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October 9, 2012
[By email to rjohnson@dccouncil.us](mailto:rjohnson@dccouncil.us)

Hon. Phil Mendelson, Chair
Committee on the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Gun Owners of America, Inc. and Gun Owners Foundation Comments
on: Administrative Disposition of Weapons Amendment Act of 2012

Dear Mr. Mendelson:

Our firm represents Gun Owners of America, Inc. (“GOA”) and Gun Owners Foundation (“GOF”), which hereby submit these joint comments for inclusion in the official record regarding the DC Council’s consideration of the proposed “Administrative Disposition of Weapons Amendment Act of 2012” (“Act”).

1. Identity of Commenters.

GOA is a national membership educational organization and lobby, devoted to protecting and defending firearms rights across the country. GOA was incorporated in California in 1976, and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code (“IRC”). GOF is an educational and legal defense organization defending the Second Amendment of the U.S. Constitution. GOF was incorporated in Virginia in 1983, and is exempt from federal income tax under IRC section 501(c)(3). GOA and GOF are headquartered in northern Virginia. GOA and GOF appreciate that the Council has provided this opportunity to comment on the proposed Act.

2. GOA and GOF Have a Long-Standing Interest in D.C. Firearms Policy.

Both GOA and GOF have long been aware of the D.C. government’s hostility to the Second Amendment and distrust of its citizens’ ability to own firearms. Over the years both organizations have received requests for assistance from numerous persons who have unwittingly found themselves charged with violations of D.C. firearms laws.

In 1987, well before the United States Supreme Court recognized that the Second Amendment protected an individual right, not a collective one, GOF co-filed the only *amicus curiae* brief in the D.C. Court of Appeals, supporting the right of a D.C. resident to carry an unregistered firearm on his person, in and around his home and place of business. See Sandidge v. United States, 520 A.2d 1057 (D.C. Ct. App. 1987).¹

In District of Columbia v. Heller, 554 U.S. 570 (2008), GOA and GOF filed an *amicus curiae* brief urging the court to recognize (i) that the Second Amendment protects an individual right, and (ii) that the right protected is not subject to infringement by regulatory schemes, such as the one that prevailed in the District.² In Heller, the Court ruled not only that the Second Amendment protects an individual right, but that the right protected could not be overcome by a putative government interest — compelling or otherwise. Rather, the Court ruled that the right is to be measured by the guarantee set forth in the constitutional text that, if a person is a part of the American political community, and the weapon falls within the category of an “arm,” that a citizen’s right to keep and bear arms can not be infringed by the District no matter how “compelling” its interest.

Nevertheless, this Council responded to Heller by enacting into law a firearms registration system that would effectually reinstall its pre-Heller ban on handguns. Thus, in Heller v. District of Columbia (“Heller II”), GOF filed the only *amicus curiae* brief³ in support of Mr. Heller, arguing that D.C.’s newly enacted registration requirements, and its bans on “high capacity” magazines and “assault weapons,” continue to infringe its residents’ Second Amendment rights, and should be subject to the “text, history and tradition” Second Amendment test enunciated in Heller, rather than generic standards of review (*e.g.*, rational basis, intermediate scrutiny, or strict scrutiny). Unfortunately, both the parties and the court considered the case in the context of traditional standards of review, rather than the textual/historical analysis of the Supreme Court’s decision in Heller. The U.S. Court of Appeals issued its decision on October 4, 2011.⁴ This case is currently on remand to the U.S. District Court for the District of Columbia.

¹ http://lawandfreedom.com/site/firearms/Sandidge_amicus.PDF

² <http://lawandfreedom.com/site/constitutional/DCvHellerAmicus.pdf>

³ http://lawandfreedom.com/site/firearms/HellerII_Amicus.pdf

⁴ [http://www.cadc.uscourts.gov/internet/opinions.nsf/DECA496973477C748525791F004D84F9/\\$file/10-7036-1333156.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/DECA496973477C748525791F004D84F9/$file/10-7036-1333156.pdf)

3. Brief Statement of Position.

The pending bill, introduced by Chairman Phil Mendelson, represents a marked change in the District's response to the Supreme Court's decision in Heller. It appears to be the first effort of the District government to recognize the Second Amendment rights of persons in the District. We are further encouraged that Mr. Mendelson indicated (at the September 23, 2012 hearing) that "he would look further into the implications of extending administrative dispositions in firearms-related cases to D.C. residents as well."⁵

While GOA and GOF are not able to support the proposed change as it does not go far enough to reach constitutional minimums, neither do they oppose it. Insofar as Mr. Mendelson is considering expanding the scope of the bill, this letter offers some suggestions about how the issue of possessing firearms and ammunition in the District can be better addressed by the D.C. Council.

4. District of Columbia Regulation of Firearms.

Prior to the U.S. Supreme Court's decision in Heller, the District of Columbia had, by far, the most onerous and restrictive firearms laws in the nation. Even after the Supreme Court's decision, the D.C. government has only grudgingly tolerated some exercise of these constitutional rights by its citizens.

Civilian ownership of firearms remains prohibited after Heller, subject only to a narrow registration exception. D.C. Code § 7-2502.01. Only after jumping through numerous hoops, requiring the investment of a tremendous amount of time and resources, may a person register and possess a firearm — but only in his home.⁶ D.C. Code § 7-2502.03, *et seq.* The District of Columbia does not permit its citizens to carry firearms in public, whether concealed or unconcealed. Anyone who is found in possession of an unregistered firearm is subject to imprisonment for up to one year and a fine of up to \$1,000. D.C. Code § 7-2507.06.

5. Constitutional Principles Involved.

Contrary to the position taken by Second Amendment opponents, the U.S. Supreme Court's decision in Heller did not limit the right to keep and bears arms only to persons in their homes, and only for the narrow purpose of self-defense. Unfortunately, this narrow reading was adopted by the District, which led to Heller II, and the current effort of the

⁵ <http://www.washingtontimes.com/news/2012/sep/24/scope-of-proposed-gun-bill-questioned-attorney-gen/?page=all>

⁶ See E. Miller, "The new guide to getting a gun in D.C.," July 12, 2012. <http://www.washingtontimes.com/blog/guns/2012/jul/12/miller-new-guide-getting-gun-dc/>

District to modify some of its stringent rules governing the possession of handguns in the District. That effort ultimately will fail, however, if the District fails to conform D.C. firearms policy to the principles governing the Second Amendment, as set forth by the Supreme Court in Heller.

Pertinent to this case is the principle protecting the “bearing” of arms outside the confines of one’s home or business. In an appeal before the United States Court of Appeals for the Fourth Circuit, GOA and GOF have filed an *amicus curiae* brief⁷ supporting a federal district court ruling that a Maryland law generally prohibiting the concealed carry of a handgun violates the Second Amendment. Woollard v. Sheridan, 2012 U.S. Dist. LEXIS 28498 (D. Md. Mar. 2, 2012). As Heller established, a handgun is an arm comparable to arms that were historically protected and, therefore, enjoys protection under the Second Amendment. And as Heller also established, the keeping of a handgun for self defense is within the historic purpose of the Second Amendment.

6. The District of Columbia Should Repeal its Prohibition on the Possession and Carrying of Firearms.

Pursuant to these principles, GOA and GOF urge that the Council should repeal Section 7-2507.06 of the D.C. Code. By repealing this provision, the Council would take a first real step toward restoring gun rights in the District, enabling both residents and nonresidents to exercise their Second Amendment rights. No state in the country has requirements as onerous as does the District for the simple possession of a firearm in one’s home. Only Illinois similarly denies all persons the right to carry a firearm in public.⁸

The vast majority of states currently require state officials to issue licenses to carry firearms to anyone who demonstrates certain minimal qualifications. The denial of the right to carry a firearm to law abiding citizens is, at best, of dubious legality. The Woollard opinion of the Maryland federal court discussed *supra* determined that Maryland’s discretionary “may-issue” system of licensing was unconstitutional, and that the right to “bear” arms extends outside of the home.⁹ Thus, the Council should seriously consider moving the District’s laws into a position more closely in line with the laws of 49 states, with the U.S. Supreme Court’s decision in Heller and, of course, with the text and meaning of the Second Amendment.

⁷ http://lawandfreedom.com/site/firearms/WoollardvGallagher_Amicus.pdf

⁸ See <http://www.handgunlaw.us/LicMaps/ccwmap.php>.

⁹ Woollard v. Sheridan, 2012 U.S. Dist. LEXIS 28498 (D. Md. Mar. 2, 2012). See <http://baltimore.cbslocal.com/2012/03/05/md-gun-law-found-unconstitutional/>.

7. Alternatively, the D.C. Council Should Amend the Penalty for Possessing a Firearm to be Civil, Rather than Criminal.

The proposed bill to amend the District of Columbia Firearms Control Regulations Act of 1975 would provide some relief to many Americans who reside outside the District and visit the nation's capital, but who are unaware of the D.C. law prohibiting the possession of an unregistered firearm, or have simply forgotten to leave their firearm at home.¹⁰ However, the proposed change does nothing to alleviate the burdens placed upon D.C. residents who currently are being deprived of their constitutional right to keep and bear arms, and who may find themselves in similar situations.

While GOA and GOF believe Second Amendment rights must not be compromised, the Council could consider decriminalizing possession of unregistered firearms, amending Section 7-2507.06 to redefine the offense as civil rather than criminal, so long as the offender is permitted to possess a firearm under federal law, and so long as the offense was not accompanied by the commission of another serious crime. Such civil offense could be punishable, for example, by a fine of up to \$1,000. In the case of a D.C. resident, any violation could subject the offending firearm to forfeiture if the possessor of the firearm failed to register it within 6 months. For a nonresident, the firearm might be subject to forfeiture upon a second violation. If the Council did not wish to treat its residents and nonresidents alike, such a change could be enacted to apply only to nonresidents, making their possession of firearms a civil offense.

8. As Written, the Proposed Act Subjects Second Amendment Rights the Risk of Misinterpretation by Other Jurisdictions.

Additionally, it is unclear whether Section(b)(3) of the Act, which states that an “administrative disposition” is not a “criminal conviction” would be interpreted in this manner outside of the District. Since the underlying offense is criminal in nature, the administrative disposition may be considered to reflect the commission of a crime by officials in another state.

One particular problem involves persons whose livelihood depends upon their eligibility to possess a firearm and who may not be protected by the statement in the bill that an “administrative disposition shall not be grounds for the suspension, revocation, or denial of any license.” The D.C. Council cannot prevent an executive officer of another state from treating such an administrative disposition as the equivalent of a criminal conviction. In light

¹⁰ Over the years, GOF has been contacted several times by law-abiding Americans who unintentionally violated the District’s strict firearms laws, either not aware of the laws or forgetting they had a firearm with them, and who were facing either serious criminal charges, forfeiture of their firearms, or both.

of these risks it would be preferable for the Council to change the nature of the offense from criminal to civil, as discussed *supra*.

Sincerely yours,

/s/

Robert J. Olson

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