

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MICHELLE LANE, et al.,

Plaintiffs,

VS.

ERIC HOLDER, et al.,

Defendants.

Civil No. 11-503

July 15, 2011

MOTIONS HEARING

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: GURA & POSSESSKY PLLC
BY: ALAN GURA, ESQ.

FOR THE DEFENDANT: OFFICE OF THE U.S. ATTORNEY
BY: LAUREN WEXLER, ESQ.
STEVEN OBERMEIER, ESQ.
BUREAU OF ALCOHOL TOBACCO FIREARM &
EXPLOSIVES
BY: MELISSA ANDERSON, ESQ.

OFFICE OF THE CORPORATION COUNCIL
BY: THOMAS L. KOGER, ESQ.
ANDREW SANDING, ESQ.

OFFICE OF THE ATTORNEY GENERAL
BY: GEORGE CHABALEWSKI, ESQ.
CATHERINE HILL, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
401 Courthouse Square, 5th Floor
Alexandria, VA 22314
(703)501-1580

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1 (Thereupon, the following was heard in open
2 court at 10:45 a.m.)

3 THE CLERK: 1:11 civil 503, Michelle Lane, et
4 al versus Eric Holder, et al.

5 MS. WEXLER: Good morning, Your Honor.
6 Lauren Wexler on behalf of Attorney General, Eric Holder.

7 With me at counsel table is my colleague,
8 Steven Obermeier and Melissa Anderson from the Bureau of
9 Alcohol Tobacco Firearms and Explosives.

10 THE COURT: Good morning.

11 MR. GURA: Good morning, Your Honor. Alan
12 Gura for the plaintiffs.

13 THE COURT: Good morning, Mr. Gura.

14 MR. KOGER: Good morning, Your Honor. Thomas
15 Koger for the District of Columbia --

16 THE COURT: I'm sorry. I could not hear what
17 you said.

18 MR. KOGER: I beg your pardon, Your Honor.
19 Thomas Koger for the District of Columbia,
20 with Andy Sanding from my office.

21 MR. SANDING: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. CHABALEWSKI: Good morning, Your Honor.
24 George Chabalewski with the Office of the Attorney
25 General on behalf of the Superintendent.

1 With me also is Mrs. Catherine Hill from the
2 Office of the Attorney General.

3 THE COURT: Good morning.

4 MS. HILL: Good morning.

5 THE COURT: I'm prepared to take the matter
6 up now, and if you all have a suggestion about who wants
7 to go first, I'm open to that suggestion.

8 My thought is that the order in which you are
9 named in the complaint with the Attorney General being
10 named first might be a way to proceed, but I'm open to
11 any suggestion you have, if you all have talked about
12 order.

13 MS. WEXLER: Your Honor, from the defendant's
14 standpoint, I think we had planned to have the Attorney
15 General go first, the Superintendent go second and the
16 District of Columbia go third.

17 THE COURT: All right. Then the Attorney
18 General has the podium.

19 MS. WEXLER: Thank you, Your Honor.

20 The issue before the Court, at least as to
21 the Attorney General is whether this Court should issue a
22 mandatory nationwide preliminary injunction prohibiting
23 the Attorney General from enforcing a law imposing
24 conditions or qualifications on the commercial sale of
25 firearms, a presumptively lawful measure under the

1 Supreme Court's decision in *Heller* and a law that does
2 not bar anyone from buying a handgun at all, even out of
3 state.

4 All the law does is say that if -- in effect,
5 is that if someone does buy a handgun out of state, then
6 they need to transfer it through an in-state federal
7 firearm licensee.

8 Under these circumstances, Your Honor, the
9 Court -- the answer to the question is clearly no. The
10 Court should not enter such a preliminary injunction and
11 particularly in light of the development last night with
12 the filing of D.C.'s declarations showing that D.C. is
13 taking steps to insure that its residents will be able to
14 resume obtaining firearms.

15 THE COURT: I appreciate what you just said.
16 Would you address the issue of standing
17 first?

18 MS. WEXLER: I would, Your Honor.

19 THE COURT: Thank you.

20 MS. WEXLER: As I briefly explained,
21 plaintiffs can't establish standing because they cannot
22 satisfy the traceability element of standing.

23 The problem here, Your Honor, does not arise
24 from our laws that are at issue here, 922(b)(3) and the
25 implementing regulation.

1 THE COURT: Let's make sure we set the
2 context. Ms. Lane wants to buy a gun and she lives in
3 Washington.

4 MS. WEXLER: That's correct.

5 THE COURT: And in order to do that, she has
6 to buy the gun out of state. She has to purchase it from
7 a federally licensed firearms dealer, and she's made
8 arrangements to do that from a firearms dealer in Lorton,
9 Virginia; is that right?

10 MS. WEXLER: She has to purchase -- correct.
11 What she wants to do is purchase in Virginia, and she
12 would have to transfer it to a federally an -- if I may
13 say an FFL in --

14 THE COURT: Please don't do that. A
15 federally licensed arms dealer in Washington, D.C. would
16 have to receive the gun from a federally licensed arms
17 dealer in Virginia; is that right?

18 MS. WEXLER: That's correct, Your Honor.

19 THE COURT: And the argument being advanced
20 is that because at the time the complaint was filed,
21 Ms. Lane contends that there was no licensed federal
22 firearms dealer in Washington, D.C. to receive the weapon
23 she was being deprived of her right to buy a gun for self
24 defense.

25 MS. WEXLER: That's our understanding of what

1 the alleged harm is.

2 THE COURT: Well, what's the injury here and
3 who caused it, if anyone?

4 MS. WEXLER: The injury as we understand is
5 being alleged is her inability to obtain a firearm and
6 thereby exercise her Second Amendment right.

7 THE COURT: Does the Government have to
8 provide guns to people to buy?

9 MS. WEXLER: No, the Government most
10 certainly doesn't have to. But, the particular problem
11 that we have identified, the causation problem as Your
12 Honor has indicated is that the United States, the
13 Federal Government is not responsible for the absence of
14 a thriving market for handguns in Washington, D.C. and
15 thereby the lack of firearms dealers through whom she
16 could obtain the gun.

17 THE COURT: So, there's a right to possess a
18 weapon for self defense, and Ms. Lane contends that she
19 is being deprived of it because there is no market in
20 Washington, at least at the time of her filing where she
21 could lawfully purchase a weapon.

22 MS. WEXLER: That's correct, Your Honor.

23 THE COURT: Is that the Government's fault?

24 MS. WEXLER: That is not the Government's
25 fault. And that's precisely our argument for why she

1 cannot establish the element of traceability and why
2 there is no subject matter jurisdiction over this case.

3 THE COURT: All right. What about the
4 organization? Does the organization of have standing?

5 MS. WEXLER: The organization does not have
6 standing, either, Your Honor. We submit that the Versnel
7 declaration does not satisfy the requirements for
8 organizational standing either insofar as it would try to
9 establish an injury to the organization or an injury to
10 any member. It's simply too vague. It's, in fact, less
11 vague than the declaration that was submitted in the
12 *Ezell* case. It's far more similar to the allegations
13 that were at issue in the *Hodgkins* case which is the
14 precursor of *Dearth*. That was the name of the case in
15 DDC when the District of Columbia found that SAF did not
16 have standing to challenge the laws there.

17 THE COURT: All right. I think I understand
18 your position.

19 Thank you.

20 MS. WEXLER: Thank you, Your Honor.

21 THE COURT: Uh-huh.

22 Who's next?

23 MR. CHABALEWSKI: Good morning, Your Honor.
24 George Chabalewski again for the Superintendent.

25 THE COURT: Good morning.

1 MR. CHABALEWSKI: Your Honor, I'm not going
2 to go through our memoranda on all the issues. I just
3 want to frame some responsive arguments to what was
4 raised by the plaintiff in reply.

5 THE COURT: All right.

6 MR. CHABALEWSKI: And principally and the
7 first I think the most important argument is the
8 plaintiff essentially frames this case as a total ban on
9 the purchase of handguns in Virginia as a result of our
10 Virginia statute. And that is categorically incorrect.
11 There is no ban in Virginia on the purchase of a handgun
12 by a nonresident.

13 All that a resident -- nonresident has to do,
14 however, he can come to Virginia and buy a handgun. But
15 what Virginia requires is the same thing it requires of
16 its own residents and that is a full, complete assessment
17 of whether that individual in his home state is entitled
18 to have that weapon.

19 We have no ban that essentially prohibits an
20 out-of-state resident from obtaining a handgun.

21 Insofar as the argument for preliminary
22 injunction -- for mandatory preliminary injunction, let
23 me just address the public interest aspect of it.

24 The plaintiffs have said in their reply,
25 quote, "It is unclear what is so compelling about

1 insuring that handgun transfers go through a local
2 middleman who does absolutely nothing that the initial
3 federal firearms licensee does, not other than generate
4 the cost of additional shipping and charge an exorbitant
5 fee".

6 Your Honor, the facts in the record here, the
7 Donna Tate affidavit categorically proves that statement
8 false. Ms. Tate who is in charge of the State Police's
9 Firearms Center tells you we cannot, as Virginia, do the
10 kind of check that another state can do because we simply
11 don't have access to that information, and that's
12 un rebutted.

13 THE COURT: Well, Congress has already made a
14 judgment about this law from 1968; is that right?

15 MR. CHABALEWSKI: As far as the federal law,
16 yes.

17 THE COURT: Yes, the federal law, 1968.
18 That's when Bob Kennedy was assassinated, Dr. King was
19 murdered. That's when they decided to regulate handgun
20 purchases from state to state; is that right?

21 MR. CHABALEWSKI: That is correct.

22 THE COURT: All right. Virginia's law does
23 not contain in it the text of a ban on purchasing weapons
24 from out of state residents.

25 MR. CHABALEWSKI: Correct.

1 THE COURT: And in this case, if there were a
2 federally licensed firearms dealer in Washington, D.C.,
3 Ms. Lane could get her gun or several guns if she wanted
4 to.

5 MR. CHABALEWSKI: Correct.

6 THE COURT: Except, I think, Virginia's idea
7 of gun control is one gun a month.

8 MR. CHABALEWSKI: Your Honor, that's a
9 different issue for perhaps a different day.

10 THE COURT: It sure is. Well, thank you,
11 Mr. Chabalewski. I think I understand your position.

12 MR. CHABALEWSKI: Insofar as the four
13 elements, however, for mandatory --

14 THE COURT: I don't think you understand. I
15 was trying to let you know that I'm not focused on the
16 injunction just yet.

17 MR. CHABALEWSKI: Okay.

18 THE COURT: Plaintiffs cited *Blackwelder*
19 which is no longer the law, so I don't think I need to go
20 there.

21 Thank you.

22 MR. CHABALEWSKI: Let me then go to, Your
23 Honor, insofar -- well, in which case, I'm going to sit
24 down.

25 THE COURT: Thank you.

1 MR. CHABALEWSKI: Thank you, Your Honor.

2 THE COURT: The judge can be -- you listen.
3 That's a good thing.

4 Come on up, Mr. Koger.

5 MR. KOGER: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. KOGER: The District's analysis of the
8 standing barrier to plaintiffs' claims is identical to
9 that of the United States.

10 The inability of Ms. Lane or others to
11 purchase a firearm as residents of the District of
12 Columbia is not a function of District law. It is a
13 function of the marketplace over which we have no
14 control, but are, in fact, responding to even now, in
15 efforts to make a federally -- a federal firearms
16 licensee available to serve people seeking to acquire
17 handguns in the District.

18 THE COURT: So what about this argument that
19 the D.C. law is so restrictive on where a firearms dealer
20 can operate that it's in effect a de facto ban?

21 MR. KOGER: Your Honor, it is not in effect a
22 ban. We agree that it is -- that it limits the
23 locations. We believe that as reflected in the
24 declaration submitted last evening that we have a remedy
25 that is specific to this problem which is that the

1 District of Columbia Zoning Commission has provided that
2 a federally licensed firearms dealer or broker may
3 operate an office for the purposes of complying with the
4 District's regulations and federal statutes within either
5 a police or law enforcement building or a licensing
6 agency which in the District of Columbia would likely be
7 the District of Columbia's Department of Consumer and
8 Regulatory Authority.

9 We're trying to accomplish that. We've
10 also --

11 THE COURT: So, you're going to have a
12 Government space being made available to a private
13 merchant to sell guns in the police station, and in the
14 D.C. License --

15 MR. KOGER: DCRA, Your Honor.

16 THE COURT: DCRA, okay.

17 MR. KOGER: Likely, Your Honor, only one,
18 given the limited demand, and it would be pursuant to a
19 license which I understand pursuant to a --

20 THE COURT: To someone who grew up in
21 Southeast, Washington, the idea of going into 14th
22 Precinct to buy a gun seems a little remarkable to me.
23 But, I'm a Virginia judge and whatever the State Council
24 in Washington, D.C. decides to do is fine.

25 I think I understand your position. The

1 issue of standing as it relate to the organization, do
2 they have standing here?

3 MR. KOGER: They do not, Your Honor, for the
4 same reasons that the United States very eloquently
5 expressed.

6 The problem is not our laws being a barrier
7 or a prohibition. The problem is that by nature of the
8 marketplace, whether it be the culture or the history of
9 the District of Columbia, there has not been a thriving
10 market for firearms dealers.

11 Mr. Sykes, I am advised, really is not
12 operating at something akin to a profit if you were to
13 take into account his overhead. He has been able to have
14 space very cheaply, if not freely for the last few years.
15 That is not now available to him.

16 But for the fact that the District of
17 Columbia has crafted a licensing agreement pursuant to
18 which he would be licensed to use government space for a
19 period of a year for \$1,000 for the entire year in order
20 that the Government may facilitate the Second Amendment
21 rights of its residents.

22 THE COURT: All right. Thank you very much.
23 Mr. Gura.

24 MR. GURA: Thank you, Your Honor. If I may
25 respond briefly to these points.

1 The defendants misconstrue the nature of the
2 complaint and the nature of the allegations that we're
3 making. We're not complaining about the lack of firearms
4 dealers in Washington, D.C. or the way that the District
5 of Columbia regulates the sale or registration of guns
6 inside the District.

7 Clearly, it is a symptom of the extreme
8 regulations that they have that we have a situation where
9 there are no dealers operating. But, that's just the
10 worst manifestation of the core injury. And the core
11 injury that we're claiming here, and it's made very clear
12 in our complaint, and it's the same type of injury that
13 the Seventh Circuit last week understood to exist in the
14 *Ezell* case is this. People would like to engage in
15 transactions. Those transactions are handgun
16 transactions outside of the District of Columbia or
17 outside the individual's home state and those
18 transactions are prohibited.

19 So that's the nature of the injury, is that
20 people would like to engage in conduct, that is, people
21 would like to buy a gun. And they want to buy the gun in
22 Virginia or in some other state in which they do not
23 live. And that transaction is prohibited by the conduct
24 of the defendants, and that's --

25 THE COURT: Could you help me with Ms. Lane's

1 standing. What is her standing here?

2 MR. GURA: Ms. Lane's standing is that she
3 would like to engage in a handgun transaction with the
4 dealer in Lorton, Virginia, and that transaction is
5 prohibited by all three defendants.

6 That is -- as the Seventh Circuit explained
7 last week in the *Ezell* case, it is not a defense neither
8 on standing or the merits to tell somebody who wants to
9 engage in a constitutionally protected transaction that
10 they can do it somewhere else. The Supreme Court has
11 historically rejected that.

12 THE COURT: I don't follow what you're
13 saying, do it somewhere else.

14 My impression is and correct me if I'm wrong.
15 My impression is that since 1968 nonresidents have been
16 able to buy guns out of state. They just have to buy it
17 through a federally licensed firearms dealer and the
18 state in which they're going to purchase the gun. And
19 then they have to have it transferred to another
20 federally licensed firearms dealer in the state where
21 they live; is that right?

22 MR. GURA: That is correct.

23 THE COURT: And so that is a ban on guns?

24 MR. GURA: We never said it was a complete
25 ban on guns. We said it is a complete ban on

1 out-of-state handgun transactions.

2 If you want to have a transaction out of your
3 state -- if I want to go to a store across the state
4 line, take possession of a gun there, I cannot do that.
5 And that is a transaction that people are trying to
6 engage in that's prohibited.

7 THE COURT: Okay. So your view of Ms. Lane's
8 injury is that because there is no federally licensed
9 firearms dealer in Washington, D.C., she has been banned
10 from buying a gun out of state?

11 MR. GURA: That is one manifestation of the
12 injury. But if we're going to address injury in the
13 strict narrow constitutional sense of what an Article 3
14 injury is, that is, what is the literal thing that a
15 person is barred from doing or a cost is directly imposed
16 by the Government.

17 THE COURT: So, if a federally licensed
18 firearms dealer existed in Washington, D.C. at the time
19 she sought to buy her gun in Lorton, Virginia, she would
20 not have a claim here; is that right?

21 MR. GURA: She would. And that's been our
22 point consistently. She would -- she -- she always has
23 the claim to engage in a transaction that she's trying to
24 have or that people in the United States would like to be
25 able to buy and sell things where a common market in this

1 country is the genius of the American system that we can
2 cross state lines and buy and sell goods freely.

3 THE COURT: So, this is a frontal assault on
4 the firearms legislature enacted by Congress in 1968; is
5 that right? You're asking me to strike it down and to
6 allow residents from any state to buy guns anywhere at
7 any time without there being any regulation of it
8 whatsoever. Is that right?

9 MR. GURA: No, no, Your Honor, that is not
10 what we're asking.

11 THE COURT: Then tell me. What it is you're
12 asking me to do?

13 MR. GURA: We're not saying that people
14 should not be allowed to buy guns out of state without
15 regulation at any time. We readily concede. We have no
16 problem with the idea --

17 THE COURT: What is it that you're asking me
18 to do in this case?

19 MR. GURA: What we're asking you to do is one
20 of two things. First, people should be able to engage in
21 handgun transactions across state lines the same as they
22 would be able to engage and are, in fact, currently able
23 to engage in rifle and shotgun transactions.

24 That is, people should be able to go to a
25 dealer as long as they comply with the law of their state

1 and the law of the state in which they're in, then the
2 transaction would be approved, which is currently the way
3 business is done.

4 And, even if the Government were to say to
5 us, well, we have these unique handgun specific state
6 disqualifiers that are not in the system, our answer is
7 put them in the system. Check for them. Do what you
8 have to do to insure that people are complying with the
9 law. We have no --

10 THE COURT: Is this a new argument that
11 you're advancing here? This is another argument; is it
12 not?

13 MR. GURA: No.

14 THE COURT: *Heller* doesn't say that a person
15 as the right to buy a gun, does it? Does *Heller* say
16 that?

17 MR. GURA: It actually does.

18 THE COURT: Does it say that the Government
19 has to supply guns for purchases?

20 MR. GURA: There's a difference between the
21 right to buy a gun and the right to have a gun supplied.

22 THE COURT: My question is whether the
23 Government is required to supply guns to citizens.

24 MR. GURA: The Government is not required to
25 supply guns to citizens. But the Government is required

1 to respect and not unconstitutionally interfere with
2 citizen's private desires to go out and acquire guns.

3 *Heller* repeatedly cited --

4 THE COURT: Well, they can buy guns. You
5 just don't like the way they have to do it. They can buy
6 guns if they're qualified from state to state.

7 MR. GURA: And the issue is the
8 constitutionality of the qualifications that are imposed.

9 What the Government is saying, as I
10 understand their position is, they have two arguments.
11 The first argument is we can ban you from having an
12 out-of-state handgun transaction because you can do it in
13 your home state and just take it inside your state --
14 your state's borders.

15 That is not a sufficient constitutional
16 response under -- the way the Supreme Court has handled
17 constitutional rights. You cannot be told go to some
18 other jurisdiction to do something that is protected.

19 Their second argument is a better argument
20 and this is the one that we take more seriously. And
21 this is the argument that holds. We have a very
22 important interest in making sure that people don't
23 violate the handgun laws of their home state.

24 We agree that that is a legitimate Government
25 interest and that is an interest that the Government is

1 entitled to vindicate through regulation, and there is no
2 dispute about that.

3 The only question is whether, in furtherance
4 of that interest which we readily concede, this type of
5 law is properly tailored. And we submit that it is not,
6 and we have several very obvious facts that would prove
7 that.

8 Number one, there is a national instant
9 background check system --

10 THE COURT: Excuse me. I'm not Congress.
11 This is federal court. I'm not Congress.

12 MR. GURA: Sure.

13 THE COURT: Help me with the issue of
14 standing for Second Amendment Foundation, Incorporated.

15 MR. GURA: Well, this --

16 THE COURT: What standing does the
17 organization have?

18 MR. GURA: The organization has standing on
19 behalf of its members. This version of standing was
20 affirmed in *Dearth*. It was affirmed in *Ezell*. It was
21 affirmed in *Wollard*, and it should be affirmed here.

22 There are three factors that are important
23 under *Warth v. Seldin*. First of all, does the
24 organization have members who are impacted? Is the
25 lawsuit germane to the organization's interests? And is

1 the participation of the individual members necessary for
2 the case to proceed?

3 And all those three factors point to the fact
4 that the Second Amendment Foundation has standing.

5 The interesting thing, though, Your Honor, is
6 that we should not even reach the Second Amendment
7 Foundation standing if the Court is satisfied that there
8 is at least one plaintiff here whose desired transaction
9 is being frustrated.

10 That is a very well-established doctrine.
11 The United States of the Supreme Court a long time ago
12 followed dutifully by the courts that once standing is
13 established for one plaintiff, the standing inquiry
14 ceases.

15 The organization also has standing in its own
16 right as it is in the business of advising people,
17 teaching people and helping people about compliance with
18 the firearms law, and this kind of system clearly imposes
19 a burden on the organization's resources. And so it also
20 has not just representational standing on behalf of its
21 membership, but also inherent organizational standing as
22 well.

23 But we shouldn't even get that far because
24 it's clear that Ms. Lane and the Wellings have individual
25 standing. They're trying to engage in a transaction in

1 Virginia which is prohibited.

2 THE COURT: Well, as I understand it, there
3 was some declaration filed to date that now Mr. Sykes may
4 be able to operate his business in the police station and
5 to receive Ms. Lane's gun.

6 Does that moot the case?

7 MR. GURA: No, it does not, Your Honor.
8 And I'm happy that we got the D.C. Zoning Board to show
9 up for work last night at 6:15 in the evening. But it's
10 simply -- and as I've advised the City, and this has
11 always been our position. If the City wants to moot the
12 case, at least with respect to itself, all it needs to do
13 is say that henceforth we will treat handgun transactions
14 the same way we treat shotgun and rifle transactions.
15 And on this I'd like to address --

16 THE COURT: I understand your point about
17 that, but you're addressing it to the wrong entity, it
18 seems to me. You're asking me to change the law, the
19 federal law, about the way handguns are regulated as
20 distinct from rifles and shotguns.

21 And the ultimate threshold you have to cross
22 first with me is the issue of standing. I'm not even
23 going to talk about citing *Blackwelder* when the new
24 standard is *Winter* and *The Real Truth About Obama*. So, I
25 don't need to go that far with this.

1 I've asked you the questions I have about
2 standing. Would you sum up, please.

3 MR. GURA: Our standing position?

4 THE COURT: I said I've asked you the
5 questions I have about standing. Can you sum up, please.

6 MR. GURA: Yes, I would be happy to sum up.
7 I just would make one point in summation, one and a half
8 points.

9 THE COURT: You can make two if you'd like.

10 MR. GURA: I'm sorry.

11 THE COURT: You can make two if you'd like.

12 MR. GURA: Okay. We'll see if it amounts to
13 two. And we do just love the rocket docket, Your Honor.

14 But the Superintendent said that they would
15 be satisfied with -- if someone could show to me full and
16 complete proof that the Zye transaction comports with the
17 law of their home state.

18 That may be more or less challenging in
19 different circumstances, but in this case, it's easy
20 because in order for this to even occur, people must show
21 up with an approved registration certificate from the
22 Metropolitan Police Department in Washington, D.C.

23 Nobody is able to take possession of any kind
24 of firearm, handgun, rifle, or shotgun, if we get our
25 injunction, from a Virginia dealer or any other kind of

1 dealers unless they have the pre-approval of the City's
2 police department.

3 So, there's no need to be concerned about
4 whether or not their complying with or evading their home
5 law because that proof is required.

6 And then the other one half point which, I
7 guess, is no more than that, the beauty of the
8 adversarial process is that we are here to point out each
9 other's mistakes. *Blackwelder* is not the law. We
10 concede that. We do not rely on *Blackwelder*, and I
11 apologize if that somehow made it in. I -- that's all I
12 can say.

13 THE COURT: They call it practice for a
14 reason, Mr. Gura.

15 MR. GURA: That's right.

16 THE COURT: That's fine. That's fine.

17 MR. GURA: Thank you.

18 THE COURT: Thank you.

19 Ms. Wexler, does the Government want to say
20 anything further?

21 MS. WEXLER: Your Honor, we have nothing
22 further at this time.

23 THE COURT: Thank you. Anyone else?

24 All right. Let the record reflect this
25 matter is before the Court on the plaintiffs' motion for

1 preliminary injunction, and this is a case involving
2 Ms. Lane's attempt to purchase a weapon in Virginia for
3 transfer to her home in Washington, D.C. and a claim
4 brought by the Second Amendment Foundation, Incorporated.

5 The issues are whether the Court should grant
6 Ms. Lane's and Second Amendment Foundation's, Matthew
7 Welling and Amanda Welling's motion for preliminary
8 judgment when the plaintiffs allege that the balance of
9 harm is in plaintiffs' favor because of their inability
10 to obtain guns in the District of Columbia, and they will
11 prevail on the merits because they have a constitutional
12 rights under the Second Amendment to bear arms and the
13 federal law at issue in this case cannot pass strict
14 scrutiny and a preliminary injunction would serve the
15 public interest.

16 I think this case turns on standing, and I'm
17 going to deny the preliminary injunction because
18 plaintiffs lack standing to bring this suit. They lack
19 standing because they cannot prove causation and
20 plaintiffs' injury here, if any is caused by independent
21 third parties who are not joined in this case and over
22 whom the Court cannot exercise control.

23 This case involves two federal laws, 18
24 United States Code Section 922(b)(3) and 28 -- I'm sorry,
25 27 CFR 478.99 as well as the District of Columbia

1 Regulations -- Means For Regulation, Title 24 Section
2 2230.3(b)(f) and Virginia Code 18.2-308.2:2.

3 All these regulations and laws deal with the
4 sale of guns and transfer of guns in interstate commerce
5 respective of the states.

6 The plaintiffs are all D.C. residents and
7 apparently Ms. Lane ordered two handguns from a licensed
8 federal firearms dealers in Lorton, Virginia. And under
9 the law she cannot take possession of the handguns at
10 least at the time of her purchase because the lone D.C.
11 federal firearms licensee, Mr. Charles Sykes closed. He
12 was out of business at the time.

13 Ms. Amanda Welling and Matthew Welling would
14 like to receive a gun from Texas from Ms. Welling's
15 father but not able to do so because there is no current
16 D.C. federal firearms licensee. And Second Amendment
17 Foundation is an organization that has members in
18 Virginia and the District of Columbia who allegedly are
19 adversely affected by the federal laws and advocates on
20 behalf of its members.

21 The standard for injunction is well known.
22 And what is sought here is a mandatory affirmative
23 injunction which is an extraordinary remedy. And
24 granting an injunction in the first instance is an
25 equitable remedy that is an extraordinary remedy.

1 And there are four key points that have to be
2 established under the *Winter versus Natural Resources*
3 *Defense Council*, Supreme Court of United States.

4 First is that the plaintiff is likely to
5 succeed on the merits. Second, that she is likely to
6 suffered irreparable harm in the absence of preliminary
7 relief. Third, the balance of equities tips in her
8 favor; and four, an injunction is in the public interest.

9 The Fourth Circuit case is called *The Real*
10 *Truth About Obama* and, the Court has to balance the
11 plaintiff's claim of injury against the effect of
12 granting or withholding the injunction, particularly as
13 to the effect it will have on the public interest.

14 In this case, the plaintiffs cannot show
15 standing or causation. The complaint here and plaintiffs
16 would have to establish concrete personal injuries which
17 must be fairly traceable to or cause by the defendant's
18 conduct. And the injury must likely be redressed if
19 relief sought is granted under *Lujan*, that's L-U-J-A-N
20 *versus Defenders of Wildlife*.

21 It's what's called a traceable requirement
22 that insures that it's likely the plaintiff's injury was
23 caused by the challenged conduct of the defendant and not
24 by the independent action of third parties not before the
25 Court, under *The Friends of Farrell Parkway*. That's

1 F-E-R-R-E-L-L *Parkway versus Stasko*, S-T-A-S-K-O from the
2 Fourth Circuit.

3 And additionally when plaintiff is not the
4 object of the Government action that challenges standing,
5 it's very difficult to establish. Causation has to turn
6 on the unfettered choices made by independent actors not
7 before the Court and whose control are broad and
8 legitimate discretion the courts cannot presume either to
9 control or predict is generally insufficient.

10 So in this case, what we're talking about is
11 the absence of a licensed federal firearm dealer in the
12 District of Columbia, not an outright ban on purchase of
13 weapons from out-of-state residents, because as counsel
14 acknowledges, it is possible to buy a weapon in another
15 state. It requires you to purchase the weapon in
16 Virginia from the federally licensed firearms dealer.
17 Then that weapon has to be transferred to a federally
18 licensed firearm dealer in Washington, D.C., go through
19 whatever process the District of Columbia has including
20 ballistic testing before it's actually delivered to the
21 purchaser.

22 So it seems to me what we're talking here is
23 the action of the independent third party. It's not the
24 federal law that's barring Ms. Lane or Ms. Welling from
25 obtaining a weapon. It's not the District of Columbia

1 and it's certainly not the Commonwealth of Virginia
2 because our firearms dealer is prepared to make this
3 sale.

4 So in this case, I'm going to deny the motion
5 because plaintiffs are unable to prove the injury is
6 fairly traceable to or caused by the federal firearms
7 laws.

8 I understand the plaintiffs' position that
9 the weapons regulation as it relates to firearms are to
10 be comparable to that of the way transfers of shotguns
11 and rifles is handled by federal law. But I think that
12 argument belongs before Congress, not before the District
13 Court, specifically the plaintiffs are challenging 18
14 United States Code Section 922(b) which states that,
15 quote, "It shall be unlawful for any licensed importer,
16 licensed manufacturer, licensed dealer or licensed
17 collector to sale or deliver any firearm", end quote.

18 Plaintiffs are not licensed importers,
19 manufacturers, dealers, or collectors. They are gun
20 purchasers.

21 So, as they are challenging statutes and
22 regulations that do not address their claims, their
23 burden is very high. And additionally as I've stated
24 earlier, in order to challenge a federal law and to seek
25 a mandatory injunction, a great deal more would have to

1 be shown, and it has not been shown here.

2 So, for those reasons it seems to me that the
3 law does not ban handgun sales in the District of
4 Columbia. It does not ban handgun sales in Virginia.

5 And the plaintiff acknowledges that the
6 briefs were focused on the old standard for injunction,
7 but I do not have to reach the issue of injunction
8 because in the absence of standing it is not appropriate
9 for me to reach that question in any event.

10 I'm going to deny the District of Columbia's
11 motion to sever because the matter is moot, and the case
12 is now dismissed because plaintiffs lack standing to
13 suit.

14 Thank you.

15 We're in recess.

16 (Proceeding concluded at 11:27 a.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motions in the case of Michelle Lane, et al vs. Eric Holder, et al.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said motions, and that the foregoing pages, numbered 1 to 31, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 8th day of August, 2011.

/s/
Renecia Wilson, RMR, CRR
Official Court Reporter