

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DICK ANTHONY HELLER, <i>et al.</i>)	
)	
Plaintiffs)	
)	
v.)	Case No. 1:08-cv-01289
)	Hon. Ricardo M. Urbina
THE DISTRICT OF COLUMBIA, <i>et al.</i>)	
)	
Defendants)	
_____)	

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT
OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Dick Anthony Heller, Absalom Jordan, William Carter, and Mark Snyder, by counsel, pursuant to LCvR 7 and 56.1, hereby submit the following statement of material facts as to which the plaintiffs contend there is no genuine issue.

1. The District of Columbia’s Firearms Control Amendment Act of 2008 (hereafter “the Act”), which Mayor Fenty signed on December 28, 2008, became effective on April 1, 2009.

Complaint and Answer [hereafter “Compl. & Ans.”] ¶ 12.

2. No public firing range exists in the District. Compl. & Ans. ¶ 17.

3. Plaintiff Mark Snyder wished to purchase a .22 caliber bolt action target rifle. Exhibit [“Ex.”] 1, Snyder Declaration [“Decl.”] ¶ 3.

4. On January 20, 2009, Snyder was advised of the registration requirements by the Metropolitan Police Department (MPD). Compl. & Ans. ¶ 34.

5. Snyder ordered the rifle from a dealer. On February 2, he received the registration paperwork from the police, filled it out and sent it to the dealer, who returned it on February 11.

Ex. 1, Snyder Decl. ¶ 3-4.

6. On February 17, Snyder attempted to deliver his registration paperwork to the MPD, which informed him that he would have to take the firearms course. He then placed telephone calls to persons on the District's certified instructors roster and left messages. On February 19, at the MPD, he took the required written test, submitted fingerprints, completed the mental health form, and paid the fees. On February 21, he paid \$125 and took the D.C.-approved course consisting of four hours of class and one hour of range time. The course consisted of handgun training. On February 25, he called the MPD to learn that his registration was approved and proceeded to the MPD to pick up the registration papers. Compl. & Ans. ¶ 34.

7. Finally, Snyder returned to the dealer, which conducted a records check on him for criminal convictions, mental disability, or other prohibited category under the National Instant Background Check System (NICS), 18 U.S.C. § 922(t), and then transferred the rifle to him. Ex. 1, Snyder Decl. ¶ 9.

8. By application dated July 6, 2009, Plaintiff Absalom Jordan applied to register a Model 59 S&W pistol to be used for "personal protection, sporting activities, recreation," and paid the required fees therefor. The MPD issued the registration on the same date. Ex. 2, Jordan Decl. ¶ 5.

9. Jordan stores outside the District two other pistols which he wished to apply to register at the same time as the above application, but could not do so because D.C. Code § 7-2502.03(e) provides in part: "The Chief shall register no more than one pistol per registrant during any 30-day period" As a result, he is required to undertake the effort and expense of submitting registration applications on two more occasions, with a minimum 30-day period between the

dates on which the Chief registers each pistol. Ex. 2, Jordan Decl. ¶ 6.

10. The term “Colt AR-15 series” refers to different models of a rifle manufactured by Colt’s Defense and its predecessor companies. “AR-15” is commonly used as a generic term to describe the same or similar rifles made by other manufacturers. Ex. 5, Overstreet Decl. ¶ 3.

11. AR-15s are semiautomatic, meaning that they are designed to fire only once when the trigger is pulled. They have the capacity to accept a detachable magazine. Standard magazines hold 20 or 30 rounds of ammunition, but magazines of other capacities are also available. They also have a pistol grip typically 3¾ to 4 inches in length that protrudes at a rearward angle beneath the action of the rifle. Ex. 5, Overstreet Decl. ¶ 4.

12. Since being introduced in 1963, roughly two million AR-15 type rifles have been manufactured. Ex. 5, Overstreet Decl. ¶ 5.

13. AR-15s accounted for 14.4 percent of rifles made in the U.S. for the domestic market in 2007. Ex. 5, Overstreet Decl. ¶ 10.

14. A projected 2,145,162 AR-15 type rifles will have been produced and not exported from 1986 through 2009. Ex. 5, Overstreet Decl. ¶ 9.

15. Plaintiff Heller applied to register a Bushmaster XM-15-E2S .223 caliber rifle, “For use in the Civilian Marksmanship Program [CMP].” The MPD found it to be an “assault weapon” and denied the application. Compl. & Ans. ¶ 51. The rifle resembles a “Colt AR-15 series” rifle or “variation, with minor differences” thereof, and has “a pistol grip that protrudes conspicuously beneath the action of the weapon.” Ex. 4, Heller Decl. ¶ 5.

16. Such rifles are eligible for use in, and are widely used in, the CMP. Heller has received training by the CMP and has been issued a certificate of completion. Ex. 4, Heller Decl.

¶ 6.

17. Plaintiff Jordan applied to register an Armalite AR-180 .223 caliber rifle to be used for “personal protection.” The MPD found it to be an “assault weapon” and denied the application. Compl. & Ans. ¶ 52.

18. The Armalite AR-180 is a semiautomatic rifle which uses a detachable magazine and has a pistol grip that protrudes about 4 inches beneath the action. Rifles of this type are commonly possessed for protection, target shooting, competitions, and sporting purposes. Ex. 2, Jordan Decl. ¶ 8.

19. Plaintiff William Carter applied to register an LMT Defender 2000 .223 caliber semiautomatic rifle, which has a pistol grip that protrudes beneath the action of the weapon and a telescoping stock, to be used for “recreational activity, NRA range.” Ex. 3, Carter Decl. ¶ 3, 5. The MPD found it to be an “assault weapon” and denied the application. Compl. & Ans. ¶ 57.

20. This type of pistol grip allows the rifle to be accurately shot from the shoulder without excessive muzzle rise. In his Marine Corps training, Carter was instructed to fire the M16 (which has a similar pistol grip) only from the shoulder and was never trained to fire it from the hip. Ex. 3, Carter Dec. ¶ 6.

21. Neither the pistol grip nor the telescoping stock makes the rifle more powerful or dangerous. Numerous persons possess such rifles throughout the United States for target shooting and other lawful purposes. Ex. 3, Carter Dec. ¶ 7.

22. Protruding pistol grips are shown as used on single-shot Olympic air rifles and .22 caliber rifles on the website

<http://www.feinwerkbau.de/ceasy/modules/cms/main.php5?cPageId=13>.

23. The ArmaLite M15 rifle and AR-10 rifle are very similar in design and function to the Colt AR-15 rifle. The AR-180 is also similar in design to, and is functionally identical to, the Colt AR-15. Ex. 6, Westrom Decl. ¶ 2.

24. The ArmaLite M15 and AR-180 rifles, the AR-10 rifle, and the Colt AR-15 rifle share several common characteristics. They are semiautomatic, meaning that they fire only once per trigger pull. They have the capacity to accept a detachable magazine. These rifles have a pistol grip typically 3 3/4 to 4 inches in length that protrudes at a rearward angle beneath the action of the rifle. The pistol grip, in conjunction with the straight-line stock, allows the rifle to be fired accurately from the shoulder with minimal muzzle-rise. Most AR-15 and AR-10 rifles have fixed stocks, but some have a telescoping stock which allows adjustment to the person's physique. Ex. 6, Westrom Decl. ¶ 3.

25. ArmaLite has manufactured approximately 100,000 M15 rifles/rifle receivers, 45,000 AR 10 rifles/rifle receivers, and 10,000 AR 180 rifles. Another 10,000 AR 180 rifles were manufactured in the United Kingdom and subsequently imported into the United States. Ex. 6, Westrom Decl. ¶ 4.

26. The ArmaLite M15 rifle, the AR 180 rifle, and the AR 10 rifle have proven to be a flexible family of rifles that have experienced expanded use, and are commonly possessed, for law enforcement, sport (including target shooting, both informally and in formal competitions), and security, including personal protection in the home. Features allowing varied iron and optical sights further reflect their increased use in sport and hunting. Ex. 6, Westrom Decl. ¶ 5.

27. During the past 15 years, because of their superb accuracy, the ArmaLite M15 rifle and the AR 10 rifle have almost totally replaced preceding models at the National Matches and

other formal target shooting venues. The M15 and similar models are the main Service Rifle in formal competition these days. Their use in less formal target shooting is widespread. Ex. 6, Westrom Decl. ¶ 7.

28. The accuracy and light recoil of the ArmaLite M15 rifle, the AR 180 rifle, and the AR 10 rifle make them extremely useful for hunting small and medium-sized game and varmint hunting. Ex. 6, Westrom Decl. ¶ 8.

29. ArmaLite has experienced a broad acceptance of these rifles for security and personal protection purposes both among police and private owners due to both operational and safety concerns. A carbine or rifle provides better accuracy than a handgun, and the small caliber cartridge of the M15 and AR-180 tends to break up rather than penetrate multiple walls and objects. Ex. 6, Westrom Decl. ¶ 9.

30. Magazines that have a capacity of more than 10 rounds of ammunition are commonly sold with and are available for numerous makes and models of pistols and rifles. Such magazines are commonly possessed for self defense, target shooting, hunting, and sporting purposes. The Model 59 S&W pistol, for instance, was originally sold with a magazine holding 14 rounds of ammunition. As a result of D.C. Code § 7-2506.01(b), which prohibits possession of any magazine with a capacity of more than 10 rounds of ammunition, Plaintiff Jordan cannot possess such magazine in the District but must keep it stored elsewhere. Ex. 2, Jordan Decl. ¶ 9.

31. Plaintiff Jordan is a Firearms Instructor certified by the National Rifle Association. He formerly held a Federal Firearms License to engage in the business of dealing in firearms in the District, and was agent for Glock when the MPD evaluated and purchased the Glock Model 17 pistol. Ex. 2, Jordan Decl. ¶ 3, 10.

32. Many pistols and rifles are sold with magazines that hold more than 10 rounds, and such firearms are in wide use for self defense, target shooting, and other lawful purposes. Ex. 4, Heller Decl. ¶ 9.

33. Plaintiff Heller is a Special Police Officer in the District, which licensed him to carry a pistol. He has provided security for United States judges at the Thurgood Marshall Federal Judicial Center and for various federal officials at other buildings in the District. Ex. 4, Heller Decl. ¶ 8.

34. Ammunition feeding devices that have a capacity of more than 10 rounds of ammunition are typically detachable box magazines designed for semiautomatic rifles or semiautomatic pistols, or tubular magazines designed for .22 rimfire caliber rifles. Millions of such magazines have been manufactured in the United States and imported. Such magazines are widely available in the commercial market and are in common use throughout the United States. Magazines holding more than ten rounds are preferable for self protection, and are in common use for target shooting, competitions, and other sporting purposes. Ex. 6, Westrom Decl. ¶ 10.

35. Of 1.5 million handguns made in the United States and not exported in 2007, 77 percent were semiautomatic pistols. Ex. 5, Overstreet Decl. ¶ 13.

36. Standard magazines for very commonly owned semiautomatic pistols hold up to 17 rounds of ammunition. In 2007, about 2/3 of the 1.2 million pistols made and not exported were in calibers typically using magazines that hold over 10 rounds. Ex. 5, Overstreet Decl. ¶ 14. Today, law enforcement officers typically carry pistols the standard magazines for which hold more than 10 rounds, such as the Glock 17, and such pistols are also widely owned by private citizens in the United States. *Id.* ¶ 15. The standard magazine for the armed forces' Beretta M9

9mm service pistol holds 15 rounds, which are also commonly owned by private citizens in the United States. *Id.* ¶ 15.

37. Beginning with the M1 Carbine, introduced in the 1940s, rifles capable of accepting detachable magazines holding more than 10 rounds, and typically equipped with such magazines, have been increasingly common among private citizens in our country. More than six million M1 Carbine series rifles have been made since their introduction in the 1940s, and the standard magazines for them hold 15 or 30 rounds. There are roughly two million AR-15 type rifles, and they are typically sold with between one and three standard magazines. More than 800,000 Ruger Mini-14 series rifles have been produced since their introduction in 1974, and many are equipped with standard magazines of 20 or 30 rounds. Numerous other rifle makes and models also have the capacity to accept, and are commonly equipped with, magazines holding more than 10 rounds. Ex. 5, Overstreet Decl. ¶ 17.

38. In addition to magazines sold with firearms, many more magazines are widely available on the open market. Ex. 5, Overstreet Decl. ¶ 18.

39. As of 1994, an estimated 18 percent of civilian-owned firearms, including 21 percent of civilian-owned handguns, were equipped with magazines holding over ten rounds, and 25 million guns were equipped with such magazines. Some 4.7 million such magazines were imported during 1995-2000. Ex. 5, Overstreet Decl. ¶ 19.

40. As of 1994, an estimated 40 percent of the semiautomatic handgun models and a majority of the semiautomatic rifle models manufactured and advertised were sold with, or had a variation that was sold with, a magazine holding over 10 rounds. Ex. 5, Overstreet Decl. ¶ 20.

41. The usefulness of magazines holding more than 10 rounds for lawful defense of self

and others is demonstrated by the fact that they are issued to the police. In 1989, the MPD adopted the Glock 17 as its service pistol, magazines for which hold 17 rounds, and later adopted the Glock 19, magazines for which hold 15 rounds. Compl. & Ans. ¶ 65; Ex. 2, Jordan Dec. ¶ 10.

42. Plaintiff Heller applied to register a Sig Sauer P226 9mm pistol with a magazine capacity of 15 rounds of ammunition for “self-defense in the home.” The MPD disapproved the application because the “15 round ammunition capacity is defined as a ‘large capacity ammunition feeding device’ and exceeds 10 rounds as required by D.C. Code 7-2506.01(b).” Compl. & Ans. ¶ 66.

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Respectfully Submitted,

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