corresponding CFP and registration certificate), 8-20-100(a) (providing that generally, "no firearm may be sold, acquired or otherwise transferred within the city, except through inheritance of the firearm"), 8-20-100(d) (providing that "No person may loan, borrow, give or rent to or from another person, any firearm or ammunition except in accordance with this chapter"), 8-20-110(a) (mandating that each individual must have a valid CFP to possess a firearm), 8-20-140(a) (mandating that no firearm may be possessed without a registration certificate), and 8-24-010 (barring recreational shooting).



24. Every day in which an individual operates a gun range in violation of Chi. Mun. Code § 8-20-280; or transfers, loans, borrow, gives or rents firearms or ammunition in violation of Chi. Mun. Code § 8-20-100; or possesses an unregistered firearm in violation of Chi. Mun. Code § 8-20-140, is considered a separate and distinct offense. The penalty for a first offense in violation of these provisions is a fine ranging from \$1,000 to \$5,000 and/or incarceration ranging from 20 to 90 days. A subsequent offense carries a fine ranging from \$5,000 to \$10,000 and/or incarceration ranging from thirty days to six months. Chi. Mun. Code § 8-20-300(b).

25. Every day in which an individual possesses guns outside the home or fixed place of business in violation of Chi. Mun. Code §§ 8-20-020 or 8-20-030; possesses ammunition without a corresponding registration under Chi. Mun. Code § 8-20-080; or possesses a firearm without a CFP in violation of Chi. Mun. Code § 8-20-140, is considered a separate and distinct offense. The penalty for a first offense in violation of these provisions is a fine ranging from \$1,000 to \$5,000 and/or incarceration ranging from 20 to 90 days. Chi. Mun. Code § 8-20-300(a).

26. Discharging a firearm other than in self-defense or defense of another person, in violation of Chi. Mun. Code § 8-24-010, carries a penalty ranging from \$500 to \$1000.

*The Impact of Chicago's Range Prohibition on Plaintiffs and the Public*

27. Plaintiff Rhonda Ezell has been the victim of three attempted burglaries at her Chicago home. She has applied for a Chicago Firearms Permit so that she may register her handgun. However, to obtain the necessary training, Ezell traveled to a range in Dundee, Illinois, a significant distance from her home.

28. Plaintiff Ezell suffers from interstitial lung disease, lupus, and end stage renal disease, for which she is currently awaiting a kidney transplant. Ezell would like to continue recreational shooting, but given her condition finds it difficult to travel outside the city for that purpose. Ezell would utilize a gun range inside the city of Chicago were one accessible to her.

29. Plaintiff Joseph I. Brown is an honorably-discharged U.S. Army veteran. Plaintiff Brown served in the Pacific and European theaters during the Second World War, and was among the liberators of the infamous Dachau concentration camp. Brown is currently the Chairman of the Marksmanship Committee for the Department of Illinois, American Legion. He is also the Secretary and Treasurer of the Cook County Rifle League, and instructs a winter shooting league for junior shooters (boys and girls ages 12-20) that meets at the six-point indoor gun range located at the Morton Grove, Illinois American Legion Post 134.

30. Plaintiff Brown would like to register one of his guns for possession inside his Chicago home, but cannot do so until he obtains his Chicago Firearms Permit. Notwithstanding his unusual expertise and high level of firearms proficiency, Brown must undergo one hour of formal range training to obtain the Chicago Firearms Permit and register his gun.

31. Plaintiff Brown would also engage in recreational shooting within the City of Chicago, and promote and provide instruction in the shooting sports, and marksmanship, to his Chicago neighbors at a local range, if one were made available to him.

32. Plaintiff William Hespen is a retired Chicago Police detective. Hespen is the registered owner of various firearms, twenty-four of which have registrations set to expire on October 8, 2010. Hespen must obtain training and apply for a CFP upon the expiration of his registration certificate in order to continue lawful possession of his firearms.

33. Plaintiff Hespen would also engage in recreational shooting within the City of Chicago, and promote and provide instruction in the shooting sports, and marksmanship, to his Chicago neighbors at a local range, if one were made available to him.

34. Various qualified customers of Plaintiff Action Target have expressed to Action Target their desire to retain the company to construct gun ranges within the city limits of Chicago. Action Target refrains from entering into these contracts, and from supplying range equipment and supplies in Chicago, owing to the ordinances complained of in this action. But for these prohibitions, Action Target would successfully market its services and products in Chicago to non-governmental entities.

35. Plaintiff ISRA has long operated a gun range approximately sixty miles outside Chicago for the benefit of its members and the public at large. ISRA would operate a range within the City of Chicago, to further its chartered purposes of promoting the shooting sports, educating the public about firearms, training individuals to become better and safer shooters, enabling individuals to comply with training requirements such as that recently enacted by the City of Chicago, and generally serving its members.

36. Plaintiffs SAF and ISRA have members and supporters within the City of Chicago who require range training in order to obtain CFPs and thus lawfully keep firearms. It is squarely within the educational and public service missions of SAF and ISRA to provide firearms training, especially to the extent such training is required as a condition of gun ownership.

37. SAF and ISRA expend their resources advising and counseling current and prospective Chicago gun owners with respect to Chicago's gun laws, including the city's range training requirement.

38. Every day, current firearms registrants, including the members and supporters of Plaintiffs SAF and ISRA, are forced to obtain CFPs to continue exercising their right to keep arms in the City of Chicago, as registration certificates issued under the previous Chicago firearms ordinance expire. It is urgent that such individuals immediately obtain the city-mandated training, lest their firearms become unregistrable and they become subject to criminal penalties.

39. Numerous individuals within Chicago, including the members and supporters of Plaintiffs SAF and ISRA, urgently require the city-mandated training so that they may timely obtain CFPs and gun registrations prior to the expiration of the 90-day grandfathering window on October 12, 2010.

40. To meet these urgent educational needs, SAF has contracted for the delivery of a modern mobile firearm training facility, ordinarily used by law enforcement personnel, to the City of Chicago. This mobile range facility, fully compliant with all federal environmental and safety standards, contains three positions within a forty-eight foot truck trailer. SAF has also secured a commercial space for the location of this range within Chicago, and plans to secure additional parking locations so that convenient range training may be provided to gun owners throughout the length and breadth of the City of Chicago. This range would be operated by SAF in conjunction with ISRA's state-registered firearms trainers.

41. But for the criminal enactments challenged in this complaint, SAF and ISRA would begin educating individuals in the use of firearms, including by providing the training required by Defendant City of Chicago, utilizing the mobile range within the City of Chicago by the end of September, 2010, but refrain from doing so for fear of arrest, prosecution, fine and incarceration of their principals and employees.

42. But for the criminal enactments challenged in this complaint, ISRA would seek to construct and operate gun ranges within the City of Chicago, but refrains from doing so for fear of arrest, prosecution, fine and incarceration of their principals and employees.

43. But for the criminal enactments challenged in this complaint, Plaintiffs Brown and Hespen would obtain the mandated gun training in the City of Chicago utilizing Plaintiffs SAF and ISRA's mobile facility, and frequent a Chicago gun range for recreational shooting, and to maintain and improve their proficiency with firearms.

**COUNT I**  
**RIGHT TO KEEP AND BEAR ARMS**  
**U.S. CONST., AMENDS. II AND XIV, 42 U.S.C. § 1983**

44. Paragraphs 1 through 43 are incorporated as though fully stated herein.

45. The Second Amendment, which applies against defendant City of Chicago by operation of the Fourteenth Amendment, secures the right to operate firearms at a range, for purposes of learning about firearms, gaining proficiency with firearms, obtaining any training required as a condition of firearms ownership, recreation, and competition; and the right to own and operate a range for these purposes.

46. Chicago's laws ban the operation of gun ranges, thereby prohibiting numerous traditional lawful uses of firearms. The range ban and associated laws also impede gun ownership itself by frustrating compliance with the city's firearm registration program and barring access to useful information and experience inherently necessary to the exercise of Second Amendment rights.

47. By banning gun ranges open to the public, and by effectively banning the loan, rental, and borrowing of functional firearms at ranges open to the public, Defendant currently

under color of law deprives individuals, including the Plaintiffs, of their right to keep and bear arms, in violation of the Second and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendant's unconstitutional customs, policies, and practices.

**COUNT II**  
**FREE SPEECH**  
**U.S. CONST., AMENDS. I AND XIV, 42 U.S.C. § 1983**

48. Paragraphs 1 through 47 are incorporated as though fully stated herein.

49. The First Amendment, which applies against defendant City of Chicago by operation of the Fourteenth Amendment, secures the right to provide and receive education and instruction in the use of firearms, including the right to provide and receive the training required by defendant as a prerequisite to owning firearms.

50. By banning gun ranges open to the public, and by effectively banning the loan, rental, and borrowing of functional firearms at ranges open to the public, Defendant currently under color of law deprives individuals, including the Plaintiffs, of their right to free speech, in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendant's unconstitutional customs, policies, and practices.

**PRAYER FOR RELIEF**

Plaintiffs request judgment be entered in their favor and against Defendant as follows:

1. An order preliminarily and permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code § 8-20-280, barring operation of gun ranges open to the public;
2. An order preliminarily and permanently enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code §§ 8-20-020, 8-20-030, 8-20-080, 8-20-100, 8-20-110, 8-20-140, and 8-24-010, or any other law, as against the ordinary operation and use of gun ranges open to the public and the loan or rental of functional firearms within gun ranges open to the public;
3. Attorney Fees and Costs pursuant to 42 U.S.C. § 1988;
4. Declaratory relief consistent with the injunction;
5. Costs of suit; and
6. Any other further relief as the Court deems just and appropriate.

Dated: August 16, 2010

Respectfully submitted,

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*Pro Hac Vice* Application Pending

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

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

RHONDA EZELL, et al.,	)	Case No. 10-C-
	)	
Plaintiffs,	)	
	)	MOTION FOR
v.	)	PRELIMINARY INJUNCTION
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	

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**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

COME NOW the Plaintiffs, Rhonda Ezell, Joseph I. Brown, William Hespen, Action Target, Inc., Second Amendment Foundation, Inc., and Illinois State Rifle Association, by and through undersigned counsel, and move for the entry of an order:

1. Preliminarily enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code § 8-20-280, barring operation of gun ranges open to the public;

2. Preliminarily enjoining Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Chicago Municipal Code §§ 8-20-020, 8-20-030, 8-20-080, 8-20-100, 8-20-110, 8-20-140, and 8-24-010, or any other law, as against the ordinary operation and use of gun ranges open to the public and the loan or rental of functional firearms within gun ranges open to the public.



Dated: August 16, 2010

Respectfully submitted,

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By: /s/ Alan Gura/

By: /s/ David G. Sigale/

Alan Gura

David G. Sigale

Attorneys for Plaintiffs

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

RHONDA EZELL, et al.,	)	Case No. 10-CV-5135
	)	
Plaintiffs,	)	<b>NOTICE OF APPEAL</b>
	)	
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	

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**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN** that Rhonda Ezell, Joseph I. Brown, William Hespen, Action Target, Inc., Second Amendment Foundation, Inc., and Illinois State Rifle Association, plaintiffs in the above named case, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the order denying plaintiffs' motion for preliminary and permanent injunctive relief, entered in this action on the 12th day of October, 2010.

Dated: October 28, 2010

Respectfully submitted,

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By: /s/ Alan Gura/  
Alan Gura

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

Attorneys for Plaintiffs

**COPY**

CITY OF CHICAGO  
COMMITTEE ON POLICE AND FIRE

REPORT OF PROCEEDINGS of a  
meeting of the City of Chicago, Committee on  
Police and Fire, taken on June 29, 2010, 1:00  
p.m., City Council Chambers, Chicago, Illinois,  
and presided over by ALDERMAN ANTHONY BEALE,  
Chairman.

Reported by: Donna T. Wadlington, C.S.R.

WADLINGTON REPORTING SERVICE, INC.  
(312) 372-5561

1       whatever it is.

2               ALDERMAN BURNETT: All right. Thank  
3       you.

4               CHAIRMAN BEALE: Alderman Dowell.

5               ALDERMAN DOWELL: Thank you,  
6       Mr. Chairman.

7                       Mrs. Georges, on your  
8       testimony, your statement, just want to be  
9       clear. You mentioned repeat drug dealers or  
10      drug offenders and DUI offenders. Could this  
11      also be applied to people who have convictions  
12      for domestic violence?

13               CORPORATION COUNSEL GEORGES: That  
14      certainly is a very wise possibility where you  
15      talk about, you know, is it reasonable for our  
16      ordinance to limit handgun ownership to those  
17      who have convictions for domestic violence. And  
18      that sounds reasonable to me that there is a  
19      population out there that we don't want to have  
20      access to handguns.

21               ALDERMAN DOWELL: Okay. And then my  
22      second question is, you mentioned that it would

1 be prohibited in the city of Chicago to have a  
2 gun dealership, what about shooting range  
3 facilities? Could people come into Chicago and  
4 construct those kind of facilities?

5 CORPORATION COUNSEL GEORGES: We could  
6 certainly, and what I was trying to get across  
7 in my testimony, is limit what we allow to  
8 operate in our city however is reasonable as  
9 decided by the City Council. And the City  
10 Council certainly could decide from a point -- a  
11 reasonable point of view that those gun dealers  
12 should be prohibited and various other gun  
13 associated activities prohibited within the  
14 city. We do have the Police Academy firing  
15 range in the city. So that -- that is within  
16 the city.

17 ALDERMAN DOWELL: I was thinking more  
18 in lines of private companies that might see  
19 this as an opportunity to make some money and  
20 just come in and want to build those facilities  
21 in different parts of the city.

22 CORPORATION COUNSEL GEORGES: And

1     there are certainly very stringent zoning  
2     requirements that need to be met and things such  
3     as that. So, you know, there is regulation that  
4     can be done.

5             ALDERMAN DOWELL: Okay. And I guess  
6     my third question is, you talked about the  
7     insurance requirement. Are you contemplating an  
8     annual review of an insurance policy? Because  
9     as I was sitting here when talking to my  
10    colleague, it's possible that, you know, people  
11    could get their insurance and then cancel it the  
12    next day.

13            CORPORATION COUNSEL GEORGES:  
14    Insurance is a very tough issue to deal with and  
15    which has really been a significant holdup in  
16    our ability to finalize any sort of ordinance.

17                   And, you know, right now we're  
18    just trying to consider everything. What kind  
19    of insurance should we require -- I suppose the  
20    threshold question is should we require  
21    insurance? Although I've heard from many of  
22    your colleagues that they would -- they think an

1 budgeted positions is sufficient. And we've got  
2 to realize that we've got to make the sacrifices  
3 with our communities to make sure our citizens  
4 are safe.

5 CHAIRMAN BEALE: Alderman Burke.

6 ALDERMAN BURKE: Superintendent, I  
7 asked the Corporation Counsel earlier if she  
8 knew how many registered guns there are in  
9 Chicago now. Do you know?

10 SUPERIENTENDENT WEIS: Yes, sir. We  
11 have 95,700 registered weapons.

12 ALDERMAN BURKE: And what was the high  
13 point years ago?

14 SUPERIENTENDENT WEIS: That I don't  
15 know, Chairman.

16 ALDERMAN BURKE: 600,000, 700,000?  
17 Who knows?

18 SUPERIENTENDENT WEIS: I don't know.

19 ALDERMAN BURKE: Are you familiar with  
20 the New York program for registering gun  
21 offenders?

22 SUPERIENTENDENT WEIS: Is that the New

1 ALDERMAN REBOYRAS: Thank you.

2 CHAIRMAN BEALE: Alderman Pope.

3 ALDERMAN POPE: Thank you,

4 Mr. Chairman. Good afternoon, Superintendent.

5 SUPERINTENDENT WEIS: Good afternoon.

6 ALDERMAN POPE: Your remarks are right  
7 on target. I really appreciate some of your  
8 suggestions and I think all of them should be  
9 incorporated. I do have a question or two  
10 though.

11 You mentioned the training of  
12 the officers that they currently receive for  
13 firearms. Any suggestions or ideas about how  
14 many hours John Public should receive for  
15 training via our ordinance and who might conduct  
16 that training?

17 And I don't know if you're  
18 familiar with other municipalities who allow the  
19 public to carry handguns and what their training  
20 might be.

21 SUPERINTENDENT WEIS: The only one  
22 I'm familiar with, sir, is I believe in



1 Washington. They require four hours of the  
2 classroom and one hour of range time, I believe,  
3 to certify that what they learned in the  
4 classroom was, in fact, valid.

5 It's really tough to say.  
6 Shooting is a very perishable skill. However,  
7 you know, if the folks are buying weapons to  
8 protect their home, the chances of them being  
9 involved in a shooting is somewhat minimal. So  
10 it -- it's somewhat arbitrary the hours that we  
11 put in for the training, and I think we'd have  
12 to look at other municipalities and see what  
13 they have used and use them as, perhaps, models  
14 for us to adopt. But the only one I'm really  
15 familiar with is the DC model, which was four  
16 hours classroom, one hour of range time.

17 ALDERMAN POPE: And do you know who  
18 conducts it? Is that the actual Washington, DC  
19 or is that outsourced?

20 SUPERINTENDENT WEIS: No, sir. They  
21 use outside -- I think they use state of  
22 Maryland.

1                   And just to put it on record,  
2       we would not have the capability of training the  
3       folks in Chicago. We have thirteen and a half  
4       thousand police officers, roughly. We train all  
5       the time. Just -- you know, just to train that  
6       many officers a year with our current range  
7       conditions is a challenge. To take on training  
8       other folks would be insurmountable, both from  
9       costs and from time management.

10                  ALDERMAN POPE: You also made  
11       reference to storing ammunition, especially as  
12       it relates to children. You did not mention and  
13       I would think it's appropriate to maybe limit  
14       the amount of ammunition one has in his or her  
15       possession. And I wouldn't like to walk up on a  
16       house and see 10,000 shells there and 5,000 --

17                         Any thought on that, in terms  
18       of limiting how much ammunition one can keep?

19                  SUPERINTENDENT WEIS: Well, certainly  
20       as you just mentioned, you wouldn't want to walk  
21       up on something that if there was a fire it  
22       would be a hazard to our first responders.

1                   We have that in our general  
2 orders, and we can certainly put that and  
3 available to the public.

4                   ALDERMAN RUGAI: I would ask that you  
5 give that to the Corporation Counsel and to us  
6 perhaps and, you know, so that we have that.  
7 And then if it has to be changed, it can be  
8 amended.

9                   SUPERIENDENT WEIS: We can  
10 certainly pass that through the Chair, ma'am.

11                  ALDERMAN RUGAI: You answered -- my  
12 original reason for asking to speak.

13                   On training, I was thinking  
14 there are no training facilities or ranges in  
15 Chicago, I don't believe, other than the Police  
16 Academy?

17                  SUPERIENDENT WEIS: I believe  
18 that's correct.

19                  ALDERMAN RUGAI: And if training  
20 became a requirement, you know, and along with  
21 that I'm assuming a fee to use the training,  
22 could that be done at the Academy with

1 professional police officers present, you know,  
2 being paid for through the fees?

3 SUPERINTENDENT WEIS: Actually, we  
4 did look at that, and we provided some proposals  
5 and projection models. It's hard to determine  
6 how many people are going to go out and buy a  
7 weapon.

8 We looked at, say, 10 percent  
9 of the population actually pursued this, which  
10 of course would be around 300,000 folks. The  
11 shooting that would be required on this would  
12 overpower our ventilation system almost  
13 immediately. And it would require replacement  
14 of fans and various filters, which is  
15 extraordinarily expensive.

16 It also, I think, would make  
17 the City liable if we certify someone as being,  
18 you're capable and certified for handling this  
19 weapon and then if something were to happen  
20 where that person is found to not have handled  
21 that weapon properly. I would suggest that we  
22 put that on an outside entity, such as a state

City Council Committee on Police and Fire

July 1, 2010

On June 18 and June 29, this Committee held hearings on gun violence and took testimony from experts on possible policies to reduce such violence in our city. These hearings contemplated the impact of the United States Supreme Court's *McDonald* decision on the City's handgun ban, and on future policies the City can enact to address gun violence.

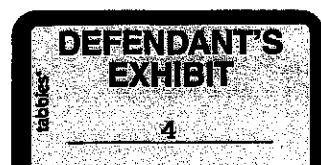
More than 30 people testified at these hearings. We've heard from numerous experts on gun violence, from the Corporation Counsel and other legal experts, from the Superintendent of the Chicago Police Department and other CPD officers, from business owners, from leaders in our faith and community organizations, from those who have lost loved ones to gun violence, and even from some of the plaintiffs in the *McDonald* case.

Among the experts that testified were:

- Robyn Thomas, the Executive Director of Legal Community Against Violence
- David Hemenway, from the Harvard School of Public Health
- Thom Mannard, Executive Director of the Illinois Council Against Handgun Violence
- Tom VandenBerk, President and CEO of the Uhlich Children's Advantage Network
- Mark Walsh, the Executive Director of the Illinois Campaign to Prevent Gun Violence
- Dr. Marie Crandall, from the Trauma Unit at Northwestern Medical Faculty Foundation
- Claude Robinson, the Executive Vice President at the Uhlich Children's Advantage Network
- Annette Holt, from Purpose Over Pain
- Juliet Leftwich, the Legal Director of Legal Community Against Violence, and
- Daniel Webster, Co-Director of the Johns Hopkins Center for Gun Policy and Research

I would also like to acknowledge that one of the experts we invited, Dr. Jens Ludwig, a Professor of Social Service Administration, Law, and Public Policy at the University of Chicago's Crime Lab, was unable to speak but prepared testimony that was distributed to the members of the Committee on June 29. This testimony sets forth Dr. Ludwig's research on the costs of gun violence in Chicago. We've distributed this testimony to the Committee members again today, and I would like to note that it is on the record, and to thank Dr. Ludwig.

During our prior hearings, we also distributed and placed on the record the testimony from several of our other experts, as well as references from their work and numerous other studies on



the causes and effects of gun violence, and recommendations on what we can do to address this problem.

From the evidence that was presented at these hearings, the Committee can make the following findings:

1. Chicago, like other big cities, has a serious problem of gun violence. The total economic and social costs of gun violence in Chicago are substantial. Gun violence severely impacts Chicago's criminal justice and health care systems. Gun violence foments fear in Chicago communities, which can harm property values and drive residents to flee neighborhoods.
2. An increase in the number of guns in circulation contributes to an increase in the number of incidents of gun violence. The presence of a gun makes a crime more lethal than it would be if a gun were not present.
3. Handguns, to an extreme degree; disproportionately contribute to gun violence and death in Chicago.
4. A strong permitting system for firearm owners is vital. Persons who commit violent crimes or threaten public safety by repeated substance abuse should not be allowed to possess firearms. Fingerprinting is necessary to identify ineligible persons. Public safety requires that firearm owners complete a certified firearms training course that includes both classroom instruction and range training.
5. A vigorous firearms registration system is necessary. Registration gives law enforcement essential information about firearms ownership, allows first responders to determine in advance whether individuals may have firearms, facilitates the return of lost or stolen firearms to their rightful owners, permits officers to seize unregistered weapons, and permits officers to charge an individual with a crime if he or she is in possession of an unregistered firearm. Requiring owners to confirm registration information annually is necessary to further these ends.
6. Shootings in the home are a major cause of death, particularly of children and minors. Requiring owners to secure or store their firearms when minors are present, or likely to be present, can reduce the number of accidental and intentional youth firearms injuries, including youth suicides. Further, limiting the number of firearms in the home that may be kept in an operable condition even when no minor is present reduces the risk of firearms injury in the home.
7. Requiring owners to quickly notify law enforcement of the loss, theft, or destruction of their firearm aids law enforcement in reducing illegal gun trafficking, and in identifying and prosecuting gun traffickers. Requiring owners to report the loss or theft when they know or should have known of the loss or theft enhances these purposes. A notification requirement also assists law enforcement in returning firearms to their lawful owners.

8. Limiting the number of handguns in circulation is essential to public safety. Limiting registration of handguns to one per person per month will help limit handgun injuries and crimes, as well as illegal handgun trafficking and straw purchasing.
9. The carrying of firearms in public should be prohibited. In a dense, urban environment like Chicago, public carrying presents a high risk that everyday interpersonal conflicts will result in gun injury. Carrying allows carriers, particularly gang members, to intimidate others. Carrying also increases the threat to law enforcement when responding to calls for assistance.
10. The public safety requires a ban on assault weapons. Assault weapons are not designed for the purpose of self-defense in the home and are not necessary for that purpose, nor are they designed for sport. They are military-style weapons and pose a particularly dangerous threat to law enforcement, as well as to civilians.
11. "Junk guns" – cheap, low-quality handguns that are prone to misfire, fire when dropped, or otherwise malfunction, and that are usually easily concealed – are disproportionately associated with criminal misuse, especially by juveniles and young adults. Banning junk guns will reduce accidents and the risk of criminal abuse.
12. Gun dealers in the City present a risk of firearms flowing quickly into the community and into the hands of criminals, through theft or illegal trafficking, or even through legitimate purchases. Further, there are many federally-licensed gun dealers close to Chicago from which Chicago residents may purchase firearms.

The Committee understands and respects the constitutional rights of Chicago residents. The Committee is mindful of the rulings of the United States Supreme Court, and of the protections conferred by the Second Amendment. The policies that will be recommended by the Committee and contained in the Responsible Gun Ownership Ordinance are in full accord with those rights and protections and are necessary for the ongoing protection of the public welfare and the safety of the residents of Chicago.

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

RHONDA EZELL, et al.,	)	Case No. 10-C-
	)	
Plaintiffs,	)	DECLARATION OF RHONDA EZELL
	)	
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**DECLARATION OF RHONDA EZELL**

I, Rhonda Ezell, am competent to state, and declare the following based on my personal knowledge:

1. I have been the victim of three attempted burglaries at my Chicago home. I have applied for a Chicago Firearms Permit so that I may register my handgun. I need a handgun to defend myself in my home.
  
2. To obtain the range training required by the City of Chicago as a condition of letting me have a Chicago Firearms Permit and keeping my gun, I traveled to a range in Dundee, Illinois, a significant distance from my home.
  
3. Traveling to this gun range outside the city was a hardship. I suffer from interstitial lung disease, lupus, and end stage renal disease, for which I am currently awaiting a kidney transplant.
  
4. I would like to continue recreational shooting, and I believe I need to keep practicing with my handgun in order to remain proficient in its use so that I may be better able to



defend myself in the event of a fourth burglary. I would welcome opportunities to learn how to maintain and improve my marksmanship. However, given the current state of my health, I find it difficult to travel outside the city to use a gun range. I would definitely utilize a gun range inside the city of Chicago were one accessible to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 5<sup>th</sup> day of August, 2010

A handwritten signature in black ink, appearing to read "Rhonda Ezell", written over a horizontal line.

Rhonda Ezell

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

RHONDA EZELL, et al.,	)	Case No. 10-C-
	)	
Plaintiffs,	)	DECLARATION OF WILLIAM HESPEN
	)	
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	

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**DECLARATION OF WILLIAM HESPEN**

I, William Hesper, am competent to state, and declare the following based on my personal knowledge:

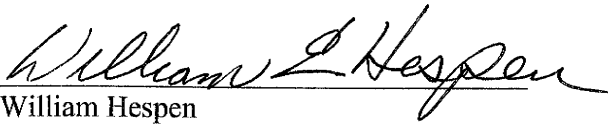
1. I am retired from a career as a Detective with the Chicago Police Department.
2. I am currently the registered owner of various guns, including handguns, shotguns and rifles, which I registered under the previous Chicago registration ordinance. I enjoy shooting and collecting guns, and I also need guns for self-defense at my Chicago home.
3. A large portion of my collection, comprising twenty-four firearms, will have its registration expire on October 8, 2010. I would re-register these guns under the new ordinance, but cannot do so until I obtain my Chicago Firearms Permit. I understand that I must undergo one hour of formal range training to obtain that permit and register my guns.
4. I understand that the Second Amendment Foundation and the Illinois State Rifle Association are planning to bring a mobile range to Chicago to offer the required city training for

people in my position. I would definitely utilize this facility to obtain the necessary range training in order to get my Chicago Firearms Permit.

5. I am a member of the ISRA range near Kanakee, located 56 miles from my home. Driving a round-trip of 112 miles to shoot imposes a hardship on me and reduces my ability to maintain my marksmanship. I would use a range within the City of Chicago, were a range available.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 7 day of August, 2010

  
William Hespen

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

RHONDA EZELL, et al.,

Plaintiffs,

Y.

CITY OF CHICAGO,

**Defendant.**

Case No. 10-C-

DECLARATION OF JOSEPH I. BROWN

**DECLARATION OF JOSEPH I. BROWN**

I, Joseph I. Brown, am competent to state, and declare the following based on my personal knowledge:

1. I am an honorably-discharged U.S. Army veteran. I served in the Pacific and European theaters during the Second World War, and was among the liberators of the infamous Dachau concentration camp.

2. I am currently the Chairman of the Marksmanship Committee for the Department of Illinois, American Legion. I am also the Secretary and Treasurer of the Cook County Rifle League, and instruct a winter shooting league for junior shooters (boys and girls ages 12-20) that meets at the six-point indoor gun range located at the Morton Grove, Illinois American Legion Post 134.

3. I would like to register a gun I currently keep outside the City of Chicago for possession inside my Chicago home, but cannot do so until I obtain my Chicago Firearms Permit.

I understand that I must undergo one hour of formal range training to obtain that permit and register my gun.

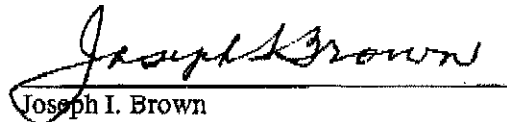
4. I understand that the Second Amendment Foundation and the Illinois State Rifle Association are planning to bring a mobile range to Chicago to offer the required city training for people in my position. I would definitely utilize this facility to obtain the necessary range training in order to get my Chicago Firearms Permit.

5. I would also engage in recreational shooting within the City of Chicago, and promote and provide instruction in the shooting sports, and marksmanship, to my Chicago neighbors at a local range, if one were available.

6. Historically, Chicago has had various ranges open to the public. I have used the following gun ranges located in the City of Chicago: Small Bore Riflemen of Chicago, Clybourn and Fullerton Avenue; CECO, 22<sup>nd</sup> and Wabash Avenue, 2<sup>nd</sup> Floor; Roseland Gun Club, Roseland; Leadslingers Rifle Club, Oliphant & Northwest Highway; Chicago Rifle Club, Austin Town Hall, Austin and Lake Street; Lane Technical High School, Addison & Western Avenue; Gabby Hartnett's Range, Lincoln and Pulaski Road.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12 day of August, 2010

  
Joseph I. Brown



retrofitting of gun ranges for U.S. Customs and Border Protection, located at 610 South Canal Street, Chicago, Illinois, and for the Federal Air Marshals, next to O'Hare Airport, located at 899 Upper Express Drive, Chicago, Illinois. In 2003, Action Target constructed a range for Brinks, located at 4420 S. Tripp Avenue, Chicago, Illinois.

5. Several Action Target customers have expressed an interest to me in having Action Target build a commercial indoor shooting range within the city limits of Chicago. Action Target would pursue and solicit this work, and build and supply commercial gun ranges within the city of Chicago, were it lawful to do so. I refrain from engaging in the commercial range business in Chicago for fear of arrest, prosecution, fine and imprisonment under the provisions challenged in this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 14 day of August, 2010



Chris Hart

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

RHONDA EZELL, et al.,

**Plaintiffs,**

Y.

CITY OF CHICAGO,

**Defendant.**

Case No. 10-CV-5135

DECLARATION OF JERRY TILBOR

### DECLARATION OF JERRY TILBOR

I, Jerry Tilbor, am competent to state, and declare the following based on my personal knowledge:

1. I am the President of Blue Line Corporation.
2. Blue Line is engaged in the business of renting a mobile firearms range. The range is contained in a truck trailer, which I drive to Blue Line's clients. Upon arrival at the customer location, I operate the range, while the client is responsible for the use of the range, including the provision of any training.
3. Blue Line's range was constructed by Meggitt Training Systems. The range appears from the outside as a plain, unmarked truck trailer, and on the inside it contains three shooting lanes and a range-master office. The range is equipped with a state of the art HEPA air filtration system, a bullet trap, is fully bullet-proof, and is insulated for sound, so that gunfire inside the range sounds no louder than a nail gun on the outside. The range interior is lined with foam.




4. Apart from the fact that the Blue Line range is mobile, it is no different than any gun range that exists inside a fixed structure.
5. No one has ever been injured by a bullet fired inside the Blue Line range.
6. Most of Blue Line's customers are law enforcement departments who need range facilities to maintain their officers' firearms qualifications. However, Blue Line also rents the range to the civilian market. There are no features or characteristics of the range that make it unsuitable for the public. For example, every fall, the Blue Line range is parked outside of a sporting goods store in Kittery, Maine, where members of the public use it for recreation, and to try out different kinds of guns and ammunition.
7. Blue Line's range can be parked and operated on any flat surface. There are no special parking requirements. If the range fits in a parking spot, it can be safely operated there. I frequently deliver the range to locations I have never previously examined in person. There is no particular spot within a parking lot or street that is better or worse than any other, so long as the parking space is level.
8. In many locations, the range's muffled noise does not rise above the general background noise. I have operated the range five feet from a house without incident.
9. I have examined satellite images of the Accurate Perforating property, and the property located at 6300-6400 South Bell. These appear to be ideal places to operate the range. The Accurate Perforating parking lot is next to a major highway and factories. The Bell lot is a large vacant lot next to a railroad.

10. Blue Line has a contract with the Second Amendment Foundation (SAF) to operate the Blue Line range in Chicago, so that members of the general public may obtain the range training required by the City of Chicago to own guns. Blue Line fully endorses SAF's project. The Blue Line range is perfect for this application. Blue Line understands that the training will be provided by firearms instructors certified by the State of Illinois, who are familiar with the basic rules of firearms safety. Blue Line understands that the trainers may be provided by the Illinois State Rifle Association, which is working with SAF, but that in any event, all Chicago Firearms Permit trainers must be certified by the State of Illinois, and Blue Line is satisfied that such trainers can safely use its facility.
11. The precise way in which the project is operated, for example, whether or how appointments are taken, whether fees are charged to use the range and in what amount, or whether firearms and ammunition are supplied, is of no concern to Blue Line. It is for SAF to determine how best to utilize the range for its purposes. Blue Line's role is only to operate the range and ensure that the basic rules of safety are followed.
12. Blue Line is contractually obligated to provide its range to SAF at agreed-upon dates within a one-year period. If the Court permits it, Blue Line is currently scheduled to deliver the range to Chicago September 24, and operate it in Chicago for a week. As a practical matter the final decision to drive the range to Chicago must be made by September 22 as the range would be trucked from Massachusetts.

13. After the first visit to Chicago, ending September 30, Blue Line will continue offering the range's availability to SAF throughout the service agreement year. Our contract does not allow us to deny SAF access to the range after the initial visit. I see no reason why the Blue Line range could not return to Chicago following its next appointment, consistent with our contract.
14. If there is no legal impediment to doing so, Blue Line fully intends to operate the range for SAF in Chicago.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12<sup>th</sup> day of September, 2010

  
Jerry Tilbor

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

RHONDA EZELL, et al.,	)	Case No. 10-C-
	)	
Plaintiffs,	)	DECLARATION OF
	)	JULIANNE VERSNEL
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**DECLARATION OF JULIANNE VERSNEL**

I, Julianne Versnel, am competent to state, and declare the following based on my personal knowledge:

1. I am the Director of Operations of the Second Amendment Foundation ("SAF").
2. SAF is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including many in Chicago. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right to privately own and possess firearms, and the consequences of gun control.
3. SAF members and supporters in Chicago are among the individuals who need immediate range training to maintain their ability to keep firearms for self-defense under Chicago's new firearms ordinance.

4. Not every gun is suitable for every person. It is quite obviously better for potential gun owners, and in the interest of public safety, that prospective gun buyers experience a variety of guns, or at least, those guns they are considering, *before* actually making their purchases. And many people are introduced to shooting and gun ownership by visiting a range prior to deciding to purchase a gun.

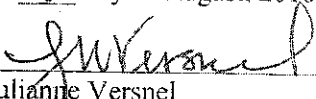
5. To fulfill SAF's organizational objectives, and serve our members and supporters, SAF has placed a deposit guaranteeing the availability, for immediate delivery, of a mobile range facility, fully compliant with all federal environmental and safety standards, which contains three rifle positions within a forty-eight foot truck trailer. A copy of this contract is attached hereto as Exhibit A. SAF has also secured a commercial space for the location of this range within Chicago. A copy of this lease agreement is attached hereto as Exhibit B. SAF plans to secure additional parking locations so that convenient range training may be provided to gun owners throughout the length and breadth of the City of Chicago.

6. The mobile range facility would be operated by SAF in conjunction with ISRA's state-certified firearms trainers.

7. But for the criminal enactments challenged in this complaint, SAF and ISRA would begin operating the mobile range within the City of Chicago by the end of September, 2010, but refrain from doing so for fear of arrest, prosecution, fine and incarceration of our principals and employees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 15 day of August, 2010

  
\_\_\_\_\_  
Julianne Versnel

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

RHONDA EZELL, et al.,	)	Case No. 10-C-
	)	
Plaintiffs,	)	DECLARATION OF
	)	RICHARD PEARSON
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	

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**DECLARATION OF RICHARD PEARSON**

I, Richard Pearson, am competent to state, and declare the following based on my personal knowledge:

1. I am the Executive Director of the Illinois State Rifle Association ("ISRA").
2. ISRA is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois, including many in Chicago. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation. .
3. ISRA members and supporters in Chicago are among the individuals who need immediate range training to maintain their ability to keep firearms for self-defense under Chicago's new firearms ordinance.

4. Not every gun is suitable for every person. It is quite obviously better for potential gun owners, and in the interest of public safety, that prospective gun buyers experience a variety of guns, or at least, those guns they are considering, *before* actually making their purchases. And many people are introduced to shooting and gun ownership by visiting a range prior to deciding to purchase a gun.

5. ISRA has long operated a gun range near Kankakee, Illinois, for the benefit of its members, and to promote marksmanship and the shooting sports. Among ISRA's members and officers are various firearms trainers certified by the State of Illinois who are qualified to provide the training mandated by the City of Chicago as a prerequisite to obtaining a Chicago Firearms Permit.

6. There currently exist at least eleven gun ranges in the city of Chicago, but none are open to the public. These include five ranges are operated by the Chicago Police Department; four gun ranges operated by the federal government (Postal Inspectors, Air Marshals, Customs and Border Protection, and the Federal Reserve Bank); and two gun ranges operated by private security companies for their own purposes.

7. There exists a severe shortage of range-time within a hundred miles of the City of Chicago, owing to the incredible demand on training facilities created by (1) the need of existing gun registrants to obtain officially-recognized training to continue their firearms ownership, (2) the need for people to obtain officially-recognized training in time for them to comply with the grandfathering provisions for previously acquired guns, and (3) an intense interest in firearms ownership as a result of the *McDonald* case, and the city's acquiescence in recognizing legal handgun ownership. Handguns, as the Supreme Court recognized, are overwhelmingly the arms of choice in our country for people wishing to have a means of self-defense, and handgun

ownership has just become legally possible in Chicago for the first time in decades. Without the construction of additional range facilities open to the public, including range facilities in Chicago, people who would register their firearms will not be able to do so.

8. To fulfill ISRA's organizational objectives, and serve our members and supporters, ISRA will supply state certified firearms trainers to operate the mobile gun range being brought to the City of Chicago by the Second Amendment Foundation.

9. But for the criminal enactments challenged in this complaint, SAF and ISRA would begin operating the mobile range within the City of Chicago by the end of September, 2010, but refrain from doing so for fear of arrest, prosecution, fine and incarceration of our principals and employees. For the same reason, ISRA refrains from opening a more permanent range facility within the City of Chicago. But for the ban on the operation of a gun range in the City of Chicago, ISRA would bring its many years of range operating experience to the city to continue fulfilling its essential mission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 15<sup>th</sup> day of August, 2010

  
Richard Pearson



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

RHONDA EZELL, et al.,	)	Case No. 10-C-5135
	)	
Plaintiffs,	)	DECLARATION OF
	)	JULIANNE VERSNEL
v.	)	
	)	
CITY OF CHICAGO,	)	
	)	
Defendant.	)	
	)	
	)	

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**DECLARATION OF JULIANNE VERSNEL**

I, Julianne Versnel, am competent to state, and declare the following based on my personal knowledge:

1. I am the Director of Operations of the Second Amendment Foundation ("SAF"). I have worked with the foundation in numerous capacities for thirty-four years.
2. SAF has approximately 1,700 members in Chicago. Most of our members own guns.
3. My deposition in this case lasted over five hours. As part of this deposition, the city's attorney argued with me at great length about whether SAF's corporate purpose allows us to bring a gun range to Chicago and file this lawsuit. As part of this line of inquiry, I was repeatedly asked, in different ways, why SAF's general statement of purpose does not specifically mention, literally, that the organization may bring a range to Chicago and file this lawsuit, and why I interpret our mission statement as permitting this activity.

4. The Second Amendment Foundation exists to promote Second Amendment rights. The mobile gun range project and this lawsuit were approved by SAF's Board of Directors and Executive Vice President. Filing strategic civil rights lawsuits against the City of Chicago over its gun laws is within the essential core purpose of SAF, as is ensuring that our members can exercise Second Amendment rights in Chicago by having access to required range training. We brought *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). Our membership is enthusiastic and supportive of our efforts in this case. No one, other than the city's attorney at my deposition, has ever suggested that it is not within SAF's mission to bring a gun range to Chicago and challenge the city's range ban.

5. I located our first landlord, Accurate Perforating, by searching the internet for industrial space for lease in Chicago. My search led me to a real estate leasing broker, Beverly Hayes. I explained to Ms. Hayes exactly what SAF would do with the property – operate a mobile gun range inside a trailer, and Ms. Hayes placed me in touch with Accurate Perforating's Larry Cohen. I explained to Mr. Cohen exactly what SAF would do with the property – operate a mobile gun range inside a trailer. Mr. Cohen agreed to lease us the land. I was explaining the range to Mr. Cohen and told him the only noise was something similar to a nail gun. He said that that would be quieter than the noise emanating from his factory.

6. Following the Court's denial of our first motion for temporary restraining order, I renegotiated SAF's lease with Accurate so that the start date would be moved up to August 31, from September 15.

7. At my deposition, the city's attorney asked me numerous questions about whether a gun range in Chicago would violate zoning codes, building codes, parking regulations, environmental regulations, and the like, and whether it would place Accurate Perforating in

violation of the law. While I cannot give any legal opinions, I did understand the questioning as threatening our landlord, Accurate Perforating, with retaliation for leasing us the property on which to operate the range.

8. Mr. Cohen told me on September 3 that he would be changing the location of the property that we had leased. On September 7, I was told that the lease would be terminated.

9. I immediately began searching the internet for a replacement land. On September 8, Accurate formally terminated our lease effective October 31. Exhibit C.

10. On September 9, I reached an agreement in principle with Leo Solarte of First Western Properties, to rent a portion of 6300-6400 South Bell. This property is a vacant two-acre parking lot, with high powered lights, that used to store cars for a car dealership. The property has an electric fence, and barbed wire at the top of the fence on the street side. The opposite side borders a railroad yard. Another portion of this property is currently occupied by a wrecking company. I am told that it is zoned M1-2, Limited Manufacturing District.

11. On September 10, I received a formal lease offer from Mr. Solarte, which I accepted and returned September 11 with the required payment. Our lease for the Bell property starts September 15, and SAF has paid for the first two months' rent. A copy of that lease agreement is attached as Exhibit D.

12. Accordingly, SAF now has two properties suitable for the mobile gun range, starting September 15. We will consider abandoning possession of the Accurate property, and operate exclusively at Bell, provided that Accurate refunds our money and that nothing occurs limiting our options to Accurate's land.

13. SAF has now arranged with Blue Line to have the Blue Line mobile range begin operations in Chicago on September 24. Blue Line has indicated that it could operate on either

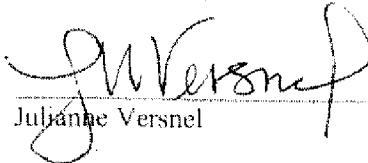
parcel of our land, or anywhere else in Chicago where a truck trailer can be parked. SAF has paid Blue Line the first \$7,500 of the non-refundable fee to get the range to Chicago.

14. As a practical matter, SAF does not wish to have the range sitting idle in Chicago while people are scheduled for its use. Lead time is needed to schedule the trainers, to contact our membership and alert them to the range's arrival and availability. Ten days is sufficient lead time to ensure that everyone and everything will be in place for the range's arrival.

15. The only thing stopping the range's operation on September 24 is Chicago's range ban. If the Court issues an injunction, the range will commence training Chicagoans for their Chicago Firearms Permits on September 24.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12<sup>th</sup> day of September, 2010

  
\_\_\_\_\_  
Julianne Versnel

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

RHONDA EZELL, et al.,

Plaintiffs,

**V.**

CITY OF CHICAGO,

**Defendant.**

Case No. 10-C-5135

# DECLARATION OF RICHARD PEARSON

### DECLARATION OF RICHARD PEARSON

I, Richard Pearson, am competent to state, and declare the following based on my personal knowledge:

1. I am the Executive Director of the Illinois State Rifle Association ("ISRA").
2. ISRA is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation.
3. ISRA members and supporters in Chicago are among the individuals who need immediate range training to maintain their ability to keep firearms for self-defense under Chicago's new firearms ordinance. ISRA has approximately 1,144 members in Chicago. Most of our members are gun owners.

4. Not every gun is suitable for every person. It is quite obviously better for potential gun owners, and in the interest of public safety, that prospective gun buyers experience a variety of guns, or at least, those guns they are considering, *before* actually making their purchases. And many people are introduced to shooting and gun ownership by visiting a range prior to deciding to purchase a gun.

5. ISRA has long operated a gun range near Kankakee, Illinois, for the benefit of its members, and to promote marksmanship and the shooting sports. Among ISRA's members and officers are various firearms trainers certified by the State of Illinois who are qualified to provide the training mandated by the City of Chicago as a prerequisite to obtaining a Chicago Firearms Permit.

6. There currently exist at least ten gun ranges in the city of Chicago, but none are open to the public. These include five ranges are operated by the Chicago Police Department; four gun ranges operated by the federal government (Postal Inspectors, Air Marshals, Customs and Border Protection, and the Federal Reserve Bank); and at least one gun range operated by a private security company for its own purposes. Previously I declared there were two security company ranges, but this was an oversight on my part, for which I apologize. The fact remains that there are ranges in Chicago, but none that the public can access.

7. There exists a severe shortage of range-time within a hundred miles of the City of Chicago, owing to the incredible demand on training facilities created by (1) the need of existing gun registrants to obtain officially-recognized training to continue their firearms ownership, (2) the need for people to obtain officially-recognized training in time for them to comply with the grandfathering provisions for previously acquired guns, and (3) an intense interest in firearms ownership as a result of the *McDonald* case, and the city's acquiescence in recognizing legal

handgun ownership. Handguns, as the Supreme Court recognized, are overwhelmingly the arms of choice in our country for people wishing to have a means of self-defense, and handgun ownership has just become legally possible in Chicago for the first time in decades. Without the construction of additional range facilities open to the public, including range facilities in Chicago, people who would register their firearms will not be able to do so.

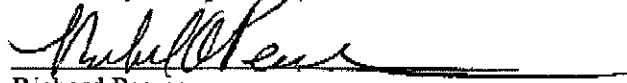
8. To fulfill ISRA's organizational objectives, and serve our members and supporters, ISRA will supply state certified firearms trainers to operate the mobile gun range being brought to the City of Chicago by the Second Amendment Foundation.

9. ISRA has a comprehensive general liability insurance policy which covers its fixed range and other activities of the ISRA. It will cover the mobile range as well. However, I will need to add the address of the mobile range as soon as the decision is made as to where it's going to be located, either at the Accurate Perforating or the Bell lot, and once we have the Court's permission. The policy is designed for shooting ranges and has \$1,000,000/\$2,000,000 general liability coverage with a \$5,000,000 umbrella over that. Range insurance is readily available.

10. But for the criminal enactments challenged in this complaint, SAF and ISRA would operate the mobile range within the City of Chicago on September 24, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12<sup>th</sup> day of September, 2010

  
Richard Pearson



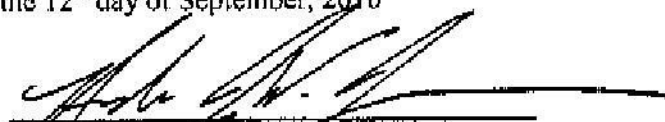


that we may lose access to their range at some point. Recently, G.A.T. informed me that it would charge us \$250 per week to have use of their range for 2 hours per week for training our CFP students. G.A.T. is also located in Dundee, Illinois, a significant drive from Chicago. We also use Maxon's Gun Range in Des Plaines, but that range is not open on Mondays and has only ten lanes. Maxon's is usually a forty-five minute drive from Chicago, without traffic.

4. The lack of adequate range facilities costs us customers, both because there is simply not enough range time to take on the students that we can serve, and because the cost and time associated with using the ranges that are available discourages customers.
5. Fidelity is interested in sharing the mobile range that the Plaintiffs in this case are bringing to Chicago, and is also interested in bringing in its own mobile range, at least until it can construct its own permanent range in Chicago. I have previously met with representatives of a mobile range manufacturer, Laser Shot, at the Midwest Police and Security Expo in Rosemont, Illinois, which is sponsored by the Illinois Association of Chiefs of Police. I was impressed with Laser Shot and their mobile range product.
6. I have also visited the Meggitt website and have researched their mobile ranges. I believe that their ranges are well-constructed and ideal for our use.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12<sup>th</sup> day of September, 2010

  
Andre Queen

EZELL, et al, )  
Plaintiffs, ) No. 10-CV-5135  
vs. ) Judge  
CITY OF CHICAGO, ) Virginia M.  
Defendants. ) Kendall

The deposition of LARRY COHEN, called as a witness for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before LISA C. HAMALA, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, CSR No. 84-3335, at Suite 1230, 30 North LaSalle Street, Chicago, Illinois, on the 3rd day of September, A.D. 2010, at 1:05 p.m.



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1 conversation was the termination of the lease.

2 Q. What did Mr. Gura say?

3 A. He said it was illegal for the City to  
4 harass me.

5 Q. Did he say anything else?

6 A. No.

7 Q. Did he say what he thought was harassing  
8 towards you?

9 A. That the City -- he didn't say it. I  
10 said he -- the tone of the conversation was that "I  
11 didn't want any problem with the City. I'm  
12 canceling the lease. Any problems of any kind with  
13 the City with regard to this lease. They could be  
14 extra judicial."

15 He said "It's against the law for the  
16 City to harass you," to which Mike Lurie replied  
17 "Legally that's correct. In the real world, it  
18 might be a different answer," or "I live in the  
19 real world."

20 Something to that nature.

21 Q. Do you feel that you have been harassed  
22 by the City?

23 A. No. I feel like this is an aggravation  
24 which I don't need, okay. I'm not looking for this



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1 Q. Did you have any such discussions with  
2 anyone at the City of Chicago?

3 A. No.

4 Q. Did you have any such discussions with  
5 anyone else?

6 A. No, other than Mr. Gura.

7 I emphasized over and over again if it  
8 is legal, they can operate it. If it is not legal,  
9 they can't.

10 Q. Putting to the side the ban on shooting  
11 ranges, did you have any discussions with anyone as  
12 to whether allowing the trailer to be used as a  
13 shooting range open to the public would cause  
14 Accurate Perforating to violate any City of Chicago  
15 laws?

16 A. No.

17 Q. If you had known that the SAF wanted to  
18 use the trailer as a shooting range available to  
19 members of the public, would you have signed the  
20 lease?

21 A. I don't know. It would depend. This  
22 was not the intention of this lease. That's  
23 another completely different topic.

24 Q. You would have not signed the lease we



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09:29:46

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RHONDA EZELL, et al.,  
Plaintiffs,  
v.

Case No. 1:10-cv-05135  
Chicago, Illinois  
August 23, 2010  
Emergency Motion for TRO

CITY OF CHICAGO,  
Defendant.  
-----

VOLUME 1-A  
TRANSCRIPT OF EMERGENCY MOTION FOR TRO  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Gura & Possessky, PLLC  
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- and -

Law Firm of David G. Sigale, P.C.  
By: David G. Sigale  
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**APPEARANCES:**

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By: Andrew W. Worsack, and  
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produced by notereading.



09:43:53 1 describing what irreparable harm is, we could have gone for a  
09:43:57 2 TRO a week ago. We didn't do so out of professional courtesy  
09:44:00 3 to the City, because we wanted to give them an opportunity to  
09:44:03 4 respond. And I feel that what we have here is a case of no  
09:44:07 5 good deed going unpunished, because instead of taking the time  
09:44:10 6 that we've given them to meet the merits of the case, instead  
09:44:14 7 they have come out with some kind of an argument for why the  
09:44:16 8 case should never be addressed.

09:44:18 9 So respectfully, your Honor, we have irreparable  
09:44:20 10 harm. We believe these are very serious allegations. The  
09:44:23 11 case is ripe. It's ready for decision.

09:44:25 12 The preliminary injunction might even be suitable  
09:44:27 13 under Rule 65 for combining with a trial on the merits. And  
09:44:32 14 so we would respectfully request that the Court rule on the  
09:44:35 15 issue. We don't really care which judge rules on it, but we  
09:44:39 16 do need to have it ruled on soon, because one thing that we do  
09:44:43 17 not address are the City's deadlines.

09:44:45 18 The City has deadlines for people to comply with  
09:44:48 19 training requirements. And once those deadlines expire,  
09:44:52 20 people have lost their rights. They have lost their firearms.  
09:44:56 21 And every day that goes by that we don't get relief from this  
09:45:00 22 is a day closer to those deadlines. And, you know, it makes a  
09:45:05 23 huge difference to our clients whether or not they can do this  
09:45:08 24 now as opposed to later.

09:45:09 25 We don't -- we will be very happy to argue the

03:22:02

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF ILLINOIS  
6 EASTERN DIVISION

7 RHONDA EZELL, et al.,  
8 Plaintiffs,  
9 v.

Case No. 1:10-cv-05135

Chicago, Illinois  
August 23, 2010  
Emergency Motion for TRO

10 CITY OF CHICAGO,  
11 Defendant.  
12 -----

13  
14 VOLUME 1-B  
15 TRANSCRIPT OF EMERGENCY MOTION FOR TRO  
16 BEFORE THE HONORABLE VIRGINIA M. KENDALL  
17 UNITED STATES DISTRICT JUDGE

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24 - and -

25 Law Firm of David G. Sigale, P.C.  
By: David G. Sigale  
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03:55:13 1 clear Second Amendment violation.

03:55:17 2 Second, maintaining proficiency with firearms is an  
03:55:21 3 aspect of the Second Amendment right. The Heller Court  
03:55:24 4 specifically noted that a person exercises Second Amendment  
03:55:27 5 rights when they go to a range and practice in a safe place.  
03:55:31 6 We quoted that language. It's very clear.

03:55:34 7 In fact, the Second Amendment's text itself speaks of  
03:55:37 8 a well regulated militia and the Supreme Court defined that.  
03:55:42 9 I know some people disagreed with the Supreme Court defining  
03:55:46 10 that as meaning the body of the people who are proficient and  
03:55:47 11 well supplied and can practice and know how to use their  
03:55:52 12 firearms. Otherwise the militia is not very well regulated  
03:55:56 13 and not very effective. So all of those things point to the  
03:56:00 14 fact that we do have a fairly severe harm on the Second  
03:56:04 15 Amendment level.

03:56:05 16 Also, there's a First Amendment issue in this case.  
03:56:09 17 Training and education and learning and familiarization are  
03:56:12 18 all recognized forms of protected speech. The Supreme Court  
03:56:16 19 has made it very clear time and again, most recently in the  
03:56:19 20 Holder case that we cited.

03:56:21 21 That training is speech. The Fourth Circuit case  
03:56:24 22 that we cited, Edwards versus City of Goldsboro, specifically  
03:56:30 23 held that teaching a class about the carrying of firearms that  
03:56:35 24 is a requirement for the obtaining of the state license is  
03:56:38 25 protected speech. In fact, the Fourth Circuit held that it

03:56:41 1 occupies the highest rung of First Amendment values.

03:56:44 2 And so we know here that we're talking about a law  
03:56:48 3 which is designed to and does impact core Second and First  
03:56:55 4 Amendment rights. The irreparable harm, we believe, is fairly  
03:56:58 5 obvious, and I don't see how the City would defend itself on  
03:57:02 6 the merits, even if we get beyond the structure of the  
03:57:05 7 preliminary injunction, TRO-type regime.

03:57:07 8 In fact, the City's opposition doesn't say a whole  
03:57:10 9 lot, if anything, about the First Amendment claim, the Second  
03:57:14 10 Amendment claim. It's very thin on those points, and we  
03:57:17 11 believe that the reason it's thin is because there's really  
03:57:19 12 not much to say.

03:57:20 13 I will address some of the other things that they do  
03:57:23 14 say, because I think it merits some response.

03:57:27 15 THE COURT: Why don't you address what you say --

03:57:27 16 MR. GURA: Sure.

03:57:27 17 THE COURT: -- because you need to prove to me  
03:57:29 18 likelihood of success on the merits. You need prove to me  
03:57:32 19 inadequate remedy at law and the irreparable harm.

03:57:36 20 MR. GURA: Sure.

03:57:36 21 Likelihood of success on the merits. Here's what the  
03:57:39 22 Heller case had to say. The Constitution secures the right --  
03:57:41 23 I'm quoting here, this is from page 2812 S.Ct. 128 -- line  
03:57:47 24 128.

03:57:47 25 The Constitution secures the right of the people to

04:24:53 1 They're simply saying, you know, Not having access to  
04:24:55 2 this firing range is a core violation of Second Amendment.

04:24:59 3 MR. WORSECK: And again, your Honor, that's a merits  
04:25:01 4 issue. I think your point about the arbitrariness of  
04:25:04 5 geographical boundaries while may be ultimately not relevant  
04:25:08 6 to the ultimate merits issue is extremely relevant on the  
04:25:12 7 issue of irreparable harm. There the boundaries are  
04:25:16 8 artificial.

04:25:16 9 If you can go to the nearby suburbs, as your Honor  
04:25:19 10 pointed out, many of the ranges in the suburbs could very well  
04:25:22 11 be closer to your Chicago residence than, you know, a shooting  
04:25:25 12 range on the far North Side of the city, if you live on the  
04:25:28 13 far South Side, then there's no irreparable harm. And any  
04:25:34 14 time and money spent in traveling that short distance is fully  
04:25:38 15 compensable.

04:25:40 16 Your Honor, another point that plaintiffs completely  
04:25:42 17 ignored, but which we raised in our submission, is the utter  
04:25:46 18 futility of the injunctive relief that they seek. Even if  
04:25:50 19 they got all of the injunctive relief that they're seeking  
04:25:54 20 with respect to the City's ban on gun ranges and any related  
04:25:57 21 provisions on an as-applied basis that might impact one's  
04:26:01 22 ability to transport guns to a shooting range and so forth,  
04:26:05 23 the fact would remain that the City would still have within  
04:26:09 24 its -- the fullest breadth of its powers, the prerogative to  
04:26:15 25 enact the requisite public safety regulations, zoning

04:26:19 1 regulations, licensing regulations, environmental regulations  
04:26:23 2 and the like.

04:26:24 3 THE COURT: But have they done that?

04:26:26 4 MR. WORSECK: They have not done that, because  
04:26:28 5 currently the bans are not lawful. If it were determined that  
04:26:33 6 the bans -- that the ranges needed to be permitted, then the  
04:26:36 7 City would need to pass the requisite statutes, ordinances,  
04:26:41 8 and regulations. That would take, needless to say, a great  
04:26:45 9 deal of time, and plaintiffs seek no relief whatsoever that  
04:26:48 10 would direct the City to do any of that by a date certain.

04:26:52 11 And even if they tried, they would certainly fail at  
04:26:57 12 that respect with that request, because it would intrude into  
04:27:00 13 core aspects of the City's police power, which they themselves  
04:27:04 14 concede are legitimate in this instance.

04:27:07 15 THE COURT: What is the rational basis for the ban?  
04:27:10 16 Because you want to have people trained, so if you want to  
04:27:12 17 have people trained in firearms, which is a prerequisite to  
04:27:16 18 get your -- what did you call it, C ...

04:27:17 19 MR. WORSECK: CFP.

04:27:18 20 THE COURT: CFP.

04:27:19 21 If you want to get your CFP and have them trained,  
04:27:22 22 then what's your rational basis for prohibiting the ranges?

04:27:26 23 MR. WORSECK: There are concerns generally and  
04:27:27 24 certainly with respect to mobile firing ranges operating out  
04:27:30 25 of the back of a truck, with arms being discharged en masse

04:27:36 1 and with great frequency at locations in a very densely  
04:27:40 2 populated city like Chicago that has a very serious problem  
04:27:44 3 with gun discharges. I mean, that's no secret to anyone here.

04:27:49 4 And that would certainly, in our view, pass the at  
04:27:53 5 least reasonable regulation standard, which we think actually  
04:27:56 6 would be the appropriate standard of scrutiny in this case and  
04:28:00 7 would certainly as well pass the more strict and more exacting  
04:28:07 8 standards of scrutiny, whether it be strict scrutiny or  
04:28:10 9 intermediate scrutiny. But again, your Honor, all of that is  
04:28:14 10 going to merits. The applicable --

04:28:15 11 THE COURT: Well, of course, we have a likelihood of  
04:28:17 12 success on the merits as one of your components.

04:28:19 13 MR. WORSECK: And that's only one of the three --

04:28:21 14 THE COURT: Right. I know. So they're saying, We're  
04:28:23 15 going to win automatically because it's strict scrutiny. It's  
04:28:26 16 a core exercise of our Second Amendment right and also our  
04:28:30 17 First Amendment right to be trained, the training itself.

04:28:33 18 And so I need to hear from you as to -- well, what  
04:28:37 19 standard do you believe should be applied here?

04:28:38 20 MR. WORSECK: If I may just very quickly, your Honor?  
04:28:41 21 Even if they are completely correct about every merits issue  
04:28:44 22 that they have raised, even if they get complete and total  
04:28:47 23 merits relief at the end of this case, that is only one of the  
04:28:51 24 three factors that they have the threshold burden of  
04:28:53 25 establishing in this TRO proceeding.



04:31:17 1 trained to possess. So -- but as I mentioned before, to me,  
04:31:22 2 the most compelling argument under that theory is, I can't  
04:31:25 3 leave the city limits to possess. Which is why I asked these  
04:31:29 4 questions regarding the boundaries, these political  
04:31:33 5 subdivisions which seem to me to be somewhat artificial in  
04:31:38 6 that we could do a Mapquest search, which we just threw in how  
04:31:44 7 many gun firing ranges there were within the courthouse, and I  
04:31:48 8 think we came up with somewhere in the neighborhood of nine or  
04:31:51 9 ten in suburbs within twenty miles or so of the courthouse.

04:31:56 10 So my question is, what is this boundary of the city  
04:32:00 11 if you put together a statute that says, Go ahead and possess  
04:32:03 12 a gun. By the way you're going to need it registered with us  
04:32:06 13 and you're going to need to have this certificate with us, and  
04:32:08 14 that certificate with us means that you've had your training  
04:32:11 15 at a range, but we're not going to allow you access to any  
04:32:15 16 ranges within our boundaries.

04:32:17 17 Are you constructively, constructively prohibiting me  
04:32:22 18 from possessing my weapon?

04:32:23 19 MR. WORSECK: No, we're not. We're simply requiring  
04:32:26 20 that you obtain once every three years an hour of shooting  
04:32:28 21 range training.

04:32:29 22 THE COURT: Not in the city.

04:32:31 23 MR. WORSECK: Not in the city. But we're not --  
04:32:33 24 it's --

04:32:33 25 THE COURT: Based upon the concern that firearms

04:32:36 1 being discharged en masse is dangerous.

04:32:41 2 MR. WORSECK: That is a serious concern that the City  
04:32:43 3 has --

04:32:43 4 THE COURT: And that's the only thing you've said to  
04:32:45 5 me as far as why you have prohibited firing ranges.

04:32:47 6 MR. WORSECK: We have the discharge issue. We have  
04:32:48 7 the travel issue. You're going to have people traveling with  
04:32:51 8 the guns to a range. You're going to have them in the cars  
04:32:54 9 that can lead to unfortunate incidents.

04:32:57 10 THE COURT: How do you --

04:32:58 11 MR. WORSECK: We obviously --

04:32:58 12 THE COURT: How do you get the gun from the shop to  
04:33:01 13 the house, if you don't travel with it? Is there some clause  
04:33:05 14 in there that allows you to do that?

04:33:07 15 MR. WORSECK: There is. There is a provision for the  
04:33:10 16 transportation of firearms, when it is in a broken-down  
04:33:14 17 state --

04:33:14 18 THE COURT: When it is --

04:33:15 19 MR. WORSECK: -- unchallenged here. Excuse me?

04:33:16 20 THE COURT: In a broken-down state. Oh.

04:33:18 21 MR. WORSECK: And other secured, broken down, not  
04:33:23 22 operable, et cetera.

04:33:23 23 THE COURT: They're permitted to transport the  
04:33:26 24 firearm in a broken-down state.

04:33:31 25 Okay. All right. You were talking about irreparable

04:10:16

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RHONDA EZELL, et al.,  
Plaintiffs,  
v.

Case No. 1:10-cv-05135  
Chicago, Illinois  
September 15, 2010  
Emergency Motion for TRO

CITY OF CHICAGO,  
Defendant.  
-----

VOLUME 1  
TRANSCRIPT OF EMERGENCY MOTION FOR TRO  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

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25 Proceedings recorded by mechanical stenography; transcript  
produced by notereading.

04:48:00 1 September 24th. I'm not sure how we could get relief from the  
04:48:03 2 Court before September 24th without seeking the TRO, because  
04:48:05 3 the preliminary injunction is set for October 1st.

04:48:07 4 THE COURT: Go ahead.

04:48:09 5 MR. GURA: And --

04:48:10 6 THE COURT: No, it's his turn.

04:48:11 7 MR. FORTI: Well, your Honor, let me go back to my  
04:48:13 8 colleague. But I want to say something just following up on  
04:48:16 9 something Mr. Worseck said, again, in perhaps plainer  
04:48:18 10 language. And, that is, the City of Renton and the First  
04:48:22 11 Amendment cases, that's because adult use is the essential  
04:48:25 12 part of the First Amendment. And as you have pointed out  
04:48:27 13 quite nicely, one of the issues you're grappling with, since  
04:48:31 14 the decision in Heller and McDonald, is what is the core part?

04:48:34 15 Plaintiff would like you to assume that operating  
04:48:37 16 ranges is an integral part of the Second Amendment. No Court  
04:48:40 17 has held that. So the City of Renton case and other First  
04:48:45 18 Amendment cases that talk about adult use are really quite far  
04:48:47 19 afield, because it's very well established that adult use is  
04:48:51 20 an integral part, although albeit on the infringe, I think,  
04:48:55 21 some Supreme Court cases say, but it's an integral part. So  
04:48:59 22 their banning adult uses is completely different than banning  
04:49:03 23 of the firearms.

04:49:04 24 THE COURT: How so? Can you distinguish it for me?

04:49:07 25 MR. FORTI: I think I can, your Honor. Because in

04:49:09 1 the City of Renton the focus is whether or not adult activity,  
04:49:11 2 which is, as we all know, sort of a euphemism for what goes on  
04:49:16 3 in most likely a gentlemen's club. And the Court has held  
04:49:20 4 that expressive dancing is at the fringes of the First  
04:49:26 5 Amendment, because the dancing is a manifestation of someone's  
04:49:29 6 sense of their body and perhaps played to music.

04:49:32 7 And the Supreme Court has said repeatedly, you know,  
04:49:34 8 Some of us may not like that, but that itself is protected  
04:49:39 9 speech, the actual dancing.

04:49:40 10 So if a municipality, like the City of Renton,  
04:49:45 11 decides, We're going to have a complete ban over all adult  
04:49:49 12 use, which is the essential part of the First Amendment, it  
04:49:52 13 makes imminent sense and we would not quarrel with a  
04:49:56 14 prohibition there.

04:49:56 15 But as you pointed out from the very beginning,  
04:50:00 16 Judge, you're absolutely correct. One of the challenges  
04:50:02 17 presented here is whether the core, as we've said, which is  
04:50:06 18 following McDonald and Heller -- the right to possess a gun in  
04:50:10 19 your home for self defense -- whether this more tangential  
04:50:15 20 requirement of firing range use, whether that's actually part  
04:50:18 21 of the core or not.

04:50:19 22 So I would think -- and hopefully I've explained it  
04:50:22 23 clearly enough -- that in the City of Renton case, there's no  
04:50:26 24 question. It's uncontroverted that the First Amendment is at  
04:50:29 25 the heart of the adult use club. So, of course, it can't be

04:50:32 1 banned.

04:50:33 2 THE COURT: But the problem is that you have put the  
04:50:39 3 possession, linked the possession to the certification at a  
04:50:46 4 firing range. So you have almost brought it into the core use  
04:50:49 5 by saying, You cannot have this weapon in your home unless  
04:50:53 6 it's certified.

04:50:55 7 MR. FORTI: Well, we would recognize, your Honor --  
04:50:56 8 and notwithstanding --

04:50:57 9 THE COURT: Unless you are certified. Excuse me.

04:50:59 10 MR. FORTI: Right. Notwithstanding the rhetoric of  
04:51:01 11 our esteemed counsel, if the impediment were so high that, in  
04:51:06 12 fact, people could not get their training cards, then  
04:51:10 13 plaintiff might have a valid point. But as we've pointed out  
04:51:13 14 in our papers, based on the discovery to date and our own  
04:51:17 15 research, there are over nineteen ranges within 50 miles of  
04:51:21 16 Chicago. And we think the record will demonstrate in these  
04:51:25 17 papers and when we have a preliminary injunction hearing that  
04:51:28 18 there is relative easy access.

04:51:30 19 Now, that may not justify why we've got the ban, but  
04:51:34 20 if we're, as Mr. Worseck said, focused on the first prong,  
04:51:37 21 which the plaintiff has the burden of overcoming, which is  
04:51:40 22 irreparable harm, we continue to pose the question. And based  
04:51:44 23 on your prior ruling, there was no irreparable harm two weeks  
04:51:48 24 ago. We would submit there's no irreparable harm today. And,  
04:51:52 25 not surprisingly, on October 1st or whenever we have the

12:55:19

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RHONDA EZELL, et al.,  
Plaintiffs,  
v.

Case No. 1:10-cv-05135  
Chicago, Illinois  
October 1, 2010  
Motion for Preliminary  
Injunction

CITY OF CHICAGO,  
Defendant.

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VOLUME 1  
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UNITED STATES DISTRICT JUDGE

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16 Christopher Hart,  
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24 Proceedings recorded by mechanical stenography; transcript  
25 produced by notereading.

01:47:45 1 You will hear testimony from Patty Scudiero, the  
01:47:48 2 City's commissioner of zoning and land use planning and zoning  
01:47:52 3 administrator that the City's ordinance does not provide for  
01:47:55 4 gun ranges, and, therefore, prohibits them.

01:47:57 5 Ms. Scudiero will further testify that gun ranges are  
01:48:01 6 an intense use, from a zoning perspective, and would only be  
01:48:05 7 acceptable in the city's manufacturing districts, and only  
01:48:08 8 then as a special use approved by the Chicago zoning board of  
01:48:13 9 appeals.

01:48:13 10 Ms. Scudiero will also testify that allowing ranges  
01:48:17 11 in the city without having proper zoning regulations in place,  
01:48:20 12 which is what plaintiffs are actually seeking here, poses  
01:48:24 13 considerable dangers to the city and its citizens because,  
01:48:27 14 among other reasons, ranges would be allowed to locate next to  
01:48:31 15 or in the vicinity of sensitive areas, such as residential  
01:48:34 16 communities, schools, and churches.

01:48:37 17 Ms. Scudiero will further testify that there are  
01:48:39 18 other zoning considerations, such as setbacks, parking,  
01:48:43 19 fencing, height that would need to be put in place to ensure  
01:48:47 20 the safety of both the nearby area and those citizens who  
01:48:50 21 actually come to the range to practice.

01:48:56 22 Ms. Scudiero will further testify that the property  
01:48:57 23 at 6300 South Bell, which plaintiffs propose to place this  
01:49:01 24 mobile range at, is not an appropriate location. Ms. Scudiero  
01:49:04 25 will testify that the neighborhood directly to the west of

01:55:23 1 A. Yes, we've done several ranges.

01:55:25 2 Q. Okay. Let's discuss some of the ranges that you've

01:55:29 3 installed in Chicago.

01:55:29 4 Can you please describe some of those?

01:55:30 5 A. Yes. The U.S. Postal Service at 743 South Canal.

01:55:35 6 Q. Okay.

01:55:36 7 A. The Federal Reserve Bank at 230 South LaSalle.

01:55:39 8 Q. Okay.

01:55:39 9 A. The Brinks Security range is at 919 South California

01:55:44 10 Avenue.

01:55:44 11 Q. Okay. And are there any ranges that perhaps Action Target

01:55:48 12 did not build but which you either retrofitted or supplied in

01:55:52 13 Chicago?

01:55:52 14 A. Yes. I have several estimates out that are pending for --

01:55:55 15 one is for the federal -- or the federal Air Marshals at

01:55:57 16 O'Hare in Chicago, and the other is for U.S. Customs and

01:56:03 17 Border Protection on 610 South Canal.

01:56:04 18 Q. Okay. Let's talk first about the Air Marshal range.

01:56:08 19 Have you visited the Air Marshal range?

01:56:09 20 A. I've been there several times.

01:56:10 21 Q. Okay. Do you remember the address for that Air Marshal

01:56:12 22 range?

01:56:12 23 A. It's 899 Upper Express Drive, Chicago, Illinois, and I

01:56:16 24 believe it's 60018.

01:56:17 25 Q. Okay. Can you please describe the structure in which this

01:56:20 1 range is located?

01:56:20 2 A. It's located in an office building, along with the offices  
01:56:23 3 of the Air Marshals and in an office park.

01:56:26 4 Q. Okay. Now, what is surrounding this office park?

01:56:28 5 A. On the south side is the runways at O'Hare. On the east  
01:56:32 6 and west, I believe, there's some office buildings for other  
01:56:36 7 companies. And to the north side is I-90, Touhy Avenue, Lake  
01:56:43 8 Park Golf Course and some residential.

01:56:44 9 Q. Okay. Let's talk about the postal inspector's range. I  
01:56:48 10 believe you mentioned it's at 743 South Canal.

01:56:51 11 Have you visited that range?

01:56:52 12 A. I've been there many times.

01:56:54 13 Q. Okay. What is around that neighborhood?

01:56:55 14 A. A block away you've got the -- well, across the way is the  
01:56:59 15 Chicago Port Authority offices. There's a children's  
01:57:02 16 playground as part of that building on the north side, which  
01:57:04 17 is an outdoor playground. Across the street from that is a  
01:57:08 18 Holiday Inn, two restaurants. And on the south side of that  
01:57:11 19 building is the Polk Street Pub. I've eaten there before.

01:57:15 20 Q. Okay. And let's talk about -- there's another range you  
01:57:17 21 mentioned, the U.S. Customs and Border Protection.

01:57:21 22 Is that -- what's the address there?

01:57:22 23 A. It's 610 South Canal. It's across the street and one  
01:57:26 24 block south from the postal service.

01:57:28 25 Q. Okay. And let's talk about the range at 230 South

01:57:31 1 LaSalle.

01:57:31 2 Can you please describe the structure that that's in?

01:57:34 3 A. Yes. The Federal Reserve Bank, it's a high-rise office  
01:57:37 4 building. Our range is on the seventeenth floor, which I  
01:57:40 5 believe is the top floor, and buildings on both sides are  
01:57:43 6 office buildings, high-rise.

01:57:45 7 Q. Okay. And just for the record, can you briefly describe  
01:57:47 8 the kind of neighborhood that 230 South LaSalle is located in?

01:57:51 9 A. Yeah, it's a downtown office district.

01:57:54 10 Q. Okay. Fantastic.

01:57:55 11 Let's talk about the Brinks range, and I'd like to  
01:58:00 12 correct the record here. In your declaration you stated that  
01:58:03 13 it was at 4420 South Tripp and today you've corrected that to  
01:58:03 14 919 South California.

01:58:07 15 Can you please explain how that occurred?

01:58:08 16 A. Yes. I joined Action Target in 2005. This range was  
01:58:11 17 built in 2003. The address that was in our computer system  
01:58:15 18 for this Brinks range was 4420 South Tripp. That's what I  
01:58:19 19 believed to be the correct range -- or address for the range.  
01:58:22 20 And I called my coworker that sold the range to them, who no  
01:58:25 21 longer works for us, and he corrected me that it was 919 South  
01:58:29 22 California.

01:58:29 23 Q. Okay. Now, aside from these ranges and these other  
01:58:35 24 issues, have you sold any range equipment to other  
01:58:38 25 governmental entities in Chicago?

01:58:40 1 A. Yes. We've sold clearing traps to the FBI for their  
01:58:43 2 offices and Chicago PD has purchased paper targets, steel  
01:58:47 3 targets, tactical breach doors.

01:58:50 4 Q. Okay. So do you have -- aside from marketing and selling  
01:58:52 5 things to the Chicago Police Department, does Action Target  
01:58:54 6 have any other relationship with the Chicago Police Department  
01:58:57 7 or Chicago police personnel?

01:58:59 8 A. We do. I'm in contact with them roughly every three to  
01:59:02 9 six months for different reasons. They come out to our law  
01:59:06 10 enforcement training camp in Provo, Utah, which we host. We  
01:59:10 11 had two CPD officers attend two weeks ago, September 13th  
01:59:14 12 through the 17th, and we also had one or two last year, I  
01:59:18 13 believe.

01:59:18 14 Q. Okay. Are there any events that you hold here locally  
01:59:22 15 that you interact with the police?

01:59:24 16 A. There are. At least annually I host a two-day shooting  
01:59:28 17 range development seminar where we go over shooting range  
01:59:31 18 development and every year I've had a CPD officer attend. I  
01:59:35 19 believe next week I have one, which is -- it's Tuesday and  
01:59:37 20 Thursday -- or Tuesday and Wednesday of next week.

01:59:40 21 Q. Now, apart from dealing with Government governmental  
01:59:44 22 entities and security companies, do you market any other --  
01:59:46 23 any commercial ranges?

01:59:47 24 A. We do.

01:59:47 25 Q. Have you marketed any commercial ranges in the Chicago

01:59:50 1 area?

01:59:50 2 A. I have. We built Mega Sports in Plainfield, which was

01:59:55 3 constructed twelve years ago, and I also have pending

01:59:58 4 estimates out with G.A.T. Guns in Dundee, as well as a new Gun

02:00:03 5 World range in Lombard.

02:00:04 6 Q. Okay. In your dealings with your Chicago-area customers,

02:00:08 7 has the topic of constructing a range inside the city limits

02:00:11 8 ever come up?

02:00:12 9 A. It has several times.

02:00:13 10 Q. Okay. Do you believe that you can sell a range in

02:00:15 11 Chicago?

02:00:15 12 A. I do.

02:00:17 13 Q. Okay. You believe there's a market for selling commercial

02:00:20 14 gun ranges in Chicago?

02:00:21 15 A. I do.

02:00:22 16 Q. Okay. And if Action Target is to prevail in this lawsuit,

02:00:25 17 will you go ahead and market and sell and install ranges in

02:00:28 18 the City of Chicago?

02:00:29 19 A. Yes, we will.

02:00:29 20 Q. Okay. Does Action Target build any mobile ranges?

02:00:32 21 A. We do.

02:00:34 22 Q. Okay. Are they the same as your brick-and-mortar ranges?

02:00:37 23 What might be the differences or similarities between a mobile

02:00:40 24 range and a brick-and-mortar range?

02:00:42 25 A. It's the exact same indoor range equipment. It's just

02:00:45 1 scaled to fit in a trailer as opposed to a brick-and-mortar  
02:00:48 2 range.  
02:00:48 3 Q. Okay. Is Action Target currently constructing a mobile  
02:00:51 4 range?  
02:00:51 5 A. We are.  
02:00:51 6 Q. And who might be that customer?  
02:00:54 7 A. I believe it's Las Vegas Corrections in Nevada.  
02:00:57 8 Q. Okay. How frequently are these mobile ranges used, these  
02:01:01 9 things that you see in the industry?  
02:01:02 10 A. They're quite common. I understand that our competitor,  
02:01:06 11 Meggitt, has sold over a hundred of these mobile ranges.  
02:01:08 12 Q. Okay. And have you seen any Meggitt ranges in the Chicago  
02:01:11 13 area?  
02:01:12 14 A. I have. Every year I see one in Wheeling, and it's the  
02:01:14 15 Westin North Chicago Conference Center where we hold the  
02:01:18 16 ILEETA conference, that's the International Law Enforcement  
02:01:23 17 Educators and Trainers Association. And that trailer range is  
02:01:24 18 parked there every year, the last three years, on the -- in  
02:01:27 19 the parking lot, on the side of the hotel, and they use it  
02:01:30 20 every day for live fire.  
02:01:32 21 Q. Okay. Can civilians use mobile ranges?  
02:01:37 22 A. Yes.  
02:01:37 23 Q. Okay. Has Action Target sold any mobile ranges that it  
02:01:40 24 knows to be used by civilians?  
02:01:42 25 A. I'm aware of one, Arms to Bear in Sparks, Nevada.



02:07:27 1 type of uses have you found to be compatible with shooting  
02:07:31 2 ranges?

02:07:32 3 MR. FORTI: Same objection, your Honor. I think  
02:07:34 4 we've only established that this witness can talk about, if  
02:07:39 5 you will, the ingredients that go into the construction of the  
02:07:42 6 range. But he has not -- there's been no foundation  
02:07:45 7 established as to any expertise the witness might have in  
02:07:47 8 terms of talking about the relationship between the range and  
02:07:50 9 the surrounding area.

02:07:51 10 THE COURT: Right. I think it's -- the proper  
02:07:54 11 objection may be that it's conclusion that is based upon -- of  
02:07:58 12 the compatibility of the neighborhood. He can conclude, based  
02:08:02 13 upon his own experience, where these ranges have been placed.

02:08:06 14 MR. GURA: Okay. We can ask that.

02:08:06 15 THE COURT: That he can say, because he's in the  
02:08:08 16 field. So he can certainly say, This is what it's comprised  
02:08:12 17 of and this is where we put them. But he can't make the  
02:08:14 18 conclusion, based upon a 702 expert analysis, that, I believe  
02:08:18 19 that it's compatible because.

02:08:20 20 MR. GURA: Okay.

02:08:20 21 THE COURT: So I think that will cure your problem.  
02:08:22 22 Thank you.

02:08:22 23 MR. GURA: Thank you so much, your Honor.

02:08:24 24 BY MR. GURA:

02:08:24 25 Q. Where have these ranges been put? Next to what kind of

02:08:28 1 uses have you experienced these ranges being placed?

02:08:28 2 A. Varied locations. Very popular are strip malls. We've  
02:08:32 3 done several in -- we have one in a Target parking lot next to  
02:08:36 4 a steakhouse and a mattress company. We have another one that  
02:08:39 5 shares a parking lot with a Sam's Club warehouse.

02:08:42 6 We have a range in Waikiki, Honolulu, Hawaii, which  
02:08:47 7 is right in a popular strip mall right off the beach.

02:08:50 8 THE COURT: Maybe we all need to go see that one.

02:08:52 9 MR. GURA: That would be great.

02:08:53 10 (Laughter.)

02:08:54 11 THE WITNESS: Another critical one is a federal range  
02:08:58 12 we did in St. Louis, the Federal Reserve Bank. And that range  
02:09:01 13 is rifle rated. It does share a wall with the gym that the  
02:09:05 14 employees use.

02:09:06 15 BY MR. GURA:

02:09:06 16 Q. Okay. All these places you've described are commercial in  
02:09:10 17 character.

02:09:10 18 Does Action Target ever build ranges in a residential  
02:09:14 19 neighborhood?

02:09:14 20 A. We've done many, yes.

02:09:15 21 Q. What kind of ranges go into residential neighborhoods?

02:09:18 22 A. Generally an indoor range, two to three positions or even  
02:09:22 23 one. And I've done one in Miami right off the bay. Estimates  
02:09:26 24 for one in Atlanta, in Milwaukee, and we've done three in  
02:09:30 25 Utah, one in Salt Lake City, one in Park City, Utah and one in

02:09:35 1 Mapleton.

02:09:37 2 Q. And just to clarify when I -- what kind of structures are  
02:09:40 3 these ranges located in, since --

02:09:41 4 A. It's in the home. It's constructed usually as part of the  
02:09:44 5 basement.

02:09:45 6 Q. Okay.

02:09:46 7 THE COURT: I just have a clarifying question.

02:09:48 8 So when we were just discussing all of the ranges,  
02:09:51 9 the locations, we were not talking about mobile ranges?

02:09:54 10 THE WITNESS: Those are permanent home ranges.

02:09:56 11 THE COURT: Permanent ranges.

02:09:58 12 THE WITNESS: Yes.

02:09:58 13 THE COURT: Okay.

02:09:59 14 BY MR. GURA:

02:09:59 15 Q. You mentioned earlier that cities are often concerned  
02:10:02 16 about noise and parking. Let's talk about noise for a moment.

02:10:05 17 Have you found -- has Action Target done anything to  
02:10:10 18 address the noise issues in your business?

02:10:12 19 A. Generally --

02:10:13 20 MR. FORTI: Objection, your Honor. I don't think  
02:10:15 21 this witness -- a proper foundation has been laid in terms of  
02:10:19 22 his ability to comment on noise, other than what items are  
02:10:22 23 used to construct the ranges, various ranges that he's talked  
02:10:27 24 about.

02:10:27 25 THE COURT: Okay. I'll take that objection as

09:46:29

UNITED STATES DISTRICT COURT  
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Defendant.

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Chicago, Illinois

October 4, 2010

Motion for Preliminary  
Injunction

VOLUME 2-A  
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UNITED STATES DISTRICT JUDGE

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09:51:28 1 At first, I would welcome, to some degree, the  
09:51:32 2 Rule 52(c) motion by the City, because it inherently concedes  
09:51:37 3 something that we have been saying all along, which is that  
09:51:39 4 this case is ready for a decision on the merits as a matter of  
09:51:43 5 law.

09:51:43 6 Rule 52(c) states that motions under that provision  
09:51:47 7 are available only during a nonjury trial. And we have always  
09:51:53 8 maintained and continue to maintain that the Court should  
09:51:56 9 invoke Rule 65(a)(2) to advance the hearing to a trial on the  
09:52:01 10 merits for the simple reason that neither party could probably  
09:52:05 11 say anything else about the law here. And we believe that the  
09:52:09 12 law -- both sides believe that the law directs a certain  
09:52:13 13 conclusion.

09:52:14 14 And so with the City's invocation of Rule 52(c), I  
09:52:21 15 think it's fair to say that we are definitely in a nonjury  
09:52:24 16 trial not merely a preliminary injunction hearing, and that  
09:52:27 17 opens the door for the Court to rule, even in the absence of a  
09:52:32 18 finding of irreparable harm, because the Court could rule one  
09:52:34 19 way or the other that the City either has no defense and its  
09:52:38 20 laws are simply unconstitutional, or it could rule that we  
09:52:41 21 failed to state a claim. And we would -- we would suggest  
09:52:46 22 that that type of decision is available. However, with  
09:52:49 23 respect to irreparable harm, I do believe we have irreparable  
09:52:54 24 harm here. We have several ways of showing irreparable harm.

09:53:00 25 First of all, I go back to the testimony that we

09:56:23 1 found that it was not likely to repeat as a circumstance,  
09:56:28 2 because Mr. Campbell claimed that he was not a drug user, and  
09:56:31 3 so this might have been a little bit speculative to go ahead  
09:56:34 4 and obtain injunctive relief against a police search and  
09:56:40 5 seizure tactic.

09:56:42 6 Judge Williams, I think, had the better of it in the  
09:56:44 7 dissent stating that, Of course, invasions of personal privacy  
09:56:46 8 inherent in a body cavity search are extreme and perhaps this  
09:56:49 9 is not irreparable with money damages. But be that as it may,  
09:56:54 10 the fact is that I don't think Campbell would have turned out  
09:56:57 11 the same way if instead of merely a very onerous search, which  
09:57:03 12 was the harm there, would have been bodily injury or death  
09:57:07 13 resulting from someone who is not proficient in the use of  
09:57:09 14 firearms.

09:57:09 15 So I think when we remember what the Second Amendment  
09:57:13 16 is about, we remember that this actually is a matter of life  
09:57:17 17 and death for people and that training is important and it's  
09:57:20 18 so important that the City requires it.

09:57:22 19 As far as the First Amendment argument is concerned,  
09:57:25 20 we haven't talked a whole lot about that. There's one Fourth  
09:57:29 21 Circuit case that seems to be directly on point. The City in  
09:57:33 22 its pleading surmised, without looking it up, that the  
09:57:36 23 training in that case did not involve the actual firing of a  
09:57:38 24 gun. Of course, it does. We looked at the statute. It was  
09:57:42 25 irrelevant to the issue and very much requires the live firing

09:57:46 1 of a gun.

09:57:46 2 And the Fourth Circuit held -- what is really not a  
09:57:49 3 very controversial point -- which is that training is speech,  
09:57:53 4 and when you train someone in doing something, you are  
09:57:56 5 exercising your First Amendment rights to provide  
09:57:59 6 instructions. Obviously, people at a gun range who are trying  
09:58:02 7 to qualify for the CFP are there to receive instruction.

09:58:05 8 We are not claiming that there's a First Amendment  
09:58:08 9 right to fire a gun. Of course, that would be silly. Just  
09:58:11 10 like there's no First Amendment to drive a car. However,  
09:58:14 11 going to a driver's license course would probably qualify as  
09:58:22 12 First Amendment activity, and I don't think the City has  
09:58:25 13 really any defense to that.

09:58:26 14 We could argue much more extensively on the legal  
09:58:30 15 points, which I look forward to doing. The City cannot really  
09:58:36 16 establish any defense in this case, as far as likelihood of  
09:58:42 17 success on the merits. And that is because if we look at the  
09:58:47 18 record, we see this entire range ban is an afterthought.

09:58:51 19 We have a lot of conjecture of counsel that this is  
09:58:54 20 necessary to protect the public health and safety, but the  
09:58:56 21 only people who actually didn't say anything about it were the  
09:58:59 22 City Council and the witnesses they heard from. And, again,  
09:59:02 23 the excerpts from the Committee on Police and Fire hearing are  
09:59:09 24 quite telling.

09:59:11 25 We have here a question -- this is on page 48, line



10:00:14 1 THE COURT: Sure. Go ahead.

10:00:15 2 MS. NEREIM: Okay. Because, your Honor, although  
10:00:18 3 Mr. Gura's correct that Rule 65(a)(2) does allow  
10:00:22 4 consolidation, the case law under Rule 65(a)(2) is very clear  
10:00:26 5 that the parties have to have notice from the Court that the  
10:00:32 6 Court is going to consolidate, in order to prepare their case  
10:00:35 7 and have time prepare their case on the merits. And we have  
10:00:38 8 not had that notice from the Court.

10:00:40 9 THE COURT: I didn't give it. That's not the posture  
10:00:43 10 that we're in.

10:00:44 11 MS. NEREIM: Right, and we would be prejudiced if  
10:00:47 12 this --

10:00:47 13 THE COURT: Right.

10:00:49 14 MS. NEREIM: -- were, because we would -- for  
10:00:49 15 example, if we knew this was on the merits, we would have had  
10:00:53 16 experts. We would have had amicus --

10:00:55 17 THE COURT: Right, I understand. Yes, that's not the  
10:00:57 18 posture that we're in. I know where you're at.

10:01:00 19 MS. NEREIM: Thank you, your Honor.

10:01:01 20 THE COURT: Okay. Call your next witness.

10:01:15 21 (Witness takes the stand.)

10:01:15 22 THE COURT: Hi, right up here.

10:01:15 23 (The witness was sworn.)

10:01:15 24 - - -

10:01:15 25 PATRICIA SCUDIERO, DIRECT EXAMINATION

10:11:59 1 Q. Does the Chicago zoning ordinance currently provide in any  
10:12:02 2 way for a gun range?  
10:12:03 3 A. No.  
10:12:04 4 Q. Does the fact that the Chicago zoning ordinance omits gun  
10:12:09 5 ranges mean anything?  
10:12:10 6 A. It means it's prohibited.  
10:12:13 7 Q. Was that your decision to prohibit gun ranges?  
10:12:15 8 A. No, it was the City Council's.  
10:12:18 9 Q. Ms. Scudiero, have you ever been to a gun range?  
10:12:20 10 A. No.  
10:12:21 11 Q. Have you ever studied or read any literature about gun  
10:12:24 12 ranges?  
10:12:24 13 A. No.  
10:12:28 14 Q. What is your understanding, as you sit here today, of what  
10:12:29 15 actually transpires at a gun range?  
10:12:32 16 A. It's my understanding that --  
10:12:34 17 MR. SIGALE: Objection as to speculation.  
10:12:36 18 THE COURT: Sustained. Never been there, so ...  
10:12:40 19 BY MR. AGUIAR:  
10:12:40 20 Q. Ms. Scudiero, do you have any understanding of what  
10:12:43 21 happens at a gun range?  
10:12:44 22 MR. SIGALE: Objection, your Honor.  
10:12:45 23 THE COURT: What's the relevance of that then?  
10:12:47 24 Unless she's had it in her position as far as it coming before  
10:12:51 25 her.

10:15:39 1 THE COURT: You don't need to object. His objection  
10:15:41 2 is still standing.

10:15:44 3 I think that you are on shaky ground. I'll give you  
10:15:48 4 a little leeway, and let's see what she can do.

10:15:55 5 BY MR. AGUIAR:

10:15:56 6 Q. Ms. Scudiero, have you reviewed what happens at a gun  
10:16:00 7 range?

10:16:00 8 THE COURT: That's a fair question.

10:16:02 9 MR. SIGALE: Okay.

10:16:02 10 THE COURT: Overruled.

10:16:03 11 THE WITNESS: Since I was asked to testify, I've been  
10:16:06 12 sort of trying to put my arms around what a gun range does.  
10:16:09 13 I've never been to one.

10:16:10 14 BY MR. AGUIAR:

10:16:11 15 Q. What have you determined happens at a gun range?

10:16:13 16 MR. SIGALE: Objection, foundation.

10:16:14 17 THE COURT: Foundation, sustained.

10:16:15 18 BY MR. AGUIAR:

10:16:16 19 Q. What have you done to put your arms around the idea of  
10:16:18 20 what happens at a gun range?

10:16:23 21 A. Just from my general knowledge of what people -- what I  
10:16:26 22 imagine what people would do there is they would go there to  
10:16:31 23 either learn how to shoot a gun or practice shooting a gun.

10:16:33 24 Q. Anything else?

10:16:35 25 A. I imagine they either bring their own gun there or use a

10:16:38 1 gun that's on site.

10:16:39 2 MR. SIGALE: Your Honor, I'm going to move to strike  
10:16:41 3 any testimony based on speculation, that includes the word  
10:16:45 4 imagine.

10:16:46 5 THE COURT: Okay. I'm going to let her testify, and  
10:16:51 6 I'll be the judge of whether there's any weight to be given to  
10:16:54 7 it or merit. It's nebulous at this point, so I'll let you  
10:17:01 8 have some leeway to see what you can do with it.

10:17:07 9 BY MR. AGUIAR:

10:17:08 10 Q. Ms. Scudiero, based on your understanding that you've  
10:17:11 11 stated here today as to what happens at a gun range, in your  
10:17:14 12 21 years of experience with zoning in the City of Chicago, in  
10:17:17 13 what zoning classification do you believe that a gun range  
10:17:20 14 should be allowed in the city?

10:17:22 15 A. As with uses that could pose the possibility of being  
10:17:29 16 intense, we would put them in an intensive use category, and  
10:17:32 17 we would ask that they be put into a manufacturing district.

10:17:37 18 Q. You testified you would think it's an intense use.

10:17:40 19 What is an intense use from a zoning perspective?

10:17:43 20 A. From a zoning perspective, an intense use is a use that  
10:17:48 21 could pose a threat to the health, safety, and welfare of our  
10:17:52 22 city's residents. And the way the zoning code works, we have  
10:17:56 23 zoning districts that are created throughout the city where,  
10:18:01 24 you know, the residential uses are for people who, obviously,  
10:18:04 25 they're living there, they're attending school there or church

10:18:07 1 there.

10:18:07 2 The next use category is the business use where  
10:18:10 3 people do their daily shopping, business use also allows for  
10:18:13 4 residential above them. You know, as you leave those  
10:18:17 5 districts, you start getting into more intense uses,  
10:18:20 6 commercial districts, manufacturing districts, plan  
10:18:25 7 manufacturing districts.

10:18:25 8 We try to keep intense uses into those manufacturing  
10:18:30 9 districts, because they are the furthest point away from the  
10:18:32 10 residents where they live.

10:18:35 11 Q. Could you please give some examples of what would be an  
10:18:37 12 intense use from a zoning perspective?

10:18:38 13 A. Certainly. Taverns are intense uses. Rock crushing  
10:18:42 14 facilities are intense uses. Salvage yards, incinerators,  
10:18:47 15 those are intense uses. They're kept at the periphery of the  
10:18:50 16 city normally, so that they are kept away from the residential  
10:18:53 17 areas.

10:18:54 18 Q. What about adult uses, are they considered an intense use?

10:18:57 19 A. They are.

10:18:57 20 Q. What about facilities that have drive-through facilities?

10:19:02 21 A. Drive-through facilities are considered an intense use, in  
10:19:07 22 as they require a special use permit in all the districts that  
10:19:09 23 they exist throughout the city.

10:19:12 24 Q. Again, based on your zoning experience and your stated  
10:19:16 25 understanding of what happens at a gun range, why do you think

10:19:19 1 a gun range would only be appropriate in a manufacturing  
10:19:22 2 district?

10:19:23 3 A. It's to keep --

10:19:24 4 MR. SIGALE: I'm going to object. I'm going to  
10:19:27 5 object -- I don't believe a proper foundation has been laid.

10:19:30 6 THE COURT: Yes, overruled, based upon what I said  
10:19:33 7 before.

10:19:37 8 THE WITNESS: The manufacturing districts are, again,  
10:19:41 9 normally the furthest point away from the residential  
10:19:44 10 districts, in order to protect the people who are residing in  
10:19:48 11 the residential districts of the manufacturing -- as I said,  
10:19:52 12 the manufacturing districts house the intense uses throughout  
10:19:54 13 the city.

10:19:56 14 BY MR. AGUIAR:

10:19:56 15 Q. And, again, based on your zoning experience and your  
10:20:00 16 stated understanding of what happens at a gun range, are there  
10:20:03 17 any zoning classifications that you do not believe it would be  
10:20:06 18 appropriate to place a firing range in close proximity to?

10:20:10 19 A. No, other than the M.

10:20:14 20 Q. Let me rephrase my question.

10:20:16 21 Based, again, on your experience in zoning --

10:20:19 22 A. Yes.

10:20:20 23 Q. -- and your stated understanding of what happens at a gun  
10:20:24 24 range, are there any zoning classifications you would not want  
10:20:28 25 a firing range near?

10:20:30 1 A. Any district that would have a residential component to  
10:20:32 2 it, which would be the R districts, the B and C districts also  
10:20:36 3 permit some residential uses.

10:20:38 4 Q. And why is that?

10:20:40 5 A. Those districts, the B and C districts specifically,  
10:20:45 6 permit residential uses in them. The C1 and C2 districts  
10:20:50 7 specifically permit residential uses. The C3 district does  
10:20:53 8 not permit it. It's used as buffer between the manufacturing  
10:20:57 9 districts and every other district. There should be some sort  
10:21:01 10 of buffer between all of the zoning ordinance classified  
10:21:05 11 intense uses and its residential communities.

10:21:08 12 Q. Now, you testified that the only zoning district in which  
10:21:12 13 you believe it would be appropriate to place a firing range in  
10:21:15 14 would be a manufacturing district.

10:21:17 15 Based on your experience in zoning and, again, your  
10:21:20 16 stated understanding of what happens at a firing range, should  
10:21:23 17 a firing range be automatically allowed in a manufacturing  
10:21:27 18 district, in your opinion?

10:21:28 19 A. In my opinion, no.

10:21:30 20 Q. How would it be allowed then?

10:21:32 21 A. It should be allowed as a special use.

10:21:34 22 Q. And what is a special use?

10:21:35 23 A. A special use permit is issued by the Chicago zoning board  
10:21:42 24 of appeals. The zoning board of appeals would review the  
10:21:45 25 case -- it's an additional review -- review the case and do a

10:21:50 1 thorough investigation of it and deem whether a special use  
10:21:54 2 permit should be granted for a specific site, and many, many  
10:21:58 3 uses require special uses in the Chicago zoning ordinance.  
10:22:02 4 Q. What use is -- what things require a special use permit?  
10:22:05 5 A. Drive-through facilities throughout the city require a  
10:22:08 6 special use permit, churches in the B and C district require  
10:22:12 7 special use, nail salons, adult uses, taverns in some cases.  
10:22:19 8 Q. You mentioned the zoning board of appeals. What is the  
10:22:23 9 zoning board of appeals?  
10:22:24 10 A. The zoning board of appeals is a group of experts that are  
10:22:27 11 appointed by the mayor, affirmed by the City Council, to serve  
10:22:31 12 on the board. And they meet monthly -- the Board of Appeals  
10:22:36 13 meets monthly and hears requests for variations, special uses,  
10:22:39 14 and appeals.  
10:22:41 15 Q. To become -- or to receive approval to be a special use,  
10:22:45 16 is there a specific procedure that must be followed?  
10:22:48 17 A. Yes, a denial is issued by my department. That denial is  
10:22:51 18 used to file a special use application with the zoning board  
10:22:55 19 of appeals. That special use application is processed by the  
10:22:58 20 board and a public hearing is set for that.  
10:23:02 21 Q. Based on your zoning experience and, again, your stated  
10:23:06 22 understanding of what happens at a firing range, do you  
10:23:10 23 believe that there are any dangers to the City's public  
10:23:11 24 health, safety, and welfare if ranges are allowed to enter the  
10:23:15 25 city without zoning regulation?



10:30:11 1 Q. Okay. And do these photographs have any impact on your  
10:30:14 2 conclusion -- or your opinion, excuse me, that 6300 South Bell  
10:30:18 3 is an inappropriate location for the mobile range, from a  
10:30:21 4 zoning perspective?

10:30:22 5 A. These photographs reinforce that opinion.

10:30:26 6 Q. Okay. Ms. Scudiero, there's been testimony in this case  
10:30:29 7 that there are firing ranges located within federal buildings  
10:30:32 8 in Chicago.

10:30:34 9 Does your office have any jurisdiction to enforce the  
10:30:39 10 City's zoning ordinance with respect to those firing ranges?

10:30:43 11 A. No, it does not.

10:30:44 12 Q. Why not?

10:30:44 13 A. The federal government is exempt from the zoning  
10:30:47 14 provisions.

10:30:48 15 Q. Ms. Scudiero, do you know whether there are firing ranges  
10:30:51 16 at any Chicago Police Department facilities?

10:30:53 17 A. I have been told there are.

10:30:55 18 Q. Okay. Again, based on your experience in zoning and your  
10:30:59 19 understanding of gun ranges stated here today, do the gun  
10:31:05 20 ranges at Chicago Police Department cause a problem, from a  
10:31:09 21 zoning perspective?

10:31:10 22 A. No.

10:31:11 23 Q. And why not?

10:31:12 24 A. From what I'm told, those are used by sworn police  
10:31:15 25 officers at the site. The public is not allowed in to use

10:34:08 1 Q. And the City Council votes on the proposed ordinance,  
10:34:14 2 based at least in part on your recommendation?

10:34:14 3 A. I would hope so.

10:34:16 4 Q. Okay. And you make these recommendations either upon  
10:34:21 5 request or upon an application for a zoning change; is that  
10:34:25 6 true?

10:34:25 7 A. That is correct.

10:34:26 8 Q. All right. And with that said, it's correct that you had  
10:34:30 9 no participation in any form in the writing or enactment of  
10:34:34 10 the City's new firearm ordinance?

10:34:36 11 A. That is correct.

10:34:37 12 Q. You had no discussion about the new firearms ordinance  
10:34:40 13 with anyone from or on behalf of the City's committee on  
10:34:45 14 zoning?

10:34:45 15 A. That is correct.

10:34:46 16 Q. And you had no discussion about the new firearms ordinance  
10:34:48 17 with the mayor or anyone acting on his behalf?

10:34:52 18 A. That's correct.

10:34:54 19 Q. Now, for a proposed use in the City of Chicago the zoning  
10:34:57 20 administrator would be contacted to start a review as to the  
10:35:01 21 best and appropriate locations and zoning classifications for  
10:35:04 22 that use?

10:35:04 23 A. That is correct.

10:35:05 24 Q. And that zoning administrator is you, correct?

10:35:08 25 A. It is.

10:35:08 1 Q. So you'd be the go-to person?

10:35:10 2 A. I would be.

10:35:11 3 Q. All right. Now, as I -- just to clarify from before, you

10:35:14 4 have no experience with using firing ranges and you've never

10:35:19 5 been to one; is that correct?

10:35:20 6 A. That is correct.

10:35:21 7 Q. And you have no experience or education with either the

10:35:26 8 structure or the operation of firing ranges?

10:35:29 9 A. That is correct.

10:35:30 10 Q. And that's true whether we're talking about a mobile

10:35:33 11 firing range or a permanent brick-and-mortar-type firing

10:35:37 12 range?

10:35:37 13 A. That is correct.

10:35:38 14 Q. Okay. And you've never in your life investigated firing

10:35:42 15 ranges for zoning purposes?

10:35:44 16 A. That's true.

10:35:45 17 Q. You have no knowledge of firing ranges, other than the

10:35:49 18 fact that firearms are used there; is that fair to say?

10:35:52 19 A. Only my personal knowledge, yes.

10:35:54 20 Q. Okay. Now, the City's zoning code bans firing ranges

10:35:59 21 completely by not including them in the code as a permitted

10:36:02 22 use?

10:36:02 23 A. That's correct.

10:36:03 24 Q. And the zoning code doesn't mention them and, therefore,

10:36:06 25 they are banned?

10:36:07 1 A. That's correct, they are prohibited.

10:36:08 2 Q. Okay. Now, you did not have a vote in the City zoning

10:36:12 3 code's ban on firing ranges insofar as it bans them by failure

10:36:16 4 to include them?

10:36:17 5 A. I have no vote.

10:36:19 6 Q. Correct?

10:36:20 7 A. Correct.

10:36:20 8 Q. And you didn't make, with regard to that portion of the

10:36:22 9 zoning code that excludes firing ranges by omitting them, you

10:36:27 10 didn't make any recommendations to anybody regarding that

10:36:30 11 portion of the zoning code, true?

10:36:32 12 A. That is correct.

10:36:34 13 Q. And regarding the City's new firearms ordinance, at no

10:36:38 14 time prior to June 30th of this year did you have a

10:36:40 15 conversation with anyone regarding the topic of firing ranges

10:36:45 16 and zoning, true?

10:36:46 17 A. That's correct.

10:36:47 18 Q. No City Council members ever contacted you regarding how

10:36:50 19 other cities are zoned for firing ranges, true?

10:36:54 20 A. True.

10:36:55 21 Q. And you have no idea if any other cities in America ban

10:36:59 22 gun ranges; is that true?

10:37:00 23 A. That's true.

10:37:01 24 Q. And you have no knowledge as to -- if a firing range may

10:37:08 25 or may not emit any noise or fumes or smells. You don't have

10:37:14 1 any idea as to -- any knowledge about any of that, as pertains  
10:37:18 2 to a firing range, including whether there are any at all; is  
10:37:22 3 that true?

10:37:22 4 A. That's true.

10:37:23 5 Q. And you testified about your concerns about placing a  
10:37:27 6 firing range at 6331 South Bell.

10:37:31 7 Do you recall a discussion you and I had regarding a  
10:37:33 8 firing range at Area 1 police headquarters at 5101 South  
10:37:40 9 Wentworth?

10:37:40 10 A. I recall that conversation.

10:37:42 11 Q. And you recall that we looked on a map, a Google Map,  
10:37:47 12 showing that address, 5101 South Wentworth?

10:37:50 13 A. I recall that.

10:37:50 14 Q. And do you recall that across the railroad tracks from  
10:37:55 15 that Area 1 headquarters were four churches and a school?

10:37:56 16 A. I recall that.

10:37:58 17 Q. And do you recall the same discussion that we had  
10:37:59 18 regarding the Area 2 police headquarters --

10:38:02 19 MR. AGUIAR: Your Honor --

10:38:02 20 BY MR. SIGALE:

10:38:04 21 Q. -- at 727 East 111th Street?

10:38:04 22 MR. AGUIAR: Objection, your Honor. He's talking  
10:38:05 23 about Ms. Scudiero's deposition, what happened in her  
10:38:08 24 deposition.

10:38:08 25 THE COURT: What's the basis for the objection?

10:38:11 1 MR. AGUIAR: Foundation here.

10:38:12 2 THE COURT: It's overruled. He can cross-examine her  
10:38:16 3 about previous statements.

10:38:19 4 MR. SIGALE: Thank you, your Honor.

10:38:19 5 BY MR. SIGALE:

10:38:20 6 Q. Do you recall that discussion, Commissioner, 727 East  
10:38:26 7 111th Street, Area 2 headquarters?

10:38:28 8 A. I recall the conversation.

10:38:30 9 Q. And you recall that near those headquarters was the  
10:38:33 10 Smurfit-Stone Container Corporation, the University of  
10:38:34 11 Chicago, and residential housing?

10:38:35 12 A. I recall the conversation, yes.

10:38:37 13 Q. And you recall a discussion -- similar discussion about  
10:38:40 14 Area 3 headquarters, 2452 West Belmont Avenue?

10:38:44 15 A. Yes.

10:38:44 16 Q. And that in the immediate vicinity of those headquarters  
10:38:48 17 is the Cook County Municipal Court, the Devry Institute of  
10:38:51 18 Technology, Toys"R"Us, Blockbuster Video, and a residential  
10:38:56 19 area?

10:38:56 20 A. I recall it.

10:38:56 21 Q. And the same question regarding the Area 4 headquarters at  
10:39:00 22 3151 West Harrison?

10:39:02 23 A. Yes.

10:39:02 24 Q. You recall that discussion?

10:39:03 25 A. I do.

10:39:04 1 Q. And we looked at a map and we saw that near there was the  
10:39:07 2 Cook County Criminal Court, the Jens Jensen Public School, and  
10:39:11 3 three churches, yes?

10:39:12 4 A. Yes, I recall that.

10:39:15 5 Q. And luckily there's only five area headquarters, because  
10:39:19 6 then I can move on.

10:39:20 7 But you recall the discussion we had about Area 5  
10:39:23 8 headquarters at 5555 West Grand Avenue, yes?

10:39:26 9 A. I do recall it, yes.

10:39:27 10 Q. And you recall that across the street from Area 5  
10:39:31 11 headquarters is a park, a vocational school, and across from  
10:39:34 12 the park is an elementary school, and in that vicinity is also  
10:39:37 13 a residential area, correct?

10:39:40 14 A. Yes, I recall that.

10:39:41 15 Q. And you recall that the police academy -- Chicago Police  
10:39:44 16 Academy at 1300 West Jackson is adjacent to Whitney Young High  
10:39:49 17 School to the west and a park to the north?

10:39:51 18 A. I recall that, yes.

10:39:53 19 Q. Okay. And you have never heard a complaint, from a zoning  
10:39:56 20 perspective, from anyone representing any person or entity  
10:40:02 21 residing or working near any of those police facilities with  
10:40:06 22 any type of complaint regarding a firing range on those  
10:40:10 23 premises; is that true?

10:40:11 24 A. That's what I testified, correct.

10:40:13 25 Q. Okay. And, likewise, you've never heard from anyone

10:40:17 1 complaining about a firing range at 230 South LaSalle Street,  
10:40:20 2 743 -- I'm sorry -- 230 South LaSalle, 743 South Canal Street,  
10:40:26 3 610 South Canal Street, or 899 Upper Express Drive, which as  
10:40:32 4 we talked about is up near O'Hare. You've never heard from  
10:40:35 5 anyone complaining about a firing range at any of those  
10:40:39 6 locations, true?

10:40:39 7 A. That is correct.

10:40:40 8 Q. In fact, before last week when we had the discussion I was  
10:40:47 9 referring to, you had no idea that there might be firing  
10:40:51 10 ranges at any of those locations; is that true?

10:40:53 11 A. That's what I testified, yes.

10:40:55 12 Q. Now, actually, you would recommend that firing ranges be  
10:41:04 13 zoned C3 or higher, which includes the M zones; is that  
10:41:09 14 accurate?

10:41:10 15 A. I recommended that the firing ranges be considered for the  
10:41:15 16 manufacturing zones. What I said was the only district  
10:41:18 17 that -- of the Cs that didn't permit residential was C3.

10:41:28 18 Q. Okay. Now, permitted uses in M districts, you said,  
10:41:33 19 include tavern -- taverns?

10:41:36 20 A. Taverns.

10:41:36 21 Q. Light industry?

10:41:37 22 A. Light industries.

10:41:39 23 Q. Catering offices?

10:41:41 24 A. Yes.

10:41:41 25 Q. As well as the other things you testified before?



10:53:15 1 Q. How could a mobile range pose a threat to the public  
10:53:18 2 safety?

10:53:19 3 A. When you talk about a mobile range, you have a facility  
10:53:24 4 that is in the public, as opposed to enclosed in some sort of  
10:53:29 5 building, and traffic management around that facility would be  
10:53:32 6 a great concern to any range master or firearms instructor.

10:53:37 7 Q. What do you mean by traffic management?

10:53:39 8 A. Well, you're going to have people coming and going from  
10:53:41 9 that facility and due to the fact of overlapping classes,  
10:53:47 10 numerous people coming for training, bystanders stopping by,  
10:53:51 11 and other unforeseen casual observers would be a great concern  
10:53:57 12 to officers conducting any kind of training.

10:54:00 13 Q. Are there ways to limit or control some of these problems  
10:54:07 14 you foresee?

10:54:08 15 A. Certainly.

10:54:09 16 Q. And what would those be?

10:54:10 17 A. At a bear minimal [sic], you'd have to have some sort of  
10:54:14 18 permanent fencing that was unable to be seen through. You'd  
10:54:19 19 have to have locations separate from where live fire training  
10:54:23 20 was occurring and classroom training was occurring. You'd  
10:54:25 21 have to have parking lots that were secure, so that people  
10:54:28 22 could remove equipment from their vehicle, transport that  
10:54:32 23 equipment to a training area, and from a training area to a  
10:54:35 24 live fire area. You'd also have a need to have locations for  
10:54:40 25 safe loading, unloading, and handling of weapons.

10:54:47 1 Q. I'd like to break that down a little bit with you and ask  
10:54:50 2 you some questions about what you just testified to.

10:54:52 3 You said there'd need to be permanent fencing. Why  
10:54:56 4 is that?

10:54:58 5 A. Well, in my experience as a patrol officer, if you look at  
10:55:00 6 construction sites that have temporary fencing, that's  
10:55:03 7 commonly blown over or pushed over. Permanent fencing that is  
10:55:09 8 seated in the ground would reduce that likelihood of the  
10:55:12 9 fencing being comprised.

10:55:14 10 Q. You mentioned it should not be see-through. Why should  
10:55:18 11 the fence not be see-through?

10:55:19 12 A. Well, as a firearms instructor, you have a lot of duties.  
10:55:19 13 And that duty is safety to your students, to your firearms  
10:55:22 14 instructors, and to the public.

10:55:24 15 That being said, as people are curious, like people  
10:55:28 16 are, standing by a fence looking through to see what was  
10:55:31 17 happening there would be of great concern.

10:55:34 18 Q. You testified that you need a separate location for the  
10:55:38 19 loading/unloading of weapons. Why is that?

10:55:41 20 A. Loading and unloading of weapons is a great concern to any  
10:55:45 21 firearms instructor, due to unintentional discharges. You  
10:55:48 22 want to make sure that it is in a safe location and that the  
10:55:51 23 students are actually performing the task at hand without  
10:55:54 24 obstruction or without intrusion from bystanders or other  
10:55:58 25 people.

10:55:59 1 Q. And where should this location be in relationship to a  
10:56:02 2 range?

10:56:03 3 A. That would depend on the facility.

10:56:06 4 Q. Okay. Should it be next to the range or away from the  
10:56:10 5 range?

10:56:11 6 A. It would be separate from the live fire range, but in the  
10:56:13 7 general vicinity of it.

10:56:15 8 Q. Okay. Would this area be next to parking or away from  
10:56:19 9 parking?

10:56:19 10 A. You would want it to be separate from your parking to  
10:56:22 11 avoid people wandering off to their cars when they are  
10:56:25 12 supposed to be concentrating on one specific task.

10:56:28 13 Q. You also testified about the parking lots need to be  
10:56:31 14 secure. In what way should the parking lots be secure?

10:56:34 15 A. Well, you'd definitely want participants' cars secured,  
10:56:38 16 due to the fact that there would be assumption that firearms  
10:56:40 17 would be in those cars, and you wouldn't want people worried  
10:56:43 18 about what's going to happen to their cars when they are using  
10:56:47 19 firearms in training.

10:56:49 20 Q. So there would be a threat to the people -- potential  
10:56:52 21 threat to people who are coming to the range?

10:56:54 22 MR. GURA: Objection, calls for speculation.

10:56:57 23 THE COURT: Overruled. I'll allow him to testify  
10:57:00 24 based upon his understanding.

10:57:03 25 THE WITNESS: There would be assumption that firearms

11:09:42 1 THE COURT: Right, so that's actually relevant so  
11:09:44 2 overruled.

11:09:45 3 THE WITNESS: I'm sorry. Could you repeat the  
11:09:47 4 question, sir?

11:09:49 5 BY MR. AGUIAR:

11:09:49 6 Q. If guns are transported in a broken-down state to this  
11:09:53 7 site, is there a safety concern for people going to the range?

11:09:57 8 A. Yes.

11:09:58 9 Q. And what is that concern?

11:10:00 10 A. Victims of crime.

11:10:01 11 Q. What do you mean by that?

11:10:04 12 A. A facility that's known as a live fire range is assumed  
11:10:07 13 that weapons will be transported to and from that facility,  
11:10:10 14 which could substantially increase the people going to and  
11:10:14 15 from that vicinity as people for victims of crime for people  
11:10:18 16 who want to obtain firearms.

11:10:20 17 Q. And based on your experience with the Chicago Police  
11:10:24 18 Department, even if people aren't transporting their firearms  
11:10:27 19 to the range, is there a safety concern for those people?

11:10:29 20 A. Well, there's assumption that they would be --

11:10:32 21 Q. Assumption by whom?

11:10:34 22 A. By the potential offenders.

11:10:37 23 Q. So they would be a safety risk for them?

11:10:39 24 A. Certainly.

11:10:42 25 Q. Are you aware that one of the locations that plaintiffs

01:52:30

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RHONDA EZELL, et al.,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

Case No. 1:10-cv-05135

Chicago, Illinois  
October 4, 2010  
Motion for Preliminary  
Injunction

VOLUME 2-B  
TRANSCRIPT OF MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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24 Proceedings recorded by mechanical stenography; transcript  
25 produced by notereading.

02:03:16 1 proffer --

02:03:16 2 THE COURT: No, no, he can proffer for his record,  
02:03:18 3 right, so he did.

02:03:19 4 MR. AGUIAR: One moment, your Honor.

02:03:25 5 Nothing further at this time, your Honor.

02:03:28 6 THE COURT: Okay. Cross-examination?

02:03:30 7 MR. GURA: Sure. Thank you.

02:03:30 8 - - -

02:03:30 9 DANIEL BARTOLI, CROSS-EXAMINATION

02:03:30 10 BY MR. GURA:

02:03:40 11 Q. Good afternoon, Sergeant Bartoli.

02:03:42 12 A. Good afternoon.

02:03:43 13 Q. Sergeant Bartoli, obviously, you're a police officer. You  
02:03:46 14 testified that you've been on patrol before.

02:03:50 15 Have you trained with firearms yourself as part of  
02:03:52 16 being a police officer?

02:03:53 17 A. I have.

02:03:53 18 Q. Why do you train with firearms?

02:03:57 19 A. In the event that I have to use them to protect my life or  
02:04:00 20 someone else's life.

02:04:01 21 Q. Is it fair then to say that if you don't train  
02:04:05 22 sufficiently with firearms you may not be in a position to  
02:04:06 23 adequately defend yourself or other people?

02:04:09 24 A. Yes, it would be fair to say that.

02:04:11 25 Q. And is it also fair to say that training also helps

02:04:14 1 prevent accidents?

02:04:17 2 A. Yes, it would be fair to say that.

02:04:18 3 Q. Okay. Is training -- strike that.

02:04:22 4 Is proficiency with firearms a perishable skill?

02:04:26 5 Is -- does the training have to be maintained at a certain  
02:04:29 6 level?

02:04:30 7 A. Yes, it does.

02:04:30 8 Q. Okay. And so -- and does it matter how much a person is  
02:04:34 9 trained with a firearm?

02:04:36 10 A. It depends on the person.

02:04:37 11 Q. Okay. But is there usually a correlation that -- it's  
02:04:40 12 true that the more training a person has the safer they are  
02:04:43 13 with firearms; is that a fair statement?

02:04:46 14 MR. AGUIAR: Objection, your Honor.

02:04:47 15 THE COURT: Basis?

02:04:47 16 MR. AGUIAR: Are we talking about members of the CPD  
02:04:49 17 training or members of the public?

02:04:51 18 THE COURT: So is it a foundation objection?

02:04:53 19 MR. AGUIAR: It's a vague ambiguous foundation.

02:04:55 20 THE COURT: Okay. Sustained.

02:04:59 21 BY MR. GURA:

02:05:00 22 Q. If a police officer hypothetically would train for one  
02:05:05 23 hour every three years with his or her firearm, would that  
02:05:09 24 officer be less or more safe than an officer who trains one  
02:05:14 25 hour every year?



02:07:44 1 MR. AGUIAR: Objection, relevance, your Honor.

02:07:48 2 THE COURT: I think it's outside the scope of what  
02:07:51 3 his testimony is. So that's sustained. It may be relevant to  
02:07:57 4 your argument.

02:07:58 5 MR. GURA: Sure. Well, I think it's a fair point. I  
02:08:02 6 can move on.

02:08:03 7 THE COURT: Well, you all think everything is  
02:08:05 8 relevant. It's just whether it comes from this person on the  
02:08:07 9 stand.

02:08:08 10 MR. GURA: Sure, sure.

02:08:08 11 THE COURT: So that's been our issue the entire  
02:08:10 12 preliminary hearing.

02:08:11 13 MR. GURA: Well -- I really want to advance this  
02:08:15 14 quickly, so I'll try to move on as quickly as I can, your  
02:08:18 15 Honor, and not argue forever on these things.

02:08:21 16 Let's just clean up the record a bit here, Officer.

02:08:23 17 BY MR. GURA:

02:08:24 18 Q. You testified that there is a police firearms range in  
02:08:27 19 every one of the area headquarters, as well as the training  
02:08:30 20 academy; is that correct?

02:08:31 21 A. Correct.

02:08:31 22 Q. Okay. And just for the record, it's true that the Area 1  
02:08:35 23 range exists at 5101 South Wentworth?

02:08:39 24 A. Correct.

02:08:39 25 Q. How many lanes exist? How many shooting positions are at

02:08:42 1 that location?

02:08:43 2 A. Five.

02:08:45 3 Q. And it's true then that the Area 2 range is located at

02:08:49 4 727 East 111th?

02:08:53 5 A. I -- yes, I would assume that's the address, yes.

02:08:56 6 Q. And how many lanes are there --

02:08:58 7 A. Five also.

02:08:59 8 Q. Five.

02:08:59 9 And Area 3, the Area 3 range, is that located at

02:09:05 10 2452 West Belmont?

02:09:06 11 A. Yes.

02:09:06 12 Q. And how many lanes are there?

02:09:08 13 A. Five.

02:09:10 14 Q. The Area 4 headquarters range, is that located at

02:09:14 15 3151 West Harrison?

02:09:15 16 A. Yes.

02:09:15 17 Q. And how many lanes are there?

02:09:17 18 A. Five.

02:09:20 19 Q. How about the Area 5 headquarters on 5555 West Grand, is

02:09:27 20 that where the range exists for Area 5?

02:09:30 21 A. Yes.

02:09:31 22 Q. And how many lanes are there?

02:09:32 23 A. Five.

02:09:33 24 Q. And finally at the training academy at 1300 West Jackson,

02:09:38 25 there's a gun range there as well, right?

02:09:41 1 A. Yes.

02:09:41 2 Q. Okay. And how many lanes exist there?

02:09:42 3 A. There's two ranges, ten lanes each.

02:09:45 4 Q. Two ranges at ten lanes each.

02:09:49 5 So you've testified there are, I guess, twenty lanes  
02:09:53 6 at the West Jackson. And then, I guess, a total of 45 lanes  
02:09:59 7 total that the Chicago Police Department has for its officers  
02:10:02 8 to train at, correct, if we have five each in Areas 1 through  
02:10:09 9 5 --

02:10:09 10 A. Yes.

02:10:09 11 Q. -- that's 25?

02:10:10 12 A. Yes.

02:10:11 13 Q. Okay. Is this a sufficient number of lanes to train and  
02:10:18 14 keep qualified the Chicago police force?

02:10:22 15 A. I believe no.

02:10:24 16 Q. And, in fact, the Chicago police have been looking at  
02:10:28 17 adding range capacity recently; is that correct?

02:10:30 18 MR. AGUIAR: Your Honor, outside the scope of the  
02:10:32 19 direct.

02:10:32 20 MR. GURA: Oh, this goes to --

02:10:34 21 THE COURT: Overruled.

02:10:37 22 THE WITNESS: Yes.

02:10:40 23 BY MR. GURA:

02:10:40 24 Q. How many more lanes do the Chicago police require for its  
02:10:46 25 13,500 officers?

02:12:49 1 Do these ranges impact the existing neighborhoods in  
02:12:59 2 which they are located in any negative way?  
02:13:00 3 A. I don't believe they do.  
02:13:04 4 Q. Now, as far as civilian training for people seeking a  
02:13:08 5 Chicago Firearms Permit is concerned, is it just anybody who  
02:13:12 6 can provide the training, or is there a requirement under the  
02:13:15 7 law as to who can provide the training?  
02:13:17 8 A. I'm pretty sure there's a requirement.  
02:13:19 9 Q. And what's that requirement?  
02:13:20 10 A. It's a certified firearms instructor, but I don't exactly  
02:13:24 11 recall who certifies --  
02:13:25 12 Q. Certified by whom, you don't recall?  
02:13:27 13 A. It's a state certified, but I don't recall who.  
02:13:30 14 Q. Are you aware of what is required to become a state  
02:13:33 15 certified instructor in Illinois?  
02:13:36 16 A. I know -- I'm aware of what certifies you as a law  
02:13:41 17 enforcement firearms instructor in the State of Illinois.  
02:13:43 18 Q. Okay. And what is that?  
02:13:44 19 A. You have to take a 40-hour firearms instructor course.  
02:13:50 20 Q. Okay. And who provides that certification?  
02:13:50 21 A. There's different entities that have their lesson plans on  
02:13:54 22 file with the Illinois Law Enforcement Training Boards and  
02:13:57 23 Standards that can administer that 40-hour course.  
02:13:59 24 Q. Okay. And, in fact, isn't it true that a person has to  
02:14:03 25 apply to be a police officer, essentially, in order to take

02:59:22 1 harm. Number 1, people with guns are unable, they are  
02:59:26 2 discouraged from training with their guns, and maintaining  
02:59:29 3 proficiency. That leads to death and injury and all kinds of  
02:59:33 4 tragedies when Second Amendment rights are violated.

02:59:36 5 Number 2, obviously, there's discouragement in terms  
02:59:39 6 of people being able to access the training, which is a  
02:59:42 7 prerequisite to the very possession of a firearm in one's  
02:59:46 8 home.

02:59:47 9 And, here -- I know the Court's been skeptical of  
02:59:51 10 Andre Queen's declaration, but I'm going to try one more time  
02:59:55 11 just to briefly state for the record -- that the issue is not  
02:59:56 12 the harm that the law has on Queen's business. The issue is  
02:59:58 13 that he testified that people are discouraged. In his  
03:00:00 14 experience -- he knows the market -- the cost and expense of  
03:00:03 15 traveling outside the city impacts people's desire and  
03:00:05 16 willingness to do it and the testimony is, I think, conclusive  
03:00:10 17 as to that.

03:00:11 18 And, finally, before I forget, of course, there is  
03:00:15 19 the First Amendment harm. And, again, this is not something  
03:00:16 20 on which there is a lot of law and sometimes these issues are  
03:00:19 21 not as interesting to the public as Second Amendment issues,  
03:00:24 22 but we do have very good authority from the Fourth Circuit in  
03:00:27 23 Edwards versus City of Goldsboro, where the Fourth Circuit  
03:00:31 24 actually reversed the judge that I clerked for.

03:00:33 25 THE COURT: But you weren't clerking for him --

03:00:35 1 MR. GURA: No, no that was after my time.

03:00:37 2 Where again you had a police officer who was  
03:00:45 3 retaliated against for teaching a gun training class for  
03:00:49 4 people who wanted to obtain a North Carolina permit to carry a  
03:00:53 5 handgun.

03:00:53 6 And the Court said, Look, we know that the First  
03:00:57 7 Amendment protects training. This is training. This is the  
03:00:59 8 highest level of protected speech. And just because it's  
03:01:03 9 demonstrative and just because it involves weapons doesn't  
03:01:05 10 change that analysis.

03:01:06 11 And so I -- you know, the City keeps saying, Well,  
03:01:10 12 firing a gun is not protected by the First Amendment. And, of  
03:01:13 13 course, I agree with that. We agree with that. Of course,  
03:01:15 14 the First Amendment doesn't protect any kinds of conduct as  
03:01:21 15 such. But when conduct is expressive, then it's protected and  
03:01:26 16 there's, you know, tons of case law on that. And there's  
03:01:29 17 really -- the only response they had to the Edwards case was,  
03:01:33 18 Well, we presume, presumably, that there was no firing of guns  
03:01:37 19 involved in that case. Well, the North Carolina general  
03:01:40 20 statutes say differently.

03:01:41 21 So I think we have a First Amendment harm as well.  
03:01:45 22 And then, as we know, when the First Amendment is implicated,  
03:01:47 23 the irreparable harm is presumed. I am not aware of any case  
03:01:52 24 law right now that talks about whether there's a presumption  
03:01:56 25 of harm in the Second Amendment field, when a Second Amendment

03:01:59 1 right is violated. But, your Honor, I would submit that given  
03:02:02 2 the Supreme Court's language in describing the interests  
03:02:04 3 protected by the Second Amendment, it is fair to suppose that,  
03:02:09 4 yes, when Second Amendment rights are violated, there is  
03:02:12 5 irreparable harm.

03:02:13 6 And, finally, there's not much to say about the issue  
03:02:16 7 of the public --

03:02:17 8 THE COURT: Well, are you using the Renton argument  
03:02:20 9 for the First Amendment analysis as well, saying essentially  
03:02:24 10 because they can't train within the city's borders, because  
03:02:30 11 there is no place within the city's borders, they can't  
03:02:31 12 discuss the training of the firearms within the city's  
03:02:35 13 borders?

03:02:35 14 MR. GURA: The Renton argument goes to both the first  
03:02:38 15 and Second Amendment arguments. It goes to the First  
03:02:41 16 Amendment argument to the extent that training -- it's not a  
03:02:43 17 matter of simply discussion. What's banned here is not  
03:02:45 18 discussion. We agree with the City. They haven't banned the  
03:02:48 19 four-hour classroom aspect of it, when, I suppose, we should  
03:02:52 20 be pleased with that.

03:02:53 21 But the -- but they did ban sitting down with an  
03:02:59 22 instructor who is showing a person how to operate a firearm.  
03:03:03 23 That is training and that is banned. And so since that is  
03:03:07 24 protected First Amendment activity, just like the Court found  
03:03:10 25 certain adult establishments are protected First Amendment

03:03:14 1 activity, it doesn't have any less protection than those adult  
03:03:18 2 establishments.

03:03:19 3 And so if you want a zone for any secondary effects  
03:03:22 4 that might exist, you can do that, so long as there is no  
03:03:26 5 total elimination of the ability to conduct it.

03:03:29 6 Renton is also relevant for the Second Amendment  
03:03:32 7 argument, because it's a general principle of constitutional  
03:03:35 8 law that zoning is an authorized and appropriate manner of  
03:03:38 9 regulating land uses. The Supreme Court upheld that back in  
03:03:43 10 1926. Nobody contests that today. Certainly we have no  
03:03:47 11 position on that.

03:03:47 12 But just like any other kind of regulation, it can't  
03:03:50 13 be stretched to outright prohibit the exercise of a  
03:03:54 14 constitutional right, and so in the zoning field, Renton  
03:03:58 15 controls both. If you have a right to do it, you should be  
03:04:01 16 able to do it somewhere.

03:04:02 17 Now, the City has the ability and the power to study  
03:04:05 18 it, to make findings, to make conclusions, to have  
03:04:09 19 Ms. Scudiero think about the matter some more, perhaps have  
03:04:11 20 some conversations with the City Council, and come to an  
03:04:15 21 ordinance that we might never challenge in a billion years.  
03:04:18 22 But that's not what they did. What they did is enacted a  
03:04:22 23 complete ban.

03:04:22 24 And, finally, the public harm. I don't think there's  
03:04:24 25 much else to say about it. The City acknowledges that people



03:25:53 1 ranges in Chicago --

03:25:54 2 THE COURT: Well, no, they need to transport their  
03:25:57 3 guns, right, in order to go to other --

03:25:58 4 MR. WORSECK: Well, they would transport them to the  
03:26:00 5 suburbs; they wouldn't transport them to a single spot in the  
03:26:02 6 city where --

03:26:02 7 THE COURT: So you're not arguing that the  
03:26:04 8 transportation of the gun itself is the harm?

03:26:07 9 MR. WORSECK: It's a combination. It's the  
03:26:09 10 transportation and the congregating.

03:26:10 11 You heard from --

03:26:11 12 THE COURT: Well, you can't really argue just the  
03:26:14 13 transportation, because they have to leave the city with their  
03:26:16 14 guns as it is.

03:26:17 15 MR. WORSECK: Well, Sergeant Bartoli testified that  
03:26:22 16 one of the concerns with gun ranges is theft, and criminals  
03:26:25 17 will case out the range and they will take note of the cars  
03:26:28 18 coming and going, assume that those cars have weapons in them.  
03:26:32 19 So once the patron leaves the range, who knows what's going to  
03:26:36 20 happen once they get a few blocks away? They could --

03:26:39 21 THE COURT: Based on what? He didn't give us any  
03:26:41 22 examples of that, any studies of that, any incidents that  
03:26:44 23 occurred under his watch, right?

03:26:47 24 MR. WORSECK: I believe he said based on his  
03:26:52 25 experience that the theft of arms is a very serious problem in

03:28:05 1 a guard, a CPD officer. The people using the ranges, police  
03:28:12 2 officers, are highly trained. They are professionals. You  
03:28:15 3 heard about the hour -- the 80 hours of training that recruits  
03:28:20 4 go through.

03:28:20 5 THE COURT: Okay. So the one harm so far that you've  
03:28:22 6 elucidated, on shaky ground, is that someone may steal  
03:28:27 7 weapons, criminals may steal weapons outside of the range.

03:28:31 8 MR. WORSECK: Well, there's also --

03:28:31 9 THE COURT: Summarize your other facts that you've  
03:28:34 10 presented.

03:28:35 11 MR. WORSECK: There's also the issue of congregation  
03:28:38 12 at the range itself. We heard lots of testimony about the  
03:28:40 13 serious safety issues that plopping down a mobile trailer in a  
03:28:44 14 parking lot are going to present, in terms of security and  
03:28:47 15 safety, not only of the patrons of the site, but of passersby,  
03:28:50 16 interested parties, employees of the businesses on the site,  
03:28:53 17 customers of the businesses on the site, all being around a  
03:28:56 18 place where guns are being transported, carried, congregating,  
03:29:00 19 and shot.

03:29:01 20 And the thing to keep in mind, your Honor, is even if  
03:29:04 21 the plaintiffs are going to supply the weapons at their mobile  
03:29:08 22 range, there's no guarantee, and they have no protocol in  
03:29:12 23 place for ensuring the customers don't bring weapons to that  
03:29:16 24 range.

03:29:16 25 But even more importantly, the injunction they are

03:29:19 1 seeking in this case is an injunction of the ban in toto.  
03:29:23 2 That would allow any entity to come into the city and open up  
03:29:27 3 a shooting range and run it the way they want to run it  
03:29:29 4 without any supervision by the City.

03:29:31 5 So the fact that the plaintiffs may think they are  
03:29:33 6 doing themselves a favor by supplying the guns, rather than  
03:29:36 7 having the patrons bring them, provides no assurance that some  
03:29:40 8 other operator wouldn't require the patrons to bring their  
03:29:45 9 weapons. And then, again, you would have the same problems  
03:29:47 10 with transportation and congregating at the range site.

03:29:55 11 And the connection, your Honor, between  
03:29:59 12 transportation and the ban on ranges itself is something that  
03:30:03 13 the plaintiffs' scope of relief acknowledges itself. They are  
03:30:06 14 not seeking just an in toto ban on gun ranges. They are  
03:30:12 15 seeking an injunction against numerous other provisions in the  
03:30:16 16 City's ordinance, including the transportation ban and the  
03:30:18 17 restrictions on carrying guns outside your home and the  
03:30:21 18 requirements of having a CFP and registered firearms.

03:30:24 19 They realize that they need to open those floodgates  
03:30:27 20 in order to get the kind of relief they want to have in terms  
03:30:31 21 of having people come to the range and use the range.

03:30:38 22 And, you know, the problems of congregating with  
03:30:44 23 weapons are very serious, because they -- and this is  
03:30:47 24 testimony that was elicited in the City Council -- they will  
03:30:51 25 turn -- there's a strong likelihood that every day

03:30:54 1 interpersonal conflicts will turn violent, if people have  
03:30:57 2 guns. Where two people are arguing in a parking lot may just  
03:31:02 3 result in some fisticuffs, or maybe not even that, if people  
03:31:05 4 have weapons, tensions escalate, fears escalate, and you can  
03:31:09 5 have deadly consequences. That was evidence from numerous  
03:31:12 6 witnesses and the findings themselves of the City Council that  
03:31:16 7 was presented before the City Council.

03:31:17 8 And Mr. Pearson himself, again, testified that if  
03:31:25 9 they had problems, they would call the police. That is an  
03:31:28 10 imposition on the CPD. It places CPD officers at risk.  
03:31:32 11 There's no reason why they should be called out and that  
03:31:35 12 burden should be put on the City to police these mobile ranges  
03:31:40 13 in parking lots, when the plaintiffs have not -- as I think  
03:31:44 14 was very clear from Mr. Pearson's testimony -- not come  
03:31:47 15 anywhere near -- anywhere close to doing the proper homework  
03:31:51 16 for setting up these ranges safely.

03:31:53 17 Your Honor, on the First Amendment issues that have  
03:32:00 18 been raised in this case, plaintiffs, they made the argument  
03:32:02 19 in their closing, they've made the argument in their briefs,  
03:32:05 20 they have put on no evidence of a First Amendment case.

03:32:08 21 There's no evidence that speech rights or education  
03:32:11 22 rights or training rights are being denied by anyone on the  
03:32:17 23 City's ban on shooting ranges. The only thing that's barred  
03:32:21 24 is the discharge of a gun. Discharge is not speech.

03:32:24 25 Mr. Gura said, Well, we submit -- we agree that the

03:36:36 1 I know what they are asking, but, I mean, the scope of -- I  
03:36:38 2 can't order the City to do something except to say that the  
03:36:41 3 injunction would be that you must permit a firing range within  
03:36:47 4 the City. Let's say that's the ruling.

03:36:49 5 Then wouldn't you have all of your normal remedies in  
03:36:55 6 zoning and all of your other challenges to him? What I'm  
03:37:00 7 saying -- I know that wouldn't make you happy, Mr. Gura. You  
03:37:04 8 want me to say everything has got to come in regardless. But  
03:37:08 9 isn't that the practical impact of what would happen here?

03:37:11 10 MR. WORSECK: Well, assuming that the City would have  
03:37:13 11 the full breadth of its normal powers under the zoning code,  
03:37:17 12 the building code, et cetera, to police the public safety,  
03:37:21 13 health, and welfare, we would have to ask basically, What's  
03:37:24 14 the point of granting an injunction on a preliminary basis if  
03:37:27 15 the range isn't even going to open? I mean, really, why are  
03:37:32 16 we even here, if that's all that would happen? There's really  
03:37:35 17 no point.

03:37:35 18 The consequence that would flow from that is that it  
03:37:38 19 would force the City to start, perhaps, drafting  
03:37:40 20 regulations --

03:37:41 21 THE COURT: Right.

03:37:42 22 MR. WORSECK: -- which all of our declarations that  
03:37:44 23 we've submitted into evidence from the various representatives  
03:37:47 24 of City departments establish will take months.

03:37:50 25 These departments need to investigate the issue.

03:37:53 1 They need to familiarize themselves with the issue. They need  
03:37:57 2 to research other jurisdictions. They need to prepare their  
03:37:59 3 own regulations. They need to go before City Council  
03:38:03 4 committees, they need to be passed by City Council. That will  
03:38:08 5 take months, if not more than twelve months.

03:38:10 6 And there's -- it would be improper to put the City  
03:38:13 7 to that burden on a preliminary basis in the context of a  
03:38:17 8 preliminary injunction ruling. If the range isn't going to  
03:38:19 9 open, yet, the City would start -- would be put to the burden  
03:38:22 10 of developing regulations, that is basically giving the  
03:38:25 11 plaintiffs the ultimate relief that they would seek. And  
03:38:28 12 that's something that should await final judgment on the  
03:38:31 13 merits. It should not be ordered on a preliminary basis, when  
03:38:35 14 the plaintiffs would not be getting any benefit. The range  
03:38:39 15 would be closed, and no one would be getting trained.

03:38:45 16 And, your Honor, with respect to the mobile range,  
03:38:50 17 that's a separate and distinct harm that would beset the City,  
03:38:54 18 if you were to grant the preliminary injunction. And, again,  
03:39:00 19 it's clear from the testimony that the plaintiffs have simply  
03:39:04 20 not done their homework and have not taken this seriously. I  
03:39:08 21 mean, they really haven't.

03:39:10 22 And it shows, also what will happen when you don't  
03:39:14 23 have regulations. It's only because the plaintiffs filed the  
03:39:17 24 lawsuit and your Honor granted discovery that the City was  
03:39:20 25 able to learn anything about this mobile range.

03:40:49 1 site you're operating in are very much important to how your  
03:40:53 2 safety protocol is going to look.

03:40:55 3 Plaintiffs are waiting for you to rule, and then they  
03:41:00 4 will get around to developing their safety protocol. That has  
03:41:03 5 things exactly backwards. They should be presenting to your  
03:41:06 6 Honor a coherent vetted safety plan now, so that your Honor  
03:41:10 7 can see if that would be appropriate. They're instead waiting  
03:41:14 8 for you to rule, and then hopefully they will get around to  
03:41:17 9 it.

03:41:18 10 The operators of the range itself, your Honor, are  
03:41:22 11 very problematic. The SAF has no experience at all with  
03:41:27 12 running any sort of shooting range, but it was the SAF who  
03:41:32 13 took it upon itself to pick these two sites in the city as  
03:41:36 14 being good locations for a mobile shooting range. Ms. Versnel  
03:41:41 15 thought it was appropriate to sign a contract with Accurate  
03:41:45 16 Perforating, even though that company has a hundred employees,  
03:41:48 17 there are eight other businesses that operate on its property.

03:41:52 18 THE COURT: But the testimony was that these mobile  
03:41:54 19 ranges are next to Sam's Clubs and residences and shopping  
03:41:59 20 malls and in parking lots, and there's not been any  
03:42:02 21 difficulties with them in those places. That was not  
03:42:06 22 challenged in any effective way, right? That -- that's the  
03:42:11 23 way it stands right now from the first witness we heard from.

03:42:15 24 MR. WORSECK: I believe that testimony was about  
03:42:17 25 stationary ranges, your Honor.

03:42:17 1 THE COURT: No --

03:42:17 2 MR. WORSECK: Being --

03:42:19 3 THE COURT: -- about some of the mobile ranges being  
03:42:23 4 next to places that were businesses. I mean, there's not been  
03:42:28 5 a conclusion from anyone that a mobile range next to a  
03:42:35 6 shopping mall is dangerous. I haven't heard that testimony.

03:42:39 7 MR. WORSECK: We -- what we have in this case on the  
03:42:42 8 facts, your Honor, are the two sites that plaintiffs have  
03:42:45 9 chosen. We're not talking about shopping malls. We're  
03:42:48 10 talking about --

03:42:48 11 THE COURT: No. What we have on the facts is a man  
03:42:50 12 who stood here and told this Court that those mobile ranges  
03:42:54 13 are placed in places where there's high-traffic area, and it  
03:43:00 14 goes against your argument that it's so dangerous to place one  
03:43:03 15 of these here, and that they don't have any problems with it.

03:43:07 16 Then we have two locations proposed where they can go  
03:43:11 17 and conjecture as to whether it's going to be placed in one  
03:43:15 18 angle or another angle, near the railroad tracks, near the  
03:43:19 19 residences, et cetera, but not one bullet has left those other  
03:43:22 20 ranges and caused harm to anyone. Those are the facts.

03:43:25 21 MR. WORSECK: Well, your Honor, we don't know,  
03:43:27 22 because the plaintiffs haven't presented their safety plan,  
03:43:30 23 how they would run the operation at these two sites. And  
03:43:33 24 Mr. Hart, who I believe your Honor is referring to, did not  
03:43:36 25 pick these sites. He did not pick this range. That was



03:52:07 1 She has her CFP. She has her gun. She is perfectly entitled  
03:52:10 2 and able to exercise her right to self defense in the home.

03:52:24 3 Your Honor, one final point I would like to make, and  
03:52:25 4 this goes to the last factor of the preliminary injunction  
03:52:28 5 analysis. And that looks at the harm to the public interest,  
03:52:37 6 as essentially distinct from the harm to the City.

03:52:39 7 We think there's a lot of overlap between the two.  
03:52:41 8 The harm to the public would be the exact same harms that  
03:52:44 9 would beset the City by allowing this mobile range to open, by  
03:52:50 10 allowing ranges in general to open. But even beyond those  
03:52:54 11 there is a separate and distinct harm to the public interest,  
03:52:57 12 and that is that an injunction, especially on a preliminary  
03:53:03 13 basis, would take issue with the kind of city that Chicago is  
03:53:07 14 as a city.

03:53:08 15 And I'm not talking about a city that has vigorous  
03:53:11 16 gun regulation, but I'm talking about Chicago being a city  
03:53:15 17 where businesses and enterprises are highly regulated.  
03:53:18 18 Chicago has determined, through its City Council, that having  
03:53:21 19 a vigorous regulation -- zoning regulations, building code  
03:53:26 20 regulations, environmental regulations -- of businesses is the  
03:53:29 21 best way to have optimal public health, safety, and welfare in  
03:53:34 22 the city.

03:53:34 23 Chicago is not Houston. The plaintiffs like to say,  
03:53:38 24 Well, Houston doesn't have zoning, and they get along just  
03:53:41 25 fine. Chicago is not Houston. Chicago has determined that

03:53:44 1 regulations lead to more public health and welfare than no  
03:53:50 2 regulations.

03:53:51 3 Even with respect to First Amendment conduct in the  
03:53:54 4 city, Chicago has vigorous regulations. For instance, if you  
03:53:58 5 want to hold a parade downtown or anywhere in the city, you  
03:54:02 6 need to go through a permitting process. And, of course,  
03:54:05 7 we've talked earlier about adult uses. Those are highly  
03:54:08 8 regulated in the city.

03:54:09 9 But by allowing ranges to operate without any  
03:54:12 10 regulation by the City, the Court would be acting contrary to  
03:54:16 11 the decision of the people of Chicago that they wish to live  
03:54:19 12 in a city that has regulation. And that would be directly  
03:54:23 13 contrary to the legislature's judgment that business and  
03:54:26 14 activities taking place be ordered and regulated.

03:54:29 15 And we pointed this out in our response brief, but  
03:54:33 16 Judge Gottschall found exactly this kind of harm to the public  
03:54:36 17 interest to be grounds for counseling against preliminary  
03:54:43 18 injunctive relief.

03:54:44 19 THE COURT: In what case?

03:54:46 20 MR. WORSECK: That is in the Aircraft Owners case,  
03:54:48 21 your Honor. We cite that in our response brief.

03:54:54 22 Your Honor, I just want to close with, again, on the  
03:54:59 23 five factors of the preliminary injunction analysis, the  
03:55:03 24 plaintiffs make an argument only with respect to one.

03:55:06 25 We think at most it's an open question on likelihood

## CERTIFICATE OF SERVICE

On this, the 7<sup>th</sup> day of December, 2010, I served a true and correct copy of the foregoing Appellants' Separate Appendix on the following by Federal Express:

Suzanne M. Loose  
City of Chicago Department of Law  
Appeals Division  
30 North LaSalle Street, Suite 800  
Chicago, IL 60602

I further certify that on this, the 7<sup>th</sup> day of December, 2010, I served the electronic copy of the foregoing Appellants' Separate Appendix on above-listed counsel by email to [sloose@cityofchicago.org](mailto:sloose@cityofchicago.org).

The brief was also filed this day by dispatch to the Clerk via Federal Express.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 7<sup>th</sup> day of December, 2010.



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Alan Gura