

23-07061

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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ANDREW HANSON; TYLER YZAGUIRRE; NATHAN CHANEY; ERIC KLUN,  
*Plaintiffs-Appellants,*

v.

DISTRICT OF COLUMBIA; ASHAN M. BENEDICT,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the District of Columbia

No. 22-cv-2256 (Contreras, J.)

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**BRIEF OF *AMICUS CURIAE* UNITED STATES CONFERENCE OF  
MAYORS IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *amicus* United States Conference of Mayors (“Conference”) states as follows:

A. **Parties and *Amici*.** All parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief for Appellees. The Conference is *amicus* in this Court.

B. **Rulings Under Review.** References to the rulings at issue appear in the Brief for Appellees.

C. **Related Cases.** Based upon *amicus curiae*’s knowledge, all references to related cases appear in the Brief for Appellees.

**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

The Conference states that it is a non-profit, tax-exempt organization incorporated in Illinois. The Conference has no parent corporation, and no publicly held company has 10% or greater ownership in the Conference.

**STATEMENT REGARDING CONSENT TO  
FILE AND SEPARATE BRIEFING**

All parties consent to the Conference's participation as *amicus curiae*. See Fed. R. App. P. 29(a)(2); Cir. R. 29(b).

Pursuant to Circuit Rule 29(d), undersigned counsel for *amicus curiae* certifies that a separate brief is necessary. The Conference represents the leaders of America's largest cities, and its members play a critical role in combatting the dangers of gun violence. The Conference thus offers a unique perspective on the need to retain regulatory flexibility in the face of ever-changing risks to public safety.

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## **IDENTITY, INTEREST, AND SOURCE OF AUTHORITY**

The Conference is the official non-partisan organization of the more than 1,400 United States cities with populations of 30,000 or more. Its members suffer a disproportionate share of gun violence in the United States and have a common interest in maintaining the flexibility to address this problem in the manner local officials determine to be most effective and appropriate. The Conference is authorized to file this brief under Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29(b).

## **STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS**

No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to this brief's preparation or submission.

## **INTRODUCTION**

State and local governments have long been required—and empowered—to solve novel problems across a host of issue areas. These solutions inure to the benefit of their own constituents and serve as templates for jurisdictions at all levels of government. *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015) (noting that the Supreme Court has “long recognized the role of the States as laboratories for devising solutions to difficult legal problems” (internal quotation marks omitted)). As the Conference is keenly aware, cities and the officials

who represent them have historically stood at the forefront of responding to societal issues that affect their communities. Local governments must have the ability to innovate to “deal with pressing social, economic, and environmental concerns.”<sup>1</sup>

Few problems underscore the need to innovate like the increasing availability of large-capacity magazines. The Supreme Court’s decision in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), recognized the importance of innovation and preserved a degree of flexibility for local governments to protect their constituents. *Bruen* reaffirmed the point articulated by the Court’s earlier decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that our Nation has a “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Bruen*, 142 S. Ct. at 2128 (quoting *Heller*, 554 U.S. at 627). In addition, States have had a tradition since the Founding of banning a range of weapons, from clubs and Bowie knives to multi-shot firearms and machine guns.

D.C. Code § 7-2506.01(b) fits comfortably within this tradition of regulation that *Bruen* endorsed. *Bruen* made clear that the Second Amendment is not “a regulatory straightjacket.” 142 S. Ct. at 2133. Furthermore, to prove that D.C. Code § 7-2506.01(b) is “consistent with this Nation’s historical tradition of firearm regulation,” *Bruen*, 142 S. Ct. at 2126, the District is required only to “identify a well-established and representative historical *analogue*, not a historical *twin*,” *id.* at 2133.

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<sup>1</sup> Bruce Katz & Jeremy Nowak, *The New Localism* viii (2017).

*Bruen* acknowledged, moreover, that while certain “historical analogies . . . are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Id.* at 2132. For that reason, “even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* at 2133.

This aspect of *Bruen* has particular significance to the more than 1,400 cities represented by the Conference, including the Nation’s largest cities. Even assuming that the possession of large-capacity magazines is covered by the plain text of the Second Amendment,<sup>2</sup> these magazines nevertheless represent the kind of “dramatic technological change[]” that *Bruen* contemplated. And their widespread availability has led to “unprecedented societal concerns.” Mass shootings, in particular, have caused communities across the Nation to experience previously unknown forms of tragedy and terror. And political violence and domestic extremism have jeopardized citizens’ safety and ability to participate in civic life. *Bruen* explicitly recognized that for cities to adapt to these “novel modern conditions,” *id.* at 2134 (quoting *Heller v.*

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<sup>2</sup> As the District explains, large-capacity magazines are not covered by the plain text of the Second Amendment because they are not “Arms,” *see* Appellees’ Br. 18–21, and because they are not commonly used for self-defense, *see id.* at 21–29; *see also* ECF Record Document (“RD”) 28 at 24 (holding that large-capacity magazines are not covered by the plain text of the Second Amendment because, among other reasons, “they are not typically possessed for self-defense”).

*District of Columbia*, 670 F.3d 1244, 1275 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)), they must have latitude to fashion regulatory responses “to circumstances beyond those the Founders specifically anticipated,” *id.* at 2132. Consistent with history, *Bruen* preserved the rights of cities to exercise legislative flexibility to address emerging technologies that threaten society. *See* Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *Fordham L. Rev.* 487, 516 (2004) (explaining that “local regulation” of firearms “was quite common in pre-Civil War America.”); *cf. McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (plurality opinion) (“[S]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment.” (internal quotation marks omitted)). Without this latitude, our local governments will be paralyzed in the face of a growing epidemic of gun violence, and all our communities will suffer the harms.

## ARGUMENT

### I. The Rise of Mass Shootings Demands a Flexible Government Response

Mass shootings were essentially unknown for the first two centuries of this Nation’s history. According to expert evidence introduced in recent cases challenging high-capacity magazine bans, the first mass shooting in America resulting in double-digit fatalities did not occur until 1949. *See Oregon Firearms Fed’n, Inc. v. Brown*, 644 F. Supp. 3d 782, 803 (D. Or. 2022), *appeal dismissed*, No. 22-36011 (9th Cir. Dec. 12, 2022); Supplemental Declaration of Louis Klarevas ¶ 10, *Duncan v. Bonta*, No. 3:17-cv-

01017-BEN-JLB (S.D. Cal. Nov. 10, 2022), ECF No. 118-6 (“Klarevas Decl.”). This shooting was followed by a second similar incident in 1966, a third in 1975, and a fourth in 1982. *See* Klarevas Decl. ¶ 10. In other words, these tragedies were initially non-existent, and then they occurred roughly once a decade.

The frequency and intensity of massacres plaguing our cities have since increased by an order of magnitude. Whereas the first four mass shootings resulting in 10 or more deaths occurred over more than three decades, the same number of double-digit killings took place in the two-year period from 2021 to 2022 alone.<sup>3</sup> These included, within 10 days, the racially motivated killing of 10 Black victims at Tops Friendly Markets in Buffalo, New York, and the murder of 19 children and two teachers at Robb Elementary School in Uvalde, Texas.<sup>4</sup> And these are just the most fatal incidents; when all mass shootings are accounted for, they now occur nearly *twice*

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<sup>3</sup> *See Mass Murders in 2022*, Gun Violence Archive, <https://www.gunviolencearchive.org/reports/mass-murders?year=2022> (last visited October 25, 2023); *Mass Murders in 2021*, Gun Violence Archive, <https://www.gunviolencearchive.org/reports/mass-murders?year=2021> (last visited October 25, 2023).

<sup>4</sup> *See A Partial List of Mass Shootings in the United States in 2022*, N.Y. Times (Jan. 24, 2023), <https://perma.cc/7GAP-8LA5>.

*a day*, and they killed over 1,300 people during the same two-year period.<sup>5</sup> Earlier this year, a double-digit mass killing occurred in Monterey Park, California,<sup>6</sup> and there have been over two dozen instances since that tragedy in which four or more people were killed.<sup>7</sup> As of the filing of this brief, there have been a total of 563 mass shootings this year.<sup>8</sup>

Mass shootings inflict unique and devastating harms on victims and their communities. In addition to the incalculable costs of lost lives, survivors of gun violence “face a long ordeal of pain and medical care that collectively costs patients, hospitals, and governments billions of dollars each year.”<sup>9</sup> These include not only initial medical payments, but also ongoing expenses to manage physical and

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<sup>5</sup> See *Past Summary Ledgers*, Gun Violence Archive, <https://www.gunviolencearchive.org/past-tolls> (last visited October 25, 2023) (645 mass shootings in 2022, 688 in 2021, and 610 in 2020). Mass shootings here are defined as when “four or more people are shot or killed in a single incident, not including the shooter.” *General Methodology*, Gun Violence Archive, <https://www.gunviolencearchive.org/methodology> (last visited October 25, 2023).

<sup>6</sup> See Morgan Winsor et al., *Monterey Park Mass Shooting Updates*, ABC News (Jan. 24, 2023), <https://perma.cc/W7FT-ZC69>.

<sup>7</sup> See *Mass Murders in 2023*, Gun Violence Archive, <https://www.gunviolencearchive.org/reports/mass-murders> (last visited October 25, 2023).

<sup>8</sup> See Gun Violence Archive, <https://www.gunviolencearchive.org/> (last visited October 25, 2023).

<sup>9</sup> Patrick Boyle, *The Cost of Surviving Gun Violence: Who Pays?*, AAMC (Oct. 18, 2022), <https://perma.cc/GG7P-BWUD>.

psychological pain, and the costs of “diminished quality of life for victims and their families.”<sup>10</sup> They also include decreased educational attainment in children exposed to gun violence, increased expenditures on school security, and depressed business and housing price growth in local economies.<sup>11</sup> Survivors of school shootings in particular suffer long-term economic consequences, including reduced employment and earnings.<sup>12</sup> When the losses borne by survivors, families, communities, employers, and taxpayers are taken together, gun violence costs the U.S. \$557 billion annually, or about 2.6 percent of gross domestic product.<sup>13</sup> And these costs are most acute in mass shootings.<sup>14</sup>

For those living in cities—which are densely populated and provide target-rich environments—mass shootings are particularly dangerous. The Conference knows this all too well. In December 2022, the Conference sent a letter to Senators Schumer

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<sup>10</sup> *Id.*

<sup>11</sup> See Joint Econ. Comm. Democrats, *The Economic Toll of Gun Violence* 1, <https://perma.cc/8CUF-75EN>.

<sup>12</sup> See Kai Ryssdal & Maria Hollenhorst, *How School Shootings Shape Survivors’ Economic Lives*, Marketplace (May 26, 2022), <https://perma.cc/9X35-7L2Z>.

<sup>13</sup> See *The Economic Cost of Gun Violence*, Everytown Research & Policy (July 19, 2022), <https://perma.cc/T8Z4-QYF9>.

<sup>14</sup> See Boyle, *supra* note 9 (“Injuries from mass shootings are especially severe and costly.”); see also Zara Abrams, *Stress of Mass Shootings Causing Cascade of Collective Traumas*, Am. Psych. Assoc. (Sept. 1, 2022), <https://perma.cc/8TAV-VW3V>.



and McConnell urging the Senate to pass gun safety legislation that would have banned assault weapons and expanded background checks.<sup>15</sup> The letter was written on behalf of mayors of cities that experienced a mass shooting in 2022. Despite that limitation on signatories, the letter was signed by nearly 70 *mayors*. In April of this year, a bipartisan group of 164 mayors in the Conference sent a letter to Congress urging quick action on gun safety legislation.<sup>16</sup>

Mass shootings are also particularly likely to involve large-capacity magazines. According to the expert evidence cited above, “100 percent of mass shootings resulting in more than 14 deaths involved [large-capacity magazines] holding more than 10 bullets.” Klarevas Decl. ¶ 13 (emphasis added); see *Oregon Firearms Fed’n*, 644 F. Supp. 3d at 801. Furthermore, according to a study submitted by a different expert, in “all mass shooting events resulting in four or more fatalities through 2019 where the magazine capacity was known, sixty percent involved large-capacity magazines.” *Id.* (citing Supplemental Declaration of Lucy P. Allen ¶ 26, *Duncan v. Bonta*, No. 3:17-cv-01017-BEN-JLB (S.D. Cal. Nov. 10, 2022), ECF No. 118-1). And between 2015 and 2022, “at least eight out of the 10 mass shooting incidents with the most casualties . . .

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<sup>15</sup> See Letter from U.S. Conf. Mayors to Charles Schumer, Majority Leader, U.S. Senate, and Mitch McConnell, Republican Leader, U.S. Senate (Dec. 5, 2022), <https://perma.cc/YX6U-HYJW>.

<sup>16</sup> See Letter from U.S. Conf. Mayors to U.S. Cong. (Apr. 19, 2023), <https://perma.cc/7Z6V-BWSZ>.

involved at least one firearm equipped with a high-capacity magazine.”<sup>17</sup> As the en banc Ninth Circuit recently explained in granting a stay of a district court order enjoining California’s restriction on large-capacity magazines, “mass shootings nearly always involve large-capacity magazines.” *Duncan v. Bonta*, No. 23-55805, 2023 WL 6588623, at \*2 (9th Cir. Oct. 10, 2023).

The Conference and its members have seen why large-capacity magazines are so popular with mass shooters. First, large-capacity magazines turn other weapons into even more formidable killing machines. For example, a Glock 19—the semiautomatic pistol used by a Tucson, Arizona, gunman in 2011 to shoot U.S. Rep. Gabrielle Giffords and nearly 20 other people, killing six—can be outfitted with an extended magazine that allows the shooter to fire off 33 shots in 15 seconds without having to reload.<sup>18</sup> Handguns with large-capacity magazines are also easily concealable, which explains their popularity among mass shooters. “Most mass shootings—81 percent—involved the use of at least one handgun, and . . . [a]t least 16 shooters used a handgun with a high-capacity magazine.”<sup>19</sup> The cities represented by

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<sup>17</sup> *Assault Weapons and High-Capacity Magazines*, Everytown Research & Policy (Apr. 28, 2023), <https://perma.cc/HR5C-2GVC>.

<sup>18</sup> See Lane DeGregory, *Glock 19: Quick, Light, Tough*, Tampa Bay Times (Jan. 14, 2011), <https://perma.cc/74A5-GHMX>.

<sup>19</sup> *Ten Years of Mass Shootings in the United States*, Everytown Research & Policy (Nov. 21, 2019), <https://perma.cc/5UJX-7AS8>.

the Conference's members have first-hand experience: Dylann Roof used a handgun to kill nine people at the Emanuel AME Church in Charleston, South Carolina; Robert Bowers used three handguns along with an assault-style rifle to kill 11 at the Tree of Life synagogue in Pittsburgh, Pennsylvania; and Omar Mateen used a handgun along with an assault-style rifle to kill 49 at the Pulse nightclub in Orlando, Florida.<sup>20</sup> Recognizing the lethality and terror inflicted by these readily available weapons in the United States, foreign terrorist organizations have repeatedly urged their adherents to take advantage of such easy access to commit terrorist attacks.<sup>21</sup> The threat has been a reality for mayors in Orlando, Florida; San Bernardino, California; and Chattanooga, Tennessee, among others.<sup>22</sup>

There are proven solutions that jurisdictions have adopted, such as D.C. Code

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<sup>20</sup> See Emily Shapiro, *Key Moments in Charleston Church Shooting Case as Dylann Roof Pleads Guilty to State Charges*, ABC News (Apr. 10, 2017), <https://perma.cc/KRH7-SF2P>; Reuters Staff, *Suspect in Pittsburgh Synagogue Massacre Faces More Charges*, Reuters (Jan. 29, 2019), <https://perma.cc/GP3L-N9B5>; Bart Jansen, *Weapons Gunman Used in Orlando Shooting Are High-Capacity, Common*, USA Today (June 14, 2016), <https://perma.cc/8TG9-BC8A>.

<sup>21</sup> See Adam Taylor, *The Islamic State Likes America's 'Dumb' Gun Laws, Defector Says*, Wash. Post (Aug. 4, 2016), <https://perma.cc/EU67-A6CY>; Nick Miroff, *ISIS Fighter with American Accent Urges Supporters to Take Advantage of U.S. Gun Laws*, Wash. Post (Dec. 27, 2017), <https://perma.cc/3DUA-SWER>.

<sup>22</sup> See Ralph Ellis et al., *Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance*, CNN (June 13, 2016), <https://perma.cc/A3HG-LLGF>; Faith Karimi et al., *San Bernardino Shooters 'Supporters' of ISIS, Terror Group Says*, CNN (Dec. 5, 2015), <https://perma.cc/3GJX-QN47>; Kristina Sgueglia, *Chattanooga Shootings 'Inspired' by Terrorists, FBI Chief Says*, CNN (Dec. 16, 2015), <https://perma.cc/MX83-ZRUP>.

§ 7-2506.01(b), that can save lives by restricting exactly those weapons and accessories that mass shooters are most likely to use. At the state level, “the rate of high-fatality mass shootings per capita was 2.3 times higher in states without [a large-capacity magazine] ban” than it was in States with such a ban.<sup>23</sup> And at the local level, cities like New York have seen success with the implementation of new firearms regulations aimed at curbing gun violence.<sup>24</sup>

The success of these regulations demonstrates the need for the kind of flexibility that *Bruen* contemplated. As the Conference and its partners have previously explained, “cities have adopted a range of approaches to confront the particular threats of gun violence that their communities face,” and “[t]his range puts in sharp focus ‘the theory and utility of our federalism as the States perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear.’”<sup>25</sup> This flexibility is particularly critical where cities face “novel” and “unprecedented societal concerns” like those posed by the problem of mass shootings. *Bruen*, 142 S. Ct. at 2132, 2134 (internal quotation marks omitted). In

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<sup>23</sup> Louis Klarevas et al., *The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017*, 109 *AJPH* 1754, 1758 (2019).

<sup>24</sup> See Brief of *Amici Curiae* Major American Cities, the United States Conference of Mayors, and Legal Community Against Violence in Support of Petitioners at 10–11, *D.C. v. Heller*, 554 U.S. 570 (2008) (No. 07-290).

<sup>25</sup> *Id.* at 11 (quoting *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring)) (alterations omitted).

addressing this problem, “data from cities and their varying approaches to municipal firearms regulation . . . show that cities need flexibility to craft locally tailored solutions to the particular threats and costs of gun violence that their residents face.”<sup>26</sup>

Plaintiffs-Appellants’ argument boils down to their view that large-capacity magazines cannot be regulated because they are “in common use” today. *See, e.g.*, Appellants’ Br. 23 (“The fact that Plus-Ten Magazines are commonly possessed . . . should end the *Bruen* inquiry here.”); *id.* at 32 (“[W]here a type of arm is in common use, there is by definition no historical tradition of banning.”). This is wrong factually and legally. First, as the District Court explained, the relevant question is not how many large-capacity magazines are *in circulation*, but how many are *used for lawful self-defense*. *See* RD28 at 15. Second, Plaintiffs-Appellants’ argument runs headlong into *Bruen*’s admonition that “dramatic technological changes may require a more nuanced approach” to firearms regulation. 142 S. Ct. at 2132. *Bruen* recognized a tradition going back to the Founding of governments regulating “dangerous and unusual weapons,” *id.* at 2128 (quoting *Heller*, 554 U.S. at 627), as those technologies emerged.

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<sup>26</sup> *Id.* at 12.

D.C. Code § 7-2506.01(b) fits within that tradition.<sup>27</sup>

Furthermore, Plaintiffs-Appellants' argument is illogical and proves too much. As Judge Easterbrook explained in his opinion upholding a Highland Park, Illinois, ordinance banning assault weapons and large capacity magazines when it was challenged less than a decade ago, “[d]uring Prohibition the Thompson submachine gun (the ‘Tommy gun’) was all too common in Chicago, but that popularity didn’t give it a constitutional immunity.” *Friedman v. City of Highland Park*, 784 F.3d 406, 408 (7th Cir. 2015). To the contrary, “relying on how common a weapon is at the time of litigation would be circular,” because it would imply that “the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn’t commonly owned.” *Id.* at 409. By Plaintiffs-Appellants’ logic, if a jurisdiction does not act immediately to ban a novel and dangerous weapon, thus permitting that weapon to enter into common use, then the jurisdiction can *never* ban the weapon. *See* Appellees’ Br. 26–27. This time-sensitive approach to regulation finds no basis in the

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<sup>27</sup> Plaintiffs-Appellants spend much of their brief arguing that large-capacity magazines were common both before and after the Founding. *See* Appellants’ Br. 34–44. As the District Court explained, however, that argument is factually incorrect. *See* RD28 at 28 (crediting expert testimony that there was “zero evidence in primary sources that large-capacity firearms were anything other than exotic curios in [the Founding] era” (internal quotation marks omitted)); *id.* (noting that “[h]igh-capacity firearms became more common in military settings in the second half of the 19th century, but they were still rare”); *see also* Appellees’ Br. 30–31 (“Such capacity may have *existed*, but the weapons were experimental, designed for military use, rare, defective, or some combination of these features before the adoption of the Fourteenth Amendment.” (internal quotation marks omitted)).

Constitution and is inconsistent with prudent governance.

If cities lose the flexibility to devise regulatory responses to new and dangerous threats, mayors and other local officials will be hamstrung in their ability to ensure public safety, while being left to manage the fallout of mass shootings when they inevitably occur. Mass shootings place substantial demands on cities' resources beyond the incalculable human toll that they exact. These resources are necessarily diverted from "essential public goods like education, workforce development, and . . . building healthier, safer, more sustainable communities."<sup>28</sup> A ruling in favor of Plaintiffs-Appellants would impair the ability of the Conference's members not only to protect their communities, but also to govern the cities for which they are responsible.

## **II. Regulatory Flexibility Is Necessary to Address Increases in Political Violence**

In addition to the unprecedented problem of mass shootings, the Nation has seen a startling surge in political and ideologically motivated violence. "From death threats against previously anonymous bureaucrats and public-health officials to a plot to kidnap Michigan's governor and the 6 January 2021 attack on the U.S. Capitol, acts

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<sup>28</sup> Thoughts and Prayers Are Not Enough: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Fin. Servs., 117th Cong. 1 (2022) (written testimony of Sarah Burd-Sharps, Senior Dir. Rsch., Everytown for Gun Safety Support Fund), <https://perma.cc/67SG-WJLS>.

of political violence in the United States have skyrocketed in the last five years.”<sup>29</sup>

This recent increase in political violence has myriad causes, but one of the most prominent is the rise of domestic extremists that harbor anti-government sentiment.<sup>30</sup>

Some of these extremists are disparate individuals who “self-radicalize via online engagement.”<sup>31</sup> Others coalesce in paramilitary groups or militant social movements that espouse conspiratorial, white supremacist, and misogynistic views.<sup>32</sup> All are a danger to our communities, and they demand nuanced policy responses from our civic leaders.

Political violence poses a threat to all Americans, regardless of where they reside: in addition to the direct losses that flow from violent acts, “political violence, *by design*, . . . creates harm and imposes costs on society well beyond the violent

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<sup>29</sup> Rachel Kleinfeld, *The Rise of Political Violence in the United States*, 32 J. Democracy 160, 160 (2021); see *Political Violence in Polarized U.S. at Its Worst Since 1970s*, Reuters (Aug. 9, 2023), <https://perma.cc/X4HG-SKWK>; *U.S. Grapples with Rising Threats of Political Violence as 2024 Election Looms*, PBS (Aug. 12, 2023), <https://perma.cc/EB4F-5Z3P>.

<sup>30</sup> See Laura Barrón-López & Saher Khan, *Far-Right Violence a Growing Threat and Law Enforcement's Top Domestic Terrorism Concern*, PBS (Sept. 5, 2023), <https://perma.cc/25UH-5QUT>.

<sup>31</sup> See Kleinfeld, *supra* note 29, at 160.

<sup>32</sup> See Alejandro J. Beutel & Daryl Johnson, Newsline Inst., *The Three Percenters: A Look Inside an Anti-Government Militia* 3 (2021), <https://perma.cc/4EQK-VG3U> (“The U.S. far-right milieu is not monolithic. It can be divided into at least five sections: racist extremism, namely white nationalism/supremacy; anti-government extremism; nativist extremism; anti-abortion extremism; and male supremacy.”).



incident itself.”<sup>33</sup> Researchers have concluded that “political violence deteriorates the functioning of government[] and its consequent ability to support the populace in three ways: (1) by deteriorating government systems necessary for daily living; (2) by weakening the public sector; and (3) by destroying democratic processes.”<sup>34</sup> The United States has experienced this deterioration in recent years: according to the 2023 Fragile States Index Annual Report, which ranks countries based on their level of stability, the United States “is by far the most worsened” among the world’s most democratic nations with respect to certain measures.<sup>35</sup> The Report noted that “[i]n 2022, amidst continued political polarization, gridlock, and brinksmanship, the United States had the highest number of mass shootings ever recorded in a single year.”<sup>36</sup>

While political violence affects us all, the burden is heavy for local governments. A recent report from the Office of the Director of National Intelligence found that militant violent extremists “typically target[] law enforcement

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<sup>33</sup> Andrew Blum, Democracy Fund, *The Costs of Political Violence in the United States* 11 (2021), <https://perma.cc/9Y2P-N7PP>.

<sup>34</sup> Cindy A. Sousa, *Political Violence, Collective Functioning and Health: A Review of the Literature*, 29 *Med. Conflict & Survival* 169, 184 (2013).

<sup>35</sup> Fund for Peace, *Fragile States Index Annual Report 2023*, at 11 (2023), <https://perma.cc/DE4W-98X4>.

<sup>36</sup> *Id.*

and government personnel and facilities.”<sup>37</sup> These include police officers, election workers, and other local officials.<sup>38</sup> Cities have also seen a rise in extremist activity targeting marginalized groups. These include publicly salient threats aimed at LGBTQ events,<sup>39</sup> as well as antisemitic marches by white supremacists and armed neo-Nazi groups,<sup>40</sup> but they also include less visible forms of violence, such as recent increases in hate crimes against Blacks, Latinos, and Asians.<sup>41</sup> The numbers with respect to some groups are particularly startling. According to reporting from large U.S. cities, for example, anti-Asian crimes rose 224 percent in 2021.<sup>42</sup> And in 2022, the

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<sup>37</sup> Off. Dir. Nat’l Intel., *Domestic Violent Extremism Poses Heightened Threat in 2021*, at 2 (2021), <https://perma.cc/5LFF-RN4Y>; see Fed. Bureau Investigation & Dep’t Homeland Sec., *Strategic Intelligence Assessment and Data on Domestic Terrorism* 40 (June 2023), <https://perma.cc/2Z7T-FCM7> (assessment from the Department of Homeland Security, Federal Bureau of Investigation, and National Counterterrorism Center that domestic violent extremists “pose a sustained threat of violence to the American public, democratic institutions, and government and law enforcement officials”).

<sup>38</sup> See, e.g., Cat Zakrzewski, *Election Workers Brace for a Torrent of Threats: ‘I KNOW WHERE YOU SLEEP’*, Wash. Post (Nov. 8, 2022), <https://perma.cc/F8SP-PVEE>.

<sup>39</sup> See, e.g., Odette Yousef, *31 Members of the White Nationalist Patriot Front Arrested near an Idaho Pride Event*, NPR (June 12, 2022), <https://perma.cc/L346-JWBX>.

<sup>40</sup> See, e.g., Adam Gabbatt, *‘Jews Will Not Replace Us’: Vice Film Lays Bare Horror of Neo-Nazis in America*, Guardian (Aug. 16, 2017), <https://perma.cc/9RQP-MZNE>.

<sup>41</sup> See Brian Levin et al., Ctr. Stud. Hate & Extremism, *Report to the Nation: 2020s—Dawn of a Decade of Rising Hate 2* (2022), <https://perma.cc/K7NW-P9AW>.

<sup>42</sup> *Id.*

Anti-Defamation League recorded more antisemitic attacks in the United States than ever before.<sup>43</sup>

The widespread availability of firearms with large-capacity magazines exacerbates the problem of political violence. Nowhere is this more apparent than at public events, where domestic extremists increasingly show up visibly armed. The presence of extremists can have dangerous consequences: according to a recent report that studied armed and unarmed demonstrations, “the presence of an armed person is correlated to more—not less—violence and destruction, and is a detriment to public safety and the right to organize, compared to demonstrations with unarmed participants.”<sup>44</sup> To put numbers on it, “armed demonstrations are nearly six times as likely to turn violent or destructive compared to unarmed demonstrations.”<sup>45</sup> Armed demonstrations are also more deadly: “A fatality was reported at approximately one out of every 2,963 demonstrations where no firearm was identified, compared to about one out of every 62 demonstrations where there was a firearm identified.”<sup>46</sup>

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<sup>43</sup> *U.S. Antisemitic Incidents Hit Highest Level Ever Recorded, ADL Audit Finds*, ADL (Mar. 23, 2023), <https://perma.cc/NW2T-JR8Y>.

<sup>44</sup> Armed Conflict Location & Event Data Project & Everytown for Gun Safety, *Armed Assembly: Guns, Demonstrations, and Political Violence in America* 4 (2021), <https://perma.cc/A9QL-WK3E>.

<sup>45</sup> *Id.* at 2 (emphasis omitted).

<sup>46</sup> *Id.* at 3.

And this increased violence is attributable not just to those who are armed, but also to *unarmed* individuals, indicating that “the presence of firearms at a demonstration can serve to escalate tensions in contentious contexts, *indirectly* contributing to a more dangerous environment.”<sup>47</sup>

Even when armed protests do not turn violent, they deter citizens from exercising their rights. This is intuitive for local officials, who have dealt repeatedly with the chilling effect that armed protestors have on participation in public events. In Sandpoint, Idaho, for example, a group of students organized a small protest against systemic racism.<sup>48</sup> According to the city’s mayor, counter-protestors appeared heavily armed “in full camo fatigues,” and “the paramilitary and other armed citizens quickly overwhelmed” the students.<sup>49</sup> Consistent with this anecdote, a recent study “found that participants were far less likely to attend a protest, carry a sign, vocalize their views, or bring children to protests if they knew firearms would be present.”<sup>50</sup> This was true regardless of participants’ political ideology or whether they themselves

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<sup>47</sup> *Id.* at 4.

<sup>48</sup> See, e.g., Kirk Siegler, *Are Paramilitary Extremists Being Normalized? Look to Idaho for Answers*, NPR (Oct. 17, 2020), <https://perma.cc/F54U-FWJK>.

<sup>49</sup> *Id.*

<sup>50</sup> Diana Palmer & Timothy Zick, *The Second Amendment Has Become a Threat to the First*, Atlantic (Oct. 27, 2021), <https://perma.cc/A98W-ZRVS>.

owned a gun.<sup>51</sup>

The stifling effects of guns are not limited to participation in peaceful protests. Recent years have seen a swell of armed activity in polling places, vote-count centers, public board meetings, and other centers of civic life.<sup>52</sup> As in the case of peaceful protests, this armed activity deters citizens from exercising their freedom of speech and assembly, and it also deters them from engaging in other core democratic functions, such as exercising their right to vote and to petition their government. Again, the academic literature is instructive on this point: a forthcoming article measured the chilling effects that firearms have on people's willingness to visit—and their feelings of safety regarding—several categories of public places.<sup>53</sup> Similar to the study above, the authors found that firearms had a chilling effect with respect to parks, open-air markets, and election centers, and they also found that this effect was

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<sup>51</sup> See *id.*; see also Timothy Zick & Diana Palmer, *The Next Fight Over Guns in America*, Atlantic (June 23, 2022), <https://perma.cc/65VB-RF37> (“When asked if they would attend a local rally on a topic they cared about if they knew some protest participants would be carrying firearms, 71 percent of survey participants said they were unlikely or very unlikely to attend.”).

<sup>52</sup> See, e.g., Jacob Knutson, *Election Officials: Armed “Vigilantes” Near Ballot Drop Box in Arizona*, Axios (Oct. 23, 2022), <https://perma.cc/CC7L-W565>; Danyelle Khmara & Clara Migoya, *Anti-Mask Protesters Storm Tucson School Board Meeting*, Ariz. Daily Star (Apr. 29, 2021), <https://perma.cc/Z6G7-BRJU>.

<sup>53</sup> See Darrell A.H. Miller et al., *Technology, Tradition, and “The Terror of the People,”* Notre Dame L. Rev. (forthcoming) (manuscript at 20-30), <https://ssrn.com/abstract=4521030> (last visited October 25, 2023).

significant for respondents who lived in gun-owning houses and non-gun-owning houses alike.<sup>54</sup>

## CONCLUSION

*Bruen* contemplated that state and local governments would retain the flexibility they need to address “dramatic technological changes” and “unprecedented societal concerns.” 142 S. Ct. at 2132. Large-capacity magazines implicate both of these considerations. D.C. Code § 7-2506.01(b) falls well within a historical tradition of regulating “dangerous and unusual weapons,” *id.* at 2128 (quoting *Heller*, 554 U.S. at 627), which *Bruen* recognized, and which dates to the Founding. Preserving this tradition is particularly important when it comes to large-capacity magazines, given how effective they are at killing and how likely they are to chill participation in civic life. The Conference urges the Court to bear in mind that local officials require certain regulatory tools if they are to stand a chance against the “novel modern conditions” they face. *Id.* at 2134 (internal quotation marks omitted).

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<sup>54</sup> *See id.* at 21–24, 27–29.

October 25, 2023

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this document complies with Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,955 words, exclusive of the portions of the brief that are exempted by Circuit Rule 32(e)(1) and Federal Rule of Appellate Procedure 32(f).

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/s/ Mary B. McCord

Mary B. McCord



**CERTIFICATE OF SERVICE**

I, Mary B. McCord, certify that on October 25, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: October 25, 2023

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