

No. 12-1401

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In the  
**Supreme Court of the United States**

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MICHELLE LANE, ET AL.,  
*Petitioners,*

v.

ERIC HOLDER, ATTORNEY GENERAL, ET AL.,  
*Respondents.*

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

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**BRIEF OF AMICUS CURIAE  
COMMUNITY ASSOCIATION FOR  
FIREARMS EDUCATION  
IN SUPPORT OF PETITIONERS**

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GEORGE L. LYON, JR.  
*Counsel of Record*  
1929 Biltmore Street NW  
Washington, DC 20009  
glyon@fcclaw.com  
202-669-0442

DAELEEN M. CHESLEY  
401 Holland Lane  
Alexandria, Virginia 22314

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## STATEMENT OF THE INTEREST OF AMICUS

The Community Association for Firearms Education (“CAFÉ”) is an unincorporated association of firearms instructors and enthusiasts in the Washington, DC area.<sup>1</sup> CAFÉ is dedicated to teaching and practicing the safe and responsible use of firearms for self-defense and recreation. CAFÉ sponsors gun safety classes, clinics in the use and care of various firearms and range outings. In addition, members of CAFÉ have testified before the Washington, DC City Council and the Maryland legislature on firearms related issues.

CAFÉ’s community involvement has resulted in positive changes in Washington, DC’s firearms laws to better protect second amendment rights and ensure safe gun handling. CAFÉ alerted the DC City Council that under its regulations, firearms safety training, then mandatory to register a gun in the District, could not be effected in the city because students were forbidden to possess ammunition or a firearm not registered to them. The DC Council modified the law to allow a firearms student to handle a firearm and to possess ammunition in the

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<sup>1</sup> The parties were provided a minimum of 10 days’ advance notice of amicus’s intent to file this brief. Both Petitioners and Respondents have consented to its filing. Pursuant to Rule 37.6, CAFÉ affirms that no counsel for any party authored this brief in any manner, and no party, party’s counsel, or any person other than CAFÉ, its members, or their counsel made a monetary contribution to the preparation or submission of this brief.

course of gun safety training. CAFÉ's testimony to the City Council also resulted in liberalizing restrictions on possession of ammunition by registered gun owners.

As will be explained in more detail below, the restriction of 18 U.S.C. §922(b)(3), prohibiting a federal firearms licensee ("FFL") to transfer a handgun interstate, imposes a significant burden on those members of CAFÉ who reside within the District of Columbia. The increased costs associated with transferring a handgun through two FFLs limits the handguns CAFÉ members would purchase. More importantly, these increased costs discourage and in some cases prohibit persons of lesser means, those persons most at risk of becoming victims of violent crime, from exercising their second amendment right to obtain the quintessential self-defensive weapon, a handgun. *See District of Columbia v. Heller*, 554 U.S. 570, 629 (2008).

CAFÉ is also harmed because 18 U.S.C. §922(b)(3), in raising the cost of handgun ownership in the District of Columbia, necessarily limits those persons who may choose to join CAFÉ to the extent it limits their ability to purchase a firearm and actively participate in the association as responsible and safe gun owners. And in raising the cost of legal handguns, the law serves to perpetuate the illegal market in handguns which poses a threat to public safety.



## SUMMARY OF ARGUMENT

Certiorari should be granted to review the decision of the 4<sup>th</sup> Circuit Court of Appeals for three reasons.

First, the decision below creates an irreconcilable circuit split with the DC Circuit's holding in *Dearth v. Holder*, 641 F.3d 499 (D.C. Cir. 2011) and the 5<sup>th</sup> Circuit's holding in *Nat'l Rifle Assoc., Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5<sup>th</sup> Cir. 2012), *reh'g denied* (April 30, 2013) (hereinafter "*NRA v. BATFE*"). Those two courts correctly found consumer standing to challenge restrictions identical in form to 18 U.S.C. §922(b)(3)'s prohibition on interstate transfers of handgun. Moreover, as Petitioners point out, the decision below is contrary to analogous precedent in several other circuits involving restrictions on the sale of items other than firearms. See Petition for Certiorari, No. 12-1401 at 22-24 (hereinafter "Petition").

The opinion below sought to distinguish various cases on the basis that the restriction at issue only indirectly affected plaintiffs in those cases and that Petitioners here were not absolutely prevented from acquiring a handgun. The 4<sup>th</sup> Circuit's rationale, however, is in conflict with other circuits and is in any event unavailing. For example, the 5<sup>th</sup> Circuit readily acknowledged in its decision that the plaintiffs there could acquire handguns in

another legal manner, but nevertheless found the plaintiffs to have standing.

Furthermore, the 4<sup>th</sup> Circuit's rationale that Petitioners are not absolutely prevented from obtaining a handgun under the statute misses the point. Necessarily, the increase in cost resulting from transferring a handgun through two FFLs instead of one, limits at least some persons of lesser means from acquiring a handgun. These persons are likely to be the very ones who most have need of a defensive firearm because statistics show they proportionately are at greater risk of becoming crime victims.

Petitioners here have suffered a concrete injury from 18 U.S.C. §922(b)(3), redressable by the relief they seek. That injury is the increased cost and effort of obtaining a handgun resulting from the restriction of available transferring FFLs caused by the challenged statute. In essence, the statute deprives Petitioners of the availability of an interstate competitive market for the transfer of a handgun. Because a favorable decision will remedy that injury, they have standing.

Second, the decision below is squarely irreconcilable with this Court's opinion in *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). There this Court found consumer standing to contest a prohibition on the advertising of prescription drugs despite that the

restriction on advertising prescription drugs indirectly affected the consumers and despite that the consumers could have obtained prescription drug prices via other means. *See Id.* at 782-83 (Rehnquist, C.J., dissenting).

Third, this case has substantial significance to a citizen's ability to exercise his or her second amendment rights. The decision below as it affects specifically the District of Columbia harms those who are most vulnerable to crime, those persons of lesser means. By unnecessarily increasing the cost of a handgun, and therefore the ability of a citizen to obtain one, 18 U.S.C. §922(b)(3) assures that some potential victims of crime will not have the means to protect their lives and the lives of their loved ones from violence. To that end, the District of Columbia, the most restrictive jurisdiction in the country in terms of gun control, recognized that the restriction at issue in this case serves to limit the second amendment rights of its citizens. Accordingly, the District repealed its own version of 18 U.S.C. §922(b)(3), citing the second amendment rights of its citizens.

## ARGUMENT

### **I. The 4<sup>th</sup> Circuit’s decision creates a circuit split on whether consumers have standing to challenge restrictions on firearms dealers which limit consumers’ second amendment right to acquire handguns.**

To place this case in context, it is necessary to recap the statutory scheme governing a District of Columbia resident’s ability to obtain a handgun.

The District of Columbia, from 1976 to this Court’s decision in *Heller*, outlawed citizen ownership of a functional handgun.<sup>2</sup> Partially owing to the limited demand resulting from DC’s firearm restrictions, the city had – and still has – but a handful of FFLs legally entitled to deal in firearms, only one of which conducts transactions for private citizens. In fact, the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (“BATFE”) website lists six FFLs, including the BATFE itself.<sup>3</sup> Of the other five,

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<sup>2</sup> Under the city’s registration scheme then in effect, certain long guns and handguns owned prior to the gun ban could be registered and possessed, provided they were unloaded and either disassembled or trigger locked. *Heller*, 554 U.S. at 574-75.

<sup>3</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives Statistics - Listing of Federal Firearms Licensees, District of Columbia, available at <https://www.atf.gov/sites/default/files/assets/ffls-2013-may/0513-ffl-list-district-of-columbia.txt>. The

one engages solely in the import/export business and thus does not deal with the public;<sup>4</sup> two are held by theater companies that use their federal firearms licenses only to obtain firearms for the purposes of theatrical presentations;<sup>5</sup> and one is the head of an organization that lobbies for stricter gun control, and an email request to him by undersigned counsel to assist in a handgun transfer received no response.<sup>6</sup> The last one is Charles Sykes, operating as CS Exchange, who previously transferred handguns for certain of the city's numerous security agencies that employ armed special police officers.<sup>7</sup>

Also worth noting, is that DC has no retail firearms shops and current District law makes opening a retail firearms business very difficult. District zoning restrictions limit a retail firearms business from being located within 300 feet of a residence, school, playground, public library, or place

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BATFE is not in the business of transferring firearms to the public.

<sup>4</sup> Segraves, *DC still feeling a little gun-shy* (July 10, 2008), available at [http://www.wtop.com/?sid=1437663 &nid=695](http://www.wtop.com/?sid=1437663&nid=695).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* FFLs are not required under either federal law or BATFE regulation to transfer any firearms in order to maintain their federal firearms license.

<sup>7</sup> See CS Exchange website, <http://cwsxchange.com/4.html>.

of worship.<sup>8</sup> Indeed, prior to the filing of this case in May of 2011, Mr. Sykes lost his office lease and was forced to suspend business because he could not find another location that fell within DC's restrictive zoning regulations. Faced with loss of its only transferring FFL as a result of its stringent zoning restrictions, on the eve of the hearing in the district court of this action, the District of Columbia offered to lease Mr. Sykes an office in the headquarters building of the Metropolitan Police Department ("MPD") for \$100 a month, which he subsequently accepted. Petition at 27a-28a.

Mr. Sykes does not maintain an inventory of handguns or other firearms; nor does he order firearms from firearms manufacturers or distributors.<sup>9</sup> Rather to obtain a handgun through Mr. Sykes, a District of Columbia resident must order the handgun from an FFL operating in another state, generally from one of the gun shops in Virginia or Maryland.<sup>10</sup> Alternatively, a handgun may be ordered over the Internet from an FFL. In any case, the buyer purchases the gun from the out of state

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<sup>8</sup> See District of Columbia Zoning Commission, *Order*, No. 08-20 (March 9, 2009), available at <http://www.dcoz.dc.gov/orders.08-20.pdf>.

<sup>9</sup> See CS Exchange website, *supra* note 7.

<sup>10</sup> *Id.*

FFL and pays to have that dealer ship the firearm to Mr. Sykes.<sup>11</sup>

Perhaps because of his monopoly on transferring handguns to DC citizens, or perhaps because demand for legal handguns has been low in the District in light of the city's stringent regulatory scheme, Mr. Sykes charges \$125 just for the acts of receiving the shipped handgun, performing the NICS check, entering the transfer into his BATFE required records, and filing out the FFL portion of the District of Columbia registration application, Form PD-219. Petition at 27a. These are all services an out of state FFL would perform as part of the retail sale of their inventory.

Local gun shops and individual non-stocking FFLs in Virginia and Maryland will also perform transfers from other dealers. In contrast to Mr. Sikes's \$125 fee, the abundance of FFLs outside the city of Washington, results in significantly lower transfer fees, generally less than \$50.<sup>12</sup>

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<sup>11</sup> Shipping costs can vary. A search of Internet dealers found that Summitgunbroker.com, which makes sales via the Internet only, charges \$18 to ship a firearm. *See* Summit Gun Broker website, <http://www.summitgunbroker.com/>. The Glock Store, located in Southern California also makes Internet sales and charges \$40 to ship a handgun to a local dealer. *See* Glock Store website, checkout page, <https://www.glockstore.com/checkout/cart/>.

<sup>12</sup> Gunbroker.com lists several dealers inside the Beltway that will transfer a handgun for between \$25 and \$50. *See*

The necessity to effect the firearm transfer through Mr. Sykes, instead of through any of a variety of Virginia or Maryland FFLs, flows directly from the provision of 18 U.S.C. §922(b)(3) which prohibits an FFL from transferring a handgun to an out of state resident. An FFL is under no such restriction, however, with respect to transfer of a long gun to an out of state resident, provided the transaction is legal in the resident's home state and in the state where the FFL does business, as 18 U.S.C. §922(b)(3) contains an exception for rifle and shotgun transfers.

The 4<sup>th</sup> Circuit incorrectly found that Petitioners lacked standing to contest the provisions of 18 U.S.C. §922(b)(3). According to the 4<sup>th</sup> Circuit, the Petitioners lacked an injury in fact in part because the burden imposed on them by the statute was not "direct." Petition for Certiorari at 10a.

The 4<sup>th</sup> Circuit's opinion acknowledges, however, that consumers have been found to have standing in a variety of circumstances where the law was applicable to the vendor rather than the consumer, just as in this case. Petition at 9a, citing

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Gunbroker.com Federal Firearms Licensee Search Tool, search near zip code 22101, available at <http://www.gunbroker.com/FFL/SearchForFFL.aspx?st=Zip%20Code&sv=22101>. Virginia Arms, in Manassas, Virginia, charges \$30 to effect a transfer plus a \$2 charge to cover the Virginia State Police background check. See Virginia Arms website, firearm transfers page, <http://virginiaarms.com/TransferUnderConstruction.html>.



*Freeman v. Corzine*, 629 F.3d 146, 154 (3d Cir. 2010) and *Bridenbaugh v. Freeman-Wilson*, 227 F.3d 848, 849-50 (7th Cir. 2000) (consumers have standing to challenge prohibition against interstate shipment of wine directly to consumers). Indeed, the 7<sup>th</sup> Circuit, in *Bridenbaugh*, correctly found such regulation to be a direct injury to consumers, stating “Plaintiffs’ claim, moreover, is direct rather than derivative: every interstate sale has two parties, and entitlement to transact in alcoholic beverages across state lines is as much a constitutional right of consumers as it is of shippers – if it is a constitutional right at all.” 227 F.3d at 850. In the immediate case, plainly a constitutional right is at stake.

The 4<sup>th</sup> Circuit also acknowledged that consumers had standing to contest Chicago’s ban on firing ranges, *see Ezell v. City of Chicago*, 651 F.3d 684, 695, 698 (7th Cir. 2011), and that an expatriate had the right to contest 18 U.S.C. §922(b)(3) to the extent it prohibited him as a resident of no state from purchasing a firearm from an FFL, *see Dearth v. Holder*, 641 F.3d at 502-03. Petition at 10a.

However, the 4<sup>th</sup> Circuit sought to distinguish these various cases on the ground that the consumers were absolutely prohibited from engaging in the transactions at issue.<sup>13</sup> Petition at 9a-10a.

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<sup>13</sup> Note, however, that in *Ezell*, Chicago argued unsuccessfully that Plaintiffs could practice at ranges outside the city. *Ezell v. City of Chicago*, 651 F.3d at 697. That argument, rejected by

The 4<sup>th</sup> Circuit thus dismissed Petitioners' claims of injury if they were required to follow the statutory scheme as "minor inconveniences ... distinct from an absolute deprivation." Petition at 9a.

The 4<sup>th</sup> Circuit cited no case supporting such a distinction. And such a distinction here is fallacious in any event. For here, Petitioners are absolutely deprived of the right to participate in an interstate transfer of a handgun.

In direct conflict with the 4<sup>th</sup> Circuit's opinion is the opinion of the district court in *Jennings v. BATFE*, No. 5:10-CV-140-C (N.D. Tex. Sept. 29, 2011) and the 5<sup>th</sup> Circuit's opinion affirming that decision, *NRA v. BATFE*, 700 F3d 185.

That case held that 18-20 year-old prospective purchasers of handguns had standing to contest the similar provision of 18 U.S.C. §922(b)(1), which prohibits FFLs from transferring a handgun to persons under the age of 21, despite that plaintiffs there could legally obtain handguns in another fashion.

The district court observed that "the ban ... forecloses 18- to 20-year-olds from gaining access to the entire licensed market for handguns and handgun ammunition" but noted that the ban "does not apply to other avenues such as gifts or to those who sell arms on an irregular basis." *Jennings v.*

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the 7<sup>th</sup> Circuit is logically indistinguishable from the 4<sup>th</sup> Circuit's view that Petitioners were not absolutely deprived of the ability to acquire handguns under the statute.

*BATFE*, slip op. at 4. The district court went on to emphasize “that the ban does not prohibit the possession of handguns or handgun ammunition by 18-to 20-year-olds. Those in this age group are free to acquire handguns and ammunition from sources other than FFLs.” *Id.*, at 4 & n.2. Thus, just as in the instant case, where Petitioners are not absolutely deprived of the ability to obtain handguns, 18-20 year olds were not absolutely deprived of the opportunity legally to obtain a handgun by the statute.

On appeal, the 5<sup>th</sup> Circuit affirmed the district court and rejected the government’s renewed claim that the 18-20 year olds lacked an injury in fact and thus lacked standing because they could obtain a handgun in some other legal way, stating:

We disagree and hold that Payne and the NRA, on behalf of its under-21 members, have standing to bring this suit. The government is correct that the challenged federal laws do not bar 18-to-20-year-olds from possessing or using handguns. The laws also do not bar 18-to-20-year-olds from receiving handguns from parents or guardians. Yet, by prohibiting FFLs from selling handguns to 18-to-20-year-olds, the laws cause those persons a concrete, particularized injury—i.e., the injury of not being able to purchase handguns from FFLs. *See*

*Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 750–57, 755 n.12 (1976) (finding standing for prospective customers to challenge constitutionality of state statute prohibiting pharmacists from advertising prescription drug prices, despite customers’ ability to obtain price quotes in another way—over the phone from some pharmacies).

*NRA v. BATFE*, 700 F.3d at 190-91.

In *NRA v. BATFE*, the injury plaintiffs faced was their inability to purchase handguns from FFLs. Here the injury is similar in that Petitioners cannot purchase handguns from out of state FFLs, thereby restricting competition and increasing the cost of exercising their constitutional right to keep and bear arms. The 4<sup>th</sup> Circuit’s opinion below is thus directly in conflict with the 5<sup>th</sup> Circuit’s opinion in *NRA v. BATFE*. In each case the statute operates on FFLs, not consumers, and in each case the consumers are not absolutely deprived of the ability to acquire a handgun. Yet, the 5<sup>th</sup> Circuit found standing and the 4<sup>th</sup> Circuit did not. This Court should grant certiorari to resolve the conflict in the circuits over this important standing issue.

**II. The 4<sup>th</sup> Circuit's decision is contrary to this Court's opinion in *Va. State Bd. of Pharmacy v. Va. Citizens Consumer's Council, Inc.***

Certiorari should be granted to review the 4<sup>th</sup> Circuit's decision below because it is directly contrary to this Court's opinion in *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, a case the 4<sup>th</sup> Circuit failed even to address in its decision.

In that case, consumers sought to overturn a Virginia statute that made it an unethical practice for licensed pharmacists to advertise the price of prescription drugs. *Id.* at 749-50. This Court found that even though the statute did not directly regulate the plaintiffs, it nevertheless burdened their "right to receive the [prescription drug] advertising" and that this was a right that they could assert against the statute. *Id.* at 757.

The majority never even hinted that the fact that consumers had other means to obtain the requested information vitiated their ability to assert that they should have the benefit of advertised drug prices made available to them.

The dissent, on the other hand did press this very point, stating:

I do not find the question of the appellees' standing to urge the claim

which the Court decides quite as easy as the Court does.... [I]t has been stipulated in this case that the challenged statute does not prohibit anyone from receiving this information either in person or by phone....

There is no prohibition against a consumer group, such as appellees, collecting and publishing comparative price information as to various pharmacies in an area.... Yet, though appellees could both receive and publish the information in question, the Court finds that they have standing to protest that pharmacists are not allowed to advertise. Thus, contrary to the assertion of the Court, appellees are not asserting their "right to receive information" at all, but rather the right of some third party to publish.

*Id.* at 781-83 (Rehnquist, C.J., dissenting).

The 4<sup>th</sup> Circuit's rationale below, that the restriction was indirect and that consumers were not absolutely prevented from acquiring handguns by 18 U.S.C. §922(b)(3), directly tracks the dissent's suggestion in *Va. State Bd. of Pharmacy*, that the consumers there lacked standing to challenge the Virginia statute because they could obtain the prescription drug prices in some other way.

The mistake the dissent made in *Va. State Bd. of Pharmacy*, however, was assuming the harm plaintiffs suffered was the inability to obtain price information for the prescription drugs. In reality, the most significant harm plaintiffs suffered was the lack of price competition resulting from the inability of pharmacists to advertise and thus compete for customers based on price.

This is the same mistake the 4<sup>th</sup> Circuit made below. The 4<sup>th</sup> Circuit mistakenly assumed that the sole harm Petitioners faced as a result of 18 U.S.C. §922(b)(3) was the inability to obtain a handgun. To be sure that was an element of the harm Petitioners faced when the case was filed due to Mr. Sykes having lost his lease and thus his ability to conduct business; and it remains a potential harm given the practical inability for additional transferring FFLs to commence business in Washington, DC should Mr. Sykes again be placed in a position where he cannot conduct business. *See* Petition at 6. However, the injury Petitioners face extends beyond the potential inability simply to obtain a handgun. The injury lies in the restriction of competition and additional hoops Petitioners (and other DC residents) must jump through to obtain a handgun, all of which necessarily increase the cost and burden of exercising their fundamental second amendment right to possess handguns for personal protection and home defense.

Because the decision below is directly contrary to this Court's decision in *Va. State Bd. of Pharmacy*,

certiorari should be granted to review and reverse the 4<sup>th</sup> Circuit's decision.

**III. The injuries Petitioners and CAFÉ's members suffer from 18 U.S.C. §922(b)(3) are not minor inconveniences.**

Fundamental to the Court of Appeals' holding, that Petitioners did not suffer a cognizable injury, appears to be its view that effecting a transfer of a handgun through the only transferring FFL in Washington, DC, would result in merely minor inconveniences to Petitioners. Petition at 9a. In this regard the Court of Appeals grossly minimizes the injury to Petitioners and similarly situated persons, including members of CAFÉ.

The Glock series handgun is one of the more popular self-defense handguns in the United States for both citizens and law enforcement. It is the standard side-arm of the FBI,<sup>14</sup> the Washington, DC MPD,<sup>15</sup> the New York City Police,<sup>16</sup> the BATFE,<sup>17</sup> and many other law enforcement agencies.<sup>18</sup> An Internet search reveals that the cost of a Glock series

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<sup>14</sup> Barrett, *Glock: The Rise of America's Gun* 139 (2012).

<sup>15</sup> *Id.* at 139, 152-53.

<sup>16</sup> *Id.* at 264.

<sup>17</sup> *Id.*

<sup>18</sup> Some 65 percent of police departments in the country use the Glock line of handguns according to the company's website. See Glock website, law enforcement sector page, <http://us.glock.com/products/sector/law-enforcement>.



handgun generally ranges between \$500 and \$700.<sup>19</sup> Lesser expensive handguns are certainly available, but no matter what the cost of a handgun might be, for a District of Columbia citizen legally to purchase a Glock or any other handgun there is an additional charge of \$125, payable to the local transferring FFL, plus the cost of shipping from the selling FFL. These charges, adding some \$140-165 to the cost of the firearm (some 20 to 30 percent above the cost of the gun itself), are charges the citizen would not pay if the gun were purchased directly from a stocking FFL or transferred via another transferring FFL in Virginia or Maryland, where transferring charges are significantly lower.

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<sup>19</sup> See Bass Pro website, Glock pistols for sale, [http://www.basspro.com/Brand-Glock/Shooting-Guns-Pistols/\\_/N-1z0wfhbZ1z0ux60](http://www.basspro.com/Brand-Glock/Shooting-Guns-Pistols/_/N-1z0wfhbZ1z0ux60) (price range from \$599.99 to \$649.99 online as of June 12, 2013, at Bass Pro Shop, a retailer with stores throughout the nation, including at Arundal Mills, south of Baltimore, Maryland); Blue Ridge Arsenal website, Glock pistols for sale, [http://shop.blueridgearsenal.com/pistols-c-102\\_106.html?page=1&filter\\_id=32&sort=2a&sort=2a](http://shop.blueridgearsenal.com/pistols-c-102_106.html?page=1&filter_id=32&sort=2a&sort=2a) (price range from \$570.99 to \$781.99 as of June 12, 2013 at Chantilly, Virginia gun ship); Buds Gun Shop website, [http://www.budsgunshop.com/catalog/index.php/cPath/21\\_43](http://www.budsgunshop.com/catalog/index.php/cPath/21_43) (price range between \$525 and \$663 as of June 12, 2013 at Lexington, KY, Internet retailer); Glock Store website, Glock pistols for sale, <http://www.glockstore.com/glock-factory-handguns> (price range between \$482-\$547 as of June 12, 2013 at southern California Internet retailer); Impact Guns website, <http://www.impactguns.com/brand-glock.aspx> (price range between \$540 and \$759.99 at Utah based Internet retailer).

Although the 4<sup>th</sup> Circuit may consider this increase in cost to be only a minor inconvenience, it is anything but to members of CAFÉ and to many other citizens of Washington, DC. Washington, DC is notorious for its high crime rate, and its citizens have a legal right to protect themselves under the second amendment. In 2007, DC had 4056 major crimes per 100,000 of population.<sup>20</sup> This is compared to 1827 per 100,000 for the United States as a whole.<sup>21</sup> In 2008, the rate of major crimes was 4087, compared to 1784 for the US; in 2009, 3534 compared to 1683 for the US; in 2010, 3701 compared to 1610 for the US.<sup>22</sup> According to the DC MPD, the city had 1134 violent crimes per 100,000 population in 2011 and 4183 per 100,000 property crimes that year.<sup>23</sup>

Crime most often affects those in our society of lesser means, and those of lesser means tend proportionately more to be minorities. Medium household income data for Washington, DC, obtained from the Census Bureau's American Community

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<sup>20</sup> See USA.com, *Washington, DC Crime and Crime Rate*, available at <http://www.usa.com/washington-dc-crime-and-crime-rate.htm>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Washington, DC Metropolitan Police Department, *Annual Report 2011*, at 20, available at [http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/ar\\_2011\\_0.pdf](http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/ar_2011_0.pdf).

Survey for the period of 2006-09, breaks down as follows: \$97,402 for whites, \$38,218 for African Americans, and \$51,569 for Hispanics.<sup>24</sup> Although victimization data by race is not readily available for all crimes, MPD reports a very disturbing statistic: 90 percent of homicide victims in DC in 2011 were African-American, six percent were Hispanic while two percent were white.<sup>25</sup>

The correlation between lower income and victimization is startling. The extra \$125, plus shipping costs, to obtain the quintessential defensive weapon may only be a minor inconvenience to the 4<sup>th</sup> Circuit, but it can be the difference between life and death for a struggling single mother being stalked by an ex-boyfriend, who statistically is likely to also be a member of a minority group. For such a person, an extra \$125, plus shipping, on top of the high cost of a handgun itself, is truly likely to be cost prohibitive. This is no minor inconvenience. It is a substantial burden on the exercise of her second amendment rights that plainly confers standing.

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<sup>24</sup> See USA.com, *Washington, DC Historical Median Household Income by Races Data*, available at <http://www.usa.com/washington-dc-income-and-careers--historical-median-household-income-by-races-data.htm>.

<sup>25</sup> Washington, DC Metropolitan Police Department, *Annual Report 2011*, *supra* note 22, at 23. A category of “other than white” was two percent. *Id.*

Studies vary but suggest that at a minimum there are several hundred thousand defensive gun uses annually.<sup>26</sup> Many times merely showing the gun to the potential offender is sufficient to deter the criminal act. Also MPD reports that its records show some 88,308 registered firearms in the District in the hands of non-law enforcement persons.<sup>27</sup> MPD further reports that from January 1, 2009 through December 31, 2012, no registered firearm in the District was implicated in a shooting.<sup>28</sup> At least in the District of Columbia legal gun ownership is not a problem. 18 U.S.C. §922(b)(3), however, places a substantial impediment on District residents to obtain a legal firearm for self-defense. And the statute is especially burdensome to those of our most vulnerable citizens.

It is significant that after this litigation commenced, DC repealed its parallel provision requiring its citizens to obtain a handgun via transfer from a

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<sup>26</sup> Compare Kleck & Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminology 150 (1995); Cook and Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, NIJ Research in Brief, May 1997; Smith, *A Call for a Truce in the DGU War*, J. Crim. L. & Criminology, 87 (1997); Duncan, *Gun Use Surveys: In Numbers We Trust?* 25 Criminologist 1, (Jan/Feb 2000).

<sup>27</sup> Washington, DC, MPD Response to Freedom of Information Act Request No. 130325-003 (May 29, 2013) (reproduced in the Appendix hereto at 4a).

<sup>28</sup> *Id.*

DC based FFL. The city did so, in its words, to protect the second amendment rights of its citizens. *See* Petition at 9. Plainly the city did not think its provision amounted to a mere minor inconvenience to its citizens.

CAFÉ members, the majority of whom are non-white, have likewise been deterred from purchasing handguns because of the additional cost of going through multiple FFLs. They, like Petitioners in this case, suffer a palpably injury as a result of 18 U.S.C. §922(b)(3). CAFÉ further suffers a distinct injury because inasmuch as the statute serves to increase the price of handguns, it limits those persons who can afford to purchase a firearm and who would be likely to join CAFÉ, engage in CAFÉ's recreational firearms activities, or take advantage of the firearm safety-related instruction CAFÉ and its members offer.

There is a further injury resulting from 18 U.S.C. §922(b)(3), to society generally. To the extent it raises the cost of legally acquiring a self-defense handgun, 18 U.S.C. §922(b)(3) perpetuates the illegal acquisition of handguns on the black market without the various safeguards, such as safety training and registration, incumbent under DC's firearm regulatory scheme. This, in turn, becomes a threat to the public safety of responsible citizens as well as results in an increase in the disrespect and disregard for the law by those that have access to that black market. It is yet another reason why this Court

should grant certiorari to review and reverse the decision below.

In sum, the burden 18 U.S.C. §922(b)(3) imposes on Plaintiffs, on CAFÉ and on DC citizens in general is far from minor. Certiorari should be granted to correct the Court of Appeals' erroneous decision, which failed to properly assess the burden this statute imposes on citizens' second amendment rights.

## CONCLUSION

Grant of certiorari is warranted (1) because the decision below creates a split in the circuits concerning consumer standing to contest restrictions on the transfer of handguns; (2) because the decision below is contrary to this Court's opinion in *Va. State Bd. of Pharmacy*, and (3) because the Court of Appeals inadequately evaluated the harm 18 U.S.C. §922(b)(3) inflicts on Petitioners and other citizens of the District of Columbia. This Court should therefore grant the Petition for Certiorari.

GEORGE L. LYON, JR.

*Counsel of Record for Community  
Association for Firearms Education*

**GOVERNMENT OF THE DISTRICT OF  
COLUMBIA  
METROPOLITAN POLICE DEPARTMENT**

May 29, 2013

George Lyon  
glyon@fcclaw.com

Re: FOIA Request No. 120325-003

Dear Mr. Lyon:

This letter is in response to your above-listed Freedom of Information Act (FOIA) request to which you requested:

- (1) Number of registered firearms in the District of Columbia;
- (2) Number of registered handguns in the District of Columbia;
- (3) Number of registered long guns in the District of Columbia;
- (4) Number of firearms registered to individuals who are not police, special police, firearms training organizations or security organizations;
- (5) Number or accidental or negligent shootings in the District since Jan. 1 2009 through Dec. 31, 2012 by year if available;
- (6) Police reports for each incident set forth in number 5 above;

- (7) Number of shootings since January 1, 2009 through Dec. 31, 2012 involving a registered firearm;
- (8) Police reports for each incident identified in number 7 above;
- (9) Number of firearm registrations revoked since 1976 and the reason for each revocation.

After due consideration, your request is granted. Please find attached the document responsive to your request.

Please know that, under D.C. Code §2-537 and 1 DCMR §412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter as well on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.

The appeal must be mailed to: The Mayor’s Correspondence Unit, FOIA Appeal, 1350 Pennsylvania Avenue, N.W. Suite 316, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to The Mayor’s Correspondence unit at [foia.mayor@dc.gov](mailto:foia.mayor@dc.gov). Further, a copy of all appeal materials must be forward to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there



is no designated Freedom of Information Officer there.

Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

Sincerely,

[signature]

Genet Amare  
FOIA Specialist  
Freedom of information Act Office  
Strategic Services Bureau  
Metropolitan Police Department

P.O. Box1606, Washington, DC 20013-1606

Below you will find the results to the freedom of information request by Mr. George Lyons, FOIA #130325-003

1. Number of registered firearms in the District of Columbia.  
A database search yielded: 90876 as of 3/28/2013
2. Number of registered handguns in the District of Columbia.  
A database search yielded: 56,746 as of 3/28/2013
3. Number of registered long guns in the District of Columbia.  
A database search yielded: 27792 as of 3/28/2013

4. Number of firearms registered to individuals who are not police, special police, firearms training organizations or security organizations.

A database search yielded: 88,308 as of 3/28/2013

5. Number or accidental or negligent shootings in the District since Jan. 1 2009 through Dec. 31, 2012 by year if available.

This information is not currently tracked by our department

6. Police reports for each incident set forth in number 5 above.

This information is not currently tracked by our department

7. Number of shootings since January 1, 2009 through Dec. 31, 2012 involving a registered firearm.

Our current records indicate there were none

8. Police reports for each incident identified in number 7 above.

No reports to generate

9. Number of firearm registrations revoked since 1976 and the reason for each revocation.

A database search yielded: 264 registration revocations as of 3/28/2013. The reason for these revocations include: CPO against the registrant, commitment to a mental institution and violation of any criminal code in which possession of a firearm becomes illegal or the registrant becomes ineligible to register a firearm.