
Nos. 23-1793, 23-1825, 23-1826, 23-1827 & 23-1828 (consol.)

**United States Court of Appeals
for the Seventh Circuit**

CALEB BARNETT, et al.

Plaintiffs-Appellees,

v.

KWAME RAOUL, Attorney General of Illinois,
and BRENDAN F. KELLY, Director of the Illinois State Police,

Defendants-Appellants.

On Appeal from the United States District Court for
the Southern District of Illinois
No. 3:23-cv-00209-SPM

**BRIEF *AMICUS CURIAE* OF DC PROJECT FOUNDATION, INC.,
OPERATION BLAZING SWORD, INC., AND LIBERAL GUN CLUB
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel for *Amici Curiae* furnishes the following statement in compliance with Circuit Rule 26.1:

- (1) The full name of every party that the attorney represents in the case:

Amici Curiae (Court of Appeals)

DC Project Foundation, Inc.
Operation Blazing Sword, Inc.
Liberal Gun Club

Amicus Curiae (3:23-cv-209-SPM)

The Illinois Sheriffs' Association

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Amici Curiae (Court of Appeals)

Harrison Law LLC

Amicus Curiae (3:23-cv-209-SPM)

Harrison Law LLC

- (3) If the party or amicus is a corporation:

- i) Identify all its parent corporations, if any:

DC Project Foundation, Inc. and Operation Blazing Sword, Inc.
have no parent corporations.

- ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

No publicly held company owns 10% or more of DC Project Foundation, Inc. or Operation Blazing Sword, Inc.

s/ Michael L. Rice

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Counsel for *Amici Curiae*

June 26, 2023

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INTEREST OF *AMICI CURIAE*¹

DC Project Foundation, Inc. (DCPF), Operation Blazing Sword, Inc. (operating as Operation Blazing Sword - Pink Pistols) (OBSPP), and The Liberal Gun Club (LGC) are associations with thousands of members residing throughout the United States, including Illinois. OBSPP is a non-profit organization, exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code. DCPF and LGC are non-profit organizations with an approval under section 501(c)(4) of the Internal Revenue Code.

DCPF was established in 2016 by retired police officer and professional shooting competitor, Dianna Muller. A woman from each state originally met in Washington DC to organize nationally and advocate in each state for the right of women in America to own firearms and for the training and safe use of firearms by women. DCPF members work together in a bipartisan fashion to educate legislators on firearm safety and culture. Currently, DCPF has over 3,000 members, including in Illinois. DCPF believes that HB5471 will negatively impact women's right to self-defense and the right to bear arms secured by the Second Amendment.

OBSPP was established to advocate on behalf of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) firearm owners, with specific emphasis on

¹ No party or counsel for a party other than *amici*, their members, or their counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation and submission of this brief.

self-defense issues. Operation Blazing Sword, founded in 2016 the day after the Orlando Pulse Nightclub Massacre, has over 1,500 volunteer firearm instructors in nearly a thousand locations across all 50 states who will teach anyone the basics of firearm safety, operation and ownership for no cost and without judgment for race, gender, sexual orientation, biology, or manner of dress. Pink Pistols, founded in 2000 and incorporated into Operation Blazing Sword in 2018, is a shooting society that honors gender and sexual diversity and advocates the responsible use of firearms for self-defense. It represents portions of the American population that are disproportionately the targets of hate crimes and armed criminal violence, and consists of 45 chapters across the country. Pink Pistols does not maintain a list of members out of respect for those who wish to stay “inside the gun closet.” Membership of both aspects of this organization is open to anyone, regardless of sexual orientation or gender identity, who supports the rights of LGBTQ firearm owners.

LGC was founded to provide a forum and resources for left-of-center firearms owners who are pro-Second Amendment but do not subscribe to the right-wing ideology and rhetoric that is often associated with other Second Amendment groups. Given this alternative perspective that resonates with a large contingent of politically moderate and left-of-center firearms owners, LGC membership has grown significantly over the past seven years with chapters now in thirty-five

states, including Illinois, and new chapters opening across the country. LGC encourages expression of differing viewpoints and active debate among its members and focuses on root cause mitigation to address violence, such as strengthening mental health treatment and finding solutions for poverty, homelessness and unemployment rather than imposing prohibitions on firearms and firearms owners. In particular, LGC is opposed to so-called assault weapons bans and limits on magazine capacity, such as the ban set forth in HB5471 in part because of their disproportionate effect on already marginalized communities, members of whom make up a significant proportion of LGC's membership. Instead, LGC advocates for targeted enforcement of existing laws as well as concealed carry minimum standards and reciprocity among the states.

INTRODUCTION

Women, LGBTQ people and persons of all political leanings have the right and the undeniable need to defend themselves against violent crimes. The Second Amendment to the United States Constitution guarantees them that right. Illinois owes them that right. However, HB5471 will severely infringe upon that right by denying them the ability to be adequately armed for self-defense.

The *Amici* submit this brief to discuss the negative and unconstitutional effects that HB5471 will have on the ability of their respective members who are citizens of or travel to Illinois to defend themselves and conduct lawful activity. They offer this Court a perspective that no other party offers in this action – the perspective of citizens and visitors in Illinois that are at a greater risk of being victims of violence based entirely upon their lifestyles and personal identity. As history shows, the Constitution is the place of refuge when the majority – in the name of safety – seek to disarm marginalized individuals, disenfranchise them, and devalue them. The *Amici*, therefore, look to this Court to preserve the constitutional rights that lay at the core of their ability to face the threats that are all too real for their members.

BACKGROUND

Because of the unique perspective of each of the *Amici* and their troubled history as targets of hate and violence in our society, *Amici* offer the following

historical backgrounds and insight into the effects resulting from infringements of their constitutional rights. Most significantly, the groups that comprise the *Amici* have suffered violence and oppression at a disproportionately higher rate than members of the majority.

I. Women / DCPF

Notwithstanding Illinois' substantial efforts to provide women with equal rights, the fact remains that society at large does not put women on an equal plane. Nationally, there were 2,059 females murdered by males in single victim/single offender incidents in 2020 based upon reports submitted to the FBI for its Supplementary Homicide Report. *See When Men Murder Women – An Analysis of 2020 Homicide Data*, p. 3, Violence Policy Center (2022), available at <https://vpc.org/when-men-murder-women/>. By comparison, only 228 females were murdered by other females in single victim/single offender incidents in 2020. Federal Bureau of Investigation, Supplementary Homicide Reports 1980-2020. In Illinois specifically, from July 1, 2020 to June 30, 2021, 74% of domestic violence homicides were caused by male perpetrators, while 65% of their victims were female. *See Annual Illinois Domestic Violence Homicide Report, FY 21*, p. 8, Illinois Coalition Against Domestic Violence, available at <https://cm20-s3-ilcadv1.s3.amazonaws.com/ResourceFiles/1f9368bc57504e96bbac7f5da86db085HomicideReportFY21.pdf>. Since 2014, the rate of women murdered by men has

continued to increase from 1.06 per 100,000 women in that year to 1.34 per 100,000 women in 2020. *See When Men Murder Women*, p. 3.

Throughout the United States, women are the primary victims of domestic violence. Specifically, in cases where the relationship between the victim and offender is known, 89 percent of female victims were murdered by a male they knew, and 60 percent of those victims were the wives or intimate acquaintances of their killers. *Id.* at 4. Notably, women are significantly more likely to be killed by spouses or an intimate acquaintance than men. *Id.* at 5. The numbers are even worse for racial/ethnic minority women who face disproportionately higher homicide rates than white women. *Id.* at 7, citing *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003–2014*, pp. 741–746, *Morbidity and Mortality Weekly Report*, 2017, vol. 66, available at <https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm>. In particular, black females were murdered by males at a rate (2.96 per 100,000) nearly three times as high as white females (1.07 per 100,000). *See When Men Murder Women*, p. 5.

These statistics demonstrate that women are disproportionately victimized by male attackers who often have physical advantages. When confronted with one or more men and threatened with violence, a firearm can serve as a critical equalizer for a woman. The choice of what firearm and the amount of ammunition

needed for an individual woman to protect herself and her family and to feel safe is a decision for her to make, rather than politically motivated government bodies.

II. LGBTQ / OBSPP

While Illinois has long recognized the particular vulnerability of the LGBTQ community, that community still suffers a higher rate of violence in America than the majority. LGBTQ people are nearly four times more likely than non-LGBTQ people to experience violent victimization, including rape, sexual assault, and aggravated or simple assault. Andrew Flores, Lynn Langston, Ilan Meyer, and Adam Romero, *Victimization rates and traits of sexual and gender minorities in the United States: Results from the National Crime Victimization Survey, 2017*, *Science Advances*, October 2, 2020, available at https://www.science.org/doi/10.1126/sciadv.aba6910?fbclid=IwAR010LZW1XfpY1Zlif_XRxOTzgBjmddp6ML9zTl6URfqFYCw6vL88CwguHc. See Ericka Dixon, Audacia Ray, Beverly Tillery, Michelle Leigh, *Pride and Pain: A Snapshot of Anti-LGBTQ Hate and Violence during Pride Season 2019*, National Coalition of Anti-violence Programs (2020), available at <https://avp.org/reports/>.² In 2017,

² The National Coalition of Anti-violence Programs (NCAVP) recorded the homicides of 14 LGBTQ people from May 15 – July 15, 2019, an average of nearly 2 (1.75) homicides each week and more than three times the hate violence homicides recorded between January 1 and May 14, 2019. Eleven of the homicides were hate violence related. Ten of these victims (91%) were Black and seven (64%) were Black trans women. Of the three intimate partner violence homicides, one victim was a white, gay man, one was a Black woman, and one was a white woman who identifies as asexual. The youngest victim was 17 years old, with the majority (86%) of all homicide victims being under the age of 35.

The National Coalition of Anti-violence Programs (NCAVP) recorded reports of 52 hate violence related homicides of LGBTQ people, the highest number ever recorded by NCAVP. *See A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender and Queer Hate Violence Homicides in 2017*, National Coalition of Anti-violence Programs (2017), available at <https://avp.org/reports/>. This number represents an 86% increase in single incident reports from 2016. *Id.*

In 2017, there was the equivalent of one homicide of an LGBTQ person in the U.S. each week. *Id.* “Of the total number of homicides in 2017, 71% of the victims were people of color, 31 (60%) of the victims were Black, 4 (8%) were Latino, 2 (4%) were Asian, and 1 (2%) was Native. Additionally, 12 (23%) of the victims were white and 2 victims’ racial and ethnic identity is unknown to NCAVP at this time.” *Id.* Illinois saw a 73% increase in hate crimes directed at individuals based on sexual orientation or gender identity from 2017 to 2018, and those high levels of incidents persisted in 2019 before again decreasing. *See 2017 Hate Crime Statistics*, Federal Bureau of Investigation, Table 13, available at <https://ucr.fbi.gov/hate-crime/2017/downloads/downloads>; *2018 Hate Crime Statistics*, Federal Bureau of Investigation, Table 13, available at <https://ucr.fbi.gov/hate-crime/2018/downloads/downloads>; *2019 Hate Crime Statistics*, Federal Bureau of Investigation, Table 13, available at <https://ucr.fbi.gov/hate-crime/2019/downloads/downloads>. The Chicago Police

Department likewise reported an almost 90% increase in hate crimes based on sexual orientation or gender identity from 2018 to 2019, and after a slight decrease in 2020, another 83% increase from 2020 to 2021. *See Hate Crime in Chicago – 2019 Annual Report*, p.2, Chicago Police Department, available at https://home.chicagopolice.org/wp-content/uploads/2021/01/2019_HC_Annual_Report.pdf; *Hate Crime in Chicago – 2021 Annual Report*, p. 11, Chicago Police Department, available at <https://home.chicagopolice.org/wp-content/uploads/Hate-Crimes-Annual-Report-2021-English-1.pdf>.

It is no wonder that LGBTQ people who have chosen to responsibly own and use firearms for protection are worried about being able to adequately defend themselves with the passage of HB5471.

III. LGC

LGC’s membership, and its leadership at a national and state level, is comprised of members whose demographics certainly include women and LGBTQ people. It also includes members and leaders from other marginalized sectors of society who face threats and challenges based on race, religion or national origin, as well as threats based on political beliefs. As reported last year, “[a]ccording to a mega-survey conducted by researchers at University of California, Davis, and released [in July 2022], one in five US adults say political violence is justified at

least in some circumstances.” Betsy Reed, *US faces new era of political violence as threats against lawmakers arise*, The Guardian (July 31, 2022), available at <https://www.theguardian.com/us-news/2022/jul/31/us-political-violence-threats-against-lawmakers>. LGC’s members believe that the rights guaranteed by the Second Amendment are critical for self-defense, and that such a right must be available to everyone, not just those whose right-leaning political views have traditionally been associated with the Second Amendment.

QUESTION PRESENTED

Should the preliminary injunction against the enforcement of HB5471 be affirmed because HB5471 violates the Second Amendment of the United States Constitution?

Answer: Yes. HB5471 significantly hinders the ability of individuals to fully defend themselves with a firearm in Illinois. The Court should affirm the district court’s preliminary injunction against HB5471.

ARGUMENT

The District Court held that HB5471 cannot be harmonized with the Second Amendment of the United States Constitution and the Supreme Court’s prior decisions: “The Supreme Court in [*N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022)] and [*D.C. v. Heller*, 554 U.S. 570 (2008)] held that the citizens have a constitutional right to own and possess firearms and may use them for self-defense. [HB5471] seems to be written in spite of the clear directives in *Bruen* and *Heller*, not in conformity with them.” SA3. The District Court’s well-reasoned decision correctly applied the Supreme Court’s framework for analyzing attempts at restricting the rights guaranteed by the Second Amendment and properly exercised its discretion in finding that the balance of the equities favored the preliminary injunction. SA8–11. The court’s decision is particularly important to *Amici* and their ability to navigate increasingly dangerous surroundings and defend themselves. The Second Amendment guarantees them that ability.

I. HB5471 IS UNCONSTITUTIONAL

HB5471 prohibits individuals represented by *Amici* from acquiring any of the multitude of firearms that the legislation characterizes as “assault weapons,” which definition incorporates firearms capable of having feeding devices with capacities above 10 (semiautomatic rifle) or 15 (semiautomatic pistol) rounds. 720 ILCS 5/24–1.9(b); 720 ILCS 5/24–1.9(a)(1). It also prohibits the possession of

those firearms already owned at the time of the statute's effective date except upon registration of the firearm and with extreme restrictions on how and where such firearms may be possessed. 720 ILCS 5/24-1.9(c).

Contrary to the restrictions embodied in HB5471, the Second Amendment to the United States Constitution preserves “the right of the people to keep and bear Arms” and declares that this right “shall not be infringed.” U.S. CONST. amend.

II. In *Heller*, the Supreme Court made abundantly clear that a ban on the possession of handguns – an “entire class of ‘arms’ that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]” – runs afoul of this constitutional provision. 554 U.S. at 628. “Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.” *Heller*, 554 U.S. at 634-35.

First, the firearms and feeding devices prohibited by HB5471 are plainly arms that come within the scope of the Second Amendment's protections. This is true not only for what the legislation calls “assault weapons,” but also for the feeding devices that provide the ammunition for those weapons to function and provide self-defense. As noted by Justice Thomas, “[c]onstitutional rights implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26–27 (2016). Even before *Bruen*, the Ninth Circuit

confirmed that “the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014).

The district court correctly held that the feeding devices banned by HB5471 are “arms” (SA19), and that holding is consistent with widespread precedent recognizing that magazines are subject to protection under the Second Amendment. *See, e.g., Worman v. Healey*, 922 F.3d 26, 36 (1st Cir. 2019) (implicitly holding that a magazine restriction implicates the Second Amendment); *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 257 (2d Cir. 2015) (“we proceed on the assumption that [bans on “assault weapons” and “large capacity magazines”] ban weapons protected by the Second Amendment”); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Atty Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018) (“The law challenged here regulates magazines, and so the question is whether a magazine is an arm under the Second Amendment. The answer is yes.”); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1276 (N.D. Cal. 2014) (“[T]he court finds that the prohibited magazines are ‘weapons of offense...’ as they are integral components to vast categories of guns.”), *aff’d*, 779 F.3d 991 (9th Cir. 2015).

Second, the *Heller* Court also made clear that the Second Amendment’s protections apply even to firearms that did not exist when the Constitution was adopted, so long as they are commonly used today for legal purposes by law-

abiding citizens. *Id.* at 624–25; *see also Bruen*, 142 S. Ct. at 2128 (noting that the Second Amendment’s protections extend to “any weapon” commonly used today). The firearms and feeding devices at issue here easily fit within this construct because they are commonly used today, including by individuals in the groups represented by *Amici*. The district court specifically noted the evidence presented by Plaintiffs (the only evidence on this issue) that “more than 24 million AR-15 style rifles are currently owned nationwide.” SA23.

The same is true for feeding devices with a capacity of greater than 10 rounds of ammunition, which are also commonly owned and utilized by law-abiding firearms owners across the Country. *See, e.g., Cuomo* , 804 F.3d at 255–57 (noting “large-capacity magazines” are “in common use” based on even the most conservative estimates). In particular, such magazines are “typically possessed “for the core lawful purpose of self-defense. *See Heller*, 554 U.S. at 624–25.

In light of the common, lawful possession and use of the firearms and feeding devices covered by HB5471, the ban it imposes on those firearms and feeding devices is directly contrary to *Heller* and cannot stand. *See Ezell v. City of Chicago*, 651 F.3d 684, 703 (7th Cir. 2011) (“Both *Heller* and *McDonald* suggest that broadly prohibitory laws restricting the core Second Amendment right—like the handgun bans at issue in those cases, which prohibited handgun possession

even in the home—are categorically unconstitutional.”). That should end the Court’s review.

Third, even assuming that the Second Amendment only “presumptively” applies to the sale, purchase, and possession of the firearms and feeding devices affected by HB5471, the State would still be required to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2129–30. Yet, as detailed by Plaintiffs-Appellees (Appellees’ Resp. Br. at 43-53), although semiautomatic firearms have long been available to and popular with the public, prior to the late 1980s, only a handful of states imposed serious restrictions on such firearms. Within the framework recognized by *Bruen*, these regulatory efforts were either too little or too late to constitute a “historical tradition” of firearms regulation that could overcome the presumption that such regulations are prohibited by the Second Amendment. *See Bruen*, 142 S. Ct. at 2126.

For these reasons and the arguments more fully set forth in Appellees’ Response Brief, DCPF, OBSPP and LGC submit that HB5471 is patently unconstitutional.

II. HB5471 DEPRIVES INDIVIDUALS WHO ARE ALREADY DISPROPORTIONALLY ENDANGERED OF THE RIGHT TO DEFEND THEMSELVES

All citizens of Illinois have the right to defend themselves and their families. How one does that should be left to the individual. As discussed above, the individuals represented by *Amici* suffer higher rates of violence and, arguably, have a higher need for tools of self-defense.

HB5471, whether intended or not, has the effect of making these already vulnerable Illinoisans even *more vulnerable* to violence than the majority by disarming them in the name of public safety. The evidence before the district court demonstrated that just over one third of owners of AR-15 style rifles use them for self-defense outside the home (SA22), and such uses are certainly critical to *Amici*. Thus, restrictions that effectively eliminate the ability to defend oneself outside the home increase the dangers faced by marginalized and targeted individuals like those represented by *Amici*. This is equally true for the feeding devices, because having to repeatedly reload low-capacity magazines, or simply not having enough rounds of ammunition to end an attack underway, leaves individuals exposed and vulnerable. And because HB5471 eliminates the ability of law-abiding citizens to acquire these firearms and feeding devices except through inheritance, it deprives particularly vulnerable individuals, including young women and LGBTQ persons, of a future option for defending themselves.

The ability to defend themselves is critical because, as members of these groups well know, the police do not always respond in time to help. Indeed, the government is not liable if the police fail to show up at all. *See DeShaney v. Winnebago Cty*, 489 U.S. 189, 195–96 (1989) (due process does not give rise to an affirmative right to government assistance with protecting an individual’s life, liberty, or property; the government does not assume a permanent guarantee of an individual’s safety once it provides protection for a temporary period); *see also Castle Rock v. Gonzales*, 545 U.S. 748, 760–61 (2005) (recognizing “deep-rooted nature of law-enforcement discretion”). Indeed, the Supreme Court has previously commented about governments that disarm and subject minorities to criminal attack:

Amici supporting incorporation of the right to keep and bear arms contend that the right is especially important for women and members of other groups that may be especially vulnerable to violent crime. If, as petitioners believe, their safety and the safety of other law-abiding members of the community would be enhanced by the possession of handguns in the home for self-defense, then the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.

McDonald v. City of Chicago, 561 U.S. 742, 790 & n.33 (2010) (citing, *inter alia*, Brief of Pink Pistols).

The Second Amendment serves to shield a critical means of self-defense—particularly important to *Amici*—from government interference and restrictions.

The district court rightly recognized that the restrictions imposed by HB5471 cannot be reconciled with the Second Amendment, and its injunction against enforcement of HB5471 should be affirmed so that all citizens, including those represented by *Amici*, may make the choices they believe are necessary for them to protect themselves.

CONCLUSION

As the district court stated in enjoining enforcement of HB5471: “There is no question that Plaintiffs are harmed by [HB5471] and will continue to be harmed if this Court denies the motion for preliminary injunction. A constitutional right is at stake. Some Plaintiffs cannot purchase their firearm of choice, nor can they exercise their right to self-defense in the manner they choose.” SA26. DCPF, OBSPP and LGC therefore urge this Court to affirm the decision of the district court granting a preliminary injunction against the enforcement of HB5471.

Respectfully submitted,

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Dated: June 26, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief *Amicus Curiae* complies with Circuit Rule 29. According to the word count feature of the word-processing system used to prepare the brief, it contains 3,780 words.

I further certify that the attached brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it was prepared in a proportionately spaced typeface using 14-point Times New Roman font in Microsoft Word.

/s/ Michael Rice

Michael Rice

Counsel for *Amici Curiae*

Dated: June 26, 2023

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, an electronic PDF of the foregoing Brief *Amici Curiae* of the DC Project Foundation, Inc., *et al.* was uploaded to the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service on those registered attorneys will be accomplished by the CM/ECF system.

/s/ Michael Rice _____

Michael Rice

Counsel for *Amici Curiae*