

No. 08-1521

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IN THE  
**Supreme Court of the United States**

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OTIS McDONALD; ADAM ORLOV;  
COLLEEN LAWSON; DAVID LAWSON;  
SECOND AMENDMENT FOUNDATION, INC.;  
AND ILLINOIS STATE RIFLE ASSOCIATION,  
*Petitioners,*

v.

CITY OF CHICAGO, *et al.*,  
*Respondents.*

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

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**BRIEF OF AMICUS CURIAE  
SAFARI CLUB INTERNATIONAL  
IN SUPPORT OF PETITIONERS**

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November 23, 2009

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## TABLE OF AUTHORITIES—Continued

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Responsive Management/National Shooting Sports Foundation, <i>The Future of Hunting and the Shooting Sports: Research-Based Recruitment and Retention Strategies</i> (Mark Duda ed., 2008) available at: <a href="http://www.responsive-management.com/download/reports/Future_Hunting_Shooting_Report.pdf">http://www.responsive-management.com/download/reports/Future_Hunting_Shooting_Report.pdf</a> (retrieved November 20, 2009).....	5
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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Safari Club International (“SCI”) is a nonprofit corporation incorporated in the State of Arizona, operating under §501(c)(4) of the Internal Revenue Code, with principal offices and places of business in Tucson, Arizona and Washington, D.C. and a membership of approximately 53,000. SCI’s missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI carries out its conservation mission through its sister organization, Safari Club International Foundation. SCI has long been involved in litigation and other advocacy efforts to promote hunting and conservation.

Many of the hunting activities in which SCI members regularly engage will be placed at risk if the Second Amendment is not incorporated against the states. SCI members hunt in accordance with federal, state, county and/or municipal statutes, regulations and ordinances. They hunt within the boundaries of cities and counties and on National Wildlife Refuges and other federal lands located within or in the vicinity of urban and suburban areas. They hunt with firearms that are often encompassed within firearms bans and must trans-

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<sup>1</sup> The following is provided pursuant to Supreme Court Rule 37. No counsel for a party authored this brief in whole or in part and no counsel for a party and no party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than named *amicus curiae* made a monetary contribution to this brief. Counsel of Record for Petitioner and Respondents consented to the filing of all *amicus curiae* briefs with proper notice, which the *amicus curiae* provided.

port these firearms to private and public hunting areas.

If local or even state authorities regulate firearms unconstrained by the Second Amendment, many of the hunting activities and opportunities that SCI members enjoy may become illegal, if not impossible. Whether the Second Amendment is incorporated against the states will not only govern the ownership, carriage and use of firearms, but will also heavily influence the ability of sportsmen and women to use those firearms.

In this *amicus* brief, SCI will “bring[] to the attention of the Court relevant matter not already brought to its attention by the parties.” Sup. Ct. R. 37(1). SCI seeks to provide information that will “be of considerable help to the Court.” *Id.* SCI will not be addressing the merits of the claims or legal arguments, especially as the two Petitioners, and possibly other *amici*, will more than adequately cover those areas. Instead, SCI files this amicus brief to describe the impact that the court’s ruling will have on the hunting community. In doing so, SCI will try to “provide important assistance to the court . . . [by] ‘explain[ing] the impact a potential holding might have on an industry or other group.’” *Neonatology Associates, P.A. v. Commissioner of Internal Revenue Service*, 293 F.3d 128, 132 (3rd Cir. 2002) (Alito, J.), quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J.App. Prac. & Process 279 (1999).

### **SUMMARY OF THE ARGUMENT**

The ability to bear arms is essential to the hunter. Whether the weapon of choice is a rifle, shotgun, muzzleloader or handgun, the Second Amendment

protects the ability to carry and use that weapon, including for hunting. In states that have no state constitutional right to bear arms provisions, or where such protections are weaker than the Second Amendment provides, the ownership, transportation and use of firearms for hunting are always at risk to potentially arbitrary whims and political agendas of city, county and/or state officials. Incorporation of the Second Amendment against the states is necessary to prevent bans and restrictions that could interfere with valued and beneficial hunting activities.

Americans participate in hunting activities throughout the United States, on public and private lands. Contrary to common perceptions, hunting is not confined to rural areas, but in fact is part of urban, suburban and rural recreation and wildlife management. Recreational hunting has been lauded by courts, presidents, and Congress and has repeatedly been recognized as a tool for wildlife management and conservation.

The case before the Court arose from a city's restrictions on the use of firearms. Similar bans and restrictions in other U.S. cities, townships, counties or even states could interfere with existing and future valuable hunting opportunities. Urban hunting opportunities are particularly vulnerable. Similarly, National Wildlife Refuge hunting in and near urban and suburban areas is at risk despite the fact that both Congress and the Executive branch have designated hunting a priority use of the National Wildlife Refuge System. Traveling with firearms to choice hunting areas could be made impossible by overly general and unnecessary weapons bans. The growing use of urban and suburban hunts for

managing wildlife overpopulations could similarly be thwarted by local firearms restrictions.

The impact of the Second Amendment is not limited to ownership and use of firearms. By practical extension, its protections facilitate hunting. As an *amicus curiae* SCI offers this brief to demonstrate the hunting implications of the question this Court will resolve. SCI asks this Court to rule in favor of the Petitioner and in so doing to issue a decision that will ensure consistency in the protections necessary for the continued enjoyment of hunting.

## ARGUMENT

### **A. Without Incorporation of the Second Amendment Through the Fourteenth Amendment, the States Will be Free to Unduly Restrict Firearm Use**

The Court should incorporate the Second Amendment through the Fourteenth Amendment so that the Second Amendment applies to the states. Without incorporation, individual state constitutional provisions are all that protect hunters from those who seek to limit or restrict the possession, carriage and use of the firearms necessary for hunting. Six states, including California, Iowa, Maryland, Minnesota, New Jersey and New York, have no state constitutional protections of the right to keep and bear arms. Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 Texas Rev. L. & Pol. 191, 193-205 (2006). Other states offer only conditional or limited protections. For example, the Massachusetts' Constitution provides that "[t]he people have a right to keep and to bear arms for the common defence." MASS. CONST. pt. I, art. XVII (1780). Massachusetts courts have interpreted that provision to protect only a

collective right to bear arms. *Com. v. Davis*, 343 N.E.2d 847, 849 (Mass. 1976) (“the declared right to keep and bear arms is that of the people, the aggregate of citizens.”) Illinois’ constitutional provision subjects the right to keep and bear arms to restrictions authorized through the state’s police power. ILL. CONST. art. 1, §22 (1970) (“Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”). Without the consistency that incorporation of the Second Amendment against the states will bring, individuals who hunt in states or travel with hunting firearms through states without protections or with limited protections could suffer diminished or lost ability to own, carry and use their firearms for hunting.

### **B. Regardless of Their Intent, Firearms Bans Affect the Firearms Hunters Use**

Laws designed to restrict firearms may not intentionally focus on the firearms hunters use, but can easily sweep them into their reach. Handguns are a frequent target of firearms restrictions. A significant number of hunters hunt with handguns. Safari Club International has an entire chapter of members who hunt with handguns. A survey of active hunters indicated that 69% used rifles, 55% used shotguns, 13% used muzzleloaders, and 8% used handguns for their hunting activities. Responsive Management/National Shooting Sports Foundation, *The Future of Hunting and the Shooting Sports: Research-Based Recruitment and Retention Strategies*, 13 (Mark Duda ed., 2008) available at: [http://www.responsivemanagement.com/download/reports/Future\\_Hunting\\_shooting\\_Report.pdf](http://www.responsivemanagement.com/download/reports/Future_Hunting_shooting_Report.pdf) (retrieved November 20, 2009). With over 12 million hunters

nation-wide, over a million handgun hunters could be affected by overzealous state and local legislators.

Another frequent target of gun control is military-style semi-automatic rifles, some of which are popular hunting firearms. The defunct 1994 federal gun ban targeted these sporting rifles, as do some current state gun laws. See Public Safety and Recreational Firearms Use Protection Act, Pub. L. 103-322, Title XI, Subtitle A (1994) (codified as amended in scattered sections of 18 U.S.C.) (expired due to sunset provision on September 13, 2004). When these types of gun bans are considered, legislators and gun control advocates fail to understand or acknowledge that many hunting rifles are military-style firearms. Dick Metcalf, *A Reasoned Look at the AR-15 Question*, *The Outdoor Wire*, March 2, 2007, [http://www.theoutdoorwire.com/archived/2007-03-02\\_tow.html](http://www.theoutdoorwire.com/archived/2007-03-02_tow.html) (retrieved November 19, 2009) (“Virtually every type of center fire hunting and sporting rifle in existence started off as a military weapon”). Bolt-action hunting rifles are direct descendants of the 1898 Mauser and 1903 Springfield, which were the preeminent military rifles during World War I. National Shooting Sports Foundation, *The American Rifle*, <http://nssf.org/msr/history.cfm> (retrieved November 19, 2009); see also Dave Anderson, *50 Years of Sporting Rifles*, *Guns Magazine*, May 2005, [http://findarticles.com/p/articles/mi\\_m0BQY/is\\_5\\_51/ai\\_n13469642/](http://findarticles.com/p/articles/mi_m0BQY/is_5_51/ai_n13469642/) (retrieved November 19, 2009) (“Even 50 years ago the Model 70 was hardly a new design—its features derive from the 1898 Mauser and 1903 Springfield.”). Additionally, semi-automatic hunting rifles were popularized after the use of the M1 Garand by U.S. troops during World War II. *American Rifle*. Currently, one of the best selling semi-automatic sporting rifles is the AR-15, which is modeled after the modern M-16 used by

the U.S. military since Vietnam. *American Rifle; Metcalf* p.1. When state or local officials pass gun control laws, popular hunting firearms are inevitably encompassed within those controls and hunters are hurt. The incorporation the Second Amendment against the states would provide an additional check on the adoption of such improvident laws.

**C. Hunting Activities, at Risk from the Absence of Second Amendment Protections, are Beneficial as a Tool for Recreation, Wildlife Management and Conservation**

As discussed in the following Sections, the failure to incorporate the Second Amendment against the states would allow if not embolden state and local governments to increase regulation of gun ownership, use, and transport. This increased gun control would interfere with and discourage legal and beneficial hunting activities. A failure to incorporate would undermine conduct that is of great value to society and to the environment. Hunting plays a strategic role in wildlife management and conservation in the United States and throughout the world. Courts, presidents, state legislatures and federal agencies have acknowledged these benefits of hunting.

Many states have formally acknowledged hunting's benefits by adopting constitutional provisions that protect the right to hunt. VT. CONST. ch. II, § 67 (1777) ("The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly."); MINN. CONST. art. 13, § 12 (1998) ("Hunting and fishing and the taking of game and

fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good.”); LA. CONST. art. 1, § 27 (2004) (“The freedom to hunt, fish, and trap wildlife, including all aquatic life, traditionally taken by hunters, trappers and anglers, is a valued natural heritage that shall be forever preserved for the people.”); ALA. CONST. art. 1, § 36.02 (1996) (“All persons shall have the right to hunt and fish in this state in accordance with law and regulations.”).

Numerous state legislatures have codified statements about the social and environmental benefit that hunting brings to their human and wildlife populations and state resources. Several states have adopted laws recognizing hunting as a recreational, wildlife management and conservation tool. Arkansas and Illinois, for example, describe hunting as “an essential component of effective wildlife management, in that it is an important tool for reducing conflicts between people and wildlife and provides incentives for the conservation of wildlife, habitats, and ecosystems on which wildlife depend[.]” ARK. CODE ANN. § 15-41-302(5) (2005); 520 ILL. COMP. STAT. 30/5(5) (2005); *see also* MD. CODE ANN., NAT. RES. § 10-212(a)(5) (2005) (declares that hunters are the foremost supporters of sound wildlife management and conservation practices in the United States, hunters and hunting organizations provide direct assistance to wildlife managers and enforcement officers, and hunting is an effective component of effective wildlife management and provides incentives for the conservation of wildlife, habitats and ecosystems). Colorado law directs that the state shall “[a]llow sport hunting, trapping, and fishing as a wildlife management tool and as the primary method

of affecting a necessary wildlife management on lands under the control of the division of parks and outdoor recreation.” COLO. REV. STAT. ANN. § 33-10-101(2)(e) (2009). Louisiana describes hunting of migratory waterfowl as a “most valuable asset,” LA. REV. STAT. ANN. § 56:151 (2008), and Louisiana’s Hunting and Fishing Advisory Education Council, established by state statute, is tasked “to promote the many benefits of hunting and fishing among Louisiana citizens and to educate the citizens of the state on those benefits.” *Id.* § 56:699.21(A) (2008). Georgia’s legislature notes the “important role that hunting and fishing and the taking of wildlife play in the state’s economy and in the preservation and management of the state’s natural communities.” GA. CODE ANN. § 27-1-3 (2009).

State courts have similarly recognized the beneficial role that hunting plays. For example, the Supreme Court of the State of Connecticut acknowledged hunting as a habitat and wildlife management tool:

regulated hunting [is] the most cost efficient, effective means of controlling the deer population, according to the collective experience of the fifty states. . . . Hunting also helps to control the population of geese, coyotes and a variety of small game.

*State v. Ball*, 796 A.2d 542, 553 (Conn. 2002). The Maine Supreme Court addressed this issue in a tax case. The Court first observed that “the experience of the Department has been that, unless the deer herd in a given sanctuary or preserve is periodically reduced, the animals tend to increase to a point where the food supply is insufficient, resulting in the starvation of some animals . . . .” *Holbrook Island*

*Sanctuary v. Inhabitants of Town of Brooksville*, 214 A.2d 660, 664 (Me. 1965). The Court then denied a charitable tax designation for a private “game preserve” where hunting was prohibited because the government biologist deemed such conditions harmful to the wildlife. *Id.* at 666. *See also Wisconsin v. Herwig*, 117 N.W.2d 335, 337 (Wisc. 1962) (“hunting regulations in the interest of conservation may be enacted in the exercise of the police power.”); *State Game & Fish Comm’n v. Gill*, 538 S.W.2d 32, 36 (Fogleman, J. dissenting) (Ark. 1976) (“The evidence also shows that hunting is necessary to maintain the proper population balance as a conservation measure.”).

Both the federal executive and legislative branches have recognized the significance of hunting. President Clinton designated hunting as a priority public use of the National Wildlife Refuge System. Exec. Order No. 12966, 61 Fed. Reg. 13647 (March 25, 1996). The National Wildlife Refuge System Improvement Act designates hunting as one of six *priority* public uses of the system. 16 U.S.C. § 668dd(a)(3)(C) (1998) (“compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management”); *id.* § 668ee(2) (listing “hunting” first in the definition of “wildlife-dependent recreational uses”).

The U.S. Fish and Wildlife Service (“Service”), in charge of the National Wildlife Refuge System, has established, in public documents dealing with the environmental impact of refuge hunting opportunities, that hunting serves to control wildlife populations and to improve habitat. For example, the Service described the potential impact to refuge habitat

on a Maine National Wildlife Refuge if the unit terminated deer and goose hunting:

A lack of hunting on the refuge diminishes the Refuge's ability to manage wildlife populations. Wildlife habitats susceptible to damage, such as native wetlands and marshes, would continue to be overgrazed by increasing numbers of resident Canada geese, resulting in increasingly degraded habitat for black ducks, green-winged teal, and other ducks, as well as sora, Virginia rail, and other waterbirds (Haramis and Kearns 2000). Likewise, an increased local deer population to a density of 15-20 deer per square mile would likely negatively affect forest regeneration, resulting in degradation of habitat for woodcock, chestnut-sided warbler, and other migratory birds that use regenerating forest, . . . .

Amended Environmental Assessment, Public Hunting on Moosehorn NWR, April 2007, p. 28. <http://www.fws.gov/northeast/pdf/moosehorn.pdf> (retrieved November 12, 2009). In analyzing the cumulative impact of hunting on refuges throughout the National Wildlife Refuge System, the Service recognized benefits not only to individual refuges, but to wildlife habitat generally, both on and off the refuge system. The analysis also recognized that, because hunting improves habitat and wildlife health, it leads to enhanced recreational opportunities for hunters and non-hunters.

The control of hunted deer populations, considered collectively with similar wildlife management efforts on numerous refuges throughout the National Wildlife Refuge System, conserves the cumulative health of the habitat of the flyway in which the refuge is located and migratory birds

that utilize that flyway. The prevention of browse lines and other habitat degradation is beneficial for ground nesting and lower arboreal nesting birds. *Similarly, the benefits that hunting brings to each refuge improves the entire refuge system's available habitat and native wildlife populations and also provides the public generally with more valuable and diverse refuge recreational opportunities of all kinds.*

Environmental Assessment, Activities on Portions of Big Oaks National Wildlife Refuge as Described in the Hunting and Fishing Plan, Final, p. 24 (April 27, 2007) (emphasis added) *available at* <http://www.fws.gov/midwest/Refuges/huntEAs/BigOaksEA.pdf> (retrieved November 18, 2009).

Federal law has also made hunting an essential component of the financial aspect of wildlife and habitat management and conservation throughout the United States. The Federal Aid in Wildlife Restoration Act directs a portion of the excise tax on sporting arms and ammunition to the states to finance approved projects involving wildlife habitat, introduction of wildlife onto habitat, and wildlife research. 16 U.S.C. § 669 *et seq.* (1937). Under the Federal Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. § 718 *et seq.* (1934), “duck stamps” serve as the license for hunting migratory waterfowl and the means of funding the conservation of those waterfowl, generating over \$700 million for wetland conservation and migratory bird habitat. *State of the Birds*, p. 20 (2009) [http://www.stateofthebirds.org/pdf\\_files/State\\_of\\_the\\_Birds\\_2009.pdf](http://www.stateofthebirds.org/pdf_files/State_of_the_Birds_2009.pdf) (retrieved November 12, 2009).

Anything that interferes with such hunting opportunities and activities not only harms an important

recreational pursuit, but the management and conservation benefits that flow from hunting.

**D. Without Second Amendment Protections, Arbitrary Firearms Controls Could End Valuable and Beneficial Hunting Practices, Including in Urban and Suburban Areas**

Inadequate protection of the right to bear arms threatens all types of hunting, but urban and suburban hunting may face the greatest risk. A common misperception is that hunting is only a rural activity. To the contrary, a significant percentage of hunting takes place in suburban areas and often within city limits. In fact, a Respondent in this case, the City of Chicago, allows hunting within its limits. Chi. Mun. Code §8-24-050 (1990). In states that lack their own state constitutional versions of the Second Amendment, or inadequate protections, these urban hunting opportunities are vulnerable to the whims of municipal officials who may fail to understand or appreciate the recreational values and the wildlife management role that hunting plays in the urban setting.<sup>2</sup>

California is one state that lacks any constitutional protections for the ownership, carriage or use of firearms. Hunting that currently takes place within city limits could easily be undermined by arbitrary bans

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<sup>2</sup> Although this brief focuses on the potential for local governments to impose limitations on firearms in the absence of Second Amendment protections, SCI does not mean to suggest that state governments could not or would not impose similar restrictions on a statewide basis. States like California, Minnesota, Iowa, New York, New Jersey and Maryland could utilize their freedom from incorporation to impose broad and unreasonable restrictions on firearms ownership, transportation and use.

or restrictions on the use or carriage of firearms. For example, the City of San Diego currently permits waterfowl hunting (ducks, geese, coots/gallnules and common snipe) for California state licensed hunters in specifically designated areas of lakes within the city limits. San Diego also allows turkey hunting in identified areas. San Diego City Lakes and Recreation, <http://www.sandiego.gov/water/recreation/waterfowl.shtml> (retrieved November 19, 2009). San Diego also authorizes the City, through the City Manager, to designate property of the water impounding system for the purpose of hunting. San Diego, Cal., Code § 67.0303 (2000), and to issue permits for hunting in those areas. *Id.* § 67.0305 (2000). The Code further states that the City Council has authority to issue permits or designate areas where firearms can be operated legally within city limits. *Id.* § 53.10 (e) and (f) (1964). Without Second Amendment protections, arbitrary bans or restrictions on the use of firearms could make these valued hunting opportunities impossible, if not illegal.

Iowa is another state lacking a constitutional right to bear arms. Consequently, Iowa hunters' opportunities to participate in hunts within city boundaries are left to the authority of municipal government officials. For example, the city of West Des Moines, Iowa allows hunting, with firearms, for deer, turkey and migratory waterfowl on certain private property with the permission of the owner, within the city limits. West Des Moines, Ia., Code § 5-2-30A (2009). Hunters in urban areas of Massachusetts, where only limited protections apply, could suffer a similar fate. Many cities in Massachusetts offer hunting opportunities. Revere, for example, allows game hunting with a shotgun within city limits. Revere, Mass., Code § 9.20.010 (2007). All these hunting opportuni-

ties could fall or be made impossible by firearms bans or restrictions.

In addition to its recreational and sustenance value, hunting is gaining recognition as a wildlife management tool in urban and suburban areas. State and local fish and game authorities are using urban and suburban managed hunts with increasing frequency to reduce overpopulations of deer (and other wildlife) in and near residential areas. Hunts are designed to reduce the incidence of vehicle/deer collisions, limit property damage caused by deer browsing on residential plantings, lessen the incidence of lyme disease spread by deer ticks, and improve deer herd health where malnutrition and disease are the product of deer exceeding the carrying capacity of available habitat.

Hunters are being called upon to assist state and local officials in culling deer populations on public and private land. In some areas, hunters have participated in deer management as volunteer sharpshooters. In Watchung Reservation in Union County and the South Mountain Reservation in Essex County, New Jersey, volunteer sportsmen participate as agents of wildlife management authorities to reduce the counties' deer populations. Hunters who qualify, based on marksmanship proficiency, cull deer outside of traditional harvest seasons. New Jersey Community Based Deer Management (2009), <http://www.njfishandwildlife.com/cbdmp.htm> (retrieved November 17, 2009).

Other communities have dealt with deer overpopulations by opening up new hunting areas or seasons, increasing harvest limits and/or lengthening hunting seasons to encourage recreational hunters to increase their take of deer. In densely populated or

urban areas, state and local wildlife management authorities have often turned to controlled hunts to manage their deer populations.

Controlled deer hunts are an alternative management technique in areas where people find traditional sport hunting intrusive, or where specific objectives of the landowner/manager require limited or directed hunter activity. Controlled deer hunts limit hunters to a modified season which is usually more restrictive than traditional hunting in terms of hunter density, methods of take, and size of huntable area than do deer hunting seasons in surrounding areas.

An Evaluation of Deer Management Options, North-east Deer Technical Committee, May 2009, p. 23, [http://www.dec.ny.gov/docs/wildlife\\_pdf/Deermgtopt08.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/Deermgtopt08.pdf) (retrieved November 17, 2009). The New York State Department of Environmental Conservation endorses controlled hunting for deer management in urban or suburban areas:

The effectiveness and public acceptance of hunting as a deer management program can be increased through controlled hunts, particularly in areas where traditional hunting is impractical due to housing density, local laws, or restricted land access. Controlled hunts can be tailored to meet a variety of local conditions. Marksmanship requirements and restrictions on who may hunt, hunting methods, hunting times and locations, and the sex, age and number of deer to be taken are often employed.

A Citizen's Guide to Management of White-Tailed Deer in Urban and Suburban New York, New York State Department of Environmental Conservation,

2007, p. 9; [http://www.dec.ny.gov/docs/wildlife\\_pdf/ctguide07.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/ctguide07.pdf) (retrieved November 17, 2009).

Despite the support for hunting offered by state wildlife managers, local firearms bans can make it impossible for members of the hunting community to participate in important wildlife management efforts. Without Second Amendment protections consistently extended throughout the country, those who wish to restrict and control the ownership, carriage and use of firearms can, purposely or not, also sabotage reasonable wildlife management strategies.

#### **E. Bans or Restrictions on Firearms Could Interfere With Federal Hunting Priorities**

The risks to hunting on state, local, and private lands extend to federal lands. As discussed in Section C above, by federal statute and Executive Order, hunting has been designated a priority use for the refuges of the National Wildlife Refuge System. There are over 300 hunting programs on National Wildlife Refuges throughout the country.

Several National Wildlife Refuges have lands within the boundaries of one or more cities and provide hunting opportunities within city limits. Some of these refuges are located in states that do not provide constitutional protections for the right to bear arms. Minnesota Valley National Wildlife Refuge, for example, has lands located within Shakopee, Savage and Carver city limits in Minnesota. The refuge provides hunting opportunities in each of the three cities. Hunting with firearms is permitted in the Savage City and Carver City portions of the refuge. Currently, Savage City's municipal code permits the use of firearms for purposes including hunting on National Wildlife Refuge land. Savage

City, MN., Code § 132.03(I)(1990). The Carver City Code also authorizes the use of firearms within city limits with city issued permits. Carver City, MN., Ordinances ch. 11, §1105.03 (2007). Without incorporation of the Second Amendment against the states, the cities that are the home to Minnesota Valley NWR's deer, waterfowl, small game and turkey hunting opportunities, could impose additional restrictions or bans on firearms that could interfere with refuge hunting opportunities presently allowed within city limits. Firearm restrictions and/or bans could make it difficult, if not impossible, for hunters to take advantage of the very hunting opportunities that Congress and the President prioritized.

Loss of hunting on refuges within city limits is a small part of a potentially larger problem—the interference with hunting opportunities on federal lands. National Wildlife Refuges are in every state, and most major U.S. cities are no more than one hour's drive from a National Wildlife Refuge. Welcome to the National Wildlife Refuge System (2009), <http://www.fws.gov/refuges/about/welcome.html> (retrieved November 18, 2009). Refuges are not the only federal lands where hunting is welcome. Hunting opportunities exist on the vast federal land holdings of the Bureau of Land Management, National Park Service and Forest Service, among other agencies. If cities, townships, counties and states have free reign to interfere with the right to bear arms, hunters who want to take advantage of the wealth of hunting opportunities on federal lands may be unable to obtain a firearm or transport it to their chosen hunting location.

### **F. Firearms Restrictions Can Inhibit the Transportation of Hunting Equipment**

State or locally imposed restraints on the right to keep and bear arms can make it very difficult for the traveling hunter to comply with the law and can result in serious penalties for violations. Varying restrictions between the laws of different jurisdictions make travel with hunting firearms complicated if not impossible. A hunter who lives in one area but seeks to hunt in another might be required to transport his firearm through a variety of jurisdictions. Even the local police can have a difficult time properly enforcing these laws. *Revell v. Port Authority of New York and New Jersey*, 321 Fed.Appx. 113, 115 (3rd Cir. 2009) (Plaintiff en route to Pennsylvania was arrested for transporting a pistol and hollow-point bullets through Newark Airport. Charges against the accused were dismissed.).

A federal law designed to address this problem reveals that Congress has recognized that this concern is real and could become worse. Unfortunately, the law does not alleviate all the problems the traveling hunter might face. To help hunters and gun owners deal with the patchwork of state and local gun laws, Congress enacted the Firearms Owner Protection Act (FOPA) in 1986. This act states:

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such

firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: Provided, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

18 U.S.C. § 926A (1986).

The FOPA was specifically designed to help protect sportsmen traveling between states from inadvertently violating one or more laws within the complicated patchwork of state and local firearms provisions. 131 Cong. Rec. S9116 (daily ed. July 9, 1985) (statement of Senator Hatch). While the FOPA does provide some protections to hunters who travel with firearms, the law does not go far enough to protect the fundamental right to keep and bear arms. The FOPA only allows a hunter to transport his firearm “from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm.” *Id.* This law was intended to provide adequate protection for interstate transport of firearms. In practice, the FOPA's protections have not met that expectation. The Department of Justice has interpreted this law to protect a person traveling with a firearm through a state only if that person makes no stops during transit. Letter from the Department of Justice letter to Congressman Young (February 18, 2005) [http://www.handgunlaw.us/documents/doj\\_doc\\_nyc\\_air.pdf](http://www.handgunlaw.us/documents/doj_doc_nyc_air.pdf) (retrieved, November 17, 2009) (describing how firearms must be transported without any interruption

in the transportation). For many hunters, this protection would be insufficient. A hunter who travels with a firearm through several states on his way to hunt could potentially violate state or local laws by simply stopping to visit relatives or making a side-trip unrelated to his travel. Once the hunter stops for any sort of detour, he or she risks losing the protections of the FOPA. The incorporation of the Second Amendment would provide additional protection to the hunter who wants to make an interstate hunting trip without having to observe unnecessary and arbitrary firearm possession restrictions along the way.

The FOPA also provides no protection for the hunter who wishes to travel intrastate. The Department of Justice, a federal court, and the Massachusetts Attorney General agree that the FOPA applies only to the *interstate* transport of firearms. Department of Justice Letter at 2 (encouraging state and local authorities to continue to enforce their firearms laws); *Coalition of New Jersey Sportsmen v. Florio*, 744 F.Supp. 602, 610 (D.N.J 1990) (court held that the FOPA does not apply to the intrastate transport of firearms); 1986-87 Mass. Op. Atty. Opinion No. 4 p.3, 1986 WL 288992 (1986) (“Thus, the Massachusetts resident leaving the state, returning, or traveling within its borders, must comply with all state regulations.”). Without Second Amendment incorporation, hunters traveling from one part of a state to another are not protected from inadvertently violating city or other local restrictions on the possession and carriage of hunting firearms.

**CONCLUSION**

*Amicus Curiae* Safari Club International requests that this Court reverse the ruling of the Seventh Circuit and declare that the Second Amendment must be incorporated against the states. Only with such a ruling can hunters be better assured that they will not face unnecessary and inappropriate restrictions on their ability to own, carry and use their hunting firearms. Only with such a ruling can hunters rest easier that they will not face detrimental obstacles to their participation in beneficial hunting activities on state, federal and private land.

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November 23, 2009