

No. 12-17808
IN THE
In the United States Court of Appeals
for the Ninth Circuit

GEORGE K. YOUNG, JR.

Plaintiffs-Appellants,

v.

STATE OF HAWAII; *et al.*,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Hawaii
Helen W. Gillmor, Senior District Judge, Presiding

**BRIEF OF *AMICUS CURIAE* BRADY IN SUPPORT OF APPELLEE
STATE OF HAWAII**

Jonathan Lowy
Kelly Sampson
Christa Nicols
BRADY
840 First Street, NE, Suite 400
Washington, DC 20002
jlowy@bradyunited.org
ksampson@bradyunited.org
cnicols@bradyunited.org
(202) 370-8104

Mark M. Murakami
DAMON KEY LEONG KUPCHAK
HASTERT
1003 Bishop Street, Suite 1600
Pauahi Tower
Honolulu, Hawaii
mmm@hawaiilawyer.com
(808) 531-8031

June 08, 2020

CORPORATE DISCLOSURE STATEMENT

Brady has no parent corporations. Brady also has no stock; therefore, no publicly held company owns 10% or more of its stock.

/s/ Mark M. Murakami

Mark M. Murakami
DAMON KEY LEONG KUPCHAK
HASTERT

Counsel for Amicus Curiae Brady

June 08, 2020

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE..... iv

INTRODUCTION AND SUMMARY OF ARGUMENT2

ARGUMENT.....2

I. There Is No Second Amendment Right to Carry Guns in Public for Confrontation.....2

 A. The Supreme Court Has Not Recognized A Right To Public Carry2

 B. Constitutional Principles Support Not Expanding *Heller* Beyond The Home5

II. The Second Amendment Should Not Be Expanded To Deprive States of Their Authority To Protect Public Safety and Other Fundamental Rights...6

 A. The Second Amendment Cannot Infringe on Americans’ Right to Live6

 B. Hawaii’s Law Reasonably Protects Against The Increased Risks Created By Carrying Guns In Public7

 C. States Have Authority To Protect Democracy and Free Speech11

 D. The Right To Bear Arms Has Long Been Understood To Allow Barring or Restricting Public Carry of Guns12

III. The Text, History, and Purpose of the Second Amendment Do Not Support A Right To Public Gun Carrying.....13

 A. The Framers Said What They Meant13

 B. The Framers’ Text Shows They Did Not Constitutionalize Private, Non-Militia Gun Rights.....15

 1. The Framers Meant What They Said.....16

 2. “Keep and bear Arms” refers to possession and use of weapons for military purposes.....21

IV. Conclusion23

TABLE OF AUTHORITIES

Cases

Aymette v. State, 21 Tenn. 154, 161 (Tenn. 1840).....28

Andrews v. State, 50 Tenn. 165 (1871).....12

Bliss v. Commonwealth, 12 Ky. 90 (1822)12

Davis v. Beason, 133 U.S. 333 (1890).....8

District of Columbia v. Heller , Br. for the U.S. as Amicus Curiae at 3 & n. 5.....5

District of Columbia v. Heller, 554 U.S. 570 (2008). 1, 2, 3, 4, 17, 18,19, 25, 26, 28

English v. State, 35 Tex. 473 (1871).....3, 4

Fife v. State, 31 Ark. 455 (1876)16

Hill v. State, 53 Ga. 472 (1874)12

Marbury v. Madison, 5 U.S. 137 (1803).....19

McDonald v. City of Chicago, 561 U.S. 742 (2010)1, 26

New York v. Quarles, 467 U.S. 649 (1984).8

Perpich v. Dep’t of Defense, 496 U. S. 334 (1990).....21

Piszczatoski v. Filko, 840 F. Supp. 2d 813 (D.N.J. 2012).....8

Rogers v. United States, 185 U.S. 83 (1902)21

Schenck v. United States, 249 U.S. 47 (1919)8

Stanley v. Georgia, 394 U.S. 557 (1969).....6

State v. Workman, 14 S.E. 9 (W. Va. 1891)16

United States v. Carolene Products, Co., 304 U.S. 144 (1938).7

United States v. Craighead, 539 F.3d 1073 (9th Cir. 2008).....6

United States v. Hayes, 555 U.S. 415 (2009)1

United States v. Masciandaro, 638 F.3d 458 (4th Cir. 2011).....5

United States v. Menasche, 348 U.S. 528 (1955)18

United States v. Miller, 307 U.S. 174 (1939)18

Young v. Hawaii, 896 F.3d 1044 (9th Cir. 2018).....2, 4

Young v. Hawaii, Brief of Amici Curiae City and County for Honolulu et. al. in Support of Petition for Rehearing En Banc, 9/24/18 Decl. of Chief Michael M. Contrades,157-3 10

Young v. Hawaii, Brief of Amici Curiae City and County for Honolulu et. al. in Support of Petition for Rehearing En Banc, 9/24/18 Decl. of Susan Ballard, 157-211

Other Authorities

Adams, Samuel, *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts*.16

Amar, Akil Reed, *The Bill of Rights as a Constitution*, 100 YALE L. J. 1131, 1164 (1991).....16

Benning, Tom, *75 Percent of Texas Police Chiefs Responding to Survey Oppose Open Carry*, DALLAS NEWS, (Feb. 13, 2015), <https://www.dallasnews.com/news/politics/2015/02/13/75-percent-of-texas-police-chiefs-responding-to-survey-oppose-open-carry/>10

Bolster, Karina, *‘The Fear Is the People From Outside’: Groups Canceling Trips to the Capitol Monday*, NBC12 (Jan. 17, 2020), <https://www.nbc12.com/2020/01/17/fear-is-people-outside-groups-canceling-trips-capitol-monday/>.....12

Branas, Charles C. , et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AMER. J. PUB. HEALTH 1, 4 (Nov. 2009)8

Brown, Dennis, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 HASTINGS CONST. L. QUARTERLY 510 (2019).....22

Chappell, Bill, *Richmond Gun Rally: Thousands Of Gun Owners Converge On Virginia Capitol On MLK Day*, NPR (Jan. 20, 2020), <https://www.npr.org/2020/01/20/797895183/richmond-gun-rally-thousands-of-gun-owners-converge-on-virginia-capitol-on-mlk-d>.12

CNNwire, *Family sues Hoover, Alabama, and the Officer Who Killed Emantic Bradford Jr. at a Mall on Thanksgiving*, FOX43 (Nov. 25, 2019), <https://www.fox43.com/article/news/family-sues-hoover-alabama-and-the-officer-who-killed-emantic-bradford-jr-at-a-mall-on-thanksgiving/521-ab538c75-6807-41ae-ab91-9ef37e41732d>.....10

Cogan, Neil, ed., *THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES AND ORIGINS* 263, 275 (1997). 16, 17

Cook, Philip & Jens Ludwig, *The Social Costs of Gun Ownership*, J. PUB. ECON. 379, 387 (2006).....8

Cornell, Saul, *Meaning and Understanding in the History of Constitutional Ideas: The Intellectual History Alternative to Originalism*, 82 FORDHAM L REV. (2013).19

Cornell, Saul, *Originalism on Trial: The Use and Abuse of History in District of Columbia v. Heller*, 69 OH. ST. L.J. (2008).....19

Cornell, Saul, *St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings*, 47 WM. & MARY L. REV. 1123 (2006).....20

Cornell, Saul, *The Original Meaning of Original: A Neo-Blackstonian Critique*, 67 MO. L. REV 150 (2007)..... 21, 22

Dezhabakhsh, Hashem & Rubin, Paul, *Lives Saved or Lives Lost? The Effects of Concealed-Handgun Laws on Crime*, THE ECON. OF GUN CONTROL 473 (May 1998).....8

Dillon, Hon. John, *The Right to Keep and Bear Arms for Public and Private Defense Def. (Part 3)*, 1 CENT. L.J. 259, 287 (1874).....13

Donohue, John J., *The Impact of Concealed-Carry Laws, in EVALUATING GUN POLICY EFFECTS ON CRIME AND VIOLENCE* 289 (2003).....8

Dorf, Michael C., *Does Heller Protect a Right to Carry Guns Outside the Home?*, 59 SYRACUSE L. REV. 225, 231-33 (2008).....5

Eliot, T.S., THE LOVE SONG OF J. ALFRED PRUFROCK, Collected Poems (Harcourt, Brace & Co. 1936).....22

Elliott, Jonathan, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION at 379 (2d ed. 1941)17

Epstein, Richard A., *A Structural Interpretation of the Second Amendment: Why Heller is (Probably) Wrong on Originalist Grounds*, 59 SYRACUSE L. REV. 171 (2008).....19

Finkelman, Paul, *It Really Was About a Well Regulated Militia*, 59 SYRACUSE L. REV. 267 (2008)19

Griswold, Erwin, *Phantom Second Amendment ‘Rights’*, WASH. POST (November 4, 1990), <https://www.washingtonpost.com/archive/opinions/1990/11/04/phantom-second-amendment-rights/f4381818-fed9-4e63-8d62-f62056818181/>.....21

Hemenway, David & Azrael, Deborah, *The Relative Frequency of Offensive and Defensive Gun Uses: Results From a National Survey*, 15 VIOLENCE & VICTIMS 257, 271 (2000).....8

JENSEN, MERRILL, ED., THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, 623-24 (1976)16

Konig, David Thomas, *Why the Second Amendment Has a Preamble: Original Public Meaning and the Political Culture of Written Constitutions in Revolutionary America*, 56 UCLA L. REV (2009)19

Lay, Maya & Jim Mustian, *Baton Rouge Police Shooting Brings Renewed Attention to Louisiana's 'Open Carry' Rights*, THE ADVOCATE (Aug. 6, 2016), https://www.theadvocate.com/baton_rouge/news/baton_rouge_officer_shooting/article_83d7317a-5b60-11e6-84b4-13cf89c9f22f.html.10

Lopez, German, *There Are Huge Racial Disparities in How US Police Use Force*, VOX (Nov. 14, 2018),

<https://www.vox.com/identities/2016/8/13/17938186/police-shootings-killings-racism-racial-disparities>.10

Lowy, Jonathan & Kelly Sampson, *The Right Not To Be Shot: Public Safety, Private Guns, and The Constellation of Constitutional Liberties*, 14 *Geo. L.J. & Pub. Pol’y* 187 (2016).....7

Ludwig, Jens, *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18 *INT’L REV. L. & ECON.* 239 (1998)8

Lund, Nelson, *Second Amendment Standards of Review in a Heller World*, 39 *FORDHAM URB. L. J.* 1617 (2012).....18

Marist Poll, *9/10: Gun Restrictions in the United States*, (Sept. 10, 2019), <http://maristpoll.marist.edu/npr-pbs-newshour-marist-poll-results-8/#sthash.BN7q1o6E.6ydp1z1A.dpbs>.....6

Merkel, Williams G., *The District of Columbia v. Heller and Antonin Scalia’s Perverse Sense of Originalism*, 13 *LEWIS & CLARK L. REV.* 349 (2009).....19

Miller, Darrell A. H., *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 *Columbia L. Rev.* 1278, 1351 (2009).....5, 6

Mock, Brentin, *What New Research Says about Race and Police Shootings*, CITY LAB (Aug. 6, 2019), <https://www.citylab.com/equity/2019/08/police-officer-shootings-gun-violence-racial-bias-crime-data/595528/>.....10

Nessel, Press Release, MSP Col. Gasper Call for Safety if Protests Occur at Capitol, (May 13, 2020)11

Nolan, Kay, Julie Bosman & Campbell Robertson, *In 3 Key States That Elected Trump, Bitter Divisions on Reopening*, *N.Y. TIMES* (May 14 2020), <https://www.nytimes.com/2020/05/14/us/coronavirus-wisconsin-pennsylvania-michigan.html>.11

Pomeroy, John Norton, *AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES*, 152-53 (1868).....13

Posner, Richard A., *In Defense of Looseness: The Supreme Court and Gun Control*, NEW REPUBLIC (Aug. 27, 2008)
<https://newrepublic.com/article/62124/defense-looseness>18

Scalia, Antonin & Gardner, Bryan, *READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012).....14

Scheyder, Ernest, *Dallas Police Chief Cays Armed Civilians in Texas 'Increasingly Challenging'*, REUTERS (Jul. 10, 2016), <https://www.reuters.com/article/us-usa-police-protests/dallas-police-chief-says-armed-civilians-in-texas-increasingly-challenging-idUSKCN0ZQ0V8>.9

Story, Joseph, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES*, § 1897, at 620–621 (4th ed. 1873).....19

Sunstein, Cass R., *Second Amendment Minimalism: Heller as Griswold*, 122 Harv. L. Rev. 246, 246 (2008).....5

Thayer, James B., *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129 (1893).....6

Wilkinson, J. Harvie IV, *Of Guns, Abortions and the Unraveling Rule of Law*, 95 VA. L. REV. (2009).....19

Williams, Timothy, et. al., *Amid Tight Security, Virginia Gun Rally Draws Thousands of Supporters*, N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/us/virginia-gun-rally.html>.....12

Yassky, David S., *The Second Amendment: Structure, History and Constitutional Change*, 99 Michigan L. Rev. 588 (2000).....18

5-4, *DC v. Heller*, WESTWOOD ONE PODCAST NETWORK (Apr. 28, 2020).....15

Constitutional Provisions and Legislative Materials

Decl. of Independence ¶ 2 (U.S. 1776).....7

Ky. Const. of 1850, art. XIII, § 25.....13

U.S. Const. Amend. II.....11

INTEREST OF *AMICUS CURIAE*

For over 40 years Brady has been one of the nation's oldest and largest nonpartisan, non-profit organizations dedicated to gun violence prevention. Brady provides education, research, and direct legal advocacy to reduce gun deaths and injuries, including filing amicus briefs in numerous cases involving firearms regulations.¹ Brady has a substantial interest in ensuring that the Second Amendment is interpreted to not infringe on Americans' right to live, and does not jeopardize state authority to prevent gun violence. Brady files this brief as *amicus curiae* in support of Appellee State of Hawaii.²

¹ See, e.g., *McDonald v. City of Chicago*, 561 U.S. 742, 870 n.13, 887 n.30, 891 n.34 (2010) (Stevens, J., dissenting) (citing Brady brief); *United States v. Hayes*, 555 U.S. 415, 427 (2009) (citing Brady brief); and *District of Columbia v. Heller*, 554 U.S. 570 (2008).

² No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than amicus or its counsel contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The panel opinion claims that the Second Amendment “protect[s] a right to carry a firearm in public for self-defense”³ and restricts states’ authority to reduce the risks resulting from public carry — as Hawaii’s laws do. The ruling is unsupported by *District of Columbia v. Heller*,⁴ and the Second Amendment’s text and meaning, and would dangerously limit states’ longstanding police power to protect Americans’ most fundamental right —their right to live. This Court should not make that quantum constitutional leap.

ARGUMENT

I. There Is No Second Amendment Right to Carry Guns in Public for Confrontation

A. The Supreme Court Has Not Recognized A Right To Public Carry

The panel decision purportedly relies on *Heller* to find a right to carry guns in public, but *Heller*’s holding repeats “in the home” twice:

In sum, we hold that the District’s ban on handgun possession *in the home* violates the Second Amendment, as does its prohibition against rendering any lawful firearms *in the home* operable for the purpose of immediate self-defense.⁵

Heller’s description of the right also emphasized its homebound scope:

³ *Young v. Hawaii*, 896 F.3d 1044, 1074 (9th Cir. 2018).

⁴ *Heller*, 554, U.S. at 635.

⁵ *Id.* at 635 (emphasis added).

And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms *in defense of hearth and home*.⁶

Heller left any extension of the right outside the home “to future evaluation.”⁷ Relying on *Heller* to create a vast new right to carry guns in public misreads its holdings.

Heller made the right’s narrow scope clearer still, by explaining in Part III that the Second Amendment permits many (potentially *all*) other gun laws, save for broad bans on guns in the home that it took “off the table.”⁸ The Court specifically recognized, approvingly, “the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’”⁹

For support, *Heller* cited, *inter alia*, *English v. State*,¹⁰ which held that a ban on public handgun carrying was consistent with the Second Amendment. *English* recognized “the right inherent in society to ward off crimes against itself by antecedent precautions” (quoting John Stuart Mill) and found it “little short of ridiculous, that anyone should claim the right to carry any of the mischievous

⁶ *Id.* (emphasis added).

⁷ *Id.*

⁸ *Id.* at 636.

⁹ *Id.*

¹⁰ *Id.* at 627 (citing *English v. State*, 35 Tex. 473, 476 (1871)).

devices inhibited by the statute, into a peaceable public assembly ***”.¹¹ *Heller* and its cited authority contradict a broad right to carry guns in public.

The panel suggests *Heller*’s statement that “nothing in our opinion should be taken to cast doubt on *** laws forbidding the carrying of firearms in sensitive places such as schools and government buildings ***”¹² implies that the Second Amendment generally protects a right to carry in non-sensitive places. The opposite is true.

The Court listed bans on guns in sensitive places as one of several “presumptively lawful regulatory measures” that are “only...examples” and not “exhaustive,”¹³ refuting the panel’s deduction. The Court apparently included this “safe harbor” list in response to the United States’ amicus brief, which sought protections for federal laws, including the ban on guns in some government property.¹⁴ The Court did not list restrictions on public carrying because those are state laws not noted in the U.S. brief.

If the right is to be expanded to entitle public carry, the Supreme Court should make the leap. As Judge Wilkinson noted:

¹¹ *English v. State*, 35 Tex. at 478.

¹² *Young*, 896 F.3d at 1053, n. 6 (citing *Heller*, 554 U.S. at 626).

¹³ *Heller*, 554 U.S. at 627 & n. 26.

¹⁴ *See District of Columbia v. Heller*, Br. for the U.S. as Amicus Curiae at 3 & n. 5, accessible at <https://www.justice.gov/osg/brief/district-columbia-v-heller-amicus-merits>.

To the degree that we push the right beyond what the Supreme Court in *Heller* declared to be its origin, we circumscribe the scope of popular governance, move the action into court, and encourage litigation in contexts we cannot foresee. This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights. It is not far-fetched to think the *Heller* Court wished to leave open the possibility that such a danger would rise exponentially as one moved the right from the home to the public square. If ever there was an occasion for restraint, this would seem to be it. There is much to be said for a course of simple caution.¹⁵

This wisdom should guide this Court.

B. Constitutional Principles Support Not Expanding *Heller* Beyond The Home

Broad constitutional principles support confining the right to the home.¹⁶

“The home occupies a special place in the pantheon of constitutional rights,” and some constitutional rights are at their apex in, or confined to, the home.¹⁷

Professor Darrell Miller proposed a framework supporting a home-focused Second Amendment, modeled on *Stanley v. Georgia*, 394 U.S. 557 (1969), which

¹⁵ *United States v. Masciandaro*, 638 F.3d 458, 475-76 (4th Cir. 2011) (Wilkinson, J. concurring).

¹⁶ See, e.g., Michael C. Dorf, *Does Heller Protect a Right to Carry Guns Outside the Home?*, 59 SYRACUSE L. REV. 225, 231-33 (2008).

¹⁷ Darrell A. H. Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 COLUMBIA L. REV. 1278, 1303-04 (2009) (citing *United States v. Craighead*, 539 F.3d 1073, 1077 (9th Cir. 2008)).

recognized greater First Amendment rights in the home.¹⁸ This principle especially applies given *Heller*'s emphasis on the home.

Professor Cass Sunstein offers another reason for judicial restraint, grounded in the principle that, where the legislature has not clearly violated a Constitutional right and the majoritarian political process is not defective, the judiciary should defer to the political branches.¹⁹ That applies here, as the political branches are debating gun issues. Nor is this a case where judicial action is needed to protect “discrete, insular minorities” whose rights are insufficiently protected by the political process,²⁰ for, to the contrary, Congress has often elevated gun rights over the views of most Americans, who support stronger gun laws.²¹

II. The Second Amendment Should Not Be Expanded To Deprive States of Their Authority To Protect Public Safety and Other Fundamental Rights

A. The Second Amendment Cannot Infringe on Americans' Right to Live

¹⁸ *Id.* at 1297.

¹⁹ Cass R. Sunstein, *Second Amendment Minimalism: Heller as Griswold*, 122 HARV. L. REV. 246, 246, 259 (2008) (citing James B. Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129 (1893)).

²⁰ *United States v. Carolene Products, Co.*, 304 U.S. 144, 153 n.4 (1938).

²¹ Marist Poll, *9/10: Gun Restrictions in the United States*, (Sept. 10, 2019), <http://maristpoll.marist.edu/npr-pbs-newshour-marist-poll-results-8/#sthash.BN7q1o6E.6ydp1z1A.dpbs>.

“Second Amendment analysis must begin with the recognition that the risks created by firearms are unique among constitutional rights inasmuch as firearms pose a risk of imminent lethality.”²² Expanding gun rights may conflict with America’s founding principles to protect “life, liberty, and the pursuit of happiness.”²³ Courts have always understood that the state’s authority to protect public safety constrains the exercise of all rights.²⁴ That is especially true with the Second Amendment, since it “is unique among all other constitutional rights . . . because it permits the user of a firearm to cause serious personal injury - including the ultimate injury, death - to other individuals, rightly or wrongly. . . . A person wrongly killed cannot be compensated by resurrection.”²⁵

B. Hawaii’s Law Reasonably Protects Against The Increased Risks Created By Carrying Guns In Public

Requiring open carry applicants to show that they have a pressing need to protect life or property, as H.R.S. §§ 134-9 does, is a reasonable measure to protect public safety. This supports both limiting the right to the home and, if a broader

²² Jonathan Lowy & Kelly Sampson, *The Right Not To Be Shot: Public Safety, Private Guns, and The Constellation of Constitutional Liberties*, 14 GEO. L.J. & PUB. POL’Y 187, 190 (2016).

²³ Decl. of Independence ¶ 2 (U.S. 1776).

²⁴ See, e.g., *Schenck v. United States*, 249 U.S. 47, 52 (1919); *Davis v. Beason*, 133 U.S. 333, 342-43 (1890); *New York v. Quarles*, 467 U.S. 649, 651-53 (1984).

²⁵ *Piszczatoski v. Filko*, 840 F. Supp. 2d 813, 816 (D.N.J. 2012).

right is recognized, upholding Hawaii’s law under intermediate (or even strict) scrutiny.

Public gun carrying poses great societal risks, which states have authority to prevent. Guns are used “far more often to kill and wound innocent victims than to kill and wound criminals ... [and] guns are also used far more often to intimidate and threaten than they are used to thwart crimes.”²⁶

Studies show that public gun carrying *increases* the risk of victimization to violent crime.²⁷ One study found that “gun possession by urban adults was associated with a significantly increased risk of being shot in an assault,” and that “guns did not protect those who possessed them from being shot in an assault.”²⁸ An increase in guns in public may cause increased criminal violence.²⁹

Acting Kauai Police Chief Michael Contrades explained that invalidating the “good and substantial” reason requirements from open and concealed carry permits

²⁶ David Hemenway & Deborah Azrael, *The Relative Frequency of Offensive and Defensive Gun Uses: Results From a National Survey*, 15 VIOLENCE & VICTIMS 257, 271 (2000).

²⁷ See, e.g., John J. Donohue, THE IMPACT OF CONCEALED-CARRY LAWS, EVALUATING GUN POLICY EFFECTS ON CRIME AND VIOLENCE at 289, 320 (Brookings Inst. Press 2003); Jens Ludwig, *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18 INT’L REV. L. & ECON. 239, 248 (1998).

²⁸ Charles C. Branas, et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 AMER. J. PUB. HEALTH 2034, 2037 (Nov. 2009).

²⁹ Philip Cook & Jens Ludwig, *The Social Costs of Gun Ownership*, J. PUB. ECON. 379, 387 (2006).

would increase gun violence and make officers' jobs "harder and more dangerous."³⁰ Chief Contrades warned that "[i]n a confrontation between a police officer and a criminal, an additional person bearing a gun, might cause confusion as to which side of the confrontation the person is on."³¹ Honolulu Police Chief Susan Ballard stated, "[i]f the HPD is required to issue open carry permits to applicants who have no special need for such protection, police officers will be likely to face greater danger."³²

For example, when five police officers were shot and killed at a protest in Dallas in 2016, many protestors were carrying firearms, which made it harder for police to identify and stop the shooter.³³ Then Dallas police chief David Brown said, "We don't know who the 'good guy' versus who the 'bad guy' is, if everybody starts shooting."³⁴ After a man open-carrying a rifle in Louisiana shot and killed three officers, the police union President said that open carry "scares the

³⁰ *Young v. Hawaii*, Brief of Amici Curiae City and County for Honolulu et. al. in Support of Petition for Rehearing En Banc, 9/24/18 Decl. of Chief Michael M. Contrades, 157-3.

³¹ *Id.* ¶ 16.

³² *Young v. Hawaii*, Brief, Supra 40, Decl. of Susan Ballard, 157-2.

³³ Ernest Scheyder, *Dallas Police Chief Cays Armed Civilians in Texas 'Increasingly Challenging'*, REUTERS (Jul. 10, 2016), <https://www.reuters.com/article/us-usa-police-protests/dallas-police-chief-says-armed-civilians-in-texas-increasingly-challenging-idUSKCN0ZQ0V8>.

³⁴ *Id.*

hell out of me.”³⁵ Not surprisingly, a survey found 75% of responding Texas police chiefs opposed open carry and 90% said that any open carry should require licenses.³⁶

Implicit racial bias³⁷ makes civilian carry particularly risky for people of color, leading to tragic results. For example, in 2018 Emantic Bradford Jr., a Black licensed gun owner, sought to protect himself and others when a shooting broke out at the mall.³⁸ Responding officers mistook Mr. Bradford Jr. as the

³⁵ Maya Lay & Jim Mustian, *Baton Rouge Police Shooting Brings Renewed Attention to Louisiana's 'Open Carry' Rights*, THE ADVOCATE (Aug. 6, 2016), https://www.theadvocate.com/baton_rouge/news/baton_rouge_officer_shooting/article_83d7317a-5b60-11e6-84b4-13cf89c9f22f.html.

³⁶ Tom Benning, *75 Percent of Texas Police Chiefs Responding to Survey Oppose Open Carry*, DALLAS NEWS, (Feb. 13, 2015), <https://www.dallasnews.com/news/politics/2015/02/13/75-percent-of-texas-police-chiefs-responding-to-survey-oppose-open-carry/>.

³⁷ See, e.g., Brentin Mock, *What New Research Says about Race and Police Shootings*, CITY LAB (Aug. 6, 2019), <https://www.citylab.com/equity/2019/08/police-officer-shootings-gun-violence-racial-bias-crime-data/595528/>; German Lopez, *There Are Huge Racial Disparities in How US Police Use Force*, VOX (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938186/police-shootings-killings-racism-racial-disparities>.

³⁸ CNNwire, *Family sues Hoover, Alabama, and the Officer Who Killed Emantic Bradford Jr. at a Mall on Thanksgiving*, FOX43 (Nov. 25, 2019), <https://www.fox43.com/article/news/family-sues-hoover-alabama-and-the-officer-who-killed-emantic-bradford-jr-at-a-mall-on-thanksgiving/521-ab538c75-6807-41ae-ab91-9ef37e41732d>.

assailant and shot him to death.³⁹ Eleven days earlier, police shot and killed Jemel Roberson, a Black security guard, was killed while he subdued a suspect.⁴⁰

C. States Have Authority To Protect Democracy and Free Speech

Public carry restrictions also protect First Amendment rights and the “security of the free State.”⁴¹

Consider, for example, recent protests against Michigan’s COVID-19 stay-at-home order, in which citizens openly carried firearms outside and inside the Michigan State Capitol Building. Michigan Attorney General Dana Nessel stated “[t]he presence of heavily armed protestors at the Capitol unnecessarily creates a powder keg dynamic that is dangerous to protestors, law enforcement and public servants reporting to work at the Capitol.”⁴² In response, Michigan closed the Capitol building and canceled the legislative session.⁴³

³⁹ *Id.*

⁴⁰ Holly Yan, “*Hero*” Security Guard Killed By Police Was Working Extra Shifts For His Son’s Christmas, CNN, (Nov. 15, 2018), <https://www.cnn.com/2018/11/15/us/chicago-area-security-guard-police-shooting/index.html>.

⁴¹ U.S. Const. Amend. II

⁴² Press Release, AG Nessel, MSP Col. Gasper Call for Safety if Protests Occur at Capitol, (May 13, 2020) (on file with author).

⁴³ Kay Nolan, Julie Bosman & Campbell Robertson, *In 3 Key States That Elected Trump, Bitter Divisions on Reopening*, N.Y. TIMES (May 14 2020), <https://www.nytimes.com/2020/05/14/us/coronavirus-wisconsin-pennsylvania-michigan.html>.

Earlier this year, Virginia Governor Ralph Northam declared a State of Emergency, temporarily banning firearms in Virginia’s Capitol square, due to threats of “credible violence”⁴⁴ by individuals protesting gun violence prevention bills.⁴⁵ As a result, many gun violence prevention advocates cancelled their annual “Lobby Day” trips to the Capitol.⁴⁶ As one advocate said, “We feel like our opportunity at democracy has been compromised.”⁴⁷

D. The Right To Bear Arms Has Long Been Understood To Allow Barring or Restricting Public Carry of Guns

Courts have long recognized that the Second Amendment (and state analogues) do not protect a broad right to publicly carry guns in public.⁴⁸

⁴⁴ Timothy Williams, et. al., *Amid Tight Security, Virginia Gun Rally Draws Thousands of Supporters*, N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/us/virginia-gun-rally.html>.

⁴⁵ Bill Chappell, *Richmond Gun Rally: Thousands Of Gun Owners Converge On Virginia Capitol On MLK Day*, NPR (Jan. 20, 2020), <https://www.npr.org/2020/01/20/797895183/richmond-gun-rally-thousands-of-gun-owners-converge-on-virginia-capitol-on-mlk-d>.

⁴⁶ Karina Bolster, *‘The Fear Is the People From Outside’: Groups Canceling Trips to the Capitol Monday*, NBC12 (Jan. 17, 2020), <https://www.nbc12.com/2020/01/17/fear-is-people-outside-groups-canceling-trips-capitol-monday/>.

⁴⁷ *Id.*

⁴⁸ Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 Fordham Urban L. J. 1695, 1699, 1701, 1723; *Compare, Andrews v. State*, 50 Tenn. 165, 180-81 (1871); *Fife v. State*, 31 Ark. 455, 460 (1876) ; *Hill v. State*, 53 Ga. 472, 474 (1874); *State v. Workman*, 14 S.E. 9, 11 (W. Va. 1891) with *Bliss v. Commonwealth*, 12 Ky. 90, 91, 93 (1822), which declared Kentucky’s concealed-weapons ban in conflict with

Commentators agreed. John Norton Pomeroy's treatise, which *Heller* heralded as representative of "post-Civil War 19th century sources,"⁴⁹ stated that the right to keep and bear arms "is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons."⁵⁰ Judge John Dillon explained that "the peace of society and the safety of peaceable citizens plead loudly for protection against the evils which result from permitting other citizens to go armed with dangerous weapons."⁵¹

III. The Text, History, and Purpose of the Second Amendment Do Not Support A Right to Public Gun Carrying

The Second Amendment's text and history do not support a right to carry guns in public for private armed confrontation. Neither does *Heller*'s shaky historical analysis. This court must follow the Supreme Court's holdings, but it need not expand on those holdings based on dicta that often misstates the history and meaning of the Second Amendment.

A. The Framers Said What They Meant

its Constitution, is recognized as an exception to this precedent. See Joel Prentiss Bishop, COMMENTARIES ON THE CRIMINAL LAW § 125, at 75-76 (1868). The Kentucky legislature corrected the decision by amending the state constitution. See Ky. Const. of 1850, art. XIII, § 25.

⁴⁹ *Heller*, 554 U.S. at 618.

⁵⁰ John Norton Pomeroy, *AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES*, 152-53 (1868).

⁵¹ Hon. John Dillon, *The Right to Keep and Bear Arms for Public and Private Defense Def. (Part 3)*, 1 CENT. L.J. 259, 287 (1874).

In purporting to construe the meaning of “the right of the people to keep and bear arms,” the panel does not account for the first half of the Second Amendment: “A well-regulated militia, being necessary to the security of a free State....” As *Miller v. United States* held, the Second Amendment “must be interpreted and applied with [the] end in view” of its “obvious purpose to assure the continuation and render possible the effectiveness” of the “well-regulated militia[s]” the Framers referenced.⁵²

While *Heller* gave the militia clause short shrift, it stated that *Miller* remains good law.⁵³ Regardless, a Constitutional amendment—not five votes—is needed to excise the militia clause. The words chosen by the Framers are integral to understanding what right is protected, especially if “text and history” are purportedly to guide Second Amendment analysis.

Particularly when the historical record leads to varying conclusions, results-neutral rules of construction are critical. One cardinal rule is to avoid treating language as surplusage.⁵⁴ “It cannot be presumed that any clause in the

⁵² *United States v. Miller*, 307 U.S. 174, 178 (1939); *see also Heller*, 554 U.S. at 625 - 627.

⁵³ *Heller*, 554 U.S. at 625-627.

⁵⁴ *United States v. Menasche*, 348 U.S. 528 (1955); *see also* Antonin Scalia & Bryan Gardner, *READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS*, 63-66 (2012).

constitution is intended to be without effect.”⁵⁵ Yet according to the panel, the

Second Amendment means something like:

A well-regulated militia, being necessary for the security of a free State, the right of the people to have and use guns in armed private confrontation in public spaces, with no relationship to militias, which may make the State less secure, shall not be infringed.

Under this view, the militia clause adds no meaning, but must be explained away. This reading conflicts with the text and the militia nature of the right.

Context matters in understanding sentences. If I say, “because hotels are booked, you may stay at my house,” that does not entitle you to live with me forever.⁵⁶ But if I say, “because we should share, you may stay at my house,” it might. And if I say, “you may sojourn at my house,” “sojourn” reinforces the temporary nature of your stay. The militia clause matters.

B. The Framers’ Text Shows They Did Not Constitutionalize Private, Non-Militia Gun Rights

The text shows the Framers chose not to recognize a private, non-militia right.

If the Framers wanted to recognize a private, non-militia-based right, they could have used language from a Massachusetts proposal “that the said

⁵⁵ *Marbury v. Madison*, 5 U.S. 137 (1803).

⁵⁶ Inspired by 5-4, *DC v. Heller*, WESTWOOD ONE PODCAST NETWORK (Apr. 28, 2020) (downloaded using Apple Podcasts).

Constitution be never construed to authorize Congress...to prevent the people of the United States, who are peaceable citizens, from keeping their own arms.”⁵⁷ Or a Pennsylvania dissent that included the right to bear arms “in defense of themselves...or for the purposes of killing game...and no law shall be based for disarming the people...”⁵⁸ But even those states rejected these proposals.⁵⁹ Or they could have adopted a proposal submitted to Congress that “Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion.”⁶⁰ But it too was rejected.

Even if some wished to protect some private gun rights, as Professor Akhil Reed Amar observed, “[T]o see the [Second] Amendment as primarily concerned with an individual right to hunt, or protect one’s home,” would be “like viewing the heart of the speech and assembly clauses as the right of persons to meet to play bridge.”⁶¹

1. The Framers Meant What They Said

⁵⁷ Samuel Adams, *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts*, 86-87.

⁵⁸ THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, 623-24 (Merrill Jensen, ed. 1976).

⁵⁹ Several other states failed to attain majority votes for submitting similar amendments. *See id.*

⁶⁰ AMENDMENT II: KEEP AND BEAR ARMS CLAUSE, THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES AND ORIGINS 263, 275 (Neil H. Cogan ed. 1997).

⁶¹ Akil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L. J. 1131, 1164 (1991).

Another cardinal rule is to interpret provisions to further the intent of the legislature.⁶² The Second Amendment’s text and history reflect its purpose – to prevent the new federal government from destroying the institution of the state militia.⁶³

For example, George Mason feared that Congress’s new power would allow Congress to destroy the militia by “rendering them useless—by disarming them ... Congress may neglect to provide for arming and disciplining the militia; and the state governments cannot do it, for Congress has an exclusive right to arm them.”⁶⁴

Madison’s first draft makes clear the right’s militia focus. Madison’s first proposal to Congress recognized a right “to keep and bear arms,” while stating: “but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.”⁶⁵ “Bearing arms” was synonymous with “render[ing] military service.” The conscientious objector clause was ultimately rejected because of concerns that the federal government could weaken the militia by designating who was “religiously scrupulous,”⁶⁶ which only highlights the right’s

⁶² *Rogers v. United States*, 185 U.S. 83, 86 (1902).

⁶³ *See Perpich v. Dep’t of Defense*, 496 U. S. 334, 340 (1990).

⁶⁴ Jonathan Elliott, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* at 379 (2d ed. 1941).

⁶⁵ *THE COMPLETE BILL OF RIGHTS: THE DRAFTS, DEBATES, SOURCES AND Origins* at 169 (Cogan ed. 1997).

⁶⁶ David S. Yassky, *The Second Amendment: Structure, History and Constitutional Change*, 99 Michigan L. Rev. 588, 609-610 (2000).

militia focus, and the Framers' anti-federalist concerns. After the clause was removed, the Second Amendment changed little, giving no indication that the Framers sought to protect a non-militia right.

The *Heller* majority's (mis)reading of the Second Amendment and history has received sharp criticism across the political spectrum. Conservative scholar Nelson Lund, who agreed with the holding, noted that:

Justice Scalia's *Heller* opinion itself shows that his use of history and tradition is little more than a disguised version of the kind of interest balancing that he purported to condemn. At crucial points, he simply issued ipse dixits unsupported by any historical evidence, and at other points, he misrepresented historical facts.⁶⁷

Seventh Circuit Judge Richard Posner called *Heller*:

questionable in both method and result, and it is evidence that the Supreme Court, in deciding constitutional cases, exercises a freewheeling discretion strongly flavored with ideology.... The irony is that the "originalist" method would have yielded the opposite result.⁶⁸

Second Amendment historian Saul Cornell called Justice Scalia's misreading of history "a lawyer's version of a magician's parlor trick."⁶⁹

⁶⁷ Nelson Lund, *Second Amendment Standards of Review in a Heller World*, 39 FORDHAM URBAN L. J. 1617, 1629 (2012).

⁶⁸ Richard A. Posner, *In Defense of Looseness: The Supreme Court and Gun Control*, NEW REPUBLIC (Aug. 27, 2008) <https://newrepublic.com/article/62124/defense-looseness>.

⁶⁹ Saul Cornell, *Originalism on Trial: The Use and Abuse of History in District of Columbia v. Heller*, 69 OH. ST. L.J., 625, 626 (2008) *see also* Saul Cornell, *Meaning and Understanding in the History of Constitutional Ideas: The Intellectual History Alternative to Originalism*, 82 FORDHAM L. REV., 721 (2013).

Fourth Circuit Judge J. Harvie Wilkinson IV wrote that *Heller* “represents a failure—the Court’s failure to adhere to a conservative judicial methodology in reaching its decision.”⁷⁰

A few examples are illustrative.

Heller credits Joseph Story for drawing a parallel between the English Declaration of Rights’s guarantee of an individual right to arms, and the Second Amendment.⁷¹ But Story focused on the militia in his commentary on the Second Amendment.⁷²

Heller relied on St. George Tucker, who did not view the Second Amendment in a narrowly individualistic way, but rather viewed it in its military context.⁷³

⁷⁰ Harvie Wilkinson III, *Of Guns, Abortions and the Unraveling Rule of Law*, 95 VA. L. REV. 253, 254 (2009). *See also, e.g.*, David Thomas Konig, *Why the Second Amendment Has a Preamble: Original Public Meaning and the Political Culture of Written Constitutions in Revolutionary America*, 56 UCLA L. REV. 1295 (2009); Paul Finkelman, *It Really Was About a Well Regulated Militia*, 59 SYRACUSE L. REV. 267 (2008); William G Merkel, *The District of Columbia v. Heller and Antonin Scalia’s Perverse Sense of Originalism*, 13 LEWIS & CLARK L. REV. 349 (2009); Richard A. Epstein, *A Structural Interpretation of the Second Amendment: Why Heller is (Probably) Wrong on Originalist Grounds*, 59 SYRACUSE L. REV. 171 (2008).

⁷¹ *Heller*, 554 U.S. at 608.

⁷² Joseph Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, § 1897, at 620–621 (4th ed. 1873)); *see also Heller*, 554 U.S. at 594-595.

⁷³ *See Saul Cornell, St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings*, 47 WM. & MARY L. REV. 1123 (2006).

Heller claims support from Blackstone’s description of the pre-existing right to “right of having and using arms for self-preservation and defense.”⁷⁴ But Blackstone “referred to the right of the people ‘*to take part in the militia*’ to defend their political liberties and to *the right of Parliament* (which represented the people) to *raise a militia* even when the King sought to deny it that power.”⁷⁵

The Court’s seemingly results-oriented treatment of history makes rules of construction even more important. But the *Heller* Court eschewed those rules to trivialize the Framers’ militia meaning. Rather than read the Second Amendment holistically (as sentences are usually read), *Heller* adopts a “novel” interpretation which it construed the “operative” clause separately, then claimed it need only bear a “logical connection” to the militia clause.⁷⁶ That is not how the Framers, or the public of their time, would read a prefatory clause.⁷⁷

While Justice Scalia cites authority that a preamble does not control “clear and unambiguous terms,” the same source states, “if any doubt arise on the words of the enacting part, the preamble may be resorted to, to explain it.”⁷⁸ As it was

⁷⁴ *Heller*, 554 U.S. at 665.

⁷⁵ *McDonald*, 561 U.S. at 915-916 (Breyer, J. dissenting) (internal citations omitted)(emphasis added in original).

⁷⁶ *Heller*, 554 U.S. at 661, 643 & n.7 (Stevens, J., dissenting).

⁷⁷ Saul Cornell, *The Original Meaning of Original: A Neo-Blackstonian Critique*, 67 MO. L. REV 150 (2007).

⁷⁸ *Heller*, 554 U.S. at 593-594 (internal citation omitted.)

long believed “[t]hat the Second Amendment poses no barrier to strong gun laws is perhaps the most well-settled proposition in American Constitutional law,”⁷⁹ the panel’s broad reading, which is the opposite of this long-settled view, cannot be “clear and unambiguous.” The militia clause informs the military nature of the right.

2. “Keep and bear Arms” refers to possession and use of weapons for military purposes.

The Framers also indicated the militia focus by using the phrase “to keep and bear Arms.” Historians and scholars have confirmed that “keep and bear Arms” was an idiomatic military phrase in founding-era America.⁸⁰ As the Supreme Court of Tennessee noted in 1840: “A man in the pursuit of deer, elk and buffaloes, might carry his rifle every day, for forty years, and, yet, it would never be said of him, that he had *borne arms* ***.”⁸¹

Justice Scalia avoided the phrase’s established ordinary meaning, relying instead on a few dictionary definitions and founding-era writings, some of which

⁷⁹ Erwin Griswold, *Phantom Second Amendment ‘Rights’*, WASH. POST (November 4, 1990), <https://www.washingtonpost.com/archive/opinions/1990/11/04/phantom-second-amendment-rights/f4381818-fed9-4e63-8d62-f62056818181/>.

⁸⁰ Cornell, *A Neo-Blackstonian Critique*, at 163. See also Dennis Brown, *Corpus Evidence Illuminates the Meaning of Bear Arms*, 46 HASTINGS CONST. L. QUARTERLY 510 (2019).

⁸¹ *Aymette v. State*, 21 Tenn. 154, 161 (Tenn. 1840).

included alternative military meanings.⁸² *Heller*, and the panel, also rely on Justice Ginsburg's dissent in *Muscarello v. United States*, which construed what "carry" (not bear) meant in 18 U.S.C. Sec. 924(c)(1) (not the Second Amendment). And Justice Ginsburg joined dissents in *Heller* that found "keep and bear" had a military meaning. Relying on the dissent of a dissenter is less than a slim reed; it is, Justice Ginsburg might say, "not what I meant, at all!"⁸³

Heller's shaky (and incorrect) historical and interpretative analysis does not support expanding its narrow holding.

⁸² *Heller*, 554 U.S. at 587.

⁸³ T.S. Eliot, THE LOVE SONG OF J. ALFRED PRUFROCK, *Collected Poems* (Harcourt, Brace & Co. 1936).

IV. Conclusion

Text, history, tradition, policy, and Americans' right to live and engage in democratic institutions without intimidation all support upholding Hawaii's authority to restrict open carrying of firearms.

Respectfully Submitted,

/s/ Jonathan Lowy _____

Jonathan Lowy

Kelly Sampson

Christa Nicols

BRADY

840 First Street, NE

Suite 400

Washington, DC 20002

jlowy@bradyunited.org

ksampson@bradyunited.org

cnichols@bradyunited.org

(202) 370-8104

/s/ Mark M. Murakami _____

Mark M. Murakami

DAMON KEY LEONG KUPCHAK

HASTERT

1003 Bishop Street, Suite 1600

Honolulu, Hawaii

mmm@hawaiilawyer.com

(808) 531-8031

June 08, 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form:

<http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s) 12-17808

I am the attorney or self-represented party.

This brief contains 4963 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

it is a joint brief submitted by separately represented parties;

a party or parties are filing a single brief in response to multiple briefs; or

a party or parties are filing a single brief in response to a longer joint brief.

complies with the length limit designated by court order dated _____.

is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/Jonathan Lowy Date June 08, 2020
(use "s/[typed name]" to sign electronically-filed documents)