No. _____

In the United States Court of Appeals for the Seventh Circuit

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IN RE RHONDA EZELL, JOSEPH I. BROWN, WILLIAM HESPEN, ACTION TARGET, INC., SECOND AMENDMENT FOUNDATION, INC., AND ILLINOIS STATE RIFLE ASSOCIATION,

Petitioners.

On Petition for a Writ of Mandamus to the
United States District Court for the Northern District of Illinois
The Hon. Virginia M. Kendall, District Judge
District Court No. 10-CV-5135

PETITION FOR A WRIT OF MANDAMUS

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February 28, 2017

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PETITION FOR WRIT OF MANDAMUS

RELIEF SOUGHT

Pursuant to 28 U.S.C. § 1651 and Fed. R. App. P. 21, Rhonda Ezell, Joseph I. Brown, William Hespen, Action Target, Inc., Second Amendment Foundation, Inc., and Illinois State Rifle Association—Appellants in No. 10-5135, Appellees in No. 14-3312, and Cross-Appellants in No. 14-3322—respectfully petition this Court to issue a writ of mandamus directing the United States District Court for the Northern District of Illinois to immediately, without any further delay or variance, execute and enter judgment upon this Court's mandate as issued in Nos. 14-3312 and 14-3322.

INTRODUCTION

Nearly six years have passed since this Court ruled that Chicago's range ban irreparably harms Petitioners by violating their fundamental Second Amendment rights. But no gun ranges open to the public are on Chicago's horizon, geographically or figuratively, and already the City's post-mandate gamesmanship following the second round of appellate proceedings has afforded it an additional three-week delay in which to violate Petitioners' rights and "thumb[] the municipal

nose" at the courts. *Ezell* v. *City of Chicago*, 651 F.3d 684, 711 (7th Cir. 2011) (Rovner, J., concurring in the judgment) ("*Ezell I*").

Having maintained a de facto range ban for nearly six years beyond the demise of its de jure range ban, what's another six months before the next incarnation of Chicago's range ban? After failing to seek a stay of this Court's most recent mandate, either here or at the Supreme Court, the City is asking *the District Court* to stay *this Court's* mandate for *six months*, for the expressed purpose of avoiding this Court's judgment altogether.

Rather than dismiss the City's highly inappropriate and extra-jurisdictional motion out of hand, the District Court has (1) sub silentio extended the stay of its appealed judgment beyond the mandate's issuance (and thus beyond its own jurisdiction—the first violation of the mandate), and (2) effectively granted the City a temporary stay of this Court's mandate pending (3) a lengthy briefing and argument schedule to decide whether this Court's mandate needs to be honored.

It does. Enough is enough. "Judicial mandates must be obeyed, and litigation must have an end." *In re Continental Illinois Sec. Litigtion*, 985 F.2d 867, 869 (7th Cir. 1993).

The City, and the court below, make two fundamental errors. First, it is for this Court or the Supreme Court, *not* for the lower court, to stay this Court's mandates. See 28 U.S.C. § 2101(f). Sometimes, this Court stays its mandates sua sponte. Other times, it does so on motions pursuant to Fed. R. App. P. 41 ("Rule 41"). Sometimes, the Supreme Court gets involved. Parties do take great care litigating appellate courts' mandates—in the relevant courts—because everyone usually understands what happens in district courts once a mandate issues. Parties cannot ignore Rule 41, allow the mandate to issue uncontested, and then ask the lower court for relief.

Second, the court below and the City have lost sight of what happened here. Petitioners sought a judgment—which they won—barring the enforcement of certain Chicago ordinances as unconstitutional. Petitioners did *not* seek an order compelling the City to revisit its legislation. No Section 1983 plaintiff asks the courts to order that . . . legislatures kindly revisit a topic in half a year.[1] Are people who win civil rights cases not usually entitled to their

[1]Had Petitioners sought a judgment directing the City to reconsider legislation in the abstract, or to commandeer the legislative function, doubtless the City would have objected.

judgments? "[T]he remedy is necessarily directed at the statute itself and *must* be injunctive and declaratory . . . ." *Ezell I*, 651 F.3d at 698.

Finally, Petitioners might as well raise the Court's awareness now: Petitioners have reason to suspect that apart from the dilatory nature of the City's belated stay efforts, the City has another abusive purpose in mind. Should it succeed in avoiding a district court judgment by legislatively mooting the dispute, the next shoe to drop might be yet another reprise of the unconstructive argument that Petitioners did not prevail for purposes of 42 U.S.C. § 1988 because no district court judgment had issued.

The City invented that frivolity on remand from *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010), but notwithstanding this Court's blunt rejection of the argument, *Nat'l Rifle Ass'n of Am., Inc.* v. *City of Chicago*, 646 F.3d 992 (7th Cir. 2011), the ploy was attempted again in the fee dispute following *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012). Unlike Judge Shadur, the *Moore* district court rejected the argument and held that winning in this Court qualifies one as a prevailing party, *Moore* v. *Madigan*, No. 11-3134, 2014 U.S. Dist. LEXIS 164647, at *13-*20 (S.D. Ill. Nov. 24, 2014), but the matter

required litigation and wasted much time as Illinois would not let go of the concept that plaintiffs hadn't prevailed.[2]

If the City does not intend to question that Petitioners "prevailed" for Section 1988 purposes in either of the appeals here, or in the court below on the M-zoning issue, by all means, it should say so now. In any event, following normal procedures upon the issuance of a mandate is not only right in and of itself, but can help avert problems later.

The writ of mandamus should issue.

ISSUE PRESENTED

Whether a writ of mandamus should issue directing the district court to follow this Court's mandate of February 9, 2017, entered in Nos. 14-3312 and 14-3322.

STATEMENT OF FACTS

In *Ezell I*, this Court "held that [Chicago's] range ban was incompatible with the Second Amendment and instructed the district court to preliminarily enjoin it." *Ezell* v. *City of Chicago*, Nos. 14-3312 & 14-3322, 2017 U.S. App. LEXIS 900, at *2 (7th Cir. Jan. 18, 2017)

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[2]The *Moore* district court abused its discretion in denying the plaintiffs' motion for sanctions over this and other frivolous arguments, but the dispute eventually settled on appeal.

(citation omitted) ("*Ezell II*"). Alas, later the same day, "[t]he City responded by replacing the range ban with an elaborate scheme of regulations governing shooting ranges." *Id.*

The District Court denied the City's motion to dismiss the case as moot and allowed Petitioners to amend their complaint, but it also invited the parties to propose injunctions that would effectuate the *Ezell I* mandate. *Ezell* v. *City of Chicago*, No. 10-C-5135, 2011 U.S. Dist. LEXIS 110860, at *10 (N.D. Ill. Sept. 28, 2011). Petitioners proposed to enjoin what plainly amounted to a range ban by another name, but the District Court declined to do so. See Dist. Ct. Dkt. 131 (Nov. 10, 2011).

Nearly three years later, on September 29, 2014, litigation in the District Court yielded the opinion that this Court would affirm in part and reverse in part in *Ezell II*. Although the District Court struck down some provisions, including the restriction of gun ranges to manufacturing districts, it granted the City's motion for a stay pending appeal. See Dist. Ct. Dkt. 302 (Jan. 29, 2015).

This Court announced *Ezell II* on January 18, 2017. The City failed to seek rehearing, or to otherwise move to stay the mandate under

Rule 41. Consequently, this Court's mandate issued on February 9, 2017. The notice of issuance of mandate, certified judgment, certified opinion, and bill of costs from this Court were all recorded the same day in the court below.

And then, nothing happened.

For the next four days.

On the fifth day following the issuance of the mandate, Petitioners received not the judgment that they won and that this Court had mandated, but a motion asking the lower court to "stay the effective date of any injunction and judgment"—in essence, to stay the mandate—for half a year! See Stay Motion, Addendum 3.

Allegedly, nothing that had occurred in the course of litigation since 2011—not the City witnesses' inability to substantiate any of the laws with empirical evidence, not the District Court's 2014 judgment striking down the M-zoning, not the 2015 arguments in this Court, nor even the January opinion in *Ezell II*—alerted the City that more homework might be required if it wished to regulate gun ranges. Only with the mandate having issued did the City discover that "numerous City departments, such as Police, Fire, Buildings, Zoning,

Law, and Licensing . . . will need time to *again* thoroughly investigate and research" appropriate zoning and age regulations. *Id.* at 3 (emphasis added).[3]

> The City Council will then need time to consider these proposals and enact legislation. We estimate that approximately 180 days are necessary for this process to occur, although the City will, of course, make every effort to proceed as expeditiously as possible.

Id.

[By way of comparison, the Supreme Court issued its judgment in *McDonald* on June 28, 2010; four days later, on July 2, 2010, the City enacted its comprehensive 29-page replacement ordinance, which included the original range ban. This Court heard argument in *Ezell I* on April 4, 2011; on July 6, 2011, hours after this Court's opinion issued, the City enacted its comprehensive range scheme.]

The City offered that its stay proposal is consistent with *Moore*, where *this Court* stayed its mandate; *Shepard* v. *Madigan*, 734 F.3d 748 (7th Cir. 2013), where plaintiffs were not heard to complain that laws timely responding to this Court's mandate were not being

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[3]Of course Chicago lost *Ezell II* for the same reason that the word "again" here is misleading.

implemented fast enough; and a case where the District Court stayed its own judgment at the City's request. *Id.* See Stay Mot. at 3-4. (As discussed infra, the City's discussion of *Moore* and *Shepard* is inaccurate.)

Directly contradicting *Ezell I*, the City then offered that "Plaintiffs will not be prejudiced by this stay," because "[s]hould Plaintiffs wish to receive live training in firearm use or practice using their firearms during the stay period, they can do so without significant burden by traveling to the many ranges in the adjoining suburbs." Stay Mot. at 4. But the City alleged it would be harmed if a moment passed by in Chicago, as they do throughout the United States, without regulations restricting the location of gun ranges and their access by people under age 18. *Id.*

The District Court appears to take the City's motion seriously. It set a briefing schedule on the matter, to be followed by an April 25, 2017 status conference. See Addendum 4. Of course, it has not entered judgment on the mandate, effectively granting the City a stay that has lasted nearly three weeks as of this writing.

REASONS WHY THE WRIT SHOULD ISSUE

Parties seeking a writ of mandamus must establish three elements.

> First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires. Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Cheney v. *U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004) (internal quotation marks, brackets, and citations omitted).

Petitioners satisfy all requirements for obtaining mandamus relief.

I. PETITIONERS HAVE NO AVENUE FOR RELIEF ABSENT MANDAMUS.

Petitioners have already had their appeal. They are entitled to their judgment **now**. Not six months from now, not never because the City might re-legislate, not perhaps ten weeks from the mandate's original issuance date once the court below has considered a motion as to whether the mandate needs to be followed—now.

If *Ezell I* means anything, it means that Petitioners are suffering a loss of their fundamental constitutional rights every single moment that Chicago's laws interfere with the establishment and operation of gun ranges. The very fact that Petitioners are being forced to continue

litigating this simple point *six years after the harm was to be preliminarily enjoined*, for weeks and months following the mandate, with the District Court *still* open to the claim that Petitioners should simply visit ranges outside the City, is dismaying to say the least.

Of course, as the City intends to have it, the process is the proverbial punishment. The object remains, as always, to delay, obstruct, resist, wear down, and utilize every conceivable tactic and artifice to maintain the City's range-free, Second Amendment-free status quo for as long as possible. And the City's expressed goal is to buy enough time to re-legislate prior to the judgment, effectively moot the case, and deny judgment altogether. Having seen this movie twice before in Second Amendment cases, Petitioners know what's next: a scorched-earth 1988 defense centered on the lack of a district court judgment.

It doesn't matter whether the Petitioners will defeat the stay motion below. On the present schedule, they might continue to be deprived of their judgment through at least late April. Even were they to prevail below, the City might file a (frivolous) appeal which it would utilize to gain more time. The City doesn't need to win the stay. It just needs to keep dragging Petitioners through the process.

Anticipating that Petitioners might want to actually have an effective judgment, the City cites *Shepard* for the proposition that nobody is entitled to "first day relief" because "transition to a new regime of gun rights [will] require considered, complex [government] action, and therefore [can] not be instantaneous." Stay Mot. at 3-4 (quoting *Shepard*, 734 F.3d at 751).

The City does not understand *Shepard*. In *Moore*, this Court generously stayed its mandate for 180 days, to accommodate the political process in Illinois formulating some measure of regulating the carrying of guns. *Moore*, 702 F.3d at 942. This Court subsequently granted a Rule 41 motion extending that stay an additional 30 days when the State couldn't timely get its act together. But this Court's solicitude wasn't bottomless. With the stay extension came a warning: "No further extensions to stay the court's mandate will be granted." See Order, No. 12-1269, Dkt. 76 (June 4, 2013).

The common sense import of this warning was clear: the State could not undo its defeat in *Moore* by refusing to regulate. After 210 days, Illinois could enact some sort of regulation, or it would join the growing number of states that do not regulate the carrying of guns by non-

prohibited persons at all. Nothing required the State to enact regulations if it could not gather the political will to do so.

The same morning that this Court's *Moore* mandate issued, the legislature overrode the governor's veto of Illinois' gun carrying licensing system. Of course, it would take time to process carry permit applications and issue permits under the new law, which forbade not all carrying as before, but unlicensed carrying. The *Shepard* plaintiffs,[4] who would have to go through the licensing procedure before bearing arms, believed that Illinois had violated the *Moore* judgment by not making gun carriage available immediately. But that was not so. Illinois's new law allowed for licensed carrying, even if, as a practical matter, it took some time to get off the ground.

The situation here is quite different. Petitioners are not complaining about the administration of a new law. *There is no new law*. The mandate has issued, but Chicago still enforces, because the District Court will not enjoin it, the *old, struck-down* law. Unlike Illinois, the City did not prepare for the mandate, seeking to stay it and timely enacting replacement legislation. And unlike the gun carry licensing

[4]But not the *Moore* plaintiffs.

scheme, zoning and age limits are relatively straightforward. The City either regulates, or it doesn't.

* * *

Put plainly: absent mandamus relief, it would be doubtful that Petitioners might emerge from this litigation with any district court judgment, but certain that Petitioners will continue to be denied their fundamental rights—as they are being denied now—long after this Court, by all rights and ordinary process, has commanded that the harm cease.

II. PETITIONERS' RIGHT TO MANDAMUS IS CLEAR AND INDISPUTABLE.

A. The District Court Stands In Clear Violation of the Mandate Rule.

"The mandate rule requires a lower court to adhere to the commands of a higher court on remand." *Kathrein* v. *City of Evanston*, 752 F.3d 680, 688 (7th Cir. 2014) (internal quotation marks omitted).

> The mandate rule requires a district court on remand to effect our mandate and to do nothing else. Further, on remand the district court must implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court.

Gen. Universal Sys. v. *HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007) (internal quotation marks omitted).

These are not new concepts. "The principle has been well established, in numerous cases, that, on a mandate from this court, containing a specific direction to the inferior court to enter a specific judgment, the latter court has no authority to do anything but to execute the mandate." *In re Washington & G. R. Co.*, 140 U.S. 91, 96 (1891) (citations omitted); *Blair* v. *Durham*, 139 F.2d 260, 261 (6th Cir. 1943). "Obeying the mandate of this court, and proceeding in conformity with its opinion, in the present case, were not matters within the discretion of the [lower court]." *Gaines* v. *Rugg*, 148 U.S. 228, 239 (1893). A judgment "made final by the order of [a higher] court [is] not again subject to be reviewed by the court below in the exercise of its equitable powers or otherwise." *Texas & P. R. Co.* v. *Anderson*, 149 U.S. 237, 241 (1893).

> [A lower court] is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.

In re Sanford Fork & Tool Co., 160 U.S. 247, 255 (1895) (citations omitted).

The mandate has issued, and yet the District Court has declined to give it any effect, and may not do so for weeks and months, if ever. That is a violation of the mandate rule. The situation is especially egregious considering that the District Court was, in part, affirmed. To the extent that this Court affirmed the judgment striking down the restriction of gun ranges to M zones, the lower court could "only record [this Court's] order and proceed with the execution of its own decree as affirmed. It has no power to rescind or modify what we have established." *Durant* v. *Essex Co.*, 101 U.S. 555, 556 (1879).

> After the appeal had been taken, the power of the court below over its own decree was gone. All it could do after that was to obey our mandate when it was sent down. We affirmed its decree and ordered execution.

Id. at 556-57.

Of course, the District Court had the power, which it exercised, to stay its own decision striking down the M-zone limitation pending appeal. But that power "continue[d] to reside in the district court until such time as the court of appeals issue[d] its mandate." *Rakovich* v. *Wade*, 834 F.2d 673, 674 (7th Cir. 1987). "The power of a district court to grant a stay of judgment pending appeal terminates when the Court

of Appeals issues its mandate." *Metavante Corp.* v. *Emigrant Sav. Bank*, No. 05-CV-1221, 2010 U.S. Dist. LEXIS 108787, at *6 (E.D. Wis. Sept. 28, 2010) (internal quotation marks omitted). The District Court's stay should have dissolved, if not under its own terms, then pursuant to the mandate's termination of the District Court's jurisdiction to keep the stay in place—but Petitioners are still missing their judgment.

B. Mandamus Is The Proper Remedy.

"[M]andamus [is] the proper remedy to enforce compliance with the mandate." *United States* v. *U.S. Dist. Court*, 334 U.S. 258, 263-64 (1948). Indeed, enforcing mandate compliance is "[o]ne of the less controversial functions of mandamus." *Continental*, 985 F.2d at 869 (citations omitted). "A court of appeals has the power to enforce its mandate and mandamus is an appropriate remedy to enforce a previous judgment of an appellate court." *Oswald* v. *McGarr*, 620 F.2d 1190, 1195 (7th Cir. 1980).

> [C]ourts have not hesitated to issue writs of mandamus when it appeared to be necessary to enforce the judgment of the appellate court. Where a lower court has failed to comply with a mandate of a reviewing court, compliance with such mandate may be compelled by writ of mandamus.

Id. at 1196 (citations omitted).

III. MANDAMUS RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES.

There is no good reason why Petitioners should be denied the benefit of their judgment, particularly given the City's evasion of this Court by declining to move for Rule 41 relief. That evasion is understandable on some level—the City correctly surmised that the District Court might remain more open than would this Court to the notion that Petitioners aren't harmed if they are told to go exercise their fundamental rights somewhere else for six months. But action is urgently needed to preserve this Court's prerogatives and to secure Petitioners' fundamental rights. Public safety, in contrast, is plainly not at risk from *finally* effectuating Petitioners' fundamental rights.

A. The District Court Lacks Jurisdiction to Stay this Court's Mandate.

In cases not involving federal parties, Rule 41(b) generously affords parties three weeks from the time of this Court's judgment until the mandate issues, commanding the District Court to implement the appellate judgment.[5] "The court"—meaning, *this* Court, *not* the District Court—"may shorten or extend the time." *Id.*

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[5]Seven days after the expiration of time to petition for rehearing, which is two weeks per Rule 40(a)(1).

Parties may move to stay the mandate "pending the filing of a petition for a writ of certiorari to the Supreme Court," but must show both that the certiorari petition "would present a substantial question and there is good cause for a stay." Rule 41(d)(2)(A). "The stay may not exceed 90 days," absent either good cause or a timely filed certiorari petition. Rule 41(d)(2)(B). The City seeks double this time, without good cause and without a certiorari petition.

Presumably, the Court's inherent supervisory powers allows parties to seek a stay of the mandate for other reasons. *Moore* demonstrates as much. This Court could not have been unaware of its powers in this regard; its silence with respect to a stay spoke volumes. The District Court "had no power after [the mandate issued] to do what [this Court] might have done and did not do." *Durant*, 101 U.S. at 557.

But in all instances, it is for *this* Court to decide whether to stay its mandate or not. Losing parties cannot ignore Rule 41, only to start proceedings in the District Court on remand asking for, essentially, a stay of this Court's judgment. What would be the point of Rule 41 if one could shop the stay to the District Court? The City's reliance on *Moore* is seriously misguided—*everything* about that case demonstrates this

Court's primacy in the mandate-stay business. The stay issued here. The motion to extend the stay was made here. The command that no further stays issued from here. On the morning that the mandate issued and portended the immediate end to the State's only law relating to the carrying of guns in public, the legislature did not demand that the Attorney General race to the District Court for another stay, but immediately overrode the veto to enact a new law.

The mandate carries significant finality. Indeed, even this Court cannot ordinarily recall and stay its own mandate once the mandate has issued. *United States* v. *Holland*, 1 F.3d 454, 456 (7th Cir. 1993) (Ripple, J., in chambers) (denying motion to recall and stay mandate where losing party failed to articulate any exceptional circumstances "justify[ing] her failure to request a stay before the release of the mandate"). Surely the District Court does not have more control than does this Court over this Court's mandate. In fact, the District Court has *no* control over the mandate, its issuance or stay, and no input as to whether and when the mandate should issue and on what terms.

Title 28, Section 2101(f) likewise impedes the District Court's ability to stay this Court's mandate. Paralleling Rule 41, Section 2101(f)

provides that aggrieved parties may seek a stay from a judgment's execution and enforcement, which "may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court . . . ."

"Courts interpreting the language of 28 U.S.C. § 2101(f) have universally concurred that the language is exclusive, prohibiting the district court from staying the enforcement of a court of appeals' judgment pending an appeal to the Supreme Court." *Metavante*, 2010 U.S. Dist. LEXIS 108787 at *5-*6 (citing *In re Stumes*, 681 F.2d 524, 525 (8th Cir. 1982); *United States* v. *Lentz*, 352 F. Supp. 2d 718, 726 (E.D. Va. 2005); *Brinkman* v. *Department of Corrections*, 857 F. Supp. 775, 777 (D. Kan. 1994); *Gander* v. *FMC Corp.*, 733 F. Supp. 1346, 1347 (E.D. Mo. 1990); *Hovater* v. *Equifax Services, Inc.*, 669 F. Supp. 392, 393 (N.D. Ala. 1987); *Deretich* v. *City of St. Francis*, 650 F. Supp. 645, 647 (D. Minn. 1986)); see also *Mister* v. *Illinois C. G. R. Co.*, 680 F. Supp. 297, 299 (S.D. Ill. 1988); *WesternGeco LLC* v. *ION Geophysical Corp.*, No. 4:09-CV-1827, 2016 U.S. Dist. LEXIS 64056, at *10 (S.D. Tex. May 4, 2016); *Studiengesellschaft Kohle, mbH* v. *Novamont Corp.*,

578 F. Supp. 78, 80 (S.D.N.Y. 1983). If the District Court cannot stay enforcement of this Court's judgment pending certiorari, surely it cannot enter a stay for unenumerated reasons.

Of course, most of these decisions emanate from district courts. But in none of these cases was a district court failing to act upon a mandate that would correct an ongoing deprivation of fundamental rights. Petitioners do not believe that they should have to litigate to the District Court, possibly over the course of months, the legitimacy of their judgment and questions of whether they are harmed if told to exercise their rights elsewhere. Petitioners either won their case, or they didn't. As noted supra, any "victory" in the extra-jurisdictional process would at least be partially pyrrhic owing to the delays.

Indeed, the timeline here compares poorly with that in *Metavente*. In that case, this Court affirmed a money judgment for the plaintiffs—there was no question of further legislation mooting the judgment. The plaintiffs, doubtless sensing shenanigans, moved the district court to lift its stay of the judgment four days *prior* to the issuance of this Court's mandate. By the time the defendants presented their excuses for not paying the judgment, the district court could and did properly

hold that continuing its stay would violate the mandate, which had issued only seven days earlier. Here, the District Court took no action when the mandate issued, the City filed its stay motion five days later, and a week after that, the District Court—still not acknowledging this Court's mandate—set the matter to be briefed and heard through April 25, at which time the ongoing stay may well be extended to 180 days.

Notwithstanding full appreciation of the *Metavente* plaintiffs' foresight, Petitioners here had no reason to suspect that the mandate would not be followed. Petitioners believe that mandates must be given effect without requiring additional litigation; that it is the province of this Court to render its mandates, mandatory; and most respectfully, that they should not have to return to the District Court to litigate the legitimacy of their mandate over the next two months

B. Even a Timely Stay Motion Should Have Been Denied.

"The grant of a motion to stay the mandate is far from a foregone conclusion." *Senne* v. *Vill. of Palatine*, 695 F.3d 617, 619 (7th Cir. 2012) (Ripple, J., in chambers) (internal quotation marks omitted).

Obviously, the City believes that there must be some law zoning gun ranges and restricting the age of range visitors. It is unclear whether

the City yet comprehends that there must also be some constitutional freedom here. Nothing *requires* Chicago to restrictively zone gun ranges, or indeed, to have any zoning law at all, or to regulate the age of admission to gun range property. Many cities get along fine without any such regulations. The tort system's ability to abate true nuisances and impose liability for unsafe range operation imposes a measure of regulation as well.

Nearly seven years after *McDonald* and into this litigation, following two appeals, *only now* the City wants to *start* developing data regarding the imposition of an allegedly critical, but in American experience wholly optional, regulatory scheme for gun ranges. Given how rapidly the City enacted substantially more complex and thorough gun control regulations in the wake of adverse court rulings, the argument for another six months' delay could not have been made in good faith. The evasion of this Court's Rule 41 process merely confirms as much. Experience teaches that if the City suspects that the writ of mandamus might issue, the new ordinance could be enacted overnight.

CONCLUSION

Petitioners are entitled their judgment now. A writ of mandamus should issue.

Dated: February 28, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

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/s/ Alan Gura
Alan Gura
Attorney for Petitioners

Dated: February 28, 2017

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2017, I electronically filed the foregoing Petition with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by email addressed to USCA7_Clerk@ca7.uscourts.gov

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that on February 28, 2017, I served the trial court by Federal Express next-day delivery addressed as follows:

The Hon. Virginia M. Kendall
United States District Court
219 South Dearborn Street, Room 2378
Chicago, IL 60604

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 28th day of February, 2017.

/s/ Alan Gura
Alan Gura
Counsel for Petitioners

Addendum 1

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

January 18, 2017

Before: MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

Nos. 14-3312, 14-3322	RHONDA EZELL, et al., Plaintiffs - Appellees/Cross - Appellants v. CITY OF CHICAGO, Defendant - Appellant/Cross - Appellee
Originating Case Information:	
District Court No: 1:10-cv-05135 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

The judge was right to enjoin the manufacturing-district restriction, and to that extent the judgment is **AFFIRMED**. The distancing and age restrictions are likewise invalid; to that extent the judgment is **REVERSED** and the case is **REMANDED** with instructions to modify the injunction consistent with the opinion. The above is in accordance with the decision of this court entered on this date. Cost to the plaintiffs.

Addendum 2

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

February 9, 2017

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago , IL 60604-0000

Nos. 14-3312 and 14-3322	RHONDA EZELL, et al., Plaintiffs - Appellees, Cross - Appellants, v. CITY OF CHICAGO, Defendant - Appellant, Cross - Appellee.
Originating Case Information:	
District Court No: 1:10-cv-05135 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

AMOUNT OF BILL OF COSTS (do not include the $):	931.00
DATE OF MANDATE OR AGENCY CLOSING LETTER ISSUANCE:	02/09/2017

RECORD ON APPEAL STATUS: No record to be returned

NOTE TO COUNSEL:
If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

- -

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date: **Received by:**

_____ _____

form name: **c7_Mandate**(form ID: **135**)

Addendum 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EZELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**No. 10-CV-5135**
	)	**Judge Virginia M. Kendall**
CITY OF CHICAGO,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO STAY THE EFFECTIVE DATE OF ANY INJUNCTION AND JUDGMENT

Defendant City of Chicago (the "City") by its attorney, Edward N. Siskel, Acting Corporation Counsel of the City of Chicago, hereby moves for an order staying for 180 days the effective date of any injunction and judgment entered by the Court consistent with the opinion issued in this case by the United States Court of Appeals for the Seventh Circuit on January 18, 2017. The City also moves the Court to continue to stay, for that same period, the effective date of the Court's opinion and judgment dated September 29, 2014, that invalidated MCC § 17-5-0207 and any injunction thereof. The purpose of this request is to allow the City time to enact reasonable regulations governing the location and operation of gun ranges in Chicago and a regulatory scheme allowing for minors to patronize gun ranges to protect public safety while also respecting Second Amendment rights. In support of its motion, the City states as follows:

1. On September 29, 2014, this Court entered a memorandum opinion and order on the parties' cross-motions for summary judgment. *See* Dkt. #288. The Court ruled, *inter alia*, that MCC § 17-5-0207, which requires gun ranges to be located only in manufacturing districts with special use approval, was unconstitutional under the Second Amendment, but upheld MCC § 17-9-0120, which requires gun ranges to be located at least 500 feet from residential

zones, schools, day-care facilities, places of worship, museums, libraries, or hospitals and at least 100 feet from any other firing range. *See id.* pp. 14-18. The Court also upheld MCC § 4-151-100(d), which restricts persons under the age of 18 from entering a shooting range facility.

2. The City appealed the Court's decision regarding MCC § 17-5-0207 to the Seventh Circuit, and Plaintiffs cross-appealed the judgment against them on MCC § 17-9-0120 and § 4-151-100(d). *See* Dkt. # 285, 291. The City also filed, with this Court, a Motion to Stay Enforcement of the Court's Ruling Pending Appeal. *See* Dkt. # 286. That motion explained that, while the Court's summary judgment order and corresponding judgment did not specifically grant Plaintiffs' request for injunctive relief enjoining the City from enforcing MCC § 17-5-0207, the Court's declaratory judgment would have the same practical effect as an injunction. The Court granted the City's motion to stay on January 29, 2015. *See* Dkt. # 302.

3. On January 18, 2017, the Seventh Circuit issued its opinion in which it upheld this Court's invalidation of MCC § 17-5-0207 but reversed its decision upholding the constitutionality of MCC § 17-9-0120 and § 4-151-100(d). *See Ezell v. City of Chicago*, No. 14-3312 & 14-3322, (Jan.18, 2017), a copy of which is attached hereto as Exhibit A, at 19. The Seventh Circuit remanded the matter to this Court "with instructions to modify its injunction consistent with this opinion." *Id.*

4. The Seventh Circuit issued its mandate on February 9, 2017. *See* Dkt. #303

5. As things now stand, the City will need to enact new zoning regulations for gun ranges, as well as a regulatory scheme allowing certain persons under the age of 18 to use gun ranges. The City respectfully submits that, in order to ensure fidelity to the Second Amendment while also protecting public safety, the City requires 180 days to consider, draft, support, and enact

appropriately-tailored regulations.

6. This time period is necessary and appropriate. Indeed, the Seventh Circuit recognized that any City regulation of the location of gun ranges would have be "carefully" crafted. It stated that "[a] different combination of zoning rules—say , a more permissive zoning classification and a less restrictive buffer-zone rule—may well be justified, *if carefully drafted* to serve actual public interests while at the same time making commercial firing ranges practicable in the City." Ex. A at 11 (emphasis added). In order to carefully craft new regulations that protect both Second Amendment rights and public safety, the evaluation and expertise of numerous City departments, such as Police, Fire, Buildings, Zoning, Law, and Licensing, are required. Each of these departments will need time to again thoroughly investigate and research where ranges might properly locate in Chicago, including best practices in other jurisdictions, and to then propose appropriate regulations for Chicago. They will also need to do the same with respect to how to allow persons under the age of 18 to safely shoot at a gun range. The City Council will then need time to consider these proposals and enact legislation. We estimate that approximately 180 days are necessary for this process to occur, although the City will, of course, make every effort to proceed as expeditiously as possible.

7. The City's proposal is also consistent with the approach taken by the courts in this circuit under facts identical to that present here. For example, in *Moore v. Madigan*, the court stayed its mandate invalidating Illinois' blanket ban on carrying guns in public for 180 days so that Illinois could "craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment." 702 F.3d 933, 942 (7th Cir. 2012). *See also Shepard v. Madigan*, 734 F.3d 748, 751 (7th Cir. 2013) (plaintiffs' "insistence on 'first day' relief"

is "untenable" because it is "obvious that transition to a new regime of gun rights [will] require considered, complex [government] action, and therefore [can] not be instantaneous"). And in *Illinois Association of Firearms Retailers v. City of Chicago*, 10 C 4184 (N.D. Ill.) (Chang, J.), the district court, upon motion by the City, stayed for 180 days its injunction enjoining the enforcement of MCC §§ 8-20-100(a) and 17-16-0201, which prohibited the construction and operation of firearms sales businesses in Chicago, to provide the City with sufficient time to draft and enact appropriate regulations regarding firearms sales. *See* Permanent Injunction dated January 14, 2014, attached hereto as Exhibit B, ¶ 4.

8. Plaintiffs will not be prejudiced by this stay. Should Plaintiffs wish to receive live training in firearm use or practice using their firearms during the stay period, they can do so without significant burden by traveling to the many ranges in the adjoining suburbs. On the other hand, the City and its residents would be severely prejudiced if a stay is denied, as there would be no City ordinances or regulations governing where gun ranges can locate in Chicago or protecting minors under the age of 18 who would use a gun range. The City respectfully submits that a 180-day stay is necessary for the City to do this in a way that both protects public safety and comports with the Second Amendment.

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Court enter an order staying for 180 days the effective date of any injunction and judgment entered pursuant the Seventh Circuit's January 18, 2017 opinion, and that the Court to continue to stay, for that same period, the effective date of the Court's September 29, 2014 opinion and judgment invalidating MCC § 17-5-0207, and any injunction thereof.

Dated: February 14, 2017

Respectfully submitted,

EDWARD N. SISKEL
ACTING CORPORATION COUNSEL
CITY OF CHICAGO

By: /s/ William Macy Aguiar
One of Its Attorneys

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William Macy Aguiar
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Attorneys for Defendant City of Chicago

Addendum 4

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
Eastern Division

Rhonda Ezell, et al.

Plaintiff,

v.

Case No.: 1:10–cv–05135
Honorable Virginia M. Kendall

City Of Chicago

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, February 21, 2017:

MINUTE entry before the Honorable Virginia M. Kendall. Briefing schedule set as to Defendants' Motion to stay the effective date of any injunction and judgment [307]. Responses due by 3/7/2017. Replies due by 3/14/2017. Status hearing set for 4/25/2017 at 9:00 AM. Motion hearing set for 2/27/2017 is stricken. Mailed notice(lk,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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NOTICE OF CASE OPENING

February 28, 2017

No. 17-1443	IN RE: RHONDA EZELL, et. al., Petitioners
Petition for Writ of Mandamus	
District Court No. 1:10-cv-05135 District Judge Virginia M. Kendall Clerk/Agency Rep Thomas G. Bruton Case filed: 02/28/2017 Case type: op/npman Fee status: Due Date NOA rc'd-AC: 02/28/2017	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

Deadlines:

Appeal No.	Filer	Document	Due Date
17-1443	Action Target, Incorporated	Fee Due	03/14/2017
17-1443	Joseph I. Brown	Fee Due	03/14/2017
17-1443	Rhonda Ezell	Fee Due	03/14/2017
17-1443	William Hespen	Fee Due	03/14/2017

17-1443	Second Amendment Foundation, Incorporated	Fee Due	03/14/2017

NOTE: This notice is issued to counsel of record, in furtherance of the revised *Circuit Rule 3(d)*, to provide necessary information regarding this appeal. Please verify this notice for accuracy. Counsel are encouraged to provide a fax and/or e-mail address to the court. If any corrections are necessary, please indicate those corrections on this notice and return it to the Clerk's Office within ten (10) days.

THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT / SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.

Important Scheduling Notice!

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at http://www.ca7.uscourts.gov/cal/calendar.pdf. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).

form name: **c7_Docket_Notice**(form ID: **108**)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF DOCKETING - Short Form

February 28, 2017

To: Thomas G. Bruton
Clerk of Court

To: Virginia M. Kendall
District Court Judge

The below captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit:

Appellate Case No: 17-1443 Caption: IN RE: RHONDA EZELL, et. al., Petitioners
District Court No: 1:10-cv-05135 District Judge Virginia M. Kendall Clerk/Agency Rep Thomas G. Bruton

If you have any questions regarding this appeal, please call this office.

form name: **c7_Docket_Notice_short_form**(form ID: **188**)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORIGINAL PROCEEDING CIRCUIT RULE 3(b) NOTICE

February 28, 2017

No. 17-1443	IN RE: RHONDA EZELL, et. al., Petitioners
Petition for Writ of Mandamus	
District Court No: 1:10-cv-05135 District Judge Virginia M. Kendall Clerk/Agency Rep Thomas G. Bruton	

Circuit Rule 3(b) empowers the clerk to dismiss a petition if the docket fee is not paid within fourteen (14) days of the docketing of the petition. This petition was docketed and the fee has not been paid as of February 28, 2017. Depending on your situation, you should:

1. Pay the required $500.00 docketing fee to the Clerk of the Court of Appeals.

2. File a motion to proceed on appeal in forma pauperis with the Court of Appeals. An original and three (3) copies of that motion, with proof of service on your opponent, is required. This motion must be supported by a affidavit in the form of a sworn statement listing the assets and income of the petitioner(s). See **Form 4** of the *Appendix of Forms to the Federal Rules of Appellate Procedure (as amended 12/01/2013)*.

If one of the above stated actions is not taken, the petition will be dismissed.

NOTE:
On March 2, 2015, the Seventh Circuit began accepting electronic fee payments for originating case filing fees(petitions for review and original petitions) via Pay.gov. Details are available at www.ca7.uscourts.gov.

form name: **c7_OP_Fee_Notice_Sent**(form ID: **189**)