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O'Melveny Files Supreme Court Amicus Brief in Chicago Guns Case

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WASHINGTON, DC -- JANUARY 6, 2010 -- O'Melveny & Myers LLP filed an *amicus curiae* brief in the US Supreme Court today in *McDonald v. City of Chicago*, the "Chicago guns case" that the Court will hear this Term. The case concerns what limits the US Constitution, and in particular the Fourteenth Amendment, places on states' and cities' ability to regulate firearms.

The brief, filed on behalf of 34 of the nation's leading historians and legal historians, describes the history of gun regulation during the era of the Fourteenth Amendment and the continuing importance of states' power to protect public safety in the Reconstruction era. An O'Melveny team, led by partner Matthew Shors, associate Justin Florence, and senior paralegal Andrew Eveleth, worked closely with leading scholars to research a range of state and municipal laws that closely regulated the possession and use

of classes of weapons, including handguns. According to the brief: “As state constitution drafters, courts, legislatures, and commentators alike have agreed, our constitutional framework gives states and local governments the authority they need to balance the public safety interests impacted by the possession and use of dangerous weapons such as handguns.”

The brief shows that the level of gun regulation increased in the era of the Fourteenth Amendment, and that many laws enacted at the time are actually more restrictive than the laws at issue in the case before the Court. The brief thus refutes the core argument of *McDonald*: that the Fourteenth Amendment was understood to bar states from restricting gun rights. As the brief points out, the historical record shows that the Fourteenth Amendment was understood to preclude state laws and actions targeted at certain classes of people, in particular African-Americans, but not classes of dangerous weapons.

“This brief reflects the best current scholarship in legal history and constitutional history,” notes Saul Cornell, Paul and Diane Guenther Chair in American History at Fordham, one of the two lead historians on the brief, and one of the nation’s leading experts on the history of the Second Amendment and gun regulation. “Moreover, we were incredibly lucky to be working with a world class team at O’Melveny which not only included top Supreme Court litigators, but younger associates with advanced training in history.”

“It would be wrong if the Court were to strike down Chicago’s gun law on Fourteenth Amendment grounds, when Chicago’s law is less restrictive than those enacted and upheld at the time of the Fourteenth Amendment,” said O’Melveny partner Matthew Shors, counsel of record on the brief.

“The court is increasingly relying on history in these cases,” said Bill Novak, Professor of Law at the University of Michigan, a national expert on the history of state regulation, and the other lead historian on the brief. “So it’s important for professional historians and legal historians to weigh in on the current state of the field, providing a counterweight to temporary histories concocted for special advocacy purposes only.”

Oral argument in the case is scheduled for March 2, 2010, with a decision expected by June.

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