No. 18-2385

United States Court of Appeals for the Seventh Circuit

LARRY EDWARD HATFIELD,
PLAINTTIFF-APPELLEE

v.

JEFFERSON B. SESSIONS, III, *IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE UNITED STATES*,
DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, NO. 16- CV-00383-JPG-RJD, HON. J. PHIL GILBERT, PRESIDING

MOTION OF THE CATO INSTITUTE FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

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Pursuant to F.R.A.P. 29(a) and Seventh Circuit Rule 29, the Cato Institute ("Cato") respectfully moves for leave to file a brief as *amicus curiae* in support of the Plaintiff-Appellee and upholding the decision below. Plaintiff-Appellee consented to the filing of this brief, while Defendant-Appellant did not respond to a request for such consent.

Cato was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, issues the annual *Cato Supreme Court Review*, and files *amicus* briefs with the courts.

An *amicus* brief from Cato will aid the Court in resolving this case by providing a "unique perspective" that "can assist the court of appeals beyond what the parties are able to do" on issues related to the Second Amendment and over-criminalization. *Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Cato has a rich experience of research, commentary, and legal filings in these areas. *See*, *e.g.*, Brief of Cato Institute as Amicus Curiae in support of Petitioners, *Silvester v. Becerra* (cert denied) (No.17-342) (2017) (outlining

precedent on the scope of Second Amendment protections); Brief of National Association of Manufacturers and Cato Institute as Amici Curiae, *United States v. DeCoster*, 826 F.3d 626, No. 15-1890 (8th Cir. 2016) (examining federal regulatory reach into the criminal law and its effects on executives); David B. Kopel, *The Costs and Consequences of Gun Control*, No. 784 Cato Inst. Policy Analysis, Dec. 1, 2015; Jeffrey R. Snyder, *Fighting Back: Crime, Self-Defense, and the Right to Carry a Handgun*, No. 284 Cato Inst. Policy Analysis, Oct. 22, 1997; Ilya Shapiro & Matthew Larosiere, *Yes, Washington, the First Amendment Even Protects Firearm Blueprints*, The Federalist, Aug. 1, 2018.

Cato has also filed several briefs in this Court. *See*, *e.g.*, Brief of Cato Institute, et. al. as Amici Curiae Supporting Appellant, *Midwest Fence Corp. v. U.S. Dep't of Transp.*, 840 F.3d 932 (7th Cir. 2016) (arguing that Illinois failed to meet the constitutional standards governing the use of race-conscious measures in its Disadvantaged Business Entity program); Brief of Cato Institute, et. al. as Amici Curiae Supporting Appellant, *Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015) (examining the factual inaccuracies of purported justifications for a prior restraint on speech); Brief of Cato Institute and Constitutional Accountability Center as Amici Curiae Supporting Appellees, *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) (arguing that the Fourteenth Amendment promises equal protection for same-sex couples regarding marriage licenses).

Cato's brief here offers a detailed, factually focused exploration of § 922(g)(1), the constitutional concerns it raises, and the important policy considerations its application raises. We present an extensive discussion of the scope of the problems raised by prohibition of firearm ownership by non-violent felons and the necessity of a nuanced response in the proposed brief, analysis that goes beyond what the parties have given the Court.

For these reasons, Cato should be granted leave to file an *amicus curiae* brief in support of the Plaintiff-Appellant.

Respectfully submitted,

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October 11, 2018

CERTIFICATE OF SERVICE

I hereby certify that, I electronically filed the foregoing with the Clerk of Court, who will enter it into the CM/ECF system, which will send a notification of such filing to the appropriate counsel.

/s/ Ilya Shapiro
October 11, 2018

No. 18-2385

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 18-2385

Short Caption: Hatfield v. Sessions

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Cato Institute

(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:

n/a

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

i) Identify all its parent corporations, if any; and

n/a

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

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Attorney's Signature: s/ Ilya Shapiro Date: 10/11/2018

Attorney's Printed Name: Ilya Shapiro

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

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i) Identify all its parent corporations, if any; and

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Attorney's Printed Name: Matthew Larosiere

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

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato conducts conferences, publishes books, studies, and the annual *Cato Supreme Court Review*.

This case concerns Cato because laws that abrogate constitutional rights warrant meaningful judicial oversight. Felon-in-possession laws eliminate the right to keep and bear arms for an overbroad category of Americans without rational justification or connection to a legitimate government interest.

[1] Fed. R. App. P. 29 Statement: Plaintiff-Appellee consented to this filing, while Defendant-Appellant did not respond to *amicus*'s request for consent. Accordingly, a motion for leave to file is being filed in conjunction with this brief. No counsel for either party authored this brief in whole or in part. No person or entity other than *amicus* and its members made a monetary contribution to fund its preparation and submission.

SUMMARY OF THE ARGUMENT

Mr. Hatfield wishes to possess a firearm to defend himself in his home, but the intersection of § 922(g)(1) and the ever-expanding conception of felonious conduct has effectively seen his Second Amendment right stripped away. The conviction that now restricts his right to armed self-defense was for lying to the government when seeking unemployment benefits—nearly three decades ago. While his conduct in 1989 was not upstanding, it also was not the type of behavior that should rationally lead to permanent disarmament. On this point, § 922(g)(1) is not only unconstitutional as applied here, but with respect to all non-violent felons.

There is no longstanding precedent supporting total felon disarmament. In fact, the provision restoring rights to felons that do not pose a threat to public safety, 18 U.S.C. § 925(c), indicates a tacit acceptance that "felon" as a category is over-broad in relation to § 922's stated public-safety purpose. Section 922's operation as a categorical elimination of rights for a broad class of people is both outside the historic conception of felon disarmament and without a meaningful tie to public safety. The broad swath of modern felonies effectively remove many individuals' rights to self-defense. They also have harmful effects on minorities and the poor—those who are often most likely to become victims of crime and receive the least police assistance. The Court should adopt the lower court's analysis in finding unconstitutional the permanent abrogation of Hatfield's right to defend himself.

ARGUMENT

I. BECAUSE THERE IS NO LONGSTANDING PRECEDENT FOR THE DISARMING OF NON-DANGEROUS AMERICANS, §922(G)(1) IS UNCONSTITUTIONAL AS APPLIED TO NON-VIOLENT FELONS

While an individual's right to keep and bear arms is not unlimited—no rights are—broad abridgements should not to be taken lightly. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). In *Heller*, the Supreme Court made clear that laws eliminating the "core" right protected by the Second Amendment are unconstitutional. The very *Heller* quote the government here attempts to pass off as a broad approval for the felon-in-possession prohibition did no such thing. That "nothing in [*Heller*] should be taken to cast doubt on *longstanding* prohibitions on the possession of firearms by felons and the mentally ill" was simply the Court's setting the contours of an historically important fundamental right. *Id*. at 626–27 (emphasis added). The Court "kn[ew] of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach. The very enumeration of the right takes out of the hands of government—including the judiciary—the power to decide on a case-by-case basis whether the right is *really worth*" protecting. *Id.* at 634. (emphasis in original).

With § 922(g)(1) and its analogues, the government strips the right to own a firearm from anyone ever convicted of any felony, regardless of when the offense occurred, its seriousness, or its relationship to firearm use. 18 U.S.C. § 922. This

Court has recognized that laws that broadly abrogate Second Amendment rights are *per se* unconstitutional. *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 . . . are categorically unconstitutional."). This Court has also recognized that felon-disarmament laws were at most "'presumptively lawful,' which, by implication, means that there must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge." *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010).

Given the "strong presumption that the Second Amendment right is exercised individually and belongs to all Americans," only longstanding restrictions on the right to bear arms fall outside the scope of the Second Amendment. *Heller*, 554 U.S. at 581. As far as this case is concerned, not only are non-violent statutory felonies a modern invention, but if permanent non-violent felon disarmament without recourse were a person, it would be a Millennial.[2] No Millennial policy could reasonably be called "longstanding." *See United States v. Rene E.*, 583 F.3d 8 (1st Cir. 2009) (comparing 18 U.S.C. § 922(x)(2)'s prohibition on gun sales to juveniles to similar state restrictions dating back to 1856).

[2] As explained *infra* Part II, § 925(c) operated to relieve the change from "crime of violence" to "punishable by a term of imprisonment of more than one year" until its defunding in 1992. Thus, the modern prohibition as applied to Hatfield has only existed since 1992.

The history of both § 922(g)(1) and laws during Founding era foreclose the argument that non-dangerous felons fall outside the scope of the Second Amendment. The 1787 "Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents" contains what the *Heller* court identified as a "highly influential" precursor to the Second Amendment. *Heller*, 554 U.S. at 604. The Address stated that "no law should be passed for disarming the people . . . unless for crimes committed, or real danger of public injury from individuals" *Id*. This evidence ties disarmament to the presence of danger or what could be called common-law public nuisance—a far cry from the commission of a statutory offense for which the government recommends that no time be served.

It is true that some scholarly sources have concluded that the Founders did not consider "felons within the common law right to arms," but what constituted a felony at the time of the Founding was very different from lying to the Railroad Retirement Board. *United States v. Emerson*, 270 F.3d 203 at 226 n.21 (5th Cir. 2001). Felonies at common law were a much narrower class of crimes: murder, rape, manslaughter, robbery, sodomy, larceny, arson, mayhem, and burglary were the crimes committed by the sort of people the Founders might have been comfortable with disarming. *See, e.g.*, *Jerome v. United States*, 318 U.S. 101, 108 n.6 (1943).

Founding-era interpretations aside, there were no federal prohibitions on firearm ownership by felons for nearly two centuries. The first such legislation didn't

come until the New Deal Era with the Federal Firearms Act of 1938, which only prohibited those "convicted of a crime of violence" from firearm ownership. Federal Firearms Act of 1938, Pub. L. 75-785. The "crime of violence" language was very clearly tied to the purpose of public safety, covering only people who manifested a capacity to be dangerous—people unlike Mr. Hatfield.

It wasn't until 1961 that Congress substituted "crime punishable by imprisonment for a term exceeding one year" for "crime of violence," causing the statute to now reach all felons, regardless of the nature of the crime committed. *United States v. Weatherford*, 471 F.2d 47, 51 (7th Cir. 1972). Shortly thereafter, though, Congress added 18 U.S.C. § 925(c), which enabled felons who lost firearm rights due to § 922(g)(1) to restore their civil rights by petitioning the attorney general (by way of the ATF). Under § 925(c), if the felon is "not likely to act in a manner dangerous to public safety," their rights can be restored. As the lower court fairly pointed out, § 925(c) can be seen as a "tacit admission by Congress that § 922(g)(1) is overbroad by facially applying to all felons regardless of their underlying crime or circumstances—indicating a bad fit between § 922(g)(1) and the Government's purpose of keeping firearms out of the hands of dangerous criminals who may create armed mayhem." *Hatfield v. Sessions*, No. 3:16-cv-00383, slip op. at 15 (S.D. Ill., Apr. 26, 2018).

This "relief valve" alleviated the pressure of the new § 922's constitutional shortcomings. By giving non-dangerous felons an administrative remedy to their unnecessarily abrogated civil rights, the government managed to avoid these challenges for some time, as anyone who had failed to exhaust this remedy wouldn't have a case to bring.[3] Congress stopped funding the § 925(g) program in 1992, however, forcing the ATF to return applications for the restoration of firearm rights without action. *See United States v. Bean*, 537 U.S. 71 (2002).

The current breadth of § 922(g)(1) can apply to up to 20 percent of some state populations. Sarah K. S. Shannon, et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States*, 54 Demography 1795 (2017), https://doi.org/10.1007/s13524-017-0611-1. And while the interest advanced by § 922(g)(1) is public safety, such sweeping prohibitions must be scrutinized by courts or millions of people could lose their fundamental right to self-defense. The government may not take more of a right than is necessary to achieve an important state interest. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 257 n.73 (2d Cir. 2015) (finding a ban on pump-action rifles unconstitutional as unrelated to a policy focused on semi-automatic weapons); *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 990 F. Supp. 2d 349 (W.D.N.Y. Dec. 31, 2013) (finding a

[3] A litigant should exhaust any prescribed administrative remedies available before seeking judicial review. 28 U.S.C. § 2254. Here, however, the de-funding of § 925(c)'s remedy leaves Hatfield no option but an as-applied challenge.

seven-round firearm magazine limitation unconstitutional as "untethered" from the state's rationale). Protecting the public from dangerous people—murderers, rapists, arsonists, burglars—is certainly an important government interest. But Mr. Hatfield—who falsified employment records nearly 30 years ago—does not present the type of public nuisance that justifies a permanent revocation of his natural right to self-defense, with the only recourse being a presidential pardon!

II. MODERN CONCEPTIONS OF FELONIES HAVE TURNED § 922(G)(1) INTO A SWEEPING AND NEARLY IMPENETRABLE MONOLITH THAT CONSIDERS NEITHER DANGEROUSNESS NOR THE MINIMAL PUNISHMENTS OFTEN GIVEN TO NON-VIOLENT FELONS

The United States has an overcriminalization problem. The Brennan Center for Justice has observed that we have as many people with criminal records as it does college graduates. Matthew Friedman, *Just Facts: As Many Americans Have Criminal Records as College Diplomas*, Brennan Center for Justice (Nov. 17, 2015), https://bit.ly/1SVQ9Vo. The scope of felony in the United States has been expanding at breakneck speed for nearly a century and has reached a point where the average American might commit multiple felonies per day without even knowing. *See*, *e.g.*, Harvey A. Silverglate, *Three Felonies a Day: How the Feds Target the Innocent*, (2009); Glenn Harlan Reynolds, *Ham Sandwich Nation: Due Process When Everything is a Crime* (January 20, 2013), Colum. L. Rev. Sidebar, 2013; Univ. of Tenn. Legal Studies Research Paper No. 206, https://ssrn.com/abstract=2203713.

Whether Mr. Silvergate's estimate that the average American inadvertently commits three felonies a day is generous or conservative, the fact that there are so many "inadvertent" felonies on the books makes one question how blanket categorizations related to felonies could have any relationship to whether people deserve the right to defend themselves from unlawful force in their own homes.

Countless non-dangerous statutory felonies not contemplated at the common law, together with the post-1992 § 922(g)(1), have created a system of unreasoned civilian disarmament. As the lower court pointed out, if the Second Amendment has any force, it cannot be that "the Founders meant to allow Congress to inadvertently disarm the people by passing gobs of statutory felonies." *Hatfield*, slip op. at 15.

A wide range of offenses falling within the scope of § 922(g)(1) pose no relation to a risk of violence or gun violence. *See* Jay Buckey, *Note: Firearms for Felons? A Proposal to Prohibit Felons from Possessing Firearms in Vermont.* 35 Vt. L. Rev. 957, 962 (2011); Conrad Kahn, *Challenging the Federal Prohibition on Gun Possession by Nonviolent Felons*, 55 S. Tex. L. Rev. 113, 128 (2013). The lower court correctly highlighted many statutory felonies which seem absurd when treated as if they were violent crimes, *Hatfield*, slip op. at 10, but Judge Gilbert's list barely scratches the surface. Many statutes have made felonies of vaguely articulated, non-violent conduct. In 2013, a Florida man was charged with the felony of "polluting to harm humans, animals, plants, etc." after releasing a dozen heart-shaped helium

balloons to impress his sweetheart. Erika Pesantes, *Love Hurts: Man Arrested for Releasing Helium Balloon with His Girlfriend*, The Sun Sentinel, Feb. 22, 2013, https://bit.ly/2RsWk9V. The Lacey Act has resulted in felony treatment for such heinous crimes as catching a few undersized lobsters, packaging them in plastic bags as opposed to cardboard boxes, and depositing funds into a bank. 16 U.S.C. § 3371 (2012); Paul Rosenzweig & Ellen Podgor, *Eight Years for Bagging Lobsters?*, The Heritage Foundation, (Dec. 31, 2003), https://herit.ag/2Np3j0k. Some states define gaining "unauthorized access" to a computer or wireless router a third-degree felony, which could include a mobile device connecting to an unsecured wireless network. *See, e.g.*, HI Rev Stat § 708-895.7 (2013).

None of the above laws, nor those listed by Judge Gilbert, could justifiably result in prison time, much less permanent forfeiture of civil rights. There is nothing about catching lobsters, releasing balloons, or fibbing on retirement forms that has any bearing on whether a person can be trusted with a firearm. The Second Amendment does not grant a privilege—unlike, say, a security clearance that gives someone access to classified information—but rather protects something to which Mr. Hatfield is presumed to be entitled: a pre-existing right to armed self-defense.

Finally, the disproportionality of Hatfield's disarmament highlights § 922(g)'s poor tailoring. The underlying felony here—making a false statement—provides for up to five years in prison. 18 U.S.C. § 1001(a). This maximum seems appropriate

for a serious felony, but when compared to the actual punishment—zero months in prison and a small fine—it seems absurd. *Hatfield*, slip op. at 2.

The proliferation of statutory felonies previously discussed has created many "paper felonies" which—in the rare event of their actual prosecution—have the potential to yield many situations like Hatfield's. This Court should not heed the government's arguments of procedural efficiency, but instead should see this misapplication of law for what it is: the use of a purported public safety measure to significantly damage an American with no countervailing benefit.

III. FELON-IN-POSSESSION BANS DISPROPOTIONATELY HURT THOSE WITH THE GREATEST NEED TO DEFEND THEMSELVES

In *Ezell*, this Court recognized that "a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end." *Ezell*, 651 F.3d at 708. Here, the district court was unimpressed with the argument that non-violent felons who received no prison time were "so dangerous to society that they simply should not be able to enjoy their constitutional right to keep a gun in their homes for self-defense." *Hatfield*, slip op. at 17. In addition, the over-application of § 922(g)(1) poses acute policy concerns which frustrate not only the Second Amendment, but also the safety of a broad class of Americans.

A. Minorities, the Poor, and Other Disadvantaged People Are Most Likely to Be Simultaneous Victims of Violent Crime and § 922(g)(1)

Poor people and minorities are simultaneously the most likely people to have non-violent felony convictions and to be victimized by violent crime. Due to economic limitations that many convicted felons face, many live in high-crime neighborhoods where the need for effective self-defense is greatest. Zack Thompson, *Is it Fair to Criminalize Possession of Firearms by Ex-Felons?*, 9 Wash. U. Jur. Rev. 151, 164–65 (2016). People living in those neighborhoods encounter crime to a much more severe degree than the average American. *Id*. at 165. A Bureau of Justice Statistics report shows that people with lower household incomes experience a higher rate of violent victimization than those with higher incomes. *See* Bureau of Justice Statistics, *Criminal Victimization 2015*, (2016), https://bit.ly/2qdUjEh. Similarly, black Americans experience a higher rate of violent victimization than whites. *Id*. Convicted felons who are victims of crime often qualify for compensation from funds established to support victims of crime. *See* Gary Hunter, *Maryland: Convicted Felons Receive Victims' Compensation*, Prison Legal News, 36 (2011). In many cases, armed self-defense is essential for self-preservation since police are often unable to provide an adequate response to life-threatening emergencies in these areas. Thompson, *supra*, at 166.

By depriving non-violent convicted felons of their Second Amendment rights, a large segment of already at-risk Americans are endangered without sufficient

countervailing public interest. As one commentator observed, "at a minimum, equal protection should require a reasonable relationship between nonviolent felons and their propensity to commit or engage in future violent acts that is not based on criminal stereotypes." Kahn, *supra*, at 134. Instead, this unreasoned treatment of all felons as if they were violent unfairly disadvantages the poor and minorities.

B. This Court Should Not Be Influenced by Misleading Recidivism Statistics

Current recidivism studies illustrate "individual lawbreaking tendencies" by comparing criminal history categories and recidivating percentage rates. Thompson, *supra*, at 165; U.S. Sentencing Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 32 (May 2004). A study found that Category I offenders (the least serious offenders), out of six categories total, are only 1.2 percent less likely than Category V offenders to commit a serious violent offense. See, Brief of Defendant-Appellee Schimel at 29, *Kanter v. Sessions and Schimel*, No. 16-cv-01121 (7th Cir. May 31, 2018); U.S. Sentencing Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 32 (May 2004). At first glance, it appears that people with non-violent felony charges are almost as likely as those with violent felony charges to later commit serious violent crimes. However, this statistic does nothing to explain the circumstances under which a non-violent felon may later find it necessary to engage in violent behavior. "Simply put, nonviolent felons do not display a

propensity for violence." Kahn, *supra*, at 17. To portray recidivism more accurately, studies should consider the socio-economic challenges felons inevitably encounter.

Convicted felons, violent or not, suffer serious consequences that affect their employment prospects and ability to live in safe neighborhoods. Many felons live in poor, densely populated areas with a higher risk of being the victim of violent crime, where the need for self-defense is most acute. Miriam Axel-Lute, *Where Are People Returning to the Community from Prison Supposed to Live?*, Shelterforce: The Voice of Community Development, Feb. 21, 2013, https://bit.ly/2ymPie1; Trymaine Lee, *Recidivism Hard to Shake for Ex-Offenders Returning Home to Dim Prospects*, Huffington Post, June 9, 2012, https://bit.ly/2E4ow04. Further, all felons become stigmatized regardless of whether they have served time in jail. *Id*. "Felony imprisonment results in social stigma, the erosion of job skills, and disqualification from stable government and union jobs. Accordingly, former prisoners experience lower wages, slower wage growth, and, importantly, greater unemployment." Thompson, *supra*, at 164. Prof. Sarah Shannon has noted that "the larger population who also have felony convictions face many of the same types of stigma that come with having been incarcerated—lack of access to jobs, lack of access to housing and welfare support—without necessarily having had the experience of spending time behind bars." Allan Flurry, *Study Estimates U.S. Population with Felony Convictions*, UGA Today, Oct. 1, 2017, https://bit.ly/2p5vFn2. Moreover, police

are often unable to sufficiently address the violent crime taking place in such areas. "Gun ownership reduces the likelihood of being victimized in the first place. Convicted felons admit a fear of armed victims, and make efforts to avoid them." Thompson, *supra*, at 167; Douglas N. Husak, *Guns and Drugs: Case Studies on the Principled Limits of the Criminal Sanctions*, 23 L. & Phil 437, 482 (2004).

Explanations for recidivism would be more complete if they considered why some nonviolent felons later engage in violent behavior. The reason is often not their past (nonviolent) criminal history, but that their post-conviction circumstances induce victimization in an array of forms.

CONCLUSION

Because the Second Amendment protects all Americans *prima facie*, this Court should uphold the judgment of the court below and ensure that Mr. Hatfield, and people like him, are not unreasonably victimized.

Respectfully submitted,

October 11, 2018

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**Not admitted in this Court.*

CERTIFICATE OF COMPLIANCE

1. This memorandum complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,297 words, excluding the parts exempted by Fed. R. App. P. 32(f).

2. This memorandum complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, 14-point font.

/s/ Ilya Shapiro
October 11, 2018

CERTIFICATE OF SERVICE

I hereby certify that, I electronically filed the foregoing with the Clerk of Court, who will enter it into the CM/ECF system, which will send a notification of such filing to the appropriate counsel.

/s/ Ilya Shapiro
October 11, 2018