Testimony

New York State Rifle & Pistol Association, Inc.

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City Council Hearing
Public Safety Committee

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11:00 a.m.
250 Broadway, 14th Floor
New York City

I am pleased to testify today on behalf of the New York State Rifle & Pistol Association, Inc. ("Association"). The New York State Rifle & Pistol Association is the New York State affiliate of the National Rifle Association of America ("NRA").

INT. 313-2010 – A Local Law to amend the administrative code of the city of New York, in relation to fees for firearm licenses and rifle and shotgun permits and the possession of firearms, rifles and shotguns while intoxicated and other abuse of firearm licenses and rifle and shotgun permits.

The Association opposes INT. 313-2010 in its current form. We certainly support any reduction in license application and renewal fees, and the bill is a step in that correct direction. Indeed, the Constitution requires the elimination of fees on the exercise of the fundamental right of the people to keep and bear arms. However, the balance of the bill proposes a solution in search of a problem, and creates additional threats to the rights of the people to bear arms and also to be otherwise secure from infringements on their personal liberty as guaranteed in the Bill of Rights and 14th Amendment. Accordingly the Association opposes the bill as introduced.

License Fees Are Unconstitutional

The City and State of New York violate the Equal Protection Clause of the Fourteenth Amendment when making "affluence … or the payment of any fee" a qualification for the lawful exercise of the fundamental individual right to keep and bear arms as guaranteed by the Second Amendment. *See,* Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 666, 86 S.Ct. 1079, 1081 (1966) (invalidating an annual $1.50 poll tax on the fundamental individual right to vote). The right to keep and bear arms guaranteed by the Second Amendment is an individual right, District of Columbia v. Heller, 128 S.Ct. 2783, 2799 (2008) (there is "no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms."), and it is, like the right to vote, "fundamental" such that the States and their political subdivisions like the City of New York are, by operation of the Due Process Clause of the Fourteenth Amendment, prohibited from infringing that right. McDonald v. City of Chicago, Ill., 130 S.Ct. 3020 (2010).

Quite plainly, any application fee by the City and State of New York on the lawful exercise of the right to keep and bear arms – a fundamental individual right guaranteed in the Bill of Rights – is unconstitutional, and all such fees should be not merely reduced, but repealed.

Drug and Alcohol Issues

The balance of the proposed legislation is a solution in search of a problem. It appears to be merely a new tactic in the long-march strategy of gun prohibitionist politicians to do everything possible to erode and undermine the right of the people to keep and bear arms. The proposal threatens not only fundamental Second Amendment rights, but other fundamental rights as well, notably the Fourth Amendment freedom to be secure in their persons and property from unreasonable searches and seizures. It also continues the unseemly local tradition of exempting law enforcement from the operation of City law.

Apparently borrowing concepts from laws to combat drunk driving, the proposal conflates the privilege of driving, an activity which requires constant attention and sober reaction times, with the fundamental right to bear arms, which, for example, in the case of a person lawfully carrying a holstered firearm, normally does not require constant attention nor any reaction time: the firearm virtually always stays securely put, securely holstered, out of sight. The diverse situations of driving and having a holstered firearm are not comparable in their practical aspects, nor can they be treated equally from a Constitutional point of view. There is no need for a problematic set of laws and rules for a status offense of impairment based on misplaced analogies to motor vehicle operation. Persons who commit acts of criminal recklessness should be prosecuted, but current law allows quite well for that.

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