

More Friends of the Second Amendment: A Walk through the Amicus Briefs in *McDonald v. City of Chicago*

By Ilya Shapiro

This Article summarizes each of the dozens of amicus brief filed in McDonald v. City of Chicago. Ilya Shapiro is Senior Fellow in Constitutional Studies at the Cato Institute, and Editor-in-Chief of the Cato Supreme Court Review. The author would like to thank Matthew Aichele, Travis Cushman, Andrew Kasnevich, Katy Noeth, Eric Tellado, and Evan Turgeon for their assistance with this article.

Keywords: Second Amendment, Fourteenth Amendment, Due Process, Privileges or Immunities, incorporation, Supreme Court, amicus brief, Chicago, handgun prohibition, self-defense

Two years ago in these pages I presented an article summarizing the record 68 amicus curiae briefs in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), the case establishing that the Second Amendment protected an individual right to keep and bear arms. *Heller* only applied that right as against federal government infringement, however—D.C. being under direct federal control—so, as expected, in the days and weeks following the decision, various lawsuits were filed challenging state and local restrictions.

In a consolidated appeal of two such suits, the U.S. Court of Appeals for the Seventh Circuit upheld a Chicago ordinance banning the possession of handguns—as well as other gun regulations affecting rifles and shotguns—citing Supreme Court precedent from before the time *any* rights had been applied against the states. The Supreme Court disaggregated the suits and granted cert on the question: “Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment’s Privileges or Immunities or Due Process Clauses.”

That was the question presented in the cert petition filed by *Heller* victor Alan Gura in *McDonald v. Chicago*—the Court held *NR4*

v. Chicago in abeyance pending *McDonald*'s resolution—and showed that this case was just as much about the Fourteenth Amendment as it was the Second. That is, the Court since the 1920s has been “incorporating” various rights (including nearly the entire Bill of Rights) against the states under the Substantive Due Process doctrine. This methodology has become such a constitutional trope that a second-year law student, let alone a Supreme Court clerk or justice—could write an opinion applying the Second Amendment to the states in this manner. Such “selective incorporation” (a constitutional misnomer, really) arose only because the Privileges or Immunities Clause was strangled in its crib, however, by a Supreme Court that refused to reconcile itself to Reconstruction-era changes in constitutional structure: In a set of cases on the regulation of Louisiana abattoirs—appropriately known as the *Slaughterhouse Cases*, 83 U.S. 36 (1873)—the Court virtually erased that Clause, reducing its contents to a risible set of federal rights.

And so, in the wake of *Heller*, legal scholars and lay people alike widely anticipated the Court's rejection of Chicago's far-reaching prohibition on private gun ownership but did not know *how* the Court would go about doing so. Would it resurrect the Privileges or Immunities Clause or continue using a suspect doctrine—one that Justice Antonin Scalia has called “babble”—for protecting individual rights against state infringement?

That was perhaps the most interesting question at issue in *McDonald*, but there were others too, with activists, think tanks, politicians, and concerned citizens of all stripes filing 50 *amicus* briefs (fourth all-time). Many focused on the Due Process versus Privileges or Immunities issue, while others discussed the incorporation of rights generally—treating the debate over Fourteenth Amendment clauses as an academic technicality. (It's not, for reasons that are beyond this article's scope but that Josh Blackman and I detail in “Keeping Pandora's Box Sealed: Privileges or Immunities, *The Constitution in 2020*, and Properly Extending the Right to Keep and Bear Arms to the States,” 8 *Geo. J.L. & Pub. Pol'y* 1 (2010).)

Disappointingly, many of the respondents' *amici* insisted on re-litigating *Heller*, arguing about the meaning of the historic right to keep and bear arms and its relationship to militia service. One or more of petitioners' *amici* might similarly be criticized for running a *Heller* victory lap, essentially saying that the individual Second Amendment right is *so* important that it just *has to* be incorporated. And, of course, several *amici* got into a duel, as it were, over the so-

cial science evidence regarding effectiveness of gun bans and related issues.

The *amici* (32 for the challengers to the handgun ban, 16 for Chicago, and two styled as not taking sides) not only echo the fundamental disagreement on the nature of the right to keep and bear arms and the role of the federal courts in protecting it, but extend it.

One notable *amicus* brief is signed by Senators Kay Bailey Hutchison (R-TX) and Jon Tester (D-MT), along with a majority of the members of both the House and the Senate. That brief details Congress's long history of protecting the right of the people to keep and bear arms, an interest it argues would be undermined if the Second Amendment were held not to apply to the states. Not surprisingly, a group of Democratic congressmen led by Carolyn McCarthy (D-NY) took it upon themselves to offer a contrary interpretation of congressional interests.

Among the *amicus* briefs are competing arguments from state prosecutors and legislators, contradictory interpretations of empirical evidence relating to gun violence, and the pros and cons of whether guns cause more violence against women, children, and racial and religious minorities. Philosophers battle criminologists, while public health officials feud with historians—who themselves are bitterly divided. There is no agreement on the correct interpretation of *Slaughterhouse* and the degree to which the Court needs to distinguish or overrule that precedent regardless of which way it ultimately rules. Many of the briefs repeat arguments spelled out more than adequately by the parties or fellow *amici*—and were likely filed so the particular organization could say to its prospective donors that it “took a stand” on this high-profile case. But a not insignificant number of the briefs—even if they didn’t end up being cited—seemed to have genuinely helped the justices write their opinions.

Perhaps the most striking, and quite possibly influential, brief was provided by the “Constitutional Law Professors”: anything that brings together conservative, progressive, and libertarian lions—*e.g.*, Steven Calabresi, Jack Balkin, and Randy Barnett, respectively—merits serious consideration. (Full disclosure: I was involved in discussions surrounding that and several other briefs regarding the original understanding of the Fourteenth Amendment and how the Constitution protects rights against state usurpation generally—and of course I signed the Cato Institute’s brief, which was principally authored by Timothy Sandefur of the Pacific Legal Foundation.)

In any event, here is a compendium of *amicus* briefs in *McDonald v. Chicago*. For lack of a better organizing principle, I list them alphabetically, first the petitioners' *amici*, then the respondents', then two supporting neither side. Unlike in *Heller*, the U.S. Government did not weigh in here. In addition to a summary of the argument in each brief, I provide the interest of each *amicus* and any "items of note" (*i.e.*, interesting facts) about the brief. I hope that, when read in the light of the Court's opinions in the case, this Article can serve as a guide for counsel and parties in the litigation over how much states can regulate the right to keep and bear arms that has already been launched.

PETITIONERS' *AMICI*

1. ACADEMICS FOR THE SECOND AMENDMENT

Interest: Academics for the Second Amendment is a tax-exempt organization formed in 1992 by law school teachers. Its goal is to secure the right to keep and bear arms as a meaningful, individual right.

Argument: The antebellum years saw expansion and increasing individualism of the right to bear arms. The American right to arms has evolved in ways that make it ever more individualistic and personal. The persecution of abolitionists and the refusal of authorities to protect them greatly expanded the individual rights movement.

2. AMERICAN CENTER FOR LAW AND JUSTICE

Interest: The ACLJ is a public interest legal and educational organization committed to ensure the ongoing viability of constitutional freedoms in accordance with the principles of justice.

Argument: The Privileges or Immunities Clause is better suited to incorporating the individual protections of the Bill of Rights, including the Second Amendment. The understanding of Rep. John Bingham and of learned commentators during or shortly after ratification also supports incorporation by the Privileges or Immunities Clause. The *Slaughterhouse*, *Cruikshank* and *Miller* cases should not bar the Court from incorporating the Second Amendment.

Items of Note: Bingham stated that the goal of his amendment was "not to transfer the laws of one state to another state" but "to

secure to the citizens of each state all the privileges and immunities of citizens of the United States in the several states.” Also, *Slaughterhouse* can be read to support the incorporation of the Second Amendment and Bill of Rights because the butchers in that case didn’t base their claims on the Bill of Rights.

3. AMERICAN CIVIL RIGHTS UNION, LET FREEDOM RING, COMMITTEE FOR JUSTICE, FAMILY RESEARCH COUNCIL

Interest: *Amici* are groups that seek to ensure all constitutional rights are fully protected.

Argument: The right to keep and bear arms is a fundamental right applicable to the states through the Fourteenth Amendment. The right to bear arms can be incorporated through the Privileges or Immunities Clause without overruling the *Slaughterhouse Cases*. *Slaughterhouse* should not be overruled. *Slaughterhouse* did not involve any provision of the Bill of Rights and therefore was not an incorporation case. *Slaughter-House Cases* should not be overruled, as doing so would render the Privileges or Immunities Clause a *tabula rasa*, which the Court in the future could interpret to mean anything it chooses.

4. AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Interest: ALEC is the nation’s largest non-partisan individual membership association of state legislators. It serves to advance Jeffersonian principles of free markets, limited government, federalism and individual liberty.

Argument: The Second Amendment is incorporated under the Due Process Clause because the right to keep and bear arms is “necessary to an Anglo-American regime of ordered liberty” and is a right “deeply rooted in our nation’s history and tradition.”

5. APPELLANTS FROM THE NINTH CIRCUIT INCORPORATION CASE OF *NORDYKE V. KING*

Interest: Russell and Sallie Nordyke are gun show promoters, exhibitors, and vendors who operate at county fairgrounds throughout California, whose case involving similar questions was argued before the *en banc* Ninth Circuit and is now pending in that court.

Argument: The Court has fully already examined the historical analysis of the fundamental nature of the “right to keep and bear arms” and its significance to American jurisprudence. Purging the

legacy of *Slaughterhouse* is reason enough to reconsider the post-Civil War insurgency against the Fourteenth Amendment. Incorporation of the Bill of Rights is a form of constitutional preemption that insures a baseline uniformity of the rights, privileges and immunities of all persons entitled to the protections of our Constitution.

Items of Note: Most guns in the United States are possessed by law-abiding citizens. Chicago's gun ban is not interfering with criminals and their illegal use of illegal firearms. This is evidenced by the fact that it is the murder capital of the United States and 11,000+ firearms are recovered and traced each year .

6. ARMS KEEPERS

Interest: Arms Keepers is a nonpartisan volunteer organization that supports the reasonable regulation of handguns and rifles, instead of prohibition.

Argument: Incorporating Second Amendment rights via Substantive Due Process would violate both original meaning and precedent. Process of elimination rules out implausible readings of the Privileges or Immunities Clause and supports an interpretation that selectively incorporates the right to keep and bear arms without overturning precedents like *Slaughterhouse*. If the Court incorporates the right to keep and bear arms via the Privileges or Immunities clause, then the Court should not use the avoidance doctrine to bypass Due Process Clause analysis.

7. BUCKEYE FIREARMS FOUNDATION AND UNITED STATES CONCEALED CARRY ASSOCIATION

Interest: Buckeye is a non-profit organization dedicated to defending and advancing human and civil rights secured by law, specifically including the rights of Ohio citizens to own and use firearms for all legal activities. U.S. Concealed Carry Association is the largest organization in the United States dedicated to protecting and advancing the unique interests of those persons within the United States who may carry concealed weapons for all lawful purposes.

Argument: Chicago suffers from a consistently high violent crime rate and Chicago's disarmed residents are forced to rely exclusively on the police for protection. Incorporating the Second Amendment will restore the right of self-defense to residents of

Chicago and non-resident visitors alike. Non-resident visitors to Chicago are currently treated as second-class citizens.

Items of Note: People traveling to Chicago are forced to shed their constitutional right to self defense at both the Illinois state line and the Chicago city limits, as Illinois does not issue Firearm Owner I.D. cards to non-residents and Chicago makes no provision for non-residents to keep an operable handgun at hand for self-defense.

8. CALGUNS FOUNDATION

Interest: Calguns Foundation is a nonprofit organization that supports the California firearms community.

Argument: Charles Fairman's and Raoul Berger's work on Fourteenth Amendment incorporation of the Bill of Rights is deeply flawed, inaccurate and should not be relied upon by the Court. Fairman's and Berger's suggestion that the Fourteenth Amendment is equivalent to the Civil Rights Acts (and thus limited to prohibiting discrimination rather than enforcing rights) is contrary to the text and purpose of both. They use unreliable sources and have a now-repudiated historical perspective of hostility toward the Reconstruction and the Fourteenth Amendment.

Items of Note: Brief written by noted Supreme Court/appellate practitioner Erik S. Jaffe.

9. CALIFORNIA DISTRICT ATTORNEYS, ET AL.

Interest: *Amici* are district attorneys from California and Nevada who represent populous, mid-sized and rural counties, as well as several police and firearms associations, plus Bloomfield Press, the nation's largest publisher and distributor of gun-law books.

Argument: Incorporation of the Second Amendment under the Due Process Clause is a matter of first impression. The Second Amendment right is fundamental and thus incorporated. The Supreme Court has recognized a fundamental right to armed self-defense. Firearms are essential to the right of self-defense and federalism does not bar incorporation of a fundamental right.

Items of Note: In light of *Heller*, incorporation reduces to a simple syllogism: 1) all fundamental rights of the people enumerated in the Bill of Rights are incorporated by, and apply to, the states through the Fourteenth Amendment, 2) *Heller* found the Second Amendment embodied a fundamental right of the people to keep and bear arms, and therefore 3) the Second Amendment is

incorporated by, and applies to, the states through the Fourteenth Amendment.

10. CATO INSTITUTE AND PACIFIC LEGAL FOUNDATION

Interest: Cato is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. PLF is the largest nonprofit legal foundation devoted to defending property rights and economic freedom.

Argument: *Slaughterhouse* ignored the doctrine of paramount national citizenship that the Fourteenth Amendment’s authors intended to constitutionalize. In addition to ignoring the legislative history of the Fourteenth Amendment, the *Slaughterhouse* majority violated basic rules of constitutional interpretation. Overruling *Slaughterhouse* would not threaten the vitality of substantive due process. *Slaughterhouse*’s refusal to acknowledge that the Fourteenth Amendment constitutionalized the theory of paramount national citizenship led it to make the critical error of narrowly defining the realm of rights protected by the Amendment.

Items of Note: Opponents of slavery “argued that national citizenship was not dependent upon state citizenship, but was paramount to it.” It is now widely recognized that the Fourteenth Amendment’s authors intended to overturn *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833), and provide federal protection against state actions that deprived individuals of their natural and civil rights.

11. CLAREMONT INSTITUTE CENTER FOR CONSTITUTIONAL JURISPRUDENCE

Interest: The Center is dedicated to upholding the principles of the American Founding, including the proposition that governments are established to secure unalienable rights, including the right to keep and bear arms in self-defense and as a check against government tyranny.

Argument: The Fourteenth Amendment recognized and adopted the widely-held historical consensus that the terms “privileges” and “immunities” embraced well-understood, fundamental rights. The right to keep and bear arms, recognized in the Second Amendment, is among the Privileges and Immunities that the Fourteenth Amendment protects from state deprivation.

Items of Note: Former Attorney General Ed Meese is one of the brief’s signatories.

12. CONSTITUTIONAL LAW PROFESSORS

Interest: *Amici* teach constitutional law and have published books and articles on the Fourteenth Amendment and the Bill of Rights: Richard L. Aynes, Jack M. Balkin, Randy E. Barnett, Steven G. Calabresi, Michael Kent Curtis, Michael A. Lawrence, William Van Alstyne, Adam Winkler

Argument: The Privileges or Immunities Clause protects substantive fundamental rights against state infringement. The Clause included an individual right to bear arms. Precedent does not prevent the Court from recognizing that the Clause protects an individual right to bear arms against state infringement. Reviving the Clause and limiting *Slaughterhouse* would bring the Court's jurisprudence in line with constitutional text and a near-unanimous scholarly consensus on the history and meaning of the Clause.

Items of Note: The brief was signed by Doug Kendall, Elizabeth Wydra, and David Gans of the Constitutional Accountability Center, a progressive organization that brought together academics of all political persuasions to argue for this originalist position.

13. EAGLE FORUM EDUCATION & LEGAL DEFENSE

Interest: Eagle Forum Education & Legal Defense is a nonprofit corporation devoted to principles of limited government, individual liberty, and moral virtue.

Argument: The Second Amendment requires uniform application nationwide, and the right of self-defense is analogous to rights that are incorporated. Federalism sometimes protects against local tyranny as well as national tyranny.

Items of Note: "Here, the factionalism of irrational gun control has taken hold of a small, notoriously corrupt political unit (the City of Chicago) when such gun control would not be adopted by a larger political unit (the State of Illinois)."

14. FOUNDATION FOR MORAL LAW

Interest: The Foundation is a national public-interest organization that promotes a return in the judiciary to the historic and original interpretation of the Constitution, and promotes education about the Constitution and the Godly foundation of this country's laws and justice systems.

Argument: The Court should be guided by the original meaning of the constitutional texts at issue. The right to keep and bear arms

is a pre-existing right naturally derived from the inalienable right of self-defense given by God. The Second Amendment right to keep and bear arms is a fundamental and deeply-rooted American right that easily satisfies the Court's criteria for incorporation through the Due Process Clause. Compared to total incorporation, however, selective incorporation is subjective and unreliable. *Heller* acknowledged that the Second Amendment did not create the right to bear arms, it "codified a pre-existing right." The natural right predates not just the Constitution but America and even England. It is the only right with "teeth," and the one by which the people can defend and maintain all their other rights.

15. GOLDWATER INSTITUTE AND WYOMING LIBERTY GROUP

Interest: The Goldwater Institute is a tax-exempt organization advancing the public policies of limited government, economic freedom and individual responsibility. The Wyoming Liberty Group's mission is to facilitate the practical exercise of liberty in Wyoming through public policy options that are faithful to protecting property rights, individual liberty, privacy, federalism, free markets, and decentralized decision-making.

Argument: *Stare decisis* does not compel adherence to *Slaughterhouse* or its progeny because its erroneous interpretation of the Privileges or Immunities Clause has proven unworkable. The normal and ordinary meaning of that Clause incorporates the right to keep and bear arms and other guarantees of rightful liberty. Shifting incorporation of the right to keep and bear arms to the Privileges or Immunities Clause is workable and consistent with federalism because dual sovereignty is meant to secure rightful liberty.

16. GUN OWNERS OF AMERICA, ET AL.

Interest: Each of the eight *amici* nonprofit groups was established for educational purposes related to participation in the public policy process, which purposes include programs to educate the public on statutes related to the right of citizens to bear arms.

Argument: The Chicago handgun ban unconstitutionally abridges the right to keep and bear arms, a privilege or immunity of U.S. citizens protected by the Fourteenth Amendment. No wholesale change in the Court's Fourteenth Amendment jurisprudence is required to rule that the Chicago ordinance unconstitutionally abridges petitioners' right to keep and bear arms.

Items of Note: Petitioners are both U.S. citizens and citizens of Illinois. As dual citizens, petitioners have “two political capacities, one state and one federal, each protected from incursion by the other.” As U.S. citizens, petitioners are entitled to possess handguns in the privacy of their homes for self-defense.

17. INSTITUTE FOR JUSTICE

Interest: The Institute for Justice is a public interest law firm committed to individual liberty and appropriate constitutional limits on governmental power, including restoring the Privileges or Immunities Clause to its proper role in the constitutional structure.

Argument: Blacks and whites desperately needed judicial protection of their right to keep and bear arms during reconstruction, but they never got it. The Fourteenth Amendment does not “incorporate” the Second Amendment—it protects the *pre-existing* right to arms from state and local governments. The Privileges or Immunities Clause aimed to eliminate constructive servitude by protecting the rights most incompatible with it. Interpreting the Clause according to its original public meaning would clarify and improve the Court’s individual rights jurisprudence

Items of Note: Congress received reams of evidence during the drafting of the Fourteenth Amendment that freedmen and white loyalists were being systematically disarmed in the South to make them more vulnerable to intimidation, terror, and reprisals.

18. INTERNATIONAL LAW ENFORCEMENT EDUCATORS AND TRAINERS ASSOCIATION, ET AL.

Interest: *Amici* include law enforcement organizations, a civil rights organization, scholars, and public policy research institutions.

Argument: Ending handgun prohibition does not harm public safety. After Chicago’s handgun ban, Chicago crime rates rose sharply relative to other large cities

Items of Note: Because some home-invasion burglaries turn into assaults or rapes, if the U.S. home-invasion burglary rate (13%) rose to a level similar to other nations’ (45%), millions of additional home invasions would result in about 545,713 more assaults every year, raising the overall violent crime rate 9.4%. Ending handgun prohibition does not lead to disaster, as is shown in Washington, D.C. post-*Heller* (homicide rate fell 27%) and in South Carolina after the 1965 handgun sale ban was lifted. Police officers in Chicago are murdered at a rate 79% above the national average, and at a

higher rate than in most other large cities (sixth worst of the 25 largest cities). Chicago's handgun prohibition is so ineffective that it has not even reduced the percentage of murders perpetrated with handguns—a percentage that has risen notably since the ban was imposed.

19. JEWS FOR THE PRESERVATION OF FIREARMS OWNERSHIP

Interest: JPFO is a non-profit, tax-exempt Wisconsin corporation with more than 5,000 members and many more Internet-based supporters. JPFO is an educational organization with a vital interest in preserving the individual right to keep and bear arms.

Argument: A right to keep and bear arms equally enforceable against the state and federal governments is essential to prevent the rise of tyranny and genocide. James Madison argued that the American people, unlike most of their counterparts in Europe, have the advantage of being armed, and thus a standing army in the hands of a tyrant could not overcome the collective armed defensive efforts of the citizenry.

20. MARYLAND ARMS COLLECTORS' ASSOCIATION

Interest: The Maryland Arms Collectors' Association is a nonprofit organization with members sharing a common interest in the collecting, preserving, using and/or studying of any type of arms and/or accessories pertaining to the arms field.

Argument: The Fourteenth Amendment was intended as "the amendment to enforce the Bill of Rights," and the Court has said that the Second Amendment is an individual right. Incorporation is possible under the Privileges or Immunities Clause or under the Due Process Clause.

Items of Note: In the Founders' time, felons were without property rights, essentially civilly dead. The insane and mentally incompetent were not civilly dead but had lost the right to control their property. The right to bear arms only extended to trustworthy people, not to felons or the unbalanced.

21. NATIONAL SHOOTING SPORTS FOUNDATION, INC.

Interest: The National Shooting Sports Foundation, Inc. is the trade association for the firearms, ammunition, hunting, and shooting sports industry.

Argument: Firearms were a principal and ubiquitous tool of survival in colonial America. The Second Amendment derives from

the American's refusal to be disarmed. The history of the right to bear arms among the states confirms the fundamental nature of that right.

Items of Note: Firearms were commonly viewed as essential to protecting colonists from attacks by Native Americans, slaves, and wild animals. Firearms also proved superior to other weapons in hunting--so much so that Native Americans, when possible, abandoned their traditional weaponry for the new firearms. One report estimates firearms ownership in 1774 at over fifty percent.

22. PROFESSORS OF PHILOSOPHY, CRIMINOLOGY, LAW AND OTHER FIELDS

Interest: *Amici* are distinguished scholars from various fields who are concerned about ensuring accuracy in the scholarship advanced in important matters of public policy such as those involved in this case.

Argument: Philosophers, both at the time of the Founders and at present, have understood that the cardinal right to self-defense embodies a right to arms. Criminological data undermines the frequently-cited bases for blanket gun prohibitions and supports the private ownership of firearms by ordinary citizens.

Items of Note: The vast majority of homicides and violent gun crimes are committed not by ordinary, law-abiding citizens, but by those with criminal backgrounds and mindsets. Firearms uniquely give a victim a reliable, realistic advantage over an attacker. To religiously-oriented thinkers like Samuel Adams, self-defense was as much a duty as a right. Colonial preachers reasoned that God gives men life and, accordingly, to fail to defend life was to denigrate God's gift and to frustrate his plan.

23. ROCKY MOUNTAIN GUN OWNERS AND NATIONAL ASSOCIATION OF GUN RIGHTS

Interest: The RMGO is Colorado's largest State-based gun lobby, dedicated to protecting the right to keep and bear arms. The NAGR assists state-based gun-rights organizations, including many in the American West, by providing information and lobbying support.

Argument: The original understanding of the right to keep and bear arms has been preserved in the American West and is an essential component of citizenship.

Items of Note: The West avoided much of the racial motivation behind gun control (slavery was outlawed until 1857). Since possession of arms for self-defense and protection against tyranny have historically been fundamental elements of Western law and culture, under the *Duncan* test, this is strong evidence that Second Amendment rights are necessary to ordered liberty.

24. SAFARI CLUB INTERNATIONAL

Interest: SCI is a nonprofit corporation with a membership of approximately 53,000. Its missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool.

Argument: Without incorporation of the Second Amendment through the Fourteenth Amendment, the states will be free to unduly restrict firearm use. Regardless of their intent, firearms bans affect the firearms hunters' use. Without Second Amendment protections, arbitrary firearms controls could end valuable and beneficial hunting practices

Items of Note: Incorporation of the Second Amendment is necessary to prevent bans and restrictions that could interfere with valued and beneficial hunting activities. Recreational hunting is a tool for wildlife management and conservation. Six states have no constitutional protections of the right to keep and bear arms. Others offer only conditional or limited protections. A significant number of hunters hunt with handguns. A survey of active hunters indicated that eight percent used handguns for their hunting activities.

25. SENATORS KAY BAILEY HUTCHINSON AND JON TESTER, 56 OTHER SENATORS, AND 251 CONGRESSMEN

Interest: Congress has a long history of protecting the right of the people to keep and bear arms. It was Congress, after all, that proposed the Second Amendment, the rest of the Bill of Rights, and the Fourteenth Amendment. Congress has enacted statutes such as 42 U.S.C. § 1983 that protect and enforce the Second Amendment against state action.

Argument: The right to keep and bear arms is uniquely suited to incorporation through the Fourteenth Amendment. The structure of the Constitution and the nature of the individual right to keep and bear arms require the states to respect that right. State restrictions on the right to keep and bear arms would threaten to impede Congress' war powers.

Items of Note: The history of the adoption of the Fourteenth Amendment is replete with references to protecting the right to keep and bear arms. The original Constitution restricted the states' ability to infringe the right to keep and bear arms to the extent that doing so would impair Congress' powers under the Militia Clauses.

26. STATE FIREARM ASSOCIATIONS

Interest: The State Firearms Associations include over 40 state firearm associations representing the interests of millions of U.S. citizens and seeking to ensure the right of the people to keep and bear arms is properly recognized as a fundamental right incorporated against the states.

Argument: *Dred Scott*, *Cruikshank* and their progeny reflect a sad legacy, and the Court should not perpetuate their obsolete anti-incorporation views. Rights that are deeply rooted in this nation's history and traditions, or that are implicit in the concept of ordered liberty, are incorporated as against the states under the Fourteenth Amendment. Second Amendment rights are deeply rooted in this nation's history and traditions, are implicit in the concept of ordered liberty and are properly incorporated as against the states under the Fourteenth Amendment.

Items of Note: Cases like *Cruikshank* and *Presser* were written during a time of open animus toward groups such as African-Americans and labor unions, and they bear the stigma of goal-oriented decisions. The Court has long since disavowed such biases.

27. STATE LEGISLATORS

Interest: *Amici* are 891 state government officials from all 50 States. They seek the assistance of the Court in securing the fundamental rights of their constituents and resolve ongoing uncertainty over the validity of state firearm regulations.

Argument: It will do no harm to our system of federalism for the Court to find the Second Amendment incorporated as against the states under either the Due Process Clause or the Privileges or Immunities Clause, or both. Incorporation via the Privileges or Immunities Clause provides an independent basis to reach the same result. The Court's historic precedent under this clause should not be construed in a manner to compromise the fundamental rights of U.S. citizens.

Items of Note: Principles of federalism do not trump fundamental rights. Relying on the factual findings of *Heller*,

reinforced by its own analysis, the *Nordyke* panel easily determined that the right to keep and bear arms is fundamental.

28. TEXAS AND 37 OTHER STATES

Interest: *Amici* are 38 states that serve as the guardians of their citizens' constitutional rights, including the Second Amendment right to keep and bear arms, as a critical liberty interest, essential to preserving individual security and the right to self-defense.

Argument: The Second Amendment applies to the states through the Fourteenth Amendment. The Due Process Clause incorporates "fundamental" rights. The right to keep and bear arms was considered "fundamental" when the Fourteenth Amendment was adopted and it remains so to this day.

Items of Note: The debates around the drafting of the Fourteenth Amendment are replete with evidence that the Second Amendment was understood to protect a fundamental right.

29. THE HEARTLAND INSTITUTE

Interest: The Heartland Institute is a nonprofit public policy research organization based in Chicago. Its mission is to discover, develop, and promote free-market solutions to social and economic problems.

Argument: Chicago's handgun ban is an utter failure; handgun murders have soared during the 25 years the ordinance has been in effect. The police have no legal duty to protect citizens from crime. The police have no practical ability to protect all citizens from every crime.

Items of Note: According to Chicago Police Department data, the percentage of murders committed with handguns has skyrocketed since 1982 and handgun murder rates per 100,000 population more than doubled in the 1990s over 1982 levels. In 2008, these rates were up more than 60% over 1983. Approximately 83% of Americans "will be victims of violent crime at some point in their lives" and "in any given year serious crime touches twenty-five percent of all households."

30. THE PARAGON FOUNDATION

Interest: The Paragon Foundation provides education, research and the exchange of ideas in an effort to promote and support constitutional principles, individual freedoms, private property rights and the continuation of rural customs and culture.

Argument: The right of the people to keep and bear arms, preserved by the Second Amendment, is a fundamental right. Engaging in the Fourteenth Amendment inquiry prescribed by *Heller* leads to the conclusion that the Second Amendment right to keep and bear arms is incorporated as against the states by the Fourteenth Amendment's Due Process Clause. Reliance on federalism to validate local handgun bans is misplaced.

Items of Note: It would be Orwellian to relegate the Second Amendment to a lower tier of constitutional value that is not worthy of incorporation, i.e. all fundamental constitutional rights are equal but some rights are more equal than others.

31. THE RUTHERFORD INSTITUTE

Interest: The Rutherford Institute is a Virginia-based civil liberties organization that specializes in providing pro bono legal representation to individuals whose civil liberties are threatened or infringed upon, and in educating the public about constitutional and human rights issues.

Argument: Since the adoption of the Bill of Rights, the Court has recognized that a substantial number of its amendments must be applicable to and restrain the several states, either through the Privileges or Immunities Clause or the Due Process Clause. Rather than permit an illogical and indefensible jurisprudence under which the rights of citizens would be protected against infringement by the federal government whilst simultaneously being susceptible to erosion and nullification by state and local governments, the Court should now recognize that the Fourteenth Amendment makes the fundamental individual right secured by the Second Amendment enforceable against the states and their political subdivisions.

Items of Note: "If the argument against allowing handguns in citizens' homes is motivated by safety concerns, the legislative remedy should be the adoption of stricter state laws on the storage of handguns, not to their outright ban. Safety concerns may also be effectively addressed by laws requiring background checks prior to the purchase of a firearm. In fact, a bipartisan 2009 survey of 612 registered voters by the Illinois Campaign to Prevent Gun Violence revealed that 90% of those asked were in favor of background checks for all gun sales. Most importantly, such laws would not threaten or infringe upon the right guaranteed in the Second Amendment, but would simply place reasonable restrictions upon that right as are in the public interest."

32. WOMEN STATE LEGISLATORS AND ACADEMICS

Interest: *Amici* are an ad hoc group of 75 women state legislators and academics, asserting that women have a fundamental right to self-defense and that possession of a handgun in the home should be a legal option for any law-abiding woman.

Argument: The Second Amendment is a fundamental right that should be incorporated under the Due Process Clause. For women, the fundamental right to self-defense must include the right to possess a handgun in the home. The harms of denying women the choice to possess handguns in the home exceed the social costs claimed for handgun ownership.

Items of Note: For millions of women, the ability to defend themselves effectively is not an activity or an interest, but the very means by which they protect their personal autonomy and bodily privacy. Since Chicago cannot provide a safe environment for women nor guarantee police protection, the City cannot disrespect a woman's privacy interests in her home.

RESPONDENTS' AMICI

1. AMERICAN CITIES, COOK COUNTY, ILLINOIS, AND POLICE CHIEFS

Interest: *Amici* comprise 10 major American cities (Baltimore, Cleveland, Columbus, Oakland, Philadelphia, Portland, Richmond, Sacramento, San Francisco, and Seattle, Washington); Cook County, Illinois; the Commissioner of the Philadelphia Police Department, and the Chief of Police for the City of Seattle. Each amicus is actively engaged in efforts to reduce the costs, both social and economic, inflicted by gun-related violence upon local communities.

Argument: In *Heller*, the Court reaffirmed that the Second Amendment has its own structural role in preserving what the Founders viewed to be a cornerstone of a free country—namely, the states' ability to raise citizen militias, given that standing armies were disfavored. Unlike the First Amendment, however, the Second Amendment does not also safeguard a right for its own sake; it does so only as a means to the end of preserving citizen militias. Also, unlike speech, bearing arms for self-defense almost always gives rise to a risk of violence and breach of peace. As a result, the Second Amendment is not central to the functioning of a free and democratic government or implicit in the concept of ordered liberty. The Second Amendment operates as “a limitation only upon

the power of Congress and the National government, and not upon that of the States.” Incorporation of the Second Amendment right against the states could potentially subject to constitutional review numerous state and local laws that regulate not just the right to possess firearms, but also the propriety of their use in different self-defense situations.

Items of Note: The Second Amendment was designed to prevent the federal elimination of state militias, and is subject to presumptively valid regulatory measures. Incorporation of the Second Amendment against the states would intrude on the states’ core police powers and disrupt the federal-state balance struck by the Constitution.

2. ANTI-DEFAMATION LEAGUE

Interest: The ADL was founded to stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike. It has long sought to combat extremists, including through advocacy for strong gun control legislation.

Argument: The significant threats posed by armed extremist groups supports a decision that Second Amendment rights are not incorporated through the Fourteenth Amendment. Incorporating the Second Amendment empowers extremists by increasing access to firearms and calling current Due Process Clause protections into question. Judicial restraint is appropriate because scholars and lower courts have only begun to interpret *Heller*.

Items of Note: ADL data indicate that there have been more than 100 domestic extremist-related killings in the United States since 2005, more than half of which involved a firearm. Incorporating the Second Amendment through the Privileges or Immunities Clause simultaneously calls into doubt Due Process protections enjoyed by non-citizens (DP protects “people” while PI protects “citizens”) and grants broader rights to extremists to arm themselves against the fantasized non-citizen “threat.”

3. ASSOCIATION OF PROSECUTING ATTORNEYS AND DISTRICT ATTORNEYS

Interest: *Amici* are state and local prosecutors and the communities they protect who rely upon the enforcement of state and local gun laws in prosecuting violent crimes.

Argument: Gun violence is a serious problem in urban areas and has lead many jurisdictions to enact gun laws in order to reduce instances of violent crime. State gun laws play an important role

in preventing escalation of violence in already dangerous law-enforcement activities.

Items of Note: Ninety-four Percent of all gang-related homicides in 2004 involved firearms. About 93% percent of law enforcement officers killed in the line of duty in the U.S. between 1997 and 2006 were killed with firearms. The proportion of homicides and robberies between 1994 and 1996 that involved guns was about six percent lower in Cook County, which is dominated by Chicago, compared to the other 200 largest counties in the country. Incorporation would create a legal environment whereby every house could be defended by a firearm, substantially increasing the risk of miscalculation and escalation, thereby endangering police and citizens alike. Incorporation would further complicate prosecution of violent crimes by providing defendants with a new basis to challenge any arrest in which the arrestee was armed.

4. BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.

Interest: *Amici* are governmental, civic, and religious organizations actively engaged in efforts to reduce handgun violence and the destructive impact it has on the local communities and urban centers they serve.

Argument: The Second Amendment's structure precludes its incorporation. The Due Process Clause does not support incorporation because a fundamental right to have any weapon that is in common use is not essential to ordered liberty. Even if the Court incorporates the right to keep and bear arms, the right remains subordinate to the greater right of all individuals to personal security. The right to arms (even for personal defense) is fundamentally different from other liberties retained by individuals because of their inherent lethality. The Second Amendment was intended to prevent the federal government from destroying state militias, which, when "well-regulated," stood as a check against federal tyranny.

Items of Note: States and local legislatures have always retained their police power to ban common use weapons that posed too great a danger to public safety, so long as access to other weapons sufficient for the asserted needs (such as self-defense) is preserved. The Second Amendment should not be incorporated through the Privileges or Immunities Clause because adoption of a virtually unlimited natural-law-rights definition of "privileges and immunities" would effectively replace elected legislatures with an imperial and unelected judiciary.

5. BRIEF FOR THE VILLAGES OF WINNETKA AND SKOKIE, ILLINOIS, THE CITY OF EVANSTON, ILLINOIS, THE ILLINOIS MUNICIPAL LEAGUE, AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

Interest: *Amici* are political subdivisions of the State of Illinois concerned with gun violence and associated societal effects.

Argument: Petitioners do not meet the high burden of justification that passing judgment on local legislation requires. The framers of the Fourteenth Amendment did not intend to divest states of their authority to enact neutral, police-power ordinances such as firearm regulations. Local and state regulation of firearms has been nearly exclusive for most of the nation's history. Federal regulation would preclude effective locality-specific regulation, would disrupt the balance of federalism, and would burden the federal courts unduly by "thrust[ing] the Federal Judiciary into an area previously left to state courts and legislatures."

6. EDUCATIONAL FUND TO STOP GUN VIOLENCE

Interest: EFSGV is an organization that seeks to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy. EFSGV has a strong interest in stemming the tide of gun violence that threatens lives and our communities.

Argument: The Second Amendment should not be incorporated, but if it is, the Court must clarify that the right incorporated does not include an insurrectionary component. The Second Amendment does not protect a right to violent confrontation against the government. An incorporated individual right to keep and bear arms to resist governmental authority cannot be reconciled with our existing constitutional order, national sovereignty, or our democratic form of government.

Items of Note: An insurrectionist right would glorify the murder of law enforcement officials (and, collaterally, that of innocent bystanders and children). The revolutionary militia was not composed of men working separate from government; they were acting collectively for the common defense and within a clear set of legal structures.

7. ENGLISH/EARLY AMERICAN HISTORIANS

Interest: *Amici* are scholars and professional historians who have an interest in the Court having a well-informed and accurate understanding of the Anglo-American tradition to "have arms" from which the Second Amendment originated.

Argument: The right to “have arms” embodied in the English Declaration of Rights did not intend to protect an individual’s right to possess, own, or use arms for private purposes; rather, it referred to a right to possess arms in defense of the realm. Contrary to the conclusion of the work relied upon by the *Heller* Court, the “have arms” provision was the result of a political dispute over whether ultimate control over the militia resided with the sovereign, or in Parliament, rather than a right to have arms for private self-defense.

Items of Note: The King’s grant of power to Catholics to arm the militia and disarm persons deemed “disaffected” gave rise to a fear amongst Protestants that England would be overthrown by Catholics. It was this fear that would lead to the drafting of the Declaration of Rights’ “have arms” provision. Not a single document references any claim that the British violated the colonists’ right to “have arms.”

8. HISTORIANS AND LEGAL SCHOLARS

Interest: *Amici* are six historians and legal scholars who have each studied, taught courses about, and/or published scholarship on the Fourteenth Amendment and its framing: Bret Boyce, Jonathan Lurie, William G. Merkel, William Nelson, Donna Schuele, George C. Thomas III.

Argument: In determining whether the Second Amendment individual right defined in *Heller* is fundamental to our scheme of ordered liberty, the Court will be aided by an examination of the historical context. The Court should examine the history of the underpinnings of the right, the early modern theories of individual and collective self defense, the rise of volunteer militias, the Pennsylvania Constitution, the congressional debates, and the collective rights motivation behind adoption of the Second Amendment. This history demonstrates that the individual right defined in *Heller* is not implicit in and fundamental to our scheme of ordered liberty.

Items of Note: The collective right of self-defense motivated adoption of the Second Amendment. The Second Amendment left the right of individual self-defense unchanged.

9. LAW PROFESSOR AND STUDENTS

Interest: *Amici* are the professor (Douglas A. Berman) and students from an Ohio State Law School seminar on the Second Amendment and seek to enhance the Court’s understanding of how

to apply the Second Amendment to state laws if that amendment is to be incorporated.

Argument: Localities regulated firearms during the Framing Era, and have continued to do so to present day. Constitutional doctrine and practical considerations justify a less rigorous form of constitutional scrutiny of local firearm regulation.

Items of Note: The current legal regime poses a problem for localities. Localities are responsible for implementing and enforcing state statutes, but are also subject to liability under § 1983 if its actions are at some point found unconstitutional. Given this threat, the Court's jurisprudence should provide express attentiveness and deference to local needs. For example, every county in Virginia has adopted different firearm regulations tailored to its needs.

10. OAK PARK CITIZENS COMMITTEE FOR HANDGUN CONTROL

Interest: *Amicus* is an unincorporated, voluntary association of Oak Park residents who lobbied the village board to enact an ordinance banning handguns over 25 years ago, and who later organized the campaign in support of the ban in a public referendum called by the board.

Argument: There is nothing incongruous about states and local communities adopting different standards concerning the role handguns play, if any, in ensuring the right of self-defense, especially in light of the vastly different circumstances that communities face regarding public safety implications of handguns. To incorporate the Second Amendment right to possess handguns in one's home would portend a massive federal intrusion into the administration of the right to self-defense that is as unwarranted as it is unnecessary. There is no reason in law or sound public policy why any supposed contrary nationwide judgment regarding the quintessence of handgun ownership in American society should trump the more specifically tailored considerations of the people of Oak Park and the role handguns play in their community.

Items of Note: The circumstances that warrant allowing an individual to use a handgun in self-defense, if any, will differ depending on demographic and cultural characteristics that vary widely across the United States. Before the ban, Oak Parkers were much more likely to take their own lives with handguns, or to injure or kill another in a domestic dispute or accident, than they were to defend themselves with a handgun kept in the home.

11. ORGANIZATIONS COMMITTED TO PROTECTING THE PUBLIC'S HEALTH, SAFETY, AND WELL-BEING

Interest: *Amici* are nine not-for-profit organizations united by a commitment to protecting the American public's health, safety, and well being. Each organization is dedicated to preventing violence and injury by removing handguns from homes and communities across the country.

Argument: Public health research may be relevant to assessing the constitutionality of the statutes at issue. Empirical data regarding the effect of handguns on public health may bear on constitutionality. Guns in the home increase the risk of suicide, homicide, and death from accidental shooting. Guns pose a particular risk to women, children and adolescents.

Items of Note: Studies suggest that the challenged statutes may prevent a substantial number of suicides, homicides and accidental fatal gun shootings. Gun safety education is ineffective for children. Because children cannot be made "gun safe," their environments must be made safe by removing handguns.

12. PROFESSORS OF CRIMINAL JUSTICE

Interest: *Amici* are scholars (James Alan Fox and Jack Levin of Northeastern University) who teach, write, and speak about criminal justice.

Argument: The Chicago handgun ban has reduced handgun violence. Chicago's handgun ban reduces the supply and increases the cost of handguns. *Amici* in support of petitioners misconstrue the statistical data concerning the impacts of the Chicago handgun ban.

Items of Note: The United States experienced a 4.3% drop in intimate partner homicides with female victims from the pre-ban period to the post-ban period. Chicago's drop over the same period was 27.2%. Research shows that even when sub-statute guns from out-of-state enter a jurisdiction with supply-side regulations, such as Chicago, the price of such out-of-state, illegally imported guns is higher, thereby inhibiting demand. The number of homicides that occurred in victims' homes declined in Chicago after the enactment of the handgun ban, indicating that Chicago residents are actually safer in their homes.

13. REPRESENTATIVES CAROLYN MCCARTHY, MIKE QUIGLEY, AND 53 OTHER MEMBERS OF CONGRESS

Interest: *Amici* are members of Congress bound by oath or affirmation to support the Constitution and having an interest in assisting the Court to appropriately construe the Second and Fourteenth Amendments and ensuring the Court considers Congress's experience interpreting and applying those amendments.

Argument: The Second Amendment has never been understood to abrogate the police powers of the states to enact gun control legislation that is reasonably necessary for the public safety. Congress has long recognized and supported the right of states to enact locally appropriate measures restricting gun possession and use. Incorporation of the Second Amendment is not necessary to the effective exercise of Congress's War and Militia powers.

Items of Note: The majority of state constitutions adopted at the time the Fourteenth Amendment was ratified included a right to bear arms, but specifically granted the state legislatures the power to regulate the exercise of that right. Congress enacted the Federal Firearms Act of 1938 in order to establish minimum federal gun controls and to aid state and local efforts at tighter control by prohibiting transactions that would violate local laws. With the enactment of the Gun Control Act of 1968, Congress continued to recognize and support the right of states and local governments to restrict the sale and possession of firearms. Incorporation of the Second Amendment is not necessary to ensure that firearms suitable for the national defense are privately owned because the possession of such firearms is already lawful in every state.

14. STATES OF ILLINOIS, MARYLAND, AND NEW JERSEY

Interest: These states assert an interest in using their police powers to enact and enforce laws governing firearms.

Argument: The history of the Second and Fourteenth Amendments shows that the Framers viewed the right to bear arms as a check on federal, not state, power. Incorporation would strip decision-making from state legislatures and courts and place it in the hands of federal courts, which would have to address a host of new challenges with little guidance from constitutional text or history. If the Court were to incorporate the Second Amendment via the Privileges or Immunities Clause, it would open the door to incorporation of still more rights—such as the Fifth Amendment's grand jury right and the Seventh Amendment's civil jury trial right—

contrary to longstanding practice and the states' well-founded reliance to the contrary.

Items of Note: The English common law recognized a need to regulate firearms only as a check against royal power, while the people, acting through Parliament, retained plenary authority over firearm use and possession; conversely, Americans did not fear oppression by regulation from the states. The Fourteenth Amendment was designed to place the constitutionality of the Freedman's Bureau and other civil rights legislation beyond doubt. The states are adept at balancing the legitimate interests of gun owners against the need for reasonable regulation of firearms and although *Heller* indicated that many firearms regulations would survive Second Amendment scrutiny, deciding which laws pass muster will thrust federal courts into a morass of standardless line-drawing.

15. 34 PROFESSIONAL HISTORIANS AND LEGAL HISTORIANS

Interest: *Amici* are professional historians and legal historians who have taught courses and published scholarship on the Second Amendment, Reconstruction amendments, federalism, and legal and constitutional history.

Argument: States possessed plenary authority during the antebellum period to regulate arms for public safety, and the Fourteenth Amendment did not reduce this authority. For example, the Texas Constitution of 1868 was one of several to make "the right to keep and bear arms" expressly subject to "such regulations as the legislature may prescribe." These express provisions would have made little sense if those states believed that the Fourteenth Amendment barred such forms of regulation in any event.

16. UNITED STATES CONFERENCE OF MAYORS

Interest: The U.S. Conference of Mayors is the official non-partisan organization of all U.S. cities with populations of 30,000 or more. Its members suffer a disproportionate share of gun violence in the United States and have a common interest in maintaining the flexibility to address this problem in the manner local officials determine to be most effective and appropriate.

Argument: Gun control laws play a central role in fighting violent crime. Stringent regulation of concealable weapons is critical to the ability of cities to control violent crime. The Fourteenth Amendment does not protect the Second Amendment right to keep

and bear arms. A right's inclusion in the Bill of Rights is not enough to warrant incorporation. If that were sufficient for incorporation, the Court would have adopted a regime of total incorporation. The Second Amendment protects a largely obsolete 18th-century right.

Items of Note: Gun control laws play an important role in decreased crime rates. Confining the right to bear arms to a Framing-era understanding (as *Heller* suggests) would also imperil the use of stop-and-frisk tactics. The 18th-century right to bear arms has given way to a more vigorous conception of state and local police powers. In high-crime, gang-ridden neighborhoods, a right to bear arms seems more likely to imperil ordered liberty than to secure it.

AMICI IN SUPPORT OF NEITHER PARTY

1. NAACP LEGAL DEFENSE & EDUCATION FUND

Interest: The NAACP Legal Defense is a nonprofit corporation seeking to assist African-Americans in securing their civil and constitutional rights through litigation and advocacy.

Argument: In determining whether the Second Amendment right is incorporated as against the states, the Court should look first to its existing due process framework. The Due Process Clause, which the Court has the option of using to answer the question presented, has proven adequate to the task of ensuring the applicability of constitutional guarantees to the states. Any revival of the Privileges or Immunities Clause should supplement and not supplant existing due process protections; should the Court choose to acknowledge the mistakes of the Reconstruction-era Court and correct them, it must protect the Due Process Clause precedents that safeguard the constitutional protections that have been essential to the development of our democracy.

2. BRADY CENTER TO PREVENT GUN VIOLENCE, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, AND NATIONAL BLACK POLICE ASSOCIATION

Interest: *Amici* are groups that seek to ensure that the Second Amendment does not stand as an obstacle to strong gun laws that help police protect the public from gun crime and violence.

Argument: Deferential review of firearms laws is appropriate in light of the unique public welfare concerns implicated by the

right to possess and use firearms. Anglo-American jurisprudence has long recognized that states have broad powers to protect the public by regulating firearms, and such laws have been and continue to be reviewed with deference. Even fundamental constitutional rights that do not create risks akin to the risk of gun possession are not necessarily subject to strict scrutiny. The Court should adopt the reasonable-regulation test for assessing Second Amendment challenges

Items of Note: Researchers have found that as the rate of gun ownership in a community increases, the homicide rate increases as well. One study estimated that the number of gun crimes exceeded the number of self-defense gun uses by a ratio of between 4-to-1 and 6-to-1. In light of the unparalleled societal risks associated with firearms, the Second Amendment should not prevent citizens, through their elected representatives, from enacting reasonable gun laws.