



07 DEC 13 PM 3:37

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

December 18, 2007

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:

Subject: A REPORT AND PROPOSED RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN AN AMICUS BRIEF IN THE UNITED STATES SUPREME COURT SUPPORTING THE DISTRICT OF COLUMBIA'S APPEAL OF A LOWER COURT DECISION INVALIDATING THE DISTRICT'S LOCAL FIREARMS BAN

Summary

The City Attorney seeks Council approval to file, on behalf of the City of Oakland, an amicus brief in support of the District of Columbia's appeal of a lower decision invalidating the District's local firearms ban on grounds the local ban violates the Second Amendment to the US Constitution.

The District of Columbia's handgun ban was challenged in *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) and the federal appellate court in the case struck it down. The appellate court ruled the local handgun ban violates the Second Amendment to the United States Constitution which protects the constitutional right to bear arms. Prior to this ruling no federal appellate court had ever found that a firearms regulation was unconstitutional under the Second Amendment. On November 21, 2007, the US Supreme Court agreed to hear an appeal of the decision. At the Supreme Court, the case is titled *District of Columbia v. Heller*, Case No. 07-290. The Amicus Brief must be filed no later than January 11, 2008 pursuant to court deadlines in the case.

Background

During its history, the Supreme Court has addressed the Second Amendment only a few times. Each time the Court has held that laws regulating firearms do not violate the Second Amendment because that amendment is concerned with preserving the effectiveness of the militia in "collectively" bearing arms. Based on this case law the federal government, 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

HONORABLE CITY COUNCIL

Oakland, California

December 18, 2007

PAGE: 2

firearms occurring in their communities. These laws 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). In Oakland, the Council has passed legislation regulating gun dealers, straw sales, junk guns (Saturday Night Specials), and ultra compact guns.

While it is impossible to know the full impact the Court's decision in *Heller* will have on existing law, the case stands to significantly affect the legal landscape in which cities and states attempt to regulate firearms as a way to reduce gun violence in their communities.

Given the importance of this matter, several cities intend to join in the friend of the court brief being prepared by the Legal Community Against Violence. LCAV is a public interest law center formed in the wake of the 1993 assault weapon massacre at 101 California Street in San Francisco. The various cities that will likely join in the brief are New York, Los Angeles, San Francisco, Seattle, Baltimore, Milwaukee and Sacramento. LCAV expects additional cities will continue to join.

Fiscal Impact

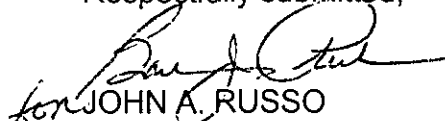
Insignificant.

The amicus brief will be prepared by the Legal Community Against Violence. The City will provide some data regarding the City's experience with handguns.

Recommendation

We recommend that the Council authorize the City Attorney to file an amicus brief in the US Supreme Court supporting the District of Columbia's appeal of a lower decision invalidating the District's local firearms ban on grounds the local ban violates the Second Amendment to the US Constitution. The Council must make a decision by December 18, 2007 because the Amicus Brief must be filed no later than January 11, 2008 pursuant to court deadlines in the case.

Respectfully submitted,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Rocio V. Fierro

OFFICE OF THE CITY CLERK
OAKLAND

Rocio V. Quiro
Approved as to Form and Legality

07 DEC 13 PM 1:07
Oakland City Council

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN AN AMICUS BRIEF IN THE UNITED STATES SUPREME COURT SUPPORTING THE DISTRICT OF COLUMBIA'S APPEAL OF A LOWER COURT DECISION INVALIDATING ITS LOCAL FIREARMS BAN

WHEREAS, in *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) a federal appellate court invalidated the District of Columbia's local ban on firearms and on November 21, 2007, the US Supreme Court agreed to hear an appeal of that decision, in which the case is now titled *District of Columbia v. Heller*, Case No. 07-290; and

WHEREAS, during its history, the Supreme Court has addressed this constitutional issues only a few times and each time the Court has held that laws regulating firearms do not violate the Second Amendment to the US Constitution because that amendment is concerned with preserving the effectiveness of the militia in "collectively" bearing arms; and

WHEREAS, based on this case law precedent, the federal government, 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, while it is impossible to know the full impact the Court's decision in *Heller* will have on existing law, the case stands to significantly affect the legal landscape in which cities and states attempt to regulate firearms as a way to reduce gun violence in their communities; and

WHEREAS, given the importance of this matter, several cities intend to join in the friend of the court brief being prepared by the Legal Community Against Violence, including New York, Los Angeles, San Francisco, Seattle, Baltimore, Milwaukee and Sacramento. LCAV expects additional cities will continue to join; now, therefore, be it

RESOLVED: that the City Council authorizes the City Attorney to sign onto an amicus Brief asking the US Supreme Court to reverse the Court of Appeal's decision in *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007) which held invalid the District of Columbia's local ban on firearms and which case is now titled *District of Columbia v. Heller*.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,
CHANG, AND PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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