No. 21-5464

In the
Supreme Court of the United States

STEVEN E. WALKER,
Petitioner,

v.

UNITED STATES OF AMERICA, and STATE OF CALIFORNIA.
Respondents.

ON A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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In Pro se

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PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 44.2, Steven E. Walker respectfully petitions for rehearing of the Court's December 6, 2021, order denying certiorari in this case.

GROUNDS FOR REHEARING

The original Petition for a Writ of Certiorari presented important constitutional questions of whether the Second Amendment is supreme constitutional authority, and whether this supreme authority precludes government from enacting and enforcing any law which invades upon the fundamentally necessary yet personal right to keep and bears arms to protect one's state of freedom and independence.[1] Basically, the Second Amendment protects the "central" right of "security," and the auxiliary right to keep and bear arms which is "necessary" to security. *See Necessary To The Security Of A Free State: Federalism And The Original Meaning Of The Second Amendment*, by Douglas H. Walker, at p. 87 (2011)[Electronic Version].

Rule 44.2 authorizes petitions for rehearing from the denial of certiorari under the following circumstances: (1) if a petition can demonstrate "intervening circumstances of a substantial or controlling effect"; or (2) if a petitioner raises "other substantial grounds not previously presented." *Id.* Here, Petitioner is raising other substantial grounds not previously presented to this Court. Specifically, the claims filed in the district court and majority of the grounds raised, which were summarily dismissed, concerned a facial challenge that *all* state and federal laws enacted and enforced as "gun control" laws are, in fact,

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[1] The answer to which is obvious, yet this Court refuses to acknowledge, that "yes" the Second Amendment is supreme Constitutional authority, and "yes" government is jurisdictionally barred from encroaching upon or prohibiting its protections to any American citizen.

unconstitutional *anti-self-defense* laws. The district court and Ninth Circuit assumed Petitioner was only challenging the unconstitutional laws as applied to him. Neither court addressed Petitioner's facial challenges to these patently unconstitutional laws. *See* Appendix A and Appendix B attached to Original Petition for Writ of Certiorari. Rehearing should be granted to bring clarity that all government actors, agents, and elected officials are jurisdictionally barred from infringing upon supreme constitutional protections:

This Court Should Grant Rehearing In Order To Clarify Whether The Second Amendment's Supreme Constitutional Command Jurisdictionally Bars Government From Invading Upon Its Protections In Any Manner.

To clarify this matter, the Court should first turn to the text of the Second Amendment. The text *is* the history of the Amendment. It is very explicit in stating that the "...right of the People to keep and bear arms, *shall not be* infringed." U.S. Const. Amend. II.

The Amendment does not confer a right to keep and bear arms upon anyone, because the right to *armed* self-defense existed prior to its enactment and "shall not be infringed" is a clear "jurisdictional" restriction. Basically, the Second Amendment eliminates government power over the right of any person to keep and bear arms. *See Necessary To The Security Of A Free State: Federalism And The Original Meaning Of The Second Amendment, supra,* at pp. 85-88*; also see* U.S. Const. Amend. IX ["The enumeration in the Constitution, of certain rights, *shall not be* construed to deny or disparage others retained by the people"].

1. The Ninth Amendment Supports The Second.

In interpreting the Constitution, real effect should be given to all the words it uses. The Ninth Amendment

to the Constitution, like the Second Amendment "*since 1791* it has been a basic part of the Constitution *which we are sworn to uphold.*" *Griswold v Connecticut*, 381 U.S. 479, 491 (1965) [Conc. Opn by Goldberg J.]. To hold that a right so basic and fundamental and so deep-rooted in our society as the right to armed self-defense may be infringed because that right is not guaranteed *in so many words* by the Second Amendment to the Constitution "is to ignore the Ninth Amendment and to give it no effect whatsoever." *Id.*[2] Moreover, the Second Amendment's jurisdictional restriction applies to all government due to the very fact that its protections are "*necessary to the security*" of *every* American citizen. *See Necessary To The Security Of A Free State: Federalism And The Original Meaning Of The Second Amendment, supra* at pp. 86-87; *and* U.S. Const. Amend. II.

In addition, the right to keep and bear arms is an "auxiliary right," which is not only required to protect the inherent natural right of self-defense and personal security, but its possession by individual citizens is "*immune*" from governmental infringement. *Ibid.* Thus, the Ninth and Second Amendments are to be construed *in pari materia,* as establishing a jurisdictional bar that fundamental rights shall not be denied, disparaged, or

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[2] Basically, the right to "self-defense" is not "*in so many words*" specifically enumerated in the Second Amendment and, therefore, the Second Amendment shall not be construed to deny or disparage that right. Consequently, the Ninth Amendment also establishes a "presupposition" that those Second Amendment rights retained by the People shall not be denied or disparaged. *Cf. Seminole Tribe of Fla. V. Florida,* 517 U.S. 44, 54 (1996)["we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition. . . which it confirms"]; *also see Griswold, Supra,* 381 U.S. at 491 [[i]t cannot be presumed that any clause in the constitution is intended to be without effect."]

infringed. *See United States v. Freeman*, 44 U.S. 556, 564-565 (1845).

"The fact that the auxiliary right to bear arms exist[s] to check the government implies that the private ownership of weapons could not be prohibited by it under any pretext." To enable the people to oppose repressive rulers, "the Second Amendment forbade the government from disarming them." *See Necessary To The Security Of A Free State: Federalism And The Original Meaning Of The Second Amendment, supra* at pp. 86-88 Thus, much like the Eleventh Amendment which acts as a jurisdictional bar on the power of the federal judiciary—specifically, that power "...*shall not be* construed to extend to any suit in law or equity..." *see Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 97-102 (1984)—the Second Amendment acts as a jurisdictional bar on the powers of government in that it *shall not be construed* to infringe upon (disparage) or prohibit (deny) the right to armed security. Consequently, "shall not be" in the constitutional sense, is a command which abolishes any delegation of power to act.[3] Essentially, government can only exercise its

[3] Other Amendments to the Constitution establish jurisdictional restrictions upon the delegation of government powers. The First Amendment restricts government from making laws which curtail free speech, peaceful assembly, and petition, as well as government involvement in religion. However, over the years the Court has carved out exceptions. The Third Amendment restricts military power from quartering soldiers but contains a very specific caveat. The same with the Fourth Amendment, prohibits government from search and seizure, but only allows it under restricted yet reasonable grounds. The Ninth Amendment, like the Eleventh, jurisdictionally bars government from "construing" the enumerated rights as denying or disparaging other retained rights. The only difference between the jurisdictional restrictions of these Amendment's and that of the Second, is the Second contains no exceptions, and none can be donut holed into it. *Cf. Bostock v. Clayton County Georgia*, 140 S.Ct. 1731, 1747-1750 (2020)

powers *to protect* the rights of the people, and "can exercise no other." *See United States v. Cruikshank*, 92 U.S. 542. 549 (1876) The jurisdictional bar of the Second Amendment however has no other effect than to "restrict the powers" of government from trespassing upon the right. *Id.* 92 U.S. at 553. Accordingly, Petitioner's claims must be analyzed under the Second Amendment's "shall not be infringed" standard or the Ninth Amendment's "shall not be construed" standard, rather than under a substantive due process approach. Because those Amendments "provide[] an explicit textual source of constitutional protection against this sort of . . . intrusive governmental conduct, th[ose] Amendment[s], not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Cf. Graham v. Connor*, 490 U.S. 386, 395 (1989). The lower courts in this case, failed to analyze Petitioner's facial challenge under the Second or Ninth Amendments. Instead, they implausibly relied upon unimpressive, constitutionally unsound dictum.

2. A Facial Challenge That "Gun Control/Anti-Self-Defense" Laws Are Patently Unconstitutional Under The Second And Ninth Amendments Establishes A Substantive Constitutional Issue.

A facial challenge to a regulation or law under the Second Amendment and Ninth Amendment cannot be subject to First Amendment standards, for the very reason that the text and purpose of the Second Amendment is completely diverse from that of the First.

The First Amendment protects the rights of speech, assembly, petition, and religion. Whereas, the Second Amendment, protects life, liberty and the pursuit of happiness as well as every fundamental right associated with the other Amendments. Essentially, the right to bear arms *exists to check the government* and "implies that the private ownership of weapons could not

be prohibited by it under any pretext." To enable the people to oppose repressive rulers, "the Second Amendment *forbade* the government from disarming them." *See Necessary To The Security Of A Free State: Federalism And The Original Meaning Of The Second Amendment, supra,* at p, 87.

The crucial point to understand, however, is not what the founders believed the right to keep and bear arms entailed "but why they thought it necessary to say it —shall not be infringed." *Id.* at p. 88.

A facial challenge under the Second Amendment only concerns whether a "gun control" law, *in any manner* of application, *infringes* upon *any person's* right to armed security. Consequently, the same applies with the Ninth Amendment in that the challenge only need show that the law denies or disparages the natural right to self-defense. Under these standards both California Penal Code sections §§ 29800-29900 *et seq.*, and 18 U.S.C. § 922 *et seq.*, "lacks any plainly legitimate sweep" *cf. U.S. v. Stevens*, 130 S.Ct. 1577, 1587 (2010), due to the indispensable fact that those laws clearly deny, and disparage the right of any person to defend themselves by infringing upon the means to do so. Especially, where those people are born-again law-abiding, responsible citizens. *E.g. Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) ["The parolee has been released from prison based on an evaluation that he shows *reasonable promise of being able to return to society and function as a responsible, self-reliant person*"]. However, under the anti-self-defense laws in question, once the parolee or probationer is "discharged" (*i.e.* cleared) from the punishment established by their conviction, by demonstrating that they are a free, functioning, responsible, law-abiding, and self-reliant person, they are incessantly disparaged from and denied the opportunity to secure and defend their life, liberty family and property from tyrants, criminals, and other

dysfunctional miscreants. *Cf. Kanter v. Barr*, 919 F.3d, 437, 461-62 (7th Cir. 2019)[diss. opn. by Barrett J.] There is no legitimate governmental interest in depriving a person of the inalienable right to self-security. *See* U.S. Const. Amend. IX; *and* Calif. Const. art. I §1.

By denying the right to the means of security, the right of protection itself is also denied.

That is exactly what "gun control" accomplishes. All gun control laws are "patently unconstitutional" because they do nothing more than penalize responsible law-abiding people for exercising their fundamental constitutional rights. Sec *Shapiro v. Thompson*, 394 U.S. 614, 631 (1969); *United States v. Jackson*, 390 U.S. 570, 581 (1968).

In *District of Columbia v Heller*, this Court merely mentioned in *dictum* that prohibitions of firearm possession by felons' were "presumptively lawful." *Id.* 128 S.Ct. 2783, 2817 & n. 26 (2008). This Court never mentioned "ex-felons" or "previously convicted," people. And, has yet to resolve where these presumptively lawful restrictions derived from. Particularly, the Court did not undertake a *full scope* analysis of the Second Amendment but mentioned these presumptively lawful measures were only "identif[ied]" as examples. *Id.* 128 S.Ct. at n. 26. Yet, failed to elaborate on where these "examples" came from. *Ibid.*

Those examples certainly did not derive from the history or text of the Second Amendment, nor any other provision of the Constitution. The history of the Amendment is derived from the text. The text of the Amendment *is its* historical weight where the act is clear upon its face, and when standing alone it is susceptible of but one construction. *Hamilton v Rathbone*, 175 U.S. 414, 419 (1899).

Clearly, "shall not be infringed," and "shall not be construed to deny or disparage" removes all doubt that government has power to control or prohibit the

supremacy of the people to exercise their fundamental rights *See* U.S. Const. Amend. X ["The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, ***are reserved*** to the states respectively, **or *to the people***"]; *Marbury v. Madison*, 5 U.S. 137 (1 Cranch 137), 176 (1803)[The people have an original right to establish such principles as shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected].

Accordingly, the Second Amendment, "was adopted by the Framers to ensure the protection of `our fundamental liberties.'" *Ashcroft v Gregory*, 501 U.S. 452, 460-61 (1991). Essentially, the Second Amendment respectfully reserves a power of "security" to each person which shall not be encroached upon. It does not delegate that power to government, and the Ninth Amendment commands that the Second shall not be "construed" to deny or disparage that power. Consequently, any type of "arms" control laws are patently unconstitutional.

3. Intervening Circumstances Of A Substantial Effect.

Rule 44.2 authorizes petitions for rehearing from the denial of certiorari if a petition can demonstrate "intervening circumstances of a substantial or controlling effect....." Rule 44.2(1).

There were two substantial intervening circumstances which transpired following the filing of this case in the lower courts and with this Court, which have an important impact on the right of armed self-defense by those accused of and labeled has criminals.

1. The first circumstance was the jury verdict in the nationally publicized case of Kyle Rittenhouse. *See* https://nypost.com/2021/11/19/kyle-rittenhouse-verdict-protesters-furious-but-not-surprised/.

Rittenhouse, a teenager, was exercising his rights to defend property, himself, and humanity in Kenosha Wisconsin, in August 2020, since government had failed

to protect society from the ravages of terrorist activity. *Ibid.* In defending himself from attack and possible death, Rittenhouse stood his ground which resulted in the shooting and killing of three terrorists. *Ibid.* The prosecution charged Rittenhouse with, *inter alia,* homicide, attempted homicide, and reckless endangerment. Rittenhouse pleaded self-defense. *Ibid.*[4]

On November 19, 2021, a jury acquitted Rittenhouse of all charges. The jury's acquittal of Rittenhouse is a clear and substantial determination that society considers the right to self-defense a fundamental right, and that even those people who are labeled as "criminals" are allowed to use firearms for security purposes.

The jury verdict in Rittenhouse is substantial to the outcome of this case because (1) jury's are a vital part of the American system of checks and balances; (2) jury trials prevent tyranny; (3) jury's participate in the process of governing; and (4) juries provide the voice of common sense and the perspective of the citizen to our developing body of law. *See* https://www.judges.org/wp-content/uploads/2020/03/Why-Jury-Trials-are-Important-to-a-Democratic-Society.pdf. The jury in Rittenhouse, reaffirmed that the right to self-defense is of vital constitutional importance, and that people shall not be held accountable for exercising the right.

2. The second circumstance, is the case of Andrew Coffee IV. Coffee attempted to save he and his girlfriend's lives by firing at multiple home invaders who

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[4] Since "self-defense" is a fundamental constitutionally protected right, like the presumption of innocence, then the prosecution should have the burden of proving its non-existence. Thus, current "stand your ground laws" are unconstitutional because they impermissibly shift the burden of self-defense upon the defendant to prove that he exercised a constitutionally protected right. *E.g. In re Winship,* 397 U.S. 358, 361-63 (1970).

crashed into his bedroom window in the middle of the night. Unfortunately, Coffee was unsuccessful at saving his girlfriend, Alteria Woods, where the home invaders shot her ten times. Because the armed invaders who killed his girlfriend wore badges, Coffee went to jail and was charged with Woods' murder. He was also charged with the attempted murder of the three officers who smashed in his window that night and killed his girlfriend. The incident occurred in 2017. See https://thefreethoughtproject.com/man-acquitted-for-defending-himself-for-cops-coffee/.

Coffee was also acquitted on the same day Rittenhouse was. The jury determined that Coffee acted in self-defense and that Coffee, and ex-felon, illegally possessed a firearm. The prosecution is seeking maximum punishment on the possession charge. *Ibid.*

This case is also illustrative because (a) the jury determined as a matter of public policy that people, including ex-felons, are allowed to defend themselves, (b) even though Coffee illegally possessed a firearm in self-defense, the possession had no bearing on his right to defend himself; and (c) state and federal firearm prohibition laws are patently unconstitutional in that they serve no other purpose than to penalize people who choose to exercise a constitutionally protected right. *Ibid.*; *but see cf. Shapiro v. Thompson*, Supra, 394 U.S. at 631; and *United States v. Jackson*, Supra, 390 U.S. at 581; *also see* https://www.courthousenews.com/felon-gets-immunity-for-gun-use-in-self-defense/

In sum, all firearm prohibition laws are patently unconstitutional in all manner of application.

CONCLUSION

The petition for rehearing should be granted.

Dated: December, 20, 2021.

Respectfully Submitted.

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