

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Shelly Parker *et al.*,

Plaintiffs,

v.

District of Columbia
and Anthony Williams,

Defendants.

No. 03CV00213 (EGS)

**MOTION OF BRADY CENTER TO PREVENT GUN VIOLENCE
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

The Brady Center to Prevent Gun Violence (the "Brady Center") files this Motion for Leave to Participate as *Amicus Curiae* in this case. Counsel for the Brady Center has discussed this Motion with counsel for Defendants, who have consented to the Brady Center's participation as *amicus curiae*, and with counsel for Plaintiffs, who oppose the Brady Center's participation. The Brady Center therefore requests the Court to grant this Motion and accept the Memorandum Of *Amicus Curiae* The Brady Center To Prevent Gun Violence (attached at Tab A).

The Brady Center is a national, non-profit public interest organization dedicated to reducing gun violence through education, research and legal advocacy. The Brady Center has a substantial and ongoing interest in ensuring that our Nation's constitutional jurisprudence not function as a barrier to strong government action to prevent gun violence. Through its Legal Action Project, the Brady Center has filed numerous briefs *amicus curiae* in federal and state cases involving the constitutionality of gun laws, including appearances in the Supreme Courts

of Indiana, Ohio, and Rhode Island. It also has appeared in several significant Second Amendment cases as *amicus curiae*, including *Farmer v. Higgins*, 498 U.S. 1047 (1991), *United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001) and *Fresno Rifle & Pistol Club v. Van de Kamp*, 965 F.2d 723 (9th Cir. 1992). In addition, Brady Center attorneys have made significant contributions to scholarly research on the meaning of the Second Amendment. See, e.g., D. Henigan, *The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?*, 15 U. Dayton L.R. 5 (1989) (cited with approval in *United States v. Hale*, 978 F.2d 1016 (8th Cir. 1992) and in *United States v. Wright*, 117 F.2d 1265 (11th Cir. 1997)); D. Henigan, *Arms, Anarchy and the Second Amendment*, 16 Val. U. L. Rev. 107 (1991); D. Henigan, E.B. Nicholson, D. Hemenway, *Guns and the Constitution: The Myth of Second Amendment Protection for Firearms in America* (Aletheia Press 1995).

The Brady Center believes its mission to reduce gun violence can be accomplished without banning all guns. Accordingly, the attached Memorandum takes no position on the merits of the regulations at issue in this lawsuit. The Brady Center seeks leave to file this memorandum solely to assist the Court in interpreting the Second Amendment of the United States Constitution.

“[A] decision to accept an amicus brief is within the sound discretion of the court.” *United States v. Microsoft Corp.*, Civ. A. 98-1233 (TPJ), 1999 WL 1419040, at *1 (D.D.C. Dec. 20, 1999) (overruling objection to submission of memorandum by *amicus curiae*); see also *Cobell v. Norton*, 246 F. Supp. 2d 59, 61 (D.D.C. 2003) (“it is solely within the discretion of the Court to determine the fact, extent, and manner of participation by the *amicus*”). “Generally, courts have exercised great liberality in permitting an *amicus curiae* to file a brief in a pending case. . . . There are no strict prerequisites . . . an individual seeking to appear as amicus must

merely make a showing that his participation is useful to or otherwise desirable by the court.”

United States v. Davis, 180 F. Supp. 2d 797, 800 (E.D. La. 2001).

As explained above, a primary function of the Brady Center is to reduce gun violence through legal advocacy. Brady Center attorneys have substantial experience in assisting courts in their interpretation of the Second Amendment and other gun laws through *amicus curiae* submissions (such as the attached memorandum) and in scholarly publications. The Brady Center’s memorandum offers three critical perspectives on the Second Amendment that do not duplicate arguments of the parties in this case: (i) a textual analysis of the Supreme Court’s decision in *United States v. Miller*, 307 U.S. 174, 178 (1939), which held that there is no individual Second Amendment right to bear arms unrelated to militia service; (ii) a discussion of the federal courts’ consistent interpretation of *Miller* as a rejection of the individual right view, both before and after the Fifth Circuit’s unique decision to the contrary in *United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001); and (iii) an analysis of the historical context surrounding the Second Amendment’s adoption that forcefully confirms that the amendment was not intended to interfere with local firearms regulations of the kind at issue in this case.

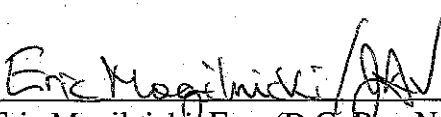
Plaintiffs will not be prejudiced by the Brady Center’s participation as *amicus curiae*. The attached memorandum merely offers different perspectives on subjects that the parties have already raised in their briefs, namely the jurisprudence and legislative history of the Second Amendment. Should Plaintiffs wish to respond to the Brady Center’s memorandum, the Brady Center would not object and would not request leave to file a reply. Moreover, the Court has not yet heard oral argument on Defendants’ motion to dismiss and Plaintiffs’ motion for summary judgment. At any such hearing, Plaintiffs will have additional opportunity to respond to any points made in the Brady Center’s memorandum.

Because the Brady Center has "a special interest in this litigation as well as a familiarity and knowledge of the issues raised therein that could aid in the resolution of this case," *Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996), and because the parties will not be prejudiced as a result, the Brady Center respectfully requests that the Court grant this Motion for Leave to Participate as *Amicus Curia* and accept the attached Memorandum Of *Amicus Curiae* The Brady Center To Prevent Gun Violence. A proposed Order is attached at Tab B.

Dated: July 25, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

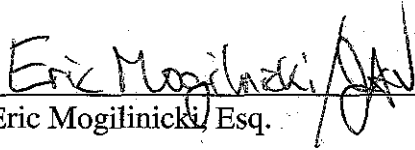
The undersigned hereby certifies that true and correct copies of the foregoing Motion of Brady Center to Prevent Gun Violence for Leave to Participate as *Amicus Curiae*, were served this 25th day of July 2003, by overnight mail, on the following:

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