No. 17-719

In the Supreme Court of the United States

BARRY BAUER, *et al.*,

Petitioners,

v.

XAVIER BECERRA, Attorney General of California, *et al.*,

Respondents.

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

BRIEF OF AMICUS CURIAE NATIONAL AFRICAN AMERICAN GUN ASSOCIATION IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER

INTEREST OF AMICUS CURIAE[1]

The National African American Gun Association ("NAAGA") is a voluntary membership organization, with 50 chapters across the country, dedicated to protecting and defending the Second Amendment rights of the African-American community with respect to firearms ownership, self-defense, and defense of family. African Americans have been the target of some of the oldest and most odious attempts at forced disarmament; and today, African-American communities are victimized by violent crime at much higher rates than the rest of the Nation. Accordingly, NAAGA seeks to facilitate the use of firearms by African Americans for self-defense and recreation, and to preserve the African-American community through armed protection and community building. NAAGA welcomes people of all religious, social, and racial backgrounds. NAAGA has a strong interest in this case because taxes and fees imposed on the right to keep and bear arms disproportionately affect African Americans,

[1] Pursuant to SUP. CT. R. 37.2(a), amicus certifies that counsel of record for all parties received timely notice of the intent to file this brief and that all parties have given written consent to the filing of this brief. Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, that no party or party's counsel made a monetary contribution to fund its preparation or submission, and that the only person or entity, other than amicus or its members or counsel, that made such a monetary contribution was the National Rifle Association Civil Rights Defense Fund.

due to the average lower income and higher rate of poverty in the African-American community.

SUMMARY OF ARGUMENT

Since *M'Culloch v. Maryland*, this Court has understood that "the power to tax involves the power to destroy." 17 U.S. (4 Wheat.) 316, 431 (1819). Accordingly, across a wide variety of constitutional rights, the Court has made clear that "[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution." *Murdock v Pennsylvania*, 319 U.S. 105, 113 (1943). The government may impose *generally applicable* taxes that *incidentally* fall upon constitutionally protected conduct, for there is a difference between "impos[ing] a tax on the income or property of a preacher" and "exact[ing] a tax from him for the privilege of delivering a sermon." *Id.* at 112. The government may even charge fees that apply specifically to the exercise of fundamental rights, if they are limited in amount to what is necessary "to defray the expenses of policing the activities in question." *Id.* at 114. But what the government *may not* do is *single out* constitutionally protected conduct for special taxes or fees that are then used, in whole or in part, to fund programs that are "unrelated to the scope of the activities" of the law-abiding citizens who pay them. *Id.* at 113.

California has done just that. Over a quarter of the license fee that the State imposes on the acquisition of firearms within the state—$5 out of every

$19—is used *not* to defray the cost of the State's system for regulating firearm purchases but rather to fund a state crime-prevention program that seeks to ferret out criminals who possess firearms *illegally*.

A simple application of this Court's jurisprudence should, thus, have disposed of this case. But the panel below upheld California's fee, joining a minority of lower courts that have blessed such government attempts to charge ordinary citizens for the pleasure of tolerating their constitutional rights. That was an error—an error that threatens the constitutional freedoms of all citizens.

1. Governments have long sought to suppress the exercise of constitutional rights by saddling them with special taxes or fees. But in case after case—from the religious liberty of minority faiths to the freedom of newspapers holding out-of-favor political views to speak out against the establishment—this Court and others following its lead have invalidated those efforts. Whether they are popular or unpopular, wealthy or disadvantaged, this Court has made clear that individuals cannot be charged for exercising rights guaranteed to them by the Constitution. Fees or taxes may be imposed on constitutionally protected conduct only if the resulting revenues are used solely to defray the costs of facilitating or regulating the conduct of the fee-payors. (For example, if the government may legitimately require a license to engage in constitutionally protected conduct, the government generally may charge fees necessary to fund the administration of

the licensing system.) Because the Second Amendment cannot "be singled out for special—and specially unfavorable—treatment," *McDonald v. City of Chicago*, 561 U.S. 742, 778–79 (2010), California's law flunks that longstanding test.

2. Indeed, the taxes and fees that have been imposed on the Second Amendment exemplify two of the features that have strongly contributed to this Court's uniform rejection of such special charges in other constitutional contexts. First, the historical record shows that governments often impose these special taxes for the purpose of suppressing *unpopular* constitutional rights—or the exercise of constitutional rights *by the unpopular*. That is plainly the case with the Second Amendment, where state and local governments hostile to the right to keep and bear arms have increasingly turned to charging onerous taxes or fees as a means of quashing the right—a purpose and design that, in many cases, the government officials imposing the tax *explicitly avow*.

3. Further, levying special taxes or fees on constitutionally protected conduct—by the laws of economics—curbs the unwanted conduct in an *inherently retrogressive way*. While the wealthy and fortunate have the means to pay the State's toll, the disadvantaged and marginalized can be effectively *priced out* of exercising their constitutional freedoms by special government sur-charges. The retrogressive nature of these tax measures is noxious enough in any context. But it is especially perverse in this one, where poor and historically disadvantaged citizens are *precisely*

the individuals who have the *greatest need* for the Second Amendment right of armed self-defense, since they are disproportionately the victims of violent crime.

ARGUMENT

I. Across constitutional rights, the courts have consistently forbidden the use of special fees and taxes on constitutionally protected conduct to generate general revenue.

The State of California is not the first government to hit upon the idea of filling its coffers by imposing a special charge on constitutionally protected conduct. This Court, and others following its lead, have turned back efforts by officials at every level of government to single out the exercise of fundamental rights for special taxes and fees. In some cases, these surcharges appear to be nothing more than attempts by enterprising officials to find a new source of general revenue. But more ominously, these special taxes and fees often are self-evidently designed to *suppress* the conduct in question, either because of simple hostility to a particular constitutional right or because the government wants to ensure that only the "right kind of people" enjoy the right.

No matter which of these motives is operative, this Court has long recognized the danger attendant to levying special charges on those who seek to exercise a right guaranteed by the Constitution. And to guard against this danger, it has insisted that "[a]

state may not impose a charge for the enjoyment of a right granted by the federal constitution." *Murdock*, 319 U.S. at 113. Moreover, far from some idiosyncratic feature of "the First Amendment context," as the panel below repeatedly intimated, *e.g.*, Pet.App.15, the courts have enforced this principle across the constellation of constitutional rights.

For instance, one of the earliest cases invoking this principle involved not the right to free speech but rather the right to interstate travel that this Court has found implicit in the Constitution. In *Crandall v. Nevada*, the Court struck down a Nevada statute that "levied and collected a capitation tax upon every person leaving the State by any railroad or stage coach." 73 U.S. (6 Wall.) 35, 39 (1867). The State's attempt to impose a special charge "upon persons residing in the State who may wish to get out of it, and upon persons not residing in it who may have occasion to pass through it," this Court concluded, violated the right to travel—each citizen's right "to come to the seat of government," to "transact any business he may have with it," and "to free[ly] access . . . its sea-ports." *Id.* at 39, 44. Nor did it matter, the Court reasoned, that the tax imposed on each traveler was nominal; for

> if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one State can do this, so can every other State. And thus one or more States covering the only practicable routes of travel from the east to the west, or from the north to the

> south, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other.

Id. at 46. Accordingly, as this Court's subsequent cases have explained, the tax in *Crandall* was bad not because its *amount* was excessive but because that amount "was not limited . . . to travelers asked to bear a fair share of the costs of providing public facilities that further travel." *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707, 712 (1972).

This rule—that constitutionally protected conduct may not be singled out for fees and charges that raise revenue rather than merely fund programs regulating or facilitating the conduct of the very people paying the fees—was also enforced in a series of early cases involving the free exercise of religion. In *Murdock v. Pennsylvania*, this Court considered a city ordinance requiring "all persons canvassing for or soliciting . . . orders for goods, paintings, pictures, wares, or merchandise of any kind" to obtain a license from the City and to pay a fee (ranging from $1.50 per day to $20 for three weeks). 319 U.S. at 105, 106. The City prosecuted a group of Jehovah's Witnesses for violating this ordinance by "distributing literature and soliciting people to 'purchase' certain religious books and pamphlets," without first obtaining the required licenses. *Id.* This Court held that application of the ordinance unconstitutional. Because "[t]he power to tax the exercise of a privilege is the power to control or suppress its enjoyment," the Court reasoned, "[i]t

could hardly be denied that a tax laid specifically on the exercise of [religion] would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that." *Id.* at 108, 112.

Moreover, the *Murdock* Court noted that the ordinance in question was distinct from two other, related types of measures that *would* be constitutional. First, the Court clarified, it did not mean to call into question most *generally applicable* taxes: "for example, . . . a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities." *Id.* at 112. But "[i]t is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon." *Id.*[2] Second, the Court emphasized that the ordinance challenged in *Murdock* was "not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question." *Id.* at

[2] While *Murdock* itself muddied the clarity of this distinction, *see id.* at 115, this Court's later cases make clear that "generally applicable laws and regulations" are constitutional even if their application may in some cases indirectly increase the cost of constitutionally-protected activity. *Jimmy Swaggart Ministries v. Board of Equalization of Cal.*, 493 U.S. 378, 391 (1990); *see also Breard v. City of Alexandria*, 341 U.S. 622, 641–42, 645 (1951), *abrogated on other grounds by Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980). What the case-law stretching back to *Murdock* emphatically condemns are taxes and fees that *single out* conduct protected by the First Amendment.

113–14. While such a "registration system" and attendant "license tax" could pass constitutional muster, "[t]he constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized." *Id.* at 113–14 & n.8.

A year later, the Court relied on *Murdock*'s holding to strike down a similar ordinance in *Follett v. Town of McCormick*, 321 U.S. 573 (1944). As in *Murdock*, the law at issue in *Follett* imposed a license tax on the door-to-door sale of books; as in *Murdock*, that ordinance had been used to convict an individual for distributing literature from the Watch Tower Bible & Tract Society. Again, this Court struck down that application of the tax. "Freedom of religion is not merely reserved for those with a long purse," and thus "[t]he exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment[ ] is as obnoxious as the imposition of a censorship or a previous restraint." *Id.* at 576, 577 (citations omitted). Of course, "a preacher who preaches or a parishioner who listens . . . is [not] free from all financial burdens of government"; but that "does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Id.* at 577–78.

While the head tax struck down in *Crandall* was likely little more than a creative revenue-generating measure, the fees in *Murdock* and *Follett* bring into sharp relief the more invidious motives that often lead to the imposition of special taxes on constitutional

rights. One need not read too far between the lines in these cases to understand that the Jehovah's Witnesses were not the most popular characters in McCormick, South Carolina and Jeanette, Pennsylvania in the early 1940s. But as this Court made clear in *Murdock*, these disfavored proselytes "ha[ve] the same claim to protection as the more orthodox and conventional exercises of religion," "however misguided they may be thought to be." 319 U.S. at 109; *see also Follett*, 321 U.S. at 577 ("The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views.").

The fee cases arising in the Free Speech context also frequently involve special charges imposed out of naked hostility to the constitutionally protected conduct in question. In *Grosjean v. American Press Co.*, for instance, this Court struck down a Louisiana tax on the publication of advertisements in newspapers or magazines. 297 U.S. 233 (1936). That special charge, the Court reasoned, was akin to the eighteenth-century taxes designed "to suppress the publication of comments and criticisms objectionable to the Crown" that had been widely reviled in England and that had "aroused the American colonists to protest against taxation for the purposes of the home government." *Id.* at 246. Like those "taxes on knowledge," the Court concluded, the Louisiana tax amounted to "a deliberate and calculated device in the guise of a tax to limit the circulation of information." *Id.* at 250. In-

deed, the Court thought that invidious purpose evident from the tax's "history and . . . present setting," *id.*—history which included evidence that the tax had been targeted at a number of large Louisiana papers that had been critical of Senator Huey Long, who had advocated for the tax in the State Legislature by describing those newspapers as "lying newspapers" and characterizing the tax "as 'a tax on lying,' " *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 579–80 (1983).

The Court reaffirmed *Grosjean* more recently, in *Minneapolis Star & Tribune*. There, the Court struck down a Minnesota tax on the paper and ink used by newspapers, which was paired with a series of "exemptions, [that] limit[ed] its effect to only a few newspapers" in the State. *Id.* at 576. Minnesota's tax, the Court reasoned, both "singled out the press for special treatment," and also "target[ed] a small group of newspapers" within the broader category of the press. *Id.* at 582, 591. And while "[i]t is beyond dispute that the States and the Federal Government can subject newspapers to generally applicable economic regulations," "[a] power to tax differentially, as opposed to a power to tax generally, gives a government a powerful weapon against the taxpayer selected," since "the political constraints that prevent a legislature from passing crippling taxes of general applicability are weakened" in that context. *Id.* at 581, 585.

Finally, the Illinois Supreme Court applied the same principle in *Boynton v. Kusper*, 494 N.E.2d 135

(Ill. 1986).[3] That case concerned a license fee levied on the application for a marriage license. Under Illinois law, county clerks were charged with collecting a $25 fee for issuing marriage licenses; but while part of this fee went to defray "the county clerk's service of issuing, sealing, filing, or recording the marriage license," a 1983 statute provided that $10 from each fee was instead to be deposited "into the Domestic Violence Shelter and Service Fund," which helped to fund shelters for "family or household members who are victims of domestic violence and their children." *Id.* at 136, 138. The state supreme court held that though this $10 charge was costumed as a "license fee," because "[i]ts sole purpose is to raise revenue which is deposited in the Domestic Violence Shelter and Service Fund," it was in reality nothing more than "a tax." *Id.* at 138. Moreover, that tax "singled out" and "impose[d] a *direct* impediment to the exercise of the fundamental right to marry." *Id.* 140–41. Relying on this Court's decision in *Minneapolis Star & Tribune Co.*, the Illinois Supreme Court applied strict scrutiny and struck down this effort to "single[ ] out marriage as a special object of taxation," because there was no "interest of compelling importance [the state] could not achieve without the differential taxation." *Id.* at 140.

[3] *Boynton*'s holding is ultimately based on provisions of the Illinois Constitution, not the federal constitution; but as evidenced by the Illinois Supreme Court's numerous citations to the precedent from this Court throughout the opinion, both lines of constitutional jurisprudence dictated the same result, in that case.

Indeed, revenue-raising measures directed at the exercise of constitutional rights cannot satisfy heightened scrutiny because there always is a "clearly available" alternative—a generally applicable tax that does not single out a constitutional right.

While the principle that the government may not raise revenue by imposing special taxes and fees on constitutionally protected conduct may be most familiar in the Free Speech context, these cases, and many others, show that this rule is one of general application, and that it has in fact been applied to protect many other constitutional rights. Moreover, these cases illustrate two other important features of these forbidden taxes and fees—features that have contributed to this Court's disapproval of them. First, these charges are disproportionately imposed on *unpopular* constitutional rights, or the exercise of rights by *unpopular groups*. And second, by their very nature these special taxes and fees also disproportionately *affect the marginalized and financially disadvantaged*—those who, in *Follett*'s language, lack "a long purse." 321 U.S. at 576. As we show in the following two sections, both of these features are also present in the recent spate of attempts by state and local governments to tax the Second Amendment.

II. With increasing frequency, governments hostile to the Second Amendment have imposed special fees and taxes designed to suppress the right to keep and bear arms.

While the Second Amendment "is not the only constitutional right that has controversial public safety implications," *McDonald v. City of Chicago*, 561 U.S. 742, 783 (2010) (plurality), few rights are currently the target of as much government hostility—or as many attempts at outright suppression—as the right to keep and bear arms. In the decade since this Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), jurisdictions that refuse to accept the value choices enshrined by the Second Amendment have grasped at every conceivable means of suppressing the exercise of the right.

One mechanism that state and local governments hostile to the Second Amendment right have turned to at an increasing rate is the imposition of special taxes or fees designed to *raise the cost* of keeping and bearing arms and thereby *suppress the quantity* of such conduct.

Some jurisdictions impose a fee on the *purchase* or *possession* of a firearm. New York City, for instance, requires a license for the possession of a firearm within the City, and it charges a fee of $340 for each such license. N.Y.C. ADMIN. CODE § 10-131(a)(2). Massachusetts charges a fee of $100 for its "firearm identification card"—which it requires each resident to obtain before purchasing or possessing a firearm.

MASS. GEN. LAWS ch. 140, § 129B(9A). And Connecticut requires any person who wishes to purchase a handgun to obtain an "eligibility certificate," for which it charges $35. CONN. GEN. STAT. § 29-36h(a).

Other jurisdictions impose special *taxes* on the purchase of firearms or the ammunition used to operate them. The most extreme example is the Commonwealth of the Northern Mariana Islands, which, in a 2016 statute, imposed an excise tax of *$1,000* on the purchase of any handgun. 2016 N. Mar. I. Pub. L. No. 19-42, Sec. 14 (codified at 4 N. MAR. I. CODE § 1402(h) (2016)). Similarly—if less extremely—Cook County, Illinois presently imposes a tax of $25 on each handgun sale, and a tax of between $.02 and $.05 on each round of ammunition sold. COOK COUNTY CODE § 74-668(a) & (b). And Seattle, Washington, imposes firearm and ammunition taxes in the same amounts as Cook County. SEATTLE MUN. CODE Ordinance 124833, *available at* https://goo.gl/VL8uu7.

We do not mean to suggest that every one of these provisions is unconstitutional. Indeed, some of the licensing fees have been upheld as "designed to defray . . . the administrative costs associated with the licensing scheme," *Kwong v. Bloomberg*, 723 F.3d 160, 166 (2d Cir. 2013)—a conclusion on which Amicus takes no position. But others are naked attempts to suppress the right to keep and bear arms.

The text and history of Cook County's firearms and ammunition taxes, for example, make clear that

they were adopted for the express purpose of squelching conduct protected by the Second Amendment. The very preamble of the ordinance imposing the taxes baldly declares that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." Cook County Ordinance 12-O-64, *available at* https://goo.gl/pgvBWr. And the statements of the officials who enacted the taxes remove any conceivable doubt about their motivation. One of the tax measure's sponsors declared that "[a]t least we can make it difficult for people to have guns. . . . If you can't afford it, you won't buy it." Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://goo.gl/1CJgew. Another supporter lamented that "there are way too many guns in this community." *Id.* at 1:09:25. And another defended the tax on ammunition as "add[ing] to the costs of the instruments of death." Meeting of the Cook County Board of Commissioners at 1:44:31 (Nov. 12, 2015), *available at* https://goo.gl/1CJgew.

Seattle's tax has a similar history. The tax was imposed in the wake of a state-court ruling striking down the City's earlier attempt to *ban* the possession of firearms in parks and other public facilities, *see Chan v. City of Seattle*, 265 P.3d 169 (Wash. Ct. App. 2011), and it was the brainchild of a series of meetings between City Council Members and anti-Second Amendment activists who worked together to "brainstorm opportunities at the local level to work around" that state-court ruling. Daniel Beekman, *City, gun-rights plaintiffs skirmish over tax on gun, ammo sales*,

THE SEATTLE TIMES, Dec. 18, 2015, https://goo.gl/eJdYjH. The resulting tax measure was a transparent effort to suppress access to guns. In the public meeting that adopted it, for example, one Council Member read a statement by a constituent who supported the bill because "making it more difficult to access guns and ammunition will save more lives," Seattle City Council Meeting at 1:24:39 (Aug. 10, 2015), https://goo.gl/82jKhw, and another Member testified that "[t]he fact is, in simple terms, access to guns is too high," *id.* at 1:25:44.

Finally, the egregious $1,000 handgun tax imposed by the Commonwealth of the Northern Mariana Islands was self-evidently designed to tax the right to keep and bear arms into oblivion. While some may have dismissed as speculative the Court's observation in *Crandall* that "if [a] State can tax [one exercising his constitutional rights] one dollar, it can tax him one thousand dollars," 73 U.S. (6 Wall.) at 46, the Commonwealth has confirmed the wisdom of this concern.

The $1,000 tax was passed in reaction to a decision of the District Court for the Northern Mariana Islands striking down the Commonwealth's flat ban on the possession of firearms, *Radich v. Guerrero*, 2016 WL 1212437 (D. N. Mar. I. Mar. 28, 2016), and the text of the tax measure made the Commonwealth's motives plain. According to the bill's statement of purpose, "the vast majority of the inhabitants of the Commonwealth strongly oppose the legalization of handguns," "the introduction of handguns threatens th[e] public safety," and the Legislature was "legaliz[ing]

the ownership and possession of firearms" only "reluctantly" because of the "[u]nfortunate[ ]" decision by the District Court. 2016 N. Mar. I. Pub. L. No. 19-42, Sec. 2. The Commonwealth's outright hostility to the Second Amendment is confirmed by the tax measure's legislative history. In speaking in favor of the $1,000 tax, for example, one of the bill's sponsors indicated that "[it] will go a long way toward reducing the number of guns coming into the islands." Cherrie Anne E. Villahermosa, *Gun-law measure now with governor*, MARIANAS VARIETY, Apr. 7, 2016, https://goo.gl/ZaTVFJ. And in signing the measure, the Governor emphasized that lawful firearm possession was "something that none of us want and we want to make it as strict as possible." Office of the Governor & Lt. Governor, *Handgun Law Signed; Stricter Regulations Now in Place* (Apr. 11, 2016), https://goo.gl/psAMh8.

It should come as no surprise that governments hostile to the Second Amendment have turned to onerous taxes and fees as a way of suppressing the right; as this Court recounted in *Grosjean* and *Minneapolis Star & Tribune*, differential taxation is one of the most "well known and odious methods"—not to mention one of the oldest—of curtailing constitutionally protected conduct. *Grosjean*, 297 U.S. at 250; *see also Minneapolis Star & Tribune*, 460 U.S. at 583–85. Now that this Court has clarified that the Second Amendment "guarantee[s] the individual right to possess and carry weapons," *Heller*, 554 U.S. at 592, jurisdictions hostile to that individual right have turned to this time-worn but effective technique as a way of stifling

its exercise. This Court should grant review and make clear that requiring citizens "to pay a tax for the exercise of . . . a high constitutional privilege," *Follett*, 321 U.S. at 578, is an option that the Second Amendment has taken "off the table," *Heller*, 554 U.S. at 636.

III. The burden of fees and taxes that single out conduct protected by the Second Amendment falls disproportionately on minorities and the economically disadvantaged.

Finally, the Second Amendment taxes discussed above illustrate well the inherently retrogressive nature of government attempts to suppress constitutionally protected conduct through special taxes and fees. By necessity, raising the cost of some activity through taxation will *disproportionately* discourage *the financially disadvantaged* from engaging in it. High-income individuals have the means to purchase firearms and ammunition no matter what onerous taxes and fees the government imposes; but these additional charges may well prevent those individuals who are financially less fortunate from purchasing a safe, reliable firearm for self-defense. The effect of levying these special charges is thus to "reserve[ ] [Second Amendment rights] for those with a long purse." *Follett*, 321 U.S. at 576.

Consider the $1,000 tax on handguns levied by the Northern Mariana Islands in 2016. In 2009, the mean household income in the Commonwealth was

only $31,463,[4] and the minimum wage is currently $7.05.[5] It would take someone working full time at that wage *nearly a month* to earn enough money to pay the $1,000 tax. Imposing such a tax thus functions to transform the Second Amendment into an exclusive right that only the elite few enjoy.

As Amicus—a group dedicated to promoting responsible gun ownership among African Americans—is acutely aware, these taxes also disproportionately harm historically disadvantaged groups. According to census data, the median income of Black households in 2015 was only $36,898—more than $26,000 below the median income for non-Hispanic White households.[6] And the poverty rate among African Americans is *over twice as high* as among White non-Hispanics.[7] Raising the cost of firearms through special taxes and fees is thus likely to prevent law-abiding African Americans from possessing handguns to defend themselves and their families by a significantly greater margin than White Americans.

These recent attempts at suppressing Second Amendment conduct thus provide a modern echo of

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[4] U.S. CENSUS BUREAU, Commonwealth of the Northern Mariana Islands, 2010 Census Detailed Crosstabulations at tbl. 2-18, https://goo.gl/d32ZNu (download Part 1 of the Crosstabulations and navigate to Table 2-18).

[5] CNMI Department of Labor, https://goo.gl/yJSQp7.

[6] U.S. CENSUS BUREAU, INCOME & POVERTY IN THE UNITED STATES: 2015 at 7 (2016), https://goo.gl/CcDJW6.

[7] *Id.* at 13 tbl.3.

the earliest efforts at gun control. The post-war South, for example, attempted to suppress the rights of former slaves to carry arms for their self-defense at every turn. Mississippi's notorious "Black Code," for instance, forbade any "freedman, free negro or mulatto" to "keep or carry fire-arms of any kind." An Act To Punish Certain Offences Therein Named, and for Other Purposes, ch. 23, § 1, 1865 Miss. Laws 165. The recent attempts to curb Second Amendment conduct through taxation may not be explicitly racist like these laws, and the governments that impose them may not intend to disarm African-Americans at higher rates, but because of the retrogressive nature of these taxes and the average socioeconomic status of Black families, that is their ultimate effect.

While attempts to raise the price of constitutionally protected conduct through special taxes and fees will *always* disproportionately burden the disadvantaged and marginalized, in the Second Amendment context this mechanism of suppressing the exercise of fundamental rights is doubly perverse. For it is these disadvantaged individuals who have *the greatest need* to defend themselves and their families against crime. According to data from the Bureau of Justice Statistics, individuals living at or below the poverty level

are *more than twice as likely* to become victims of violent crime than those in high-income households.[8] African Americans also experience violent crime at significantly higher rates than White Americans: they are over 30% more likely to suffer serious violent crimes such as rape, robbery, or aggravated assault,[9] and they are *six times more likely* to be victims of homicide.[10]

This Court should grant review and establish clear limits on the ability of state and local governments to charge fees and taxes that prevent the poor and disadvantaged—the very groups with the greatest need to "to use arms in defense of hearth and home," *Heller*, 554 U.S. at 635—from exercising their Second Amendment rights.

CONCLUSION

For the above reasons, this Court should grant the writ and reverse the judgment of the Ninth Circuit.

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[8] Bureau of Justice Statistics, *Household Poverty & Nonfatal Violent Victimization*, *2008–2012* at 1 (Nov. 2014), https://goo.gl/hhUFPm.

[9] Bureau of Justice Statistics, *Criminal Victimization, 2014* at 9 tbl.9 (Sept. 29, 2015), https://goo.gl/R8aWu1.

[10] Bureau of Justice Statistics, *Homicide Trends in the United States, 1980–2008* at 3 & tbl.1 (Nov. 2011), https://goo.gl/Esjg8T.

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