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The Honorable Patricia S. Connor
Clerk of Court
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

RE: *Stephen Kolbe, et al. v. Lawrence J. Hogan, Jr., et al.*, No. 14-1945
Citation of Supplemental Authority Pursuant to FRAP 28(j) and L.R. 28(e)

Dear Ms. Connor:

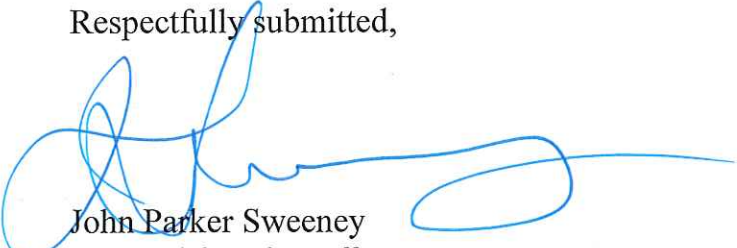
In the past two weeks, both the Court of Appeals for the Third Circuit and the Court of Appeals for the Sixth Circuit issued the attached en banc decisions applying the two-step analysis set forth in *United States v. Marzzarella*, 614 F.3d 85 (3rd Cir. 2010), adopted by this Court in *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010), and applied by successive panels of this Court since its adoption, App. Supp. Br. at 23-28. See *Binderup v. Att'y Gen.*, Nos. 14-4549, 14-4550, 15-1975, 15-1976 (3rd Cir. Sept. 7, 2016); *Tyler v. Hillsdale Cnty Sheriff's Dep't*, No. 13-1876 (6th Cir. Sept. 15, 2016). These recent cases were the first instances of en banc courts adopting the two-step analysis.

In both cases, the en banc courts selected intermediate scrutiny for those as-applied challenges because those plaintiffs were not law-abiding, responsible citizens. See *Binderup*, Slip Op. at 6-7 (explaining that plaintiffs bringing the challenge were misdemeanants); *Tyler*, Slip Op. at 16 (holding that intermediate scrutiny was appropriate because of the plaintiff's history of mental illness).

While a ban on constitutionally-protected firearms can survive no level of heightened scrutiny, and is thus unconstitutional *per se*, *see* App. Br. at 25-28, should this Court select a level of scrutiny, it should follow the reasoned decision of its panel in this case holding that strict scrutiny is the proper standard for Appellants' facial challenge to a prohibition of protected firearms in the home that applies to law-abiding, responsible citizens. *Kolbe v. Hogan*, 813 F.3d 160, 181-82 (4th Cir. 2016); *see also* App. Supp. Br. at 20-49.

Unlike Mr. Binderup and Mr. Tyler, Appellants in this case are law-abiding, responsible citizens. Applying intermediate scrutiny in this context would obliterate any distinction between law-abiding, responsible citizens and criminals and the mentally ill, whose rights to possess firearms are entitled to less protection. App. Supp. Br. at 47-49; *see also D.C. v. Heller*, 554 U.S. 570, 626. Accordingly, at a minimum, this Court should apply strict scrutiny to the challenged laws.

Respectfully submitted,



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Counsel for Plaintiffs