

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 JAN -7 PM 7:25

Oakland City Council

RESOLUTION No. 82493 C.M.S.

RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN AN AMICUS (FRIEND OF THE COURT) BRIEF IN THE UNITED STATES SUPREME COURT ASKING THE COURT TO UPHOLD THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT DISMISSING LAW SUITS CHALLENGING CHICAGO'S BAN ON THE POSSESSION AND SALE OF HANDGUNS

WHEREAS, the United States Supreme Court has granted review of *McDonald v. Chicago*, 567 F.3d 856 (7TH Cir. 2009) and certified the following question for briefing and oral argument:

Whether the Second Amendment right to keep and bear arms is incorporated against the states by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses; and

WHEREAS, *McDonald* consolidates two lawsuits that were filed by the National Rifle Association and the Second Amendment Foundation, challenging Chicago's ban on handgun possession and sale on the ground that (1) the ban violates the Second and Fourteenth Amendments to the United States Constitution and equal protection and (2) Chicago's registration scheme conflicts with federal law; and

WHEREAS, the Federal District Court ruled that the Second Amendment right to keep and bear arms is not incorporated through the Fourteenth Amendment to apply to the states and granted judgment on the pleadings for the Chicago in both lawsuits; and

WHEREAS, after the two lawsuits were consolidated, the Court of Appeals for the Seventh Circuit unanimously affirmed dismissal of both lawsuits on the ground that binding Supreme Court precedent held that the Second Amendment does not apply to state and local governments; and

WHEREAS, based on Supreme Court precedent, the cities and states across the country have enacted a wide range of laws governing the possession, use and sales of firearms to curb the crime involving firearms occurring in their communities; and

WHEREAS, some of the laws enacted by local, state and federal entities range from registration requirements to prohibitions on concealed weapons to bans on particular categories of guns (e.g., handguns, assault rifles, and .50 caliber rifles) and, in Oakland, the Council has passed legislation regulating gun dealers, straw sales, junk guns (Saturday Night Specials), and ultra compact guns; and

WHEREAS, the amicus ("friend of the court") brief will argue, among other things, that state and local governments properly exercise one of their core police powers when they regulate the possession and transportation of firearms and determine the scope and applicability of self-defense when a firearm is used against another individual; and

WHEREAS, applying the Second Amendment right to bear arms to state and local governments would disrupt the relationship between an individual and his or her local community by establishing a remote, uniform, national standard with respect to firearms regulation;

WHEREAS, individuals would be entitled to challenge the constitutionality of local regulations based on a national standard, even though the standards and circumstances of each local community may differ and therefore should be controlling; and

WHEREAS, given the importance of this matter, a number of cities and counties intend to join in the friend of the court brief, including Baltimore, Maryland, Cleveland and Columbus, Ohio, Richmond, California, Sacramento, California, Seattle, Washington, Alameda County, California and Cook County, Illinois; now, therefore, be it

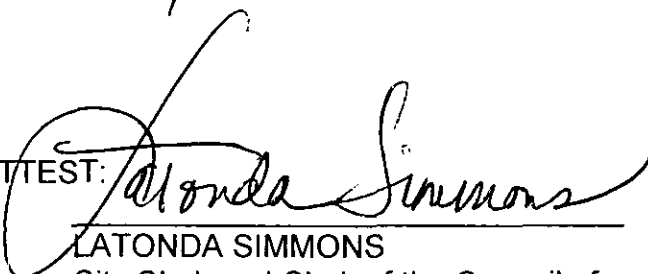
RESOLVED: that the City Council authorizes the City Attorney to sign onto an amicus ("friend of the court") brief in support of Chicago, asking the United States Supreme Court to Affirm the Seventh Circuit's decision based on a more than a century-old Supreme Court precedent that the Second Amendment (right to bear arms) does not apply to state and local governments.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 19 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, ~~REID~~,
AND PRESIDENT BRUNNER - 7

NOES - ϕ
ABSENT - ϕ
ABSTENTION - ϕ
~~Excused~~ - Reid - 1

ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California