No. 10-7005

IN THE
Supreme Court of the United States

STEVEN SKOIEN, *Petitioner*,
v.
UNITED STATES, *Respondent*.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF GUN OWNERS FOUNDATION, GUN OWNERS OF AMERICA, INC., GUN OWNERS OF CALIFORNIA, INC., VIRGINIA CITIZENS DEFENSE LEAGUE, AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Gun Owners Foundation ("GOF") (www.gunowners.com) was incorporated in Virginia in 1983, and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC"). GOF is an educational and legal defense organization defending the Second Amendment.

Gun Owners of America, Inc. ("GOA") (www.gunowners.org) was incorporated in California in 1976, and is exempt from federal income tax under IRC section 501(c)(4). GOA is a citizens' lobby to protect and defend the Second Amendment.

Gun Owners of California, Inc. ("GOC") (www.gunownersca.com) was incorporated in California in 1982, and is exempt from federal income tax under IRC section 501(c)(4). Affiliated with GOA, GOC lobbies on firearms legislation in Sacramento and was active in the successful legal battle to overturn the San Francisco handgun ban referendum.

Virginia Citizens Defense League ("VCDL") (www.vcdl.org)was incorporated in Virginia in 1998 and is exempt from federal income tax under IRC section 501(c)(4). VCDL is dedicated to advancing the

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[1] It is hereby certified that the parties have consented to the filing of this brief; that counsel of record for all parties received notice at least 10 days prior to the filing date of the intention to file this *amicus curiae* brief; and that no counsel for a party authored this brief in whole or in part, and no person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

right to keep and bear arms as guaranteed by the United States and Virginia consitutions.

Conservative Legal Defense and Education Fund, ("CLDEF") (www.cldef.org) was incorporated in the District of Columbia in 1982, and is exempt from federal income taxation under IRC section 501(c)(3). CLDEF is dedicated to the correct construction, interpretation, and application of the law.

Each of the *amici curiae* was established, *inter alia*, for educational purposes related to participation in the public policy process, which purposes include programs to conduct research, to inform and educate the public on important issues of national concern, such as the construction of state and federal constitutions and statutes related to the right of citizens to bear arms, and related issues.

In the past, each of the *amici* has conducted research on issues involving the U.S. Constitution, and each has filed *amicus curiae* briefs in other federal litigation involving such issues, including *amicus curiae* briefs to this Court. Of particular relevance here, GOF and GOA filed an *amicus* brief (Apr. 2, 2010) in United States v. Skoien, when this case was before the U.S. Court of Appeals for the Seventh Circuit. Additionally:

- GOA, GOF, GOC, and CLDEF filed an *amicus* brief in District of Columbia v. Heller, No. 07-290 (Feb. 11, 2008).

- GOA and GOF filed *amicus* briefs both in support of the petition for certiorari (July 6, 2009) and on the merits (Nov. 23, 2009, along with GOC and CLDEF) in the consolidated cases of National Rifle Association of America, Inc., *et al.* v. City of Chicago, *et al.*, and Otis McDonald, *et al.* v. City of Chicago, Nos. 08-1497 and 08-1521.

It is hoped that the perspective of the *amici curiae* on the issues in the present case will be of assistance to the Court.

SUMMARY OF ARGUMENT

The issue before the court of appeals below was whether Petitioner, an American citizen, could be disqualified from possession of a lawful firearm because he had been convicted of a misdemeanor crime of domestic violence, as defined in 18 U.S.C. section 922(g)(9). Thus, Petitioner's case presents a fundamental issue concerning the scope of the right guaranteed by the Second Amendment that needs to be resolved by this Court. However this is not the only reason for this Court to grant certiorari.

Petitioner's case is one of many in the flurry of Second Amendment challenges to various federal firearms laws faced by lower federal courts since this Court decided District of Columbia v. Heller, ___ U.S. ___, 128 S.Ct. 2783 (2008), and McDonald v. Chicago, 561 U.S. ___, 130 S.Ct. 3020 (2010). Many of these cases have been given short shrift by the lower courts, erroneously believing that this Court's

"presumptively lawful" dictum in Heller controlled their disposition.

In this case, rather than submitting Petitioner's claim to an analysis of the Second Amendment text, or to the type of principled analysis employed by the Heller Court for Second Amendment claims, the court of appeals keyed its opinion to a dictum, asking whether the statutory misdemeanant disqualification was a "presumptively lawful regulatory measure," like the "longstanding prohibition on the possession of firearms by [a] felon[]." *See* 614 F.3d at p. 639.

Additionally, the court of appeals majority engaged in a judicial balancing act. Heller and the McDonald plurality rejected the argument that the scope of the Second Amendment right should be determined by judicial interest balancing.

The court of appeals below erred in concluding that the Second Amendment permits Congress to disqualify categorically some persons from exercising their right to keep and bear arms by analogy to certain court-imposed limitations on application of the First Amendment. As the dissent below pointed out, however, such a comparison is inapposite, since those First Amendment restrictions apply to the type of speech involved, not — as the court of appeals determined in upholding Petitioner's conviction — the persons entitled to exercise the right.

The court of appeals erred in its determination that Petitioner — as a person who is otherwise entitled to keep and bear arms — is deprived automatically of his Second Amendment right

because of an action within the scope of 18 U.S.C. section 922(g)(9). According to Heller, however, the right to keep and bear arms belongs to "the People," and People "unambiguously refers to all members of the political community, not an unspecified subset." Heller, 128 S.Ct. at 2790. Petitioner is an American citizen, and as such, he is entitled by the Second Amendment to keep and bear arms. This Court should grant the petition for writ of certiorari, and ultimately restate, and apply in this case, the Heller ruling that rights guaranteed by the Second Amendment belong to all Americans.

ARGUMENT

I. PETITIONER'S CASE PRESENTS A FUNDAMENTAL SECOND AMENDMENT ISSUE THAT NEEDS TO BE RESOLVED.

Petitioner, Steven Skoien, phrases the question presented as:

> whether the Seventh Circuit sitting *en banc* erred in holding that an absolute and unqualified ban on gun possession for persons with prior convictions for domestic violence misdemeanors does not violate the Second Amendment, when the weapon was used solely for a lawful purpose, in this case, hunting? [Cert. Pet., at (i).]

Petitioner's case invites this Court to determine whether the Second Amendment right to keep and

bear arms really "belongs to all Americans,"[2] or whether Congress may invent categories of American citizens who may be stripped of their "individual" right. If the opinion below stands, it will prove to be an open invitation for Congress to disqualify any number of disfavored citizens from ever exercising their individual right to keep and bear arms, thereby, *inter alia*, depriving such citizens, as members of the American political community, to be equipped and able "to repel[] invasions and suppress[] insurrections ...," and "to oppose an oppressive military force if the constitutional order [should break] down," having the added benefit of rendering "large standing armies unnecessary...."[3]

While the question stated by Petitioner is sufficiently comprehensive to raise this key Second Amendment issue, it may not fully reveal why this Court should grant the certiorari petition — to address significant problems concerning the application of the Second Amendment principles laid down in District of Columbia v. Heller, ___ U.S. ___, 128 S.Ct. 2783 (2008).

At stake is not only whether the Second Amendment prohibits the current ban on firearms ownership by a statutorily-disqualified misdemeanant, but also whether the hard-fought victory to establish the individual right to keep and bear arms — won in Heller, and extended in McDonald v. Chicago, 561 U.S. ___, 130 S.Ct. 3020 (2010) — is pyrrhic or real. As

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[2] *See* Heller, 128 S.Ct. at 2791.

[3] *See id.,* 128 S.Ct. at 2801.

discussed *infra*, among the issues comprehended by the question, but not explicitly stated, are two critical questions that only this Court is in a position to resolve:

> (1) Whether this Court's dicta in Heller about "presumptively lawful regulatory measures,"[4] (i) limits judicial review of Second Amendment claims as the court of appeals below presumed,[5] or (ii) invites a careful textual and historical analysis and application of the Second Amendment principles stated in Heller, as dissenting Judge Sykes urged below?[6]
>
> (2) Whether Second Amendment rights are subject to "judicial interest balancing," as both the majority and dissenting opinions below assumed,[7] despite this Court's rejection of such "balancing" in Heller[8] and McDonald?[9]

Since this Court decided Heller in June 2008 — and intensifying after it decided McDonald in June 2010 — lower federal courts have faced a flurry of Second

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[4] *See* Heller, 128 S.Ct. at 2817, n.26.

[5] *See* Skoien, 614 F.3d 638, 639-41 (7th Cir. 2010).

[6] *See id.*, 614 F.3d, at 646, 647-49, 654 (Sykes, J., dissenting).

[7] *See Id.*, 614 F.3d at 641-45 (majority) and 651, n.12 (dissenting).

[8] *See* Heller, 128 S.Ct. at 2821.

[9] *See* McDonald, 130 S.Ct. at 3050.

Amendment challenges to various federal firearms laws. While this case may be one of many, it is well situated for this Court to reconsider its "presumptively lawful" dictum, and to reaffirm the Heller and McDonald rulings that Second Amendment rights cannot be balanced away through a judicial weighing process.

If the *en banc* opinion of the court of appeals below not reversed by this Court, it could signal to the federal (and state) judiciary that the Heller court majority's "presumptively lawful" dictum, and Heller's dissenting Justice Breyer's judicial interest balancing methodology — instead of the Constitution itself — should dominate judicial resolutions of most Second Amendment claims.

In short, if such decidedly unconstitutional decision-making as engaged in by the court of appeals below is not nipped in the bud, then the Second Amendment, long forgotten for so many years before Heller and McDonald, may once again be relegated to the dustbin of history. As James Madison observed in 1785:

> [I]t is proper to take alarm at the first experiment with our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled in precedents.... We revere this lesson too much soon to forget it. [J. Madison, "Memorial and Remonstrance Against Religious Assessments," reprinted in The Founders'

Constitution, volume 5, p. 82 (Kurland, P. & Lerner, R. Eds.: Univ. Of Chi. 1987).]

II. THIS COURT SHOULD RECONSIDER ITS "PRESUMPTIVELY LAWFUL" DICTUM IN HELLER.

The issue before the court of appeals below was whether Petitioner, an American citizen, could be disqualified from possession of a lawful firearm because he had been convicted of a misdemeanor crime of domestic violence, as defined in 18 U.S.C. section 922(g)(9). Rather than submitting Petitioner's claim to an analysis of the Second Amendment text, or to the type of principled analysis employed by the Heller Court for Second Amendment claims, the court of appeals keyed its opinion to a Heller dictum, asking whether the statutory misdemeanant disqualification was a "presumptively lawful regulatory measure," like the "longstanding prohibition on the possession of firearms by [a] felon[]." *See* 614 F.3d at p. 639.

By examining Petitioner's claim through the narrow aperture of this single sentence and accompanying footnote in the Heller opinion, the court of appeals presumed that it was not required by Heller to engage in any careful textual or historical analysis of that claim. Dissenting Judge Sykes revealed this judicial neglect: "my colleagues elide the historical-scope question; they do not decide whether persons convicted of a domestic-violence misdemeanor are completely 'outside the reach' of the Second Amendment as a matter of founding-era history and background legal tradition." *Id.*, 614 F.3d at 649 (Sykes, J., dissenting).

Like other courts reviewing post-Heller challenges, the court of appeals below misused the Heller dictum to "short-circuit" the analytical process dictated by this Court in Heller. *See id.,*128 S.Ct. at 2788-2802, 2817-19. Thus, the dissent below correctly warns that the court of appeals majority's "aggressive reading of the [Supreme] Court's reference to presumptively lawful firearms regulations" threatens to "swallow" the Heller Court's decision. *See* Skoien, 614 F.3d at 654 (Sykes, J., dissenting).

To be sure, the court of appeals below claimed that the Heller dictum is "not dispositive," but only "informative." Skoien, 614 F.3d at 640. Yet, it used the Heller dictum so as to make the Second Amendment, an 18th century constitutional guarantee, fit into a statutory gun control scheme developed over the last several decades. *See* Skoien, 614 F.3d at 640-41. As Second Amendment scholar Stephen Halbrook reminds us, the Gun Control Act of 1968 outlawed felons from possessing firearms at the behest of a Department of Justice that "endorsed the collective rights view of the [Second] Amendment,"[10] since rejected by Heller.

It is not, however, for the courts to ensure that the Second Amendment adapts to modern gun control laws. Rather, it is the judiciary's sworn duty to determine whether the statutes that Congress enacts, and that the President enforces, conform to the "permanent principles" as they are written by the

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[10] S. Halbrook, Firearms Law Deskbook, § 1:4, p. 36 (Thomson West: 2007).

People in the Constitution, the "paramount law of the nation." *See* Marbury v. Madison, 5 U.S. (1 Cranch.) 137, 176-77 (1803).

The current United States Attorney General, however, has seized the Heller dictum to divert the courts' attention away from constitutional principle — not only in this case,[11] but in others as well. The court of appeals' decision in United States v. White, 593 F.3d 1199 (11th Cir. 2010), illustrates how the Attorney General's strategy has paid prosecutorial dividends.

In White, the court of appeals stated the issue to be "whether the statutory prohibition against the possession of firearms by persons convicted of the misdemeanor crime of domestic violence ... warrants inclusion on *Heller's* list of presumptively lawful longstanding prohibitions." *Id.*, 593 F.3d at 1205. After a brief examination of the misdemeanant disqualification's short 14-year history, and without even a glance at the Heller principles, the 11th Circuit summarily pronounced that "§ 922(g)(9) is a presumptively lawful 'longstanding prohibition[] on the possession of firearms.'" *Id.*, 593 F.3d at 1206.

As in White, the court of appeals here paid more attention to what Heller did not decide, than to what it did. In similar fashion, the United States Court of Appeals for the Eighth Circuit relied exclusively upon the Heller dictum to support its holding that the prohibition against unlawful users of controlled

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[11] *See id.*, 614 F.3d at 639.

substances could be denied the right to possess a firearm. *See* United States v. Seay, 620 F.3d 919, 2010 U.S. App. LEXIS 18738*, *17 (8th Cir. 2010).

In view of its misapplication by several courts — quick to curtail the reach of Heller and to uphold challenged anti-gun laws — the Heller dictum has proved to be ill-considered. Instead of its serving this Court's original cautionary purpose to guard against over-reading its opinion to have established an "unlimited" Second Amendment right,[12] the dictum has been misread as a justification to give short shrift to challenges to firearm regulations not specifically decided in Heller. But as Heller points out, its list of "presumptively lawful regulations" was not based upon any "exhaustive historical analysis ... of the full scope of the Second Amendment." *Id.*, at 2816. Thus, the dictum should not be read, as many lower courts appear to be reading it, to dispense with an historical analysis comparable to the one engaged by the Heller Court.

Indeed, seizing the Heller dictum, the court of appeals below waltzed quickly past the Second Amendment text and history, as applied to laws that disqualified specified classes of citizens from possessing a firearm. *See* Skoien, 614 F.3d at 640-41. As the dissent below pointed out, the court of appeals majority found only one founding era constitutional text that denied the right to keep and bear arms to a class of persons whose right would otherwise have been

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[12] *See* Heller, 128 S.Ct. at 2816-17.

protected. Even then, the dissent pointed out, "this limiting language [relied upon by the majority] did not find its way into the Second Amendment." *Id.*, 614 F.3d at 648 (Sykes, J., dissenting).

Unless this Court grants the petition, however, it is reasonable to assume that lower courts will continue to misapply the Heller dictum. For this reason alone, the petition for certiorari should be granted.

III. THIS COURT SHOULD REAFFIRM ITS RULING IN HELLER, AS RESTATED IN MCDONALD, REJECTING JUDICIAL INTEREST BALANCING.

Instead of submitting the section 922(g)(9) ban on misdemeanant possession of firearms to a proper textual/historical analysis, the court of appeals jumped headlong into a **judicial balancing act** — weighing the hunting interests of Skoien, a single individual, against the Government's concern for "preventing armed mayhem." *See id.*, 614 F.3d at 642, 645. Having defined the issue in this manner, it is no surprise that the Government came out on top, having chosen to submit the Government's claim to "intermediate scrutiny" as to whether the section 922(g)(9) ban was "substantially related to an important governmental objective." *See id.*, 614 F.3d at 641-44. Indeed, as the dissent pointed out, the court majority actually carried the Government's water by identifying law review articles and sociological and psychological studies favorable to the Government's case. *See id.*, 614 F.3d at 646-47 (Sykes, J., dissenting).

Even though the dissent below expressed disappointment with the majority's balancing act, both the dissent and the majority erred in assuming "that some form of heightened judicial scrutiny is required."[13] The dissent only disagreed with the majority over the intensity and methodology of the weighing process. *See id.*, 614 F.3d at 651-53 (Sykes, J., dissenting).

Because a plurality of this Court, in McDonald, has characterized the individual right to keep and bear arms to be "fundamental,"[14] Petitioner Skoien asks this Court to resolve this intra-court battle over intermediate scrutiny "lite" and intermediate scrutiny "bold," by subjecting section 922(g)(9)'s ban on possession of firearms to "strict scrutiny." *See* Petition for a Writ of Certiorari, pp. 10-12 (U.S. Supreme Court, No. 10-7005). Petitioner's proposal overlooks, however, the McDonald plurality's explicit rejection of the argument that the Second Amendment should not apply to the states because "state courts have held that [firearms] rights [protected by state constitutions] are subject to '**interest-balancing**' and have sustained a variety of restrictions." *Id.* at 3047 (emphasis added). The McDonald plurality explained:

> In *Heller* ... we expressly **rejected** the argument that the scope of the Second Amendment right should be determined by **judicial interest balancing**, ... and this Court decades ago

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[13] *Id.*, 614 F.3d at 651 (Sykes, J., dissenting).

[14] *See* McDonald, 130 S.Ct. 3020 at 3042.

> abandoned "the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights." [*Id.* 3047 (emphasis added).]

The **intermediate scrutiny** test, no matter how formulated — and even the **strict scrutiny** test — allow courts to "water down" the right to keep and bear arms. Both tests, no matter how applied, admit exceptions to the Second Amendment's unequivocal command that "the right of the People to keep and bear arms, **shall not be infringed**." But if the original text allowed no exceptions, no modern Governmental interests — however compelling, substantial, important, reasonable, or rational any court may think those interests may be — can now create an exception. To rule otherwise would subordinate the "permanent" principles of the Constitution to the evolving policies of legislative bodies and executive departments, and thereby would undermine the very purpose of a written constitution. *See* Marbury, 5 (1 Cranch) U.S. at 176-77.

IV. THIS COURT SHOULD RESTATE, AND APPLY IN THIS CASE, THE HELLER RULING THAT THE SECOND AMENDMENT RIGHT "BELONGS TO ALL AMERICANS."

Led by its reading of the Heller dictum, the court of appeals below concluded that the Second Amendment would permit Congress to disqualify categorically some persons from exercising their right to keep and bear

arms. *See* Skoien, 614 F.3d at 641. In support, the court majority declared that "[c]ategorical limits on the possession of firearms would not be a constitutional anomaly." *Id.* After all, the court of appeals reasoned, courts have recognized a long line of "categorical limits" to the First Amendment, among which are "obscenity, defamation, [and] incitement to crime." *Id.*

The dissent, however, was unpersuaded:

> [I]t is one thing to say that certain narrowly limited **categories of speech** have long been understood to fall outside the boundaries of the free-speech right and are thus unprotected by the First Amendment. It is quite another to say that a certain **category of persons** has long been understood to fall outside the boundaries of the Second Amendment and thus may be excluded from ever exercising the right. [*Id.*, 614 F.3d at 650 (Sykes, J., dissenting) (emphasis added).]

The court of appeals' First Amendment analogy breaks down completely when subjected to a comparative analysis based upon the constitutional texts. Defamation, obscenity, and incitements to riot are categorically disqualified from protection under the First Amendment because they do **not fit** within the definition of "the freedom of **speech**." In like manner, possession of warships, fighter planes, or tanks is not protected by the Second Amendment because they would **not fit** the definition of "**arms**." *See* Heller, 128 S. Ct. at ___.

Surely, the First Amendment rights of freedom of speech, press, assembly, and petition cannot constitutionally be denied an American citizen on the ground that the person seeking to exercise the right is believed to be a "defamer," or a "pornographer," or a "rioter," or even if such a person has been convicted of a crime — whether it be a felony or misdemeanor generally, or even if it be a crime of obscenity or riotous assembly. It is not inherently obvious why a person who is otherwise entitled to keep and bear arms should be disqualified automatically by who he is or what he has done. Yet, one of the reasons given by the court of appeals below in support of the constitutionality of 18 U.S.C. section 922(g)(9) is that Skoien was a "recidivist." *See* Skoien, 614 F.3d at 645.

According to Heller, however, the right to keep and bear arms belongs to "the People," and People "unambiguously refers to **all members of the political community, not an unspecified subset.**" Heller, 128 S.Ct. at 2790 (emphasis added). While an illegal alien has no Second Amendment rights, he is not denied that right because, if allowed to possess firearms, he would be a threat to the community. Rather, he has no such right because he is **not** a member of the national political community embraced by the term, "the People." *See* United States v. Yanez-Vasquez, 2010 U.S. Dist. LEXIS 8166*, pp. *4-*8 (D. Ks. 2010). *See also* United States v. Lewis, 2010 U.S. Dist. LEXIS 86409*, pp. *5-*8 (and cases cited) (N.D. Ga. 2010).

Petitioner is, however, an American citizen. And, as such, he is entitled by the Second Amendment to keep

and bear arms. The question here, then, is whether the Second Amendment permits Congress to place him in a disfavored subset of American citizens who, because he has committed a certain kind of misdemeanor, can no longer exercise his Second Amendment rights. The First Amendment analogy, if apt, would mean that, if it is permissible to deny Second Amendment rights on the ground of having committed a misdemeanor crime of domestic violence, then it would be permissible for Congress to enact a law prohibiting any American citizen who has been convicted of the crime of selling obscene materials from exercising the freedom of speech. Would the constitutionality of such a disqualification turn on whether there were law review articles and sociological studies demonstrating that the obscenity of which he was convicted was especially harmful or that the publisher was of a class of recidivist pornographers? To pose the question, is to answer it. Of course not, even though the government's "interest" in the area may be "compelling." The rights to freedom of speech, of the press, of assembly and petition belong to "all Americans" — that is, all citizens — with no exceptions.

Yet, 18 U.S.C. section 922(g)(9) provides for just such an exception respecting Petitioner's Second Amendment rights. And for what reason? According to the court of appeals below, it is because persons convicted of misdemeanor crimes of domestic violence are too great a threat to others if allowed to possess a firearm. *See* Skoien, 614 F.3d at 641-45. Such reasoning is reminiscent of the justification given for the 1689 English Bill of Rights that limited the right to

keep and bear arms to Protestants, thereby permitting the "disarm[ing] of Roman Catholics — 'for the better securing their Majestyes Persons and Government." *See* K. Marshall, 32 *Harv. J. Of L. & Pub. Pol.* at 721-22. Indeed, the government's purported concern for domestic safety in this case is comparable to the ploy underpinning the Black Codes which deprived freedmen of their right to keep and bear arms. *See* R. Cottrol and R. Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," 80 Geo. L.J. 309, 344-46 (Dec. 1991).

This point is reinforced by the written conferral of citizenship inserted in the Fourteenth Amendment that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States....." As this Court stated in Afroyim v. Rusk, 387 U.S. 253 (1967), "the chief interest of the people in giving permanence and security to citizenship ... was the desire to protect Negroes." Id., 387 U.S. at 262. And as Senator Horward, the sponsor of the Fourteenth Amendment in the Senate, explained:

> It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States.... We desired to put this question of citizenship **and the rights of citizens** ... **beyond the legislative power**. [*Id.* at 263 (emphasis added).]

Thus, in Afroyim, this Court stated that the Amendment's citizenship guarantee "can most

reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it"[15]:

> Once acquired, this Fourteenth Amendment citizenship was not to be shifted, canceled, or **diluted** at the will of the Federal Government, the States, or any other governmental unit. [*Id.*, 387 U.S. at 262 (emphasis added).]

After all, as the Afroyim Court observed, "[i]n our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship." *Id.*, 387 U.S. at 257.

While 18 U.S.C. section 922(g)(9) does not "sever" Skoien by completely taking away his citizenship, it significantly "dilutes" Skoien's rights as a citizen by depriving him of his Second Amendment right to be "trained in arms" so as to defend the country by "repelling invasions and suppressing insurrections" and being "better able to resist tyranny." *See* Heller, 128 S.Ct. at 2801. Applying the rule in Afroyim, Skoien may not be deprived of his rights as an American citizen unless he has voluntarily relinquished that right. Conviction of a misdemeanor offense is no evidence of such a voluntary act.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

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[15] *Id.,* 387 U.S. at 262.

Respectfully submitted,

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November 15, 2010