

UNITED STATES COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
In re: )  
Jean Batty; Edward Russo; Mary )  
Learning; Ken Trudell; Matt Wolf; )  
Paul P. Barnett; Craig Vacca; David )  
Goldman; Janele Goldman; and )  
Commonwealth Second Amendment, )  
Inc., )  
Plaintiffs. )  
\_\_\_\_\_ )

CIVIL ACTION NO.  
1:15-cv-10238

-against-

Ken Albertelli, in his official Capacity as )  
Chief of the Winchester Police Department; )  
Richard C. Grimes, in his Official Capacity )  
As Chief of the Weymouth Police )  
Department; William Taylor, in his Official )  
Capacity as Superintendent of the Lowell )  
Police Department; and David A. )  
Provencher, in his Official Capacity as the )  
Chief of the New Bedford Police )  
Department, )  
Defendants. )  
\_\_\_\_\_ )

DEFENDANT KEN ALBERTELLI’S OPPOSITION TO  
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

In their complaint and reiterated in their Motion for Summary Judgment, the Plaintiffs contend that Defendant Albertelli’s policy or practice violated the Plaintiffs Second Amendment right to keep and bear arms when Defendant Albertelli issued Plaintiff Batty and Plaintiff Russo

licenses to carry firearms with restrictions limiting their use within the home for self protection and for use outside the home for targeting and hunting.

The uncontroverted facts in this case and the law as recently ruled on by the United States Supreme Court support the Defendant's argument that there is no violation of the Second Amendment either by the policy which allowed the Defendant to issue licenses with restrictions or the Defendant's implementation of that policy as it related to the Plaintiffs.

The uncontroverted facts that support Defendant's argument include the following:

- The Plaintiffs applied for a license to carry a firearm in the Town of Winchester;
- The Defendant found these two applicants to be "suitable" applicants and issued them licenses pursuant to MGL Chapter 140 Section 131;
- The statutory scheme allows the Winchester Chief as the local licensing authority to issue licenses with the discretion to restrict the use of the firearms.
- The scheme provides the Plaintiffs with the right to petition for review of any restriction placed on the licenses if they were considered "aggrieved" by the Defendant's actions;
- The licenses that were issued comported with the protections provided by the Second Amendment as defined by the United States Supreme Court in District of Columbia v. Heller and McDonald v. City of Chicago as applied to the states.

Defendant opposes Plaintiffs' Motion for Summary Judgment. As part of this opposition, the Defendant includes all arguments made in his Memorandum in Support of Defendant's Motion for Summary Judgment as well as the argument set forth below.

DEFENDANT'S OBJECTION TO PLAINTIFFS  
STATEMENT OF MATERIAL FACTS

Defendant objects to inclusion of the following statements as material facts where 1) there is no genuine issue to be tried, 2) the statements are not material, 3) the facts are misstated or contested. (identified by paragraph, cites as presented):

15. Plaintiff Jean Batty and her husband submitted a letter to Defendant Chief Albertelli requesting that he re-issue them unrestricted LTCs on January 21, 2015. [Batty Dec. ¶ 13 & ex. 4].

Objection: There is only one statement submitted by Plaintiff Batty under oath during the application process and to be considered by the court. That statement was the application. The letter referenced by Plaintiff was authored by Mr. Batty only. Mr. Batty was also an applicant for an LTC and was awarded the same, but did not appeal the Chief's Decision. Mr. Batty's letter is not material to the issue before the Court.

16. Plaintiff Jean Batty and her husband advised Chief Albertelli of specific reasons that both had to be concerned for our safety. Among other things, Plaintiff Jean Batty has concerns with specific distraught and/or confrontational individuals that she has encountered through her work at MassHealth. [Batty Dec. ¶¶ 13-14 & ex. 4]

Objection: There is only one statement submitted by Plaintiff Batty under oath during the application process and to be considered by the court. That statement was the application. The letter referenced by Plaintiff was authored by Mr. Batty only. Mr. Batty was also an applicant for an LTC and was awarded the same, but did not appeal the Chief's Decision. Mr. Batty's letter is not material to the issue before the Court.

17. Sometime after January 21, 2015, Defendant denied Plaintiff Jean Batty's request to reissue her an unrestricted LTC. [Batty Dec. ¶ 15]

Objection: There is only one statement submitted by Plaintiff Batty under oath during the application process and to be considered by the court. That statement was the application. The letter referenced by Plaintiff was authored by Mr. Batty only. Mr. Batty was also an applicant for an LTC and was awarded the same, but did not appeal the Chief's Decision. Mr. Batty's letter is not material to the issue before the Court.

20. Both Plaintiffs Jean Batty and Edward Russo sought and continue to seek licenses that would allow them the option to carry handguns for personal protection while away from their homes. [Batty Dec. ¶¶ 17, 20; Russo Dec. ¶¶ 12-13]

Objection: The record indicates neither Plaintiff completed the application process. Neither declaration by the Plaintiffs support the statement in that it was clear from the declaration only that the Plaintiffs "desired" not "sought" and continue to seek the licenses.

21. Both Plaintiffs Jean Batty and Edward Russo would complete reasonable additional training in order to obtain unrestricted LTCs. [Batty Dec. ¶ 21; Russo Dec. ¶ 15]

Objection: These facts are not material to the issues presented in the Memorandum in Support of the Motion for Summary Judgment.

25. Defendant first adopted a written firearms licensing policy in February 2016. [Albterelli Dep. (Exhibit 1) pp. 54:20-55:7]

Objection: These facts are not material to the issues presented in the Memorandum in Support of the Motion for Summary Judgment as the policy was published in draft outside the dates relevant to the issuance of the licenses.

26. Under Defendant's written policy, a "Target and Hunting" restriction allows target shooting and hunting, and also allows "personal protection in the home," collecting, and travel to and from activity locations. [Albterelli Dep. (Exhibit 1) pp. 17:15-18:5; Winchester Police Department Firearms Licensing Policy and Procedures ("Licensing Policy") (Exhibit 4) p. 7]

Objection: The licenses were issued in 2013. The written policy was published in draft in February 2016 and is thus outside of the relevant period for consideration in this case and is not material.

27. Under Defendant's written policy, a "Sporting" restriction allows possession during various outdoor activities and, similarly, "personal protection in the home," collecting, and travel to activity locations. [Albterelli Dep. (Exhibit 1) pp. 17:15-18:5; Licensing Policy (Exhibit 4) p. 7]

Objection: The licenses were issued in 2013. The written policy was published in draft in February 2016 and is thus outside of the relevant period for consideration in this case and is not material.

28. Under Defendant's written policy, an "Employment" restriction "[r]estricts possession to [a] business owner engaged in business activities or to an employee while engaged in work related activities, and maintaining proficiency, where the employer requires carrying a firearm." [Albterelli Dep. (Exhibit 1) pp. 17:15-18:5; Licensing Policy (Exhibit 4) p. 7]

Objection: The licenses were issued in 2013. The written policy was published in draft in February 2016 and is thus outside of the relevant period for consideration in this case and is not material.

36. The only references in Defendant's written policy that have any apparent bearing on Defendant's decision to impose restrictions on LTCs: (a) recite that "the statute grants to the Chief of Police as local licensing authority the discretion to place restrictions relative to the possession, use and carrying of a firearm as he/she deems proper"; (b) state that "[e]very [LTC] will specifically state the use and purpose;" and (c) provide that for new applicants, "a detailed description of the purpose for the application must be provided. ('All lawful purposes' is not sufficiently specific)." [Albterelli Dep. (Exhibit 1) pp. 17:15-18:5; Licensing Policy (Exhibit 4) pp. 4, 7]

Objection: The licenses were issued in 2013. The written policy was published in draft in February 2016 and is thus outside of the relevant period for consideration in this case and is not material.

45. Plaintiff Commonwealth Second Amendment, Inc. ("Comm2A") is a non-profit corporation organized in Massachusetts with its principal place of business in Natick, Massachusetts. [Declaration of Thomas Bolioli ("Bolioli Dec.") ¶ 3]

Objection: This statement is not material to the issues in this case and should be stricken.

46. The purposes of Comm2A include education, research, publishing and legal action focusing on the constitutional right of the people to possess and carry firearms. [Bolioli Dec. ¶ 3] .

Objection: This statement is not material to the issues in this case and should be stricken.

46. Comm2A's membership includes individuals who hold restricted LTCs issued by the Winchester Police Department. [Bolioli Dec. ¶ 4]

Objection: This statement is not material to the issues in this case and should be stricken.

48.Both Jean Batty and Edward Russo (plaintiffs in this action) are members of Comm2A. [Bolioli Dec. ¶ 4]

Objection: Plaintiff Batty's own statement disputes the fact that she ever joined Comm. 2A (DO Exhibit 2 Batty Deposition p.21 l. 14-16.). Plaintiff Russo never stated that he joined Comm. 2A, only that he authorized them to sue. (DO Exhibit 3 Russo Depos. p. 20 l. 1-3)<sup>1</sup>

49. Comm2A's membership also includes individuals who have residences or places of business in Winchester who have refrained from applying for LTCs out of their understanding that Winchester Police Chief Ken Albertelli would issue them LTCs that bear restrictions. [Bolioli Dec. ¶ 5]

Objection: This statement is not material to the issues in this case and should be stricken.

49. Both members of Comm2A and members of the public contact Comm2A on a regular basis for assistance with Massachusetts firearms laws and licensing, and particularly regarding the imposition of "Target & Hunting" restrictions. At least four individuals have contacted Comm2A regarding restrictions that the Winchester Police Department imposed on their LTCs. [Bolioli Dec. ¶ 6]

Objection: This statement is not material to the issues in this case and should be stricken.

50.Comm2A expends organizational resources in responding to requests for assistance or information regarding LTC restrictions, such as time that Comm2A representatives spend speaking to individuals and referring individuals to attorneys or others who may be able to provide more assistance or information, and funds that Comm2A itself expends to hire lawyers. [Bolioli Dec. ¶ 7]

Objection: This statement is not material to the issues in this case and should be stricken.

51.The time, energy, and resources that Comm2A spends responding to and addressing requests for assistance that pertain to the imposition of restrictions on LTC's, diminishes the time, energy, and resources that Comm2A has available to pursue other organizational priorities and forces Comm2A to change those priorities. [Bolioli Dec. ¶ 8]

Objection: This statement is not material to the issues in this case and should be stricken

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<sup>1</sup> DO connotes the exhibits attached to this opposition.

**ARGUMENT**

**NEITHER THE STATUTORY SCHEME NOR  
DEFENDANT'S IMPLEMENTATION OF THE POLICY  
IMPLICATES THE SECOND AMENDMENT RIGHTS  
OF THE PLAINTIFFS**

The Plaintiffs Batty and Russo have filed the complaint in this case and have alleged in two separate counts that the Defendant has issued Plaintiffs licenses that prohibit them from carrying and using handguns for the purpose of self-defense and therefore deprive the Plaintiffs of their right to keep and bear arms, infringing on their Second Amendment rights. In addition Count II of Plaintiffs' complaint alleges that the Defendant's decision often turns on arbitrary considerations, such as residing on the correct side of a boundary line, having excess cash, or having a business in another locality that issues unrestricted LTCs, and that such arbitrary considerations also infringes upon the Plaintiffs' Second Amendment right to keep and bear arms.

Neither Plaintiffs in fact meet the statutory requirement in their applications by indicating any unique reason to distinguish their applications from the general public that would provide a reason for seeking an unrestricted license. (DO Exhibit 1 Albertelli Deposition p.33 l. 8-24) In fact, their own deposition testimonies reflect that their reasons were not unique and were not based on any specific personal circumstance or experience. (DO Exhibit 2 Batty Deposition p.22 l. 18 –p. 23 l.13; (DO Exhibit 3 Russo Deposition p. 8 l. 19-23). In addition, neither plaintiff in fact completed the statutory procedure that provides these Plaintiffs with the opportunity to challenge the Defendant's decision making as it relates to the restrictions places upon their licenses. They made no petition to the local District Court as provided for in MGL 140 section 131. As explained in Defendant's sworn testimony, by failing to provide a more personal,

specific reason for asking for the unrestricted license, the criteria of the law has not been met. The record indicates that neither Plaintiff provided a sufficient basis for their request and the Defendant was well within his authority to issue the license with restrictions.

In their argument for summary judgment, Plaintiffs citing District of Columbia v. Heller and McDonald v. Chicago argue that these cases establish both that the right “to keep and bear arms” protects the right “to possess and carry weapons in case of confrontation” and that “self defense is the *central component* of the right itself”. The Plaintiffs argue that the core purpose of the Second Amendment is personal protection. (Memorandum 7) However, as is clear from both Heller and McDonald , the Court has not recognized the right to carry a firearm in public as a “core right” guaranteed by the Constitution. In fact, the Court differentiated between the fundamental right to possess a firearm inside one’s home for self-defense and the carrying of a firearm on a public street or in public areas, due to the dangers posed to the public in the latter circumstances. Heller at 626-627 .

Neither the Commonwealth’s statutory scheme as written in Chapter 140 Section 131 nor the decision by the Defendant to issue the license to the Plaintiffs with restrictions either expressly or implicitly impacts an individual’s right in Massachusetts to bear arms in self-defense in his or her home. In McDonald, the Supreme Court clearly stated its understanding of the exact nature of the individual right it recognized when it stated “in Heller, we held that the Second Amendment protects the right to possess a handgun in the home for the purposes of self defense.” McDonald 130 S.Ct. at 3050. Plaintiffs’ attempt to extend the Second Amendment right that the Supreme Court addressed to other purposes outside the home are without foundation or support in the Supreme Court Cases. Neither case precluded the states from regulating the licensing or possession of firearms. A review of cases decided after Heller and

McDonald indicates that the right recognized by the Supreme Court is limited to the right to possess a firearm inside an individual's home for self-defense. *See United States v. Chester*, 628 F.3d 673,676 (4<sup>th</sup> Cir. 2010); *United States v. Skoien* 614 F.3d 638, 639-640 (7<sup>th</sup> Cir. 2010); *United States v. Mazzarella* 614 F3d 85,92 (3d Cir. 2010); *United States v. Rene E* 583 F3d. 8, 12-13 (1<sup>st</sup> Cir. 2009); *Hightower v. City of Boston* 693 F3d 61,73 (1<sup>st</sup> Cir. 2012); *Pineiro v. Gemme* 937 F.Supp. 2d 161 (D.MA 2013). At least one recent case specifically declined to extend the Second Amendment right to possess firearms in public. *Peruta v. City of San Diego* No. 10-56971 (9<sup>th</sup> Cir. 2016).

None of the allegations or facts presented by the Plaintiffs demonstrate a violation of Plaintiffs' Second Amendment rights by the Defendant. As clearly indicated by the statistics provided by the Plaintiffs themselves, the Defendant has not engaged in any pattern of arbitrary or directed differential treatment as applied to these two Plaintiffs. (See Plaintiffs Brief at page 5). As to new applicants, 67% were granted a license with the Target and Hunting restriction and 22% expanded the Hunting and Targeting to include Employment use approval.

The second prong of the analysis requires an Applicant to distinguish him/herself from the general public. Pineiro at 167. Here again, in their applications, neither plaintiff attempted to distinguish their reason for the license from the general public by providing a generic all lawful purposes, self defense or personal protection reason. In fact in their depositions, neither Plaintiff indicated any personal situation which would satisfy the requirement. Batty, in her deposition, cited 9.11.01 and the Boston Marathon bombings and general increase in terrorism as her basis for seeking the license. (DO Exhibit 2 Batty depos. P. 22 l. 18- p.23 l.13). Russo in his deposition indicated he had no particular reason for seeking the license. (DO Exhibit 3 Russo Depos. P. 8 l.19-23).



The restrictions in place promote the important goal of public safety which is a legitimate and well established goal. Heller v. District of Columbia 698 F.Supp. 2d 191 (D.C. D.C. 2011). The Massachusetts statutes are substantially related to that goal in the approved review process. It is appropriate for the licensing authority to issue a license with a sporting or target restriction in response to applicants' request for an unrestricted license for self defense. Ruggiero v. Police Com'r of Boston 18 Mass. App. Ct. 256,257 (1984).

Plaintiffs' argument that the Defendant's action in implementing the statutory scheme was a violation of the Second Amendment in that the decision denied Plaintiff's their Second Amendment rights to self-protection is neither supported by the material facts nor based in the law as defined by the United States Supreme Court in Heller and McDonald and held in recent cases by the Ninth Circuit in Peruta v. County of San Diego, No. 10-56971 and by the First Circuit in Hightower v. Boston and this Court previously in Pineiro v. Gemme.

For the reasons set forth at length in Defendant's Memorandum in Support of his Motion for Summary Judgement as well as the oppositions argument set forth above, the Plaintiffs' motion for summary judgment should be denied.

Respectfully submitted,  
Ken Albertelli,  
Chief of Police, Town of Winchester,  
By his attorney,

/s/ Wade M. Welch BBO#  
Wade M. Welch, Esq.  
Welch & Donohoe, LLP  
655 Summer Street, Suite 203  
Boston, MA 02210

**Certificate of Service**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 21, 2016.

/s/ Wade M. Welch

Wade M. Welch

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re:

JEAN BATTY; EDWARD RUSSO; MARY  
LEARNING; KEN TRUDELL; MATT WOLF;  
PAUL P. BARNETT; CRAIG VACCA; DAVID  
GOLDMAN; JANELE GOLDMAN; and  
COMMONWEALTH SECOND AMENDMENT, INC.

Plaintiffs Civil Action  
v. No. 1:14-cv-10238

KEN ALBERTELLI, IN HIS OFFICIAL  
CAPACITY AS CHIEF OF THE WINCHESTER  
POLICE DEPARTMENT; RICHARD C. GRIMES,  
IN HIS OFFICIAL CAPACITY AS CHIEF  
OF THE WEYMOUTH POLICE DEPARTMENT;  
WILLIAM TAYLOR, IN HIS OFFICIAL CAPACITY  
AS SUPERINTENDENT OF THE LOWELL POLICE  
DEPARTMENT; AND DAVID A. PROVENCHER, IN  
HIS OFFICIAL CAPACITY AS THE CHIEF OF THE  
NEW BEDFORD POLICE DEPARTMENT

Defendants

DEPOSITION of KENNETH C. ALBERTELLI  
Wednesday, May 11, 2016  
11:58 a.m.

Welch & Donohoe, LLP  
655 Summer Street  
Boston, Massachusetts  
Michelle Keegan, Court Reporter

WILLIAMS & ASSOCIATES COURT REPORTERS  
Professional Court Reporters  
177 Beach Avenue  
Hull, Massachusetts 02045  
781-760-6619



1 reason then I'll issue a sporting with target and  
2 hunting. I don't usually issue -- I don't issue  
3 either a straight employment or straight  
4 supporting because it doesn't make any sense to me  
5 if they can't target and practice. So I always  
6 combine those. Those are the others. But they --  
7 it depends what they tell me.

8 Q. What if somebody asked you specifically  
9 for an unrestricted LTC?

10 A. They have to give me a reason.

11 Q. Suppose they say protection of themselves  
12 and their family.

13 A. It doesn't meet the requirements of the  
14 law.

15 Q. So by your understanding, what are those  
16 requirements?

17 A. They have to demonstrate a reason to fear  
18 to get an unrestricted license.

19 Q. A reason to fear?

20 A. I have to have a reason. Not a feeling of  
21 fear; I need a reason to fear. Something had to  
22 happen in their life that they fear for their  
23 safety, to have an unrestricted license at all  
24 times because they're always in fear.

25 Q. So if someone's objective was to get an

1       unrestricted LTC, what kind of reasons would be  
2       adequate?

3             A.    Depends what they tell me.

4             Q.    Can you give me an example of something  
5       that ought to be adequate?

6             A.    They've been assaulted.  There's some sort  
7       of documented assault.  They've been harassed.  
8       Something along those lines to demonstrate that  
9       they have a reason to fear, not a feeling.

10            Q.    What about if someone was in a particular  
11       occupation?

12            A.    Depends.

13            Q.    Can you elaborate on what it would depend  
14       on?

15            A.    Some professions are inherently dangerous,  
16       but it would depend if it was for employment  
17       reasons only when they're doing their job.  Some  
18       professions are inherently dangerous all the time.  
19       I'm actually quite, for some reason or another,  
20       sensitive to lawyers because I think they deal  
21       with the element of people that police are dealing  
22       with a lot, so they could be in danger all the  
23       time.

24            MR. WELCH:  Could you keep your voice up,  
25       Chief?  I'm having a hard time hearing.

1 A. Can you hear me?

2 Q. I can hear you, but you're looking at me.

3 A. So there are certain professions that I  
4 think can be dangerous just because of the  
5 profession. It all depends. That's the only one  
6 I can think of right now other than law  
7 enforcement, something like that.

8 Q. So other than someone's occupation or  
9 their status as a past victim of a crime, are  
10 there any other considerations that would be  
11 pertinent to whether you would issue them an  
12 unrestricted LTC?

13 A. Could be. Depends what they tell me. I  
14 ask them to be very specific so that I can  
15 evaluate it. That's my job.

16 Q. And would you be more likely to accept a  
17 reason or reasons that someone gave if they were  
18 renewing as opposed to applying for the first  
19 time?

20 A. Ask the question again. Would I be more  
21 willing to do --

22 Q. Would you be more apt to find a reason or  
23 a justification acceptable if someone was renewing  
24 an LTC after the first five to six years as  
25 opposed to just applying for a new one?

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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In re:

JEAN BATTY; EDWARD RUSSO; MARY  
LEARNING; KEN TRUDELL; MATT WOLF;  
PAUL P. BARNETT; CRAIG VACCA; DAVID  
GOLDMAN; JANELE GOLDMAN; and  
COMMONWEALTH SECOND AMENDMENT, INC.

Plaintiffs Civil Action  
v. No. 1:14-cv-10238

KEN ALBERTELLI, IN HIS OFFICIAL  
CAPACITY AS CHIEF OF THE WINCHESTER  
POLICE DEPARTMENT; RICHARD C. GRIMES,  
IN HIS OFFICIAL CAPACITY AS CHIEF  
OF THE WEYMOUTH POLICE DEPARTMENT;  
WILLIAM TAYLOR, IN HIS OFFICIAL CAPACITY  
AS SUPERINTENDENT OF THE LOWELL POLICE  
DEPARTMENT; AND DAVID A. PROVENCHER, IN  
HIS OFFICIAL CAPACITY AS THE CHIEF OF THE  
NEW BEDFORD POLICE DEPARTMENT

Defendants

----- x

DEPOSITION of JEAN Z. BATTY  
Wednesday, May 11, 2016  
10:05 a.m.

Welch & Donohoe, LLP  
655 Summer Street  
Boston, Massachusetts  
Michelle Keegan, Court Reporter

WILLIAMS & ASSOCIATES COURT REPORTERS  
Professional Court Reporters  
177 Beach Avenue  
Hull, Massachusetts 02045  
781-760-6619



1 Q. And you don't really have any kind of --  
2 haven't been using a gun.

3 What do you think these -- why do you  
4 think these restrictions limit you at all?

5 A. Because by now I would have purchased a  
6 gun, and I would have joined the Scituate Rod and  
7 Gun Club to target practice for personal  
8 protection purposes. At this point, there's no  
9 reason for me to do this because I can't carry a  
10 gun.

11 Q. You can protect yourself in your home  
12 though. Is that correct?

13 A. That's not where I'm worried. It's not in  
14 my home.

15 Q. And why are you worried about your  
16 personal protection?

17 A. Terrorism.

18 Q. And what's your experience with terrorism  
19 or terrorism events?

20 A. My husband was at the Pentagon when it was  
21 hit. He was responding to the Pentagon as a  
22 medical officer. He responded to that.

23 We also lived in Washington, D.C., at the  
24 time of the sniper. I remember distinctly picking



1 up my children from preschool and having them lie  
2 down in the back of the car because we were so  
3 afraid at that time.

4 I was in North Station at the time of the  
5 Boston bombing with my child who uses a wheelchair  
6 to get around. It's very hard to flee from  
7 terrorism when you're in a wheelchair.

8 Q. And so your initial contact with terrorist  
9 activity was 9/11/2001?

10 A. Uh-hmm.

11 Q. Why did you wait until 2013 to make out an  
12 application?

13 A. Because it's been increasing.

14 Q. Just terrorism around the world. Is that  
15 correct?

16 A. Uh-hmm.

17 Q. And in your application, you indicated  
18 that you were seeking the license for personal  
19 protection and self-defense?

20 A. Uh-hmm.

21 Q. But you want personal protection and  
22 self-defense 24 hours a day outside the home as  
23 well as inside the home. Is that correct?

24 A. I want it when I feel I'm in an at-risk

1 Q. And at some point you were -- how did you  
2 find out about the committee on the second  
3 amendment?

4 MR. JENSEN: The Commonwealth Second  
5 Amendment, I think you mean.

6 Q. Commonwealth Second Amendment. I'm sorry.

7 A. I had to talk to my husband about it. I  
8 was really upset because I couldn't figure out why  
9 I wouldn't be allowed to have a license to carry.

10 Q. A full license?

11 A. Yeah.

12 Q. Unrestricted?

13 A. Yes.

14 Q. Okay. And did you join the Commonwealth  
15 Second Amendment?

16 A. No.

17 Q. Does your husband belong to that group?

18 A. I don't know.

19 Q. And you are participating in this suit and  
20 supported by the second amendment. Is that  
21 correct?

22 A. Yes.

23 Q. And you don't own a gun?

24 A. Uh-hmm.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\*\*\*\*\*

In re:

JEAN BATTY; EDWARD RUSSO; MARY  
LEARNING; KEN TRUDELL; MATT WOLF;  
PAUL P. BARNETT; CRAIG VACCA; DAVID  
GOLDMAN; JANELE GOLDMAN; and  
COMMONWEALTH SECOND AMENDMENT, INC.,

Plaintiffs,

Civil Action  
No. 1:15-cv-10238

vs.

KEN ALBERTELLI, IN HIS OFFICIAL  
CAPACITY AS CHIEF OF THE WINCHESTER  
POLICE DEPARTMENT; RICHARD C. GRIMES,  
IN HIS OFFICIAL CAPACITY AS CHIEF  
OF THE WEYMOUTH POLICE DEPARTMENT;  
WILLIAM TAYLOR, IN HIS OFFICIAL CAPACITY  
AS SUPERINTENDENT OF THE LOWELL POLICE  
DEPARTMENT; AND DAVID A. PROVENCHER, IN  
HIS OFFICIAL CAPACITY AS THE CHIEF OF THE  
NEW BEDFORD POLICE DEPARTMENT,

Defendants.

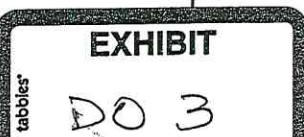
\*\*\*\*\*

DEPOSITION of EDWARD RUSSO  
Thursday, June 2, 2016  
2:12 p.m.  
Welch & Donohoe, LLP  
655 Summer Street  
Boston, Massachusetts 02210

Kimberley J. Bouzan, Court Reporter  
WILLIAMS & ASSOCIATES COURT REPORTERS  
Professional Court Reporters  
177 Beach Avenue  
Hull, Massachusetts 02045  
781-760-6619

EXHIBIT

DO 3



1 A. Yes.

2 Q. Okay. And if you'll notice on page 3,  
3 reason(s) for requesting the license was, "All  
4 lawful purposes and personal protection"; is that  
5 correct?

6 A. Yes.

7 Q. And that reason hasn't changed; has it?

8 A. No, sir.

9 Q. Okay. And tell me when you received the  
10 first license?

11 A. I believe it was 6/5/2013.

12 Q. Okay. And that was a license without  
13 restriction; is that correct?

14 A. Exactly.

15 Q. Okay. And do you own a firearm?

16 A. No, sir.

17 Q. Have you ever owned a firearm?

18 A. No, sir.

19 Q. Okay. And why did you make application  
20 for -- was there any particular event or  
21 anything --

22 A. No; nothing. Just no reason whatsoever.  
23 I wasn't -- nothing never happened to me.

24 Q. And subsequent to receiving that

1 A. Yes. No, they got in touch with me.

2 Q. When did they do that?

3 A. I can't tell you. I don't know. I have  
4 no idea or -- I have no idea except for the fact  
5 that I turned in the license on February 20th.  
6 I'm just guessing it was sometime in May -- April  
7 or May they got in touch with me. In 2015.

8 Q. Okay. You had previously testified that  
9 you went to the police station in January.

10 A. No, I didn't say that.

11 Q. I thought you said you picked up the --

12 A. I picked up the license. I picked up my  
13 new license. I'm sorry.

14 Q. In January?

15 A. I picked up the new license and it was  
16 probably the end of February. It was probably --  
17 February 6th was the day, last day I could pick  
18 it up. And I'm going to say it was sometime in  
19 February that I picked up that new license.

20 Q. Okay. And it was shortly after that that  
21 you were in touch with Commonwealth Second  
22 Amendment?

23 A. Well, they got in touch with me probably  
24 two or three months after that.

1 Q. Okay. And you authorized the suit; is  
2 that correct?

3 A. Yes.

4 MR. MURRAY: Actually, I have nothing  
5 further. Do you have any questions?

6 MR. JENSEN: No.

7 (Whereupon the deposition was concluded  
8 at 2:28 p.m.)  
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