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Press Release

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FEDERAL APPEALS COURT FINDS THAT THE CITY'S PERMIT FEE FOR RESIDENTIAL HANDGUN LICENSES IS CONSTITUTIONAL

PLAINTIFFS' SECOND AMENDMENT CHALLENGE IS REJECTED

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New York, N.Y., July 9, 2013 – A federal appeals court today determined that the City's \$340 permit fee for a residential handgun license is constitutional.

This fee, which is paid every three years, is used to cover administrative costs so that taxpayers do not have to bear the burden of the necessary in-depth background investigation conducted by the Police Department. The Court also ruled that the State Penal Law provision that allows the City to establish its own fee is constitutional. This Penal Law provision states that any locality can only charge a fee between \$3 and \$10 for a handgun license, except for New York City and Nassau County, which can charge more.

In terms of a Second Amendment analysis, the Circuit found that the fee need not be subject to heightened scrutiny, but nevertheless found that it would still survive the more demanding intermediate scrutiny standard of review employed by the court. This is important, because litigants bringing Second Amendment challenges frequently argue for strict scrutiny or, at the very least, intermediate scrutiny. Put differently, as the decision says, "...[W]e find it difficult to say that the licensing fee, which amounts to just over \$100 per year, is anything more than a 'marginal, incremental or even appreciable restraint' on one's Second Amendment rights... ."

The plaintiffs in this case were the New York State Rifle and Pistol Association and the Second Amendment Foundation as well as individual plaintiffs who have this type of license, called a "premises residence license."

Susan Paulson, Senior Counsel, Appeals Division, NYC Law Department and the City's lead attorney, noted: "We are pleased that the Court has upheld New York City's residential handgun license fee as an appropriate measure designed to defray administrative costs. The Court properly recognized that the City's licensing process is designed to promote public safety and prevent gun violence. The Court found that this does not impermissibly burden the plaintiffs' Second Amendment rights. The Court also did not find an Equal Protection problem with the State authorizing the City to charge fees that are different than those imposed in other parts of the state."

Michelle Goldberg-Cahn, Senior Counsel, Administrative Law Division, prevailed in the lower court in March 2012.

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