



COUNCIL OF THE DISTRICT OF COLUMBIA
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TESTIMONY OF PHIL MENDELSON
Re. Case No. 11-16
Text Amendment (Firearms Retail Sales)

ZONING COMMISSION
District of Columbia
CASE NO. 11-16
EXHIBIT NO. 9

I am Phil Mendelson, an At-Large member of the Council of the District of Columbia and chairman of the Council's Committee on the Judiciary. As chair of this committee I am responsible for legislation relating to gun control in the District, and ensuring that our gun laws are consistent with Constitutional law.

I am here today for two reasons. First, the proposed text case (to amend § 721.3 of the Zoning Regulations by inserting the phrase “, other than an establishment located at a District law enforcement or licensing agency,”) provides much needed relief for the location of federal firearms dealers. Second, the case before you provides an important opportunity to re-examine the zoning restrictions on firearms retail establishments.

Regarding the first point: As you may know, there is only one licensed firearms dealer in the District. It is named CS Exchange, Ltd., and is operated by Mr. Charles Sykes. Under federal law, no dealer may sell a handgun to a resident of another state. Thus, when a person acquires a handgun (such as by purchase, or as a gift) in a state other than the place of his/her residence, he or she must transfer the handgun via a federally registered dealer in his/her own state. Since there are no gun stores in the District of Columbia, every District resident must go through CS Exchange if he or she seeks to acquire a handgun.

CS Exchange is not really a retail gun dealer. Rather, it acts like a transfer agent. However, if CS Exchange were to go out of existence, no citizen of the District could lawfully acquire a handgun. As much as it has been our tradition since Home Rule to discourage gun ownership, the Supreme Court made clear in its 2008 decision, *Heller v. District of Columbia*, that District residents have a right to possess a handgun for self defense in the home. Thus, it is essential that there be at least one licensed firearms dealer in the District.

It is not likely, though, that in the foreseeable future there will be more than one licensed firearms dealer in the District. Mr. Sykes told me in July that he averages 6 - 10 handgun transactions per month. That's a maximum of 120 handgun sales per year – a very small market. I believe he charges \$125 per transaction. This is high compared to transfer dealers in other states, but this means he grosses about \$1,250 per month. Not very much income.

Mr. Sykes was notified in April that his one-room second-story office would have to relocate because the building was slated for redevelopment. He stopped taking customers and began to look

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for a new location. Current zoning, as you know, restricted him to C-2 and higher, and the market – that is, his income – made his ability to relocate even more difficult. After 2 ½ unsuccessful months, the District government stepped in and offered temporary space at police headquarters. In the meantime, the District had been sued in federal court because citizens were unable to acquire handguns in spite of the *Heller* decision.

The District government's action is the genesis of the case before you. Police headquarters is a perfectly fine location for Mr. Sykes' type of business. For years, every gun owner has had to take their handgun from Mr. Sykes' former location to police headquarters, because all firearms must be registered, and the registration is handled at police headquarters. Now, instead of traveling from, say, Anacostia (Mr. Sykes' former location) to downtown, citizens will have to travel only from one room to another within the same building. There are other advantages, as well, to using police headquarters, such as reduced risk of robbery of registrants and reduced risk of burglary of the dealer's office.

However, it is my understanding that Mr. Sykes will be permitted to locate at police headquarters for only one year. Thus, the current solution is temporary, which means that the benefit of the text amendment is temporary. This gives rise to the second purpose of my testimony.

The case before you provides an important opportunity to re-examine the zoning restrictions on firearms retail establishments. Until 2008, a firearms retail sales establishment was not a separately-defined use under the Zoning Regulations and, therefore, it appears that gun dealers were permitted as a matter-of-right in any commercial district.¹ This treatment is similar to other large cities: Chicago, New York, Portland, San Francisco, and Seattle. Other cities limit gun dealers to moderate density and less restrictive commercial districts, but without any distance requirement: Baltimore, Denver, Detroit, Los Angeles, Minneapolis, and Pittsburgh.

But in the District, with a market so small that it can barely sustain one transfer agent, a dealer may not locate:

- In a C-1 District;
- Within 300 feet of a residence;
- Within 300 feet of a Special Purpose District;
- Within 300 feet of a church or other place of worship;
- Within 300 feet of a public or private school;
- Within 300 feet of a public library; or
- Within 300 feet of a playground.

Even though Metropolitan Police Headquarters is one full block (and two cross streets) away from the Lutheran Church located at 4th and E Streets, NW, it is too close for the location of a transfer dealer. Thus, the zoning case before you.

¹As a practical matter, however, gun dealers were driven out of business with the 1976 enactment of law prohibiting the possession of handguns in the District. Prior thereto, there were numerous dealers throughout the District – e.g., 10 in 1972, including 18th & Adams Mill Road, NW, 1812 R Street, NW, 2747 Nichols Avenue, SE.

In 2008, right after the *Heller* decision, all of us moved with uncertainty as we relaxed our laws prohibiting the possession of handguns. In that context it made sense to be cautious and place distance restrictions on gun dealers. But the fears have not borne out. With three years' experience, and with revisions to our gun laws, I believe that the only distance restriction necessary, if any, is that a firearms retail sales establishment should not be located next door to the uses I just enumerated (e.g., residence, church, school, playground).

There is a fear that a gun shop will become a gathering place for troublemakers, attract violence, and in these ways be a nuisance. Yet there is no evidence of this happening in other cities. Moreover, local laws reduce the risk:

- No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. (§ 7-2504.07)
- All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked place affixed to the premises except when being shown to a customer. (§ 7-2504.07)
- It is unlawful to transport a firearm unless it is: (1) unloaded; (2) inside a locked container; and (3) separate from any ammunition. (§ 22-4504.02)
- The waiting time for the purchase of a firearm is 10 days (§ 22-4508) so nobody can walk into a gun store and expect to walk out minutes later with a gun.
- Gun dealers shall adhere to strict inventory and reporting requirements to minimize the risk of loss, and to enable the police to track a theft. (§ 7-2504.04)
- Gun dealers are prohibited from selling a firearm to a person under 21 years of age. (§ 7-2502.03)²

The numerous restrictions on gun dealers render unnecessary a 300-foot distance requirement, and the recent experience with Mr. Sykes highlights the difficulty created by this buffer. Until the market changes, which is presently unforeseen, it is unlikely that there will ever be more than one or two gun dealers in the District, and it is more likely that they will be transfer agents rather than retail gun stores. And if a retail gun store were to come, it is probably going to be a national chain store for which gun sales are a fraction of the business.³

²All citations are to the D.C. Official Code (2001 edition), updated as of May 10, 2011.

³In my September 29, 2008 testimony in Case 08-20, I stated that: "Gun dealers are a critical component of gun control. They are critical to the District's law, because citizens may acquire or transfer firearms only through licensed gun dealers. They are critical to our neighboring states, because D.C. guns used in crimes in those states are more easily traced if there are licensed District gun dealers – dealers who are required to keep records under our law as a condition of their license. Dealers are critical to federal gun control, because handguns may be purchased interstate only through gun dealers located in the purchaser's state of residence. In short, we do not want to limit gun dealers. We want them. We want them as critical players in our gun control law."

Conclusion:

The proposed revision to the Zoning Regulations would permit Mr. Sykes to continue operation which is necessary if individuals are to be able to acquire handguns under federal and Constitutional law. However, this solution may be temporary.

The Commission should go further than the proposed text and eliminate the 300-foot buffer requirement. At most, firearms retail sales establishments should be prohibited from locating next door, or adjacent, to a residence, church, school, etc.

The fact that the proposed text in this case is broad enough to permit location at any law enforcement facility, is not objectionable since my view is that the text should be even broader.

Thank you for consideration of my views.