

Friends of the Second Amendment: A Walk through the Amicus Briefs in *D.C. v. Heller*

By Ilya Shapiro

This Article summarizes each of the dozens of amicus brief filed in District of Columbia v. Heller. It was written before the Heller decision was announced. Ilya Shapiro is Senior Fellow in Constitutional Studies at the Cato Institute, and Editor-in-Chief of the Cato Supreme Court Review. Research assistance on this article was provided by Seth Ayarza, Jonathan Blanks, Samuel Debbah, and Rachel Maxam.

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The Supreme Court's grant of *certiorari* in the "D.C. Gun Ban Case" set off a media frenzy typically reserved for cases involving such culture-war touchstones as abortion, affirmative action, and prayer in schools. And indeed, as Barack Obama discovered to his chagrin when he commented on "bitter" Pennsylvanians who "cling to" their guns, the right to keep and bear arms touches a deep nerve in the American polity.

Also clinging to particular views of gun rights are the many lawyers, government officials, and political activists of all stripes who generated a record 68 *amicus curiae* briefs. (The Michigan racial preference cases, *Gratz v. Bollinger*, 539 U.S. 244 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 (2003), together generated 104 *amicus* briefs—64 in *Gratz*, 40 in *Grutter*—but these cases were consolidated for argument and neither one garnered more than *Heller* has alone.) It is striking to see so many briefs running in opposite directions. There is no agreement on any of the major issues before the Court, such as what the Founders had in mind in writing the Second Amendment, the application of the Amendment to the District of Columbia (and, by implication, to the states), the social science findings about whether gun control reduces violence, and on the constitutional meaning—if any—of Congress's past adoption of gun control laws.

The core issue is the nature of the right that the Second Amendment recognizes: the D.C. city government ties gun possession to military service; opponents to the D.C. handgun ban label gun pos-

session as an essential part of personal liberty no less than other parts of the Bill of Rights. Plenty of briefs on both sides detail the history of gun rights in colonial times through the present day. (The Cato Institute filed a brief supporting the Respondent, Dick Heller, that focuses on the right to “have and use” arms in England and America leading up to and during the Founding Era. In the interest of full disclosure, I should note that I played a small role in reviewing and commenting on this brief’s final drafts.) Other briefs focus on linguistics, or on how the Second Amendment must mean something different now than when civilians and military personnel used essentially the same arms.

Though the Court is expected to opt for the individual, private right to have guns, the briefs again divide on how to evaluate laws that infringe on this right. Should there be a “reasonableness” standard or “strict scrutiny”? Whatever the standard, if the D.C. ban survives, is anything left of the Second Amendment right?

The *amici* (19 for the District, 48 for the challengers to the handgun ban, and one for the federal government styled as not taking sides) not only echo the fundamental disagreement on the nature of the right and standard of review, but extend it. Solicitor General Paul Clement urges the Court to find an individual right to possess handguns for self-defense in the home, but also suggests that the D.C. Circuit used the wrong bright-line rule, and so the Court should remand for review under a weaker standard.

Responding to the Solicitor General proposal, many of Respondent’s *amici* return considerable fire. The Goldwater Institute, for example, assails the government for its “uncomfortable straddle,” accusing the S.G. of advancing arguments that fail on principle and logic or that rise from “flawed premises.”

One notable *amicus* brief is signed by one Richard B. Cheney, wearing his *other* hat as President of the Senate, along with a majority of the members of both the House and the Senate. That brief explicitly endorses Judge Silberman’s ruling, advocating a repudiation of the handgun ban in light of Congress’s pro-individual rights legislation. Not surprisingly, a group of Democratic Representatives took it upon themselves to offer a contrary interpretation of Congressional activity.

Among the *amicus* briefs are competing arguments from former high-ranking Justice Department officials, contradictory interpretations of empirical evidence relating to gun violence, and the pros and cons of whether guns cause more violence against women, gays, racial and religious minorities, the elderly, and the disabled. Linguists

battle grammarians, while public health officials reach no more consensus than historians or criminologists. There is no agreement on the correct interpretation of the Court's 1939 and previous rulings on the Second Amendment, and the degree to which the current Court should be bound by those rulings. State and local governments and prosecutors also line up on both sides, foreshadowing the next stage of litigation. Many (I daresay most) of the *amicus* briefs repeat arguments spelled out more than adequately in the parties' briefs—and were likely filed so the particular organization could say to its supporters/prospective donors that it “took a stand” on this high-profile case. But a not insignificant number of the briefs should genuinely help the Court write its opinion.

And so here is a compendium of *amicus* briefs in *D.C. v. Heller*. For lack of a better organizing principle, I list them alphabetically, first the Petitioners' *amici*, then the Respondent's, with the U.S. Government bringing up the rear. In addition to a summary of the argument in each brief, I provide the *amici's* interest if that is not readily apparent, and any “items of note” (interesting facts, etc.) about the brief. I hope that, when read in the light of the Court's opinions in the case, this Article can serve as a guide for counsel and potential parties in the Second Amendment litigation that is sure to follow.

PETITIONERS' AMICI

1. AMERICAN ACADEMY OF PEDIATRICS, THE SOCIETY FOR ADOLESCENT MEDICINE, THE CHILDREN'S DEFENSE FUND, WOMEN AGAINST GUN VIOLENCE, YOUTH ALIVE!

Interest: These non-profit organizations are committed to the health, safety and wellbeing of America's children and youth, and to preventing youth violence and injury by removing handguns from homes and communities across the country.

Argument: Handguns are more lethal than other types of firearms and are particularly dangerous to children and youth, especially in the home. Handguns increase the likelihood and deadliness of accidents involving children because children cannot be taught gun safety. Guns make suicide more likely and suicide attempts more injurious to children and adolescents. D.C.'s gun law is reasonable because firearms and especially handguns increase homicide and assault rates among America's youth. Contrary to the popular myth that guns are necessary in the home for self-defense, one study found that there are four unintentional shootings, seven criminal assaults

or homicides, and 11 attempted or completed suicides for every time a gun is used in self-defense in the home.

2. AMERICAN BAR ASSOCIATION

Interest: The ABA is concerned that a decision favoring *Heller* will undermine *stare decisis* by rejecting a long and consistent line of precedent. The ABA supported legislation that eventually became the Federal Gun Control Act of 1968.

Argument: The decision below undermines the rule of law by failing to provide special justifications for abandoning longstanding precedent upon which legislators, regulators, and the public have relied. The D.C. Circuit decision would compound the disruption of the regulatory system critical to public safety developed in reliance on judicial precedent. The lower court does not create an objective, reliable, and intelligible definition of “Arms” and departs from the standard in *Miller*, which is whether use or possession of the firearm has a “reasonable relationship to the preservation or efficiency of a well regulated militia.” The lower court’s decision will entangle courts in factual and policy determinations more appropriately left to state and local legislatures.

3. AMERICAN JEWISH COMMUNITY, EDUCATIONAL FUND TO STOP GUN VIOLENCE ET AL. (63 AMICI)

Interest: *Amici* are religious, civic, community, and civil rights groups and group representatives—as well as victims and families of victims of gun violence—with an interest in stemming the tide of gun violence that threatens lives and communities. *Amici* groups include the D.C. Statehood Green Party, the Gray Panthers, the Methodist Federation for Social Action, and the Baptist Peace Fellowship of North America.

Argument: The Framers adopted the division of authority between the States and the federal government to ensure protection of our fundamental liberties. It also protects *state authority* to enact and enforce legislation to safeguard life, liberty, and property in light of local conditions and preferences to which the States are often uniquely suited to respond. The Second Amendment is a limit on federal authority to interfere with gun possession by individuals, but only when the interference would intrude on state militia authority—not a limit on state and local authority to regulate in the first instance. The Framers borrowed heavily from pre-constitutional statutes and state militia laws that had restrictions on firearms. To read the Second Amendment as providing arms so that militias can

quell insurrection, while at the same time facilitating insurrection, makes no sense. Nations sharing our common law heritage, including Canada, Great Britain, and New Zealand have handgun bans, and Austria and South Africa also strictly regulate firearms.

4. AMERICAN PUBLIC HEALTH ASSOCIATION; AMERICAN COLLEGE OF PREVENTIVE MEDICINE; AMERICAN TRAUMA SOCIETY; THE AMERICAN ASSOCIATION OF SUICIDOLOGY

Interest: These four organization aim to protect Americans from preventable health threats, including firearm-related injuries.

Argument: Public health research may be relevant to assessing the constitutionality of the D.C. regulations. Guns in the home increase the risk of suicide, homicide, and death from accidental shooting. D.C.'s laws appear to have reduced suicide and homicide rates.

5. BRADY CENTER TO PREVENT GUN VIOLENCE, ET AL.

Interest: In addition to the Brady Center, *amici* are nine police organizations.

Argument: Read to give meaning to all of its words, the Second Amendment guarantees no right to possess firearms unless in connection with service in a state-regulated militia. *Miller* affirmed the Second Amendment's express militia purpose. The well-regulated militia is an organized military force, not an unorganized collection of individuals, so the phrase "keep and bear arms" refers to possession and use of weapons for military purposes. The Second Amendment was drafted to respond to Anti-Federalist fears that Congress would fail to arm the militia. Madison's initial proposal treated "bearing arms" as synonymous with "rendering military service" and debates at the convention reflected view that the Second Amendment only related to militia use. The guarantee of the right to "the people" is entirely consistent with the "militia purpose" interpretation. The Court should continue to entrust gun regulation in the interest of public safety to state and local legislators as it has for more than 200 years.

6. CITY OF CHICAGO

Interest: Chicago has similar regulations to D.C. and is concerned that an affirmance would result in challenges to its laws.

Argument: The Second Amendment is a federalism provision as identified by the text, historical context and the practice of state and local governments. This federalist objective of the Second Amendment was not altered or abandoned by the adoption of the Fourteenth Amendment and accordingly, the Second Amendment

should remain unincorporated against the States. For example, this Court held that the Second Amendment did not restrict the State of Illinois's authority to prohibit 400 armed men from marching through the streets of Chicago. *Presser v. Illinois*, 116 U.S. 252 (1886). The history of the Second Amendment demonstrates that any private right to own guns outside of a militia context is not fundamental.

7. D.C. APPLSEED CENTER FOR LAW AND JUSTICE, D.C. CHAMBER OF COMMERCE, FEDERAL CITY COUNCIL, D.C. FOR DEMOCRACY, D.C. LEAGUE OF WOMEN VOTERS, WASHINGTON COUNCIL OF LAWYERS

Interest: The D.C. Appleseed Center provides pro bono representation and works on public policy issues. The D.C. Chamber of Commerce has an interest in deference to local decision-making. The Federal City Council, D.C. for Democracy, and D.C. League of Women voters are non-partisan groups devoted to local welfare and safety. The Washington Council of Lawyers is a public interest law firm.

Argument: The Court should accord deference to local officials' exercise of their police powers. Even if the D.C. Circuit's decision stands, any private right to keep and bear arms must be subject to reasonable regulation for the purpose of public safety. The District's regulation is reasonable because it restricts access to only one category of weapons while still permitting use of other firearms. The statutes at issue strike a reasonable balance between the exercise of the police power and any legitimate private right to self-defense in the home. Many other clauses of the Constitution are subject to reasonable restriction in furtherance of public safety. For example, the Free Speech Clause permits reasonable restrictions on time, place and manner of speech.

8. DISTRICT ATTORNEYS (18)

Interest: District attorneys place a high priority on the successful prosecution of criminals who commit gun-related offenses. They have an interest here because an affirmance could cast doubt on gun laws critical to public safety. Included in this group are the DAs responsible for Atlanta, Boston, Chicago, Dallas, Detroit, Minneapolis, New York City, Oakland, San Diego, San Francisco, and the Maryland suburbs of Washington, D.C.

Argument: The Court should not provoke constitutional challenges of criminal gun laws nationwide by introducing uncertainty into a well-settled area of the law. The Court should not needlessly hinder prosecutors' ability to enforce criminal firearm laws. Criminal firearms laws have withstood repeated Second Amendment chal-

lenges in state and federal courts. These decisions were made on the assumptions that: a) the Second Amendment provides only a militia-related right to bear arms and does not apply to state or local governments; and b) that the restrictions bear a reasonable relationship to protecting public safety and thus do not violate a personal constitutional right.

9. FORMER DEPARTMENT OF JUSTICE OFFICIALS

Interest: *Amici*, including Janet Reno, Nicholas Katzenbach, Jamie Gorelick, Warren Christopher, and Seth Waxman, submit this brief to express their view that federal, state, and local gun control legislation is a vitally important law enforcement tool used to combat violent crime and protect public safety. They disagree with the current position of the DOJ that the Second Amendment protects an individual right to keep and bear arms for purposes unrelated to a State's operation of a well-regulated militia.

Argument: The Second Amendment does not protect firearms possession or use that is unrelated to participation in a well-regulated militia. This is the position of the Department of Justice Office of Legal Counsel and for decades the position maintained by the DOJ. Congress has enacted a series of statutes regulating firearms possession and use. In upholding the National Firearms Act, the Supreme Court agreed that the scope of the right to keep and bear arms is limited to furthering the operation of a well-regulated militia. In 1965 the Office of Legal Counsel stated, "Both the States and the Congress were preoccupied with the distrust of standing armies and the importance of preserving State militias."

10. HISTORIANS (15)

Interest: *Amici*, led by Jack Rakove, have an interest in the Court having an informed understanding of the history that led to the adoption of the Second Amendment.

Argument: Even after the English parliamentary bill of rights of 1689 allowed certain classes of Protestant subjects to keep arms, British constitutional doctrine and practice subjected the right to extensive legal regulation and limitation. The first American Bills of Rights made no mention of a private right to keep arms and the individual ownership of firearms was not an issue at the Federal Convention of 1787. The sole reference to a private right to arms appears in the draft of the Virginia Constitution that Thomas Jefferson prepared while in Philadelphia writing the Declaration of Independence. The right to keep and bear arms became an issue

only because the Constitution proposed significant changes in the governance of the militia, an institution previously regulated solely by state law. Standing armies were perceived as a threat to liberty by the Anti-Federalists, so they wanted their militias protected. Text and context both establish that the dominant issue throughout the period of ratification was the future status of the militia, not the private rights of individuals. James Madison's original draft of the second amendment does not support an individual rights interpretation.

11. MAJOR U.S. CITIES (BALTIMORE, CLEVELAND, LOS ANGELES, MILWAUKEE, NEW YORK, OAKLAND, PHILADELPHIA, SACRAMENTO, SAN FRANCISCO, SEATTLE, TRENTON), US CONFERENCE OF MAYORS, LEGAL COMMUNITY AGAINST VIOLENCE

Interest: Amici are eleven of America's largest cities actively engage in efforts to reduce the costs inflicted by gun violence upon local, and especially urban, communities. The Conference of Mayors is a non-partisan organization interested in maintaining flexibility in local law. The Legal Community Against Violence is a public interest law center devoted exclusively to providing legal assistance in support of gun violence prevention.

Argument: America's cities face substantial costs from gun violence and must have the flexibility to regulate guns to protect against loss of life, threats to public safety, killing of police officers, and crippling health care and economic costs posed by certain types of guns. The Court's precedents firmly establish that the Second Amendment imposes no barrier to state and local regulation of firearms and the Amendment should not limit the options available to cities to address gun violence.

12. MEMBERS OF CONGRESS (18 DEMOCRATIC REPRESENTATIVES)

Interest: Congress has, for decades, exercised the power assigned to it by the Constitution to regulate, and in some cases ban, the use or possession of certain weapons.

Argument: The decision by the Circuit Court is an unwarranted break with precedent and fails to accord appropriate deference to legislative judgments about the rights conferred by the Second Amendment. Even if Second Amendment rights were implicated, the Court of Appeals failed to apply an appropriate level of scrutiny. The Supreme Court has never construed the Second Amendment as applicable for purely private use. In *Lewis*, the Court applied "rational basis" scrutiny to a statute prohibiting certain people from possessing firearms. Deference to Congress as an interpreter of the

Constitution, in appropriate circumstances, is entirely consistent with the Court's role, articulated in *Marbury v. Madison*.

13. NAACP LEGAL DEFENSE & EDUCATIONAL FUND

Interest: The effects of gun violence on African-American citizens are particularly acute; in 2004 alone, all but two of the 137 firearm homicide victims in D.C. were African-Americans—most of whom were between the ages of 15 and 29.

Argument: The Court has never invalidated a firearm restriction on Second Amendment grounds and this clear and established understanding of the Second Amendment should not be disturbed. Overturning the precedent set in *Miller* would produce substantial upheaval in the manner in which firearms are regulated nationwide and would unduly limit the ability of States and municipalities to address the problem of gun violence. The problem of gun violence disproportionately affects African-Americans. Justice Powell said: “With respect to handguns,” in contrast “to sporting rifles and shotguns,” it “is not easy to understand why the Second Amendment, or the notion of liberty, should be viewed as creating a right to own and carry a weapon that contributes so directly to the shocking number of murders in our society.” The language of the Second Amendment has consistently been interpreted to permit regulations governing an individual's possession or use of firearms—including absolute prohibitions on particularly dangerous firearms. Before *Emerson* no federal Court of Appeals had ever recognized the existence of an individual right under the Second Amendment to “keep and bear Arms” for purely private purposes.

14. NATIONAL NETWORK TO END DOMESTIC VIOLENCE (NNEDV)

Interest: This network of state coalitions serves as a voice for battered women. NNEDV was instrumental in building support to pass the Violence Against Women Acts of 1994, 2000, and 2005.

Argument: Domestic violence is a serious problem and firearms only exacerbate an already deadly crisis. Domestic violence accounts for between one-third and one-half of female murders in the US. These murders are most often committed by intimate partners with handguns. According to one study, family violence accounted for 33 percent of all violent crimes and 53 percent of those crimes were between spouses. The Centers for Disease Control and Prevention report that the health-related costs of domestic violence approach \$4.1 billion annually. Gun-related injuries account for a large portion of that.

15. NEW YORK, HAWAII, MARYLAND, MASSACHUSETTS, NEW JERSEY, PUERTO RICO

Interest: These jurisdictions have restrictive laws on guns and may be fearful that a decision in favor of *Heller* would result in their laws being challenged or overturned.

Argument: The Second Amendment does not apply to the states. It was ratified to ensure that the federal government would not disarm state militias and thereby strip states of a critical component of their reserved sovereignty. Its purpose would be undermined by interpreting the amendment to authorize federal judicial review of state laws regulating weapons. States have established workable rules to protect the right to bear arms. The brief argues that Supreme Court decisions make clear, even after the Fourteenth Amendment, that the Second Amendment is not incorporated against the states.

16. PROFESSORS OF CRIMINAL JUSTICE DAVID McDOWALL AND JAMES ALAN FOX

Interest: Amici assert that the empirical evidence, documented in numerous well-designed and peer reviewed studies, highlights the importance of the D.C. gun law in diminishing handgun violence.

Argument: The D.C. ban is an effective law enforcement tool that has promoted the public health and safety by reducing the level of handgun violence. Stricter gun control law in adjacent jurisdictions would make individual gun control laws more effective. Handguns are used in 76.6 percent of murders involving firearms. There was a significant decrease in gun related homicides after the enactment of the ban.

17. PROFESSORS OF LAW ERWIN CHEMERINSKY AND ADAM WINKLER

Argument: If the Court finds an individual right to possess guns, then it should subject that right to reasonable regulation. No standard higher than reasonableness should be used because it will place an undue burden on the states and make it difficult for officials to shape law to local circumstances. Forty-two states have constitutional protections on the individual right to bear arms but state supreme courts have continually approved reasonable restrictions on firearms for the purpose of public safety.

18. PROFESSORS OF LINGUISTICS AND ENGLISH

Interest: Amici are three professors who wish to assist the Court in understanding 18th century grammar and the historical meaning of the language in the Second Amendment.

Argument: The first clause of the Second Amendment, “well regulated Militia,” is what linguists call an “absolute clause.” The Amendment melds the clause “A well regulated Militia is necessary to the security of a free State” together with the clause “The right of the people to keep and bear Arms shall not be infringed” to express this thought: “Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.” The language tells us that: (a) the right that is protected is the right of the people to serve in the military and keep military weaponry, and (b) the kind of military service that is protected is a “well regulated” militia.

19. VIOLENCE POLICY CENTER AND POLICE CHIEFS FOR LOS ANGELES, MINNEAPOLIS, SEATTLE

Interest: The Violence Policy Center examines the role of firearms in the United States and works to develop policies that reduce gun-related deaths and injuries.

Argument: The D.C. ban is a reasonable restriction on the right to bear arms and permissible under the Second Amendment because of the lethality of handguns. The brief strongly relies on *Miller*, which is read to suggest that there is no right to arms outside of a militia and even that a militia is subject to reasonable restrictions.

RESPONDENT’S AMICI

1. ACADEMICS:

Interest: A number of economists, criminologists, and other scholars, including John Lott and Carl Moody.

Argument: Empirical evidence concerning the murder rate in D.C. compared to other places demonstrates convincingly that the District’s handgun ban experiment was a failure. This is true even when adjusting for other variables like the economy, and trying to standardize among cities of similar economic structure.

2. ACADEMICS FOR THE SECOND AMENDMENT

Interest: Formed in 1992 by law professors, Academics for the Second Amendment’s goal is to secure the right to keep and bear arms as a meaningful, individual right. The group includes Joseph Olson, Dan Polsby, Glenn Reynolds, and Randy Barnett.

Argument: Reading “right of the people” to mean “only those people serving in a sufficiently-organized militia” is inconsistent

with Madison's original organization of the Bill of Rights. Even under the Petitioners' logic, a law that constitutes a ban over a third of all firearms makes evolution of a well-regulated militia less unlikely. Further, the phrase "right of the people" was universally used in an individual sense.

3. ALASKA OUTDOOR COUNCIL, ALASKA FISH AND WILDLIFE FUND, ET AL.

Interest: These are all non-profit organizations whose mission is to protect and preserve Alaska's heritage of hunting, fishing and trapping, and shooting sports.

Argument: At the time of the founders, a "militia" referred to an unorganized and unregulated body of armed citizens—an armed citizenry. The existence of a well regulated militia rests on the prior existence of an armed citizenry. The collective rights theory is a twentieth century notion heavily influenced by German political thought that understands the state as a political institution that must have an exclusive monopoly on the use of legitimate force. The Constitution does not enact Max Weber's social theory.

4. AMERICAN CENTER FOR LAW AND JUSTICE

Interest: A public interest legal and educational organization committed to ensuring the ongoing viability of constitutional freedoms in accordance with principles of justice.

Argument: Although Article I of the Constitution gives Congress certain powers, the Bill of Rights prohibits the federal government from using those powers to contravene the right of US citizens, such as the right to keep and bear arms. Congress may not pass laws for the District that infringe the constitutional rights of citizens residing therein; nor may the District of Columbia Council, whose powers arise solely from congressional delegation. To ensure the presence of a well regulated Militia—as the best means of achieving the ultimate end of ensuring the security of a "free State"—the drafters expressly protected the right of individual citizens ("the people") to arm themselves.

5. AMERICAN CIVIL RIGHTS UNION

Interest: "The ACRU is a non-partisan legal policy organization dedicated to the protection of all constitutional rights, not just those that may be politically correct or fit a particular ideology." The group was founded by Reagan adviser Robert Carleson; members of the policy board include Ed Meese, Ken Starr, Robert Bork, and

James Q. Wilson.

Argument: The D.C. law contains no self-defense exception for handguns, so the law abridges a substantive right. The right to bear arms was a right deemed necessary for a foundational purpose to form militias.

6. AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Interest: To advance Jeffersonian principles of free markets, individual rights, limited government and federalism. ALEC is a membership organization of conservative state legislators.

Argument: This case does not involve carrying weapons, but only the right to arm oneself in the home. The right to bear arms need not have a military connotation; Pennsylvania used the phrase “the right to bear arms” and did not have a state militia. Initially the Second Amendment was only a guarantee against the federal government, but the Fourteenth Amendment incorporated it as against the states as well.

7. AMERICAN ASSOCIATION OF PHYSICIANS AND SURGEONS

Interest: The organization represents thousands of doctors who believe that gun ownership is an essential right, one necessary to protect themselves and their offices.

Argument: “Medical professionals have no more qualifications or basis to opine about the Second Amendment than anyone else. The attempt to shroud political gun control arguments in the white coat of physicians and public health officials is utterly baseless, and constitutional law should not be influenced by it... The same logic underlying [the Petitioners’] approach to gun control could be used to insist on a ban on automobiles or swimming pools, by focusing only on the harm they cause and failing to address their benefits.” The hurtful effects of gun control are felt most greatly by children and the mentally disabled, who often lack the physical and mental capacity to defend themselves.

8. BUCKEYE FIREARMS FOUNDATION ET AL.

Interest: *Amici*, such as the National Council for Investigation and Security Services, represent the interests of the private security industry and professional investigators. The Buckeye Firearms Foundation is a statewide pro-gun group in Ohio.

Argument: The District of Columbia Metropolitan Police Department has failed to provide adequate police services to its citizens. The constant within the department has been the incompe-

tence, corruption, cronyism and failure to perform the most basic duty of a police department: to protect and serve. The judiciary is no solution; numerous court cases have exonerated and granted immunity to the police for their collective failure to adequately protect the public they disarmed.

9. CATO INSTITUTE AND HISTORY PROFESSOR JOYCE LEE MALCOLM

Interest: Cato promotes understanding of the Constitution's common law context. Malcolm is the preeminent legal historian on the English origins of the right to keep and bear arms. The brief is titled, "The Right Inherited from England."

Argument: The English right to have and use arms belonged to individuals broadly, regardless of militia service, and particularly protected their "keeping" of guns for self-defense. The Second Amendment secures at least the individual right inherited from England, as early American authorities demonstrate. As the Supreme Court noted in *Robertson v. Baldwin*, the Bill of Rights was "not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors."

10. CENTER FOR INDIVIDUAL FREEDOM

Interest: Dedicated to protecting the individual rights in the Constitution

Argument: A collective right ruling could create unexpected and disruptive effects and result in dramatic and transformative consequences for the nation, its military organizations, and its laws. *Miller* addressed plausibility of weapon type for use by state militias; lower courts have incorrectly asked whether the person bearing the weapon in question possessed the requisite intent to serve in an organized militia. A collective right ruling would create a cause of action for states to litigate that right in federal court. Such a ruling would also call the National Guard into question and collide with existing federal firearms laws

11. CONGRESS OF RACIAL EQUALITY

Interest: CORE was founded in 1942 for the advancement of the interests and welfare of the black community.

Argument: Arms restrictions have historically been levied almost exclusively to the detriment of blacks and the poor. In the aftermath of Reconstruction, the South used indirect means to keep guns out of the hands of blacks through private law enforcement, as

well as taxes on ammunition that made it effectively impossible for blacks to defend themselves. This helped contribute to the rise of the Ku Klux Klan.

12. CRIMINOLOGISTS, SOCIAL SCIENTISTS, DISTINGUISHED SCHOLARS, THE CLAREMONT INSTITUTE

Interest: *Amici* are a think tank and ten distinguished scholars from various fields who are concerned about ensuring accuracy in the scholarship advanced in important matters of public policy such as those involved in this case.

Argument: Due to the extraordinary increase in D.C.'s crime rate since the implementation of the gun ban, there would need to be extraordinary evidence to establish the D.C. gun ban as a positive force. That evidence does not exist. This brief rebuts the "Kellerman Study" (which claims having a gun in the home triples the chances of homicide victimization, but which ignores factors—such as whether the particular gun-owner is engaged in a high-risk career such as drug dealing). The Loftin study claiming that the D.C. gun ban decreased in violence is deeply flawed in that it include reduction in justifiable homicides as a benefit, and fails to account for population changes.

13. DISABLED VETERANS FOR SELF-DEFENSE AND KESTRA CHILDERS

Interest: The Disabled Veterans are an unincorporated association of veterans of Vietnam, all of whom are 70 to 100 percent disabled often as the result of torture by the Communists. *Amici* want D.C. residents to be able to protect themselves in their own homes, as the veterans are able to do. Kestra Childers is a wheelchair-bound woman who enjoys shooting.

Argument: The right of self-defense entails by necessity the right to bear arms.

14. EAGLE FORUM AND LEGAL DEFENSE FUND

Interest: A legal public interest organization dedicated to limited government, individual liberty and moral virtue.

Argument: According to precedent and rules of grammar, the prefatory clause does not alter the operative clause's meaning. Protecting the right in order to secure a free state is one purpose, but not the exclusive purpose. The word "militia" is meant to encompass the people at large.

15. FORMER SENIOR OFFICIALS OF THE DEPARTMENT OF JUSTICE

Interest: Former Attorneys General and other high-ranking officials, including Edwin Meese, William Barr, Robert Bork, Jack Goldsmith, and Charles Cooper.

Argument: The current administration properly recognized that the Second Amendment secures an individual right. The DOJ has never made a sustained collective rights interpretation of the Second Amendment; when such an argument was made it was not well reasoned. The Reno brief (former DOJ officials supporting the Petitioners) errs in suggesting that individual rights interpretation would destabilize gun control regimes nationwide. The case at issue regards the very minimum core of arms rights, so there is no reason to adopt a multi-tiered approach the Solicitor General proposes.

16. FOUNDATION FOR FREE EXPRESSION

Interest: FFE is a California non-profit corporation formed to preserve and defend the constitutional liberties guaranteed to American citizens. FFE's founder is law professor James L. Hirsen, who has taught law school courses on the Second Amendment.

Argument: Gun bans actually increase the violence and crime they purport to diminish. A "free state" is one in which individuals are safe to travel freely and are secure in their homes by being able to defend themselves against criminals or an oppressive state.

17. FOUNDATION FOR MORAL LAW

Interest: A public interest organization dedicated to "Godly principles of Law upon which the country was founded," the Foundation litigates on the behalf of constitutional rights, fundamental freedoms and sanctity of life.

Argument: Our God-given freedom begins with the right of self-defense and that right is protected by the Second Amendment. Constitutional interpretation must be based on its original meaning. The purpose of the prefatory clause was to convey the general fear of tyrannical government, which is easily substantiated by historical fact.

18. GEORGIA CARRY.ORG

Interest: GeorgiaCarry.Org is dedicated to preserving the right to keep and bear arms.

Argument: Gun bans have historically been used to oppress blacks, whereas today they are used against politically weak groups.

19. GOLDWATER INSTITUTE

Interest: A core purpose of the Goldwater Institute and its Center for Constitutional Litigation is the preservation of constitutional liberties, including the right to keep and bear arms.

Argument: The Second Amendment right deserves protection equivalent to other fundamental individual rights enumerated in the Bill of Rights, not the “intermediate” scrutiny proposed by the Government. Because the right to self-defense precedes the establishment of government, and the Second Amendment protects that right, it deserves strict scrutiny. No remand is necessary regardless of the level of scrutiny applied.

20. GRASS ROOTS OF SOUTH CAROLINA

Interest: Grass Roots is a nonprofit, nonpartisan organization whose mission is to protect the rights of law-abiding persons to possess and use firearms. Its members’ status as firearm-owning members of an unorganized militia provides a unique perspective.

Argument: The right pre-exists the Constitution, but is also protected by the penumbral “right to privacy” in the home. Thus, the D.C. gun ban is unconstitutional even if the Court uses a collective rights interpretation.

21. GUN OWNERS OF AMERICA, ET AL.

Interest: Five gun owners associations, along with the Lincoln Institute for Research and Education (which focuses on public policy issues of interest to black middle-class Americans) and the Conservative Legal Defense and Education Fund (which is dedicated to the correct interpretation of law).

Argument: The Second Amendment secures the individual and unalienable right of the American people to keep and bear arms. The Court should apply a strict standard of review given the history and text of the Second Amendment.

22. HEARTLAND INSTITUTE:

Interest: The Institute is a national non-profit organization promoting individual liberty.

Argument: Firearm restrictions violate the Second Amendment if they unreasonably interfere with possession in the home of the citizen, particularly if the arms are commonly used for home and self-defense.

23. INSTITUTE FOR JUSTICE

Interest: IJ is a libertarian public interest law firm which litigates constitutional rights.

Argument: Discussion of the Framers of the Fourteenth Amendment and the nature of the right to keep and bear arms as they understood it. The Fourteenth Amendment was intended to incorporate the Second Amendment's individual right against the states in connection with the Framers' efforts to prevent freedmen from being disarmed and victimized by state governments and militias.

24. INTERNATIONAL LAW ENFORCEMENT EDUCATORS AND TRAINERS ASSOCIATION, INDEPENDENCE INSTITUTE ET AL.

Interest: Amici are various police organizations, 29 elected California District Attorneys, and others concerned with protecting the public safety benefits of citizens possessing handguns for self-defense in the home. Attorneys on the brief are David Kopel and Chuck Michel.

Argument: For many citizens, guns are essential tools for protecting themselves, their families, and their communities. Home gun ownership also deters would-be intruders. Long guns are inadequate substitutes for handguns.

25. INTERNATIONAL SCHOLARS

Interest: *Amici* are scholars from nine countries with a special interest in the fundamental right of self-defense, the availability of arms to protect that right and how the laws of foreign countries observe and protect those principles.

Argument: Internationally, high gun ownership rates in Western democracies translates to lower crime rates, lower suicide and murder rates, and a higher degree of personal freedom and economic wealth.

26. JEWS FOR THE PRESERVATION OF ARMS OWNERSHIP

Interest: A Wisconsin-based educational organization that seeks to preserve the individual right to bear arms as a defense against tyranny.

Argument: Not all governments that disarm citizens commit genocide. But as a rule, governments that intend to commit genocide make an effort to disarm citizens first.

27. LIBERTARIAN NATIONAL COMMITTEE

Interest: A political party dedicated to the protection of natural and enumerated rights.

Argument: The Solicitor General's brief misinterprets the intermediate review standard it proposes; the S.G. derives intermediate review from two election law cases: *Burdick v. Takushi*, 504 U.S. 428 (1992) and *Timmons v. Twin City Area New Party*, 520 U.S. 351 (1997). The LNC brief shows the unusual features of intermediate review, and why it should not apply to the Second Amendment. Even if intermediate review were applied, the Court should affirm.

28. LIBERTY LEGAL INSTITUTE AND DR. SUZANNA GRATIA HUPP

Interest: LLI is an organization that consistently argues for the broadest possible protection for individual liberties protected by the Constitution, most notably speech, religion, and the right to bear arms. Dr. Hupp is a former Texas legislator and survivor of one of the deadliest mass shootings in U.S. history, at Luby's Cafeteria in 1991.

Argument: Categorical bans are unconstitutional. Bans on firearms which are descendants of those used at time of the Second Amendment ratification are also unconstitutional. Machine guns need not necessarily be legal under the Second Amendment. To say that they would be requires an application of a sort of analysis not used even for freedom of speech; the Court allows regulation of certain types of speech in certain contexts. Machine gun possession could be regulated if the government identified a compelling interest and provided the necessary nexus to the regulation, while identifying the regulation as the least restrictive means of achieving that interest. The same analysis applies to rocket launchers, etc.

29. MAJOR GENERAL JOHN D. ALTENBURG, JR., ET AL.

Interest: Amici are 10 retired generals, a civilian Army leader, and the American Hunters and Shooters Association. The AHSA claims to support "sensible" gun control policies which "balance American's right to possess firearms." Amici claim interest in the present case because they believe that facility with rifles and pistols is a predictor of success in basic training and in the military, and that lawful and regulated practice with appropriate firearms is a critical component of national defense.

Argument: The Second Amendment secures not just the constitutional right, but the constitutional goal of collective defense.

The D.C. law impedes small arms training and undermines military preparedness. It also impedes the government's function of training citizens for national defense—and therefore is barred by the D.C. Home Rule Act.

30. MARICOPA COUNTY (ARIZONA) ATTORNEY'S OFFICE AND OTHER DISTRICT ATTORNEYS

Interest: Threats of violence to prosecutors are up. The county has an interest in ensuring that the constitutional right of its prosecutors to self-defense is not infringed.

Argument: Speculation on how the Court's decision could impact existing regulations is implausible. The right to keep and bear arms is an individual one because the Second Amendment's clear operative language takes precedence over its ambiguous prefatory clause. The text and the history of the Second Amendment suggest that restrictions of the right to keep and bear arms should be reviewed under the strict scrutiny standard. Substantive due process forbids the government from infringing certain fundamental liberty interests. The Court should thus only recognize narrowly-tailored exceptions (with compelling state interest for public safety) to the right to bear arms.

31. MEMBERS OF CONGRESS AND THE PRESIDENT OF THE SENATE

Interest: 55 Senators, 250 Congressmen, President of the Senate (the Vice-President)

Argument: Congress has regulated firearms but it has always done so "reasonably." Historical legislative evidence supports the notion that Congress conceived of the right to keep and bear arms as an individual one, and continues to interpret it that way.

32. MOUNTAIN STATES LEGAL FOUNDATION

Interest: MSLF is dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited and ethical government, and the free enterprise system.

Argument: The Framers' two primary motivations for the Second Amendment were self-defense and a check on government tyranny. Interpreting the right as a collective one would effectively destroy it and frustrate those motivations. Firearms ownership is a crucial part of American culture, especially in the West.

33. NATIONAL RIFLE ASSOCIATION

Interest: The NRA is America's foremost advocate for responsible gun ownership, and the leading organization which teaches firearms safety.

Argument: The right of the people to keep and bear arms makes possible the existence of a well-regulated militia. This is supported by N.R.A.'s own history in promoting marksmanship and certifying police firearms instructors. The brief engages the pro-D.C. brief from Professors Chemirinsky and Winkler that argued for reasonableness standard of review, and also addresses crime and firearm accident statistics.

34. NATIONAL SHOOTING SPORTS FOUNDATION

Interest: The NSSF's manufacturer, distributor, and retailer members provide the lawful commerce in firearms that makes the exercise of Second Amendment rights possible.

Argument: At the time of the Constitution's ratification, many Americans feared that the national government would become a new source of tyranny. Accordingly, they sought constitutional protections from potential tyranny including freedom of religion, freedom of speech, and the right to bear arms.

35. OHIO CONCEALED CARRY PERMITHOLDERS AND THE U.S. BILL OF RIGHTS FOUNDATION

Argument: The collective rights interpretation is at odds with historical understanding of the Second Amendment. A gun ban on home ownership is at odds with privacy law. The Fourth Amendment delineates a firm line of privacy into which the government should not intrude upon the basic right self-defense.

36. ORGANIZATIONS AND SCHOLARS CORRECTING MYTHS AND MISREPRESENTATIONS COMMONLY DEPLOYED BY OPPONENTS OF AN INDIVIDUAL-RIGHTS-BASED INTERPRETATION OF THE SECOND AMENDMENT (A.K.A. THE "ERRORS BRIEF")

Interest: *Amici* are the Citizens Committee for the Right to Keep and Bear Arms, the Evergreen Freedom Foundation, and five scholars. They all "wish to expose common historical myths about the Second Amendment and the efficacy of arms prohibitions perpetuated by the District of Columbia ... and its *amici*."

Argument: "These common myths are numerous, but generally fall under two headings: (1) that the right to keep and bear arms

pertains only to the National Guard (the collective rights theory); and (2) that gun ownership is dangerous and owners are more likely to be injured in accidents or have their guns used against them than to successfully defend themselves." *Amici* present a variety of arguments under each of these headings.

37. PARAGON FOUNDATION

Interest: Paragon is a non-profit organization based in New Mexico to support and advance the principles enshrined in the Declaration of Independence and the Constitution. It advocates for individual freedom, private property rights, and limited government controlled by the consent of the people.

Argument: The right to keep and bear arms flows from pre-existing natural rights and is grounded in the historical and textual contexts from which it arose. To hold otherwise—that the Second Amendment does not confer an individual right—would be inconsistent with the Founding Fathers' vision of the Bill of Rights.

38. PINK PISTOLS AND GAYS AND LESBIANS FOR INDIVIDUAL LIBERTY

Interest: Self-defense, especially in instances of potential hate crimes.

Argument: Lesbian, gay, bisexual and transgender people have a heightened need for handguns for self-defense, because of the frequency of hate crimes, the majority of which involve attacks in the home. The police have no duty to protect and do not adequately protect LGBT individuals from hate violence. The Second Amendment guarantees the right to possess firearms for self-defense in one's home and to prevent governmental encroachment. The militia-only interpretation would exclude LGBT people from the exercise of a constitutional right because the judicial deference to military decisions means that LGBTs can be left without any right due to their exclusion from the military. For this reason, among others, the Second Amendment must recognize an individual right.

39. PRESIDENT *PRO TEMPORE* OF THE PENNSYLVANIA SENATE, JOSEPH P. SCARNATI, III

Interest: Seeks to prevent Congress from being granted more authority to regulate guns.

Argument: Pennsylvania's constitutional history and the impetus for adding the Second Amendment support the existence of an individual right to bear arms in self-defense. During the Proprietors' War in Pennsylvania, the government was incapable of defending

citizens. Guns were also required for common defense against the French and Indians in pre-revolutionary times.

40. RETIRED MILITARY OFFICERS

Interest: *Amici* are 24 retired military officers, almost all of whom have served at the highest level of command. They are interested in preserving the individual right to bear arms to better defend the country.

Argument: The District's view that the individual right to "keep and bear Arms" extends only to service in a state-run militia is inconsistent with its place in the Constitutional plan and untrue to history. The right to individual ownership of firearms protected by the Second Amendment is essential to national defense because civilians who are already experienced with firearms make better soldiers. There is a military necessity of civilian arms ownership, as shown by Switzerland being able to deter Nazi and Soviet invasion and by America's expulsion of British soldiers. The U.S. government has a long history of promoting civilian firearms ownership and training to better and more readily defend the nation. Although rifles are the primary military weapon, soldiers are also issued handguns for self-defense. Armed civilians are an effective deterrent to and defense against foreign invasion. Foreign aggressors know that to successfully invade the United States, they must not only defeat our military forces on the field of battle, but also suppress a well-armed citizenry.

41. RUTHERFORD INSTITUTE

Interest: The Institute defends constitutional rights by litigation and advocacy.

Argument: The Framers intended the Second Amendment to apply to individuals, as a guarantor against tyrannical government. Blackstone's three primary rights of personal security, personal liberty, and private property cannot be maintained without the right of self-defense. History has shown on numerous occasions that a disarmed society almost always becomes an obedient and complacent society when faced with a tyrannical government. Such fears were paramount in the minds of the Framers of the Constitution, who had experienced first-hand the tyranny of King George III and his attempts to disarm them. Militarized police forces represent modern-day standing armies. Moreover, to the Framers, the militia consisted of all able-bodied male citizens; today, the National Guard is itself a standing army not a Second Amendment militia. An armed citizenry was the best means of guarding against the possibility of tyranny that was inherent with standing armies. Finally, the African-

American experience shows the necessity of the individual right to bear arms. Greater exposure to criminality, combined with less state protection, makes firearm ownership even more important in poor communities.

42. SECOND AMENDMENT FOUNDATION

Interest: SAF seeks to preserve the effectiveness of the Second Amendment through educational and legal action programs. SAF has 650,000 members and supporters, who reside in every state of the Union.

Argument: Every permutation of the “militia only” interpretation of the Second Amendment leads to obviously absurd results. The purpose of the Second Amendment is to prevent Congress from using its powers, including its authority to regulate the militia, to disarm citizens. The purpose of the Second Amendment includes protection of the fundamental natural right of self defense against criminal violence.

43. SOUTHEASTERN LEGAL FOUNDATION, ET AL.

Interest: Amici are four non-profit organizations and four individuals that share and promote the public interest in the proper construction and enforcement of the laws and the Constitution. They are particularly interested here in ensuring that government regulations do not hinder the ability of women and seniors to protect themselves.

Argument: Historical research demonstrates that the right to self-defense has been held as an important right. Empirical research demonstrates that firearms (handguns especially) have great value in self-defense. The brief also includes many anecdotes of women and seniors defending themselves with guns.

44. STATE FIREARMS ASSOCIATIONS

Interest: The firearms associations of 40 states are interested in preserving the American tradition of responsible, law abiding firearm ownership.

Argument: The Constitution protects individual gun ownership in three ways: regulating firearms is not one of the enumerated powers; the 9th and 10th amendment guarantee all other rights to the people; and the Second amendment specifically lists gun ownership as a right of the people.

45. TEXAS AND 30 OTHER STATES

Interest: *Amici* are 31 state Attorneys General, led by Texas Solicitor General Ted Cruz. Their interest arises from *Heller's* impact on the Second Amendment rights of their citizens.

Argument: The Second Amendment refers to an individual right to keep and bear arms. The Court's precedent, scholarly commentary, and history of Second Amendment all support the existence of an individual right. The D.C. ban is unconstitutional and cannot withstand scrutiny under the standard recommended. The D.C. scheme is also incongruous with the regulatory approach of the 50 states. Properly interpreted, the Second Amendment should be incorporated in the Fourteenth Amendment, and thereby made enforceable against state and local governments.

46. VIRGINIA1774.ORG

Interest: Virginia1774.org was founded by Rudolph DiGiacinto in 2004 to be the authority on the legal history of the colonial Virginia militia and the origin of the Virginia Constitution's Art. I, § 13. DiGiacinto is a former Defense Intelligence Agency official who helped calculate the effective military manpower of foreign countries based in part on the colonial militia system. A part of the District was originally ceded by Virginia and the Second Amendment is the progeny of Virginia's Declaration of Rights, so Virginia1774.org can provide invaluable insight on the Second Amendment's meaning.

Argument: The right to self-defense is the first law of nature and no government has the right to disarm or deprive the people or individuals of their natural rights. The social nature of human beings formed and mandated a societal self-defense in the form of the militia, where each member of that society who is able-bodied is bound to participate in its defense. The self-executing nature of the Second Amendment forbids laws or ordinances that prohibit the right of the people or individuals to keep and bear arms for self-defense, self-preservation, or for any other lawful purpose. The ability to "keep" and "bear" arms are two distinct rights, and both are protected by the Second Amendment.

47. WISCONSIN

Interest: The State of Wisconsin looks to preserve its autonomy and protect its citizens from federal government encroachment. Wisconsin has its own state constitutional protection for the right to keep and bear arms.

Argument: If the Court should uphold the D.C. Circuit's decision to protect the state from an overweening and unconstitutional federal overreach into state matters, the Second Amendment should not be incorporated against the states, lest the federal government unfairly encroach upon the citizens of all the states.

48. WOMEN STATE LEGISLATORS AND ACADEMICS (126)

Interest: *Amicae* have diverse academic backgrounds and, in many cases, disparate political ideologies and divergent views on particular women's issues. What all *Amicae* share, however, is their devotion to the ability of women to legally and effectively defend themselves in situations that pose serious and immediate bodily injury.

Argument: The time has long passed when social conditions mandated that all women depend on men for their physical security. In Washington, D.C., equal protection requires that women be free to defend themselves from physical assault using the most effective means of equalizing gender-based physical differences. Gender characteristics should at least be considered before barring law-abiding women from owning handguns, the most suitable means for their self-protection. Arming women is an effective method of self-defense. Women are more likely to live alone today. A large number of elderly women live alone because they have outlived their mates. If a woman fears for her life, the right to self-defense will not be real unless firearms are available to her.

THE UNITED STATES

Interest: The Department of Justice supports the individual Second Amendment right, but is concerned that overly strong protection of that right might undermine the 1986 federal ban on new machine guns, and federal laws against firearms possession by convicted felons. The DOJ brief was filed as one of Petitioners' amici, because it supports the result the D.C. supports: overturning the D.C. Circuit Court of Appeals decision that the handgun ban violates the Second Amendment.

Argument: The D.C. Circuit correctly held that the Second Amendment protects an individual right to possess firearms unrelated to militia operations. It was common in constitutional and statutory provisions at the time of the Framing for prefatory language like "well regulated Militia" to identify a goal or principle of wise governance. The Framing-era "Militia" was not a select body like today's National Guard, and militia members were expected to bring

their own weapons when called to service. The Second Amendment was not meant to be construed such that only the militia could keep arms; the individual right is central to the preservation of liberty. Although the D.C. Circuit correctly held that the Second Amendment protects an individual right, it did not apply the correct standard for evaluating respondent's claim. The Second Amendment does not render all laws limiting gun ownership automatically invalid, but allows reasonable regulation. When a law directly limits the private possession of "Arms" the Second Amendment requires that the law be subject to heightened scrutiny. The D.C. Circuit's decision could be read to hold that the Second Amendment categorically precludes any ban on a category of "Arms." If adopted by this Court, such an analysis could cast doubt on the constitutionality of existing federal legislation prohibiting the possession of certain firearms. Given that the D.C. Code provisions at issue ban a commonly-used and commonly-possessed firearm in a way that has no grounding in Framing-era practice, those provisions warrant close scrutiny under the analysis described above and may well fail such scrutiny. Congress has substantial authority to ban the private possession of firearms by persons whom Congress deems unfit to keep such weapons, like felons. Congress has the authority to regulate the manufacture, sale, and flow of firearms in commerce. Because the Circuit Court applied a categorical rule instead of heightened scrutiny, the best course is to reverse and remand for application of the proper standard of review.