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| <p>COLORADO SUPREME COURT 2 East 14th Avenue Denver, CO 80203</p> | |
| <p>On Certiorari to the Colorado Court of Appeals Court of Appeals Case Number: 17CA1502</p> | |
| <p>In the Case of:</p> <p>Rocky Mountain Gun Owners, a Colorado nonprofit corporation; National Association for Gun Rights, Inc. a Virginia nonprofit corporation; and John A. Sternberg, Petitioners</p> <p>v.</p> <p>Jared W. Polis, in his official capacity as Governor of the State of Colorado, Respondent</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>Attorney for Amici Curiae: David B. Kopel, Atty. Reg. No. 15872 INDEPENDENCE INSTITUTE 727 East 16th Ave. Denver, CO 80203 Telephone: (303) 279-6536 Email: david@i2i.org</p> | <p>Case Number: 18SC817</p> |
| <p>MOTION OF AMICI CURIAE COLORADO LAW ENFORCEMENT FIREARMS INSTRUCTORS ASSOCIATION; SHERIFFS SHANNON BYERLY, TODD COMBS, ALLEN COOPER, GARTH CROWTHER, BILL ELDER, THOMAS ELLIOTT, KC HUME, MATT LEWIS, DAVE MARTIN, ANTHONY MAZZOLA, DON MCDONALD, TOM MCGRAW, JASON MIKESELL, SHAWN MOBLEY, TIM NORTON, BRETT POWELL, STEVE REAMS, RICHARD REIGENBORN, DANNY SANCHEZ, BRENT SCHROETLIN, CASEY SHERIDAN, AARON SHIPLETT, JEFF SHRADER, JUSTIN SMITH, TONY SPURLOCK, JOHN STIVERS, RICK VALDEZ, JAMES VAN BEEK, LOU VALLARIO, GARRETT WIGGINS, DON WILSON, AND SAM ZORDEL; AND THE INDEPENDENCE INSTITUTE FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS</p> | |

Pursuant to C.A.R. 29, the Colorado Law Enforcement Firearms Instructors Association, Sheriffs Shannon Byerly (Custer County), Todd Combs (Yuma), Allen Cooper (Fremont), Garth Crowther (Conejos), Bill Elder (El Paso), Thomas Elliott (Phillips), KC Hume (Moffat), Matt Lewis (Mesa), Dave Martin (Morgan), Anthony Mazzola (Rio Blanco), Don McDonald (Rio Grande), Tom McGraw (Park), Jason Mikesell (Teller), Jason Mobley (Otero), Tim Norton (Elbert), Brett Powell (Logan), Steve Reams (Weld), Richard Reigenborn (Adams), Danny Sanchez (Costilla), Brent Schroetlin (Grand), Casey Sheridan (Kiowa), Aaron Shiplett (Baca), Jeff Shrader (Jefferson), Justin Smith (Larimer), Tony Spurlock (Douglas), John Stivers (Washington), Rick Valdez (Archuleta), James Van Beek (Eagle), Lou Vallario (Garfield), Garrett Wiggins (Routt), Don Wilson (Dolores), Sam Zordel (Prowers) and the Independence Institute (collectively “Amici Curiae”) respectfully request leave to file a brief as amicus curie in support of Appellants.

As grounds for this motion, Amici Curiae state as follows.

1. All parties have consented to the filing of the brief. This includes the original June 3 filing and this corrected June 10 filing.
2. This Court has not yet ruled on the original June 3 Motion for Leave to File.

3. Due to error by amici, the names of two sheriffs were not included in the original Amicus Brief and the original Motion for Leave to File. This Corrected Motion and the attached Corrected Amicus Brief includes the names of Sheriffs Shawn Mobley (Otero County) and Lou Vallario (Garfield County).

4. The only changes to the Motion and the Brief are: adding the names to the captions and the certificates of service, adding names and counties to the Statement of Amici Interest and to the text of this motion, updating the word count certification in the Amicus Brief, changing the signature dates from June 3 to June 10; and these new paragraphs 1-4 of the Motion for Leave to File.

5. The Colorado Law Enforcement Firearms Instructors Association (CLEFIA) is a non-profit founded in 1991. It is Colorado's professional association for instructors who train law enforcement officers in firearms use and tactics. CLEFIA also trains officers to become instructors.

6. CLEFIA promotes professional standards and uniformity of firearms training in the law enforcement community. It facilitates the exchange of information among firearms training instructors through meetings, newsletters, training seminars, conferences, and other means. CLEFIA also provides a data bank and library for firearms training and firearms incidents.

7. CLEFIA has substantial expertise on firearms use by law enforcement, by criminals, and by law-abiding persons. CLEFIA wishes to explain to the Court how the magazine ban impairs lawful self-defense.

8. Shannon Byerly is Sheriff of Custer County, Todd Combs of Yuma, Allen Cooper of Fremont, Garth Crowther of Conejos, Bill Elder of El Paso, Thomas Elliott of Phillips, Matt Lewis of Mesa, Anthony Mazzola of Rio Blanco, Don McDonald of Rio Grande, Tom McGraw of Park, Jason Mikesell of Teller, Shawn Mobley of Otero, Tim Norton of Elbert, Brett Powell of Logan, Steve Reams of Weld, Richard Reigenborn of Adams, Danny Sanchez of Costilla, Brent Schroetlin of Grand, Aaron Shiplett of Baca, Jeff Shrader of Jefferson, Justin Smith of Larimer, Tony Spurlock of Douglas, John Stivers of Washington, Rick Valdez of Archuleta, James Van Beek of Eagle, Lou Vallario of Garfield, Garrett Wiggins of Routt, and Don Wilson of Dolores.

The sheriffs represent every region of the state, including rural counties and large urban counties. Based on their service in law enforcement and in law enforcement leadership, they have expertise in confronting and deterring armed criminals, and in advising law-abiding persons in their communities about personal protection.

The sheriffs are vitally concerned about the safety of all Coloradoans, including the deputies in their Sheriffs' Offices.

6. “It is the duty of the sheriffs, undersheriffs, and deputies to keep and preserve the peace in their respective counties.” C.R.S. §30-10-516. As the brief will explain, the magazine prohibition impedes the sheriffs’ ability to keep the peace. The ban substantially interferes with law-abiding persons’ defense of “home, person, or property,” and thereby endangers the peace.

7. The brief will also describe how the magazine ban’s infringement of the right to arms harms the constitutional purpose of using arms “in aid of the civil power, when thereto legally summoned.” COLO. CONST., art. II, §13. For example, the ban impedes citizens’ ability to serve in the *posse comitatus* when summoned by a sheriff. The sheriffs’ power to summon a *posse* is recognized by statute, has always been exercised in Colorado, and is exercised today by Colorado sheriffs. *Posses* are sometimes composed of trained volunteers, and are sometimes ad hoc, such as in an emergency. Service in any form of a *posse* is impeded by the ban.

8. Relatedly, sheriffs are the fire wardens of their respective counties, and are responsible for coordinating fire suppression in unincorporated areas. C.R.S. §30-10-512. During natural disasters, sheriffs may particularly need to be able to summon the assistance of armed citizens, as was done in the September 2013 floods.

9. Finally, the sheriffs (and their deputies on whose behalf they are speaking) suffer personal harm from the magazine ban. At the moment, they can acquire and

keep standard magazines because they are “An employee of any of the following agencies who bears a firearm in the course of his or her official duties...” C.R.S. §18-12-302(3)(b). But when they retire from law enforcement, their magazines will instantly become contraband. The grandfathering provision for magazines only applies to magazines that were owned by the individual as of July 1, 2013. C.R.S. §18-12-302(2)(a)(I). Thus, retired law enforcement officers will be forbidden to possess for self-defense the very arms that they carried when protecting the public—which of course are the arms with which the retired persons will be most familiar and competent.

10. Founded in 1985, the Independence Institute is dedicated to the eternal truths of the Declaration of Independence. The Institute is a nonprofit, nonpartisan 501(c)(3) educational organization. The Institute has long been a nationally recognized research center on firearms law and policy.

11. The scholarship of the Institute’s Research Director, David Kopel, on firearms law has been cited by cases of the highest courts of California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, New Hampshire, Oregon, Rhode Island, Washington, Wisconsin, and Wyoming. Kopel’s research has also been cited in 17 cases in the federal Circuit Courts of Appeal. The U.S. Supreme Court cited his amicus briefs in *District of Columbia v. Heller*, 554 U.S. 570, 700–

01, 710 (2008). (Breyer, J., dissenting), and *McDonald v. Chicago*, 561 U.S. 742, 751 n.2 (2010); *id.* at 888 n.31, 903 (Stevens, J., dissenting). The Seventh Circuit commended his scholarship as showing the proper model of “originalist interpretive method as applied to the Second Amendment.” *Ezell v. City of Chicago*, 651 F.3d 684, 702 n. 11 (7th Cir. 2011).

12. Since 2010, Kopel has been an adjunct professor of constitutional law at the University of Denver, Sturm College of Law. Among the courses he teaches are State Constitutional Law, for which he has written a textbook on the Colorado Constitution.

13. Amici respectfully suggest that their experience and expertise might be of assistance to the Court in considering a case that involves how firearms and magazines are actually used for offense by criminals and for defense by the law-abiding.

For all these reasons, Amici Curiae respectfully asks this Court to grant their leave to file the attached amicus brief in support of Appellants.

Dated June 10, 2019.

Respectfully submitted,

By: *S/David B. Kopel*

David B. Kopel, #15872

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2019, I electronically filed the foregoing **AMICUS BRIEF OF COLORADO LAW ENFORCEMENT FIREARMS INSTRUCTORS ASSOCIATION; SHERIFFS SHANNON BYERLY, TODD COMBS, ALLEN COOPER, GARTH CROWTHER, BILL ELDER, THOMAS ELLIOTT, KC HUME, MATT LEWIS, DAVE MARTIN, ANTHONY MAZZOLA, DON MCDONALD, TOM MCGRAW, JASON MIKESELL, SHAWN MOBLEY, TIM NORTON, BRETT POWELL, STEVE REAMS, RICHARD REIGENBORN, DANNY SANCHEZ, BRENT SCHROETLIN, CASEY SHERIDAN, AARON SHIPLETT, JEFF SHRADER, JUSTIN SMITH, TONY SPURLOCK, JOHN STIVERS, RICK VALDEZ, JAMES VAN BEEK, LOU VALLARIO, GARRETT WIGGINS, DON WILSON, AND SAM ZORDEL, AND THE INDEPENDENCE INSTITUTE IN SUPPORT OF PETITIONERS** and the related **MOTION FOR LEAVE TO FILE** with the Clerk of the Court using ICCES, which will send electronic notification of such filing to the following:

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