No. 18-280

In the Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC. ET AL.,

Petitioners,

v.

CITY OF NEW YORK ET AL.,

Respondents.

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

Motion of Neal Goldfarb as *Amicus Curiae* for Leave to Participate in Oral Argument

Pursuant to Rules 28.7 of the Rules of this Court, Neal Goldfarb respectfully moves that he be granted leave to participate in oral argument in this case as amicus curiae in support of Respondents. (*Amicus* is admitted to the bar of this Court and is also acting as counsel.) Contemporaneously with this motion, *Amicus* is filing an amicus brief in support of Respondents. *Amicus* requests that he be allowed ten minutes of argument time.

Amicus does not request divided argument because Respondents do not consent to divided argument, but their counsel has stated that that they do not oppose *Amicus* being given time to argue in addition to the time allotted to Respondents. On the other hand, Counsel for Petitioners has stated that they oppose the motion.

Amicus recognizes that motions that in light of Respondents' having withheld consent to divided argument, this motion is unlikely to be granted unless the Court finds that extraordinary circumstances justifying for leave to participate in oral argument will be granted only in extraordinary circumstances. *Amicus* believes that such circumstances are present here.

1. This case presents a Second Amendment challenge by Petitioners to certain provisions of New York City law. Respondents have understandably accepted this Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), as stating the law that governs this case. But over the past 14 months ago, evidence has emerged that provides powerful evidence that *Heller* was mistaken in its interpretation of the Second Amendment. That evidence comes from two large electronic collections of founding-era texts that were designed for the specific purpose of conducting research into constitutional original meaning. These collections take the form of linguistic corpora (the plural of *corpus*), which means they have features that make it possible to conduct linguistically-focused searches.

2. *Amicus* has conducted an in-depth and wide-ranging analysis of the corpus that is relevant to the interpretation of *the right of the people to keep and bear arms*, and one of the purposes of his brief is to call that study to the Court's attention. In almost every respect, the results of *Amicus*'s study are at odds with the Court's analysis and holding in *Heller*. For example, *Amicus* has reviewed more than 530 separate uses of *bear arms* from the mid-to-late 18th century—more than ten times the amount of evidence that the Court relied on in *Heller*, and in roughly 95% of those uses, *bear arms* conveys an

idiomatic military-related meaning, not individual self-defense meaning of the kind reflected in *Heller's* interpretation.

3. That evidence by itself casts grave doubt *Heller*'s validity, and it represents only a part of what *Amicus* has discovered as a result of immersing himself in the corpus data. *Amicus* therefore argues in his brief that the new evidence warrants a reexamination of *Heller*. However, he also argues that this case does not present an appropriate vehicle for undertaking such a reexamination, in part because in the current posture of the case, the issues could not be adequately litigated. *Amicus* argues that rather than decide the Second Amendment issue in this case under a framework prescribed by *Heller*, the Court should, in the exercise of its discretion, not resolve that issue. Instead, it should dismiss the petition, as to the Second Amendment issue only, as improvidently granted.

4. The importance of *Amicus*'s challenge to *Heller* provides one reason why he should be permitted to participate in oral argument. Another reason is that if is not allowed to argue these issues, they will not be argued by anyone. Petitioners obviously have no incentive to assert any of these issues, and our understanding is that Respondents do not intend to challenge *Heller*. And in any event, *Amicus* is uniquely qualified to present the argument. Amicus is one of only a handful of people in the country who have expertise in corpus linguistics and in applying corpus linguistics to issues of legal interpretation. In addition, having personally conducted the analysis on which his argument is based, he is intimately familiar with the details of the data.

5. Finally, it is likely that at least some members of the Court will have questions about *Amicus*'s analysis after reading his brief and his underlying analysis. Permitting *Amicus* to participate in oral argument would make it possible for the Court to get its questions answered.

6. For all of these reasons, *Amicus* suggests that this is one of those rare cases in which leave to participate in oral argument should be granted.

Respectfully submitted,

/s/ *Neal Goldfarb*
Neal Goldfarb
1301 Fairmont St., N.W.
Washington, D.C. 20009
(202) 262-7886
goldfarbneal@gmail.com
Counsel for Amicus Curiae