

GURA &
POSSESSKY101 N. COLUMBUS ST., SUITE 405
ALEXANDRIA, VIRGINIA 22314
TEL 703.835.9085
FAX 703.997.7665

WWW.GURAPOSSSESKY.COM

October 15, 2012

The Hon. Mark Langer, Clerk
U.S. Court of Appeals, D.C. Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: Fed. R. App. P. 28(j) Notice Providing Supplemental
Citations Regarding Oral Argument in
Schrader v. Holder, No. 11-5352, argued Oct. 10, 2012

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28 (j), Plaintiffs-Appellants submit supplemental citations in response to the panel's questioning at oral argument.

First, the panel inquired to what extent Schrader had advanced an individualized argument concerning 922(g)(1)'s application against him in the district court proceedings below. Schrader did in fact advance this argument to the district court. Plaintiffs refer this Court to the memoranda in support of summary judgment in the docket below—Case 10-CV-1736-RMC—at Dkt. # 21 (Pl. Opening Br.) at 41-42 (“in *any* as-applied challenge, the challenger should be permitted to ‘present facts about himself and his background that distinguish his circumstances from those of persons historically barred from Second Amendment protection’”) (emphasis in original) (quoting *United States v. Barton*, 633 F.3d 168, 174 (3d Cir. 2011)) and 44; Dkt. # 27 (Pl. Reply Br.) at 21-24.

Second, the panel requested a citation to the complaint establishing Schrader's individualized argument that § 922(g)(1) is unconstitutional as applied to him personally. Plaintiffs respectfully

Mr. Langer
Page Two

submit that this argument is fairly encompassed within count 1 of the complaint's prayer for relief, JA 36, which requests relief specific to Schrader as follows:

1. Injunctive relief commanding Defendants to withdraw their record pertaining to Plaintiff Schrader from NICS, per 18 U.S.C. § 925A;

Among other things, § 925A provides for judicial relief to a person denied a firearm “due to the provision of erroneous information . . . by the national instant criminal background check system” (NICS) or because the claimant “was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922.” That the Second Amendment prohibits § 922(g)'s application against Schrader personally is one of his arguments in support of this form of injunctive relief—namely, that his NICS disability record should be removed as erroneous. Moreover, count 3 additionally seeks “Declaratory relief consistent with the injunction.” JA 36.

Plaintiffs also note that they make a broader request for relief in count 2, and ask in count 6 for “Any other further relief as the Court deems just and appropriate.” *Id.*

Sincerely,

/s/ Thomas M. Huff
Thomas M. Huff

Counsel for Appellants

This body of this letter contains 341 words.

cc: Counsel of Record via ECF

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2012, I filed the foregoing Fed. R. App. 28(j) notice letter with the Clerk of the Court using the CM/ECF system. I further certify that counsel for Appellees are registered CM/ECF users and will be served via the CM/ECF system. This notice was also filed this day by dispatch to the Clerk via Federal Express.

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

/s/ Thomas M. Huff
Thomas M. Huff

Counsel for Appellants