

No. 13-137

IN THE
Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION, *et al.*,

Petitioners,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS,
AND EXPLOSIVES, *et al.*,

Respondents.

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

**BRIEF OF *AMICUS CURIAE* THE NATIONAL
SHOOTING SPORTS FOUNDATION, INC. IN
SUPPORT OF PETITIONERS**

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Amicus curiae National Shooting Sports Foundation, Inc. (the “NSSF”), respectfully submits this brief in support of the petition for writ of certiorari (the “Petition”) to the United States Court of Appeals for the Fifth Circuit (the “Circuit Court”).

INTEREST OF THE *AMICUS CURIAE*¹

The NSSF is the trade association for the firearms, ammunition, hunting, and shooting sports industry. Formed in 1961, the NSSF is a Connecticut non-profit tax-exempt corporation with a membership of more than 9,500 federally licensed firearms manufacturers, distributors, and retailers (also known as “federal firearms licensees” or “FFLs”); sportsmen’s organizations; shooting ranges; gun clubs; publishers; hunters and recreational target shooters. The NSSF’s mission is to promote, protect and preserve hunting and the shooting sports. The NSSF provides trusted leadership in addressing industry challenges; advances participation in and understanding of hunting and the shooting sports; reaffirms and strengthens its members’ commitment to the safe and responsible use of their products; and promotes a political environment that is supportive of America’s traditional hunting heritage and firearms freedoms. As a guardian of our nation’s rich hunting and shooting traditions, the

1. The parties have consented to the filing of this brief. Counsel of record for both parties received notice of the *amicus curiae*’s intention to file this brief at least 10 days prior to its due date. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or its counsel, made a monetary contribution to its preparation or submission.

NSSF believes that lawful commerce in firearms and firearm-related products must be protected – and that, in particular, no law or regulation should unreasonably limit the lawful transfer of firearms to responsible, law-abiding adults who have individual constitutional rights guaranteed by the Second Amendment to the United States Constitution to purchase, own, possess and use such firearms and ammunition.

The NSSF's interest in this action derives principally from the fact that the NSSF's FFL manufacturer, distributor, and retailer members provide the lawful commerce in firearms that makes the exercise of Second Amendment rights possible,² and include the licensed retailers from whom 18- to 20-year old adults are currently prohibited from purchasing firearms and ammunition by the challenged statute and regulations, 18 U.S.C. §§ 922(b)(1) and (c)(1); 27 C.F.R. §§ 478.96(b), 478.99(b)(1) and 478.124(a). More specifically, the NSSF submits this brief to expand upon the Petitioners' description of the different channels of firearms commerce (*see* Pet. at 6), and to explain to this Court i) the myriad benefits that would be available to 18- to 20-year-old adults (and society) if those adults could purchase from the primary market of licensed retailers and ii) the illogic of directing those 18- to 20-year-old adults away from the primary market and into the secondary market. For these reasons, the NSSF supports the Petitioners and urges this Court to grant the petition for writ of certiorari to the Circuit Court.

2. Members of the industry supply the United States armed forces and federal, state, and local law enforcement with the firearms they use to protect America's national security and keep our communities safe, and also supply hunters, sportsmen, and gun owners with the firearms they use for lawful purposes.

SUMMARY OF ARGUMENT

The Second Amendment to the United States Constitution preserves “the right of the people to keep and bear Arms” and declares that this right “shall not be infringed.” U.S. Const. amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court made clear that a ban on the possession of handguns – “an entire class of ‘arms’ that is overwhelmingly chosen by American society for [the] lawful purpose of self-defense” – runs afoul of this constitutional provision. 554 U.S. at 628. Given that the right to possess and use a handgun is meaningless absent the right to purchase or otherwise acquire a handgun,³ the instant action challenges a federal ban – 18 U.S.C. §§ 922(b)(1) and (c)(1); 27 C.F.R. §§ 478.96(b), 478.99(b)(1) and 478.124(a) (together, “the Ban”) – that currently prohibits licensed retailers from selling handguns and handgun ammunition to adults aged 18 to 20. The Ban unreasonably infringes upon the Second Amendment right of adults aged 18 to 20, and violates their Fourteenth Amendment right to Equal Protection under the law, U.S. Const. amend. XIV, § 1 (“No state shall ... deny to any person within its jurisdiction the equal protection of the laws.”).

3. See *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (“[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use”); *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) (recognizing that a law “prohibiting the commercial sale of firearms” is “a result [that] would be untenable under *Heller*”).

The Circuit Court erroneously upheld the Ban based upon a misreading of *Heller*,⁴ and an improper deference to the legislature to assess constitutional violations on its own.⁵ Moreover, because the Circuit Court wrongly decided the Second Amendment issue, it also applied the wrong standard of review to Petitioners' Equal Protection argument.⁶ Because the Petitioners will address these issues fully, the NSSF will not burden the Court with a repetitive analysis.

4. In upholding the Ban, the Circuit Court purports to rely on *Heller*'s "critical passage ... emphasiz[ing] that the 'right secured by the Second Amendment is not unlimited.'" Pet. App. 15 (quoting *Heller*, 554 U.S. at 626). *Heller*, however, simply stated in *dicta* that the Second Amendment is not absolute, and noted that its identification of certain qualifications was not exhaustive. 554 U.S. at 626-27. This unremarkable statement cannot form the basis for a decision in the instant case, which addresses only a specific issue – age – not at issue in *Heller*.

5. The Circuit Court concluded that "Congress's finding that minors under 21 are prone to violent crime, especially with guns-in-hand, is entitled to some deference." Pet. App. 54 n.21. This cannot be categorically true, however, because Congress' policy determinations must still pass constitutional muster. If policy considerations, for example, led Congress to increase the minimum age of lawful handgun purchasers to 30, surely it would be within the purview of the courts to correct Congress' clear violation of the adults' right to bear arms. Moreover, Congress enacted the provisions being challenged here – and weighed the policy considerations upon which the Circuit Court relies – prior to *Heller* and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), when the law did not so clearly recognize the scope of the Second Amendment's protections.

6. The Circuit Court employed a "rational basis" standard of review to Plaintiffs' Equal Protection argument, because it held that "the challenged federal laws are constitutional under the Second Amendment." Pet. App. 55-56.

Rather, the NSSF wishes to address certain erroneous conclusions that underlie the Circuit Court’s holding: i) that a legitimate state interest – “public safety” – justifies the Ban and ii) that 18- to 20- year-old adults are “emotionally immature,” “thrill-bent juveniles and minors prone to criminal behavior.” *See* Pet. App. 37-38.

First, Congress has already conclusively spoken on “public safety,” because the same statute that prohibits 18- to 20-year-old adults from acquiring handguns and handgun ammunition from licensed retailers permits those 18- to 20-year-old adults to use and possess handguns. *See* 18 U.S.C. § 922(x). Because Congress has authorized these 18- to 20-year-old adults to use handguns, there cannot be any “public safety” justification whatsoever for the Ban. Indeed, in addition to unjustifiably restricting the exercise of Second Amendment rights, the Ban accomplishes nothing other than forcing this class of adults, who are most likely to be first-time handgun purchasers, i) away from the primary market of licensed retailers and ii) into the unregulated channels of the secondary market, where 18- to 20-year-olds may buy handguns and ammunition, if and when they are available, from unlicensed dealers. Because licensed retailers are licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (the “ATF”)⁷ and closely monitored

7. FFLs, including licensed retailers, must undergo a two-month application and interview process conducted by the ATF to obtain a federal firearms license. *See* 18 U.S.C. §§ 923(a), 923(d) (2); 27 C.F.R. §§ 478.41, 478.47(d). In addition to paying a fee, each applicant is required to submit the following: (i) an Application

by the Attorney General to ensure public safety, the Ban’s redirection of buyers away from the primary market of licensed retailers cannot have anything to do with “public safety.” If anything, licensed retailers are best suited to equip 18- to 20-year-olds with firearms best fitting the needs of the particular consumer, which promotes safety. Along with each individual firearms purchase, licensed dealers can provide firearms safety education materials and instruct and train their customers on products purchased. Furthermore, the Gun Control Act requires licensed retailers to provide consumers firearm locking devices at the point of purchase.⁸ Locking devices

for Federal Firearm License (ATF F 5310.12) executed under the penalties of perjury and the penalties imposed by 18 U.S.C. § 924, which include imprisonment; (ii) a Certification of Compliance (ATF F 5330.20); (iii) two completed Fingerprint Identification Cards (FD-258) for each “responsible person” having the power to direct the management, policies, and practices of the business as it pertains to firearms; and (iv) two two-inch by two-inch photos for each responsible person. *See* 18 U.S.C. § 923(b); 27 C.F.R. § 478.44. After the applicant has submitted these materials, the Federal Firearms Licensing Center (“FFLC”) performs a background check on each responsible person and an ATF Industry Operations Investigator (“IOI”) conducts an in-person interview with the applicant. If the applicant is in compliance with all State and local laws, and his application passes the field and desk review, the FFLC will issue the license. *See* 18 U.S.C. § 923(c); 27 C.F.R. § 478.47(c).

8. 18 U.S.C. § 922(z) makes it unlawful for licensed retailers to sell, deliver or transfer any handgun to any consumer (*i.e.*, non-FFL) without providing a “secure gun storage or safety device.” 18 U.S.C. § 921(a)(34) defines a “secure gun storage or safety device”

that licensed retailers are required to make available to customers are in addition to those that are already voluntarily provided by firearms manufacturers and included in the box or other packaging containing their products.

Second, if public safety is the predicate for many of the regulations imposed on licensed retailers – *i.e.*, mandating that licensed retailers perform backgrounds checks, keep extensive records of sale, and transfer a handgun with a secure storage and/or safety mechanism – then the society as a whole is safer when first-time handgun purchasers buy in the primary market.

Third, the Circuit Court’s notion that 18- to 20-year-olds, as a class, are insufficiently mature to purchase handguns is belied by common experience – most especially the 18- to 20-year-old members of the armed forces that NSSF member companies equip with firearms, including handguns. Furthermore, the term “militia” as used in the Second Amendment was understood to include 18- to 20-year-olds who – one year after the Second Amendment

as: (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

was adopted – were required by the Militia Act to enroll and provide themselves with firearms. Act of May 8, 1792, 1 Stat. 271 (the “Militia Act of 1972”).

For these reasons, discussed more fully below, public policy – and any rational concern for firearm safety – dictates that 18- to 20-year-old adults be permitted to buy handguns and handgun ammunition in the primary firearms market of licensed retailers.

ARGUMENT

I. THE CIRCUIT COURT MISINTERPRETED THE PUBLIC POLICY AND SAFETY CONCERNS THAT MOTIVATED ITS OPINION

A. Striking the Ban on the Licensed Sale of Handguns and Handgun Ammunition to Adults Aged 18 to 20 Years Old Will Yield Significant Safety and Other Benefits for Those Purchasers

Respondents do not – and cannot – dispute that all law-abiding adult citizens, including those aged 18 to 20, have a clear constitutional right to keep and bear arms and thus to use and possess handguns for self-defense and other lawful purposes. *See* U.S. Const. amend. II; 18 U.S.C. § 922(x). The right to keep and bear arms is so etched in the foundation of American history that the Framers codified it in the Bill of Rights, the list of America’s ten most sacred freedoms. Adults having the right to protect home, family and self with a firearm not only have the right to purchase firearms, but logic dictates that they also have

the right to acquire the safest, most modern and reliable firearms on the market – *i.e.*, from licensed retailers in the primary market. Outlawing 18- to 20- year-old adults from purchasing in this highly regulated market, and thereby redirecting first-time handgun purchasers into the less regulated, unlicensed secondary market, simply makes no sense.

The safety benefits to 18- to 20-year-olds from buying handguns in the primary market are unmistakable. As a threshold matter, anyone who enters a licensed retailer's premises to buy a firearm can be assured of the seller's legitimacy, because the licensed retailer must post his license in the store pursuant to 18 U.S.C. § 923(h). This license evidences, among many other things, that the seller has passed a background check and is permitted to ship, transport, receive and possess firearms or ammunition. 18 U.S.C. § 923(d)(1)(B); 27 C.F.R. § 478.47(b). In short, the 18- to 20-year-old, first-time handgun buyer can have every confidence in the reputation of his or her seller.

In addition, there are a myriad of advantages to buying in the primary firearm market that 18- to 20-year olds should not be denied – not unlike the benefits of buying a car from a dealership instead of from a classified newspaper advertisement. Both a car dealership and a licensed firearms retailer offer a wide array of the newest models with the latest improvements, refinements, and safety features. Like a dealership offering test drives, many licensed retailers have on-premises shooting ranges that allow a purchaser to test out and compare products to determine which handgun is the best fit for the buyer's build, purpose and experience level. Both offer new product warranties, instruction manuals, and

guidance regarding repairs. And, just as a dealer will walk a new buyer through the features of his or her new car, a firearms retailer can provide or arrange for instruction in the proper handling and safe storage of a firearm. Indeed, licensed retailers offer and/or arrange for instructional courses in marksmanship and typically offer firearm safety videos for customers (especially important for first-time gun owners). Furthermore, licensed retailers are required by law to provide secure gun storage or safety devices for handguns at the point of sale, 18 U.S.C. § 922(z), as well as make available these same safety devices to all customers at any place in which firearms are sold to persons who are not licensees, 18 U.S.C. § 923(d)(1)(G). This is in addition to firearms safety devices that manufacturers voluntarily include in the box with their firearms upon shipping them to their retail distributors.

Obviously, the benefits that car dealerships and licensed retailers offer come at a cost, and the products they offer may be more expensive than those in the secondary market. But whether a buyer pays that additional cost to avail himself or herself of those benefits is a decision that should be left to the consumer. This is particularly true with respect to 18- to 20-year-olds, who may be first-time buyers, may have more to gain from the benefits that dealerships or licensed retailers have to offer, and, thus, may get more incremental benefit from the added cost relative to a more experienced purchaser.

More to the point, there is simply no rational basis, let alone a compelling state interest, for Congress's decision to deprive 18- to 20-year-olds by legislative fiat of the benefits that licensed retailers offer, especially to first-time buyers. The Circuit Court erred by ignoring

how Congress's irrational distinction – drawn prior to the Supreme Court's *Heller* and *McDonald* decisions – distorts the market, forcing 18- to 20-year-olds into the secondary market and thereby depriving them of the safety and instructional benefits that experienced, professional and licensed firearms retailers offer.

B. To the Extent Federal Firearms Laws and Attendant Regulations Are Intended to Ensure “Public Safety,” Then Prohibiting 18- to 20-Year-Old Adults from Buying from Federally Licensed Firearms Retailers Is Counterproductive

Moreover, to the extent the Circuit Court was concerned about “public safety,” and the laws and regulations imposed on licensed retailers are intended to ensure “public safety,” then the Ban is counterproductive, because it directs purchases away from those ostensible “public safety” measures. At the very least, there is certainly no societal interest served by prohibiting 18- to 20-year-old adults from buying from the primary market of licensed retailers.

The Brady Handgun Violence Prevention Act of 1993 requires licensed retailers to perform background checks on individuals before a firearm may be purchased, unless a valid exception applies, *e.g.*, a state permit to purchase firearms. 18 U.S.C. § 922(t); 27 C.F.R. § 478.102. These checks prevent certain persons from buying or possessing firearms, including any person who (i) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (ii) is a fugitive from justice; (iii) is an unlawful user of or addicted to any controlled

substance; (iv) has been adjudicated as a mental defective or committed to a mental institution; (v) is an alien illegally or unlawfully in the United States; (vi) has been discharged from the Armed Forces under dishonorable conditions; (vii) having been a citizen of the United States, has renounced U.S. citizenship; (viii) is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; (ix) has been convicted in any court of a misdemeanor crime of domestic violence; or (x) has a record of being a felon. 18 U.S.C. § 922(g). As a result of these laws and regulations, no licensed retailer's sale is anonymous, all firearms sold are traceable to purchasers, and each transaction is vetted by the National Instant Criminal Background Check System ("NICS").⁹ *See* 18 U.S.C. § 922(t); 27 C.F.R. § 478.124.

Consistent with this statutory framework, licensed retailers are required to fill out a Firearms Transaction Record – ATF Form 4473 – for every transaction. This form requires a name, address, date of birth, government-issued photo identification, NICS transaction number,

9. In contrast, individual firearms sellers in the secondary market – wherein 18- to 20- year old adults may legally purchase handguns – are not required by federal law to perform background checks. The recent Senate vote rejecting the Manchin-Toomey Amendment, which would have required sellers in the secondary market to perform background checks on purchasers, highlights the distinction between these two avenues of commerce. *See* Public Safety and Second Amendment Rights Protection Act of 2013, S. 649, 113th Cong. (2013). Nevertheless, Respondents, who purport to be proponents of regulation, would illogically direct young adults seeking to make lawful handgun purchases into the unregulated avenue.

and an affidavit stating that the purchaser is eligible to purchase a firearm under federal law.¹⁰ The licensed retailer who verifies the identity of the buyer must also sign and keep a copy of the form for at least 20 years after the date of the sale or disposition.¹¹ *See* 27 C.F.R. § 478.129(b). Further, licensed retailers must keep a permanent record of all firearms sales in an ATF-approved “bound book”¹² or computerized equivalent. 27 C.F.R. §§ 478.22, 478.121 and 478.125. The ATF is allowed to inspect these records as part of a criminal investigation or upon a trace request. 18 U.S.C. § 923(g)(7); 27 C.F.R. § 478.25a. In addition, licensed retailers must report to the ATF and the state police or local law enforcement agency the sale of multiple handguns to the same consumer at one time or during five consecutive business days. ATF Form 3310.4.¹³

10. Form 4473 is available at <http://www.atf.gov/files/forms/download/atf-f-4473-1.pdf>. After completing the required ATF Form 4473, licensed retailers contact NICS – maintained by the FBI – to request a background check with the Form 4473’s descriptive information.

11. When retiring or otherwise discontinuing its business, a licensed retailer is required by law to send its records to the ATF’s Out-of-Business Records Center. 18 U.S.C. § 923(g)(4); 27 C.F.R. §§ 478.57 and 478.127.

12. A “bound book” is a permanently bound or orderly arrangement of pages that must be maintained on the business premises. The format must follow that prescribed in the regulations and the pages must be numbered consecutively. 27 C.F.R. §§ 478.121 and 478.125.

13. *Available at* <http://www.atf.gov/files/forms/download/atf-f-3310-4.pdf>.

Finally, licensed retailers sell the most modern firearms equipped with the latest safety features and advancements in design. In fact, licensed retailers are required by law when transferring (*i.e.*, selling) a handgun to a consumer to provide the purchaser with a “secure gun storage or safety device,”¹⁴ *e.g.*, a gun lock. 18 U.S.C. § 922(z).¹⁵ No such requirement exists for sales occurring between individual consumers (*i.e.*, non-FFLs). Moreover, licensed retailers must always have safety devices available for sale in their stores. 18 U.S.C. § 923(d)(1)(G). And all licensed retailers must post ATF-provided safety posters on their premises that address safe storage of firearms, warnings against the misuse of guns by juveniles, and federal prohibitions against transferring handguns to persons under 18 years old, *see e.g.*, ATF I 5300.2.¹⁶

14. *See supra* note 8.

15. Since 1996, all, or virtually all, manufacturers have voluntarily included a free gun lock with every new firearm, including handguns, shipped from the factory. Some manufacturers have done this for decades.

16. 27 C.F.R. § 478.103(b) states:

The written notification (ATF I 5300.2) required by paragraph (a) of this section shall state as follows: (1) The misuse of handguns is a leading contributor to juvenile violence and fatalities. (2) Safely storing and securing firearms away from children will help prevent the unlawful possession of handguns by juveniles, stop accidents, and save lives. (3) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18. (4) A knowing violation of the prohibition against selling, delivering, or otherwise transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison.

The NSSF recognizes that these statutes and regulations are motivated by a desire to ensure “public safety.” Members of the firearms industry are strong supporters of firearm safety, and the NSSF, on behalf of its industry, has an extensive history of supporting and promoting the safe and responsible use and storage of firearms. A few examples of the NSSF’s initiatives include its widely-distributed publication entitled *Firearms Safety Depends on You* (2009), <http://www.nssf.org/lit/fsdoy.pdf>, and award-winning Project ChildSafe educational initiative, <http://www.projectchildsafe.org/> (last visited Aug. 16, 2013), which is the largest firearm safety program in America and has distributed over 36 million firearm safety kits, each including a free gun lock.¹⁷ As a strong advocate for firearm safety, the NSSF must note the irony and illogic of the Circuit Court’s decision. If the Circuit Court’s goal was to promote “public safety,” the Circuit Court’s decision to uphold the Ban is counterproductive, because it directs 18- to 20-year-old buyers **away from** federally mandated firearms safety messages and related products.

C. The Ban Creates an Illogical Distinction Between the Professional and Private Lives of the Nation’s Armed Forces Service Members

Finally, the Circuit Court holds that adults between 18 and 20 years of age are “children ... deemed incapable of virtue” and thus ineligible for the constitutional right to bear arms. Pet. App. 32-33 (internal quotation marks omitted). This is simply not true. Eighteen-year-olds may vote, marry, form a corporation, use and possess long guns or handguns, purchase a long gun (but, irrationally,

¹⁷. See generally, *National Shooting Sports Foundation: Safety*, <http://nssf.org/Safety/> (last visited Aug. 16, 2013).

not a handgun) from a licensed retailer, and purchase a handgun from a secondary source (but, irrationally, not from a licensed retailer).

Because NSSF member companies supply the United States armed forces with the firearms they use to protect America's national security, the NSSF is also compelled to note that federal statutes historically and presently consider 18-year-olds members of the national militia, *see* the Militia Act of 1972 and 10 U.S.C. § 311(a), and require 18-year-olds to register for the draft, accepting that they can bear arms – and even die – in service of our country. 50 U.S.C. § 453(a). Indeed, the term “militia” as used in the Second Amendment was understood to include 18- to 20-year olds, as evidenced by the Militia Act of 1792, which was passed the year after the Second Amendment was adopted. According to the Militia Act of 1792,

each and every free able-bodied white male citizen of the respective states, ..., who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company

and that “every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock,” etc. *See* STEPHEN P. HALBROOK, *THE FOUNDERS' SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS* 299-309 (2008).

Thus, an 18-year-old who has volunteered to serve in the United States armed forces can be deployed abroad

to protect America's liberties (which include, of course, the Second Amendment) and use a handgun to defend against enemy forces (hardly an "infant" in doing so). Yet, if this veteran returns home to the United States before his or her 21st birthday, he or she will be denied these very same liberties if he or she seeks to purchase a handgun from a licensed retailer. We entrust young soldiers to use machine guns, and still the law denies them the right to lawfully purchase a handgun from a licensed retailer for use in target shooting, hunting or self-defense. Equally disquieting is to prohibit a soldier's 18-year-old spouse from purchasing a handgun from a licensed retailer for household protection of herself and their infant child while her soldier husband is away fighting for our country, possibly using a handgun. The Ban thus constitutes an irrational, illogical, and unjustifiable infringement on the exercise of a fundamental civil liberty of adults aged 18 to 20.

CONCLUSION

For the foregoing reasons, as well as those in the Petition, *amicus curiae* respectfully submits that the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be granted.

Dated: August 30, 2013

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