No. 14-7071

In the United States Court of Appeals for the District of Columbia Circuit

Dick Anthony Heller, Absalom Jordan, William Carter, William Scott, and Asar Mustafa,

Appellants,

v.

The District of Columbia, and Vincent C. Gray, Mayor, District of Columbia,

Appellees.

On Appeal from the United States District Court for the District of Columbia

BRIEF OF MARYLAND, CALIFORNIA, CONNECTICUT, HAWAII, ILLINOIS, IOWA, MASSACHUSETTS, AND NEW YORK AS AMICI CURIAE IN SUPPORT OF APPELLEES

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Corporate Disclosure Statement

As states, all *amici* are governmental entities with no reportable parent companies, subsidiaries, affiliates, or similar entities under Fed. R. App. P. 26.1(a).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Constitution Provisions

Rules

Other Authorities

Identity of *Amici Curiae*

Maryland, California, Connecticut, Hawaii, Illinois, Iowa, Massachusetts, and New York file this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. The *Amici* States seek to protect their sovereign prerogative to enact and implement legislation that advances their compelling interest in promoting public safety, preventing crime, and reducing the negative effects of firearm violence. The *Amici* States have each taken different approaches to addressing the problem of firearm violence based on determinations about what measures will best meet the needs of their citizens. They join this brief not because they necessarily believe the District of Columbia has chosen the optimal policy—or that the District's approach would necessarily be optimal for the *Amici* States—but because they believe that the challenged regulations represent a policy choice that the District is constitutionally free to adopt. The enactment by states of reasonable firearm regulations that are substantially related to the achievement of an important governmental interest is fully compatible with the right to keep and bear arms protected by the Second Amendment. The *Amici* States also are concerned that the erroneous interpretation of the Second Amendment advanced by the plaintiffs and their *amici* threatens to tie the hands of states in responding to real threats to public safety.

SUMMARY OF THE ARGUMENT

In *District of Columbia v. Heller*, the Supreme Court held the right to keep and bear arms to be a pre-existing right codified in the Second Amendment and enshrined with the scope it was understood to have when it was adopted. 554 U.S. 570, 592, 634-35 (2008). The right has never been interpreted as a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatsoever purpose." *Id.* at 626. Nor does the codification of the right preclude states from enacting reasonable firearms regulations to promote public safety. To the contrary, as with all other rights guaranteed by the Constitution, the Second Amendment limits, but "by no means eliminates," the ability of states to "experiment[] with reasonable firearms regulations." *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010).

If a challenged law regulates conduct falling within the scope of the Second Amendment's protection, but does not impose a severe burden on the core Second Amendment right, this Court applies intermediate scrutiny. Although courts have articulated the intermediate scrutiny standard in different ways, their application of the standard tends to share common elements. To withstand intermediate scrutiny, the government must demonstrate a fit that is reasonable—not perfect—between the challenged regulation and a government interest that is "important," "substantial," or "significant." The chosen means need not be the least restrictive

means available to serve the state's interest; it is sufficient if they are substantially related to that objective. Furthermore, it is not a court's responsibility to weigh the evidence to determine the best policy; instead, a court's review is limited to determining if the legislature's choice is supported by substantial evidence.

In this case, the plaintiffs challenge several aspects of the District's firearms registration requirements, including the application of those requirements to long guns; the requirements that applicants demonstrate knowledge of use, handling and storage of firearms and complete training; requirements related to registration itself; and a limitation on registering no more than one firearm in a 30-day period. The plaintiffs' challenge misapprehends the intermediate scrutiny standard in at least three ways that, if accepted, would substantially impair the ability of states to enact reasonable firearm regulations. First, the plaintiffs erroneously treat the phrase contained in some articulations of the intermediate scrutiny standard that the challenged regulation be "narrowly tailored" as effectively synonymous with the least-restrictive-alternative approach applied in the strict scrutiny context. Second, the plaintiffs mistakenly attempt to cabin the deference owed to legislative judgment by confining it to the identification of a government interest, while preventing that deference from informing the assessment of whether the challenged regulation is a reasonable fit to such an interest. Third, the plaintiffs insist that the government must conclusively demonstrate that a challenged regulation will be

effective in achieving its intended goals—a demand that cannot be squared with common sense, the intermediate scrutiny standard prescribed by this Court, or the Supreme Court's assurance that reasonable experimentation with firearms regulation will continue under the Second Amendment.

ARGUMENT

I. THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS FOR SELF-DEFENSE PROTECTED BY THE SECOND AMENDMENT DOES NOT PRECLUDE REASONABLE REGULATION OF FIREARMS.

The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The right to keep and bear arms, though codified in the Second Amendment, predates the Bill of Rights; it is a pre-existing right that is neither "'granted by the Constitution'" nor "'dependent upon that instrument for its existence.'" *Heller*, 554 U.S. at 592 (quoting *United States v. Cruikshank*, 92 U.S. 542, 553 (1876)). Thus, the scope of the right is not defined exclusively by the Second Amendment's text, but by the scope it was "understood to have when the people adopted [the amendment]," regardless of the current views of legislatures or courts. *Id.* at 634-35. As a result, although the text of the amendment does not set forth any limitation on the right, it has never been interpreted as "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626.

The Supreme Court, in *Heller* and *McDonald*, repeatedly emphasized that the Second Amendment does not stand apart from other rights enumerated in the Constitution; it is neither "subject to an entirely different body of rules than the other Bill of Rights guarantees," *McDonald*, 561 U.S. at 780, nor is it a superior right entitled to more vigorous judicial enforcement. Just as the First Amendment is subject to numerous limitations unstated in its text, the "Second Amendment is no different." *Heller*, 554 U.S. at 635. "Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*." *Id.* at 595 (emphasis in original); *see also McDonald*, 561 U.S. at 802 (Scalia, J., concurring) ("No fundamental right—not even the First Amendment—is absolute.").

The codification of the right to keep and bear arms in the Second Amendment, and as incorporated against the states through the Fourteenth Amendment, necessarily "takes certain policy choices off the table," including a complete ban on the possession of all handguns kept for self-defense within the home. *Heller*, 554 U.S. at 636. But taking certain policy choices off the table does not leave the table completely bare; the people's democratically chosen representatives are not forbidden from considering every policy proposal that might in some way limit the use or enjoyment of even fundamental constitutional

rights. Just as legislative judgments about economic matters "cannot be ignored or undervalued simply because [appellants] cas[t] [their] claims under the umbrella of the First Amendment," *Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180, 224 (1997) ("*Turner II*") (alterations in original; internal quotation omitted), so legislative judgments about matters of public safety cannot be ignored or undervalued when challenged under the umbrella of the Second Amendment. Indeed, the Supreme Court has made clear that although constitutional protection of the Second Amendment right imposes "limits" on policy alternatives, it "by no means eliminates" the states' "ability to devise solutions to social problems that suit local needs and values." *McDonald*, 561 U.S. at 784-85. The Court has thus affirmed that "State and local experimentation with reasonable firearms regulations will continue under the Second Amendment." *Id.* at 785 (internal citation omitted).

II. THE PLAINTIFFS MISAPPREHEND THE GOVERNMENT'S OBLIGATION UNDER INTERMEDIATE SCRUTINY.

The plaintiffs make several contentions regarding the government's obligation under the intermediate scrutiny standard that are inconsistent with this Court's articulation of that standard, the articulation of that standard by other federal appellate courts evaluating Second Amendment challenges, and the Supreme Court's explication of that standard in the First Amendment context. Specifically, the plaintiffs erroneously contend (1) that a challenged regulation

cannot survive if less restrictive means are available, *see, e.g.*, Brief for Appellants at 37-38, 45, 53; (2) that this Court owes no deference to the legislature when considering the "fit" between the regulation and the government interest, *id.* at 22; and (3) that the government bears the burden of proving to a certainty that the regulation will achieve the government interest, *id.* at 20-22.

This Court has adopted intermediate scrutiny as the standard applicable to firearms regulations that implicate the Second Amendment right but that do not impose a "substantial burden" on that right. *Heller v. District of Columbia*, 670 F.3d 1244, 1257-58 (D.C. Cir. 2011) ("*Heller II*"). Under this Court's articulation of that standard, the government is required to show that the challenged regulations are "substantially related to an important governmental objective." *Id.* at 1258 (internal quotation omitted). Drawing from cases applying intermediate scrutiny to content-neutral regulations challenged under the First Amendment, this Court has instructed that the "fit" required between the challenged regulation and the governmental interest need not necessarily employ "the least restrictive means" available, but requires "a means narrowly tailored to achieve the desired objective.'" *Id.* (quoting *Board of Trustees of the State of New York v. Fox*, 492 U.S. 469, 480 (1989) and citing *Ward v. Rock Against Racism*, 491 U.S. 781, 782-83 (1989)). This Court has further required the District to demonstrate that "'in formulating its judgments, [the legislature] has drawn reasonable inferences based

on substantial evidence.'" *Heller II*, 670 F.3d at 1259 (quoting *Turner II*, 520 U.S. at 195 (internal quotation omitted).)[1]

Other federal appellate courts have similarly adopted intermediate scrutiny as applicable to firearms regulations that do not impose a substantial burden on the Second Amendment right, sometimes with somewhat different articulations of the standard, but generally all requiring the government to demonstrate a fit that is reasonable, not perfect, between the challenged regulation and a government interest that is "important," "substantial," or "significant." *See, e.g.*, *Kachalsky v. County of Westchester*, 701 F.3d 81, 96-97 (2d Cir. 2012) (upholding regulations if they are "substantially related to the achievement of an important government interest"); *United States v. Marzzarella*, 614 F.3d 85, 97-98 (3d Cir. 2010) (requiring a governmental objective that is "significant," "important," or "substantial"; and a "fit between the challenged regulation and the asserted objective" that is "reasonable, not perfect"); *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011) (government has the burden of demonstrating that the challenged regulation "is reasonably adapted to a substantial government interest"); *Woollard v. Gallagher*, 712 F.3d 865, 878-79 (4th Cir. 2013) ("fit" must

[1] The *Amici* States do not necessarily agree that this formulation states the appropriate standard of scrutiny for evaluating any particular firearms regulations, or that it would apply in the circuits governing their jurisdictions. However, in light of this Court's holding in *Heller II*, the *Amici* States accept this formulation as the governing standard in this case.

be "reasonable, not perfect," and is shown by the State demonstrating that its "interests are substantially served" by the challenged law (internal quotations and citations omitted)); *National Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 207 (5th Cir. 2012) (government must demonstrate that "there is a reasonable fit between the law and an important government objective"); *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (requiring firearms regulation to be "substantially related" to "important" government objective); *United States v. Skoien*, 614 F.3d 638, 641-42 (7th Cir. 2010) (en banc) (applying intermediate scrutiny to find "a substantial relation" to "an important government objective" in upholding firearms regulation); *Jackson v. City of San Francisco*, 746 F.3d 953, 965 (9th Cir. 2014) (summarizing common elements of various articulations of intermediate scrutiny as requiring the government's objective to be "significant, substantial, or important," and requiring "a reasonable fit between the challenged regulation and the asserted objective"); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010) (government has "the burden of demonstrating that its objective is an important one and that its objective is advanced by means substantially related to that objective") (quotations omitted). *But see Peruta v. San Diego*, 742 F.3d 1144, 1175-78 (9th Cir. 2014) (criticizing the intermediate scrutiny standard as applied by the Second, Third, and Fourth Circuits), *call for en banc consideration pending*, No. 10-56971, Order, Dkt. Entry

161 (9th Cir. Dec. 3, 2014); *Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (applying "more rigorous" standard than *Skoien*, short of strict scrutiny, where regulation came "much closer to . . . the meaningful exercise of the core right to possess firearms for self-defense").

These circuit courts agree that the means chosen by the government need not be the least restrictive means available to serve the state's interest; rather, it is generally sufficient if they are substantially related to that objective and do not burden substantially more protected conduct than necessary. *See, e.g.*, *Kachalsky*, 701 F.3d at 97; *Marzzarella*, 614 F.3d at 97-98; *Woollard*, 712 F.3d at 878-79. While this court has used the phrase "narrowly tailored" to describe this requirement, at least one other expressly rejects that term, *Kachalsky*, 701 F.3d at 97 ("[W]e are not required to ensure that the legislature's chosen means is 'narrowly tailored.'"); and still others simply do not use the term in connection with the application of intermediate scrutiny in the Second Amendment context, *see, e.g.*, *Marzzarella*, 614 F.3d at 97-98; *Woollard*, 712 F.3d 865; *National Rifle Ass'n*, 700 F.3d 185; *Jackson*, 746 F.3d 953; *Reese*, 627 F.3d 792, 804 n.4 (discussing "narrowly tailored" only in connection with strict scrutiny analysis). Irrespective of how courts choose to formulate or characterize the requirement, however, the existence of less restrictive alternatives does not itself render the

challenged regulation unconstitutional, *see, e.g.*, *Kachalsky*, 701 F.3d at 97; *Marzzarella*, 614 F.3d 85.

Similarly, other federal appellate circuit courts also generally agree with this Court in emphasizing the deference owed to the legislature not only in determining whether important governmental interests are at issue, but in determining whether the means chosen are a "reasonable fit" with or "substantially related to" those interests. *See, e.g.*, *Kachalsky*, 701 F.3d at 97 (in determining whether the challenged regulation "is substantially related to" the state's important governmental interests . . . "'substantial deference to the predictive judgments of [the legislature]' is warranted" (quoting *Turner II*, 520 U.S. at 195)); *Drake v. Filko*, 724 F.3d 426, 436-37 (3d Cir. 2013) ("When reviewing the constitutionality of statutes, courts accord substantial deference to the [legislature's] predictive judgments." (internal quotation omitted)); *Woollard*, 712 F.3d at 881 (in assessing "reasonable fit," deferring to the "considered view of the General Assembly" that the regulation struck the appropriate balance with the government interests). *But see Peruta*, 742 F.3d at 1176-77 (stating that no deference is owed to the legislature in assessing the fit between a challenged regulation and the government's interest), *call for en banc consideration pending*, No. 10-56971, Order, Dkt. Entry 161 (9th Cir. Dec. 3, 2014).

The plaintiffs reject this collected wisdom of the substantial majority of courts to have applied intermediate scrutiny in the Second Amendment context. To justify departing from the guidance provided by these other courts, the plaintiffs purport to rely on the Supreme Court's decisions in *Turner Broadcasting Sys. Inc. v. FCC*, 512 U.S. 622 (1994) ("*Turner I*") and *Turner II*. The plaintiffs are wrong, both in the significance they attach to these cases for this case and in their reading of them.

As an initial matter, although this Court and a number of others have naturally looked to First Amendment jurisprudence as a guide in identifying and articulating the standard of scrutiny to be applied to Second Amendment challenges, there are good reasons why it may not be appropriate to do so, at least not wholesale. Recognizing the unique characteristics of the First Amendment under which that doctrine has been developed, a number of courts have properly rejected the importation of substantive First Amendment doctrine—such as prior restraint and overbreadth analysis—into Second Amendment jurisprudence. *See, e.g.*, *Woollard*, 712 F.3d at 883 n.11; *Kachalsky*, 701 F.3d at 91-92. There is no necessary correspondence between these categories of substantive First Amendment doctrine and the analysis required to give effect to the right codified in the Second Amendment, and particular formulations of the standard of scrutiny used in applying First Amendment doctrine cannot be indiscriminately

incorporated into Second Amendment jurisprudence without losing something in translation. Even within the First Amendment context, the intermediate scrutiny standard has been articulated in varying ways, as a number of courts have observed. *See, e.g.*, *Jackson*, 746 F.3d at 965; *Marzzarella*, 614 F.3d at 97-98. However, even under the specific articulation of the intermediate scrutiny standard in the Supreme Court's decisions in *Turner*, on which the plaintiffs purport to rely, the plaintiffs have misunderstood the applicable test.

First, although not expressly adopting the strict scrutiny least restrictive means test, the plaintiffs proceed to treat the "narrowly tailored" requirement as effectively identical to that test. *See, e.g.*, Brief for Appellants at 37-38, 45, 53 (identifying purportedly less restrictive means as proof that the challenged regulations are allegedly not narrowly tailored). That insistence on what is effectively a least restrictive means test is inconsistent with the intermediate scrutiny test applied by this Court and other circuit courts in the Second Amendment context, as well with the Supreme Court's application of that test in the First Amendment context. Many regulatory measures may be narrowly tailored to serve a particular policy aim, and a legislature's choice of one of those measures over another will satisfy the demands of intermediate scrutiny.

In *Turner I*, the Supreme Court expressly stated that "a regulation need not be the least speech-restrictive means of advancing the Government's interest."

Turner I, 512 U.S. at 662; *see also Turner II*, 520 U.S. at 217-18 (a content-neutral regulation subject to intermediate scrutiny will not be invalidated just because "some alternative solution is marginally less intrusive on a speaker's First Amendment interests"). Instead, "the requirement of narrow tailoring is satisfied so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Turner I*, 512 U.S. at 662 (quotation and citations omitted); *Turner II*, 520 U.S. at 217-18. Thus, the Court explained, the issue was not whether there was any less restrictive means, but whether the chosen means "burden *substantially* more speech than is necessary to further the government's legitimate interests." *Turner I*, 512 U.S. at 662 (emphasis added; quotation omitted). Even if that same test were applicable in the Second Amendment context, it would not permit plaintiffs to meet their burden by identifying a less restrictive means that might potentially be effective. The government is not required to attempt all less restrictive means first.

A closely related error in the plaintiffs' argument is their contention that when the Supreme Court applies intermediate scrutiny in the First Amendment context, it allows deference to the legislature when addressing only the first prong of the intermediate scrutiny test—whether there is an important government interest at stake—and that no such deference is due in analyzing whether there is a reasonable fit between the challenged regulation and such interest. Brief for

Appellants at 22. Again, even if it were appropriate to import that standard directly into the Second Amendment context, the Supreme Court's decisions in the *Turner* cases provide no support for the plaintiffs' argument, and in fact refute it.

"In reviewing the constitutionality of a statute, courts must accord substantial deference to the predictive judgments of Congress." *Turner II*, 520 U.S. at 195. The review of a statute's constitutionality may begin by evaluating the asserted governmental interest, but neither the analysis nor the deference to legislative judgments ends there. The review continues—perhaps even more significantly—with evaluating the fit of the means selected by the legislature to further that interest. Acknowledging the deference owed to legislative bodies in identifying appropriate regulatory solutions, the Court in *Turner II* held that "[j]udgments about how competing economic interests are to be reconciled . . . are for Congress to make," and it is not for courts to "displace [the legislature's] judgment . . . with our own, so long as its policy is grounded on reasonable factual findings supported by evidence that is substantial for a legislative determination." *Id.* at 224. Those legislative judgments also do not end with identification of the government's interests.

Thus, when the Supreme Court's analysis in *Turner II* turned to the "fit" prong, the Court continued to defer to legislative judgment. For example, the Court noted that the "less rigorous" intermediate scrutiny analysis "affords the

Government latitude *in designing a regulatory solution*," *Turner II*, 520 U.S. at 213 (emphasis added), and, subject to the factors discussed above, allows the Government to "employ the means of its choosing," *id.* at 213-14. In rejecting the contention that a narrower provision would have been less restrictive of First Amendment rights but still sufficient to meet the government's interest, the Court further emphasized that the "record reflects a deliberate congressional choice to adopt the present levels of protection, *to which this Court must defer*." *Id.* at 218 (emphasis added). The Court proceeded to reject other alternatives proposed by the parties challenging the regulations, and in so doing used additional language indicating deference to legislative judgment. *See, e.g.*, *id.* at 220-21 (calling Congress' decision to reject a particular proposal a "reasonable one"); *id.* at 222 (rejecting a different proposal because "Congress could conclude" such remedies would be insufficient). Citing *Turner I*, this Court has held expressly that "[i]n assessing this 'fit,' we afford 'substantial deference to the predictive judgments of Congress.'" *Schrader v. Holder*, 704 F.3d 980, 990 (D.C. Cir. 2013) (quoting *Turner I*, 512 U.S. at 665). Deference to legislative judgments is owed with respect to both identification of the government interest *and* the fit of the government's chosen means to further that interest.

Finally, the plaintiffs err in interpreting intermediate scrutiny to require that the government prove with certainty that the means adopted in the challenged

regulation will actually have the effect of achieving the governmental interest. Brief for Appellants at 20-22. As the lower court correctly held, that interpretation misreads the Supreme Court's jurisprudence, which defers to the "predictive judgments" of the legislature and does not insist on a showing of scientific certainty. *Turner II*, 520 U.S. at 195. Indeed, the Supreme Court in *Turner II* did not even require proof of the actual existence of the harm the challenged regulation sought to address. Instead, the Court found that, on the evidence before Congress, lawmakers could reasonably have concluded either that the harm would occur or that it would not. *See id.* at 211-12 (evidence before Congress "could have supported the opposite conclusion," but Congress's conclusion was nonetheless "a reasonable interpretation"). If Congress can regulate to remedy a perceived harm, then clearly Congress was not required to prove conclusively that the regulation would necessarily solve that perceived problem. As the Court further clarified, the relevant issue was "not whether Congress, as an objective matter, was correct to determine [the challenged regulation] is necessary to prevent [the harm identified by the government]." *Id.* at 211. Thus, conflicting evidence as to whether the regulation was necessary to prevent the identified harm could not preclude the award of summary judgment for the government, because the legislature was entitled to draw its own conclusions. *Id.*

III. THE PLAINTIFFS ERR IN SUGGESTING THAT A REGULATION IS UNCONSTITUTIONAL SIMPLY BECAUSE IT IS UNIQUE.

The plaintiffs also err in suggesting that some of the challenged regulations must necessarily be unconstitutional simply because they have not been adopted by many, or even any, states. Although firearm violence is a national problem, it affects states and localities differently. According to the Federal Bureau of Investigation, among the factors "known to affect the volume and type of crime occurring from place to place" are: "Population density and degree of urbanization"; "Variations in composition of the population . . ."; "Stability of the population . . ."; "Modes of transportation and highway system"; "Economic conditions, including median income, poverty level, and job availability"; "Cultural factors . . ."; "Family conditions with respect to divorce and family cohesiveness"; "Climate"; "Effective strength of law enforcement agencies"; "Administrative and investigative emphases of law enforcement"; "Policies of other components of the criminal justice system . . ."; "Citizens' attitudes toward crime"; and "Crime reporting practices of the citizenry." Federal Bureau of Investigation, *Caution against ranking*, Crime in the United States, 2012 (Fall 2013), *available at* http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/caution-against-ranking (last visited December 7, 2014). These factors, and many others, vary widely across states (and within them). The variation in local circumstances helps to explain why policymakers in

different jurisdictions may choose to address threats to public safety in distinctive ways that correspond to the degree to which their citizenry is susceptible to particular types and sources of firearm violence.

Thus, an approach to firearms violence that may be appropriate or effective in one state may not be appropriate or effective in another, and the laws of one state or District should not be subject to constitutional challenge simply because they are not common to other states. Moreover, all states have an interest in maintaining the flexibility, within the constraints established by the United States Constitution and their own state constitutions, to enact common-sense regulations aimed at minimizing the adverse effects of firearm violence. In light of the different challenges facing different states, it is critical that states have the opportunity to experiment with different policies in the interest of public safety. As long as it does not transgress the limitations imposed by the constitutional right, such policy experimentation must be allowed to proceed, as the Supreme Court promised it would. *McDonald*, 561 U.S. at 784-85.

The Supreme Court's affirmation that state experimentation with firearm regulations would continue is consistent with the Court's jurisprudence in other areas of constitutional law. For example, in *Oregon v. Ice*, 555 U.S. 160 (2009), the Court held that the Sixth Amendment does not prohibit states from having the flexibility to leave to judges the determination of certain facts that dictate whether

a court may impose consecutive as opposed to concurrent sentences. *Id.* at 164 (rejecting arguments that such flexibility was precluded by the Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004)). As the *Ice* Court explained, "[w]e have long recognized the role of States as laboratories for devising solutions to difficult legal problems. This Court should not diminish that role absent impelling reason to do so." *Ice*, 555 U.S. at 171 (citation omitted). That is especially true when dealing with state efforts to control crime, which is "much more the business of the States than it is of the Federal Government." *Id.* at 170-71 (quoting *Patterson v. New York*, 432 U.S. 197, 201 (1977)). The courts "should not lightly construe the Constitution so as to intrude upon" the efforts of states to fight crime. *Patterson*, 432 U.S. at 201. That other states may not share the District's regulations is not itself a constitutional infirmity. The District's challenged firearms regulations should be judged on their own merit, and, under the intermediate scrutiny standard prescribed by this Court, should be upheld as a reasonable fit with the District's compelling interests.

CONCLUSION

The judgment of the United States District Court for the District of Columbia should be affirmed.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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This *Amicus Curiae* brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,619 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: December 12, 2014

CERTIFICATE OF SERVICE

I certify that on December 12, 2014, electronic copies of this brief were served on all parties registered through the CM/ECF system.

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