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CITY OF OAKLAND



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January 19, 2010

**HONORABLE CITY COUNCIL**  
Oakland, California

**Subject: 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**

Dear President De La Fuente and Members of the City Council:

**Summary**

The United States Supreme Court has granted review of *McDonald v. Chicago*, 567 F.3d 856 (7<sup>th</sup> 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 and Immunities or Due Process Clauses.

The Legal Community Against Violence, a public interest law center that is dedicated to prevention gun violence and providing legal assistance in support of gun violence prevention, has asked the City of Oakland and other jurisdictions to join in an amicus ("friend of the court") brief. The amicus brief asks the high Court to affirm the decision of the United States Court of Appeals for the Seventh Circuit upholding the Federal District Court's dismissal of the lawsuits on the ground that the Second Amendment right to bear arms does not apply to state and local governments.

During its history, the United States Supreme Court has addressed the Second Amendment only on a few occasions. On each occasion the Court 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 Supreme

Court precedent, the federal government and cities and states across the country enacted a wide range of laws governing the possession, use and sale of firearms to address firearm-related crimes in their communities.

However, in a striking departure from its prior interpretation of the Second Amendment, the Supreme Court ruled in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008) that the Second Amendment guarantees an individual right to possess a firearm in the home for self-defense. *Heller* struck down Washington D.C.'s decades-old ban on handgun possession and the requirement that firearms in the home must be stored unloaded and disassembled or bound by a locking device. Washington D.C.'s ban had no exception for self-defense.

Because *Heller* involved the District of Columbia, the Court did not address the question whether the Second Amendment applies to state and local governments. The Court acknowledged Supreme Court precedent beginning with *United States v. Cruikshank*, 92 U.S. 542 (1876) has held that the Second Amendment applies only to the federal government. But, the Court also cautioned that *Cruikshank* did not engage in the type of Fourteenth Amendment inquiry required by later cases.

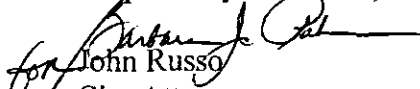
*McDonald* consolidates separate lawsuits that the National Rifle Association and the Second Amendment Foundation filed against Chicago, challenging Chicago's ban on handgun possession and sale. Both lawsuits allege, among other things, that Chicago's ban violates the Second Amendment right to bear arms. The Federal District Court granted judgment on the pleadings in favor of Chicago, ruling that the Second Amendment does not apply to state and local governments. On appeal after the two lawsuits were consolidated, the United States Court of Appeals for the Seventh Circuit unanimously affirmed dismissal of both lawsuits based on binding Supreme Court precedent holding that the Second Amendment does not apply to state and local governments.

If the high Court overrules Supreme Court precedent and holds that the Second Amendment applies to state and local governments, Oakland's gun control laws would be subject to federal standards as opposed to state and local standards that could allow broader gun regulation based on the particular needs, interests of the communities in question.

#### Action Requested of the City Council

We recommend that the City Council authorize the City Attorney to sign onto the amicus brief. A number of cities and counties have expressed their intent to join in the amicus brief, including Alameda County, California, Cook County, Illinois, Baltimore, Maryland, Cleveland and Columbus, Ohio, Seattle, Washington, and Richmond and Sacramento, California.

Respectfully submitted,

  
John Russo  
City Attorney

Assigned Attorney:  
Barbara J. Parker

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## Oakland City Council

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**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 (7<sup>TH</sup> 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,

PASSED BY THE FOLLOWING VOTE:

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

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

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