NO. 18-824

In the
Supreme Court of the United States

THOMAS R. ROGERS, et al.,

Petitioners,

v.

GURBIR S. GEWAL, et al.,

Respondents.

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

BRIEF FOR *AMICUS CURIAE* NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. IN SUPPORT OF PETITIONERS

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
WILLIAM K. LANE III
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
paul.clement@kirkland.com

Counsel for Amicus Curiae

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provision

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The National Rifle Association ("NRA") is America's oldest civil rights organization and is widely recognized as America's foremost defender of Second Amendment rights. The NRA was founded in 1871 by Union generals who, based on their experiences in the Civil War, desired to promote marksmanship and expertise with firearms among the citizenry. Today, the NRA boasts approximately five million members and its programs reach millions more. The NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA also collects and publishes real-life examples of citizens from all walks of life whose lawful possession of firearms enabled them to protect themselves from violent criminals. The NRA has a significant interest in the question presented because the NRA does not view the Second Amendment as a homebound right, and the rights of its members are infringed by laws that, like the one at issue here, preclude law-abiding individuals from carrying firearms outside the home for the constitutionally protected purpose of self-defense.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented to this filing in letters on file with the Clerk's office. The parties have been given notice of this filing.

SUMMARY OF THE ARGUMENT

As this Court made clear in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and again in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Second Amendment, at its core, guarantees a right to possess a firearm for the purpose of self-defense. That right necessarily extends beyond the four walls of one's home—the text and structure of the Second Amendment and the history of the right make this clear. Indeed, *Heller* itself, fairly read, compels the same conclusion.

Despite the wealth of authority demonstrating that the Second Amendment guarantees a right not just to keep arms, but also to bear them outside the home for self-defense, several Courts of Appeals continue to resist that conclusion, leaving the law in a state of chaos and the fundamental right to carry a firearm dependent on where one lives. This Court should grant certiorari, resolve this untenable circuit split, and restore to *all* the People protected by the Second Amendment the right to keep *and* bear arms.

ARGUMENT

I. The Second Amendment Protects The Right To Carry Firearms Outside The Home.

In affirming the restrictive handgun carry permit regime that petitioners challenge, the Third Circuit "decline[d] to definitively declare that the individual right to bear arms for the purpose of self-defense extends beyond the home." *Drake v. Filko*, 724 F.3d 426, 431 (3d Cir. 2013). The Third Circuit's refusal to accept the obvious conclusion that the right protected by the Second Amendment is not limited to the confines of one's home is at odds with the text,

structure, and purpose of the Second Amendment and the history underlying it.

A. The Text, Structure, and Purpose of the Second Amendment Confirm That the Right to Bear Arms Extends Beyond the Home.

The Second Amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Critically, this Court already has held that the text protects two separate rights: the right to "keep" arms and the right to "bear" them. *See Heller*, 554 U.S. at 591 ("keep and bear arms" is *not* a "term of art" with a "unitary meaning"). Under *Heller*'s construction, to "keep arms" means to "have weapons." *Id.* at 582. To "bear arms" means to "carry" weapons for "confrontation"—to "wear, bear, or carry" firearms "upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

Because "[t]he prospect of confrontation is … not limited to one's dwelling," the term "bear" is most naturally read to encompass the carrying of a weapon beyond the walls of one's residence. *Young v. Hawaii*, 896 F.3d 1044, 1052 (9th Cir. 2018). To say otherwise—to confine the right to the home—cannot be reconciled with the Second Amendment's "*central component*": individual self-defense. *Id.* at 1069; *see also, e.g.*, *Wrenn v. District of Columbia*, 864 F.3d 650,

657 (D.C. Cir. 2017) ("After all, the Amendment's 'core lawful purpose' is self-defense, and the need for that might arise beyond as well as within the home.") (citation omitted); *Moore v. Madigan*, 702 F.3d 933, 941 (7th Cir. 2012) ("[T]he interest in self-protection is as great outside as inside the home."); *accord Heller*, 554 U.S. at 679 (Stevens, J., dissenting) ("[T]he need to defend oneself may suddenly arise in a host of locations outside the home."). Indeed, "[t]o speak of 'bearing' arms within one's home would at all times have been an awkward usage." *Moore*, 702 F.3d at 936; *see Grace v. District of Columbia*, 187 F. Supp. 3d 124, 135 (D.D.C. 2016) ("[R]eading the Second Amendment right to 'bear' arms as applying only in the home is forced or awkward at best, and more likely is counter-textual."), *vacated on other grounds*, *Wrenn*, 864 F.3d at 663-64. It is far "more natural to view the Amendment's core as including a law-abiding citizen's right to carry common firearms for self-defense beyond the home." *Wrenn*, 864 F.3d at 657.

Confining the right to "bear arms" to the home not only would be nonsensical, but would render the right largely duplicative of the separately protected right to "keep" arms. That would contradict the basic principle that no "clause in the constitution is intended to be without effect." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174, 2 L. Ed. 60 (1803). "The addition of a separate right to 'bear' arms, beyond keeping them, should therefore protect something more than mere carrying incidental to keeping arms." *Young*, 896 F.3d at 1052-53, *citing* Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 271 (1880) ("[T]o bear arms implies something more than the mere keeping."). And

"[u]nderstanding 'bear' to protect at least some level of carrying in anticipation of conflict outside of the home provides the necessary gap between 'keep' and 'bear' to avoid rendering the latter guarantee as mere surplusage." *Young*, 896 F.3d at 1053. In short, the most natural reading of the right to bear arms encompasses carrying a firearm outside the home. Tellingly, not a single circuit to date has embraced a different interpretation of "bear."

The conclusion that the Second Amendment protects a right to carry a firearm outside the home is reinforced by the amendment's structure. As this Court explained, the Second Amendment's prefatory clause—"[a] well regulated Militia, being necessary to the security of a free State"—performs a "clarifying function" with respect to the meaning of the operative clause. *Heller*, 554 U.S. at 577-78. Here, the prefatory clause's reference to "the Militia" clarifies that the operative clause's protection of the right to "bear Arms" encompasses a right that extends beyond the home. Militia service, of course, necessarily includes bearing arms in public. The Revolutionary War was not won with muskets left at home; nor were the Minutemen notorious for their need to return home before being ready for action. And all the members of this Court in *Heller* agreed that the right to bear arms was codified at least in part to ensure the viability of the militia. *See id.* at 599; *id.* at 637 (Stevens, J., dissenting). The Court thus *unanimously* agreed that one critical aspect of the right to bear arms extends beyond the home.

B. The History of the Second Amendment Confirms That the Right to Bear Arms Extends Beyond the Home.

The "historical background" of the Second Amendment "strongly confirm[s]" that the right to bear arms extends beyond the home. *Heller*, 554 U.S. at 592. The Second Amendment traces its roots back to England, where Blackstone described "the right of having and using arms for self-preservation and defence," 1 William Blackstone, *Commentaries* 136, 140 (1765), as "one of the fundamental rights of Englishmen." *Heller*, 554 U.S. at 594. The "fundamental" right to use arms for "self-preservation and defence" necessarily included the right to carry firearms outside the home because, as discussed, the need for self-defense necessarily arose outside the home. Indeed, English authorities made clear that "the killing of a Wrong-doer … may be justified … where a Man kills one who assaults him *in the Highway* to rob or murder him." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 71 (1762) (emphasis added); *see also* 1 Matthew Hale, *Historia Placitorum Coronae* 481 (Sollom Emlyn ed. 1736) ("If a thief assaults a true man *either abroad or in his house* to rob or kill him, the true man … may kill the assailant, and it is not felony." (emphasis added)).

The need to carry for self-defense beyond the home was even greater in early America, which was dominated by "wilderness" and threats from "hostile Indians," among other dangers. *Moore*, 702 F.3d at 936. As St. George Tucker explained in his American version of Blackstone's Commentaries, "[i]n many parts of the United States, a man no more thinks, of

going out of his house on any occasion, without his rifle or musket in his hand, than a European fine gentleman without his sword by his side." 5 St. George Tucker, *Blackstone's Commentaries*, app, n.B (1803).

Tucker's observation regarding the ubiquity of publicly borne arms is confirmed by accounts from prominent figures of the time. Many of the Founding Fathers, including George Washington, Thomas Jefferson, and John Adams carried firearms in public and spoke in favor of the right to do so—a clear indication that the right to bear arms was not limited to the home. *See Grace*, 187 F. Supp. 3d. at 137. And in many parts of early America, the public carrying of arms was not only permitted, but *mandated*. *See* Nicholas J. Johnson, et. al., *Firearms Law and the Second Amendment* 106 (2012) ("[A]bout half the colonies had laws requiring arms-carrying in certain circumstances."). "[I]t is unquestionable that the public carrying of firearms was widespread during the Colonial and Founding Eras." *Grace*, 187 F. Supp.3d. at 136. The right to armed self-defense was considered by men of the era to be the "true palladium of liberty," 1 Tucker, *Blackstone's Commentaries*, app, n.D, and "was by the time of the founding understood to be an individual right protecting against both *public* and private violence," *Heller*, 554 U.S. at 594 (emphasis added).

Early American judicial authorities confirm that the Second Amendment was understood to include the right to bear arms in public in some manner. The decision of the Kentucky Court of Appeals in *Bliss v. Commonwealth*, 12 Ky. 90 (1822), is particularly

instructive given its proximity to the founding. *See* Nelson Lund, *The Second Amendment,* Heller*, and Originalist Jurisprudence*, 56 UCLA L.Rev. 1343, 1360 (2009). In fact, both Thomas Jefferson and John Adams were still alive when it issued. The court in that case struck down a statute banning generally the concealed carrying of weapons, holding that the act violated Kentucky's analogue to the Second Amendment. *See Bliss*, 12 Ky. at 93. In so doing, the *Bliss* court assumed that Kentucky's constitution codified a preexisting right which "had then no limits short of the moral power of the citizens to exercise it, and it in fact consisted in nothing else but in *the liberty of the citizens to bear arms*." *Id.* at 92 (emphasis added).

Eleven years later, in *Simpson v. State*, 13 Tenn. 356, 361 (1833), Tennessee's highest court held that the State's constitution prevented a citizen from being indicted simply for being armed in public; instead, the State had to prove that a defendant had committed acts of physical violence to sustain a charge against him. *See id.* at 361-62. As the court explained, Tennessee's constitution guaranteed "an express power ... secured to all the free citizens of the state to keep and bear arms for their defence, without any qualification whatever as to their kind or nature." *Id.* at 360.

The Supreme Court of Alabama in *State v. Reid*, 1 Ala. 612 (1840), upheld the conviction of a man prosecuted under a statute forbidding the concealed carrying of firearms. In contrast to the approach taken in *Bliss*, the court determined that the Alabama constitution permitted the legislature "to enact laws

in regard to the manner in which arms shall be borne ... as may be dictated by the safety of the people and the advancement of public morals." *Id.* at 616. Even so, however, the court made clear that the legislature's power to regulate the manner in which firearms may be carried did not include the power to ban carrying a firearm entirely: "A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional." *Id.* at 616-17.

The Georgia Supreme Court expressed the same sentiment in *Nunn v. State*, 1 Ga. 243 (1846), when it reversed the conviction of a man under a statute making it a misdemeanor to carry a pistol openly or concealed. The court explained that the statute, as applied to the concealed carrying of firearms, was "valid, inasmuch as it does not deprive the citizen of his *natural* right of self-defence, or of his constitutional right to keep and bear arms. But that so much of it, as contains a prohibition against bearing arms *openly*, is in conflict with the Constitution, and *void*." *Id.* at 251. This Court considered *Nunn* particularly helpful in *Heller*, noting that it "perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause." 554 U.S. at 612.

Finally, in *State v. Chandler*, 5 La. Ann. 489 (1850), the Louisiana Supreme Court echoed the reasoning of the Georgia and Alabama high courts. The court refused to invalidate a concealed carry prohibition because it "interfered with no man's right

to carry arms ... 'in full open view,' which places men upon an equality. This is the right guaranteed by the Constitution of the United States." *Id.* at 490.

As these cases make clear, nineteenth century jurists decided case after case on the premise that the right to bear arms, as codified in the Second Amendment and numerous state analogs, guaranteed a right to carry a weapon in public for self-defense. *See* Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev. 585, 590 (2012). Every one of those cases could have been dispatched quickly and many of them would have been decided the other way if the Second Amendment right did not extend beyond the home. *Heller* relied on these cases as persuasive in surveying the contours of the Second Amendment to determine whether the Constitution guarantees a right to possess firearms in the home. *See Heller*, 554 U.S. at 585 n.9, 610-14, 629, 688. These authorities are even more compelling evidence that the right to carry—the specific topic with which they dealt—was not confined to the home.

To be sure, there are decisions from the nineteenth century that rejected an individual right to carry arms in public. *See, e.g.*, *State v. Buzzard*, 4 Ark. 18 (1842). The few cases that reached such a conclusion, however, either have been "sapped of authority by *Heller*" because they "assumed that the [Second] Amendment was only about militias and not personal self-defense," *Wrenn*, 864 F.3d at 658, or, in one instance, concerned the interpretation of a state Second Amendment analog that expressly allowed for

the broad regulation of the carrying of firearms, *see State v. Duke*, 42 Tex. 455, 458 (1874). The overwhelming weight of historical authority thus compels the conclusion that the fundamental right to bear arms was understood to guarantee a right to carry firearms outside of the home. Under *Heller*, "history matters, and here it favors the plaintiffs." *Wrenn*, 864 F.3d at 658.

C. The Reasoning of *Heller* Strongly Supports the Conclusion That the Second Amendment Protects a Right to Carry in Public.

In affirming New Jersey's oppressive carry regime, the Third Circuit distorted the holding of *Heller*. *See Drake*, 724 F.3d at 443-44 (Hardiman, J., dissenting). While the specific issue before this Court in *Heller* concerned the possession of a firearm in the home, the reasoning of *Heller* was in no way so limited.

As this Court explained, "the inherent right of self-defense has been central to the Second Amendment right." *Heller*, 554 U.S. at 628; *see also id.* at 599 ("[S]elf-defense ... was the *central component* of the right."); *McDonald*, 561 U.S. at 749-50 ("the Second Amendment protects the right to keep and bear arms for the purpose of self-defense"). *Heller* thus began with the proposition that the Second Amendment protects a right to self-defense; the Court then applied that understanding of the right to the specific regulation at issue—a general prohibition on possessing handguns in the home. *See Heller*, 554 U.S. at 575.

That law proved unconstitutional, the Court explained, because it made "it impossible for citizens

to use them for the core lawful purpose of self-defense." *Id.* at 630. But while the Court observed that "the need for defense of self, family, and property is *most* acute" in the home, *id.* at 628 (emphasis added), that hardly compels the conclusion that "it is not acute outside the home," *Moore*, 702 F.3d at 935. Indeed, nothing in *Heller* suggests that its logic terminates at the threshold. To the contrary, if *Heller* is to be taken at its word that the Second Amendment protects a right to self-defense, then the right to bear arms is necessarily implicated by regulations that restrict the ability of one to carry a weapon in public, as the need for self-defense frequently arises outside the home.

Moreover, several portions of *Heller* make sense only on the understanding that the right is not home-bound. For instance, the Court noted that "nothing in our opinion should be taken to cast doubt on ... laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Heller*, 554 U.S. at 626. That caveat makes sense only if the Second Amendment applies outside the home. The Court also likened D.C.'s handgun ban to the "severe restriction[s]" on the carrying of firearms that had been struck down in *Nunn* and *Andrews*. *See id.* at 629. Describing those as among the most extreme restrictions on Second Amendment rights would make no sense if the amendment did not extend outside the home at all.

This Court's decision in *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016), likewise makes sense only on the assumption that there is a right to bear arms outside the home. In a per curiam opinion, the Court

reversed a decision of the Massachusetts Supreme Judicial Court upholding the conviction of a woman found in possession outside the home of a stun gun she was carrying to defend herself from an abusive boyfriend. *Id.* at 1027-28; *id.* at 1028 (Alito, J., concurring). The Supreme Judicial Court failed to faithfully follow *Heller*, this Court explained, when it insisted that the Second Amendment protected only weapons that were in common usage at the time of its ratification and were in use by the military. *See id.* at 1027-28. But if the Second Amendment had no application outside the home, the defense asserted in *Caetano*—that the Second Amendment protects the carrying of stun guns—would have been frivolous.

In sum, this Court's opinions explicating the meaning of the right to keep and bear arms are unequivocal: The Second Amendment, at its core, guaranties a right to self-defense. *See, e.g.*, *McDonald*, 561 U.S. at 749-50. "[I]nterpreting the Second Amendment to extend outside the home is merely a commonsense application of the legal principle established in *Heller* and reiterated in *McDonald* ...." *Drake*, 724 F.3d at 446 (Hardiman, J., dissenting). Any construction of the Second Amendment that denies a right to carry a firearm outside the home is inconsistent with this Court's jurisprudence.

II. This Court Should Grant Certiorari To Resolve The Open And Acknowledged Circuit Split On This Question.

Notwithstanding the clear import of the constitutional text, the well-documented history of the right to bear arms in England and America, and this Court's decisions in *Heller* and *McDonald*, lower

courts remain deeply divided over whether the Second Amendment guarantees a right to carry a firearm outside the home for self-defense. This Court should grant certiorari and resolve this untenable circuit split.

1. In the ten years since this Court's decision in *Heller*, three Courts of Appeals—the Seventh Circuit, the Ninth Circuit, and the D.C. Circuit—have correctly concluded that the Second Amendment protects a right of citizens to carry firearms in public. *See Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017). In all three cases, as here, the challenged regulation severely restricted citizens from being armed outside the home. The laws at issue in Wrenn and Young in particular were materially indistinguishable from New Jersey's regulation. While other courts had previously refused to invalidate such laws on Second Amendment grounds, the D.C. Circuit in Wrenn broke with its sister circuits. The Ninth Circuit followed suit the following year.

These decisions, along with *Moore*, share two important things in common. *First*, they took seriously the admonitions of *Heller* and *McDonald* that the Second Amendment's guarantee is, at its core, a right to self-defense. *See Heller*, 554 U.S. at 630; *McDonald*, 561 U.S. at 749-50. Any proper application of *Heller* and *McDonald* must flow from this central assumption. Consequently, these courts concluded that the Second Amendment applies outside the home because the need for self-defense inevitably arises there. *See Moore*, 702 F.3d at 942 ("[A] right to carry

firearms in public may promote self-defense."); *Young*, 896 F.3d at 1074 ("[T]he Second Amendment does protect a right to carry a firearm in public for self-defense."); *Wrenn*, 864 F.3d at 667 ("At the Second Amendment's core lies the right of responsible citizens to carry firearms for personal self-defense beyond the home ....").

Second, these decisions gave substantial weight to the history of the right to bear arms—precisely as *Heller* instructed. *See* 554 U.S. at 605. Both *Wrenn* and *Young* dedicated considerable discussion to the origin of the right and provided thorough analyses of the relevant legal treatises and nineteenth century case law. *See Wrenn*, 864 F.3d at 658-61; *Young*, 896 F.3d at 1053-68. And *Moore* rejected Illinois's request "to repudiate [the Supreme] Court's historical analysis," which, the court explained, implied "that the constitutional right of armed self-defense is broader than the right to have a gun in one's home." 702 F.3d at 935; *see also id.* at 936-37 (evaluating the historical right to bear arms in medieval and early-modern England).

2. In stark contrast to the decisions of the Seventh, Ninth, and D.C. Circuits, the First, Second, Third, and Fourth Circuits have all either refused to recognize the Second Amendment's applicability outside the home or declined to give it any meaningful force. *See Gould v. Morgan*, 907 F.3d 659 (1st Cir. 2018); *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013). While *Moore*, *Wrenn*, and *Young* embraced *Heller*, these decisions defied it.

First, each of these decisions misconstrued the foundation of the Second Amendment. The court in *Gould*, for example, claimed that "the core right protected by the Second Amendment is—as *Heller* described it—'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Gould*, 907 F.3d at 672 (quoting *Heller*, 554 U.S. at 635). While *Heller* did, of course, hold that a citizen had the right to keep a firearm in the home, "the core lawful purpose" of the right is self-defense—regardless of where such need arises. *Heller*, 554 U.S. at 630. *Kachalsky, Drake*, and *Woollard* make the same mistake. *See Kachalsky*, 701 F.3d at 94 ("*Heller* explains that the 'core' protection of the Second Amendment is the 'right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" (quoting *Heller*, 554 U.S. at 634-35)); *Drake*, 724 F.3d at 431 ("[W]e decline to definitively declare that the individual right to bear arms for the purpose of self-defense extends beyond the home, the 'core' of the right as identified by *Heller*."); *Woollard*, 712 F.3d at 874 ("*Heller*, however, was principally concerned with the 'core protection' of the Second Amendment: 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" (quoting *Heller*, 554 U.S. at 634-35)).

Second, the First, Second, Third, and Fourth Circuits declined to undertake any meaningful analysis of the history surrounding the right to bear arms. Indeed, the Third Circuit in *Drake* openly declared that it was "not inclined to address [text, history, tradition and precedent] by engaging in a round of full-blown historical analysis," and instead just insisted that "[h]istory and tradition do not speak

with one voice," 724 F.3d at 431 (quoting *Kachalsky*, 701 F.3d at 91). The Second Circuit likewise would not deign to engage in the historical analysis that *Heller* requires, instead declaring (contrary to *Heller* itself) that the "history and tradition" of "the meaning of the Amendment" is "highly ambiguous." *Kachalsky*, 701 F.3d at 91. And the Fourth Circuit in *Woollard* did not even acknowledge that a historical inquiry was part of *Heller*'s analysis; instead, the court held that Maryland's carry regime withstood scrutiny without so much as considering the scope of the right. *See* 712 F.3d at 874-76. While the First Circuit at least admitted that history matters, it summarily dismissed the very same nineteenth century cases on which *Heller* itself relied as reflecting merely "practices in one region of the country." *Gould*, 907 F.3d at 670.

3. Unfortunately, the refusal of some lower courts to meaningfully engage in the textual and historical analysis that *Heller* requires is not confined to cases involving the right to bear arms outside the home. Time and again, courts have effectively replaced *Heller*'s textually and historically grounded analysis with a loose form of "interest-balancing" in which the state always wins. *See, e.g.*, *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. New Jersey*, 910 F.3d 106 (3d Cir. 2018); *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017); *N.Y. State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015); *Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012); *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011). But while this watered-down approach to the Second

Amendment is common, that does not make it correct. As Judge Bibas recently noted in dissent, while the majority joined at least five other circuits in treating the Second Amendment as a second class right, "*Heller* overruled nine" circuits. *N.J. Rifle & Pistol Clubs*, 910 F.3d at 134. Only this Court has the power to restore rigor to Second Amendment analysis, and the need is as great now as it was in *Heller*.

There is no Second Amendment question more pressing than whether the fundamental right that the amendment guarantees is confined to the home. While the vast majority of states have correctly concluded that it is not, and strongly protect the right of their citizens to carry firearms, a minority of jurisdictions stubbornly refuse to follow suit. Yet that minority includes some of the nation's largest cities and states located in federal circuits that have neglected the teaching of *Heller* and *McDonald*, thus leaving tens of millions with no lawful avenue to carry a firearm for self-defense. That situation is untenable. The exercise of a fundamental right expressly guaranteed by the Constitution to all "the People" cannot be made to turn on where someone lives. The Court should grant certiorari and resolve this persistent circuit split.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
WILLIAM K. LANE III
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
paul.clement@kirkland.com

Counsel for Amicus Curiae

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