

No. 16-7025

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

BRIAN WRENN, et al.,
Plaintiffs-Appellants,

v.

DISTRICT OF COLUMBIA, et al.,
Defendants-Appellees.

**MOTION FOR EVERYTOWN FOR GUN SAFETY
FOR INVITATION TO FILE BRIEF AS AMICUS CURIAE
IN SUPPORT OF PETITION FOR REHEARING EN BANC**

Everytown for Gun Safety respectfully moves for an invitation from this Court, under Circuit Rule 35(f) and Federal Rule of Appellate Procedure 29(b)(2), to submit a brief as amicus curiae in support of the District of Columbia's petition for rehearing en banc. *See, e.g., PHH Corp. v. Consumer Fin. Prot. Bureau*, No. 15-1177 (D.C. Cir. Feb. 16, 2017) (granting similar request for invitation to file amicus brief in support of en banc petition); *Nat'l Ass'n of Mfrs. v. Sec. & Exch. Comm'n*, No. 13-5252 (D.C. Cir. Nov. 9, 2015) (same); *Elec. Power Supply Ass'n v. FERC*, No. 11-1486 (D.C. Cir. Sept. 17, 2014) (same).

Counsel for all parties in both related appeals (Nos. 16-7025 & 16-7067) consent to this request. The proposed brief complies with Federal Rule of Appellate Procedure 29(b), which contemplates the filing of amicus briefs in support of petitions for rehearing with leave and which limits such briefs to 2,600 words. This motion and brief are being timely filed within seven days of the petition.

I. Interest of the Amicus Curiae

Everytown for Gun Safety is the largest gun-violence-prevention organization in the country, with over three million supporters. Everytown has drawn on its substantial research on historical firearms laws to file briefs in recent Second Amendment cases involving the constitutionality of public-carry restrictions. These briefs assemble an unusual range and number of sources—from thirteenth-century English laws and proclamations and early American legal treatises to municipal ordinances from the Wild West—and they have been relied upon by courts analyzing issues similar to those presented here. *See, e.g., Peruta v. San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc).

Everytown has previously filed history-based amicus briefs in these two related appeals. In *Grace v. District of Columbia*, Everytown's brief presented an extensively researched account of the seven-century Anglo-American tradition of restricting public carry, demonstrating that the District of Columbia's good-reason

requirement for carrying a firearm in public is more than sufficiently “longstanding” to qualify as constitutional under *District of Columbia v. Heller*, 554 U.S. 570 (2008). Everytown also provided a similar account in *Wrenn v. District of Columbia*—first in a prior appeal, and then again in the district court—and it did the same in the district court in *Grace*. At the panel stage, Everytown’s amicus brief offered this Court a fresh, detailed response to the challengers’ primary historical arguments.

II. Usefulness of Briefing by Amicus Curiae in this Case

If leave is granted, Everytown’s proposed brief in support of rehearing will make a unique contribution. Drawing upon these previous submissions, Everytown files this brief because the panel’s decision to “sidestep the historical debate” (Panel Op. 17) not only contradicts *Heller* but also breaks with centuries of Anglo-American history. This history shows that, from our nation’s founding to its reconstruction, many states and cities enacted laws prohibiting carrying, or requiring good cause to carry, a firearm in populated public places. The handful of contrary 19th-century cases on which the panel relies (Panel Op. 12) emanate from the slaveholding South—a part of the country that took an outlier approach to public carry, and that included wide variability even within that region.

Everytown believes that this Court will benefit from Everytown’s considerable expertise on the history of gun laws in deciding whether to grant rehearing en banc. In light of its substantial experience with the history of public-

carry restrictions, as briefed in both this and other litigation, Everytown is uniquely able to point out the flaws in the panel's historical analysis that bear on the "questions of exceptional importance" presented by the District of Columbia's petition for rehearing. Fed. R. App. P. 35(b)(1)(B). Without Everytown's brief, the full Court will be deprived of essential historical analysis on these exceptionally important questions.

CONCLUSION

For the foregoing reasons, movant Everytown for Gun Safety respectfully requests that the Court invite it to file the accompanying brief as amicus curiae.

Respectfully submitted,

/s/ Deepak Gupta

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I electronically filed the foregoing motion with the Clerk of the Court of the U.S. Court of Appeals for the D.C. Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

/s/ Deepak Gupta

Deepak Gupta