No. 17-2202

In The United States Court of Appeals
For the First Circuit

MICHAEL GOULD; CHRISTOPHER HART; COMMONWEALTH SECOND AMENDMENT, INC.; DANNY WENG; SARAH ZESCH; JOHN R. STANTON,

Plaintiffs – Appellants,

v.

DANIEL C. O'LEARY, in his Official Capacity as Chief of the Brookline Police Department; WILLIAM B. EVANS, in his Official Capacity as Commissioner of the Boston Police Department; and the COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL,

Defendants – Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (No. 1:16-CV-10181-FDS)

BRIEF OF AMICUS CURIAE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC. IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26, the National Rifle Association of America, Inc. states that it does not have a parent corporation, nor does any publicly held corporation own 10% or more of its stock.

Dated: March 12, 2018

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INTEREST OF AMICUS CURIAE

The National Rifle Association of America, Inc. ("NRA") was founded in 1871 and is the oldest civil rights organization in America and the Nation's foremost defender of Second Amendment rights. Since the NRA's founding, its membership has grown to include more than five million people nationwide, and its education, training, and safety programs reach millions more. The NRA is America's leading provider of firearms marksmanship and safety training for civilians and law-enforcement officers, and its self-defense seminars have helped more than 100,000 women and men develop strategies to avoid falling victim to crime. The outcome of this case will affect the ability of the many NRA members who reside within the First Circuit and throughout the Nation to exercise their fundamental right to bear firearms for self-defense.

The NRA is the Nation's leading research and advocacy organization specializing in the Second Amendment and is familiar with lawsuits around the country that involve interests protected at both the state and federal levels. The NRA has filed amicus curiae briefs in many cases before the United States Supreme Court and Circuit Courts of Appeal. The NRA's expertise and the breadth of its knowledge places the NRA in a unique position to provide the Court with a rebuttal analysis of the historical evidence introduced before the trial court.

The NRA has obtained consent from Plaintiffs-Appellants to the filing of this

amicus curiae brief. Likewise, the NRA sought consent from Defendants-Appellees. Appellee Daniel C. O'Leary, in his official capacity as Chief of the Brookline Police Department, consented to the filing of this amicus curiae brief. Appellee William B. Evans, in his official capacity as Commissioner of the Boston Police Department, refused to consent, and Appellee Commonwealth of Massachusetts Office of the Attorney General did not respond to the NRA's request. The NRA concurrently submits a Motion for Leave to File Amicus Curiae Brief under Federal Rule of Appellate Procedure 29(a)(3)–(4).[1]

[1] Pursuant to the Federal Rules of Appellate Procedure, Rule 29(a)(4)(E), amicus certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than amicus, its members, and its counsel has made a monetary contribution to the preparation and submission of this brief.

INTRODUCTION

Self-defense is the core of the Second Amendment, *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008), and handguns are central to that core right. *McDonald*, 561 U.S. at 767-78; *Heller*, 554 U.S. at 628-30. Despite these clear holdings, the only way a law-abiding citizen can legally carry a handgun for self-defense in Massachusetts is to satisfy the local licensing authority that he or she has "good reason to fear injury." *See* Mass. Gen. Laws. Ch. 140, § 131 (the "Massachusetts Firearms License Statutory Scheme"). In Boston and Brookline, the result of this discretionary "good reason" standard is the categorical denial of the right to carry arms in public for self-defense to all but a largely privileged subset of the responsible, law-abiding community.

The scope of the Second Amendment is understood by its text, history, and tradition. *See McDonald*, 561 U.S. at 767; *Heller*, 554 U.S. at 576-628. Prohibiting responsible, law-abiding citizens from carrying firearms in public is inconsistent with the text of the Second Amendment, which expressly provides for the right to carry arms, as well as the history and tradition of the Second Amendment, which long has permitted the peaceable public carry of arms by law-abiding citizens. Restrictions on the right to carry emerging in the nineteenth and twentieth centuries were not reflective of any longstanding prohibition against public carry, but rather,

were the result of transitory societal conditions. The Massachusetts Firearms Licensing Scheme is not longstanding, nor is it consistent with the text, history, and tradition of the Second Amendment, and should be declared unconstitutional.

ARGUMENT

I. The Text of the Second Amendment Preserves the Right of Law-Abiding, Responsible Citizens to Carry Arms Outside the Home.

The Second Amendment provides that "the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II. In *Heller*, the Supreme Court explained that the phrase "to keep and bear arms" provided two separate individual guarantees: the right to keep arms in the home, and the right to carry arms in case of confrontation. *Id.* at 582-84, 591-92. *Heller* and *McDonald* make clear that the Second Amendment protects an inherent right to self-defense, *see, e.g.*, *Heller*, 554 U.S. at 628, *McDonald*, 561 U.S. at 749-50, 767, which quite obviously extends beyond the home. *See, e.g.*, *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012). Limiting the right to bear arms to the home would essentially collapse the right to bear into the right to keep – a construction the Supreme Court has rejected. *Heller*, 554 U.S. at 591-92.

The text of the Second Amendment further makes clear that the right to keep and bear arms is a right "of the people" – a term unambiguously referring to all Americans, except, as *Heller* explains, those subject to certain longstanding prohibitions, such as felons and the mentally ill. *See* 554 U.S. 581, 626-27; *see also*

United States v. Rene E., 583 F.3d 8, 15-16 (1st Cir. 2009). Accordingly, the Second Amendment right to carry belongs to all responsible, law-abiding citizens.

II. The Challenged Massachusetts Firearms Licensing Scheme Is Categorically Unconstitutional Because It Impermissibly Deprives Law-Abiding, Responsible Citizens of Their Right to Carry a Handgun.

In Massachusetts, a licensing authority "may issue" a license to carry firearms ("LTC") if an applicant is not a "prohibited person" and "has good reason to fear injury to the applicant or the applicant's property or for any other reason, including the carrying of firearms for use in sport or target practice only . . . ." *See* Mass. Gen. Laws ch. 140, § 131(d) (2015). The "good reason to fear" standard has not been defined under statute, and the licensing authority exercises discretion in deciding whether to award an unrestricted LTC. Mass. Gen. Laws ch. 140, § 131(a), (b).

Under both Brookline's and Boston's firearms licensing policies, an applicant will not be awarded an unrestricted LTC unless he or she can show "good reason to fear injury." *Gould v. O'Leary*, Case No. 16-10181-FDS, 2017 WL 6028342, *3-4 (D. Mass. 2017). Boston's licensing unit requires that such applicant show a "good reason to fear injury" that is distinguishable from the general population, or be employed in certain preferred professions, including law enforcement officers, medical doctors, and lawyers. *Id.* at *4. It is apparent that Brookline follows a similar methodology because both Boston's and Brookline's licensing policies have resulted in the majority of unrestricted LTCs being awarded to law enforcement, doctors, and

lawyers. *Id.* at *3, *5.

This categorical determination of eligibility for an unrestricted LTC means that ordinary law-abiding, responsible citizens – including individuals in the community falling within the lower and middle classes in Boston and Brookline's social hierarchy – are denied their right to carry far more often than those in the preferred professional occupations. The discretionary "good reason" standard thus extinguishes the right to carry for many ordinary law-abiding, responsible citizens fearing for their safety because they are not employed in certain professions or cannot demonstrate some extraordinary threat. *Heller* dictates the fate of such a severe restriction: it fails constitutional muster under any standard of scrutiny. 554 U.S. at 628-29.

III. The Challenged Massachusetts Firearms Licensing Scheme Is Not Longstanding Because the History of the Second Amendment Demonstrates a Longstanding Right of Law-Abiding, Responsible Citizens to Carry Arms in Public.

In the court below, Everytown for Gun Safety ("Everytown"), amicus supporting appellees, presented a false narrative of the history and tradition of carrying arms. *See* Brief of Everytown For Gun Safety as Amicus Curiae in Support of Defendants (Doc. 83), *Gould v. O'Leary*, Case No. 1:16-cv-10181-FDS (D. Mass. filed Oct. 24, 2017) ("Everytown Brief"). The Massachusetts Firearms Licensing Scheme is not longstanding, as amicus has argued. To the contrary, its earliest antecedent is a 1906 statute titled "An Act to Regulate By License the Carrying of

Concealed Weapons," which, significantly, does not restrict open carry. *See* Acts of March 16, 1906, ch. 172, § 1, 1906 Mass. Acts 150, 150; *see also Powell v. Tompkins*, 926 F.Supp. 2d 367, 391-92 (D. Mass. 2013), *aff'd*, 783 F.3d 332 (1st Cir. 2015) (providing historical overview of Mass. Gen. Laws ch. 140, § 131). Massachusetts law, in accord with prior English and American law, historically permitted the peaceable public carry of arms. In contrast, the challenged Massachusetts Firearms Licensing Scheme prohibits all open carry of handguns, *see* Mass. Acts ch. 284, § 101, and allows their concealed carry only for a preferred few of the law-abiding, responsible citizens.

A. The English Common Law Did Not Ban Law-Abiding, Responsible Citizens From Peaceable Public Carry, but Rather, Only Prohibited the Carrying of Arms to Terrorize People.

Everytown places great emphasis on the English Statute of Northampton, 2 Edw. III c. 3 (1328), mischaracterizing it as a "public-carrying ban." *See* Everytown Br. at 5. To the contrary, the English Statute of Northampton provided that no person shall "come before the King's Justices . . . with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere . . . ." 2 Edw. III c. 3 (1328). As its text provides and as English courts have interpreted it, the Statute only outlawed the use of force and arms to terrorize the people. The right to carry arms peaceably was always recognized.

For instance, in *Rex v. Knight*, "[t]he Chief Justice said that the meaning of the statute . . . was to punish people who go armed *to terrify the King's subjects.*" 3 Mod. 117, 87 Eng. Rep. 75, 76 (K.B. 1686) (emphasis added).[2] Thus, the crime was not just in going armed, but in doing so "to terrify" the public. *Id.* William Hawkins confirmed that "no wearing of arms is within the meaning of [the Statute of Northampton] unless it be accompanied with such circumstances as are apt to terrify the people" and "that persons of quality are in no danger of offending against this statute by wearing common weapons . . . ." 1 William Hawkins, *A Treatise of the Pleas of the Crown*, ch. 63, § 9, at 135-36 (1716).

The Declaration of Rights of 1689, coming just three years after *Knight*, further clarified that merely going armed for self-defense was a right, and not a crime. *See* 1 Wm. & Mary, sess. 2, ch. 2 (1689). And William Blackstone distinguished between the basic right of "having arms for . . . defence" which was "a public allowance under due restrictions, of the natural right of resistance and self-preservation," *see* 1 Blackstone, Commentaries *143-44, with "[t]he offense of riding or going armed, with dangerous or unusual weapons" which was "a crime against the public peace, by terrifying the good people of the land." 4 Blackstone,

[2] The chief justice further held that "the crime shall appear to be mal animo [with evil intent] . . . ." *Id.*, S. C. Comb. 38-39, 90 Eng. Rep. 330. American jurisprudence favors supplying a *mens rea* element to a crime when the legislature has not. *See Dean v. United States*, 556 U.S. 568, 574-75 (2009) (quoting *United States v. United States Gypsum Co.*, 438 U.S. 422, 437 (1978)).

Commentaries *148.

The requirement of an intent to terrify the public was carried down by English courts into the nineteenth and twentieth centuries. *See Rex v. Dewhurst*, 1 State Trials, N.S. 529, 601-02 (1820) ("But are arms suitable to the condition of people in the ordinary class of life, and are they allowed by law? A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purpose of business."); *Rex v. Smith*, 2 Ir. Rep. 190, 204 (K.B. 1914) (holding that Statute of Northampton did not apply to one who peaceably walked down a public road with a loaded revolver, because the offense was "to ride or go armed without lawful occasion in *terrrem populi* . . . .").

Furthermore, "[f]or much of English history . . . the emphasis was on extending and fixing the *obligation* to keep and supply militia weapons, not disarming Englishmen." JOYCE LEE MALCOLM, TO KEEP AND BEAR ARMS 4 (1994) (emphasis added). The Recorder of London, the city's legal counsel, confirmed that having arms was "by the ancient laws of this kingdom, not only as a right, but as a duty . . . ." William Blizard, DESULTORY REFLECTIONS ON THE POLICE 59-60 (1785). Englishmen were further required to practice with arms. MALCOLM at 6 (citing 33 Henry VIII, c. 9 (1541)). Under English law, the carrying of arms in public by law-abiding, responsible citizens was commonplace and often required, but was not an offense unless done in a manner to terrorize.

B. The Right of Law-Abiding, Responsible Citizens to Carry Arms in Public Was Recognized at the Founding and in the Early Republic.

Everytown further erroneously argues that laws enacted in Founding-era America prohibited public carry by all. *See* Everytown Br. at p. 7. Quite the opposite, "[t]he right to keep and bear arms was considered . . . fundamental by those who drafted and ratified the Bill of Rights." *McDonald*, 561 U.S. at 768-69 (citing S. Halbrook, *The Founders' Second Amendment* 171-278 (2008)). Leading up to the ratification of the U.S. Constitution, no less than Founding Father Samuel Adams proposed "that the said Constitution be never construed . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms . . . ." 6 Documentary History of the Ratification of the Constitution 1453 (2000). The Second Amendment combined similar proposals[3] by recognizing the right to keep as well as to bear arms. Several states, including Massachusetts, similarly chose to enshrine the right to bear arms in their state Constitution. *See* Mass. Dec. of Rights, XVII (1780) ("The people have a right to keep and bear arms for the common defence."); *see also* Pa. Dec. of Rights, Art. XIII (1776); Vt. Const., Art. I, § 15 (1777); N.C. Dec. of Rights, Art. XVII (1776).

In the Founding period, no laws existed that restricted the carrying of arms, with the exception of the Slave Codes. *See* Halbrook, *The Founders' Second*

[3] *See* 2 Documentary History of the Ratification of the Constitution 623-24 (1976); 18 Documentary History of the Ratification of the Constitution 1888 (1995).

Amendment 126-68. Instead, like their English antecedents, laws enacted in early colonial America only prohibited carrying to terrorize. A 1795 Massachusetts statute punished those who "ride or go armed offensively, to the fear or terror of the good citizens of this Commonwealth . . . ." 2 Perpetual Laws of the Commonwealth of Massachusetts 259 (1801). Going armed was not enough to constitute the crime. *See Commonwealth v. Eastman*, 55 Mass. (1 Cush.) 189, 223 (1848) (indictment must include "every allegation necessary to constitute the offence charged"). Other state's statutes were in accord.[4]

Peaceable carry of firearms in public was not an offense at common law. In *State v. Huntley*, 25 N.C. 418, 420-21 (1843), the North Carolina Supreme Court opined that going armed with unusual and dangerous weapons to the terror of the public was a common law offense, but held that "the carrying of a gun, *per se*, constitutes no offence. " *Id.* at 422-23. The court concluded that, "[f]or any lawful purpose – either business or amusement – the citizen is at perfect liberty to carry his gun." *Id.* In *Simpson v. State*, 13 Tenn. Reports (5 Yerg.) 356 (1833), the Tennessee Supreme Court of Errors and Appeals read Tennessee's constitutional guarantee to secure the right of "all the free citizens of the state to keep and bear arms for their defence, without any qualification whatsoever" and concluded that carrying arms

[4] *See, e.g.*, 1786 Va. Laws 30, ch. 21; 1792 N.C. Laws 60, 61 ch. 3; 1801 Tenn. Laws 710, § 6.

could not be the basis of the element of "terror to the people" necessary for an affray. *Id*. at 358-359.

Ownership of arms was in fact *required* in colonial Massachusetts and most other colonies. *See The Right to Bear Arms*, Report of the Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, 97 Cong., 2d Sess. 3 (1982); *see also* N. Johnson et al., FIREARMS LAWS AND THE SECOND AMENDMENT 101-09 (2011). And the practices of the Founders themselves confirm that the right to carry firearms was entirely ordinary, sometimes nearly universal, in colonial times and in the early Republic. *See* Cramer, Clayton, ARMED AMERICA (2006). As Judge St. George Tucker observed, "[i]n many parts of the United States, a man no more thinks, of going out of his house on any occasion, without his rifle or musket in hand, than a European fine gentleman without his sword by his side." 5 Tucker, Blackstone's Commentaries, ed. app. at 19 (1803).

While some courts upheld restrictions on concealed weapons, they did so on the basis that open carry remained lawful. The Alabama Supreme Court explained: "A statute which, under the pretense of regulating, amounts to a destruction of the right, or which requires arms to be borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional." *State v. Reid*, 1 Ala. 612, 616-17 (1840). The Supreme Court in *Heller* endorsed this explanation. 554 U.S. at 629. Indeed, *Heller* favorably cited other decisions upholding the right to carry

handguns openly, *id.* at 612-13, and compared D.C.'s handgun ban to nineteenth century bans on carrying handguns that had been invalidated by the courts. *Id.* at 629. In so doing, *Heller* has confirmed that carrying handguns by law-abiding citizens was a right, and not a crime, in the early Republic and throughout the nineteenth century.

C. Nineteenth Century Statutes Requiring Sureties Are Not Analogous to the Massachusetts Firearms Licensing Scheme and Do Not Support a Prohibition Against Public Carry by Law-Abiding, Responsible Citizens.

Everytown also misconstrued an 1836 Massachusetts statute to be a restriction against public carry absent good cause. *See* Everytown Br. at p. 11. This law only required persons who went armed *and made threats* to find sureties to keep the peace; it did not prohibit the peaceable bearing of arms:

> If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, *on complaint of any person having reasonable cause to fear an injury, or breach of the peace*, be required to find sureties for keeping the peace . . . .

1836 Mass. Laws 748, 750, ch. 134, § 16 (emphasis added). This and similar laws enacted in the nineteenth century were not restrictions on carrying, but were garden variety "surety to keep the peace" statutes. These statutes were markedly different from the "reason to fear" requirement found in the Massachusetts Firearms Licensing Scheme. These laws did not prohibit anyone from carrying a firearm; they

simply required individuals to pay what effectively amounted to a bond if someone complained about the uses to which they were putting a firearm. And even then, the individual against whom the complaint was filed was not prohibited from carrying; he just faced forfeiture of the surety (and perhaps other consequences as well) should he breach the peace while the surety remained in place. Far from requiring an individual who wanted to carry a firearm to demonstrate "good reason," these laws required *the complainant* to demonstrate "reasonable cause to fear an injury or breach of the peace" by the firearms carrier. These laws thus operated in precisely the opposite manner as the Massachusetts Firearms Licensing Scheme, by presumptively allowing someone to carry without a surety, unless and until reasonable cause to doubt the person's motives arose.

D. Many Nineteenth Century Statutes Restricting Public Carry Were a Result of Transitory Conditions in America, Not Longstanding Prohibitions on the Right of Law-Abiding, Responsible Citizens to Carry Arms in Populated Areas.

Everytown attempts to draw a distinction between carrying in populated places as opposed to unpopulated places in its effort to prove a longstanding prohibition of public carry in populated areas, particularly emerging at the turn of the century. *See* Everytown Br. at pp. 17-19. The Supreme Court, however, has rejected such claims for a special, watered-down Second Amendment in urban areas, *Heller*, 554 U.S. at 634, and moreover, the majority of the municipalities referenced by Everytown could not be considered a populated city. Of the sixteen cities listed,

only six appeared in Census Bureau's 1880 listing of the top one hundred most populous cities in the United States.[5] In the censuses closest to the enactment of each public carry prohibition in the other ten cities, their populations were: Wichita, Kansas (1870: 689, 1900: 24,671); Dodge City, Kansas (1880: 996); Tombstone, Arizona (1880: 973); Nebraska City, Nebraska (1870: 6,050); Los Angeles, California (1880: 11,183); Salina, Kansas (1880: 3,111); La Crosse, Wisconsin (1880: 15,505); Dallas, Texas (1890: 38,067); Checotah, Oklahoma (1890: 400 est.[6]); and Rawlins, Wyoming (1890: 2,235).[7]

In short, no basis exists for Everytown's attempt to read an urban/rural distinction into American laws. Most of the laws cited by Everytown were in the cities of the "Wild West," particularly in the cattle drive area extending from Texas through Kansas, and up into Nebraska and Wyoming. The passage of these ordinances were driven by short-lived local conditions – namely, the frequent mass

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[5] Table 11. Population of the 100 Largest Urban Places: 1880, U.S. Bureau of the Census (1998), https://www.census.gov/population/www/documentation/twps0027/tab11.txt.

[6] Figures for the 1890 census do not appear to be available for Checotah, but in 1900 it had a population of 805. 1 United States Census Office, CENSUS REPORTS, TWELFTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1900 427 (1901). Since the population of the Creek Nation settlement had more than doubled between 1890 and 1900, *id.*, the population of Checotah was probably 400 or fewer in 1890.

[7] Census figures cited are available at http://www.census.gov/prod/www/deccenial.html.

arrival of large numbers of transient cowboys. *See* Winkler, *Gunfight*: *The Battle over the Right to Bear Arms in America* 13 (2011). The laws do not show that carry bans are somehow specially justified, or even are longstanding, in large urban areas.

E. Many Nineteenth and Early Twentieth Century Statutes Restricting Public Carry Were Aimed to Disarm African Americans and Do Not Support a Prohibition Against Public Carry by Law-Abiding, Responsible Citizens.

Classification-based limitations on access to firearms on the basis of race, for the purported purpose of furthering public safety, were common during and preceding the early Republic. *See Powell*, 926 F. Supp. 2d at 387. The result was that only "select members of society could fully enjoy their right to keep and bear arms." *Id.* at 386-87. In the aftermath of the Civil War, the Slave Codes, reenacted as the Black Codes, prohibited both the keeping and the carry of firearms by African Americans. Such Second Amendment deprivations were prominently argued to support bills leading to the enactment of the Civil Rights Act, the Freedmen's Bureau Act, and the Fourteenth Amendment. *See* Cong. Globe, 39th Cong., 1st Sess. 654, 2765-66 (1866); *see also McDonald*, 561 U.S. at 832-33 (Thomas, J., concurring).

The first state law mentioned in *McDonald* as typical of what the Fourteenth Amendment would invalidate required a license to carry a firearm that an official had discretion to grant or deny. 561 U.S. at 771. *McDonald* rejected the argument

that the Freedmen's Bureau Act[8] and the Fourteenth Amendment sought only to provide a non-discrimination rule: the Act referred to the "full and equal benefit," not just "equal benefit." *Id*. at 773. Because "it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty," *see McDonald*, 561 U.S. at 778, the right of a law-abiding person to carry a firearm could not be dependent on the discretion of an official.

Even with the ratification of the Fourteenth Amendment, however, Jim Crow laws depriving African Americans of the right to carry arms persisted well into the twentieth century. *See* Cramer, Clayton E., *The Racist Roots of Gun Control* (1993). This was highlighted in *Watson v. Ston*e, 148 Fla. 516 (1951), where a concurring justice explained that the subject carry regulation was passed "for the purpose of disarming the negro laborers . . . and to give the white citizens in sparsely settled areas a better feeling of security." *Id.* at 524. "The statute was never intended to be applied to the white population and in practice has never been so applied." *Id*. Many southern states enacted facially neutral laws banning inexpensive guns, or requiring permits to own or carry a gun, which, in practice, disarmed African Americans. Kopel, David B., *The Racist Roots of Gun Control* (Feb. 23, 2018). Jim Crow laws

[8] Section 14 of the Freedmen's Bureau Act "explicitly guaranteed that 'all the citizens,' black and white, would have 'the constitutional right to bear arms.'" *McDonald*, 561 U.S. at 773.

like these became the foundation for gun control; these laws spread north in the early twentieth century, aimed primarily at immigrants, labor agitators, or in response to race riots. *Id.*

The current Massachusetts Firearms Licensing Scheme, in leaving discretion to the local licensing authority, effectively reserves the right to bear arms in large part only to elite professionals, including law enforcement, doctors, and lawyers. Such a licensing scheme draws close parallels to the very laws the Fourteenth Amendment sought to prohibit – laws that did not afford to law-abiding, responsible citizens the "full and equal benefit" of fundamental rights. As a result, under the Massachusetts Firearms Licensing Scheme, many law-abiding, responsible citizens, including the underprivileged and many most in need of self-protection, are denied the right to carry a handgun. This is not consistent with the history and tradition of the Second Amendment.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court opinion and order and declare the challenged Massachusetts Firearms Licensing Scheme unconstitutional.

Dated: March 12, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(G)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because this brief contains 4,428 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief 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 this brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word 2013.

Dated: March 12, 2018

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CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25 and First Circuit Local Rule 25, I hereby certify that I electronically filed the NRA's Motion for Leave to File Amicus Curiae Brief, along with the proposed Amicus Curiae Brief and its Appendix, with the Clerk of Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system on March 12, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

The undersigned further certifies that courtesy copies of the Appendix to the proposed Amicus Curiae Brief were served on all counsel of record by U.S. Priority Mail at the following addresses:

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