

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER M. FLETCHER, EOIN M. PRYAL,
SECOND AMENDMENT FOUNDATION, INC., and
COMMONWEALTH SECOND AMENDMENT, INC.
Plaintiffs,

v.

ROBERT C. HAAS, in his official capacity as Cambridge
Commissioner of Police, MARK K. LEAHY, in his
official capacity as Northboro Chief of Police, and
JASON A. GUIDA, in his official capacity as Director of
the Massachusetts Firearms Records Bureau,
Defendants.

No. 1:11-cv-10644-DPW

DEFENDANT GUIDA'S MOTION TO DISMISS

Defendant Jason A. Guida, in his official capacity as Director of the Massachusetts Firearms Records Bureau, moves to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that plaintiffs have failed to state any claim upon which relief can be granted. The grounds for this motion are set forth in the accompanying memorandum of law, and can be summarized as follows.

In this action, plaintiffs challenge the constitutionality of the Massachusetts statutory scheme that allows non-citizens to seek a permit to possess and carry regular capacity rifles and shotguns, but does not allow them to join otherwise qualified citizens in seeking a license to possess or carry large-capacity weapons, handguns, or concealed weapons.

As a matter of law, plaintiffs cannot demonstrate that the challenged statutes violate either the Second Amendment to the United States Constitution or the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs have failed to state any claim under the Second Amendment, as that provision only protects certain rights of citizens and does not extend to aliens. Because the Second Amendment allows the Commonwealth of Massachusetts to treat citizens and non-citizens differently in granting firearms licenses, as a matter of law the Commonwealth's statutes that do so cannot violate the Equal Protection Clause.

In any case, plaintiffs have not articulated any viable claim that the challenged statutes are unconstitutional on their face. On the contrary, the laws that allow aliens to possess and carry regular-capacity rifles and shotguns but not other arms have a plainly legitimate sweep and plaintiffs cannot meet their heavy burden of proving there are no circumstances under which those laws could be valid.

Finally, the claims by plaintiffs Second Amendment Foundation, Inc., and Commonwealth Second Amendment, Inc., must be dismissed for lack of standing. Neither corporate plaintiff claims to have any constitutional right of its own to bear arms. Nor can either establish associational or representational standing, because neither alleges that it represents any member who tried but failed to obtain a Massachusetts firearms license because she is an alien.

Request for Oral Argument.

Pursuant to L.R. 7.1(D), defendant Guida requests a hearing on this dispositive motion, on the ground that oral argument is likely to be of assistance to the Court.

Certification of Compliance With L.R. 7.1(A)(2).

The undersigned counsel hereby certifies that he has conferred with Plaintiff's counsel and that we have attempted in good faith to resolve or narrow the issue presented by this motion.

MARTHA COAKLEY
ATTORNEY GENERAL OF MASSACHUSETTS

/s/ Kenneth W. Salinger
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May 19, 2011

Certificate of Service

I hereby certify that this document was filed through the Electronic Case Filing (ECF) system and thus copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent to those indicated on the NEF as non registered participants on or before May 19, 2011.

/s/ Kenneth W. Salinger