No. 15-133

In the Supreme Court of the United States

ARIE S. FRIEDMAN AND THE
ILLINOIS STATE RIFLE ASSOCIATION,

Petitioners,

v.

CITY OF HIGHLAND PARK, ILLINOIS,

Respondent.

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 23 OTHER STATES IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a municipal ban on possession of some of the weapons most commonly used for lawful purposes that extends to the home violates the Second Amendment.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE* [1]

Amici curiae—the States of West Virginia, Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Wisconsin, and Wyoming—have a strong interest in the protection of their citizens' Second Amendment right to keep and bear arms and state policies enacted to protect that right. This Court recognized in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008), that the Second Amendment protects an "individual right to possess and carry weapons in case of confrontation." Most States have acted to preserve this right for their citizens by specifically preempting the type of municipal weapons ban at issue in this case.

Amici have a particular interest in this case because of the threat posed by narrow judicial construction of the Second Amendment to their citizens and policies. If this Court permits the lower court decision to stand, as it has other similar decisions, it will encourage lower courts to continue their consistently narrow view of *Heller* and the Second Amendment. And each case that upholds a ban poses an increasing threat to the policy in most

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[1] Pursuant to Supreme Court Rule 37.2(a), *amici* have timely notified counsel of record of their intent to file an *amicus* brief in support of Petitioners.

States by suggesting that a federal ban could be constitutional.

SUMMARY OF ARGUMENT

This Court's intervention is needed to reaffirm its decision in *Heller*. In *Heller*, this Court held that the Second Amendment of the United States Constitution guarantees an "individual right to possess and carry weapons in case of confrontation." *Dist. of Columbia v. Heller*, 554 U.S. 570, 592 (2008). That right, this Court explained, extends to weapons "'in common use at the time' for lawful purposes" and those "typically possessed by law-abiding citizens for lawful purposes." *Id.* at 624–25 & 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). Nevertheless, lower federal courts have consistently construed *Heller* narrowly, and certiorari is now warranted for at least two reasons.

First, encouraged by this Court's consistent refusal to correct previous lower court decisions that have narrowly interpreted *Heller*, the Seventh Circuit has gone too far. In the decision below, the court did not simply limit this Court's decision in *Heller* to its facts, but expressly refused to follow one of *Heller*'s core holdings. This Court should grant certiorari, reverse the Seventh Circuit, and send a clear message to lower federal courts that the principles in *Heller* must be faithfully applied.

Second, the trend of lower court decisions is creating a jurisprudence that threatens the policies of most of the States. Possession of the commonly

used weapons at issue is not only permitted in most States, but is affirmatively protected in many by state laws preempting municipal restrictions. This Court's continued refusal to correct the lower federal courts, however, suggests that these widespread state policies could be constitutionally overridden by a federal ban. This Court's involvement is needed to reaffirm *Heller* and these efforts in most States to protect the Second Amendment rights of their citizens.

REASONS FOR GRANTING THE PETITION

I. Narrow Construction Of Second Amendment Rights By Lower Federal Courts Is Undermining This Court's Decision In *Heller*.

A. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court conducted its first detailed examination of the Second Amendment. Based on an extensive examination of text, history, and precedents, this Court concluded that the Amendment protects an "individual right to possess and carry weapons in case of confrontation." 554 U.S. at 592. And finding specifically that "the inherent right of self-defense has been central to the Second Amendment right," this Court struck down a ban on possession of handguns in the home and a prohibition on rendering any firearm operable in the home. *Id.* at 628–35.

But as described below, lower courts interpreting *Heller* over the past seven years are undermining

this Court's decision and the Second Amendment. In case after case, lower federal courts have construed *Heller* narrowly and limited the decision to its facts. Yet this Court has refused certiorari, leading lower courts to continue and exacerbate this trend.

It is time for this Court to intervene. Seeing no action by this Court to correct any case narrowly construing *Heller*, the Seventh Circuit has now gone so far as to openly dismiss one of *Heller*'s core holdings and substitute a test of its own to determine the scope of weapons protected by the Second Amendment. The Seventh Circuit has so far departed from this Court's decision in *Heller* that it cries out for correction under this Court's supervisory powers. Sup. Ct. R. 10(a).

B. Since *Heller*, lower federal courts have mostly taken a crabbed view of *Heller* and the Second Amendment, reading this Court's landmark decision as narrowly as possible. In addition to those lower federal courts that have construed *Heller* narrowly, some have reached conclusions squarely at odds with statements in *Heller*.

1. For example, based on the fact that *Heller* specifically concerned a restriction on the possession and storage of firearms in the home, some lower federal courts have questioned whether the Second Amendment applies outside the home. The First Circuit has said: "While the Supreme Court spoke of a right of law-abiding, responsible citizens to keep and bear arms 'in case of confrontation' . . . , it did

not say . . . that *publicly* carrying a firearm unconnected to defense of hearth and home and unconnected to militia service is a definitive right of private citizens protected under the Second Amendment." *Powell v. Tompkins*, 783 F.3d 332, 348 (1st Cir. 2015) (emphasis in original). And the Third Circuit has concluded that "[i]t remains unsettled whether the individual right to bear arms for the purpose of self-defense extends beyond the home." *Drake v. Filko*, 724 F.3d 426, 430 (3d. Cir. 2013), cert. denied 134 S. Ct. 2134; see also *United States v. Masciandaro*¸ 638 F.3d 458, 475 (4th Cir. 2011), cert. denied 132 S. Ct. 756 ("There may or may not be a Second Amendment right in some places beyond the home.").

These courts are correct that *Heller*'s facts do not reach outside the home, but nothing in this Court's reasoning requires such a narrow reading of the decision. This Court broadly concluded in *Heller* that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." 554 U.S. at 592. While it focused on self-defense within the home, it did not say that was the only place where the Second Amendment has any application. To the contrary, this Court explained that the home is merely "where the need for defense of self, family, and property *is most acute*." *Id.* at 628 (emphasis added). Thus, in a later case describing the "central holding in *Heller*," this Court said that "self-defense within the home" is merely the "most notabl[e]" application of the Second Amendment.

McDonald v. City of Chicago, 561 U.S. 742, 780 (2010).

2. Lower federal courts have also narrowly construed *Heller*'s instruction that the Second Amendment protects those firearms possessed commonly for lawful purposes. In *Heller*, this Court explained that the Second Amendment protects a right to possess those weapons "typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625. Put another way, the Second Amendment extends to firearms "in common use . . . for lawful purposes." *Id.* at 624–25 (quotations omitted). This Court did not purport to identify every lawful purpose, but observed that self-defense is a "core lawful purpose." *Id.* at 630. Others include hunting, recreational target practice, or competitive shooting.

This Court did not say that there must be proof that commonly possessed firearms are actually used for lawful purposes, but lower courts have read that requirement into the language and also limited the lawful purposes deemed appropriate. In one case, the D.C. Circuit conceded that "semi-automatic rifles and magazines holding more than ten rounds are . . . in 'common use,'" but it declined to answer whether such arms are protected by the Second Amendment because the record did not show that the weapons "are useful specifically for self-defense or hunting." *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1261 (D.C. Cir. 2011). In another case, a district court in the District of Maryland was

"inclined to find th[at] [certain] weapons fall outside Second Amendment protection" because "the plaintiffs proffer[ed] no evidence beyond their desire to possess assault weapons for self-defense in the home that they are in fact commonly used, or possessed, for that purpose." *Kolbe v. O'Malley*, 42 F. Supp. 3d 768, 788–89 (D. Md. 2014), appeal pending, 14-1945 (4th Cir.); see also *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 990 F. Supp. 2d 349, 365 (W.D.N.Y. 2013) (finding that "reliable empirical evidence" on whether the firearms in question are actually "possessed for lawful purposes, like self-defense" was "elusive").

3. Several courts have dismissed *Heller*'s teaching that categorical bans on the possession of firearms in common use cannot be saved by the fact that "the possession of other firearms . . . is allowed." 554 U.S. at 629. Noting *Heller*'s description of handguns as "the quintessential self-defense weapon," *ibid.*, these courts have read that statement of non-substitution to apply only to outright bans on handguns. The D.C. Circuit has said that a ban on popular semi-automatic rifles "do[es] not impose a substantial burden upon" the Second Amendment because it does not "prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting, whether a handgun or a non-automatic long gun." *Heller II*, 670 F.3d at 1262. Several district courts have engaged in similar reasoning. See *Kolbe*, 42 F. Supp. 3d at 790 (concluding that a ban on standard capacity magazines and some semi-

automatic rifles does not "seriously impact" the Second Amendment because it "does not ban . . . handgun[s]" or "prevent an individual from keeping a suitable weapon for protection in the home"); *Shew v. Malloy*, 994 F. Supp. 2d 234, 247 (D. Conn. 2014) (noting that "[t]he challenged legislation provides alternate access to similar firearms"); *New York State Rifle and Pistol Ass'n*, 990 F. Supp. 2d at 367 (noting that there are "easily-substituted unbanned, counterpart firearms").

4. One court—the Ninth Circuit—has seemingly ignored *Heller*'s holding that it violates the Second Amendment to prohibit rendering a weapon ready for immediate self-defense. *Heller* held unconstitutional a "requirement . . . that firearms in the home be rendered and kept inoperable at all times" because that requirement "makes it impossible for citizens to use them for the core lawful purpose of self-defense." 554 U.S. at 630. The Court explained that the Second Amendment protects a right to "render[] a[] lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 635.

But the Ninth Circuit upheld a requirement that a handgun be stored or disabled when not carried on a person, finding the requirement "not a substantial burden on the Second Amendment right." *Jackson v. City and Cnty. of San Francisco*, 746 F.3d 953, 965 (9th Cir. 2014), cert. denied 135 S. Ct. 2799. The Ninth Circuit determined that the law, which could "require[] retrieving a weapon from a locked safe or

removing a trigger lock" during an emergency in the home, did not "impose the sort of severe burden imposed by" the law at issue in *Heller*. *Id.* at 964. The appeals court did not explain how its conclusion could be reconciled with this Court's statement in *Heller* that the Second Amendment protects a right to render a firearm "operable for the purpose of *immediate* self-defense," 554 U.S. at 635 (emphasis added), nor did it address the fact that the law makes self-defense in the home practically "impossible" in a number of circumstances, *id.* at 630.

5. Finally, lower federal courts have also cabined *Heller*'s instruction that outright bans on an entire class of weapons commonly used for self-defense "fail constitutional muster" under "any of the standards of scrutiny that [this Court] has applied to enumerated constitutional rights." *Heller*, 554 U.S. at 628–29. In *Heller*, this Court struck down an outright ban on handguns in the home without consideration of the potential purposes served by the law and any tailoring to those purposes. *Ibid.* This Court explained that the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. But a number of lower courts have limited that categorical methodology to the particular prohibition on handguns at issue in *Heller*, choosing instead to apply tiers of scrutiny to uphold outright bans of other types of weapons. See *Heller II*, 670 F.3d at 1261–63; see also *Kolbe*, 42 F. Supp. 3d at 793–97; *Shew*, 994 F. Supp. 2d at 249–

50; *New York State Rifle and Pistol Ass'n*, 990 F. Supp. 2d at 367–71.[2]

C. Certiorari is needed because these decisions have undermined *Heller* to such a degree that the Seventh Circuit below has now gone so far as to openly dismiss one of *Heller*'s core holdings.

Although *Heller* made clear that the Second Amendment protects from a new regulation weapons in common use at the time for lawful purposes, the Seventh Circuit refused to apply that test. The court specifically rejected the plaintiffs' argument that the Second Amendment extended to the "semiautomatic weapons" at issue because they "are commonly owned for lawful purposes." *Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015). The "common use" test, the Seventh Circuit asserted, is inconsistent with history and "circular to boot." *Id*. at 408–09.

To determine the scope of weapons covered by the Second Amendment, the Seventh Circuit created and applied its own test. The court explained that it would "ask whether a regulation bans weapons that were common at the time of ratification or those that

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[2] Faced with precedent in some courts holding that tiers of scrutiny apply, challengers to outright firearms bans have been forced to argue that, at a minimum, strict scrutiny should apply as the closest approximation of *Heller*'s analysis. Brief of *Amici Curiae* West Virginia and 20 Other States, *Kolbe, et al., v. O'Malley, et al.*, No. 14-1945, Doc. 33-1 at 15 n.3 (4th Cir. Nov. 12, 2014).

have 'some reasonable relationship to the preservation or efficiency of a well regulated militia,' and whether law-abiding citizens retain adequate means of self-defense." *Friedman*, 784 F.3d at 410 (citations and quotations omitted). Applying that test, the Seventh Circuit concluded that the banned weapons "were not common in 1791" and that "states, which are in charge of militias, should be allowed to decide when civilians can possess military-grade firearms, so as to have them available when the militia is called to duty." *Ibid.* The court further held that the outright ban did not violate the Second Amendment because it "leaves residents with many self-defense options." *Id.* at 411.

Each part of this analysis conflicts with *Heller*:

First, *Heller* explained that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, *even those that were not in existence at the time of the founding*." 554 U.S. at 582 (emphasis added). This Court expressly rejected as "bordering on the frivolous," the argument that the Second Amendment should be limited to arms available at the founding. *Ibid.* It is simply irrelevant under *Heller* whether the weapons were common in 1791, and the Seventh Circuit's inquiry into that question flies directly in the face of that instruction.

Second, this Court explained in *Heller* that the "common use" test follows from "the conception of the militia at the time of the Second Amendment's

ratification"—a "body of all citizens capable of military service, who would bring the sort of lawful weapons that they possessed at home for militia duty." 554 U.S. at 627. The Seventh Circuit's test flips that analysis on its head: inquiring not whether a weapon is the type that a citizen would have at home to bring for militia service, but rather whether a weapon is of the sort that the State would want a citizen to have for service in a militia. *Friedman*, 784 F.3d at 410.

Third, *Heller* instructed that "[i]t is no answer to say . . . that it is permissible to ban the possession" of some categories of protected guns "so long as the possession of other firearms . . . is allowed." 554 U.S. at 629. But the Seventh Circuit ignored that instruction by holding that bans on commonly used weapons are permissible so long as other weapons are available for self-defense. *Friedman*, 784 F.3d at 410.

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In case after case, the lower federal courts have steadily undermined *Heller*, and the time has come for this Court to intervene. Encouraged by this Court's consistent refusal to correct previous lower court decisions that have narrowly interpreted *Heller*, the Seventh Circuit has gone too far. This Court should grant certiorari, reverse the Seventh Circuit, and send a clear message to lower federal courts that the principles in *Heller* must be faithfully applied.

II. CONFUSION ABOUT THE SECOND AMENDMENT IS A THREAT TO THE POLICIES OF MOST OF THE STATES.

Certiorari is also warranted because these cases are creating a jurisprudence that threatens the policies of most of the States. Possession of the commonly used weapons at issue is not only permitted in most States, but is affirmatively protected in many by state laws preempting municipal restrictions. Each case that upholds a ban, however, poses an increasing threat to the policy in most States by suggesting that a federal ban could be constitutional. This Court's involvement is needed to reaffirm *Heller* and the efforts in most States to protect the Second Amendment rights of their citizens.

A. Most States Protect The Commonly Used Weapons Banned By Highland Park.

The City of Highland Park's ordinance bans many commonly used firearms and the standard capacity magazines for many popular firearms. City of Highland Park, Illinois, Municipal Code § 136.005. The ordinance prohibits semiautomatic rifles that accept magazines with more than ten rounds of ammunition and possess one of five features outlined in the ordinance: a pistol grip without a stock attached; a grip that can be held by the non-trigger hand; a folding, telescoping, or thumbhole stock; a shroud attached to the barrel, or partially encircling the barrel; and a muzzle brake or muzzle compensator. *Id.* § 136.001(C)(1). The ordinance

also prohibits by name certain rifle models including the most popular rifle, the AR-15. *Id.* § 136.001(C)(7). Included, too, is any "Large Capacity Magazine," defined as an ammunition feeding device capable of accepting more than ten rounds with certain exceptions. *Id.* §§ 136.005 & 136.001(G).

The firearms banned by Highland Park are among the most popular firearms for lawful use in the United States. One recent poll of firearms retailers reported that around 20% of all new firearms sold are the AR-type rifles that Highland Park bans. Pet. App. 121a. And a survey of shooters reported that, in 2012, roughly the same percentage had used an AR-type modern sporting rifle as had been skeet shooting and more had used an AR-type rifle than had shot sporting clays. *Id.* 131a. Indeed, this Court has explained that AR-15s "traditionally have been widely accepted as lawful possessions." *Staples v. United States*, 511 U.S. 600, 612 (1994).

Similarly, the standard capacity magazines that that Highland Park has banned are also common. They constitute almost half of all pistol magazines owned in the United States. Pet. App. 133a. And well over half of all rifle magazines owned in the United States hold over ten rounds. *Ibid.*

Rifle bans similar to Highland Park's are thus unsurprisingly rare. Only eight States and the District of Columbia have any type of ban on the possession of semi-automatic rifles or handguns. See Cal. Penal Code § 30605; Conn. Gen. Stat. §§ 53-

202a–53-202o; D.C. Code § 7-2502.02; Haw. Rev. Stat. § 134-4; Md. Code Ann., Crim. Law § 4-303(a); Mass Gen. Laws Ann. ch. 140, §§ 121, 131M; Minn. Stat. Ann. 624.713; N.J. Stat. Ann. § 2C:39-1w; N.Y. Penal Law § 265.00. Six of these States and the District of Columbia have outright bans of certain weapons based on a list, semi-automatic firing capability coupled with a list of features, or both. Cal. Penal Code §§ 30605, 30510; Conn. Gen. Stat. §§ 53-202a–53-202o; D.C. Code §§ 7-2502.01, -.02; Md. Code Ann., Pub. Safety § 5-101(r); Mass. Gen. Laws Ann. ch. 140, §§ 121, 131m; N.J. Stat. Ann. § 2C:39-1(w); N.Y. Penal Law § 265.00. One State has a more limited ban on some semi-automatic weapons. *See* Haw. Rev. Stat. § 134-1, -8 (ban on "assault pistols" defined as semi-automatic pistols that accept detachable magazines and have certain other features).

And the same is true of bans on magazine capacity. Only eight States and the District of Columbia have similar bans. See Cal. Penal Code § 16740; Colo. Rev. Stat. § 18-12-301; Conn. Gen. Stat. § 53-202w; D.C. Code Ann. § 7-2506.01(b); Haw. Rev. Stat. § 134-8(c); Md. Code Ann., Crim. Law § 4-305; Mass. Gen. Laws Ann. ch. 140, §§ 121, 131M; N.J. Stat. Ann. § 2C:39-1y; N.Y. Penal Law §§ 265.00(23), 265.37. Two of those States, Colorado and New Jersey, limit magazine capacity to no more than fifteen rounds. Colo. Rev. Stat. § 18-12-301; N.J. Stat. Ann. § 2C:39-1y. Hawaii prohibits magazines with a capacity greater than ten that can be used in a pistol. Haw. Rev. Stat. § 134-8(c). Other state

statutes prohibit magazine capacity greater than ten rounds with certain exceptions, like the ban in Highland Park. Cal. Penal Code § 16740; Conn. Gen. Stat. § 53-202w; D.C. Code Ann. § 7-2506.01(b); Md. Code Ann., Crim. Law § 4-305. The State of New York has a total ban on magazines capable of accepting more than ten rounds. N.Y. Penal Law §§ 265.00(23), 265.36.

Many States, in fact, protect their citizens' rights to possess these commonly owned weapons by preempting municipal restrictions on possession of these weapons. Thirty-nine States have laws that preempt municipal attempts to prohibit possession of popular semi-automatic rifles and standard capacity magazines.[3] Indeed, Illinois has a preemption

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[3] *See* Ala. Code § 13A-11-61.3(c); Alaska Stat. § 29.35.145; Ariz. Rev. Stat. Ann. § 13-3108; Ark. Code Ann. § 14-16-504(b)(1)(A); Del. Code Ann. tit. 9, § 330(c); *id*. tit. 22, § 111; Fla. Stat. Ann. § 790.33; Ga. Code Ann. § 16-11-173; Idaho Code Ann. § 18-3302J; 430 Ill. Comp. Stat. Ann. 65/13.1(c); Iowa Code § 724.28; 2015 Kan. Sess. Laws Ch. 93; Ky. Rev. Stat. Ann. § 65.870; La. Rev. Stat. Ann. § 40:1796; Me. Rev. Stat. tit. 25, § 2011; Mich. Comp. Laws Ann. § 123.1102; Minn. Stat. Ann. § 471.633; Miss. Code Ann. § 45-9-51; Mo. Rev. Stat. § 21.750; Mont. Code Ann. § 45-8-351; Neb. Rev. Stat. Ann. § 17-556; Nev. Rev. Stat. Ann. § 268.418; N.H. Rev. Stat. Ann. § 159:26; N.M. Const. art. II, § 6; N.C. Gen. Stat. Ann. § 14-409.40; N.D. Cent. Code § 62.1-01-03; Ohio Rev. Code Ann. § 9.68; 2015 Okla. Sess. Law Serv. Ch. 241; Or. Rev. Stat. Ann. § 166.170; R.I. Gen. Laws § 11-47-58; S.C. Code Ann. § 23-31-510; S.D. Codified Laws § 7-18A-36; Tenn. Code Ann. § 39-17-1314; Tex. Loc. Gov't Code Ann. § 229.001; Utah Code Ann. § 76-10-500; Vt. Stat. Ann. tit. 24, § 2295; Wash. Rev. Code § 9.41.290; W.

provision for restrictions on these weapons, but the City of Highland Park enacted its ordinance immediately before the law went into effect. 430 Ill. Comp. Stat. Ann. 65/13.1(c).

B. Narrow Construction Of The Second Amendment Threatens State Protections.

Certiorari is warranted because the Seventh Circuit decision below adds to an increasing number of cases that suggest a federal ban, preempting all of these state protections, could be constitutional. Such a federal law would override the policy choices of the overwhelming majority of States that permit the lawful possession of these weapons and magazines. See *supra* Part II.A. And it would undermine the protection provided by thirty-nine States that have laws foreclosing municipal bans of the types of weapons banned in Highland Park. This Court should not permit the confusion engendered by the lower courts over the meaning of *Heller* to threaten these States' policy choices and the Second Amendment rights of their citizens.

Concern about a federal ban is not idle speculation. The federal government has in the past imposed national gun bans similar to the municipal ban at issue here. In 1994, Congress enacted a federal ban on "semiautomatic assault weapons," which covered semi-automatic rifles with the ability

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Va. Code § 8-12-5a; Wis. Stat. Ann. § 66.0409; Wyo. Stat. Ann. § 6-8-401.

to accept a detachable magazine and two of the following features: a folding or telescoping stock, a pistol grip that protrudes conspicuously beneath the action of the weapon, a bayonet mount, a flash suppressor or threaded barrel, and a grenade launcher. 18 U.S.C. §§ 921, 922 (1994). The ban also included certain firearms prohibited by name, including the AR-15. *Id.* § 921(a)(30)(A) (1994). And like the Highland Park ban, the law also banned "large capacity ammunition feeding device[s]," defined as magazines that accept more than ten rounds of ammunition. 18 U.S.C. §§ 921(a)(31), 922(w)(1) (1994). The law was upheld against Commerce Clause, *Navegar, Inc. v. United States*, 192 F.3d 1050, 1054–65 (D.C. Cir. 1999), rehearing *en banc* denied, 200 F.3d 868 (D.C. Cir. 2000), cert. denied 531 U.S. 816, and Equal Protection, *Olympic Arms v. Buckles*, 301 F.3d 384, 388–90 (6th Cir. 2002), challenges. But the law expired before the decision in *Heller* and was never challenged on Second Amendment grounds, and it operated to preempt state laws protecting the Second Amendment right to possess these weapons.

Since 1994 law expired, several attempts have been made to reinstate the law or a similar ban. Even before the federal ban was set to expire in 2004, Senator Diane Feinstein introduced the Assault Weapons Ban Reauthorization Act of 2003 that would have repealed the sunset date on the 1994 ban and prohibited the importation of standard capacity magazines. The Assault Weapons Ban Reauthorization Act of 2003, S. 1034, 108th Cong. §§

2, 3(a)(2) (2003). Similar, if not identical, legislation was proposed in both chambers throughout 2004 and 2005. *See, e.g.*, Assault Weapons Ban Reauthorization Act of 2005, S. 620, 109th Cong. § 2 (2005) (reinstating the 1994 assault weapons ban); To extend the sunset on the assault weapons ban for 10 years, H.R. 3831, 108th Cong. (2004) (same); To reinstate the repealed criminal provisions relating to assault weapons and large capacity ammunition feeding devices, H.R. 5099, 108th Cong. (2004) (same); Assault Weapons Ban Reauthorization Act of 2004, S. 2109, 108th Cong. § 2 (2004) (providing a ten-year extension of the ban).

The attempts to impose a national ban of commonly used semi-automatic rifles and standard capacity magazines did not stop with this Court's decision in *Heller* in 2008. The same month this Court decided *Heller*, legislation was introduced in the U.S. House of Representatives to reinstate a ban nearly identical to the 1994 ban. Assault Weapons Ban Reauthorization Act of 2008, H.R. 6257, 110th Cong. (2008). In 2013, Senator Feinstein introduced The Assault Weapons Ban of 2013 that would have banned all semi-automatic rifles able to accept a detachable magazine with one of several characteristics, including a pistol grip, a forward grip, or a barrel shroud. S. 150, 113th Cong. (2013). The proposed legislation also would have prohibited semi-automatic rifles with fixed magazines capable of accepting more than ten rounds of ammunition. *Ibid.*

These continuing efforts to impose a federal ban similar to the Highland Park ban highlight the need for this Court's involvement. Granting certiorari and reversing the Seventh Circuit would provide clarity not only to the lower courts, but also make clear to Congress that these bans are unconstitutional and any federal effort to disrupt State efforts to protect the Second Amendment rights of their citizens will fail.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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