No. 23-877

IN THE SUPREME COURT OF THE UNITED STATES

DANE HARREL, *et al.*,

Petitioners,

v.

KWAME RAOUL, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF AMICUS CURIAE NATIONAL POLICE ASSOCIATION IN SUPPORT OF PETITIONERS

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Interests of the Amicus[1]

The National Police Association ("NPA") is a nonprofit corporation organized under Indiana law. The NPA pursues a general mission of advancing law enforcement interests, including participating in cases as amicus curiae when the cases raise legal questions important to law enforcement interests. As a national association representing police officers across the country, the NPA is deeply committed the maintenance of law and order.

This interest is becoming more acute as political forces have arisen driving policy choices that undermine the most fundamental duties of government to preserve order. Such policies have profound and primary effects upon the safety and well-being of citizens and police across the country, and secondary effects upon the Second Amendment, as it is made into a scapegoat for the failure of these policies.

The NPA sees the Illinois law here challenged as yet another manifestation of scapegoating for Illinois policies favoring disorder and criminals. The NPA appears as amicus to provide the Court with a law enforcement perspective on the critical questions of federal law—and law and order generally—

[1]Pursuant to Rule 27, the National Police Association states that counsel of record received timely notice of the intent to file this brief and did not object. Neither the parties nor their counsel had any role in authoring the brief or made any monetary contribution intended to fund its preparation or submission.

presented by the Petition. The NPA and the officers for whom it advocates operate every day in a real world of homes, streets and businesses where ordinary Americans are required to engage in armed defense against a rising tide of criminality.

The NPA seeks to ensure that legally armed citizens remain available to supplement the Nation's law enforcement in upholding public order. The NPA believes that the only thing that stops an evildoer with a gun intending on doing violence to others is a good man or woman with a gun and the will to use it—and that cannot always be a police officer. The NPA believes that new laws outlawing weapons commonly possessed by law-abiding Americans will not only be ignored by criminals, but also will tend to promote crime.[2]

The law enforcement community represented by NPA understands this. A 2013 survey of some 15,279 current or retired law enforcement personnel showed over half the law enforcement personnel rated legally armed citizens as being of the highest importance in reducing crime rates overall, and the survey respondents picked "more permissive concealed carry policies for civilians" as *the most important single factor for preventing large scale*

[2]There is significant evidence that good people with guns reduce crime generally. *See, e.g.,* Kleck, "Crime Control Through the Private Use of Armed Force," 35 Social Problems 1, 15 (1988) (reporting a substantial drop in the burglary rate in an Atlanta suburb that required heads of households to own guns); *see generally District of Columbia v. Heller*, 554 U.S. 570, 701 (2008) (collecting studies).

shootings in public.[3] Eighty percent of those with law enforcement experience are confident that "casualties would likely have been reduced" if legally armed citizens had been present—and 6.2% thought innocent casualties might have been avoided altogether. More than two-thirds of law enforcement personnel—with the most hands-on experience in fighting criminality—believe that associated limitations on magazine capacity such as those in the Illinois statute are contrary to their self-interest.

As police departments across the country face funding cuts that seriously limit the number of officers on patrol, the role of armed citizens in preventing public disorder becomes more and more important. The cost and scale of anti-Second Amendment litigation is itself becoming inimical to the interests of the NPA and those it represents, as scarce public resources to protect ordinary Americans are diverted to pay lawyers and experts, clogging courts that could otherwise be adjudicating criminal cases.

A final important interest of the NPA is protecting the many policemen and women charged with enforcing the Illinois law and similar laws from civil liability. The obviously unconstitutional nature of the Illinois restrictions has caused many law

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[3] PoliceOne.com Survey, March 4-13, 2013 (Question Nos. 20-21) (available at https://www.gunowners.org/wp-content/uploads/2020/05/PoliceOnes-2013-Gun-Policy-Law-Enforcement-Survey-Results.pdf (accessed 3/7/24)).

enforcement officers to state that they will not enforce the law, in this case resulting in a threat from the Illinois Governor to fire them.[4] And if they do enforce the law, they are liable to civil suits from the law-abiding citizens they are turning into felons, insofar as no qualified immunity would be available for violation of "clearly established . . . constitutional rights of which a reasonable person would have known". *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

The NPA is interested in acceptance of the Petition to foster decisive action by this Court to shut down an ongoing massive litigation campaign against the Second Amendment and put a stop to an "unhappy lot" presently faced by the Nation's police officers in which they must "choose between being charged with dereliction of duty . . . and being mulcted in damages". *Cf. Pierson v. Ray*, 386 U.S. 547 (1967). Through this and other amicus filings, the NPA seeks bright-line rules confirming the constitutionally protected nature of commonly-held firearms that will minimize legal risks for dedicated law enforcement professionals.

Summary of Argument

The NPA writes in support of Petitioners' request for review of the decision of the United States Court of Appeals for the Seventh Circuit holding that the State of Illinois may continue to ban

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[4]https://www.youtube.com/watch?v=LqVlm4omoT0 (1:10; accessed 2/19/24).

firearms (and their magazines) that are in common use for lawful purposes all over the United States. Semi-automatic weapons with a magazine capacity of more than ten rounds, outlawed by the Illinois statute, are the weapon of choice for civilians and police officers across the country. The primary result of continued enforcement of the Illinois law is that there will be fewer good people carrying effective weapons in Illinois for their self-defense or the defense of others.

These rights of defense against armed violence are exercised with a frequency that legal professionals, unlike law enforcement officers on America's streets, seem to find difficult to grasp. The banned weapons are essential for the self-defense of civilians, officers and the defense of others. For all these reasons, the Illinois statute threatens vital rights of vital importance, and the constitutionality of banning these commonly used weapons is "an important question of federal law that has not been, but should be settled by this Court" within the meaning of Rule 10(c).

Given the clarity of this Court's decisions in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the Seventh Circuit's rebellion against the Constitutional rule emphasized by these rulings may fairly be characterized as that Court having "so far departed from the accepted and accustomed course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power" within the

meaning of Rule 10(a). The Second Amendment represents a binding commitment to the fundamental right on the part of law-abiding citizens to defend themselves, others and the Nation, but the NPA sees disorder and lawlessness in the lower courts refusing to follow this Court's rulings in *Heller* and *Bruen,* analogous to the rising disorder faced by the police officers NPA represents on American streets.

Finally, the procedural status of the case, striking down a preliminary injunction properly issued by the District Court, also makes the case suitable for review, allowing this Court to refine the test for judicial review of laws restricting the fundamental civil rights of Americans under the Second Amendment.

Argument

I. THE SEVENTH CIRCUIT'S "RESERVED FOR MILITARY USE" EXCEPTION TO THE SECOND AMENDMENT REPRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT.

A. The Importance of the Right to Bear Semi-Automatic Weapons with Standard-Capacity Magazines.

As ever more expensive and ineffective efforts to address "root causes" of crime fail, and equity-based policies elevate the rights of criminals to avoid

bail, punishment and accountability for their crimes, many of the jurisdictions with such failed policies now seek to prevent gun violence by restricting the rights of law-abiding citizens. These restrictions threaten to leave American citizens without effective means to utilize the sort of weapons employed by criminals throughout the country—and employed by nearly all police departments to fight them.

In the world far removed from courtrooms, judge's chambers and lawyers' offices, Americans are using guns to defend themselves and others at extremely high rates—up to 2.8 million times a year.[5] More than half of the incidents of self-defense involve more than one assailant,[6] in which the ability to fire more defensive rounds obviously assumes more importance. Indeed, 3.2% of incidents involve five or more attackers,[7] where the ability to shoot

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[5] The largest sample of firearms owners ever queried about their firearms ownership and firearms use was conducted in 2021 by Dr. William English of Georgetown University. W. English, "2021 National Firearms Survey," Georgetown McDonough School of Business Research Paper No. 388145 (Expanded Report: May 13, 2022) (available at https://bit.ly/3yPfoHw (accessed 2/28/24)).

Approximately 31.9% of Americans own firearms, and those firearms are used defensively by 1.67 million times per year (*id.* at 9)—but there is evidence to many additional uses, up to 2.8 million times a year, if self-defense uses of firearms by people not using their own gun are included (*id.* at 12 n.9). This survey also does not include use of guns by private security guards. *Id.* at 12.

[6] *Id.* at 16.

[7] *Id.*

more than ten rounds is obviously critical. There are, of course, numerous reported incidents of citizens defending themselves who have been required to use more than ten shots to do so—or failing to defend themselves when only ten rounds were available.[8]

It is not practical for citizens to carry multiple weapons for self-defense purposes, and even a homeowner awakened in the night by an intruder is likely to be able to reach only one weapon and not have time to gather spare ammunition. Criminals, by contrast, can and do prepare for violence by arming themselves with multiple weapons and magazines.

In short, as well-armed criminals stalk the Nation, even wearing body armor, it becomes more and more clear that higher-capacity magazines are

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[8] *See, e.g.,* WIS News 10, "Gun shop owner shoots, kills man during attempted robbery," Aug. 9, 2012 (available at https://www.wistv.com/story/19236842/gun-shop-owner-shoots-kills-man-during-attempted-robbery/ (accessed 1/16/ 22)) ("the owner emptied a 30 round magazine before retreating to his room to get more ammunition"); Gus G. Sentementes & Julie Bykowicz, "Documents Detail Cross Keys Shooting," *Baltimore Sun*, Mar. 20, 2006 (16 rounds required to repel three assailants) (available at https://www.baltimoresun.com/news/bs-xpm-2006-03-21-0603210220-story.html (accessed 3/7/24)); Robert A. Waters, *Guns Save Lives: True Stories of Americans Defending Their Lives with Firearms* 149-59 (2002) (homeowner fails to stop home invader with ten rounds).

needed for effective self-defense, and experts in self-defense routinely recommend against magazine capacity limits.[9] Not surprisingly, then, *nearly half of gun owners have owned magazines that hold over ten rounds, and nearly a third have owned an AR-15 or similarly styled rifle with even larger magazine capacities.* (*See* W. English, "2021 National Firearms Survey," at 20.)

The Seventh Circuit's suggestion that Americans who see "greater firepower" as necessary for self-defense and the defense of others can simply "purchase several magazines of the permitted size" is frankly dishonest insofar as the Court well recognizes that "actual firing capacity" must "account for the need to change magazines". (App. 37.) It represents a total rejection of the very idea that the right of self-defense is a fundamental civil right, where it is the State that is required to seek alternative approaches to advance its policy goals, not the holders of the fundamental Second Amendment right to self-defense.

Police officers are defending themselves against the same criminals as the citizens, and their experience is highly relevant to the exercise of the fundamental right of self-defense. Over the years, police departments across the nation have

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[9] *See, e.g.,* M. Ayoob, "The Necessity of high capacity magazines: How many rounds are needed" (Wilson Combat Channel) (available at https://www.youtube.com/watch?v=_XJzxpn2vuA&t (accessed 3/6/24)).

abandoned service revolvers in favor of modern semi-automatic weapons with larger magazines. Police officers are keenly aware of the risks of running out of ammunition, which is why earlier six-shot revolvers have been largely replaced with semi-automatic weapons with standard magazine capacities outlawed by the Illinois statute.

Police officers know that even if every shot they fire hits a criminal, there are some criminals who will withstand multiple gunshot wounds and keep on coming.[10] There is a standard police textbook, "Street Survival," which shows police a famous autopsy photo of an armed robber who was shot 33 times with 9mm rounds before he stopped trying to kill the officers.[11]

Police officers also know that most of the shots fired miss. A comprehensive study of police firearm

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[10] Sergeant Timothy Gramins was involved in a gunfight with a bank robber who "would not go down, even though he was shot 14 times with .45-cal. Ammunition—six of those hits in supposedly fatal locations. C. Remberg, "Why one cop carries 145 rounds of ammo on the job," *Police1.com*, Feb. 21, 2020 (available at https://www.police1.com/officer-shootings/articles/why-one-cop-carries-145-rounds-of-ammo-on-the-job-clGBbLYpnqqHxwMq/ (accessed 3/7/24)).

[11] *See also M. Ayoob,* "Why Good People Need Semiautomatic Firearms and 'High Capacity' Magazines: Part 1," *Backwoods Home Magazine*, Dec. 29, 2012 (available at https://www.backwoodshome.com/blogs/MassadAyoob/why-good-people-need-semiautomatic-firearms-and-high-capacity-magazines-part-i/comment-page-1/ (accessed 3/7/24)).

use in New York City by Rand Corporation showed that "between 1998 and 2006, the average hit rate was 18% for gunfights".[12] Average Americans are unlikely to shoot more precisely. The State of Illinois backhandedly recognizes the severe restrictions on self-defense and the defense of others arising from the law by exempting numerous categories of "trained professionals" from the scope of the Illinois bans. (App. 7.) *The State of Illinois did not even attempt to reserve these weapons for "military use,"* recognizing that individuals facing well-armed criminals far from foreign battlefields need these weapons.

Both police and the law-abiding citizens that fill the increasing gaps in law enforcement need the weapons banned by the State of Illinois to protect themselves and others. The Illinois ban obviously imposes higher risks of losing gunfights on these law-abiding citizens, and increasing the likelihood that they wind up dead or injured. A fair-minded court evaluating the irreparable harm imposed by the Illinois law would value the lives of these innocent civilians, but the Seventh Circuit did not even reach the question, instead holding that these common tools, essential for self-defense, fell entirely outside the plain language of the Second Amendment.

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[12] B. Rostker *et al.,* "Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process," at 14 (Rand Corp. 2008) (available at https://www.nyc.gov/html/nypd/downloads/pdf/public_information/RAND_FirearmEvaluation.pdf (accessed 3/7/24)).

B. The Seventh Circuit's Legal Standard Eviscerates the Second Amendment.

As a matter of history and its plain language, the Second Amendment was obviously intended to allow every law-abiding American to be able to carry the sort of weapons that would be used in a militia, a substitute for a standing army that would be as effective as a standing army. From this perspective, the notion that modern semi-automatic weapons with standard-capacity magazines "lie on the military side" of a judge-made dividing line to put them outside the protection of the Second Amendment (App. 4) is absurd.

The Seventh Circuit's "military side of the line" test (App. 4) arises from its false claim that this Court in *Heller* completely "severed th[e] connection" between the rights protected under the Second Amendment and its prefatory clause. (App. 18; *see Heller,* 554 U.S. at 627). While *Heller* recognized that certain unusual and dangerous weapons might be regulated, it did and could not jettison the prefatory clause of the Second Amendment.

The Seventh Circuit misrepresents *Heller* as holding that state can simply declare particular weapons as "dedicated exclusively to military use" (App. 28) or "predominately useful in military service" (App. 30), but this is an approach that unless decisively rejected will permit the state to dedicate *all firearms* as "weapons that may be reserved for military use" (App. 31). From the ideological

perspective of those waging litigation war against the Second Amendment, every firearm may be characterized as "militaristic" and capable of "inflicting grisly damage". (App. 42.)

While the development of the "machine gun line" for regulation means that modern armies are utilizing weapons on a "military side" of a judge-drawn line,[13] any inquiry as to the "military" use of weapons cannot reasonably ignore the question whether they are used and useful for militia, akin to army infantry. *Cf. United States v. Miller*, 307 U.S. 174 (1939) (seeking a "reasonable relationship to the preservation or efficiency of a well-regulated militia").

Historically, when troops were mustered for the Revolutionary War, the mass of troops, like the professional soldiers, both had muskets and rifles. Any "well-regulated Militia" that the Constitution has declared as "necessary to the security of a free State" cannot serve its Constitutional function without the ability of the citizenry to possess the

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[13] The settled constitutionality of banning machine guns (*e.g.*, App. 32-33), is a historical accident arising from the lack of a challenge in *United States v. Miller*, 307 U.S. 174 (1939) (*see Heller*, 554 U.S. at 624), and the historically belated declaration in *McDonald* that the Second Amendment limits state authority, consistent with the rest of the Bill of Rights. The NPA has no interest in redrawing the machine gun line, but the historical accident that gave rise to it strengthens the case for clarifying that the right to bear arms extends up to that line, with further restrictions on weapons in common use contrary to the core purposes of the Second Amendment.

commonly used, semi-automatic "assault weapons" now outlawed by the State of Illinois.

Indeed, the Seventh Circuit's approach that commonly held weapons may suddenly be "dedicated exclusively to military use" is a direct attack on the very idea of a free State in which citizens are familiar with and able to utilize the now-banned arms. It is a total rejection of this Court's holding that "the right to keep and bear arms is fundamental to our scheme of ordered liberty". *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (emphasis deleted). The opinion below is in substance a rebellion against the Constitution's command for restrictions on government to maintain a free people, and plainly merits review as involving an important question of federal law under Rule 10(c).

II. THE SEVENTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

The police officers across the Nation represented by the NPA are on the front lines of maintaining public order, and face a rising tide of lawlessness. This Court is on the front lines of a similar phenomenon, with a rising tide of lower courts who are quite frankly failing in good faith to perform their duty to uphold the Constitution. It is no exaggeration to accuse the federal circuit courts of

engaging in the same sort of "massive resistance" that Southern governments did to other federal civil rights. Then, as now, forceful leadership by this Court is required.

This Court's decisions in *McDonald*, *Heller* and *Bruen* established that law-abiding citizens have the right to possess weapons "in common use today". *Bruen*, 597 U.S. at 47. Petitioners urge that this Court accept the Petition to "once again confirm that the common use test established by *Heller* and reaffirmed in *Bruen* governs the resolution of arms ban cases" (Petition at 3), charitably describing the Seventh Circuit's position as "entirely indefensible after *Bruen" (id.* at 18). It is more accurately described as open rebellion against *Heller* and *Bruen.*

In finding that the weapons banned by the Illinois statute do not even pass "the first step of the *Bruen* analysis" (App. 33)—that is, whether "the Second Amendment's plain text covers an individual's conduct" (*Bruen*, 597 U.S. at 17), the Seventh Circuit is putting itself in the regrettably large class of judges and justices who are unwilling to accept the rule of law if it conflicts with their policy preferences.

Equally revealing are the Court's remarks that "[f]or all its disclaiming of balancing approaches, *Bruen* appears to call for just that . . ." (App. 42), attempting to excuse its assertion of the power to balance away the most fundamental rights of Americans. The Court's extensive reliance upon

historical statutes that were addressed and distinguished in *Bruen* also constitutes a hallmark of judicial rebellion. The opinion below cannot be characterized as faithfully implementing the law as established in this Court's precedents. *See generally* App. 89-107 (dissent reviews inconsistencies with *Bruen*).

In short, the constitutionality of the Illinois statute is not a close Constitutional question. The positions taken by the Seventh Circuit are not objectively reasonable positions that can be advanced in good faith by anyone respecting the Second Amendment. Notably, in *McDonald,* this Court faced the very same resistance to the Second Amendment from the Seventh Circuit, with the Seventh Circuit relying upon some of this Court's most infamous and discredited cases, *e.g., United States v. Cruikshank*, 92 U.S. 542 (1876), to find that the Second Amendment imposed no limitations on the State of Illinois whatsoever.

As far back as recorded history goes, *e.g.*, 1 Samuel 13:19-22, elites in power have regarded it as appropriate to limit the availability of weapons to the masses. America was supposed to be different, but mass shootings in America, fueled by policies that advance the civil rights of wrongdoers at the expense of the rights of the law-abiding, now serves as the excuse *de jour* for legislation (*see* App. 45). Quite apart from the counterproductive effect of eliminating armed citizens to put a stop to mass shootings, the Second Amendment forecloses legislation based on the

> ". . . delusion—popular in some circles—that ordinary people are too careless and stupid to own guns, and we would be far better off leaving all weapons in the hands of professionals on the government payroll.

Silveira v. Lockyer, 328 F.3d 567, 569 (9th Cir. 2003) (Kozinski, J., dissenting).

Those who refuse to accept *Heller* and *Bruen* do not live in neighborhoods, common in the Nation, where firearms violence by criminals is so common that nearly 90% of the incidents never even reach the attention of law enforcement.[14] *Cf. McDonald*, 561 U.S. at 790 (Second Amendment may protect "the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials").

Unlike the ordinary citizens for whom Second Amendment rights are frequently a life and death matter, the Second Amendment's opponents do not carry weapons to protect themselves and may even be protected by bodyguards. They live in a world so different from the world of criminality suffered by

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[14] J. Carr & J. Doleac, "The geography, incidence, and underreporting of gun violence: new evidence using ShotSpotter data" (Brookings Inst. April 2016) (available at https://www.brookings.edu/wp-content/uploads/2016/07/Carr_Doleac_gunfire_underreporting.pdf (accessed 2/29/24).

ordinary police and law-abiding citizens that they cannot begin to conceive of the importance of the Second Amendment for its central purpose of self-defense, much less its importance as a "doomsday provision . . . designed for those exceptionally rare circumstances where all other rights have failed". *Silveira v. Lockyer*, 328 F.3d 567, 570 (Kozinski, J., dissenting); *see also McDonald*, 561 U.S. at 770 (quoting J. Story's Commentaries on the right to bear arms as a "check against the usurpation and arbitrary power of rulers").

The Nation's police forces do not want rising disorder resulting in *anyone* invoking the Second Amendment for its "doomsday" purpose. Just as they constitute a "thin blue line" that maintains order on the streets, so too must this Court hold the "thin black line" to maintain order in the courts and the rule of law generally. Accepting the Petition is important to prevent a rising usurpation of fundamental rights and related developments that threaten the "doomsday" necessity for the Second Amendment. The ideological delusions underlying the Illinois statute, widespread in the university-educated classes that operate the Nation's legal system and increasingly attack the Second Amendment, go hand in hand with decreasing respect for the rule of law, history and tradition, and rising public disorder.

It is now clear that such disrespect extends to a host of federal appellate and trial courts besides the Seventh Circuit in open defiance of *Heller* and

Bruen.[15] All these courts are frankly engaged in what may be called legal insurrection against the Second Amendment.

These Courts foster the use of taxpayer funds to hire expensive and well-credentialed experts, putting forth all forms of outlandish testimony concerning any and every conceivable fact remotely related to the exercise of Second Amendment Rights. Ordinary citizens attempting to resist this army find themselves unable even to hire experts, whose dependence upon state-funded positions or contracts forecloses their participation. The Nation's federal courts are burdened with the requirement to hold expensive and complex trials resulting in hundreds of pages of Constitutionally irrelevant factual findings.

Highly-credentialed experts testify that "arms" do not include magazines, ignoring contemporary inventories of "arms" from the Revolutionary War listing "Catouch Box" as an arm,[16] and ignoring the common meaning of the word, as set forth in the

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[15] *See Duncan v. Bonta*, 83 F.4th 803, 806 (9th Cir. 2023) (collecting cases); *see also id.* at 807-08 (Nelson, J., dissenting) (noting 9th Circuit's violation of procedural norms and 28 U.S.C. § 46 to exclude newer judges from participating in the case); *id.* at 808 (Bumatay, Ikuta, Nelson & Van Dyke, JJ., dissenting) ("If the protection of the people's fundamental rights wasn't such a serious matter, our court's attitude toward the Second Amendment would be laughably absurd").

[16] *See, e.g., Musters and Payrolls of the War of the Revolution*, 1775-1783 95 (New York Historical Society 1916) (available at https://archive.org/details/musterpayrollsof47newy/page/94/mode/2up) (accessed 2/19/24).

famous Webster's Dictionary of 1828: "[a] stand of arms consists of a musket, bayonet, cartridge-box and belt, with a sword". The District Court noted that the question of whether magazines constituted "arms" within the scope of the Second Amendment was "not even a close call" (App. 129), but the Seventh Circuit and others defying this Court came to precisely the opposite conclusion.

Highly paid experts are willing to testify that "interpersonal gun violence was not widespread in society prior to the middle of the nineteenth century" so that any restrictions to prevent such violence might be justified. *See*, *e.g., Oregon Firearms Fed'n v. Kotek*, 2023 U.S. LEXIS 121299, *49 (D. Or. July 14, 2023), *appeal pending* (upholding Oregon statute similar to Illinois statute). Courts waging war on the Second Amendment can and will characterize every aspect of gun violence as involving "unprecedented societal concerns". (App. 25.) They can and will characterize any technology beyond early muskets and rifles as involving "dramatic technological changes" (App. 25).

In a very real way, this Court is facing what the men and women serving as police officers all over the United States face every day: the rise of a class of Americans who do not feel bound by the rule of law and whose swelling ranks threaten our Constitutional order and, indeed, our very survival as a Nation.

The lesson the Nation's police officers can provide this Court is that it is important to stamp

out disorder quickly, before casual disregard for this Court's precedents spreads to a degree that strains the ability of this Court to control it, just as many of the Nation's cities are falling into greater and greater disorder from political choices to protect criminals and punish the law abiding.

Titus Livius Patavinus (Livy) wrote of the decline of the Roman Republic:

> ". . . as the standard of morality gradually lowers, let him follow the decay of the national character, observing how at first it slowly sinks, then slips downward more and more rapidly, and finally begins to plunge into headlong ruin, until he reaches these days, in which we can bear neither our diseases nor their remedies."[17]

As four dissenting judges in the Ninth Circuit recently pointed out, already, "three times now," this Court "has warned courts not to treat the Second Amendment as a disfavored right". *Duncan*, 83 F.4th at 810.

Like a police officer who has repeatedly extended the grace of warnings to an offender without effect, and then arrests the offender, this

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[17] Preface to Livy, *The History of Rome, Book 1* (Rev. Canon Roberts, Ed.) (available at https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0026 (accessed 3/6/24)).

Court needs to remedy the disease of rebellion against the Second Amendment by granting this and related petitions. In the unique context of Second Amendment litigation, granting the Petition is a quintessential exercise of supervisory power to strike down the mass of Court of Appeals opinions in open rebellion against *Heller*, *Bruen* and this Court's authority. "Enough should be enough." *Duncan*, 83 F.4th at 823 (Bumatay, Ikuta, Nelson & Vandyke, JJ., dissenting).

III. THE PROCEDURAL STATUS OF THE CASE FURTHER MILITATES IN FAVOR OF THE EXERCISE OF SUPERVISORY AUTHORITY.

As Petitioners point out, this Court has already rejected extensive fact-finding efforts concerning the usefulness of particular weapons in common use. (Petition at 2.) But the Seventh Circuit openly seeks to force citizens defending their fundamental constitutional rights to present "more evidence than is [typically] presented in the early phases of litigation" (App. 38) to prevent interference with their most fundamental civil rights. Legal insurrection against the Second Amendment is resulting in an army of taxpayer-funded attorneys deployed across the country to support the outlawing of modern semi-automatic weapons under the guise of banning "assault weapons".

The enormous sums spent by state and local governments in attempting to destroy the Second Amendment by extra-constitutional means—*i.e.*,

other than repealing it—are diverted from expenditures for local law enforcement and other local needs. The NPA is aware of no comprehensive analysis but notes that the firm that prevailed in *Heller* recently petitioned for $3.5 million in a case where the three attorneys there involved were reportedly "far outnumbered in lawyers, legal resources and government funding".[18] At the same time, municipalities and states ostensibly concerned with gun violence are defunding the police and letting those who violate existing gun laws walk free.

Granting the Petition will permit this Court to even more firmly declare that unless and until the Second Amendment is repealed, the Nation's courts need not be burdened with trials on whether or not commonly-held weapons are necessary for self-defense and the defense of others; the degree to which they are similar to military weapons; imagined benefits of restricting firearms ownership by law-abiding citizens; the nature of injuries caused by firearms; and many other utterly irrelevant issues. All these issues should evaporate under the force of the clear Constitutional command that the "right of the people to keep and bear Arms, shall not be infringed". A clear ruling that modern semi-automatic weapons and standard-capacity magazines sold with them are beyond the power of the state to prohibit will conserve enormous judicial and other scarce public resources.

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[18] https://www.scotusblog.com/2008/08/the-bill-for-heller-35-million/ (accessed 2/17/24).

Unless this Court puts an end to the wave of frivolous attacks on the Second Amendment, these gross wastes of public funding will continue to occur, fostering local disorder and continuing disrespect for the rule of law. The job of the Nation's police officers will only get more difficult. They do not need more gun laws; they need the resources to enforce the laws we have that focus on criminal behavior involving guns, and the simple willingness to uphold those laws by punishing criminals who violate them.

The NPA also recommends that this Court use this case as a vehicle for clarifying the test for preliminary injunctions in the Second Amendment context. Judicial experience now confirms that the longstanding presumption of constitutionality employed by the Seventh Circuit to strike down a preliminary injunction in this case (*see* App. 18) has no application in the context of widespread legal insurrection against the Second Amendment. There should be no presumption of constitutionality when the state seeks to limit criminality by regulating the Second Amendment rights of the law-abiding.

So too must irreparable harm be presumed from the abrogation of fundamental civil rights. That the Seventh Circuit regards this as a debatable question (App. 50) is yet another hallmark of its insurrection against the Second Amendment.

Conclusion

For the foregoing reasons, this Court should accept the Petition.

Respectfully submitted,

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