(citation omitted).

The district court reiterated one foundational point from *Heller*: "no matter where on the sliding scale the challenged statute is located, one thing is sure: the standard of judicial review is always stricter than rational basis review." And, based on *Moore v. Madigan,* 702 F.3d 933 (7th Cir. 2012), the district court also concluded that the correct year for determining the scope of the Second Amendment was 1791, not 1868.

Applying the Moore/Ezell two-step analysis, the district court found that, first, there was little evidence that sales or transfers of guns had been prohibited in 1791. Second, it found that a heightened level of scrutiny was appropriate, because the proposed law burdened anyone living in Chicago (as opposed to other statutes that only prohibited gun rights of limited groups such as those convicted of domestic violence). Here, "intermediate scrutiny" was inadequate, and the appropriate standard was "not quite strict scrutiny," which meant that the City must demonstrate that otherwise legitimate gun sales and transfers create such genuine and serious risks to public safety that prohibiting them within Chicago is justified.

The City's stated objectives were threefold: (1) restrict criminals' access to licensed dealers; (2) restrict gun acquisition in the illegal market; and (3) eliminate gun stores from Chicago, which are dangerous in themselves and cannot be safely regulated. The district court found that none of these sufficed. First, it was not acceptable to burden *all* legitimate Chicago gun buyers in an effort to deter criminal gun purchasers. Second, there was no evidence that prohibiting all sales in the City actually would impede illegal sales. Third, there was also no evidence that eliminating all gun stores would reduce the danger posed by guns in criminal hands.

The district court granted plaintiff's motion for summary judgment, declaring the Ordinance unconstitutional under the Second Amendment. But it stayed the judgment's effect for one week, until January 13, to allow the City "to consider and enact other sales-and-transfer restrictions short of a complete ban" and make a formal motion for stay pending appeal.

http://www.leagle.com/decision?q=In FDCO 20140106889.xml/ILLINOIS ASSOCIATION OF FIREARMS RETAILERS v. THE CITY OF CHICAGO (last accessed Jan. 9, 2014)

Housing: City Did Not Violate Due Process or Create Disparate Impact, Despite Targeting African American Neighborhoods for Cleanup

City of Fort Lauderdale v. Scott, No. 0:10-cv-61122 (11th Cir. Jan. 3, 2014)

The City of Ft. Lauderdale code addresses property maintenance and allows inspectors to cite violations for anything from leaving a garbage can on the street for too long to structural problems with houses that could cause collapse. The City has a process by which inspectors enforce the housing code. First, the inspector issues an Inspection Report that describes the violation. Next, if the property owner fails to correct that violation, the inspector issues a Notice

of Violation that sets a time and place for a hearing before a special master. The hearing offers the property owner the opportunity to contest the violation and the special master's decision is reviewable in Florida state court. If a property owner fails to correct a violation, a lien will accrue, which could lead to foreclosure and eventually sale of the property if the owner fails to satisfy the lien.

The City sought to clean up an area whose residents happened to be predominantly African American. Four residents, whose properties received violations resulting in liens, sued the City, claiming that it had violated the Due Process Clause and that its actions had a disparate impact on African Americans. The district court granted summary judgment in favor of the City and the residents appealed.

HELD: The Eleventh Circuit affirmed, finding no Due Process violation and concluding that the residents failed to establish a violation of the Fair Housing Act based on disparate impact.

DISCUSSION: The residents argued that the City violated their Due Process rights because the initial Inspection Report falsely stated that a violation could lead to the arrest and incarceration. They claimed that this false statement discouraged them from attending the hearing to contest the violations. They also claimed that the City targeted a predominantly African American area with the aim of redevelopment, which targeting they claimed had a disparate impact on African Americans in violation of the Fair Housing Act.

The Eleventh Circuit noted that due process requires "notice and an opportunity to be heard at a meaningful time in a meaningful manner." The court found that the City's process of issuing a Notice of Violation that set a time and place for a hearing before a special master, which was then appealable to state court is the "paradigm of due process." The Eleventh Circuit was not persuaded by the residents' arguments that the Inspection Report's false statement that they could face incarceration discouraged them from attending the hearing because the court noted that no connection could be made between the incorrect statement and the hearing itself. It was not alleged for example, that the residents would be arrested at the hearing. The Eleventh Circuit noted that due process is satisfied based on whether a reasonable person under the circumstances would have understood the notice of the hearing and the residents' subjective belief that they might be arrested at the hearing did not create a due process violation. The Eleventh Circuit therefore concluded that the City fully complied with its due process obligations. As to the disparate impact claim, the court reviewed four factors: (1) whether an unjustified racially disparate impact exists, regardless of intent; (2) whether the Fair Housing Act applies to the code enforcement activities that led to the imposition of liens; (3) whether the City had a legitimate nondiscriminatory goal that could not be achieved by means having a less-disparate impact; and (4) whether the individual claimant/resident can show that the challenged conduct affected him or her.

As to the disparate impact claim, the court noted that the City did indeed target this specific area for violations and told its inspectors to cite every violation, regardless of how trivial those violations were. It was undisputed that the inspectors cited violations in this predominantly African American area of the City that they would not have cited in other parts of the City. The Eleventh Circuit found that the evidence sufficiently demonstrated that the overall impact of the City's campaign to cleanup this particular area of the City was greater on African Americans than City residents of other races.

However, the court found that the individual residents had failed on the last prong of the analysis by failing to show the required individual effect. Each resident participating in the law suit was issued citations for serious violations, not just leaving a garbage can on the curb. There was no evidence that violations of the serious nature "would have been tolerated or treated more favorably anywhere in the City." The Eleventh Circuit concluded by stating that the "record includes no evidence that the City's zero-tolerance campaign made any actual difference for these counterclaimants" and that they were therefore not entitled to prevail on their disparate impact claim.

http://www.ca11.uscourts.gov/unpub/ops/201215014.pdf (last accessed Jan. 8, 2014)

Search and Seizure: Ordinance Requiring Hoteliers to Provide Police Officers With Extensive Records About Hotel Guests Violates Fourth Amendment

Patel v. City of Los Angeles, No. 08-56567 (9th Cir. Dec. 24, 2013).

Los Angeles Municipal Code §41.49 (Ordinance) mandates city hotels keep specific information about their guests on file for at least 90 day and commands that police officers be able to inspect the records upon demand. The information recorded must include "the guest's name and address; the number of people in the guest's party; the make, model, and license plate number of the guest's vehicle if the vehicle will be parked on hotel property; the guest's date and time of arrival and scheduled date of departure; the room number assigned to the guest; the rate charged and the amount collected for the room; and the method of payment." The warrantless inspection requirement states that the records "shall be made available to any officer of the Los Angeles Police Department for inspection, [provided that] whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." If an hotelier refuses a demand by an officer it is punishable as a misdemeanor with a $1000 fine and up to six months in jail.

Plaintiffs brought a facial challenge against the Ordinance under § 1983 seeking declaratory and injunctive relief, claiming it was invalid under the Fourth Amendment. The district court rejected the facial challenge, ruling in favor of the City of Los Angeles, because it determined that it could not say that in every possible circumstance the law would be unconstitutionally applied.

HELD: En banc, the Ninth Circuit held, with a four-judge dissent, that the Ordinance was facially invalid under the Fourth Amendment because it authorized inspections of administrative records without the opportunity to obtain pre-compliance judicial review.

DISCUSSION: The majority began by determining that the nonconsensual, warrantless review of an hotelier's guest records constituted a search under the Fourth Amendment. The majority found the hoteliers' records imbued with traditional privacy interests protected by the Fourth – the hotel owners had a possessory and ownership interest in the papers. The court noted that while the guests may lack a privacy interest in the records, given their voluntary disclosure to a third party, the hotels have such an interest in the records as they contain, for example, sensitive business information (a customer list).