

No. 08-1521

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In The  
**Supreme Court of the United States**

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OTIS McDONALD, *ET AL.*,

*Petitioners,*

v.

CITY OF CHICAGO, ILLINOIS, *ET AL.*,

*Respondents.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Seventh Circuit**

—◆—  
**BRIEF OF BUCKEYE FIREARMS  
FOUNDATION INC. AND UNITED STATES  
CONCEALED CARRY ASSOCIATION AS  
*AMICI CURIAE* SUPPORTING PETITIONERS**

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## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
INTERESTS OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	8
I. Chicago Suffers From a Consistently High Violent Crime Rate and Chicago's Disarmed Residents Are Forced to Rely Exclusively Upon the Chicago Police Department for Protection.....	8
A. Chicago Has a Very High Violent Crime Rate and, Despite the Absence of a Legal Source, Criminals Easily Obtain Firearms .....	8
B. Chicago's Police Department Has Earned the Distrust of the Public .....	15
C. In This Environment of High Violent Crime and Mistrust of the Police, Chicago's Laws Have Disarmed the Victims, Not the Criminals .....	23
II. Incorporating the Second Amendment Will Restore the Right of Self-Defense to Residents of Chicago .....	25
A. Chicago Does Not Have Any Compelling Policy Argument Against Incorporation.....	25

## TABLE OF CONTENTS – Continued

	Page
B. Residents of Washington, D.C. Enjoy, and Residents of Chicago Are Denied, a Constitutionally Guaranteed Right to Self-Defense.....	30
C. The Right to Possess a Handgun in the Home Applies to Chicago the Same as Other Fundamental, Individual Rights Protected by the U.S. Constitution.....	31
D. Absent Incorporation, Residents of Chicago Are Second-Class Citizens When Compared to Residents of Washington, D.C.....	33
III. Incorporating the Second Amendment Will Restore the Right of Self-Defense to Non-Resident Visitors to Chicago .....	34
A. Non-Resident Visitors to Chicago Are Currently Treated as Second-Class Citizens Compared to Residents of Chicago .....	35
B. Any Incorporation of the Second Amendment That Is Silent as to Non-Residents Will Result in Non-Residents Being Treated as Second-Class Citizens .....	36
CONCLUSION.....	39

## TABLE OF AUTHORITIES

Page

## FEDERAL CASES

<i>Bell v. Maryland</i> , 378 U.S. 226 (1964).....	33
<i>Buchanan v. Warley</i> , 245 U.S. 60 (1917).....	29
<i>District of Columbia v. Heller</i> , 129 S. Ct. 2783 (2008).....	<i>passim</i>
<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958) .....	29
<i>George Garcia v. City of Chicago</i> , 1:01cv8945, United States District Court For The North- ern District Of Illinois, Eastern Division.....	18, 19
<i>Palmer v. District of Columbia</i> , 1:09cv1482, United States District Court, District of Columbia .....	6
<i>Ex Parte Virginia</i> , 100 U.S. 339 (1879).....	32

## STATE CASES

<i>Leone v. City of Chicago</i> , 156 Ill. 2d 33 (1993).....	21
--	----

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I .....	4, 38
U.S. Const. amend. II .....	<i>passim</i>
U.S. Const. amend. IV .....	5
U.S. Const. amend. V .....	5
U.S. Const. amend. VI .....	5
U.S. Const. amend. XIV .....	<i>passim</i>

## TABLE OF AUTHORITIES – Continued

## Page

## STATE STATUTES

Chi., Ill., Municipal Code § 8-20-040 (2009) .....	3, 23, 35
Chi., Ill., Municipal Code § 8-20-050 (2009) .....	3, 23
430 ILL. COMP. STAT. ANN. 65/2(b)(5)-(10) (2009) .....	7, 35
745 ILL. COMP. STAT. ANN. 10/1-101 (2009) .....	21
745 ILL. COMP. STAT. ANN. 10/4-102 (2009) ....	21, 22

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ATF 2007 Trace Data, <a href="http://www.atf.gov/fire_arms/trace_data/2007/illinois07.pdf">http://www.atf.gov/fire_arms/trace_data/2007/illinois07.pdf</a> retrieved 11/13/2009 .....	12
ATF 2008 Trace Data, <a href="http://www.atf.gov/fire_arms/trace_data/2008/illinois08.pdf">http://www.atf.gov/fire_arms/trace_data/2008/illinois08.pdf</a> retrieved 11/13/2009 .....	11
Don Babwin, <i>Chicago Police Probed for Posing with Suspect</i> , 10/16/2009 Associated Press wire report, <a href="http://www.cbsnews.com/stories/2009/10/16/ap/national/main5389722.shtml">http://www.cbsnews.com/stories/2009/10/16/ap/national/main5389722.shtml</a> retrieved 11/17/2009 .....	17
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## TABLE OF AUTHORITIES – Continued

	Page
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John Byrne, <i>Administrative Leave for Cop Accused of Making False Arrests</i> , 10/10/2009 Chicago Breaking News wire report, <a href="http://www.chicagobreakingnews.com/2009/10/administrative-leave-for-cop-accused-of-making-false-arrests.html">http://www.chicagobreakingnews.com/2009/10/administrative-leave-for-cop-accused-of-making-false-arrests.html</a> retrieved 11/15/2009 .....	17
John Byrne, <i>Police Chief Worries About Mass Retirement of Officers</i> , 11/7/2009 Chicago Tribune wire report, <a href="http://www.chicagotribune.com/news/chi-police-retirementsnov07,0,707360.story">http://www.chicagotribune.com/news/chi-police-retirementsnov07,0,707360.story</a> retrieved 11/17/2009 .....	22
Chicago Anti-Bashing Network Press Release, <i>City of Chicago Guilty of Covering Up Criminal Police Violence</i> , 5/3/2003, <a href="http://www.net127.com/wiki/City_of_Chicago_GUILTY_of_Covering_Up_Criminal_Police_Violence_(2005)">http://www.net127.com/wiki/City_of_Chicago_GUILTY_of_Covering_Up_Criminal_Police_Violence_(2005)</a> .....	19
<i>Cop Tells FBI He Terrorized Chicago Citizens</i> , 6/1/2008 CBS wire report, <a href="http://cbs2chicago.com/local/keith.herrera.SOS.2.738113.html">http://cbs2chicago.com/local/keith.herrera.SOS.2.738113.html</a> retrieved 11/15/2009 .....	16

## TABLE OF AUTHORITIES – Continued

	Page
District Commander Lillie Crump-Hales, <i>Memo to 1st, 2nd and 3rd Watch Commanders</i> , dated September 4, 2009, <a href="http://1.bp.blogspot.com/_9peHv_weEh8/SqXmzBxhZoI/AAAAAAABABPc/uoLif9j01xs/s1600-h/IMG_3076.JPG">http://1.bp.blogspot.com/_9peHv_weEh8/SqXmzBxhZoI/AAAAAAABABPc/uoLif9j01xs/s1600-h/IMG_3076.JPG</a> retrieved 11/17/2009 .....	23
Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, <i>Attention Felons: Evaluating Project Safe Neighborhoods in Chicago</i> , <i>Journal of Empirical Legal Studies</i> , Volume 4, Issue 2, 223-272, July 2007 .....	26, 27
Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, <i>Integrating and Evaluating Multiple PSN Strategies in Chicago</i> , Slide 7, undated PowerPoint Presentation, <a href="http://uchicagolaw.typepad.com/faculty/files/meares_cbi_slides.ppt">http://uchicagolaw.typepad.com/faculty/files/meares_cbi_slides.ppt</a> retrieved 11/16/2009 .....	26, 27, 28
Agence France-Presse, <i>School Kids Risk Death in Chicago Ganglands</i> , 10/22/2009 ABC News wire report, <a href="http://www.abc-cbnnews.com/world/10/22/09/school-kids-risk-death-chicago-ganglands">http://www.abc-cbnnews.com/world/10/22/09/school-kids-risk-death-chicago-ganglands</a> retrieved 11/13/2009 .....	9
Lorne Gunter Editorial, <i>Gun Bans Don't Prevent Murder</i> , 10/27/2008 National Post, Page A14.....	11

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	Page
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David Heinzmann, <i>Police Misconduct Allegations up Almost 19%</i> , 10/30/2009 Chicago Tribune online report, <a href="http://www.chicagotribune.com/news/chi-police_complaints_upoct30,0,362522.story">http://www.chicagotribune.com/news/chi-police_complaints_upoct30,0,362522.story</a> retrieved 11/15/2009 .....	18
Judge James F. Holderman, 9/19/2003 <i>Memo-randum Opinion and Order Regarding De-fendant City of Chicago’s Motion For New Trial</i> , Pg 17, <i>George Garcia v. City of Chicago et al</i> , 1:01cv8945, United States District Court For The Northern District Of Illinois, Eastern Division .....	19
Human Rights Watch, <i>Shielded From Justice: Police Brutality and Accountability in the United States</i> , <a href="http://www.hrw.org/legacy/reports98/police/index.htm">http://www.hrw.org/legacy/reports98/police/index.htm</a> retrieved 11/12/2009 .....	20, 21, 22
Jim McKay, <i>Triggered Response</i> , 12/8/2005 Government Technology wire report, <a href="http://www.govtech.com/gt/articles/97507">http://www.govtech.com/gt/articles/97507</a> retrieved 11/13/2009.....	14

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## Page

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<i>Report: Cop Charged in Murder Scheme Cooperating</i> , 10/30/2007 CBS wire report, <a href="http://cbs2chicago.com/local/corrupt.police.officer.2.462300.html">http://cbs2chicago.com/local/corrupt.police.officer.2.462300.html</a> retrieved 11/15/2009.....	16
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## TABLE OF AUTHORITIES – Continued

	Page
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<i>Two More Ex-Cops Plead Guilty in SOS Probe</i> , 9/25/2009 Chicago Sun-Times Media Wire, <a href="http://cbs2chicago.com/local/police.corruption.case.2.1208809.html">http://cbs2chicago.com/local/police.corruption.case.2.1208809.html</a> retrieved 11/15/2009.....	15
Matt Walberg, <i>Judge Gives Cop Thug Probation in Bartending Beating Case</i> , 6/23/2009 Chicago Independent Media Center wire report, <a href="http://chicago.indymedia.org/newswire/display/86933/index.php">http://chicago.indymedia.org/newswire/display/86933/index.php</a> retrieved 11/15/2009 .....	18

**INTERESTS OF *AMICI CURIAE***<sup>1</sup>

**Buckeye Firearms Foundation** is a non-profit organization dedicated to defending and advancing human and civil rights secured by law, specifically defending and advancing the rights of Ohio citizens to own and use firearms for all legal activities including, but not limited to, self-defense, hunting, competition and recreation. Buckeye Firearms Foundation acts primarily through education and legal advocacy. Buckeye Firearms Foundation has a substantial interest in ensuring that the Second Amendment of the U.S. Constitution is incorporated against the states as intended by the drafters of the Fourteenth Amendment, to wit: The nationwide application of the Second Amendment right to self-defense and the right to carry arms to all persons within the United States. The human and civil right of self-defense applies wherever a person may live or travel, without regard to the political whims of any particular government branch or administration.

**United States Concealed Carry Association** is a Wisconsin limited liability company and the

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for *Amici* certify that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than *Amici*, their members and their counsel has made a monetary contribution to the preparation and submission of this brief. Letters from the parties consenting to the filing of this brief are on file with the clerk, and counsel of record gave each party's attorney at least 10 days notice of the intent to file this brief.

largest organization in the United States dedicated to protecting and advancing the unique interests of those persons within the United States who may carry concealed weapons for all lawful purposes. The United States Concealed Carry Association acts primarily through education and training of members and other interested parties. The United States Concealed Carry Association has a substantial and particular interest in ensuring that the Second Amendment of the U.S. Constitution is incorporated against the states as intended by the drafters of the Fourteenth Amendment, to wit: members of the United States Concealed Carry Association currently exercise their Second Amendment right to self-defense and the right to carry arms in many geographic areas of the United States, while simultaneously being arbitrarily denied the exercise of these same rights in other geographic areas of the United States on the basis of the member's state of residence. This arbitrary discrimination makes these persons "second-class citizens" in these areas, denied the right to self-defense and the right to carry arms only because of their state of residence.



## **SUMMARY OF ARGUMENT**

**I.** Chicago suffers from violent crime rates that are among the highest in the nation. Most notably, Chicago is currently experiencing a horrific epidemic of school children being killed while going to and from, or during, school. Chicago's criminals obtain,

and use, illegal firearms at will. At the same time, Chicago's police force currently experiences a crisis of confidence in the eyes of Chicago's citizens. Added to this volatile mix is a legal system that has failed to hold the police department or the city liable for their failures. In this environment, Chicago has forcibly disarmed the law-abiding in their own homes.

These are familiar circumstances when looking at any large municipality with draconian gun laws, which lead to inevitable quibbling over whether the crime problem is aggravated by the bounty of unarmed victims, or whether the crime rates would in fact be even worse if victims were legally armed and willing to defend their homes. Fortunately, this debate is now largely moot, as this court has already ruled that the Second Amendment is a fundamental, individual, core right that includes the right to own and carry handguns for self-defense in the home.<sup>2</sup> Chicago currently has in force laws which mirror the scope and operation of the laws found unconstitutional in *District of Columbia v. Heller*, 129 S. Ct. 2783 (2008), with Chicago's laws similarly operating to bar lawful possession of operable handguns in the home for self-defense.<sup>3</sup> As such, persons living, visiting or working in Chicago are denied the right to

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<sup>2</sup> *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) Syllabus at 1.

<sup>3</sup> See Chi., Ill., Municipal Code § 8-20-040 and § 8-20-050 (2009).

own and carry handguns in their homes for self-defense.

**II.** The question before this court is: “Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment’s Privileges or Immunities or Due Process Clauses.” As other *Amici*, and the parties themselves, are expected to cover the numerous legal and historical arguments for incorporation of the Second Amendment by the Fourteenth Amendment via one clause or the other, this brief will instead examine the compelling policy reasons that support such incorporation, regardless of which clause is ultimately chosen to accomplish incorporation.

Due to the limited jurisdictional nature of *Heller*, persons living in Washington D.C., and arguably also persons living in American Samoa, Puerto Rico, Guam and the U.S. Virgin Islands, enjoy a robust right to own, and carry within their homes, handguns for lawful purposes, including the right of self-defense, courtesy of the Second Amendment to the U.S. Constitution. At the same time, residents of Chicago do not enjoy this same Second Amendment right, have no analogous right in the Illinois state constitution, and are in fact actively deprived of this right by the political machine of Chicago city government. The result is that persons living in Chicago are second-class citizens compared to those living in D.C., an absurd result without legal foundation or analog. Persons living in Chicago and in D.C. share equal enjoyment of: First Amendment rights to

religious worship, free speech and freedom of the press; Fourth Amendment protections against unreasonable search and seizure of their person or property; Fifth Amendment protections against felony charges without grand jury indictment, double jeopardy and coerced self-incrimination; Sixth Amendment protections of speedy, public and fair trials with the assistance of counsel *et seq.* In short, the Second Amendment should apply equally to all persons within the United States, without regard to where the person lives or is temporarily located, and the Second Amendment must be afforded the same dignity and protection against state intrusion this court has extended to rest of the enumerated, fundamental, individual rights contained within the U.S. Constitution.

**III.** Beyond protecting the Second Amendment rights of persons living in Chicago, incorporation of the Second Amendment of the U.S. Constitution is also compelled in order to protect the rights of persons who do not live within Chicago, or even within Illinois, but are instead merely visiting or traveling to or through Illinois or Chicago. This Court has previously ruled that licensing schemes, so long as they are of a “shall issue” nature, pass constitutional review.<sup>4</sup> The foreseeable, and expected, difficulty with

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<sup>4</sup> *Amici* do not concede that licensing is *per se* constitutional in all instances, as that issue has not been specifically decided by this court. Assuming *arguendo* that licensing is not unconstitutional, this court’s holding on licensing in *District of*  
(Continued on following page)

Chicago adopting a “shall issue” licensing system in response to an adverse ruling in the instant case is that Chicago currently makes no, and in the future will make no, allowance for non-residents to exercise their Second Amendment rights within Chicago. For instance, Washington D.C. has “complied” with this court’s order in *Heller* by implementing several licensing schemes, none of which have made any provision for non-residents.<sup>5</sup> The current Illinois Firearm Owner I.D. card is yet another example; it is only issued to Illinois residents, leaving non-residents with a lesser pool of affirmative defenses and exceptions with which to exercise their Second Amendment

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*Columbia. v. Heller*, 129 S. Ct. 2783, 2822 (2008), was “Assuming that *Heller* is *not disqualified from the exercise of Second Amendment rights*, the District *must* permit him to register his handgun and *must* issue him a license to carry it in the home” (emphasis added). This type of licensing scheme, where a license must be issued so long as statutory disabilities are not present, is commonly referred to as a “shall issue” license; whereas a licensing scheme that grants the issuing official discretion over whether to issue the license to an otherwise-qualified applicant is referred to as a “may issue” license. As such, if this court finds for incorporation of the Second Amendment, then incorporation, combined with this court’s prior holding in *Heller*, means that state “may issue” licensing schemes are necessarily unconstitutional and only state “shall issue” licensing schemes are constitutional.

<sup>5</sup> See Complaint paragraph 17, *Palmer v. District of Columbia*, 1:09cv1482, United States District Court, District of Columbia. See also therein Defendants’ Motion for Summary Judgment, page 20, “The District is not alone in prohibiting the registration of firearms by non-residents, and declining to issue ‘carry’ licenses, or recognize such licenses from other jurisdictions.”

rights, all of which are inferior to that of Illinois residents.<sup>6</sup>

This distinction between residents and non-residents once again creates a category of second-class citizens when it comes to the Second Amendment: persons are denied the exercise of fundamental, enumerated Second Amendment rights within Chicago based only upon their status as non-residents. Simultaneously, residents of Chicago and residents of Illinois will enjoy greater exercise of these same rights compared to non-residents. Incorporating the Second Amendment against states, and therefore Chicago, will avoid this absurdity by applying the full body of Second Amendment protections, including *Heller's* requirement of “shall issue” licensing, to all persons regardless of residency or location within the United States where that person seeks to exercise those rights.



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<sup>6</sup> 430 ILL. COMP. STAT. ANN. 65/2(b)(5)-(10) (2009).

## ARGUMENT

### **I. Chicago Suffers From a Consistently High Violent Crime Rate and Chicago's Disarmed Residents Are Forced to Rely Exclusively Upon the Chicago Police Department for Protection**

Persons residing in Washington D.C., and arguably also persons residing in American Samoa, Puerto Rico, Guam and the U.S. Virgin Islands, currently enjoy a broad Second Amendment right to have operable handguns in their homes for self-defense. Residents of Chicago and non-residents forced to travel to Chicago do not enjoy this same protection, despite a desperate need triggered by high crime rates combined with the perceived inability of the police to impact crime.

#### **A. Chicago Has a Very High Violent Crime Rate and, Despite The Absence of a Legal Source, Criminals Easily Obtain Firearms**

Despite, and perhaps because of, a *de jure* and *de facto* ban on handguns and other firearms within Chicago, criminals have no problem obtaining and using illegal firearms to commit violent crimes.

In 2002 and again in 2008, Chicago had more murders than any other city in the U.S., including the much larger Los Angeles and New York. Today, as in the past, Chicago's murder and gun violence problem results from a deadly nexus of illegal guns and gang

violence. In the last five years, Chicago has averaged 512 murders per year. About 80 percent of these murders are committed with an illegal firearm, and nearly half of are somehow connected to gang-related disputes and activities.<sup>7</sup>

What brings a horrifying personification to this abstract statistical title is the identity of a large portion of the victims. “. . . in the (2008-2009) academic year 36 schoolchildren were slain and more than 500 shot in Chicago.”<sup>8</sup>

In a city where there is no legal source of handguns, located in a state where law-abiding citizens must be licensed to own, sell and purchase handguns, criminals are still illegally obtaining, and using, handguns to commit crimes and turn Chicago into the “Murder Capital of the United States.” This should come as no surprise, as the criminals also have no legal source anywhere within the United States for crystal methamphetamine, crack cocaine or heroin, yet criminals still continue to obtain abundant supplies of these dangerous drugs.

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<sup>7</sup> Tracey L. Meares and Andrew V. Papachristos, *Homicide and Gun Violence in Chicago: Evaluation and Summary of the Project Safe Neighborhoods Program*, January 2009 PDF document, [http://www.psnchicago.org/PDFs/2009-PSN-Research-Brief\\_v2.pdf](http://www.psnchicago.org/PDFs/2009-PSN-Research-Brief_v2.pdf) retrieved 11/13/2009.

<sup>8</sup> Agence France-Presse, *School Kids Risk Death in Chicago Ganglands*, 10/22/2009 ABC News wire report, <http://www.abc-cbnnews.com/world/10/22/09/school-kids-risk-death-chicago-ganglands> retrieved 11/13/2009.

This week, Chicago took over as murder capital of the United States. There are several cities that have higher murder rates per 100,000 population, but no city with more total murders.

Even with a population of just over 3 million, Chicagoans can expect more murders – 500 – in their city, than in New York (400 murders and 5 million population) or Los Angeles (300 murders and 3.8 million people).

Chicago is also the gun-confiscation and voluntary hand-in capital of the U. S. Over the past decade, Chicago police have confiscated or had surrendered to them an average of 10,800 guns per year. Chicago has also had a complete ban on handgun sales and possession since 1982.

How come there are so many handgun murders and so many confiscations in the Windy City if handguns are banned?

The answer is simple: Criminals ignore laws against handgun ownership more contemptuously even than they ignore those against robbery, assault, rape, drug-dealing and murder.

Crusading politicians may keep law-abiding citizens from possessing guns, but that will do nothing to stop firearms crimes because law-abiding citizens aren't shooting down

their rival meth pushers outside strip clubs at 2 a.m.<sup>9</sup>

Beyond mere anecdotal evidence, it is illustrative to look at the exact nature and source of the firearms being used criminally in Chicago. When requested, the Bureau of Alcohol, Tobacco, Firearms and Explosives assists local law enforcement agencies by tracing the ownership of a firearm from the manufacturer/importer to the dealer to the purchaser. This is done by examining records required to be kept by the manufacturer/importer and the firearm dealer. Since the local law enforcement agency must request this service, the trace data is not a perfect snapshot of all firearms used in crimes. For instance, if locally mandated registration records identified the ownership of the firearm, if the owner of the firearm previously reported to the police that the firearm was stolen or if a receipt for purchase and/or a confession of ownership is obtained through other investigation, a trace would likely not be requested.

According to trace data, in 2008 Illinois recovered and traced 11,366 firearms (8,674, or 76.3% handguns), with Chicago alone responsible for 6,300 (not broken down by type) of these, or 55.4%.<sup>10</sup> For the traces in 2008, the “source state” was identified for

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<sup>9</sup> Lorne Gunter Editorial, *Gun Bans Don't Prevent Murder*, 10/27/2008 National Post, Page A14.

<sup>10</sup> ATF 2008 Trace Data, [http://www.atf.gov/firearms/trace\\_data/2008/illinois08.pdf](http://www.atf.gov/firearms/trace_data/2008/illinois08.pdf) retrieved 11/13/2009.

6,536 (57.5%)<sup>11</sup> of the traces, with Illinois being the source state for 3,300, or 50.5% of the firearms when a source state was determined. The average “time to crime,” or the length of time from the retail transaction at the dealer to the time the firearm was recovered from a criminal or crime scene, was 12.16 years. For 2007, Illinois recovered and traced 11,986 firearms (8,782, or 73.2% handguns), with Chicago accounting for 6,690 (not broken down by type), or 55.8%.<sup>12</sup> The source state was identified in 6,640 (55.3%) of the traces, with 3,380, or 50.9%, coming from Illinois. The 2007 “time to crime” was 11.97 years. For 2006, Illinois recovered and traced 13,686 firearms (10,284, or 75.1% handguns), with Chicago picking up 8,367 firearms (not broken down by type), or 61.1% of the total firearms recovered.<sup>13</sup> The source state was determined in 7,463 (54.5%) of the traces, with Illinois accounting for 3,805, or 50.9%. The 2006 average “time to crime” was 11.94 years.

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<sup>11</sup> Reasons for the source state not being identified through the trace include: firearms with no serial number; firearms with obliterated serial numbers; lost/inaccurate records on the part of BATFE, the manufacturer or the dealer; the firearm entering private commerce prior to modern firearm records laws; and the gun was illegally imported into the country by gun smugglers, similar to narcotic importation.

<sup>12</sup> ATF 2007 Trace Data, [http://www.atf.gov/firearms/trace\\_data/2007/illinois07.pdf](http://www.atf.gov/firearms/trace_data/2007/illinois07.pdf) retrieved 11/13/2009.

<sup>13</sup> ATF 2006 Trace Data, [http://www.atf.gov/firearms/trace\\_data/2006/cy2006-illinois.pdf](http://www.atf.gov/firearms/trace_data/2006/cy2006-illinois.pdf) retrieved 11/13/2009.

2009 appears to be right in line with this remarkably consistent history of gun confiscations. “ . . . (t)here have been 7,234 guns recovered or confiscated by Chicago Police so far this year. *When you think about it, that’s about one gun for every 400 people, in a city with an ordinance that prohibits them*”<sup>14</sup> (emphasis added). Unfortunately, the full 2009 ATF trace data for Illinois is not available as of the filing of this brief, but there is no reason to suspect that the consistent ratios set forth over the past three years will be any different once 2009’s books are closed. Extrapolating this 2009 figure of 7,234<sup>15</sup> guns recovered in Chicago as of November 13, 2009, using the typical ratios from the past three years, it would be expected that 2009 will show approximately 13,100 firearms recovered and traced in Illinois, with approximately 9,825 being handguns and with Chicago accounting for approximately 7,500 of the firearms traced. Source states will be identified in approximately 7,232 traces, with Illinois being the source state for approximately 3,698 firearms. The average gun will have last been involved in a legal transaction approximately 12 years ago.

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<sup>14</sup> Kristyn Hartman, *7,234 Guns Confiscated in Chicago This Year; Number Skyrockets Despite Handgun Ban*, 11/13/2009 CBS News wire report, <http://cbs2chicago.com/local/7234.guns.confiscated.2.1309844.html> retrieved 11/13/2009.

<sup>15</sup> Assuming this number of 7,234 guns recovered is approximately the number traced by ATF.

Perhaps nothing illustrates the failure of the “gun ban as prevention” model more clearly than Chicago’s deployment of SENTRI. In a city with no legal ownership of handguns and very little legal ownership of other firearms, the police have been forced to resort to the installation of permanent gunshot sensors.

So what if the gunshot automatically triggered a 911 call, and captured video of the shooter? Police in Chicago are hoping to curb gun violence with technology that does just that. The technology – Smart Sensor Enabled Neural Threat Recognition and Identification (SENTRI) – recognizes the sound of a gunshot within a two-block radius, pinpoints the location of the shot with a surveillance camera, focuses on the location, and in less than 1 second, places a 911 call.<sup>16</sup>

Permanent gunshot sensors, murder capital of the United States, 11,000+ firearms recovered and traced each year . . . clearly Chicago’s gun ban is not interfering with criminals and their illegal use of illegal firearms.

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<sup>16</sup> Jim McKay, *Triggered Response*, 12/8/2005 Government Technology wire report, <http://www.govtech.com/gt/articles/97507> retrieved 11/13/2009.

## **B. Chicago's Police Department Has Earned the Distrust of the Public**

“In this city, it seems to me we are bombarded by stories and cases and prosecutions of police misconduct . . . It's been accelerating . . . It's very discouraging . . . There's really nobody more powerful than a policeman in a uniform with a badge and a gun . . . Everyone wants to see the police as their protectors,” U.S. District Judge Robert Gettleman, imposing sentence on Chicago Police Officer Richard Doroniuk, who was convicted of robbing drug dealers.<sup>17</sup>

While Chicago Police officials rightly protest<sup>18</sup> that only a small portion of officers bring shame on the department as a whole, it is easy to understand Judge Gettleman's exasperation. As recently as September 2009, seven members of the “elite” Special Operations Section of the Chicago Police Department have pleaded guilty to corruption charges.<sup>19</sup>

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<sup>17</sup> Steve Bartin, *Judge: I'm Tired of Crooked Cops in Chicago*, 6/30/2009 Chicago Sun-Times Media Wire, <http://www.cdobs.com/archive/syndicated/judge-im-tired-of-crooked-cops-in-chicago,36349> retrieved 11/15/2009.

<sup>18</sup> *Amici's* members and supporters include many current and retired law enforcement officers, and many law enforcement organizations are supporting Petitioners in the instant case. It is not *Amici's* intent to take a broad brush to law enforcement in general or the Chicago Police Department as a whole.

<sup>19</sup> *Two More Ex-Cops Plead Guilty in SOS Probe*, 9/25/2009 Chicago Sun-Times Media Wire, <http://cbs2chicago.com/local/police.corruption.case.2.1208809.html> retrieved 11/15/2009.

Investigation of these officers revealed a systemic conspiracy where the officers were “shaking down” criminals, stealing their property, money and drugs while simultaneously fabricating criminal charges against the victims. According to Chicago Officer Keith Herrera, who cooperated with the FBI in a larger probe, police supervisors were aware of the illegal actions occurring and told the officers to “keep it up.”<sup>20</sup> Most shocking, Officer Herrera only turned to the FBI after Officer Jerome Finnigan, one of the leaders of the police conspiracy, asked Herrera to help kill two fellow officers for breaking the “code of silence.” Thus thwarted, Officer Finnigan followed Officer Herrera’s example by agreeing to cooperate with investigators, in return for leniency in the charges resulting from his murder scheme.<sup>21</sup>

In addition to the SOS conspiracy, Chicago residents have endured the following outrageous revelations *in just the past five months*: a Federal Jury verdict ordered the Chicago Police Department to pay a \$625,000 award for a brutal beating handed out by five officers during a traffic stop;<sup>22</sup> a Federal Jury

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<sup>20</sup> *Cop Tells FBI He Terrorized Chicago Citizens*, 6/1/2008 CBS wire report, <http://cbs2chicago.com/local/keith.herrera.SOS.2.738113.html> retrieved 11/15/2009.

<sup>21</sup> *Report: Cop Charged in Murder Scheme Cooperating*, 10/30/2007 CBS wire report, <http://cbs2chicago.com/local/corrupt.police.officer.2.462300.html> retrieved 11/15/2009.

<sup>22</sup> Andy Thayer, *CPD Hit With \$625,000 Fine for Violent Police Assault During Traffic Stop*, 6/23/2009 Chicago  
(Continued on following page)

verdict for \$21,000,000 for a man framed by an officer with “a history of fabricated false identifications and then suppressing evidence of such misconduct;”<sup>23</sup> an internal affairs investigation found, and the Chicago Police admitted, misconduct in handling the investigation of a missing teen;<sup>24</sup> an officer placed on administrative leave for allegedly lying on police reports and making over a dozen false arrests;<sup>25</sup> a YouTube video surfaced that shows Chicago officers working special duty in Pittsburgh forcing a 21-year-old student under arrest to pose with the officers for a picture;<sup>26</sup> a revelation that misconduct complaints against the police rose almost 19% in the second and

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Independent Media Center wire report, <http://chicago.indymedia.org/newswire/display/86930/index.php> retrieved 11/15/2009.

<sup>23</sup> Andy Thayer, *Federal Jury Awards Victim Largest-Ever Amount in Chicago Cop Frame-up*, 6/22/2009 Chicago Independent Media Center wire report, <http://chicago.indymedia.org/newswire/display/86921/index.php> retrieved 11/15/2009.

<sup>24</sup> Ravi Baichwal, *Police Admit Misconduct in Missing Teen Case*, 9/11/2009 ABC wire report, <http://abclocal.go.com/wls/story?section=news/local&id=7008889> retrieved 11/15/2009.

<sup>25</sup> John Byrne, *Administrative Leave for Cop Accused of Making False Arrests*, 10/10/2009 Chicago Breaking News wire report, <http://www.chicagobreakingnews.com/2009/10/administrative-leave-for-cop-accused-of-making-false-arrests.html> retrieved 11/15/2009.

<sup>26</sup> Don Babwin, *Chicago Police Probed for Posing with Suspect*, 10/16/2009 Associated Press wire report, <http://www.cbsnews.com/stories/2009/10/16/ap/national/main5389722.shtml> retrieved 11/17/2009.

third quarters of 2009;<sup>27</sup> and Chicago Officer Anthony Abbate, caught viciously beating a female bartender half his size in an infamous surveillance video broadcast worldwide, was sentenced to probation only, despite direct evidence of other officers attempting to bribe and intimidate the bartender victim into silence.<sup>28</sup>

While the examples outlined above are limited to the second half of 2009, the acts of brutality, corruption and cover-up go back much further. In a 2005 case filed by George Garcia against the city of Chicago, a jury found that the Chicago Police department was systematically covering up criminal violence by officers. “The key to Garcia’s case was his claim that his injuries were caused by the city because a policy of tolerating such actions by police officers had left (the officer) with the feeling that he could do whatever he wanted.”<sup>29</sup> This freedom from accountability was a theme throughout the trial, with multiple “trial

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<sup>27</sup> David Heinzmann, *Police Misconduct Allegations up Almost 19%*, 10/30/2009 Chicago Tribune online report, [http://www.chicagotribune.com/news/chi-police\\_complaints\\_upoct30,0,362522.story](http://www.chicagotribune.com/news/chi-police_complaints_upoct30,0,362522.story) retrieved 11/15/2009.

<sup>28</sup> Matt Walberg, *Judge Gives Cop Thug Probation in Bartending Beating Case*, 6/23/2009 Chicago Independent Media Center wire report, <http://chicago.indymedia.org/newswire/display/86933/index.php> retrieved 11/15/2009.

<sup>29</sup> Mike Robinson, *Jury Awards \$1 Million to Man Allegedly Beaten by Officer*, 5/2/2003 AP News Wire, <http://www.buckeyefirearms.org/publicfiles/documents/TheAssociatedPressState.doc> retrieved 11/16/2009.

ambush” tactics on the part of the city’s attorneys,<sup>30</sup> and trial Judge James Holderman reportedly chastised the city’s attorneys by asking “is there anything else you want to lie to me about?”<sup>31</sup> Chicago protested that the officers were off-duty, but the jury obviously felt there was sufficient evidence of Chicago covering up for rogue officers to impose liability. “When asked

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<sup>30</sup> The Beavers Resolution was highly significant, ‘smoking gun’ type of evidence which went a long way toward proving plaintiff’s *Monell* claim. The City had not produced the Beavers Resolution during discovery . . . This was not the first time in this litigation that the City’s counsel was shown to have violated discovery rules and procedures. The undisputed evidence established at trial that the City withheld other relevant documents during discovery even after a judicial order to produce them had been entered. (citation omitted). Additionally, the evidence established that the City’s counsel authorized City personnel to sign and serve false sworn interrogatory answers in this case, (citations omitted). City personnel, after speaking with the City’s outside counsel, Darcy Proctor, (Tr.1136) also provided false sworn answers to certain of Plaintiff’s Second Set of Requests to Admit (citations omitted).

Judge James F. Holderman, 9/19/2003 *Memorandum Opinion and Order Regarding Defendant City of Chicago’s Motion For New Trial*, Pg 17, *George Garcia v. City of Chicago, et al*, 1:01cv8945, United States District Court For The Northern District Of Illinois, Eastern Division.

<sup>31</sup> Chicago Anti-Bashing Network Press Release, *City of Chicago Guilty of Covering Up Criminal Police Violence*, 5/3/2003, [http://www.net127.com/wiki/City\\_of\\_Chicago\\_GUILTY\\_of\\_Covering\\_Up\\_Criminal\\_Police\\_Violence\\_\(2005\)](http://www.net127.com/wiki/City_of_Chicago_GUILTY_of_Covering_Up_Criminal_Police_Violence_(2005)) describing the verdict reached in *Garcia*.

about the amount, city spokeswoman Jenny Hoyle merely said there had been no evidence to show that the injuries suffered by Garcia would justify that much in compensatory damages.<sup>32</sup> It is unclear how Chicago determined an appropriate monetary value to be paid for the officers' actions or for the city's complicity in covering for the officers, but Chicago admittedly has a large sample of civil judgments against them to rely upon in expressing this opinion.

From 1995 through early 1998, Human Rights Watch investigated police brutality in 14 large city police departments, including Chicago.<sup>33</sup> Illustrative of the report's finding is the story of Chicago Police Commander Jon Burge. Credible evidence uncovered by Human Rights Watch and Chicago's Office of Professional Standards indicated that Commander Burge and those under his command *tortured* at least 64 suspects while in custody, with techniques ranging from beating to electroshock administered to genitals to inflicting burns on subjects by chaining them to

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<sup>32</sup> Mike Robinson, *Jury Awards \$1 Million to Man Allegedly Beaten by Officer*, 5/2/2003 AP News Wire, <http://www.buckeyefirearms.org/publicfiles/documents/TheAssociatedPressState.doc> retrieved 11/16/2009. Note: The Court ordered, and Plaintiff accepted, remittitur of \$750,000 of the verdict on September 19, 2003 and separately awarded costs and fees of \$647,951.81 on the same date.

<sup>33</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, <http://www.hrw.org/legacy/reports98/police/index.htm> retrieved 11/12/2009.

hot radiators.<sup>34</sup> No criminal prosecutions were ever brought against Commander Burge or the officers under him. Despite internal investigations substantiating this systemic torture and recommending employment sanctions, Commander Burge was the only person who was fired, and two detectives working under Burge were temporarily suspended. Of these two, one went on to be decorated for valor and recommended for promotion by the mayor, and the other retired with full benefits.<sup>35</sup>

Far from imposing any sort of liability for these failures, Illinois law actually affirmatively indemnifies the police departments within Illinois against claims of negligence/incompetence from citizens.<sup>36</sup> Even though the city reportedly paid \$29,000,000 to settle 1,657 lawsuits between 1992 and 1997, these lawsuits all alleged actual criminal conduct (e.g. excessive force, false arrest, kidnapping, improper

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<sup>34</sup> The Human Rights Watch report alleged, and documented, a substantial racial animus on the part of the abusive police officers. However, as the minority status of the victims does not add to the use of this report for the purposes of this brief, no further examination of the race of the victims will be set forth.

<sup>35</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, <http://www.hrw.org/legacy/reports98/police/uspo53.htm> retrieved 11/12/2009.

<sup>36</sup> See, inter alia, 745 ILL. COMP. STAT. ANN. 10/1-101, 10/4-102 (2009) and *Leone v. City of Chicago*, 156 Ill. 2d 33 (1993).

search and seizure etc).<sup>37</sup> Under Illinois law, no liability can be imposed for “failure *to provide adequate police protection or service*, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals”<sup>38</sup> (emphasis added).

A final area of citizen concern is the ongoing staffing shortages at the Chicago Police Department. As of the writing of this brief, the Chicago Police Department is 2,000 officers short of the authorized level of 13,500 active officers. Of the active officers, a reported 641 officers a day are restricted to desk duty. An additional 730 officers are on medical rolls each day. Department policy allows an officer to take up to 365 sick days every two years.<sup>39</sup> Chicago faces the prospect of up to 1,000 officers retiring in the next year. “I am extremely nervous about the number of officers who may choose to leave based upon the fact the contract may be signed in 2010,” Chicago Police Chief Jody Weis said. “We have to be prepared for that type of loss.”<sup>40</sup> The staffing problem is so bad

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<sup>37</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, <http://www.hrw.org/legacy/reports98/police/uspo57.htm> retrieved 11/12/2009.

<sup>38</sup> § 745 ILL. COMP. STAT. ANN. 10/4-102 (2009).

<sup>39</sup> Fran Spielman, *Police Shortage a Growing Problem*, 10/29/2009 Chicago Sun-Times wire report, <http://www.suntimes.com/news/cityhall/1853008,CST-NWS-shortage29.article> retrieved 11/17/2009.

<sup>40</sup> John Byrne, *Police Chief Worries About Mass Retirement of Officers*, 11/7/2009 Chicago Tribune wire report, <http://www.tribune.com>

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that, in response to officers advising citizens of the lack of manpower and the need for citizens to complain to city government, 003rd District Commander Lillie Crump-Hales issued a memo to officers advising them that discussing the lack of manpower with citizens was a violation of department rules and regulations, and officers could face disciplinary action for doing so.<sup>41</sup>

**C. In This Environment of High Violent Crime and Mistrust of the Police, Chicago's Laws Have Disarmed the Victims, Not the Criminals**

Chicago Municipal Code § 8-20-040(a) prohibits possession of a firearm unless the firearm is registered. Simultaneously, Chicago Municipal Code § 8-20-050(c) prohibits registration of handguns unless the handgun was registered with the city by the owner prior to 1982. Stated another way, Chicago prohibits possession of unregistered firearms and will not register handguns, so no one within the city of Chicago may legally be in possession of a handgun. There is no exception for handguns kept in the home, and there is no exception for self-defense. This same

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chicagotribune.com/news/chi-police-retirementsnov07,0,707360.  
story retrieved 11/17/2009.

<sup>41</sup> District Commander Lillie Crump-Hales, *Memo to 1st, 2nd and 3rd Watch Commanders*, dated September 4, 2009, [http://1.bp.blogspot.com/\\_9peHv\\_weEh8/SqXmzBxhZoI/AAAAAAABABPc/uoLif9j01xs/s1600-h/IMG\\_3076.JPG](http://1.bp.blogspot.com/_9peHv_weEh8/SqXmzBxhZoI/AAAAAAABABPc/uoLif9j01xs/s1600-h/IMG_3076.JPG) retrieved 11/17/2009.

prohibition on handguns was struck down by this court in *Heller*. Illinois law is less strict, but only slightly so. Residents of Illinois living outside of Chicago may possess handguns in their homes for self-defense, but only after obtaining a firearm owner identification card from the state, which operates as a form of gun licensing statewide in Illinois.

As outlined previously, criminals are having no trouble obtaining and using illegal firearms in Chicago. Indeed, as outlined previously, the average “age” of the firearms recovered and traced shows that the firearms being used criminally were last transferred “legally” 12 years prior to the criminal use of the firearm. The majority of firearms recovered for which a state of origin could be determined originated from within the borders of Illinois, despite the statewide licensing of firearm ownership by the state.

The crime rates and the trace data clearly reveal that criminals are able to obtain and use firearms at will, and the firearms are being obtained from illegal sources. At the same time, law-abiding residents of Chicago have no ability to legally own handguns, even in their own homes. No matter how much training, licensing or other bureaucratic dancing the resident is willing to endure, there is no relief available to Windy City residents.

Clearly, Chicago’s gun ban is disarming the victims, not the criminals.

## **II. Incorporating the Second Amendment Will Restore the Right of Self-Defense to Residents of Chicago**

The residents of Chicago live in a city suffering from one of the highest violent crime rates in the nation. At the same time, these same residents are forcibly disarmed by their own government and forbidden the means to exercise one of the most basic of human rights – freedom from criminal attack. Consequently, the residents of Chicago are 100% reliant upon the Chicago Police Department for protection in a time when the news regularly announces allegations of police corruption, brutality and cover-up.

### **A. Chicago Does Not Have Any Compelling Policy Argument Against Incorporation**

The justifications advanced in favor of Chicago's draconian gun ban, that the ban is needed to "fight crime" or to preserve "law and order," do not withstand serious scrutiny. One need look no further than the discussion in section I(A) and (C) herein to see that the stated purpose is not being achieved. Criminals are readily obtaining a fixed, steady supply of illegal firearms in support of their criminal enterprises, and the consistently high violent crime rate in Chicago attests to the ability and willingness of criminals to use these illegal guns.

Chicago did enjoy the benefit of a federally funded project to bring together federal, state and local resources in an attempt to impact the violent

crime rate. Project Safe Neighborhoods was rolled out gradually, with interagency meetings to review and federally prosecute gun crimes commencing in May of 2002 and the rest of the program implemented the next year.<sup>42</sup> This program targeted certain areas and offenders with a previous conviction history for gun violence, with Chicago's program targeted at certain police "beats" with high violent crime rates. The program consisted of meetings and interventions with persons recently released from prison, in which they would be informed of the new program and the accompanying severe prosecution and sentencing they would face if they committed new gun crimes in the future. This component also included outreach and "self-help" type of information to help these felons break from their lives of crime. Simultaneously, the interagency group was screening all new gun crimes in Chicago, with the most serious cases involving repeat gun offenders elevated for federal prosecution with correspondingly longer sentences. Finally, the seizures of illegal guns would be monitored and increased if possible.

A study of the target group versus a control group was conducted from 2003-2005 and concluded that the target group did experience a decrease in

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<sup>42</sup> Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, *Journal of Empirical Legal Studies*, Volume 4, Issue 2, 223-272, July 2007.

homicide rates when compared to the control group.<sup>43</sup> The authors tried to assign values to the various components of the program and identify which components contributed to any decrease in violent crime. Notably, the study's authors concluded that mere membership in one of the program's target groups reduced homicides and gang homicides, and attendance at the offender meetings further reduced homicides, gun homicides and gang-related homicides.<sup>44</sup> The study's authors also concluded that the federal prosecutions and sentencing had some impact on violent crime reduction, as did the seizure of illegal firearms by authorities. However, the program had no impact on non-homicide violent crime (aggravated battery and assaults) and the largest decrease of homicide and gun homicide was attributable to attendance at the offender forums.<sup>45</sup>

Stated another way, by targeting those who had already been convicted of committing violent crime

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<sup>43</sup> Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, *Journal of Empirical Legal Studies*, Volume 4, Issue 2, 223-272, July 2007, at 256.

<sup>44</sup> Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, *Journal of Empirical Legal Studies*, Volume 4, Issue 2, 223-272, July 2007, at 256-258.

<sup>45</sup> Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, *Journal of Empirical Legal Studies*, Volume 4, Issue 2, 223-272, July 2007, at 259.

with a gun, putting them into “scared straight” types of groups and offender forums, coupled with the threat of enhanced prosecutions and continued efforts to seize illegal firearms, homicide rates could be lowered. Of particular significance, none of the study participants could legally own, purchase, possess or sell a firearm under federal law, due to their prior convictions. It is also of interest that the number of firearms seized by Chicago and traced by the ATF in 2002 was, according to the authors, 6,252<sup>46</sup> compared to the 6,300 (See Section I(A) herein) seized by Chicago and traced by the ATF in 2008. In both 2002 and 2008, Chicago led the nation in murder.<sup>47</sup> This is a fairly damning result: Chicago led the nation in the year before the “reduction” program and five years into the “reduction” program. The trace data strongly suggests a fixed, easily available supply of illegal guns, with Illinois being the source state for a majority of the guns where a state of origin could be identified, all despite the city and state bans and licensing in place.

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<sup>46</sup> Jeffrey Fagan, Tracey L. Meares, & Andrew V. Papachristos, *Integrating and Evaluating Multiple PSN Strategies in Chicago*, Slide 7, undated PowerPoint Presentation, [http://uchicagolaw.typepad.com/faculty/files/meares\\_cbi\\_slides.ppt](http://uchicagolaw.typepad.com/faculty/files/meares_cbi_slides.ppt) retrieved 11/16/2009.

<sup>47</sup> Tracey L. Meares, & Andrew V. Papachristos, *Homicide and Gun Violence in Chicago: Evaluation and Summary of the Project Safe Neighborhoods Program*, January 2009 PDF document, [http://www.psnchicago.org/PDFs/2009-PSN-Research-Brief\\_v2.pdf](http://www.psnchicago.org/PDFs/2009-PSN-Research-Brief_v2.pdf) retrieved 11/13/2009.

What, exactly, is Chicago's gun ban accomplishing?

Regardless of impact (or lack thereof) on the crime rate, this Court has repeatedly said that preservation of the public peace is not grounds to deny a person a constitutional right. "Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights," *Cooper v. Aaron*, 358 U.S. 1, 16 (1958). "That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges," *Buchanan v. Warley*, 245 U.S. 60, 80-1 (1917).

Chicago advances a policy argument against incorporation that is demonstrably false; namely, Chicago's gun ban must survive in order to combat violent crime. As examined above, the gun ban is not accomplishing this purported goal. However, even if the ban was having a demonstrable impact, citizens cannot be forced to sacrifice their enumerated constitutional liberties upon the altar of "crime control." This court should redirect governments like Chicago towards "criminal control" and away from gun owner discrimination. Chicago's current strategy is no different than fighting shoddy construction by banning hammers.

**B. Residents of Washington, D.C. Enjoy, and Residents of Chicago Are Denied, a Constitutionally Guaranteed Right to Self-Defense**

Persons living in Washington D.C., and arguably also persons living in American Samoa, Puerto Rico, Guam and the U.S. Virgin Islands, enjoy a robust right to own, and carry within their homes, handguns for lawful purposes, including the right of self-defense, courtesy of this court's ruling in *Heller*. Residents of D.C. currently benefit from an order from this court establishing "shall issue" licensing of operable handguns in their home for defense of self and family.

At the same time, residents of Chicago do not enjoy this same constitutionally protected right. While the U.S. Constitution provides that residents of D.C. are entitled to a license to possess an operable handgun in the home for self-defense (assuming they are not under firearm disability), residents of Chicago are denied this same right, despite living under the same U.S. Constitution. This discrimination occurs entirely on the basis of the location of the person's residence, and is only possible because the root of these rights, the Second Amendment to the U.S. Constitution, has not been applied to the 50 states.

**C. The Right to Possess a Handgun in the Home Applies to Chicago the Same as Other Fundamental, Individual Rights Protected by the U.S. Constitution**

This court is going to consider a broad array of scholarly discussion on the origins of the Fourteenth Amendment to the United States Constitution, as well as what was intended by the drafters of the amendment and what was the understood meaning of the amendment by the states that ratified it. Inherent in this discussion is a very thorough discussion of “due process” incorporation versus “privileges and immunities” incorporation. *Amici* do not wish to duplicate these efforts, particularly because NEITHER method of incorporation allows Chicago to deny their residents the rights conferred upon them by the U.S. Constitution.

The residents of Washington D.C. and Chicago share the same right of: free speech, free press, choice of religion, protection from unreasonable search and seizure of their person or property, protection from self-incrimination, requirement of grand jury indictment or presentment for felony charges, reasonable bail, protection against cruel or unusual punishment and speedy public trial with the assistance of legal counsel. These rights, conferred and protected by the U.S. Constitution, are enjoyed equally by residents of Washington D.C. and Chicago without regard to their state of residence. There are no legal or policy grounds to treat the Second Amendment, which is the

ultimate guarantor of all other rights, with anything less than the full protection and dignity afforded these other rights. This requires application of these same rights against the states.

No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, . . . nor deny to any person within its jurisdiction the equal protection of the laws. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The (14th Amendment), therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. *Ex Parte Virginia*, 100 U.S. 339, 346-7 (1879).

**D. Absent Incorporation, Residents of Chicago Are Second-Class Citizens When Compared to Residents of Washington, D.C.**

This court has previously held there is only one class of national citizenship, and the primary purpose of the Fourteenth Amendment was to guarantee the rights conferred by the Constitution to this single class of national citizen.<sup>48</sup> Beyond establishing this single class standard, the privileges and immunities clause jurisprudence has largely been dormant. Consequently, the instant case will likely invite the court to revisit the field.

Even if this court does not revisit the privileges and immunities field and instead travels down the due process path, the single class standard still applies. While certain protections have been extended or denied to subsets of natural persons, such as affirmative action programs and veteran programs, when it comes to fundamental, individual, enumerated rights, this court has ordered the uniform application of these rights against the states without regard to whether a person lives on one side of a border versus the other side of the border.

However, should this court decline to incorporate the Second Amendment via either method, the result will be exactly that: unequal enjoyment of a fundamental, individual, enumerated right on the basis of a

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<sup>48</sup> See, e.g., *Bell v. Maryland*, 378 U.S. 226, 250 (1964).

person living on the “right” side of the boundary line rather than the “wrong” side. The residents of Washington D.C. will enjoy a larger “basket” of fundamental, individual, enumerated rights when compared to the residents of Chicago.

### **III. Incorporating the Second Amendment Will Restore the Right of Self-Defense to Non-Resident Visitors to Chicago**

While incorporating the Second Amendment against Chicago is of critical importance to those living within Chicago, incorporation is no less important to those living outside of Chicago. Currently, members of the United States Concealed Carry Association or supporters of Buckeye Firearms Foundation, who wish to exercise their constitutional right to travel for business or pleasure, must shed all Second Amendment rights at certain state lines. As this brief is being written, members traveling to Chicago are forced to shed their constitutional right to self-defense at both the Illinois state line and the Chicago city limits, as Illinois does not issue Firearm Owner I.D. cards to non-residents<sup>49</sup> and Chicago makes no

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<sup>49</sup> Non-residents may still travel into Illinois with a firearm without a FOID to hunt, attend a firearm showing or display sanctioned by the state police, or to shoot at a firing range sanctioned by the state police. However, the firearm must, at all times other than hunting, shooting or showing, be unloaded and in a closed case, i.e. useless for self-defense. There is a further exception to these requirements for non-residents who are licensed or registered to possess firearms by their resident state.

(Continued on following page)

provision for non-residents to keep an operable handgun at hand for self-defense.

**A. Non-Resident Visitors to Chicago Are Currently Treated as Second-Class Citizens Compared to Residents of Chicago**

Chicago currently makes no provision for non-residents to register or otherwise legally possess an operable firearm for self-defense. While Chicago's law does have a limited exception for non-residents, the exception requires that the non-resident be involved in a recreational firearm-related activity within the city and that the firearm be unloaded and securely wrapped, i.e. worthless for self-defense.<sup>50</sup> If a person is traveling on business or to visit a family member instead of attending a recreational firearm activity, there is no possibility of complying with Chicago law.

While almost a practical impossibility, it is theoretically possible for a Chicago resident to have an operable handgun in the home for self-defense, although this would require that the person registered the handgun prior to 1982, successfully renewed this

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See 430 ILL. COMP. STAT. ANN. 65/2(b)(5)-(10) (2009). For a resident of Vermont, for example, this exception would be worthless, as Vermont allows all law-abiding persons to own and carry firearms without government license, registration or permission.

<sup>50</sup> Chi., Ill., Municipal Code § 8-20-040(b)(5) (2009).

registration ever since and has additionally complied with the Illinois FOID requirements. Consequently, residents of Chicago are, on paper, treated more favorably than non-residents. However, the *de facto* operation of Chicago's law is that both residents and non-residents are stripped of the ability to defend themselves.

**B. Any Incorporation of the Second Amendment That Is Silent as to Non-Residents Will Result in Non-Residents Being Treated as Second-Class Citizens**

This court phrased the question presented as: "Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses?" A necessary component of the answer to this question is Chicago's treatment of non-resident visitors. If this court incorporates the Second Amendment against the states, then the operation of that decision, when combined with this court's prior ruling in *Heller*, is that Chicago must, at a minimum, start issuing "shall issue" licenses to persons so they may lawfully keep and carry operable handguns in their residences for self-defense.

Plaintiffs in the instant case are all residents of Chicago, necessarily so because the challenged licensing laws are available to residents only. However, if this court does incorporate the Second Amendment

against the states, then this court will have ruled that 1.) The Second Amendment is a fundamental, individual right that encompasses self-defense; 2.) Licensing of handguns requires the “shall issue” variety and must allow the handgun to be kept and carried in an operable condition in the home; and 3.) The ruling in *Heller* applies against Chicago, meaning Chicago must implement some form of “shall issue” licensing, allowing operable handguns to be kept and carried in the home.

As noted earlier, Chicago’s current law makes no provision for non-residents to obtain a license and it is expected that any amendments needed to bring Chicago’s law into post-incorporation compliance will retain this defect. In such an environment, members of the United States Concealed Carry Association or supporters of Buckeye Firearms Foundation who exercise the constitutional right to travel to Chicago are treated as second-class citizens when they do so. For instance, a member forced to travel back to Chicago to provide extended care for an ill family member will be forced to shed their Second Amendment rights at the Illinois state line and further shed rights at the Chicago city limits. While the resident living next door to the sick relative will be entitled to a “shall issue” license to keep and carry an operable handgun in the home, the non-resident caring for the family member will have no such entitlement, regardless of the length of stay and the fact that the ill family member might be entirely dependent upon the

non-resident for constant care, including protection from criminal elements.

This non-resident will, however, still enjoy the same freedom of speech, religion and press, the protection against coerced self-incrimination, unreasonable search and seizure etc. that the neighbor enjoys. The non-resident's First Amendment right to political speech ensures that he may criticize the policies of President Obama equally in his own hometown and the President's hometown of Chicago. It is only Second Amendment protections that are arbitrarily denied to the traveling non-resident while in Chicago, and this denial is based only upon his or her foreign state residency.

The Second Amendment is second in chronological order but not in importance, and the non-resident must be afforded the same protections against state intrusion as residents, regardless of where a person may travel.



**CONCLUSION**

The United States Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

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