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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

PRELIMINARY STATEMENT

But for the laws challenged in this action, plaintiffs would possess handguns in their homes. And while plaintiffs do not contest the constitutionality of gun registration *per se*, they seek to bring Chicago's gun registration program into compliance with constitutional standards.

The facts of this case are not subject to dispute. Nor can the challenged laws be thought compatible with the right to keep and bear arms. The only significant legal issue before the Court is whether the Second Amendment is binding upon state and local governmental entities through application of the Fourteenth Amendment. Plaintiffs submit that under any theory of Fourteenth Amendment incorporation, Chicago is bound to respect their rights under the Second Amendment. Plaintiffs are thus entitled to a summary judgment granting them injunctive relief.

STATEMENT OF FACTS

Defendant City of Chicago generally bans the home possession of handguns by requiring that all firearms be registered, but refusing the registration of handguns. Statement of Material Fact ("SMF") 13. The individual plaintiffs have each tried to register a handgun for possession in their Chicago homes, but the city has denied each of plaintiffs' handgun registration applications per its handgun registration ban. SMF 14-17. Orlov and David Lawson's were also denied handgun registration because their handguns were acquired prior to submission of the registration forms. SMF 15, 17. Each individual plaintiff fears arrest, criminal prosecution, incarceration, and fine if he or she were to possess a handgun within the home. SMF 18. Each individual plaintiff presently intends to possess a handgun within the home for self-defense, but is prevented from doing so by the city's active enforcement of the handgun ban. SMF 19.

Defendant City mandates that all lawfully registered guns be re-registered each year. SMF 20. If a registered gun is not timely re-registered, that particular gun becomes “unregisterable” and thus illegal to possess in Chicago. SMF 21. Plaintiff McDonald owns a shotgun lawfully registered pursuant to the Chicago Municipal Code. SMF 22. Mr. Lawson likewise owns various guns lawfully registered in the city. SMF 23. McDonald and Lawson fear arrest, criminal prosecution, incarceration, and fine if they were to possess their guns in Chicago without re-registering them annually. SMF 24.

On May 4, 2008, the registration for one of Mr. Lawson’s rifles, a K31, lapsed. The rifle thus became permanently unregisterable within the City of Chicago. SMF 25. Mr. Lawson removed the rifle from his Chicago home and now keeps it outside the City of Chicago. SMF 26. Mr. Lawson fears arrest, criminal prosecution, incarceration, and fine if he were to possess the lapsed K31 rifle within his Chicago home without benefit of registration. SMF 27.

Plaintiff Lawson is not the only Chicagoan who had inadvertently allowed his firearm registration to lapse and thus render his gun “unregisterable.” The phenomenon is responsible for a decline in the number of registered guns that does not reflect the true firearm population in the city. SMF 28. When Alderman Richard Mell had various firearms become unregisterable for lack of timely re-registration, he successfully sponsored an amnesty ordinance permitting the re-registration of lapsed firearms, for a limited time, upon payment of a fine. SMF 29. The amnesty ordinance does not repeal the re-registration requirement. SMF 30.

The city also requires that all firearms be registered prior to their acquisition, lest they become unregisterable. SMF 31. At times, compliance with this requirement is not strictly possible. In 2007, plaintiff David Lawson applied to purchase a rifle from the federal Civilian

Marksmanship Program (“CMP”). On October 18, 2007, Mr. Lawson was informed via e-mail that his application was granted and the rifle would be delivered to his Chicago home. SMF 32. The CMP requires that delivery be made to Mr. Lawson’s Chicago home, because that is the address listed both in Mr. Lawson’s driving license and Illinois Firearms Owner Identification Card. SMF 33.

On October 19, 2007, the CMP rifle arrived at the Lawson home via the U.S. Postal Service. SMF 34. Mr. Lawson thus had approximately a day’s notice that he would be receiving the CMP rifle. Only upon receiving the CMP rifle could Mr. Lawson learn the gun’s serial number, necessary to apply for a Chicago registration certificate for the firearm. SMF 35.

Mr. Lawson relocated the rifle outside of Chicago and, on November 30, 2007 applied to register the rifle. SMF 36. On December 11, 2007, that application was refused because Lawson did not effectuate registration of the rifle prior to taking possession of it. SMF 37. Mr. Lawson presently intends to possess the CMP rifle within his home, but is prevented from doing so only by the city’s active enforcement of the pre-acquisition registration requirement and now unregistrable status of that firearm. SMF 38. Mr. Lawson fears arrest, criminal prosecution, incarceration, and fine if he were to possess this rifle within his home. UMF 39.

Plaintiffs Second Amendment Foundation and Illinois State Rifle Association each have individual members who are impacted by the challenged laws. SMF 6, 8. Vindication of the right to keep and bear arms is germane to these organizations’ purposes. SMF 5, 7.

SUMMARY OF ARGUMENT

Applying Fourteenth Amendment incorporation tests to the Second Amendment right to keep and bear arms, there can be only one result: the Second Amendment applies to the states.

The right to keep and bear arms is among the privileges and immunities of United States citizenship which the states are forbidden from abridging. Indeed, the Fourteenth Amendment was intended and originally understood to stop the states' abridgement of the right to keep and bear arms. The Fourteenth Amendment's Privileges and Immunities Clause may have been given a wrong, parsimoniously narrow interpretation by the Supreme Court in *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), but Second Amendment incorporation through that provision remains the most logical course of action. Considering the widely held view that the current Privileges or Immunities Clause jurisprudence is incorrect, and the recent suggestion by an Associate Justice of the Supreme Court that this doctrine be revisited, plaintiffs would in good faith urge that this precedent be reconsidered to better honor the original intent, meaning, and plain text of the Fourteenth Amendment.

Yet other precedent requires entry of judgment for plaintiffs. However *Slaughter-House* hampers incorporation through the Privileges or Immunities Clause, the Supreme Court's well-established doctrine of selective incorporation through the Fourteenth Amendment's Due Process Clause mandates that the City of Chicago respect its residents' Second Amendment rights.

Applying the Second Amendment to the challenged laws, the latter must yield. A ban on the home possession of handguns by law-abiding adults is clearly unconstitutional. *District of Columbia v. Heller*, 554 U.S. ___, 128 S. Ct. 2783, 2818 (2008). And while *Heller* did not purport to define the precise standard of review under which gun regulations must be examined in Second Amendment cases, Chicago's re-registration and pre-acquisition registration requirements, and "unregisterability" penalty, fail any possible standard of review.

ARGUMENT

I. THE RIGHT TO ARMS SECURED BY THE SECOND AMENDMENT IS A PRIVILEGE OR IMMUNITY WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT, WHICH THE STATES SHALL NOT ABRIDGE.

The Fourteenth Amendment provides, in pertinent part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” U.S. Const. amend. XIV, sec. 1, cl. 2. The Fourteenth Amendment Privileges or Immunities Clause was originally intended and understood to incorporate the Bill of Rights – including, specifically, the Second Amendment – as against the states. It should be given this effect today.

Plaintiffs acknowledge that this argument is foreclosed in this Court by *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), holding that the Privileges or Immunities Clause guarantees only rights that flow from the existence of United States citizenship, such as the rights to diplomatic protection abroad or to access the navigable waterways of the United States. *Slaughter-House* may be binding law, but “‘everyone’ agrees the Court [has] incorrectly interpreted the Privileges or Immunities Clause.” Richard L. Aynes, *Constricting the Law of Freedom: Justice Miller, the Fourteenth Amendment, and the Slaughter-House Cases*, 70 Chi. Kent L. Rev. 627 (1994); see also Laurence H. Tribe, *Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation*, 108 Harv. L. Rev. 1121, 1297 n. 247 (1995) (“[T]he *Slaughter-House Cases* incorrectly gutted the Privileges or Immunities Clause”); Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 Yale L.J. 1193, 1258-59 (1992). “Legal scholars agree on little beyond the conclusion that the Clause does not mean what the Court said it meant in 1873.” *Saenz v. Roe*, 526 U.S. 489, 523 n.1 (1999) (Thomas, J. dissenting) (citations omitted). Indeed, Justice Thomas, joined by Chief Justice

Rehnquist, declared that he “would be open to reevaluating [the Privileges or Immunities Clause’s] meaning in an appropriate case.” *Saenz*, 526 U.S. at 528 (Thomas, J., dissenting).¹ This is an appropriate such case, considering that no modern court has considered the interplay between the Second Amendment, properly understood, and the Fourteenth Amendment.

Before the Civil War, the Supreme Court held that states were not bound by the Bill of Rights. *Barron ex rel. Tiernan v. Mayor of Baltimore*, 32 U.S. (7 Pet.) 243 (1833). *Barron* proved intolerable during Reconstruction. With recalcitrant southern states actively oppressing Americans just freed from slavery, Congress saw the need to constitutionally define American citizenship and imbue that citizenship with meaningful federal protection. Thus the Fourteenth Amendment’s first section was designed to overrule two Supreme Court precedents. The first clause dispensed with *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), which held that people of African descent could not be American citizens or citizens of American states. The Privileges or Immunities Clause was aimed squarely at overruling *Barron*.

“[I]n drafting section one,” Fourteenth Amendment author Rep. John Bingham

looked to *Barron* itself for guidance. Within the words of Chief Justice John Marshall he found clear instructions: “Had the framers of these amendments intended them to be limitations on the powers of the state governments, they would have imitated the framers of the original constitution, and have expressed that intention.”

Michael Anthony Lawrence, *Second Amendment Incorporation Through the Privileges or Immunities and Due Process Clauses*, 72 Mo. Law. R. 1, 18 (2007) (hereafter “Lawrence”)

¹“Since the adoption of [the Fourteenth] Amendment, ten Justices have felt that it protects from infringement by the States the privileges, protections, and safeguards granted by the Bill of Rights . . . Unfortunately it has never commanded a Court. Yet, happily, all constitutional questions are always open.” *Gideon v. Wainright*, 372 U.S. 335, 345-46 (1963) (Douglas, J., concurring) (citation omitted).

(quoting Cong. Globe, 42d Cong., 1st Sess. 84 App. (1871); *Barron*, 32 U.S. at 250). The opening words of the Privileges or Immunities Clause thus imitate directly the command of Article I, Section 10 referenced by *Barron*: “No state shall.” Bingham made explicit that *Barron*’s suggestion was followed in order to bind the states. *Id.*, at 18-19 and citations therein.

As for the privileges and immunities that “no state shall . . . abridge,” these included, at a minimum, the Bill of Rights. “Congress in 1866 understood perfectly well that section one was intended to repudiate *Barron*. ‘Over and over [John Bingham] described the privileges-or-immunities clause as encompassing ‘the bill of rights’ – a phrase he used more than a dozen times in a key speech” Lawrence, 72 Mo. L. Rev. at 19 (quoting Akhil Reed Amar, *THE BILL OF RIGHTS 182* (1998) (hereafter “Amar”). The Fourteenth Amendment’s Senate sponsor, Senator Jacob Howard, explained the Privileges or Immunities Clause’s incorporating scope:

To these privileges and immunities, whatever they may be – for they are not and cannot be fully defined in their entire extent and precise nature – to these should be added the personal right guaranteed and secured by the first eight amendments of the Constitution; such as the freedom of speech, . . . and the right to keep and to bear arms The great object of the first section of this amendment is, therefore, to restrain the power of the States and compel them at all times to respect these great fundamental guarantees.

Cong. Globe, 39th Cong., 1st Sess. 2765-66 (1866) (emphasis added).

These and numerous other widely-reported congressional comments expressing the Fourteenth Amendment’s repudiation of *Barron* were unopposed. Amar, at 186-87. Indeed, the Fourteenth Amendment’s southern opponents understood that the Privileges or Immunities Clause incorporated the Bill of Rights, as did those who promoted the Fourteenth Amendment’s ratification among the states. *See discussion in* Lawrence, at 22-27. And arguably, the right to keep and bear arms was the right whose incorporation was most urgently desired. “With respect

to the proposed [Fourteenth] Amendment, Senator Pomeroy described as one of the three “indispensable” “safeguards of liberty . . . under the Constitution” a man’s “right to bear arms for the defense of himself and family and his homestead.” *Heller*, 128 S. Ct. at 2811 (citing Cong. Globe, 39th Cong., 1st Sess., 1182 (1866)).

Accordingly, until *Slaughter-House*, it was perfectly understood by fans and foes of the Fourteenth Amendment alike that the Privileges or Immunities Clause incorporates the entire Bill of Rights as against the states – including the Second Amendment. For purposes of this motion, it suffices to note that *Slaughter-House*’s evisceration of the Privileges or Immunities Clause was wrong the day it was decided and remains wrong today.

II. THE SECOND AMENDMENT IS INCORPORATED UNDER THE FOURTEENTH AMENDMENT’S DUE PROCESS CLAUSE.

Slaughter-House may have rendered the Privileges or Immunities Clause meaningless, but the Supreme Court would discover another approach to Fourteenth Amendment incorporation. It is now well-established that the amendment’s Due Process Clause has a substantive dimension, and that deprivation of enumerated constitutional rights is thus largely incompatible with due process. Almost every provision of the Bill of Rights considered for incorporation in the modern era has been incorporated.

In the early days of incorporation, the Supreme Court explained that “immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states.” *Palko v. Connecticut*, 302 U.S. 319, 324-25 (1937). The Second Amendment, given its forceful command and basis in the inherent human

right of self-preservation, would surely pass this test. But the Supreme Court would settle on an analysis proven yet more amenable to incorporation. The modern incorporation test asks whether a right is “fundamental to the American scheme of justice,” *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968), or “necessary to an Anglo-American regime of ordered liberty,” *id.*, at 150 n.14. *Duncan*’s analysis suggested looking to the right’s historical acceptance in our nation, its recognition by the states, any trend regarding state recognition, and the purpose behind the right.

The right to bear arms clearly meets the modern incorporation standard. “By the time of the founding, the right to have arms had become fundamental for English subjects.” *Heller*, at 2798 (citations omitted). The violation of that right by George III “provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms.” *Id.*, at 2799. The Second Amendment “codified a right inherited from our English ancestors.” *Id.*, at 2802 (citation omitted). Indeed, when the constitution was considered, demands for a bill of rights prevailed in five of seven constitutional ratifying conventions; the only provisions common to all bill of rights demands were freedom of religion and the right to arms. Forty-four of the fifty states secure a right to arms in their constitutions, and of these, fifteen are either new or strengthened since 1970. Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 *Tex. Rev. Law & Pol.* 191 (2006). And in *Heller*, thirty-two states advised the Supreme Court that the individual Second Amendment “is properly subject to incorporation.” Brief of Amici States Texas, et al., Supreme Court No. 07-290, at 23 n.6.²

The Second Amendment’s purpose confirms its incorporation. “The inherent right of self-defense has been central to the Second Amendment right.” *Heller*, at 2818. Blackstone

²North Carolina joined the brief’s 31 original signatories by letter.

described that right as preserving “‘the natural right of resistance and self- preservation,’ and ‘the right of having and using arms for self-preservation and defence.’” *Heller*, at 2792 (citations omitted). The Supreme Court binds the states to respect unenumerated rights which, like the Second Amendment, are rooted in deference to personal autonomy. Observing that “no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law,” *Cruzan v. Dir., Mo. Dept. of Health*, 497 U.S. 261, 269 (1990) (citation omitted), the Supreme Court recognized a right to refuse life-sustaining medical care. *Id.*, at 278; *see also Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (“the right of the individual . . . to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child”); *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (“liberty of the person both in its spatial and more transcendent dimensions” supports right to consensual intimate relationships); *Rochin v. California*, 342 U.S. 165 (1952) (right of bodily integrity against police searches).

It is unfathomable that the states are constitutionally limited in their regulation of medical decisions or intimate relations, because these matters touch upon personal autonomy, but are unrestrained in their ability to trample upon the enumerated right to arms designed to enable self-preservation. If abortion is protected because “[a]t the heart of liberty is the right to define one’s own concept of existence,” *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), the right of armed self-defense against violent criminal attack is surely deserving of incorporation. Indeed, *Casey* invoked the second Justice Harlan’s celebrated passage describing the liberty protected by the Due Process Clause as broader than “a series of isolated points pricked out in terms of the

taking of property; the freedom of speech, press, and religion; *the right to keep and bear arms*; the freedom from unreasonable searches and seizures; and so on.” *Id.*, at 848 (quoting *Poe v. Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting)) (emphasis added). Liberty cannot now be defined so narrowly as to exclude one of its more obvious attributes.

The Second Amendment also has another purpose, spelled out in the prefatory clause: preservation of the people’s ability to act as militia. *Heller*, at 2800-01. The Amendment’s framers believed this purpose was “necessary to the security of a free state.” U.S. Const. amend. II. By its own terms, the Second Amendment secures a fundamental right.

Three Supreme Court decisions have rejected the Second Amendment’s direct application to the states. But these holdings did not discuss Fourteenth Amendment incorporation.

With respect to *Cruikshank*’s [*United States v. Cruikshank*, 92 U.S. 542 (1876)] continuing validity on incorporation, a question not presented by this case, we note that *Cruikshank* also said that the First Amendment did not apply against the States and did not engage in the sort of Fourteenth Amendment inquiry *required by our later cases*.

Heller, 128 S. Ct. at 2813 n.23 (emphasis added).

Heller noted that *Presser v. Illinois*, 116 U.S. 252 (1886) and *Miller v. Texas*, 153 U.S. 535 (1894) “reaffirmed that the Second Amendment applies only to the Federal Government.” *Id.* But both these cases precede the incorporation era, and suffer from the same flaw that renders *Cruikshank* non-authoritative: an absence of the “required” modern incorporation analysis. *See also Duncan*, 391 U.S. at 155 (complete non-incorporation “a position long since repudiated”). *Miller*’s observation that the Second Amendment did not bind the states referenced the Fourth Amendment for the same proposition. *Miller*, 153 U.S. at 538. Clearly the city would not cite *Miller*’s language for the proposition that its police force need not obey the Fourth Amendment.

In any event, *Miller*'s non-incorporation language is dicta; the case was dismissed because the constitutional claims were not preserved at trial. *Miller*, 153 U.S. at 537-38.

As for *Presser*, the Supreme Court in that case reasoned that the Second Amendment "is one of the amendments that has no other effect than to restrict the powers of the National government." *Presser*, 116 U.S. at 265. Among the other amendments suggested by *Presser* as not being incorporated are the First (citing *Cruikshank*), Fifth,³ and Sixth.⁴ *Id.* *Presser* relied upon cases that are clearly no longer authoritative, and failed to engage in the now-required incorporation analysis that would not be announced until deep into the following century.

The Seventh Circuit once reasoned that *Presser* precluded Second Amendment incorporation. *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982). But *Quilici* has been all but overruled by *Heller*. *Quilici*'s dicta that "the right to keep and bear handguns is not guaranteed by the Second Amendment," *Quilici*, 695 F.2d at 270 (footnote omitted), is no longer recognized as law. As for *Presser*'s relevance to incorporation, *Quilici* noted that "appellants offer[ed] no authority, other than their own opinions, to support their arguments that *Presser* is no longer good law or would have been decided differently today." *Quilici*, 695 F.2d at 270.

Times have changed. As noted *supra*, the Supreme Court explained that *Cruikshank*, upon which *Presser* relied, did not "engage in the sort of Fourteenth Amendment inquiry required by our later cases." *Heller*, at 2813 n.23. *Quilici*'s refusal to consider "historical

³Takings Clause not incorporated, citing *Barron*; Double Jeopardy Clause not incorporated, citing *Fox v. Ohio*, 46 U.S. (5 How.) 410 (1847).

⁴Right to be informed of accusation not incorporated, citing *Twitchell v. Commonwealth*, 74 U.S. (7 Wall.) 321 (1869); right to criminal jury trial not incorporated, citing *Murphy v. People*, 2 Cow. 815 (N.Y. 1824).

analysis of the development of English common law and the debate surrounding the adoption of the second and fourteenth amendments,” *Quilici*, 695 F.2d at 270 n.8, key aspects of “the sort of inquiry” now “required” by *Heller*, at 2813 n.23, further undercut *Quilici*’s authority.

Since *Quilici*, two circuits concluded *Presser* had been overtaken by the incorporation doctrine. Judge Reinhardt, in elucidating the “collective right” theory rejected in *Heller*, agreed that *Presser* and *Cruikshank* “rest on a principle that is now thoroughly discredited.” *Silveira v. Lockyer*, 312 F.3d 1052, 1066 n.17 (9th Cir. 2002) (citing *United States v. Emerson*, 270 F.3d 203, 221 n.13 (5th Cir. 2001)). After *Heller*, the Seventh Circuit would surely conduct a modern incorporation analysis, as should this Court. *Quilici* poses no obstacle. “Our decisions do not bind the district court when there has been a relevant intervening change in the law.” *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005) (citation omitted); cf. *Cameo Convalescent Center, Inc. v. Percy*, 800 F.2d 108, 110 (7th Cir. 1986). *Heller*’s limitation of *Cruikshank*, and instruction that modern incorporation analysis is required to resolve the issue of Second Amendment incorporation, constitute a relevant intervening change in the law. The Village of Morton Grove must understand *Quilici*’s limitations, as it just repealed its handgun ban in the face of a post-*Heller* challenge. Robert Channick, *Morton Grove repeals 27-year old gun ban*, Chicago Tribune (July 28, 2008).

III. THE CHALLENGED LAWS VIOLATE PLAINTIFFS’ RIGHT TO KEEP ARMS.

Handgun bans of the sort at issue here clearly violate the Second Amendment. *Heller*, at 2818. With respect to the other challenged provisions, *Heller* made clear that the standard of review in Second Amendment cases should be one befitting other enumerated constitutional rights. *Heller*, at 2818 n.27. The Fifth Circuit employs a version of strict scrutiny, allowing

those laws that are “limited, narrowly tailored specific exceptions or restrictions for particular cases that are reasonable and not inconsistent with the right of Americans generally to individually keep and bear their private arms as historically understood in this country.”

Emerson, 270 F.3d at 261. Regardless of the standard to be applied, the challenged laws fail.

Whatever the value of registration, the requirement that guns be constantly re-registered burdens gun ownership but serves no useful purpose. The city already mandates that registrants immediately notify police of any changes in their registration information, including loss or disposition of a gun or registration certificate. Chicago Mun. Code § 8-20-140. Moreover, “[a] state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.” *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). The penalty for lapsed or improper registration rendering the subject firearm “unregisterable” is likewise unconstitutional. Whatever penalty the City might wish to impose for non-compliance with a registration scheme (within other constitutional limitations), permanently banning the gun at issue from lawful possession is an extreme, unwarranted deprivation of the right to keep arms.

But the non-registerability penalty is not merely a Second Amendment violation. The penalty violates the Equal Protection Clause as well, because the would-be registrant is fully capable of registering an identical firearm – just not the particular firearm whose registration lapsed or failed for some reason. The non-registerability penalty thus creates two classes of identical firearms: one which can be possessed, and one which cannot, and the only distinction between the two is that an item falling in the latter category was once subject to a registration failure. This is precisely the sort of classification held to violate the Equal Protection Clause, under a rational basis analysis, in *People’s Rights Org. v. City of Columbus*, 152 F.3d 522, 532

