No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN WESSLEY GLEASON,

Petitioner.

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition for Writ of Certiorari to the Sixth Appellate District Court of Appeal of the State of California

PETITION FOR WRIT OF CERTIORARI

SIXTH DISTRICT
APPELLATE PROGRAM
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QUESTIONS PRESENTED

The Second Amendment established one of the most fundamental rights—the right of law-abiding citizens to bear arms. Despite its fundamental nature, the Second Amendment does not extend to weapons that are "dangerous and unusual." Unfortunately, many state and federal courts have misinterpreted the "dangerous and unusual" test, holding that Second Amendment protections do not extend to semi-automatic weapons. In doing so, these courts have misread seminal Second Amendment decisions of this Court. Indeed, this Court has indicated that semi-automatic weapons are entitled to Second Amendment protection. Moreover, the statute at issue here is unconstitutional since there is no exemption for lawful possession of a common firearm in one's home.

The questions presented are:

1. Whether semi-automatic weapons are a type of weapon protected by the Second Amendment.

2. Whether a complete ban on semi-automatic weapons, without an exemption for possession in one's home for the lawful purpose of self-defense, violates the Second Amendment.

PARTIES TO THE PROCEEDING

Defendant-appellant below, who is petitioner before this Court, is John Wessley Gleason.

Plaintiff-appellee below, who is respondent before this Court, is the People of California.

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The Second Amendment to the United States Constitution (hereinafter the Second Amendment) protects an individual's right to keep and bear arms. This Court has continuously acknowledged the right to self-defense is central to the Second Amendment right and is most acute in one's own home.

However, the Second Amendment does not protect the bearing of all types of weapons. Instead, the Second Amendment does not protect the carrying of weapons that are "dangerous *and* unusual." While conjunctive in nature, lower courts have misconstrued this test as "dangerous *or* unusual." Consequently, lower courts have incorrectly upheld the prohibition of weapons that are commonly possessed for lawful purposes—and, thus, not usual—merely due to an obtuse level of dangerousness. As Justice Alito has acknowledged, even a "dangerous" weapon enjoys constitutional protection if it is widely held for lawful purposes. *Caetano v. Massachusetts*, __ U.S. __, 136 S.Ct. 1027, 1031 (2016) (Alito, J., concurring ["[T]he relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes."]). Since lower courts have distorted the

"dangerous and unusual" test, this Court should grant review.

Since semi-automatic weapons are a type of weapon protected by the Second Amendment, California's Assault Weapons Control Act violates the Second Amendment under any standard of scrutiny because it fails to provide an exemption for possession of semi-automatic weapons in one's own home for the lawful purpose of self-defense.

OPINIONS BELOW

The California Court of Appeal's opinion affirming the judgment is unreported and appears as Appendix A. The order of the California Supreme Court denying the petition for review filed upon affirmance of the judgment on direct appeal appears as Appendix B.

JURISDICTION

The California Court of Appeal issued its opinion on December 12, 2017, and the California Supreme Court denied review on February 21, 2018. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Second Amendment states: "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."

STATEMENT OF THE CASE

A. Factual Background

Since approximately 2006, petitioner John Gleason and his fiancée, Angelina Sottile, had been in a romantic relationship. (3 RT 626; 4 RT 988.) The couple lived together in Soledad with their six-year-old daughter, Evelyn, and petitioner's other daughter, seventeen-year-

old Tamarie.[1] (3 RT 620-623, 704-705.) By 2011, Angelina had become unhappy in their relationship, and, on several occasions had told petitioner she had issues with him and their relationship. (3 RT 626-627, 682; 4 RT 988.)

In the spring of 2014, Angelina reconnected with her ex-girlfriend, Patricia Van Kempen, from high school. (3 RT 623-624.) Angelina was considering resuming a romantic relationship with Patricia. (3 RT 624.) At the time, Patricia lived in Oregon but had been staying over at appellant and Angelina's home for several weeks. (3 RT 624, 679.) While Patricia visited Angelina in Soledad, the women took several trips together, including one to Mountain View with Tamarie and Evelyn. (3 RT 705, 740-741; 4 RT 989.)

On July 14, 2014, Angelina, Patricia, Tamarie and Evelyn had recently returned from their trip in Mountain View to petitioner and Angelina's residence. (3 RT 705.) Around 4 p.m., Angelina and petitioner, who had been drinking wine, began having a private conversation about their relationship. (3 RT 625-627; 4 RT 997.) At one

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[1] Petitioner's older son, Timothy, and his girlfriend were also staying at the couple's home during the time of the incident. (3 RT

point, petitioner asked Angelina if she was unhappy, and Angelina answered affirmatively. (3 RT 628-629, 681-682.)

Once it became apparent that petitioner and Angelina were having a personal conversation, Patricia took Tamarie and Evelyn to rent a movie. (3 RT 631.) When they returned from the movie rental store, the group, including petitioner, ate dinner around 6 p.m.. (3 RT 631.) Around that time, the conversation between petitioner and Angelina became increasingly serious, and Angelina conveyed she no longer loved appellant. (4 RT 999.) Due to the nature of the conversation, Patricia took Tamarie and Evelyn to Evelyn's room. (3 RT 634.)

Once the conversation between petitioner and Angelina ended, appellant, who was very upset and crying, went outside. (3 RT 635, 709; 4 RT 1000.) Then, Patricia, Tamarie and Evelyn went into the living room with Angelina to watch the movie that they had rented. (3 RT 635-636.)

While the group watched the movie, petitioner began pacing throughout the house, including in his and Angelina's bedroom, which was located near the living

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623.)

room. (3 RT 637-645.) He also paced in the backyard, including the outside shed where he stored several guns. (3 RT 621, 637-645; 4 RT 992.) Several times, petitioner sat down with the group and stared at Angelina. (3 RT 638-639.) At one point, petitioner locked the front door. (3 RT 641.) He then stayed in his room and began experiencing suicidal thoughts. (4 RT 1000-1001.)

During this period, Angelina, Patricia and Tamarie exchanged text messages about leaving the house. (3 RT 641, 645.) After packing some of Evelyn's belongings, Angelina went into the bedroom she shared with petitioner to retrieve additional belongings. (3 RT 647.) When she entered the bedroom, Angelina saw petitioner standing at the foot of the bed and noticed his SKS rifle lying on the bed with the magazine inserted.[2] (3 RT 649-650.) Upon seeing the rifle, Angelina said, "Are you kidding me?" (3 RT 652.) Appellant then picked up the rifle, and Angelina went back into the living room. (3 RT 652.) Angelina grabbed Evelyn from the living room floor, and told Patricia and Tamarie they had to leave immediately. (3 RT 652-654.) Angelina then left the

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[2] During his testimony, petitioner explained that he had brought the rifle and magazine into the house several days before the

house with Evelyn. (3 RT 654-655.)

Meanwhile, petitioner, holding the rifle, exited the bedroom as Tamarie and Patricia were preparing to leave the house. (3 RT 711.) Tamarie then stood between petitioner and Patricia as Patricia collected her belongings. (3 RT 713-714.) As Tamarie and Patricia left the house, Tamarie asked petitioner to promise he would not hurt them, to which petitioner replied he could not do.[3] (3 RT 717.) Tamarie and Patricia then reunited with Angelina and Evelyn outside. (3 RT 718.)

As the group of women convened outside, Angelina commented she left her purse in the house, and Tamarie went back inside the house to retrieve it. (3 RT 718.) Tamarie then rejoined Angelina, Patricia and Evelyn outside. (3 RT 718-719.) There, the group got into Patricia's car, which was parked across the street from appellant and Angelina's home. (3 RT 719.)

While the group got into Patricia's car, petitioner came out of the house and stood by the driveway. (3 RT 662.) Although appellant and Tamarie testified petitioner

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incident in order to clean them before selling them. (4 RT 994-996.)

[3] At trial, petitioner testified he misunderstood Tamarie's question and thought she asked him to promise not to hurt himself. (3 RT 717; 4 RT 1004-1005.)

did not bring the rifle outside (3 RT 756), Angelina testified that she saw petitioner point his rifle towards the car as they drove away and that she had instructed her daughters to put their heads down. (3 RT 663-664.)

Once they left around 11:30 p.m., the group went to a gas station, Wal-Mart in Salinas, and then to a motel for a night. (3 RT 723.) Around 5:30 p.m. the next day, the group went to the police station to notify the police of the incident. (3 RT 730-731, 744.)

Three days after the incident, petitioner went to the police station to report that Angelina had left with his children and that he did not know their whereabouts. (4 RT 1010.) There, the police interviewed petitioner and told him there was a search warrant issued for his home. (4 RT 945-946.) Petitioner accompanied the officers back to his house and assisted officers in executing the search warrant. (4 RT 946.) When petitioner opened the safe in the back shed, officers found the SKS rifle and unloaded magazines that were later determined to be compatible with the SKS rifle. (4 RT 963.)

At trial, an officer who had assessed petitioner's SKS rifle—the alleged weapon in the section 30605

conviction—testified that the firearm qualified as an assault weapon under California law. (4 RT 960-961.) The officer testified that the SKS rifle possessed three characteristics that independently rendered it an assault weapon: a folding butt stock, a pistol grip, and the capacity to accept a detachable magazine. (4 RT 960.)

B. Procedural History

On October 8, 2015, petitioner was charged by information with one count of felony possession of an assault weapon (Cal. Pen. Code § 30605, subd. (a); count 1), three counts of felony assault with a firearm (Cal. Pen. Code § 254, subd. (a)(2); counts 2-4), one count of misdemeanor exhibition of a deadly weapon (Cal. Pen. Code § 417, subd. (a)(1); count 5), and two counts of misdemeanor cruelty to a child by endangering health (Cal. Pen. Code § 273A, subd. (b); counts 6-7). (CT 32-35.)

Petitioner proceeded to jury trial. On August 14, 2015, the jury found petitioner guilty of felony possession of an assault rifle (count 1), and not guilty of assault with a firearm (counts 2-4) and cruelty to a child by endangering health (counts 6-7); the jury was unable to reach a verdict as to the exhibition of a deadly weapon charge (count 5). (CT 67-73; 5 RT 1289-1292.)

On September 15, 2015, the trial court dismissed the exhibition of a deadly weapon charge and granted petitioner a three year probationary term. (CT 94-95; 6 RT, 1507, 1517-1520.) The trial court ordered petitioner to serve 180 days in county jail with 69 days of credit for time served. (6 RT 1519; CT 95.) A timely notice of appeal was filed. (CT 76.)

On appeal, petitioner argued that California Penal Code section 30605 (hereinafter section 30605) violates the Second Amendment because it does not contain an exception for possession of an assault weapon in one's home for self-defense. Petitioner contended that the assault weapon he possessed was the type of firearm that fell within the purview of the Second Amendment because assault weapons are in common use and possessed by lawful citizens for lawful purposes.

On December 12, 2017, the appellate court affirmed the judgment in an unpublished opinion, holding assault weapons are not the type of firearm protected by the Second Amendment. (App. 1-10.) No petition for rehearing was filed.

On February 21, 2018, the Supreme Court of

California denied review. (App. 13.)

REASONS FOR GRANTING THE PETITION

Many lower courts are misinterpreting this Court's Second Amendment jurisprudence by misapplying the "dangerous and unusual" test. Consequently, courts are upholding bans on weapons that are commonly possessed for lawful purposes, in violation of the Second Amendment.

Here, the lower court upheld California's Assault Weapons Control Act (AWCA), which prohibits possession of assault weapons.[4] Cal. Pen. Code § 30605, subd. (a). The lower court accepted that semi-automatic weapons are not "unusual" because they are commonly possessed for lawful purposes. Nevertheless, the lower court held that semi-automatic weapons are not a type of weapon protected by the Second Amendment because semi-automatic weapons are, in essence, too dangerous. (App. 10.) In so holding, the lower court embraced the misinterpretation among many lower courts that, in order

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[4] Under the statute, a semi-automatic firearm constitutes an assault weapon if it is designated as such based on its make and model, or if it meets certain criteria that render it " 'variations of these [enumerated] weapons.' " *Kasler v. Lockyer*, 23 Cal.4th 472, 488 (2000) (discussing the legislative history of former section 12280—renumbered as section 30605 and continued without substantive change)—in rejecting an equal protection challenge to the Assault

to receive Second Amendment protection, the type of weapon cannot be dangerous or unusual. This "dangerous *or* unusual" standard distorts this Court's "dangerous *and* unusual" test.

Under a correct application of this Court's "dangerous and unusual" test, semi-automatic weapons are a type of weapon protected by the Second Amendment because they are commonly possessed for lawful purposes, and thus, not unusual.

Since semi-automatic weapons are a type of weapon protected by the Second Amendment, the statute at issue here violated the Second Amendment under any standard of scrutiny because it fails to provide an exemption for possession of semi-automatic weapons in one's own home for the lawful purpose of self-defense.

I. The Court Should Grant Certiorari To Resolve Whether Semi-Automatic Weapons Are A Type Of Weapon Protected By The Second Amendment to the United States Constitution.

The decision below held that semi-automatic weapons are not the type of weapon protected by the Second Amendment, even though they are commonly-possessed for lawful purposes such as hunting and self-

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Weapons Control Act (AWCA)).

defense in one's own home. A semi-automatic weapon is a type of firearm that falls within the scope of the Second Amendment because it is in common use and possessed by law-abiding citizens for lawful purposes, including self-defense. Nevertheless, lower courts are misinterpreting this Court's "dangerous and unusual" test and holding that the Second Amendment does not protect some weapons commonly possessed for lawful purposes because they are too dangerous. Thus, this Court should grant certiorari to restore the "dangerous and unusual" test to its true meaning.

A. The Decision Below Deepens A Misinterpretation Of This Court's Second Amendment Jurisprudence As To The Type Of Weapons Protected By The Second Amendment.

The regulation of semi-automatic firearms implicates citizens' Second Amendment rights because those types of weapons are in common use and possessed by law-abiding citizens for lawful purposes. *District of Columbia v. Heller*, 554 U.S. 570, 624-626 (2008) (holding that the Second Amendment secures "the right to possess and carry weapons typically possessed by law-abiding citizens for lawful purposes such as self-defense").

"[T]he Second Amendment extends, prima facie, to

all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller, supra,* 554 U.S. at 582. There is no prima facie showing when the weapon is not one "in common use at the time," "possessed at home," and for "lawful purposes like self-defense." *Id.* at 627, 624. Furthermore, a firearm is not "in common use" if it is "dangerous and unusual." *Id.* at 627.

Whether a firearm is in " 'common use' is an objective and largely statistical inquiry." *New York State Rule and Pistol Ass'n, Inc. v. Cuomo* 804 F.3d 242, 256 (2d Cir. 2015). The focus of courts in considering whether a firearm is in common use has varied. Some courts have focused on the total number of a particular weapon, other courts rely on portions and percentages of the type of firearm in the marketplace, and other courts rely on the percentage of firearm owners who own the type of weapon at issue. *Hollis v. Lynch*, 827 F.3d 436, 449 (5th Cir. 2016). Thus, there has been "considerable variety across the circuits as to what the relevant statistic is and what threshold is sufficient for a showing of common use." *Ibid.*

While there is variation on the relevant statistical data in determining whether a semi-automatic weapon is in common use, numerous courts have recognized that semi-automatic weapons are, indeed, in common use by law-abiding citizens. *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011) (*Heller II*) ("semi-automatic rifles and magazines holding more than ten rounds are indeed in 'common use,' . . . . Approximately 1.6 million AR-15s alone have been manufactured since 1986, and in 2007 this one popular model accounted for 5.5 percent of all firearms, and 14.4 percent of all rifles, produced in the U.S. for the domestic market."); *Cuomo, supra,* 804 F.3d at 256 (Assault weapons and large-capacity magazines "are 'in common use' as that term was used in *Heller*."). Since these weapons are in common use—and therefore not "unusual"—they are encompassed by the Second Amendment.

Furthermore, semi-automatic firearms are presumed to be possessed for the lawful purpose of self-defense. There is no indication that semi-automatic firearms are not ever possessed for lawful purposes, and the burden is on the government to establish the types of

weapons falling outside the ambit of Second Amendment protection. Additionally, there is no indication that these types of weapons have been historically prohibited. Thus, it is proper to assume that individuals possess semi-automatic firearms for self-defense purposes.

Although semi-automatic firearms are a type of weapon protected by the Second Amendment, several lower courts are improperly concluding otherwise. Here, the lower court held semi-automatic weapons are not protected by the Second Amendment because "[t]he assault weapons prohibited by section 30605 have *unusual and dangerous features* that make them 'weapons of war,' and they therefore do not fall within the protection of the Second Amendment." App. 10. The decision below relied on two other California appellate cases—*People v. James*, 174 Cal.App.4th 662 (2009) and *People v. Zondorak*, 220 Cal.App.4th 829 (2013)—which incorrectly held that the Second Amendment did not protect the carrying of certain weapons that are commonly possessed for lawful purposes.

In *James*, the Third District Appellate Court of California opined that assault weapons have a "dangerous

and unusual nature"—a characterization it found support for in the legislative history of the AWCA. *James, supra,* 174 Cal.App.4th at 676. The *James* court concluded that, given the dangerous nature of these weapons, assault weapons were "weapons of war" rather than weapons "typically possessed by law-abiding citizens for lawful purposes such as sport hunting or self-defense." *Ibid.* The *James* court determined its holding was supported by post-*Heller* decisions that held that the Second Amendment does not protect an individual's right to possess machine guns or short-barreled rifles. *Id.* at 676-677.

Similarly, in *Zondorak, supra,* 220 Cal.App.4th 829, the Fourth District Appellate Court of California adopted the reasoning of *James* and opined that semi-automatic weapons may be banned because they are " 'at least as dangerous and unusual as the short-barreled shotgun at issue in [*Miller*]' " and "only slightly removed from M-16-type weapons that *Heller* likewise appeared to conclude were outside the scope of the Second Amendment's guarantee." *Ibid.*

As outlined above, the lower courts incorrectly

interpreted *Heller* by simply focusing on the dangerousness of assault weapons. In determining whether a type of weapon is within the scope of the Second Amendment right, the relevant inquiry is whether the firearm is *typically* or *commonly* possessed—not merely whether it meets an undefined level of dangerousness. See *Heller, supra,* 554 U.S. at 627. Since *Heller* referred to a weapon as "dangerous and unusual" conjunctively, even a "dangerous" weapon enjoys constitutional protection if it is widely held for lawful purposes. *Caetano, supra,* __ U.S. __, 136 S.Ct. at 1031 (Alito, J., concurring ["[T]he relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes."]). Indeed, sawed-off shotguns, hand grenades and fully automatic M-16 rifles *are* unusual weapons that fall outside of the Second Amendment because they are not in common use or typically possessed by the citizenry, *not* because they exceed an acceptable level of dangerousness. See *Heller, supra,* 554 U.S. at 627.

Moreover, courts are improperly conflating dangerous and usual with the type of *features* of the

weapons. Instead, unusual refers to whether the weapon is in common use at the time, not the quality of its features. See *Heller, supra,* 554 U.S. at 627; *Caetano, supra,* __ U.S. __, 136 S.Ct. at 1031. Therefore, lower courts are incorrectly holding that semi-automatic firearms are not a type of weapon that falls within the scope of Second Amendment protection.

Petitioner urges this Court to grant certiorari to clarify the dangerous and usual test of whether a weapon falls within the ambit of the Second Amendment and conclude that semi-automatic firearms are the type of weapons within the scope of the Second Amendment right. Since semi-automatic firearms are in common use and possessed by law-abiding citizens for lawful purposes, the regulation of these types of weapons implicates the Second Amendment right to bear arms.

II. This Court Should Grant Certiorari To Resolve Whether A Complete Ban Of Semi-Automatic Weapons—A Type of Weapon Protected By The Second Amendment—Violates the Second Amendment.

Since semi-automatic weapons are a type of weapon subject to Second Amendment protection, the complete prohibition of these weapons—including in one's own home, where a law-abiding citizen's right to bear arms for

purposes of self-defense is most acute—offends the Second Amendment. Many lower courts are failing to recognize the Second Amendment's central purpose of ensuring the citizenry's right to self-defense in one's own home. Thus, this Court should grant certiorari to restore the integrity of the Second Amendment, clarify that strict scrutiny is the applicable standard in considering whether a firearm protected by the Second Amendment can be subject to a complete ban, and hold that section 30605 is unconstitutional inasmuch it fails to provide an exemption for possession of semi-automatic weapons in one's own home for the lawful purpose of self-defense

A. The Decision Below Runs Afoul To The Notion That The Inherent Right Of Self-Defense Is Central To The Second Amendment And Most Acute In One's Own Home, And Strict Scrutiny Is the Applicable Standard of Scrutiny.

"[T]he inherent right of self-defense has been central to the Second Amendment right" and is strongest in "the home, where the need for defense of self, family, and property is most acute." *Heller, supra,* 554 U.S. at 628. The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635.

In *Heller*, this Court declined to specify the level of scrutiny that applies when evaluating whether a statute violates the Second Amendment. Consequently, courts have applied various means-end standards of scrutiny—including strict scrutiny, intermediate scrutiny and rational basis standards—in assessing Second Amendment challenges. "[T]he level of scrutiny in the Second Amendment context should depend on 'the nature of the conduct being regulated and the degree to which the challenged law burdens the right.' " *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013); see also *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 96-97 (3d Cir. 2010). Specifically, the level of scrutiny applied should depend on "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.' " *Chovan, supra,* 735 F.3d at 1138 (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011)); accord *Fyock v. Sunnyvale*, 779 F.3d 991, 999 (9th Cir. 2015) ("Intermediate scrutiny is appropriate if the regulation at issue does not implicate the core Second Amendment right *or* does not place a

substantial burden on that right. [Citation.]").

Petitioner submits that strict scrutiny is the applicable standard of scrutiny to evaluate whether section 30605 violates the Second Amendment because the statute burdens a fundamental core right of a law-abiding citizen to self-defense in the home.

While other courts have applied the intermediate standard of scrutiny in evaluating various regulations of firearms, several of these courts have implicitly, if not expressly, recognized that strict scrutiny should apply when evaluating a complete ban—without an exception for possession in one's own home by law-abiding individuals—of a type of weapon falling within the scope of the Second Amendment right. See, e.g., *Marzzarella, supra,* 614 F.3d at 97 (indicating that strict scrutiny is the appropriate standard in evaluating the constitutionality of a complete prohibition on a type of protected weapons "even for the stated fundamental interest protected by the [Second Amendment] right—the defense of hearth and home"); cf. *Fyock, supra,* 779 F.3d at 999 (applying intermediate scrutiny in evaluating the constitutionality of a ban on large-capacity magazines because the

prohibition's "burden on the core Second Amendment right was not substantial" since it " 'does not effectively disarm individuals or substantially affect their ability to defend themselves.' "); *Chovan, supra,* 735 F.3d at 1138 (applying intermediate scrutiny to a regulation of firearm possession for misdemeanants); but see *Heller II, supra,* 670 F.3d at 1261-1262 (intermediate scrutiny applied in evaluating a complete ban on semi-automatic rifles because the ban did not impose a substantial burden upon the core right protected by the Second Amendment).

Section 30605 prohibits the possession of semi-automatic rifles regardless of whether an individual is a law-abiding citizen and possesses the firearm in his or her home for self-defense. Thus, the statute burdens the possession of a class of arms by anyone for self-defense in the home, where the Second Amendment right is most acute. Therefore, the statute burdens the most fundamental core of the Second Amendment—"the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller, supra,* 554 U.S. at 634-635. Thus, strict scrutiny is the appropriate level of scrutiny in evaluating whether the AWCA violates the Second

Amendment.

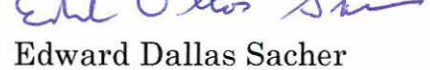
Furthermore, the statute's burden on the fundamental right to bear this type of firearm is substantial. Under the AWCA, the ban on semi-automatic weapons is a complete ban and affords no exception for any lawful purpose, including self-defense in one's home, hunting, or shooting for recreational purposes. See *Friedman v. City of Highland Park*, __ U.S. __, 136 S.Ct. 447 (2015) (Thomas and Scalia, J.J., dissenting from the denial of certiorari, "the ordinance criminalizes modern sporting rifles . . . which many Americans own for lawful purposes like self-defense, hunting, and target shooting"). Under section 30605, the burden of the complete ban on semi-automatic weapons is not merely incidental. The fact that handguns are lawful for self-defense in one's home does not mitigate the burden imposed by the AWCA. *Ibid.* ("[T]he fact that handguns, bolt-action and other manually-loaded long guns, and . . . a few semi-automatic rifles are still available for self-defense does not mitigate [the FSA's] burden."); see *Heller, supra,* 554 U.S. at 629 ("It is no answer to say . . . that it is permissible to ban the

possession of handguns so long as the possession of other firearms . . . is allowed."). And, there are legitimate reasons for citizens to favor a semiautomatic rifle over a handgun in defending themselves and their family in their home. Therefore, the AWCA's complete prohibition on semi-automatic weapons substantially burdens an individual's right to bear arms.

CONCLUSION

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

Respectfully submitted,



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