IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRACEY HANSON, et al., Plaintiffs, v. DISTRICT OF COLUMBIA, et al., Defendants.	)	Case No. 09-CV-0454-RMU **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW the Plaintiffs, Tracey Ambeau Hanson, Gillian St. Lawrence, Paul St. Lawrence, and the Second Amendment Foundation, Inc., by and through undersigned counsel, and submit their Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment.

Dated: April 13, 2009

Respectfully submitted,

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PRELIMINARY STATEMENT

This case presents what is arguably the easiest Second Amendment question that might come before a federal court today, seeing as the question has just been answered by the Supreme Court less than a year ago: may the District of Columbia ban handguns of the kind in common use by Americans for ordinary lawful purposes? The answer: no. *Heller* v. *District of Columbia*, 128 S. Ct. 2783 (2008).

Notwithstanding the Supreme Court's express language dismantling the District's handgun ban, the city enacted another far-reaching handgun ban, excluding from private ownership any handgun that does not appear on the State of California's "Roster of Handguns Certified for Sale." This attempt to enumerate every single handgun that might be legally sold is, predictably, too ambitious a task not to yield arbitrary and irrational results. But California's pre-*Heller* rostering program cannot possibly be considered constitutional, founded, as it is, on the theory specifically rejected in *Heller* as inconsistent with the Second Amendment – that common firearms might be banned based merely on the government's assessment that their possession is not in the public interest.

As the legislative record demonstrates, the California law consciously sought to alter the choices made in the mass market for common guns – precisely the sort of conduct proscribed by the Second Amendment. And as Defendants now admit in their answer, some of the California law's most restrictive aspects do not advance, and might even reduce, public safety.

Heller did not eliminate the government's ability to ban weapons that are outside the scope of Second Amendment protection. But as the three handguns at issue in this case demonstrate, Defendants' new scheme is intentionally designed to and does ban guns that easily pass the *Heller* test for protected Second Amendment arms. Indeed, the exact same model handgun at issue in *Heller*, which the Supreme Court ordered Defendants to permit not one year ago, has been re-banned by the city and denied to plaintiff Paul St. Lawrence because it has not been (and cannot be) placed on the "Roster of Handgun Certified for Sale." Mr. St. Lawrence's wife, Gillian, was denied permission to own a handgun that had once been "rostered" and approved for sale, but which is now no longer legal to own in Washington, DC because the gun's manufacturer will not pay an annual fee in perpetuity to keep it on the list. And plaintiff Tracey Hanson was denied permission to own a handgun because, effectively, it is the wrong color.

It is impossible to reconcile the roster of arms approved for sale in the Bill of Rights with that conjured by the operation of California law. The latter must yield.

STATEMENT OF FACTS

Defendants' Handgun Rostering Program

The facts of this case are not in dispute. Defendants prohibit the possession of any firearm that is not registered according to city law. Statement of Undisputed Material Fact ("UMF") 1. Registration certificates are unavailable for any prohibited "unsafe firearm." UMF 2. With few exceptions, D.C. Code § 7-2505.04 provides that "a pistol that is not on the California Roster of Handguns Certified for Sale, (also known as the California Roster of Handguns Determined Not to be Unsafe), pursuant to California Penal Code § 12131, as of January 1, 2009, may not be manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of

Columbia." UMF 3.[1]

Since 2007, a center-fire[2] semi-automatic[3] handgun cannot make the roster if it does not have both a chamber load indicator and, if it has a detachable magazine, a magazine disconnect mechanism. UMF 4. Since 2006, a rimfire[4] semi-automatic handgun must have a magazine disconnect mechanism if it has a detachable magazine. UMF 5. However, handguns rostered prior to the effective dates of these requirements can remain rostered despite lacking these features. UMF 6.

A magazine disconnect mechanism is "a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol." UMF 7. A chamber load indicator ("CLI") is "a device that plainly indicates that a cartridge is in the firing chamber." UMF 8. Not all CLIs satisfy the California requirement. Under California law,

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[1]Defendants' Answer disingenuously denied that this law was effective, pending congressional review. Exhibits A, B, and C tell a different story. The law was always effective as it was passed under temporary emergency authority, expiring concurrently with the congressional review period.

[2]Most handguns use center-fire ammunition, which fires a bullet when the center of the cartridge is struck by the gun's firing pin, igniting the primer.

[3]A semi-automatic handgun is handgun that fires one bullet each time the trigger is pulled, with the firing of each bullet causing the next round to be loaded into the chamber from a magazine. Most handguns in the United States are semi-automatic. Almost all the rest are revolvers, which hold several rounds in a rotating cylinder and also fire one bullet with each pull of the trigger. Nothing in the challenged laws, or this litigation, relates to fully-automatic weapons (machine guns), which are the subject of other specific legislative enactments.

[4]Rimfire ammunition, which is fired when struck on its rim by the gun's firing pin, is primarily used in the smallest calibers. For technical reasons, chamber load indicators are not feasible for rimfire ammunition.

> [a] device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.

UMF 9.

Although a CLI is sufficient if it is "designed and intended to indicate to a reasonable adult user" that the firearm is loaded, Cal. Penal Code § 12126(c), in practice the sufficiency of the CLI is determined by a different standard. The California Department of Justice Bureau of Firearms, the agency responsible for implementing the roster law, tests the sufficiency of CLIs by asking its employees if they understand the CLI – and when the regulatory authority's employees allegedly fail to understand the CLI, regardless of what the CLI is "designed and intended to indicate to a reasonable adult," the CLI is ruled inadequate. UMF 10.

Given the rarity of CLIs and magazine disconnect devices, handguns lacking these features are in common use today, comprising the overwhelming majority of handguns. UMF 11. This much is obvious upon any cursory survey of firearms as to be within judicial notice, akin to observing that most American cars have power windows. There are, however, some precise statistics. According to one survey, CLIs and magazine disconnect devices are included on no more than 11% and 14% of handguns, respectively. Jon Vernick, et al., "'I Didn't Know the Gun Was Loaded': An Examination of Two Safety Devices That Can Reduce the Risk of Unintentional Firearm Injuries," 20 Journal of Public Health Policy No. 4 at 433 (1999).

Indeed, the rarity of CLIs and magazine disconnect mechanisms was a fact specifically relied upon by the California Legislature in mandating these features as part of that state's handgun roster law, now adopted by Defendants. California legislators specifically considered that

CLIs and magazine disconnects are available on only perhaps 11% and 14% of handguns, respectively, as proposed by the author of the bill mandating these features. UMF 12. Because CLIs and magazine disconnect mechanisms were viewed as beneficial, it was hoped that mandating these features would alter the firearms market. UMF 13. "[I] is arguable that a requirement in California would 'drive' the technology of chamber load indicators." Exh. B, California Senate Public Safety Committee Report, p. 9. "It might also be assumed that a mandate in California would drive technology in the market for magazine disconnect devices." Id., p. 10.

Also beyond dispute are several of the Complaint's factual allegations that Defendants will not deny, and which are thus deemed admitted per Fed. R. Civ. Proc. 8(b)(6). A handgun safety mechanism may fail or be misused by the user of a handgun. UMF 14. A chamber load indicator is a mechanical device that may fail or be misinterpreted by the user of a handgun. UMF 15. A magazine disconnect mechanism is a mechanical device that may fail. UMF 16.

Given the reality that CLIs and magazine disconnect mechanisms are not infallible or immune from misuse, Defendants do apparently admit to the following: Defendants require that prospective handgun purchasers undergo a five hour gun safety course from a certified instructor. UMF 17. During these courses, instructors certified by Defendants teach the fundamental rule of gun safety holding that all guns should be treated at all times as though they are loaded, to prevent reliance on potentially faulty or misinterpreted mechanical devices and to promote safe gun handling habits. UMF 18. Instructors certified by Defendants teach that reliance on safety mechanisms, chamber load indicators, or magazine disconnect devices is not an appropriate substitute for safe gun handling practices. UMF 19.

Listings on the California handgun roster are valid for one year, and must be renewed annually, including payment of an annual fee, prior to expiration to remain valid. UMF 20. The California Department of Justice charges firearms manufacturers, importers, and dealers annual fees, ostensibly to operate the handgun roster program. Any handgun whose manufacturer fails to pay the required fees may be excluded from the roster for that reason alone. UMF 21. The initial and renewal annual listing fees for inclusion on the handgun roster are $200. UMF 22.

Other than the California DOJ, only the manufacturer/importer of a handgun model is authorized to submit that handgun model to a DOJ-Certified Laboratory for testing. UMF 23. A handgun can remain on the roster if its manufacturer/importer goes out of business or discontinues the model, provided that the model is not being offered for sale to licensed dealers, and "a fully licensed wholesaler, distributor, or dealer submits a written request to continue the listing and agrees to pay the annual maintenance fee." UMF 24. So long as a handgun is sold to dealers outside of California, the handgun's manufacturer can cause the sale of that handgun to be forbidden inside California by failing to submit the gun for testing in that state or refusing to pay the annual $200 fee. UMF 25.

A manufacturer/importer or other responsible party may submit a written request to list a handgun model that was voluntarily discontinued or was removed for lack of payment of the annual maintenance fee. The request may be approved, and the handgun restored to the "safe gun" roster, provided the fee is paid. UMF 26.

Defendants exempt from the handgun rostering requirement: (1) Firearms defined as curios or relics under federal law; (2) The purchase of any firearm by any law enforcement officer or agent of the District or the United States; (3) Pistols that are designed expressly for use in

Olympic target shooting events, as defined by rule; (4) Certain single-action revolvers, as defined by rule; and (5) The sale, loan, or transfer of any firearm that is to be used solely as a prop during the course of a motion picture, television, or video production by authorized people related to the production. UMF 27.

California, which defines and administers the handgun rostering program deferred to by Defendants, recognizes various exemptions to the rostering program not recognized by Defendants. It is not illegal in California to import an unrostered handgun when moving into the state without the intention of selling it, nor is it illegal in California to possess or use an unrostered handgun that is otherwise lawful to possess or use. UMF 28. California also exempts private party transfers, intra-familial transfers including gifts and bequests, various loans, and various single-action revolvers. UMF 29.[5]

Defendants' Enforcement of the "Handgun Roster" Program Against Plaintiffs

On March 2, 2009, Defendants denied Plaintiff Tracey Hanson's application to register a Springfield Armory XD-45 Tactical 5" Bi-Tone stainless steel/black handgun in .45 ACP, model number XD9623, as that handgun is not on the California Roster of Handgun Certified for Sale. UMF 30. Other models of this identical gun – but in different colors – are listed on the approved handgun roster and are thus available to Ms. Hanson: the XD-45 Tactical 5" .45 ACP in Black (model XD9621), the XD-45 Tactical 5" .45 ACP in OD Green (model XD9622), and the XD-45 Tactical 5" .45 ACP in Dark Earth (XD9162). UMF 31.

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[5]"Single" or "double" action refers to the gun's trigger function, one "action" being the effect of drawing back the hammer, another "action" being the effect of dropping the hammer. Guns can be designed to operate in single-action, double-action, or effectively both (if a gun has a hammer that might be retracted either manually or by pulling the trigger).

The Springfield Armory XD-45 series guns, including Plaintiff Hanson's gun, all have CLIs as a standard feature. UMF 32. However, Springfield Armory's CLIs have been rejected by California regulators as inadequate, because employees of the regulating agency claim not to understand the CLI's meaning. Springfield Armory XD-45s that are not grandfathered on the California handgun roster prior to 2007, including Plaintiff Hanson's gun, are therefore not eligible for rostering. UMF 33.[6]

Defendants denied plaintiff Gillian St. Lawrence's application to register a Para USA (Para Ordnance) P1345SR / Stainless Steel .45 ACP 4.25" handgun, as that handgun is not on the California Roster of Handguns Certified for Sale. UMF 34. The Para USA P1345SR was listed on California's Roster of Handguns Certified for Sale until December 31, 2005. UMF 35. The listing of that handgun simply expired and was not renewed. California regulators have no records indicating that there was any cause for removal of that gun's listing. UMF 36.

The handgun at issue in *District of Columbia* v. *Heller*, 128 S. Ct. 2783 (2008), was a High Standard 9-shot revolver in .22 with a 9.5" Buntline-style[7] barrel. UMF 37. Plaintiff Paul St. Lawrence sought to register an identical gun, but Defendants denied the registration as the gun does not appear on the California Roster of Handguns Certified for Sale. UMF 38.

Plaintiff Second Amendment Foundation, Inc. has individual members who are impacted by the challenged laws. UMF 39. Vindication of the right to keep and bear arms is germane to that organization's purposes. UMF 40.

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[6]The XD-45, like almost all semi-automatic handgun models, also lacks a magazine disconnect device.

[7]A "Buntline" is a Western-style extra-long barrel revolver, named for 19th-century novelist Ned Buntline who was said to commission such guns for famous personalities of the day.

SUMMARY OF ARGUMENT

This case begins and ends with the fact that California (and, by extension, Defendants) will not roster handguns lacking certain features which are missing from many, if not the vast majority, of handguns of the kind in common use throughout the United States. The challenged laws thus constitute a massive ban on handguns whose possession and use is secured by the Second Amendment.

In unsuccessfully defending its blanket handgun ban, the city argued that it could unilaterally determine which arms were too dangerous to be allowed ordinary citizens, and that handguns as a class of weapons failed to meet its criteria. This argument was rejected both by the D.C. Circuit and the Supreme Court. The city's disdain of particular arms does not enable it to ban them if their possession is protected by the Second Amendment. The test is whether the arms at issue are of the kind that would be in common use for lawful purposes.

Defendants' handgun rostering program also violates basic principles of equal protection, in that it arbitrarily makes distinctions between otherwise identical firearms, and bars some classes of people from possessing handguns that are perfectly permissible to others. These practices cannot survive Fifth Amendment scrutiny.

ARGUMENT

I. THE SECOND AMENDMENT PROTECTS THE POSSESSION OF ARMS IN COMMON USE FOR LAWFUL PURPOSES, INCLUDING HANDGUNS.

"[T]he sorts of weapons protected [by the Second Amendment are] those 'in common use at the time.'" *Heller*, 128 S. Ct. at 2817 (quoting *United States* v. *Miller*, 307 U. S. 174, 179 (1939)). "[T]he Second Amendment does not protect those weapons not typically possessed by

law-abiding citizens for lawful purposes." *Heller*, 128 S. Ct. at 2815-16. Handguns plainly satisfy this test. "It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon . . . Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition on their use is invalid." *Heller*, 128 S. Ct. at 2818.

Defendants are still free to ban "dangerous and unusual weapons," *Heller*, 128 S. Ct. at 2817, including "sophisticated arms that are highly unusual in society at large." Id. And Defendants can ban those weapons which do not meet the historic legal definition of "arms" as used in the Second Amendment – "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 128 S. Ct. at 2791 (citing 1 A New and Complete Law Dictionary (1771); N. Webster, American Dictionary of the English Language (1828) (reprinted 1989)).[8] But handguns are protected Second Amendment arms that cannot be banned – even if the city believes they are excessively dangerous.

II. DEFENDANTS' HANDGUN ROSTERING PROGRAM VIOLATES THE SECOND AMENDMENT IN THAT IT BANS PROTECTED HANDGUNS.

The handguns banned by Defendants' rostering program – including guns without CLIs and/or magazine disconnect mechanisms, guns that have not been (and cannot be) submitted by their manufacturer for government testing, and guns that would be perfectly acceptable by the government but for lack of an annual listing fee – are all nonetheless handguns of the kind in common use protected by the Second Amendment. None of these characteristics render a firearm "dangerous or unusual" or establish that it is not of the kind in common use for lawful purposes.

[8] "[A]ll firearms constituted 'arms.'" *Heller*, 128 S. Ct. at 2791 (citing1 J. Trusler, The Distinction Between Words Esteemed Synonymous in the English Language 37 (1794)).

The CLIs and magazine disconnect mechanisms required for rostering are rare features, found on perhaps only 11% and 14% of all handguns in the marketplace. Considering California's particularly harsh and entirely arbitrary enforcement of its CLI requirement, that number of qualified CLI's is surely lower than even 11% of the market.

Many guns are still protected by the Second Amendment even if they have not been manufactured for many years prior to the advent of the California Handgun Roster, or have been manufactured by a company that does not wish to sell its products in one particular state. And plainly, a gun model deemed "not unsafe" does not somehow alter its characteristics and become "unsafe" simply because a check has not been cashed in Sacramento within the year.

Having been ordered by the Supreme Court not to ban handguns because handguns, as a class of arms, have Second Amendment protection regardless of the city's safety theories, the city cannot come back less than a year later and ban handguns merely because they are deemed "unsafe." The three handguns denied Plaintiffs by operation of Defendants' handgun rostering program are plainly within the Second Amendment's protection. That this legislation is defiant of the Supreme Court's decision is illustrated by its operative banning of Paul St. Lawrence's High Standard .22 Buntline-style revolver – the exact same gun the Supreme Court ordered the city not to ban less than one year ago. This gun might not appear on the city's list of approved handguns, but according to the Supreme Court, it appears in the Second Amendment.

The handguns denied Tracey Hanson and Gillian St. Lawrence are likewise plainly within the Second Amendment's protection. They cannot be considered "dangerous and unusual" by any stretch of imagination. Hanson's gun appears on Defendants' approved list, albeit in different colors, but is unavailable in the black/stainless finish because it was not made available for testing

in that particular color before the CLI and magazine disconnect requirements came into effect. It is not as though Hanson's gun failed any safety testing; California regulators refuse to test the gun because it does not contain features missing from the overwhelming majority of American handguns – as acknowledged by the California Legislature in enacting the requirements. Gillian St. Lawrence's gun was once deemed safe enough for sale, but is only unavailable because its listing was not renewed. The gun did not suddenly become dangerous on January 1, 2006, when its listing expired because the manufacturer would not pay a fee and fill out a piece of paper.

California's legislature, operating in a pre-*Heller* environment, approached the handgun issue backwards from a constitutional, post-*Heller* perspective. The legislature sought to declare almost all handguns "unsafe" for failing to conform to its design preferences, or for the manufacturer's inability or unwillingness to pay for and participate in the state's regulatory scheme. Consciously, the state sought to "drive" the market towards its preferred outcomes. But *Heller* stands for the proposition that it is the regulatory environment that must accommodate itself to the choices made by the lawful, constitutionally-protected market for arms, and not the other way around.

III. DEFENDANTS' HANDGUN ROSTERING PROGRAM VIOLATES THE FIFTH AMENDMENT AS IT DEPRIVES INDIVIDUALS OF DUE PROCESS.

It has long been understood that the Fifth Amendment's guarantee of due process includes the concept that individuals may not be deprived of the equal protection of the law. *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954). Because the handgun rostering program is riddled with exceptions, and inherently yields inconsistent results, it invites serious questions about Plaintiffs' rights to equal protection.

"[C]lassifications . . . that impinge upon the exercise of a 'fundamental' right" are presumptively unconstitutional unless the government can demonstrate that the law satisfies strict scrutiny. *Plyler* v. *Doe*, 457 U.S. 202, 216-17 (1982) (footnote omitted). Although *Heller* did not announce a specific standard of review for cases raising Second Amendment concerns, the Supreme Court did conclude that "[b]y the time of the founding, the right to have arms had become fundamental for English subjects." *Heller*, 128 S. Ct. at 2798 (citation omitted). The Supreme Court thus specifically rejected rational basis as the standard of review for Second Amendment claims, and strongly suggested that the standard of review would be a rigorous one:

> Obviously, [rational basis] could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms.

Heller, 128 S. Ct. at 2818 n. 27 (citing *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, n. 4 (1938)).

Requiring strict scrutiny in evaluating Second Amendment questions does not spell the end of all gun laws because the government will often have a compelling state interest in the area, that may be constitutionally addressed. Strict scrutiny is context-sensitive and is "far from the inevitably deadly test imagined by the Gunther myth." Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 Vanderbilt L. Rev. 793, 795 (2006). The Fifth Circuit has long employed a version of strict scrutiny in Second Amendment cases, allowing those laws that are

> limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country,

United States v. *Emerson*, 270 F.3d 203, 261 (5th Cir. 2001). Under that standard, that court has

upheld the more basic federal gun laws. *See*, *e.g. Emerson* (upholding gun prohibition for people covered by restraining orders); *United States* v. *Patterson*, 431 F.3d 832, 835 (5th Cir. 2005) (drug addicts); *United States* v. *Everist*, 368 F.3d 517, 519 (5th Cir. 2004) (felons); *United States* v. *Darrington*, 351 F.3d 632, 635 (5th Cir. 2003) (felons).

But the sort of classifications created by the handgun roster are unacceptable under any sort of scrutiny reserved for enumerated rights. First, there are the classifications among different guns. Why is the Springfield Armory XD-45 acceptable in almost any finish, but will not even be considered for testing in Bi-Tone? If guns failing to include CLIs and magazine disconnects are unacceptably dangerous, why permit the continued manufacture and introduction of old, allegedly "unsafe" models? Why does the supposed safety of a gun depend on whether it is sold in one state, or whether an annual fee has been paid? "A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943).

In California, unrostered guns are permitted by private importation or as intra-family gifts, just not as retail purchases. The roster thus privileges people who move into the state, or who have family out-of-state. Yet all people, not just relatives, may transfer unrostered handguns inside the state.

California and the District both have wide exemptions for law enforcement personnel to purchase unrostered guns for personal use. If a gun is unacceptably dangerous, it is odd to allow it to those perhaps most likely to use it. And if the harm to be ameliorated is the unauthorized use of guns by people not knowledgeable in their use, police weapons are no less likely to be stolen or mishandled by no more proficient unauthorized users. In Washington, DC, the police exemption

makes particularly little sense because *all* handgun purchasers are required to undergo training that teaches users not to rely on the very (rare) features that often determine whether a gun is available for rostering.

The exceptions for curios and relics seems particularly egregious. Paul St Lawrence's High Standard revolver is not quite old enough to be exempt from the rostering law as a curio or relic, though in perhaps ten years, it would qualify. Ironically, Mr. Heller's particular gun might qualify today based on the fact of its involvement in an historic Supreme Court case. 27 C.F.R. § 478.11. But then, if St. Lawrence prevails here, his gun, too, by that virtue, might also be transformed into an exempted curio or relic.

Then there are the exceptions for movie and television production, which are not merely irrational, but also underscore the fact that unrostered handguns are so common in American culture such that audiences would not expect to see in realistic depiction of American life only those guns approved by California regulators.

The distinctions between different guns on the basis of whether they have an acceptable chamber load indicator are also unconstitutional given the wholly arbitrary manner in which California regulators determine whether a CLI is sufficient – asking around at the office whether random regulatory employees understand the CLI's message. While the California Legislature might have established "minimal guidelines," *City of Chicago* v. *Morales*, 527 U.S. 41, 60 (1999) defining a CLI based on design intent and characteristics, Cal. Penal Code § 12126(c), the regulatory practice is untethered from the legislative standard and in the end amounts to "because we said so." Of course, since the government does not ban revolvers or exceedingly popular rimfire rounds such as the .22, CLIs will always be missing from significant numbers of handguns.

These and other senseless distinctions are inevitable considering the audacious mission of the handgun roster law: to make a complete list of all lawful handguns, and substitute the design and feature preferences of legislators and regulators for that of a market comprising hundreds of millions of people over the course of generations. That this project intrudes into the exercise of a fundamental right calls for its abandonment.

CONCLUSION

The facts in this case are well-established, as are the controlling legal principles: the District of Columbia cannot ban handguns of the kind in common use for lawful purposes, regardless of its policy preferences. The Court should enter summary judgment for Plaintiffs.

Dated: April 13, 2009

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