

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

STATE OF MISSISSIPPI	)		
	Petitioner,	)	
v.	)		No. 2013-M-01220-SCT
	)		
ROBERT SCHULER SMITH, ET AL.	)		
	Respondent.		

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**BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*  
BY THE NATIONAL RIFLE ASSOCIATION, INC.**

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Proposed *amicus curiae* National Rifle Association of America Inc., (“NRA”), by and through counsel, and in accordance with Mississippi Rule of Appellate Procedure 29(b), files this Brief in Support of its Motion for Leave to File Brief of *Amicus Curiae*, and in support of this Motion offers the following:

Leave should be granted because, as outlined below, the NRA has substantial legitimate interests that will likely be affected by the outcome of the case, and its interests are neither adequately represented nor protected by those already a party to the case.

**BACKGROUND**

The National Rifle Association of America, Inc. (“NRA”) is a New York not-for-profit membership corporation founded in 1871. The NRA has roughly five million individual members and 10,700 affiliated members (clubs and associations) nationwide. Its purpose and objectives, as set forth in its Bylaws, are:

1. To protect and defend the constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such Constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate

individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens;

2. To promote public safety, law and order, and the national defense;
3. To train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship, and in the safe handling and efficient use of small arms;
4. To foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, state, regional, national and international levels;

The NRA has a strong interest in upholding the rights of its members and all law-abiding citizens to keep and bear arms as protected under both state and federal law. The NRA regularly litigates and files *amicus curiae* briefs in matters related to the right to keep and bear arms as guaranteed in the state and federal constitutions.

### **ARGUMENT**

In Plaintiffs' discussion on standing in their Memorandum in Support of Their Motion For Preliminary Injunction ("Plaintiffs' Memo in Support") they argue that both the select group of Mississippi sheriffs as well as the District Attorney and private citizens who are a party to this matter all have standing due to their varying interests and concerns with House Bill 2. The sheriffs, it is argued, have standing as they are sworn to uphold the law and accordingly require not only clarification of the law's language in order to do so, but are also exposed to "potential professional and personal harms" while attempting to enforce the laws. *Plaintiffs Memo in Support* at 15.

District Attorney Smith, it is argued, may face undefined "consequences...in the event he does not correctly enforce a vague, overly broad piece of legislation that binds him in his official capacity". *Plaintiffs Memo in Support* at 16. Finally, Plaintiffs argue that the private citizens

party to this litigation, Simmons, Norwood, Horhn and Frazier all have standing “because of their colorable interest in open carry laws in Mississippi”, because the bill both “affects their property interests as landowners in having the power to prohibit people from carrying weapons onto their property” and because “[t]he law also affects their rights as owners of firearms because it is unclear when a person must obtain a permit and where a person may openly carry his or her firearm”. *Plaintiffs Memo in Support* at 17.

The Defendant in this case, the State of Mississippi, is interested in the defense of its authority under the Article 3, Section 12 and Article 1 of the State Constitution as well as protecting the right of Mississippi citizens to bear arms under both the State Constitution and the Second Amendment to the United States Constitution. *Mississippi’s Combined Pet. For Interlocutory Appeal and Mot. To Permanent Inj.* at 1.

Neither party adequately represents the interests of firearms owners that are not citizens of Mississippi. That class of individuals, and more specifically those non citizen members of the NRA travelling to, through, or within Mississippi, have substantial legitimate interests that will likely be affected by the outcome of the case.

Mississippi Code Section 45-9-101 provides a means for individuals to obtain a license to lawfully carry a concealed firearm in the state. While the law contains a residency requirement, it “may be waived, provided the applicant possesses a valid permit from another state, is active military personnel stationed in Mississippi, or is a retired law enforcement officer establishing residency in the state” Miss. Code Ann. § 45-9-101(2)(a) . Many NRA members desiring to carry a firearm in the state of Mississippi do not meet this waiver requirement. For example, members from the state of Vermont have no ability to obtain a state permit or license, as Vermont does not issue either. Accordingly, for many NRA members desiring to exercise their

Second Amendment right in the state of Mississippi, the open carrying of a firearm has and is the only option available to them. As such, a clear and concise definition of the term “concealed” as contained in Mississippi Code section 97-37-1 is paramount to their ability to lawfully exercise their Second Amendment rights in the State. NRA’s proposed amicus satisfies Rule 29(a) by representing these interests.

### **CONCLUSION**

House Bill 2 did not create a mechanism for individuals to openly carry weapons throughout Mississippi, but instead clarified the pre-existing right to do so.<sup>1</sup> The clarification is paramount to non-Mississippi resident NRA members’ ability to lawfully exercise their Second Amendment rights while travelling to, through, or within Mississippi, as for many of them, the open carrying of a firearm is the only means of exercising their Second Amendment right available to them in the state. No party to the case represents these substantial and legitimate interests except for proposed amicus NRA.

WHEREFORE, PREMISES CONSIDERED, proposed *amicus curiae*, the NRA, respectfully requests this Court to find that the attached brief satisfies the requirements of Mississippi Rule of Appellate Procedure 29(a), and to accept it as *amicus* in support of the State of Mississippi in this proceeding.

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<sup>1</sup> “In short, the legislature clarified that it is not a crime under state law to openly carry firearms without a permit” (State petition for interlock appeal at 3)

Respectfully submitted, this the 29th day of July, 2013.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Winston L. Kidd  
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So certified, this the 29th day of July, 2013.

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