

No. 11-1149

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

GRAY PETERSON, Plaintiff-Appellant

v.

CHARLES F. GARCIA*, *ET. AL.*, Defendants-Appellees

On Appeal from the United States District Court for the District of Colorado
Honorable Walker D. Miller, Senior District Judge

**MOTION OF SECOND AMENDMENT FOUNDATION, INC., BUCKEYE
FIREARMS FOUNDATION, CITIZENS' RIGHTS ACTION LEAGUE,
COMMONWEALTH SECOND AMENDMENT, CONNECTICUT
CITIZENS DEFENSE LEAGUE, CALGUNS FOUNDATION, INC., GUN
OWNERS CIVIL RIGHTS ALLIANCE, HAWAII DEFENSE
FOUNDATION, ILLINOIS CARRY, ILLINOIS STATE RIFLE
ASSOCIATION, MAINE OPEN CARRY ASSOCIATION, MARYLAND
SHALL ISSUE, OREGON FIREARMS EDUCATIONAL FOUNDATION,
WISCONSIN CARRY, INC., SCOPE, INC., STILLWATER FIREARMS
ASSOCIATION, VIRGINIA CITIZENS DEFENSE LEAGUE, INC., AND
WEST VIRGINIA CITIZENS DEFENSE LEAGUE, INC. FOR LEAVE TO
FILE BRIEF AS *AMICI CURIAE***

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Counsel for *Amici Curiae*

*Appellants substituted Charles F. Garcia for Alvin LaCabe and James Davis for Peter Weir.

Amici, through undersigned counsel, respectfully request leave to file the attached amicus curiae brief. The *Amici* in this motion are Second Amendment Foundation, Inc., Buckeye Firearms Foundation, Citizens' Rights Action League, Commonwealth Second Amendment, Connecticut Citizens Defense League, Calguns Foundation, Inc., Gun Owners Civil Rights Alliance, Hawaii Defense Foundation, Illinois Carry, Illinois State Rifle Association, Maine Open Carry Association, Maryland Shall Issue, Oregon Firearms Educational Foundation, Wisconsin Carry, Inc., SCOPE, Inc., Stillwater Firearms Association, Virginia Citizens Defense League, Inc., and West Virginia Citizens Defense League, Inc. *Amici* collectively represent hundreds of thousands of interested citizens from twenty states¹ and the District of Columbia who are barred from exercising their right to carry a firearm for self-defense while visiting Denver.

Amici uniquely represent this broad group of citizens and can provide valuable assistance to the Court. The trial court's decision in this case impacts *amici*'s organizational interests, as well as the interests of their members and supporters who enjoy exercising their right to keep and bears arms. *Amici*, and their members and supporters, have a substantial interest in ensuring that all people are able to exercise their firearm rights without infringement by unconstitutional

¹ California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, Oregon, Rhode Island, South Carolina, Vermont, Virginia, Washington, West Virginia and Wisconsin.

regulations. *Amici* have participated in numerous firearm rights cases throughout the nation and have substantial expertise in the field of Second Amendment rights that would aid the Court.

Amici were given consent to file by Appellants, Appellee Davis and Intervenor Suthers, but consent was refused by Linda Davison, attorney for Appellee Garcia.

A description of each organization joining this brief follows:

The Second Amendment Foundation, Inc. (“SAF”) is a nationally focused non-profit educational foundation incorporated under the laws of the State of Washington, which seeks to preserve the effectiveness of the Second Amendment through educational and legal action programs. SAF’s primary activities include education, research, publishing and legal action focusing on the constitutional right to privately own and possess firearms, and the consequences of gun control. SAF has over 650,000 members and supporters residing in every State of the Union. Among many other successful legal challenges, SAF organized, and prevailed, in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). SAF has filed numerous amicus briefs in firearm rights cases throughout the nation.

Buckeye Firearms Foundation (“Buckeye”) is an Ohio non-profit organization dedicated to defending and advancing human and civil rights secured

by law, specifically defending and advancing the rights of Ohio citizens to own and use firearms for all legal activities including, but not limited to, self-defense, hunting, competition and recreation. Buckeye acts primarily through education and legal advocacy. Buckeye, and its members, seek to ensure the nationwide application of the Second Amendment right to self-defense and the right to carry arms for all persons within the United States. Buckeye works to ensure the human and civil right of self-defense applies wherever a person may live or travel, without regard to the political whims of any particular government branch or administration.

Citizens' Rights Action League (“CRAL”) is a Rhode Island based group dedicated to presenting the benefits of firearm ownership by law-abiding citizens, the merits of shooting sports, and the truth about the effect of gun control upon our society. CRAL is dedicated to reducing anti-firearm legislation in Rhode Island, promoting the rights of honest citizens to protect themselves & their families, preserving the ability to hunt and participate in shooting sports. CRAL has previously participated as an amicus in Rhode Island Supreme Court litigation.

Commonwealth Second Amendment (“Comm2A”) is a non-profit organization incorporated under the laws of Massachusetts with its principal place of business in Braintree, Massachusetts. Comm2A is currently seeking a determination of 26 U.S.C. § 501(c)(3) non-profit status from the Internal Revenue

Service. The purposes of Comm2A include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms.

Connecticut Citizens Defense League (“CCDL”) is non-profit incorporated under the laws of Connecticut. CCDL is a non-partisan, grassroots organization devoted to advocating rights affirmed by the Constitutions of the United States of America and the State of Connecticut, especially the unalienable right of all citizens to keep and bear arms, for the defense of both self and state. CCDL works to accomplish this goal through public enlightenment as well as legal and legislative action.

Calguns Foundation, Inc. (“Calguns”) is a non-profit organization incorporated under the laws of California with its principal place of business in San Carlos, California. The purposes of CGF include supporting the California firearms community by promoting education for all stakeholders about California and federal firearm laws, rights and privileges; and defending and protecting the civil rights of California gun owners.

Gun Owners Civil Rights Alliance (“GOCRA”) is a Minnesota-based nonprofit corporation. GOCRA has, for more than 21 years, worked to achieve its goal of restoring and defending the Second Amendment civil rights of Minnesotans

and other Americans. GOCRA efforts and initiatives have directly resulted in several key gun rights victories in Minnesota. Additionally, GOCRA works to educate and inform its broad-based network of supporters, reaching tens of thousands of Minnesotans. GOCRA maintains a strict policy of political non-partisanship, focusing exclusively upon civil rights.

Hawaii Defense Foundation (“HDF”) is a domestic non-profit corporation based in Oahu, Hawaii. HDF was founded to provide services in: civil rights litigation; firearms safety, education, and research; self-defense; and self-preservation techniques. HDF has many supporters and members within the State of Hawaii.

Illinois Carry is a non-profit organization dedicated to the preservation of Second Amendment rights. Among Illinois Carry’s purposes are educating the public about Illinois laws governing the purchase and transportation of firearms, aiding the public in every way within its power, and supporting and defending the people’s right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms.

Illinois State Rifle Association, (“ISRA”), is a non-profit association incorporated under the laws of Illinois in 1913, with its principal place of business in Chatsworth, Illinois. ISRA has Members residing throughout the State of

Illinois. The purposes of the ISRA include the protection of the right of citizens to bear arms for the lawful defense of their families, persons and property, and to promote public safety and law and order.

The Maine Open Carry Association (“MOCA”) is a non-partisan political activist group focused on the expansion and preservation of firearm rights in Maine. Additionally MOCA serves as a public information resource and refer members and interested parties to other agencies, as appropriate, on an individual basis, to best suit their firearm-related needs, whether they be educational, legal, or material.

Maryland Shall Issue is an all-volunteer, non-partisan effort dedicated to the preservation and advancement of all gun-owners' rights in Maryland, with a primary goal of CCW reform to allow all law-abiding citizens the right to carry a concealed weapon; and to the education of the community to the awareness that 'shall issue' laws have, in all cases, resulted in decreased rates of violent crime.

Oregon Firearms Educational Foundation (“OFEF”) is a 501(c)(3), non-profit incorporated in the Oregon to serve and defend gun owners and all who believe in the God-given, Constitutionally protected right to bear arms. OFEF has taken the lead on litigation in Oregon to protect gun owners’ rights.

Wisconsin Carry, Inc. ("WCI") is a non-profit organization, with thousands of members throughout Wisconsin, dedicated to the preservation and reclamation of the basic rights critical to a free society, including the right to keep and bear arms. WCI seeks to protect and promote the rights secured in the Second Amendment of United States Constitution and Article 1 Section 25 of the Wisconsin Constitution. As an organization, WCI, advocates for the right of its members to lawfully carry firearms in the manner of their choosing (open or concealed). WCI works to preserve, advance and expand these fundamental human rights through civil litigation, public relations, and legislative activism.

SCOPE, Inc. (Shooters Committee on Political Education), is a New York non-profit educational organization, dedicated to the protection and preservation of the right of firearms ownership as guaranteed by the Second Amendment to the Constitution of the United States. SCOPE is active in educating the public on the positive aspects of firearm ownership and represents over 18,000 individual and club supporters.

Stillwater Firearms Association ("SFA") is a Nevada non-profit organization. SFA's purpose is to promote public interest and skill in the use of firearms; to provide proper training and education in the use of firearms; to promote public interest and skill in the sport of target shooting; promote firearms rights and laws adhering to Article 1, Section 11 of the Nevada Constitution and

the 2nd Amendment to the U. S. Constitution; and to promote healthy and social recreation for the members of the corporation as well as for the public at large.

Virginia Citizens Defense League, Inc. (“VCDL”) is a non-profit, non-partisan, grassroots organization dedicated to advancing the fundamental human right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution.

West Virginia Citizens Defense League, Inc. (“WVCDL”), is a nonpartisan, nonprofit, all-volunteer, grassroots organization of concerned West Virginians who support our individual right to keep and bear arms for defense of self, family, home and state, and for lawful hunting and recreational use, as protected by Article III, § 22 of the West Virginia Constitution and the Second Amendment of the United States Constitution. WVCDL has a history of litigating to protect these rights through litigation, including a number of cases currently pending in federal courts in West Virginia.

CONCLUSION

For the foregoing reasons, and pursuant to rule 29(b) of the Federal Rules of Appellate Procedure, *Amici Curiae* respectfully move the Court for leave to file the attached Amicus Brief in Support of Appellants Seeking Reversal.

Dated: June 13, 2011

Respectfully Submitted,

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CERTIFICATE OF DIGITAL SUBMISSION

There are no required privacy redactions to be made in this brief and every document submitted in PDF format is an exact copy of the hard copy filed with the Clerk.

The digital submission of this brief has been scanned for viruses with Microsoft Security Essentials version 1.105.1849.0, last updated June 13th, 2011, and this submission is free of viruses.

The hard copies of the foregoing submitted to the Clerk are exact copies of the version that is being electronically filed.

/s/ Mikolaj T. Tempski
Mikolaj T. Tempski
Counsel for *Amici Curiae*
Dated: June 13, 2011

CERTIFICATE OF SERVICE

On this, the 13th day of June, 2011, I served the foregoing Amicus Curiae Brief by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this, the 13th day of June, 2011.

/s/ Mikolaj T. Tempski

Mikolaj T. Tempski