

No. 08-1521

In The
Supreme Court of the United States

OTIS McDONALD, *ET AL.*,
Petitioners,

v.

CITY OF CHICAGO, *ET AL.*,
Respondents.

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

**BRIEF OF AMICI CURIAE
STATE LEGISLATORS
IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses?

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**STATEMENT OF INTEREST OF
AMICI CURIAE STATE LEGISLATORS**

Amici Curiae are 891 individual State Government officials from all 50 States.¹ As State officials, we seek the assistance of this Court in securing the fundamental rights of our constituents and resolving ongoing uncertainty over the validity of State legislation regulating firearms.

Since this Court affirmed the fundamental right of the individual to keep and bear arms in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), the States have been plagued by uncertainty surrounding the validity of their various ordinances and regulations on individual possession and use of firearms. In many instances, this uncertainty has impeded our ability to legislate.

In fact, we and many of our colleagues are reluctant to review, draft, or enact laws that impact this fundamental right, without interpretative guidance from this Court. Although we have no doubt that this fundamental individual right,

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, or its counsel, made a monetary contribution to its preparation or submission. The *Amici* have given the parties at least ten days notice of their intention to file this brief.

A list of the *Amici Curiae* State Legislators is provided in the Appendix of this brief. *Amici* submit this brief in their individual capacities, not on behalf of any State Government itself, but their views are informed by their experiences as State officials, and their interest in Federal and State Government institutions.

embodied in the Second Amendment of the United States Constitution,² is incorporated as against the States by the Fourteenth Amendment of the United States Constitution,³ this Court should use this case to confirm incorporation now.

The reasons set forth in *Heller* and Fourteenth Amendment jurisprudence show that incorporation of the Second Amendment is both necessary and logical for preserving the exercise of this individual fundamental right against State action that impermissibly encroaches on it. By incorporating the Second Amendment, this Court will assist State Legislators, who need to determine the appropriate boundaries for the exercise of the States' Police Powers to regulate firearms. For these reasons and those below, we respectfully submit this brief in support of the Petitioners' brief and the briefs of the many *amici curiae* that advocate incorporation in this case. The sooner the Court confirms incorporation, the sooner State Legislators can get on with determining the permissible scope of legislation regulating individual possession and use of firearms.

² "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S. CONST. amend. II.

³ "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;...." U.S. CONST. amend. XIV, §1.

SUMMARY OF ARGUMENT

It will do no harm to our system of federalism for this Court to find the Second Amendment incorporated as against the States by the Fourteenth Amendment under either or both of the Due Process Clause or the Privileges or Immunities Clause. The balance between Federal and State Government was carefully crafted to preserve individual liberties against tyranny, not serve as an excuse for erosion of the people's fundamental rights. The United States Court of Appeals for the Seventh Circuit should be reversed and this Court should declare unconstitutional the City of Chicago's and Village of Oak Park's bans on handguns. The other challenged ordinances should be remanded for scrutiny in light of this Court's incorporation ruling. This will provide a springboard for clarifying the States' permissible regulatory role.

More than two centuries passed before *Heller* presented this Court with the opportunity to illuminate the fundamental nature of the individual right to keep and bear arms embodied in the Second Amendment. For most of our Nation's history, that question had not presented itself because the States rather than the Federal Government are most active in the regulation of individual possession and use of firearms (*Heller*, 128 S. Ct. at 2816); and for most of that time the Bill of Rights, including the Second Amendment, was not thought to apply to the States. *Id.*

Now that the Court has found in the Second Amendment a fundamental individual right, the unresolved question of incorporation casts a

shadow on the validity of existing State regulations of firearms. Until the incorporation question is put to rest, the lower courts are reluctant to explore the permissible boundaries of State regulation as demonstrated in this case. Just as the number of State and local ordinances regulating individual firearm ownership and use has continued to increase, so too has the necessity for constitutional interpretation increased in light of *Heller*. The sooner that work is begun, the sooner clarity will return to the permissible scope of State regulation in this area.

Incorporation of this fundamental right thus begs affirmation by this Court now. Both the United States Courts of Appeals for the Second⁴ and Seventh⁵ Circuits in addressing the issue of incorporation found that they were bound by *Presser v. Illinois*, which ruled that the Second Amendment applies only to limitations the Federal Government seeks to impose on the right to keep and bear arms. 116 U.S. 252, 265 (1886). Even though the courts below noted that the persuasive authority of that early precedent had diminished and that *Heller* might be read to question the continuing validity of such early rulings on incorporation,⁶ they chose to defer to this Court for guidance.⁷

⁴ *Maloney v. Rice*, 554 F.3d 56 (2d Cir. 2009), *petition for cert. filed*, (No. 08-1592).

⁵ *National Rifle Ass'n of America, Inc., et al. v. City of Chicago, Illinois, and Village of Oak Park, Illinois*, 567 F.3d 856 (7th Cir. 2009), *cert. granted*, (No. 08-1521), and *petition for cert. filed*, (No. 08-1497) (hereinafter *NRA v. Chicago*).

⁶ The Second Circuit found:

Neither the United States Courts of Appeals for the Second nor the Seventh Circuit spoke to the merits of incorporation in either *Maloney v. Rice*, 554 F.3d 56 (2d Cir. 2009), or *National Rifle Association of America, Inc., et al. v. City of Chicago, Illinois, and Village of Oak Park, Illinois*, 567 F.3d 856 (7th Cir. 2009). Instead, these courts faithfully followed their views of this Court's Nineteenth Century precedent and ignored subsequent rulings of the Court that are more hospitable to incorporation. In contrast, a panel of the United States Court of Appeals for the Ninth Circuit in *Nordyke v. King* found that not all avenues to incorporation had been considered or rejected in those early precedents. 563 F.3d 439 (9th Cir. 2009).

to the extent that *Heller* might be read to question the continuing validity of [incorporation], we “must follow *Presser*” because “[w]here, as here, a Supreme Court precedent ‘has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions.’”

Maloney, 554 F.3d at 59, (quoting *Bach v. Pataki*, 408 F.3d 75, 86 (2d Cir. 2005)). The Seventh Circuit agreed with the Second Circuit that “*Cruikshank*, *Presser*, and *Miller* still control even though their reasoning is obsolete.” *NRA v. Chicago*, 567 F.3d at 857.

⁷ Compare *Nordyke v. King*, holding that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against the States and local governments because, among many reasons, “the right to keep and bear arms is ‘deeply rooted in this Nation’s history and tradition.’” 563 F.3d 439, 457 (9th Cir. 2009), *rehearing en banc ordered*, 575 F.3d 890 (9th Cir. 2009) (No. 07-15763) (declaring panel opinion was not to be cited as precedent by or to any court of the Ninth Circuit).

The *Nordyke* panel, applying the Court's modern Fourteenth Amendment jurisprudence, correctly found incorporation, holding that *Heller* and the history of the Second Amendment demonstrate the fundamental character of the individual right to keep and bear arms. *Nordyke*, 563 F.3d at 451-57. Because this fundamental right embodied in the Second Amendment is "deeply rooted in this Nation's history and tradition," the panel found incorporation is warranted under this Court's approach to selective incorporation within the Due Process Clause. *Id.* at 475. The *Nordyke* panel, the only federal court to address the issue on the merits, got it right: selective incorporation is the simplest and easiest way to accomplish that which the Framers of both the Second and Fourteenth Amendments intended. *Nordyke* provides the crucial guideposts for this Court to follow in finding incorporation.

Incorporation by way of the Privileges or Immunities Clause provides an independent basis to reach the same result. The Court's historic precedent under this clause should not be construed in a manner to compromise the fundamental rights of United States citizens. There is room in these early precedents, particularly in light of the Court's modern decisions, to find incorporation under the Privileges or Immunities Clause as well.

This Court may choose either method of incorporation, or both, but either way incorporation should be the result. *Heller* illuminated the Second Amendment and it is time for the Fourteenth Amendment jurisprudence to catch up so that State Legislators and the courts can begin interpreting

the permissible regulatory role of the States in the individual exercise of this fundamental right.

ARGUMENT

I. INCORPORATION OF THE SECOND AMENDMENT AGAINST THE STATES BY THE FOURTEENTH AMENDMENT DOES NO HARM TO OUR FEDERAL SYSTEM.

Regulation of firearms is generally divided between the Federal Government's exercise of its Commerce Power and the States' exercise of their Police Powers. This Court held in *United States v. Lopez* that the Federal Government could not regulate the possession of a handgun on school property because there was an inadequate nexus to commercial activity and the legislation intruded impermissibly on the State's Police Power. 514 U.S. 549, 561-62, 567 (1995). Both the Federal Government and the States have important and distinct roles to play here.

Federalism, the "unique contribution of our Framers to political science and political theory," was designed to enhance, not diminish individual freedom. *Lopez*, 514 U.S. at 575-76 (Kennedy, J., concurring). Federalism should not be raised as a reason to constrain the exercise of our fundamental rights, but must be preserved to better secure these rights against tyranny from either the Federal Government or the States. Federalism relies for its preservation on separate political accountability of the Federal Government on the one hand, and the States on the other, each acting in their respective spheres. *Id.* at 576-77.

This Court is being called to find the fundamental right to keep and bear arms incorporated against the States by the Fourteenth Amendment. Our federal system has withstood such incorporation many times in the past and will suffer no harm from incorporation of the Second Amendment. Principles of federalism do not trump fundamental rights. To the contrary, our federal system must flex to accommodate these fundamental rights and exists precisely to ensure the preservation of those rights.

Federalism strikes a dynamic balance between certain fundamental rights that are entitled to protection by the Constitution and the States' exercise of their Police Powers. Protecting individual fundamental rights does not displace State authority to experiment within the permissible bounds of their Police Powers nor intrude upon an area of traditional State concern. *See Lopez*, 576 U.S. at 580. This Court has recognized that such State experimentation is both valuable and an inherent part of our system of federalism, but it is not without limitation. *Id.* (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).⁸

⁸ We give credence to Justice Brandeis's wise remark that "[d]enial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 311 (J. Brandeis dissenting). We do note, however, that the risk of dispensing with an enumerated individual fundamental right carries with it substantial risk to the rest of the country. Even Justice Brandeis would agree that there are limitations

Incorporation of the right to keep and bear arms does not disrupt the balance between either the Federal Government and the State, or between the State and the individual. Indeed, incorporation of many other fundamental individual rights has not upset that balance in the past. We as State Legislators have learned to tread carefully when enacting legislation that impacts other fundamental rights, such as free speech and assembly. Incorporation of the right to keep and bear arms is no different. The States will continue to have considerable leeway in exercising their Police Powers once the Second Amendment is incorporated.

State Legislators are uniquely qualified to strike the balance between protecting fundamental rights and exercising State Police Powers. We respectfully request this Court to affirm the fundamental nature of the Second Amendment, so that we may get on with our work. We welcome the opportunity to review and conform our State laws in a manner that respects and does not abridge individual basic liberties, including our right to keep and bear arms.

to State experimentation. *See generally Gambino v. United States*, 275 U.S. 310 (1927) (Brandeis, J.) (holding that evidence wrongly seized by State police violated the Fourth, Fifth and Sixth Amendments of the Federal Constitution).

II. THE FUNDAMENTAL RIGHT OF AN
INDIVIDUAL TO KEEP AND BEAR ARMS
SET FORTH IN THE SECOND
AMENDMENT IS INCORPORATED
AGAINST THE STATES BY THE DUE
PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT.

Examination of modern substantive due process jurisprudence reveals that fundamental rights are accorded heightened protection against State as well as federal action. The extent to which the Fourteenth Amendment restricts State action that infringes the exercise of enumerated rights in the first eight Amendments has been considered in numerous cases and this Court has not hesitated to find incorporation of a fundamental right. *Nordyke*, 563 F.3d at 450 n.9. Incorporation should be found here as well.

Heller emphatically supports a finding that this right is “deeply rooted in this Nation’s history and tradition,” (*Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)), and thus warrants incorporation. This recognition alone should dictate substantive due process incorporation, but the panel opinion in *Nordyke* also provides further support. Because the substantive incorporation analysis already has been performed, this Court should endorse that analysis and let State Legislators move forward with their work. There is no just reason that the right to keep and bear arms, recognized as a fundamental individual right by *Heller*, should be afforded any less protection against State action than federal.

A. The Panel in *Nordyke*, the Only Federal Court to Conduct the Required Analysis, Got It Right: Selective Incorporation of Fundamental Rights Through the Due Process Clause of the Fourteenth Amendment Dictates Incorporation of the Second Amendment.

The Fourteenth Amendment of the United States Constitution prohibits “any State [from] depriv[ing] any person of life, liberty, or property, without the due process of law...” U.S. CONST. amend. XIV, § 1. Due process is considered on a case by case basis and “[t]his court has never attempted to define with precision the words ‘due process of law’.... It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard.” *Holden v. Hardy*, 169 U.S. 366, 389-90 (1898). Many fundamental rights, including those enumerated in the Bill of Rights, have been incorporated against the States by way of the Fourteenth Amendment. *Nordyke*, 563 F.3d at 447 n.9. There can be no doubt that the right to keep and bear arms of the Second Amendment, found in *Heller* to be a fundamental individual right, embodies one of the immutable principles inherent in the very idea of free government and warrants incorporation.

1. The Due Process Clause incorporates “fundamental” individual rights.

Substantive due process secures those immutable principles, or “fundamental” rights, through the process of selective incorporation. *Reno v. Flores*, 507 U.S. 292, 301-302 (1993). By incorporation, “it is possible that some of the personal rights safeguarded by the first eight Amendments against national action may also be safeguarded against state action, because a denial of [those rights] would be a denial of due process of law.” *Malloy v. Hogan*, 378 U.S. 1, 4 (1964) (quoting *Twining v. New Jersey*, 211 U.S. 78, 99 (1908)).

In reviewing its substantive due process jurisprudence, the Court in *Malloy* observed that “[t]his Court has not hesitated to re-examine past decisions according the Fourteenth Amendment a less central role in the preservation of basic liberties than that which was contemplated by its Framers when they added the Amendment to our constitutional scheme.” *Id.* The time has come for the Court to revisit its early decisions regarding the Second Amendment and apply selective incorporation principles.

The threshold inquiry for finding selective incorporation is whether a right is fundamental. Fundamental rights, afforded substantive due process protections, are those rights “deeply rooted in this Nation’s history and tradition.” *Glucksberg*, 521 U.S. at 720-21 (quoting *Moore v. East Cleveland*, 431 U.S. 494, 504 (1977)). This Court in *Duncan v. Louisiana* explained that the “question is whether the right is among those ‘fundamental

principles of liberty and justice which lie at the base of all our civil and political institutions.’” 391 U.S. 145, 148 (1968) (internal quotes removed). *Duncan* further specified that incorporation turns on “whether given this kind of system a particular procedure is fundamental – whether, that is, a procedure is necessary to an Anglo-American regime of ordered liberty.” *Id.*, n. 14. See also *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (“so rooted in the traditions and conscience of our people as to be ranked as fundamental”); *Palko v. Connecticut*, 302 U.S. 319, 325 (1937) (“implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if they were sacrificed”). Both *Heller* and *Nordyke* point the way to selective incorporation of the Second Amendment under these principles.

2. History supports the right to keep and bear arms as a “fundamental” individual right.

Determining whether a liberty interest is fundamental and entitled to substantive due process incorporation requires consideration of the right’s historical backdrop. *Nordyke* explains that over time this Court has developed a concrete historical framework for making this determination. 563 F.3d at 449. The panel in *Nordyke* also was persuaded by the analytical approach set forth in *Duncan*. In *Duncan*, the Court evaluated the right’s present use, and the place of the right in pre-Founding English law and in the Founding era itself. *Id.* 449-50 (internal quotations removed). Similarly, in *Glucksberg*, this Court explained that “[o]ur Nation’s history, legal

traditions, and practices ... provide the crucial guideposts for responsible decisionmaking [in the area of substantive due process].” 521 U.S. at 721. The *Nordyke* panel’s analysis provides the crucial guideposts for determining whether the right to keep and bear arms is fundamental.

Relying on the factual findings of *Heller*, reinforced by its own analysis, the *Nordyke* panel easily determined that the right to keep and bear arms is fundamental. In performing its analysis, *Nordyke* tracked the historical parallels between the evidence relied upon in *Duncan* to incorporate the right to a jury in criminal cases and the right to keep and bear arms. *Nordyke*, 563 F.3d at 450-54. As part of this consideration, *Nordyke* held that the “brief survey of our history reveals a right indeed ‘deeply rooted in this Nation’s history and tradition.’” *Id.* at 454. No contrary finding is supported by history and the Court need not reconsider its findings in *Heller* in this case.

The observations this Court made about the nature of the Second Amendment right made clear the right to keep and bear arms is as implicit in the concept of ordered liberty, discussed in *Palko*, as it is deeply rooted in this Nation’s history and tradition. Again, we look to *Nordyke*, which succinctly informed this point:

Colonial revolutionaries, the Founders, and a host of commentators and lawmakers living during the first one hundred years of the Republic all insisted on the fundamental nature of the right. It has long been regarded as the “true palladium of liberty.” Colonists relied on it to assert and to win their independence, and the victorious Union sought to prevent a

recalcitrant South from abridging it less than a century later. The crucial role this deeply rooted right has played in our birth and history compels us to recognize that it is indeed fundamental, that it is necessary to the Anglo-American conception of ordered liberty that we have inherited.

Nordyke, 563 F.3d at 457.

The right to keep and bear arms as described in *Heller* and *Nordyke* is a right such that “neither liberty nor justice would exist if they were sacrificed.” *Palko*, 302 U.S. at 326. No right can truly be said to be more fundamental than the right of self-defense.

While modern times and urban living may have changed societal mores, the right to keep and bear arms is no less fundamental today because it continues to provide the means necessary to exercise the natural right of self-defense. The concepts of fundamental rights and ordered liberty include the right of the people to defend themselves. As evidenced by Samuel Adams and Benjamin Franklin, “[a]mong the natural rights of the colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can.” Samuel Adams, *The Right of the Colonists, The Report of the Committee of Correspondence to the Boston Town Meeting*, (Nov. 20, 1772) (Old South Leaflets, No. 173 (Boston: Directors of Old South Work 1906) 7: 417-428)) (Benjamin Franklin preface). This natural right, recognized and expressly preserved in our Bill of Rights, does not cease to exist inside State or municipal boundaries.

B. Selective Incorporation Through the Due Process Clause Is the Simplest and Easiest Way to Accomplish That Which the Framers of Both the Second and Fourteenth Amendments Intended.

Selective incorporation is not barred by this Court's Nineteenth Century precedent. *United States v. Cruikshank, et al.*, should not be construed in a manner that limits the application of the Second Amendment to the States. 92 U.S. 542 (1875). Doing so would result in a great disservice to the intentions of the Framers of the Fourteenth Amendment. Moreover, *Cruikshank's* analysis was informed by the jurisprudence of its time, without the aid of modern substantive due process guidance.

1. *Cruikshank* and its progeny did not consider selective incorporation.

The well-settled jurisprudence of this Court holds that the Second Amendment, standing alone, is not applicable as against the States. The Nineteenth Century precedent of *United States v. Cruikshank, et al.*, 92 U.S. 542 (1876), *Presser v. Illinois*, 116 U.S. 252 (1885), and *Miller v. Texas*, 153 U.S. 535 (1894), uniformly concluded: "the provision in the Second Amendment to the Constitution, that 'the right of the people to keep and bear arms shall not be infringed,' is a limitation only on the power of Congress and the national government, and not of the States."

Presser, 116 U.S. at 252; see also *Cruikshank*, 92 U.S. at 591-92; and *Miller*, 153 U.S. at 538. The Court need not reconsider its prior rulings that the Second Amendment does not have direct application upon the States. Selective incorporation of the Second Amendment through the Fourteenth Amendment, by way of the Court's substantive due process rulings, however, is an entirely different matter.

This Court in *Heller* suggested that *Cruikshank* should not stand in the way of incorporation. *Heller*, 128 S. Ct. at 2813 n. 23 (“With respect to *Cruikshank’s* continuing validity on incorporation, a question not presented by this case, we note that *Cruikshank* also said that the First Amendment did not apply against the States and did not engage in the sort of Fourteenth Amendment inquiry required by our later cases. Our later decisions in *Presser v. Illinois*, and *Miller v. Texas*, reaffirmed that the Second Amendment applies only to the Federal Government.” (citations omitted)). This Court also made clear that at a minimum *Cruikshank’s* holding is limited and not so broad as found by the court below in this case. *Id.* at 2812-13. (“*United States v. Cruikshank*, in the course of vacating the convictions of members of a white mob for depriving blacks of their right to keep and bear arms, held that the Second Amendment does not by its own force apply to anyone other than the Federal Government.”).

Unlike most incorporation cases, there was no claim in *Cruikshank* that the victims were deprived of their rights by State action. “Contemporary commentators saw the case very differently: They almost uniformly understood *Cruikshank* solely as

a state-action decision.” Kevin Christopher Newsom, *Setting Incorporationism Straight: A Reinterpretation of the Slaughter-House Cases*, 109 YALE L. J. 643, 718 (1999). Most commentators suggested that *Cruikshank* held that the Fourteenth Amendment offered no protection from an invasion of individual rights not involving State action. *Id.*

In any event, *Cruikshank* did not reject selective incorporation of the Second Amendment because the doctrinal basis for selective incorporation under substantive due process was not developed until a later date. Application of the doctrine of selective incorporation is not foreclosed by *Cruikshank* or its progeny. Incorporation of the Second Amendment should be reviewed under modern substantive due process jurisprudence. When that analysis is conducted, incorporation is the necessary and logical result, as shown in *Nordyke*.

2. The Framers of the Fourteenth Amendment intended to make the Second Amendment applicable to the States.

Early on, this Court in *Barron v. Mayor Balt.*, ruled that the Bill of Rights did not apply to State action. 32 U.S. (7 Pet.) 243, 249 (1833), The Framers of the Fourteenth Amendment intended to overturn *Barron* and specifically concerned themselves with reaching State action that deprived citizens of their right to keep and bear arms.

The *Nordyke* panel observed a notable shift in focus of the Framers of the Bill of Rights in 1789

and the Framers of the Fourteenth Amendment in 1868:

the target of the right to keep and bear arms shifted in the period leading up to the Civil War. While the generation of 1789 envisioned the right as a component of local resistance to centralized tyranny, whether British or federal, the generation of 1868 envisioned the right as safeguard to protect individuals from oppressive or indifferent local governments.

563 F.3d at 456 (relying upon Akhil Reed Amar, *The Bill of Rights*, 257-66 (1998)).

Less concerned with tyranny of a newly created Federal Government, the Framers of the Fourteenth Amendment sought to end post-Civil War State oppression of individual fundamental rights, including the right to keep and bear arms. *Nordyke* outlines this crucial history to the Fourteenth Amendment in reaching its conclusion on incorporation:

During the debates surrounding the Freedmen's Bureau Act, the Civil Rights Act, and the Fourteenth Amendment, Senator Pomeroy listed among the "indispensable" "safeguards of liberty" someone's "right to bear arms for the defense of himself and family and his homestead." Cong. Globe, 39th Cong., 1st Sess. 1182 (1866), *quoted in Heller*, 128 S.Ct. at 2811. Representative Bingham, a principal author of the Fourteenth Amendment, argued that it was necessary to overrule *Barron* and apply the Bill of Rights to the states. In his view, *Barron* was wrongly decided because the Bill of Rights "secur[ed] to all the citizens in every State all the privileges and immunities of citizens, and to

all the people all the sacred rights of persons—those rights dear to freemen and formidable only to tyrants.” *Id.* at 1090.... The reports and testimony contain similar evidence, confirming that the Framers of the Fourteenth Amendment considered the right to keep and bear arms a crucial safeguard....

Nordyke, 563 F.3d at 455-56.

The legislative history of the Fourteenth Amendment supports incorporation of the individual’s right to keep and bear arms, and this Court should endorse *Nordyke’s* interpretation.

C. While Rehearing *en Banc* May Have Been Granted in *Nordyke* for Whatever Reason, the Panel’s Reasoning Remains Sound and Should Guide the Court’s Analysis Here.

The United States Court of Appeals for the Ninth Circuit ordered that *Nordyke* be reheard *en banc* and that the “three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.” *Nordyke v. King*, 575 F.3d 890 (9th Cir. 2009). Whatever the reason for this action (and it may be no more than that the panel parted ways with prior Ninth Circuit precedent relying on *Cruikshank* and its progeny and instead relied on *Heller*), *Nordyke’s* analysis is compelling and its conclusions persuasive. The opinion is relevant, has substantial persuasive value, and provides a bounty of information on this issue. *Nordyke* should not be ignored.

Nordyke provides crucial guideposts for this Court’s analysis, because the foundation of its conclusion that the right to keep and bear arms is a

fundamental right is based mainly upon the *Heller* findings, supplemented by the panel's separate research and analysis. Independent analysis on this issue would support the same conclusion as demonstrated by the briefs of Petitioners and the many *amici* supporting Petitioners.

III. THE FUNDAMENTAL RIGHT OF AN
INDIVIDUAL TO KEEP AND BEAR ARMS
SET FORTH IN THE SECOND
AMENDMENT IS INCORPORATED
AGAINST THE STATES BY THE
PRIVILEGES OR IMMUNITIES CLAUSE OF
THE FOURTEENTH AMENDMENT.

The Fourteenth Amendment of the United States Constitution also provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.” U.S. CONST. amend. XIV, § 1. The Privileges or Immunities Clause provides an independent basis upon which to find the Second Amendment incorporated against the States by the Fourteenth Amendment, consistent with Fourteenth Amendment doctrines.

Prior decisions giving far too broad a reach to the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), have eviscerated a substantive clause of the Constitution. This Court need not disturb its precedent, however, because *Slaughter-House* does not preclude a finding protecting fundamental individual rights against State action. *Slaughter-House* simply requires clarification, revealing that

the Second Amendment may be incorporated by way of the Privileges or Immunities Clause.

A. Incorporation of the Fundamental Right to Keep and Bear Arms by Way of the Privileges or Immunities Clause Can Coexist with *Slaughter-House*.

The *Slaughter-House* precedent should not be construed to curtail fundamental rights and privileges, simply because those fundamental rights are enumerated in the Bill of Rights. Instead, the *Slaughter-House* opinion should lead this Court to a much different view. “[N]othing in [Justice] Miller’s [*Slaughter-House*] opinion [negates] a role for the Privileges and Immunities Clause in the incorporation of the Bill of Rights freedoms against the states, and, a more plausible reading of Miller’s opinion specifically preserves such a role for the Clause.” See Newsome, *supra*, at 650.

1. The *Slaughter-House* holding applies to economic interests, not fundamental rights enumerated in the Bill of Rights.

Slaughter-House did not face the issue of incorporation of an enumerated right from the first eight Amendments. Rather, the Court addressed whether common law interests of butchers to “free trade” found protection in the Fourteenth

Amendment.⁹ *Slaughter-House*, 83 U.S. at 57. *Slaughter-House* rejected the butchers' argument that the Privileges or Immunities Clause secured the common right¹⁰ "to require that the course of trade should be free from unreasonable obstruction." See Newsome, *supra*, at 659. The holding does not prohibit a reading that the Privileges or Immunities Clause incorporates the Second Amendment.

Slaughter-House made clear that neither the Framers of the Fourteenth Amendment, nor the legislatures of the States that ratified the Privileges or Immunities Clause, "intended to bring within the power of Congress the entire domain of civil rights." 83 U.S. at 77. Civil rights, as described by contemporary works and commentators, broadly referred to economic rights,

⁹ At oral argument, the butchers' counsel, John Campbell (a retired U.S. Supreme Court Justice), conceded "that there was no specific textual basis in the Constitution for the right he claimed on behalf of his clients." See Newsome, *supra*, at 658-59.

¹⁰ Newsome suggests that Justice Cambell's use of the term "common right" was intended to mean "a term applied to rights, privileges, and immunities appertaining to and enjoyed by all citizens equally and in common, *and which have their foundation in the common law.*" Newsome, *supra*, at 659-60 (emphasis in original). The argument presented and at issue before the Court was "that the Fourteenth Amendment had federalized—indeed, constitutionalized—the panoply of economic common-law freedoms, including the right to pursue an occupation." *Id.* at 660. The Court's understandable reluctance to embrace such a breathtaking expansion of the Fourteenth Amendment should not bar that Amendment's incorporation through the Privileges or Immunities Clause of the fundamental individual liberties of the Second Amendment.

including those rights argued in support of the butchers. *See Newsome, supra*, 670-73.

So when [Justice] Miller wrote that state-based privileges and immunities “embrace[d] nearly every *civil right* for the establishment and protection of which organized government is instituted,” and scoffed at the idea that the Framers of the Fourteenth Amendment had intended “to transfer the security and protection of all the *civil rights* which we have mentioned, from the States to the Federal government,” he was not, as is commonly assumed, in any way casting doubt on the notion that the Privileges or Immunities Clause had incorporated Bill of Rights freedoms against the states. He was merely emphasizing that the Fourteenth Amendment had *not* federalized the common-law rules that governed the making of contracts, the disposition of property, and the regulation of employment.

Id. at 673 (emphasis in original).

Slaughter-House did not reject application to the States of fundamental individual rights, protected by federal citizenship. *Slaughter-House* lends support for incorporation of a narrow realm of “uniquely federal’ rights” enumerated in the Federal Bill of Rights. *Newsome, supra*, 666.

2. Rights enumerated within the Bill of Rights were left open by *Slaughter-House* for incorporation by way of the Privileges or Immunities Clause.

This Court left open the possibility that some fundamental rights would be made applicable to

the States through incorporation. Because *Slaughter-House* did not present an issue of privileges or immunities impacting federal citizenship, this Court found itself “excused from defining the privileges and immunities of citizens of the United States which no State can abridge, *until* some case involving those privileges may make it necessary to do so.” 83 U.S. at 77 (emphasis added). This Court held that it was “useless to pursue this branch of inquiry, since we are of the opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States....” *Id.*

Although this Court did not provide a definition of privileges and immunities, it did provide some critical guidance.¹¹ In *Slaughter-House* it is apparent that the only privileges the Fourteenth Amendment might protect against State encroachment are those “which owe their existence to the Federal Government, its National character, its Constitution, or its laws.” 83 U.S. at 78-79. The better view of *Slaughter-House* is that the Court viewed the Privileges or Immunities Clause as incorporating fundamental rights found in the Bill of Rights, regardless of whether such rights were recognized before that document came into being.

¹¹ Justice Jackson, concurring in *Edwards v. California*, explained that the difficulty in its practical application to specific cases “does not excuse [the Court] from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case.” 314 U.S. 160, 182-83 (1941).

B. The Right to Keep and Bear Arms Is a Privilege of National Citizenship That No State Shall Abridge.

This Court's later reading of the Privileges or Immunities Clause in *Twining* supports Second Amendment incorporation. *Twining v. New Jersey*, 211 U.S. 78 (1908), *overturned on other grounds Malloy v. Hogan*, 378 U.S. 1 (1964). In *Twining* this Court explained that “[p]rivileges and immunities of citizens of the United States ... are only such as arise out of the nature and essential character of the National Government, *or* are specifically granted or secured to all citizens or persons by the Constitution of the United States.” *Id.* at 97, (citing *Slaughter-House, supra*, at 79; *In re Kemmler*, 136 U.S. 436, 448 (1890); *Duncan v. Missouri*, 152 U.S. 377, 382 (1894))(emphasis added).

In addition, *Presser v. Illinois* does not preclude finding the right to keep and bear arms is a privilege of national citizenship.¹² 116 U.S. 252. The privilege at issue was the right to “associate with others as a military company, and to drill and parade with arms in the towns and cities of the State.” *Id.* at 266. In *Presser*, no privilege existed because the plaintiff was unable “to point to the

¹² In dicta, *Twining* incorrectly explained that “the right to bear arms guaranteed by the Second Amendment (*Presser v. Illinois*, 116 U.S. 252), [has] been distinctly held not to be privileges and immunities of citizens of the United States guaranteed by the Fourteenth Amendment against abridgement by the States....” 211 U.S. at 98. In *Heller* this Court rejected similar dicta where the point was not at issue and was not argued. 128 S.Ct. 2783, n. 25.

provision of the Constitutional statutes of the United States by which it is conferred.” *Id.*

The right to keep and bear arms is a privilege conferred by federal citizenship. Indeed, any United States citizen, including Petitioners here, may point to the Second Amendment as evidence of that privilege. That the individual right to keep and bear arms is both a fundamental right preexisting the Constitution and one directly conferred by way of federal citizenship should serve to emphasize the importance of that right, not constrict the protection afforded its exercise.

Moreover, this Court in *Heller* established that there is a federal individual right to keep and bear arms. 128 S.Ct. at 2821-22. This ruling is applicable to the States through the Privileges or Immunities Clause because, as evidenced in *Heller*, this right arises out of the nature and essential character of our National government. Neither the States nor the City of Chicago and Village of Oak Park may abridge that right.

C. The Framers of the Fourteenth Amendment Intended to Make the Second Amendment Applicable to the States by Way of the Privileges or Immunities Clause.

The Framers of the Fourteenth Amendment intended the Privileges or Immunities Clause to incorporate the Second Amendment against the States. Senator Howard’s statement supports this: “The right to keep and bear arms was frequently mentioned by the Framers of the Fourteenth Amendment during its adoption as one of the privileges or immunities of citizenship.” Cong.

Globe, 39th Cong., 1st Sess. 2765 (1866). This right was precisely the right that the Reconstruction Congress intended to protect and the history supports that. *Heller*, 128 S.Ct. 2810-12. This Court should give force to the Framers' intention and make clear that the right to keep and bear arms is encompassed within the privileges and immunities of a United States citizen.

IV. THE DECISION BELOW SHOULD BE OVERTURNED BECAUSE THE CHALLENGED HANDGUN BANS VIOLATE THE SECOND AMENDMENT AS HELD BY THIS COURT IN *HELLER* AND AS APPLIED AGAINST THE STATES IN THE FOURTEENTH AMENDMENT.

The City of Chicago prohibits possession of a firearm unless it is registered. Mun. Code of Chicago, § 8-20-040 (a). The City of Chicago Ordinance also prohibits registration of handguns: "No registration certificate shall be issued for any of the following types of firearms... (c) Handguns...." Section 8-20-050 (c). The Village of Oak Park prohibits possession of any "firearm", which it defines as a handgun. Mun. Code of Oak Park, §§ 27-2-1, 27-1-1 ("It shall be unlawful for any person to possess or carry, or for any person to permit another to possess or carry on his/her land or in his/her place of business any firearm"; "For the purpose of this Article firearms are: pistols, revolvers, guns and small arms of a size and character that may be concealed on or about the person, commonly known as handguns."). While there are certain exceptions to these handgun

bans,¹³ the vast majority of citizens do not fall within those exceptions. Each municipality's ordinances operate in a manner that impose a total ban on handgun ownership in the home, as well as elsewhere in the municipality.

In *Heller*, this Court rejected the District of Columbia's handgun ban and explained:

The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for [the lawful purpose of self-defense]. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under *any* of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home "the most preferred firearm in the nation to "keep" and use for protection on one's home and family," would fail constitutional muster.

128 S.Ct. 2817-18 (emphasis added). When an entire class of arms commonly used for self-defense is prohibited, the Second Amendment is implicated. When possession of that class of firearms is

¹³ In the City of Chicago non-governmental exceptions are: "(1) Those validly registered to a current owner in the City of Chicago prior to the effective date of this chapter [(1982)] ... (3) Those owned by security personnel, (4) Those owned by private [licensed] detective agencies" Mun. Code of Chicago, § 8-20-050 (c). In the Village of Oak Park, non-governmental exceptions apply to: "... (J) Antique firearms; (K) Licensed firearm collectors; (L) Members or established theater organizations located in Oak Park and performing a regular performance schedule to the public" Mun. Code of Oak Park, § 27-2-1.

prohibited in the home, the Second Amendment is impermissibly infringed.

The City of Chicago's and Village of Oak Park's ordinances unlawfully burden the right to defend one's self and home in contravention of the Second Amendment. These ordinances infringe the fundamental right and privilege to keep and bear arms in the home. The City of Chicago's and Village of Oak Park's handgun bans cannot survive constitutional scrutiny any more than the District of Columbia's ban could. For these reasons, the decision below should be reversed.

The remainder of the issues raised by the City of Chicago's and the Village of Oak Park's ordinances should be remanded for the lower courts to consider whether the other challenged restrictions on the right to keep and bear arms pass muster under the Second Amendment as applied against the States by the Fourteenth Amendment in accordance with this Court's decision. Remand of these issues for further consideration by the courts below will begin the process of clarifying the States' permissible role in regulating the possession and use of firearms.

CONCLUSION

For the reasons stated above, this Court should reverse the judgments below, and hold that the Second Amendment right to keep and bear arms is incorporated against the States by the Fourteenth Amendment of the United States Constitution.

Respectfully submitted,

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Eric Burlison, State Representative
Stan Cox, State Representative
Cynthia Davis, State Representative
David Day, State Representative
Scott Dieckhaus, State Representative
John Diehl, State Representative
Gary Dusenberg, State Representative
Joe Fallert, Jr., State Representative
Barney Fisher, State Representative

Thomas Flanigan, State Representative
Michael Frame, State Representative
Douglas Funderburk, State Representative
Chuck Gatschenberger, State Representative
Jim Guest, State Representative
Belinda Harris, State Representative
Steve Hodges, State Representative
Allen Icet, State Representative
Tim Jones, State Representative
Kenny Jones, State Representative
Sam Komo, State Representative
Brad Lager, State Senate
Scott Largent, State Representative
Jim Lembke, State Senate
Tim Meadows, State Representative
Chris Molendorp, State Representative
Brian Munzlinger, State Representative
Bob Nance, State Representative
Brian Nieves, State Representative
Gary Nodler, State Senate
Mark Parkinson, State Representative

Mike Parson, State Representative
David Pearce, State Senate
Ronald Richard, State Representative
Don Ruzicka, State Representative
Therese Sander, State Representative
Luke Scavuzzo, State Representative
Kurt Schaefer, State Senate
Shane Schoeller, State Representative
Delbert Scott, State Senate
Tom Shively, State Representative
Wes Shoemyer, State Senate
Bill Stouffer, State Senate
Clint Tracy, State Representative
Terry Witte, State Representative
Anne Zerr, State Representative

MONTANA

Taylor Brown, State Senate
Jeff Essmann, State Senate
Greg Hinkle, State Senate
Verdell Jackson, State Senate
Dan McGee, State Senate

Scott Sales, State Representative

Cary Smith, State Representative

Gordon Vance, State Representative

NEBRASKA

Mark Christensen, State Senate

Colby Coash, State Senate

Tony Fulton, State Senate

Scott Price, State Senate

NEVADA

Barbara Cegavske, State Senate

Tyrus Cobb, State Assemblyman

Don Gustavson, State Assemblyman

John Hambrick, State Assemblyman

James Settelmeyer, State Assemblyman

NEW HAMPSHIRE

Gene Charron, State Representative

Tim Comerford, State Representative

Warren Groen, State Representative

Frank Holden, State Representative

Robert Mead, State Representative

William O'Brien, State Representative

Andrew Renzullo, State Representative

Jordan Ulery, State Representative

Carol Vita, State Representative

Dave Welch, State Representative

NEW JERSEY

Anthony Bucco, State Senate

Michael Patrick Carroll, State Assemblyman

Gary Chiusano, State Assemblyman

Michael Doherty, State Assemblyman

Marcia Karmon, State Senate

Alison Littell McHose, State Assemblywoman

Richard Merkt, State Assemblyman

Steve Oroho, State Senate

NEW MEXICO

Anna Crook, State Representative

Nora Espinoza, State Representative

Jimmie Hall, State Representative

Kathy McCoy, State Representative

George Munoz, State Senate

Steve Neville, State Senate

Bill Rehm, State Representative

Dennis Roch, State Representative

Sander Rue, State Senate

Shirley Tyler, State Representative

NEW YORK

Ginny Fields, State Assemblywoman

Teresa R. Sayward, State Assemblywoman

NORTH CAROLINA

Jeff Barnhart, State Representative

Douglas Berger, State Senate

Andrew Brock, State Senate

Justin Burr, State Representative

George Cleveland, State Representative

Eddie Goodall, State Senate

Steve Goss, State Senate

Jim Gulley, State Representative

Dewey Hill, State Representative

Mark Hilton, State Representative

Jimmy Love, State Representative

Nick Mackey, State Representative

Pat McElraft, State Representative

Shirley Randleman, State Representative

Johnathan Rhyne, State Representative

David Rouzer, State Senate

Cullie Tarleton, State Representative

Arthur Williams, State Representative

NORTH DAKOTA

Duane DeKrey, State Representative

Dick Dever, State Senate

Jim Kasper, State Representative

George Keiser, State Representative

Rae Ann Kelsch, State Representative

Lawrence Klemin, State Representative

Dave Nething, State Senate

Todd Porter, State Representative

Bob Stenehjem, State Senate

Blair Thoreson, State Representative

Donald Vigesaa, State Representative

Dave Weiler, State Representative

OHIO

Jarrold Martin, State Representative

William Seitz, State Senate

Mark Wagoner, State Senate

OKLAHOMA

Cliff Aldridge, State Senate

Don Armes, State Representative

Dennis Bailey, State Representative

Chris Benge, State Representative

Brian Bingman, State Senate

Neil Brannon, State Representative

Cliff Branan, State Senate

Randy Brogdon, State Senate

Bill Brown, State Senate

Mike Brown, State Representative

Samson Buck, State Representative

Marian Cooksey, State Representative

Kenneth Corn, State Senate

Brian Crain, State Senate

Johnnie Crutchfield, State Senate

Joe Dorman, State Representative

Rex Duncan, State Representative

Jerry Ellis, State Senate

John Enns, State Representative

George Faught, State Representative

Eddie Fields, State Representative

Earl Garrison, State Senate

Terry Harrison, State Representative

Corey Holland, State Representative

Tom Ivester, State Senate

Dennis Johnson, State Representative

Clark Jolley, State Senate

Charles Key, State Representative

Steve Kouplen, State Representative

Charlie Laster, State Senate

Ken Luttrell, State Representative

Steve Martin, State Representative

Scott Martin, State Representative

Mark McCullough, State Representative

Jerry McPeak, State Representative

Ken Miller, State Representative

Danny Morgan, State Representative

Jason Murphey, State Representative

Daniel Newberry, State Senate

Leslie Osborn, State Representative

Pat Ownbey, State Representative

Susan Paddack, State Senate

Ron Peters, State Representative

Eric Proctor, State Representative

Brian Renegar, State Representative

Mike Reynolds, State Representative

Mike Ritze, State Representative

Wade Rousselot, State Representative

Mike Sanders, State Representative

Mike Schulz, State Senate

Colby Schwartz, State Representative

Ben Sherrer, State Representative

Daniel Sullivan, State Representative

Anthony Sykes, State Senate

Mike Thompson, State Representative

Harold Wright, State Representative

OREGON

Cliff Bentz, State Representative

Ted Ferrioli, State Senate

Bill Garrard, State Representative

Fred Girod, State Senate

Bruce Hanna, State Representative

John Huffman, State Representative

Betsy Johnson, State Senate

Bill Kennemer, State Representative

Wayne Krieger, State Representative

Greg Smith, State Representative

Sherrie Sprenger, State Representative

Kim Thatcher, State Representative

Matt Wingard, State Representative

Brad Witt, State Representative

PENNSYLVANIA

Michele Brooks, State Representative

Bryan Cutler, State Representative

Bill DeWeese, State Representative

Glen Grell, State Representative

Rob Kauffman, State Representative

Mark Keller, State Representative

John Maher, State Representative

Daryl Metcalfe, State Representative

Merle Phillips, State Representative

Kathy Rapp, State Representative

Joe Scarnati, State Senate

Will Tallman, State Representative

RHODE ISLAND

Chris Fierro, State Representative

SOUTH CAROLINA

Thomas Alexander, State Senate

Rita Allison, State Representative

Alan Clemmons, State Representative

Kris Crawford, State Representative

Jeff Duncan, State Representative

John Knotts, Jr., State Senate

Larry Martin, State Senate

Steve Parker, State Representative

Michael Pitts, State Representative

Bill Sandifer, State Representative

David Thomas, State Senate

Danny Verdin, State Senate

Thad Viers, State Representative

SOUTH DAKOTA

Gene Abdullah, State Senate

Corey Brown, State Senate

Justin Cronin, State Representative

Richard Engels, State Representative

Mitch Fargen, State Representative

Jason Frerichs, State Representative

Jason Grant, State Senate

Brian Gresch, State Representative

Charlie Hoffman, State Representative

Phillip Jensen, State Representative

Frank Kloucek, State Senate

Dave Knudson, State Senate

David Lust, State Representative

Betty Olson, State Representative

Deborah Peters, State Representative

Lance Russell, State Representative

Todd Schlekeway, State Representative

Manny Steele, State Representative

TENNESSEE

Glen Casada, State Representative
Bill Dunn, State Representative
Mike Faulk, State Senate
Chad Faulkner, State Representative
Delores Gresham, State Senate
Mike McDonald, State Representative
Jason Mumpower, State Representative

TEXAS

Rick Perry, Governor
David Dewhurst, Lt. Governor
Jimmie Aycock, State Representative
Leo Berman, State Representative
Dwayne Bohac, State Representative
Dennis Bonnen, State Representative
Betty Brown, State Representative
Fred Brown, State Representative
Bill Callegari, State Representative
John Carona, State Senate
Norma Chavez, State Representative
Warren Chisum, State Representative

Wayne Christian, State Representative

Byron Cook State, Representative

Frank Corte, Jr., State Representative

Tom Craddick, State Representative

Robert Deuell, State Senate

Joe Driver, State Representative

Kevin Eltife, State Senate

Craig Estes, State Senate

Allen Fletcher, State Representative

Dan Flynn, State Representative

Troy Fraser, State Senate

Stephen Frost, State Representative

Dan Gattis, State Representative

Charlie Geren, State Representative

Patricia Harless, State Representative

Linda Harper-Brown, State Representative

Joe Heflin, State Representative

Glenn Hegar, State Senate

Abel Herrero, State Representative

Harvey Hilderbran, State Representative

Mark Homer, State Representative

Chuck Hopson, State Representative

Charlie Howard, State Representative

Joan Huffman, State Senate

Carl Isett, State Representative

Jim Jackson, State Representative

Tim Kleinschmidt, State Representative

Lois Kolkhorst, State Representative

Jodie Laubenberg, State Representative

Ken Legler, State Representative

Jerry Madden, State Representative

Jim McReynolds, State Representative

Jose Menendez, State Representative

Tommy Merritt, State Representative

Jane Nelson, State Senate

Solomon Ortiz, Jr., State Representative

John Otto, State Representative

Diane Patrick, State Representative

Ken Paxton, State Representative

Aaron Pena, State Representative

Larry Phillips, State Representative

Debbie Riddle, State Representative

Allan Ritter, State Representative

Patrick Rose, State Representative

Kel Selinger, State Senate

Florence Shapiro, State Senate

Wayne Smith, State Representative

Joesph Straus, III, State Representative

David Swinford, State Representative

Larry Taylor, State Representative

Vicki Truitt, State Representative

Jeff Wentworth, State Senate

Tommy Williams, State Senate

John Zerwas, State Representative

UTAH

J. Stuart Adams, State Senate

Sheryl Allen, State Representative

Bradley Dan, State Representative

John Dougall, State Representative

Jack Drexler, State Representative

Susan Duckworth, State Representative

James Dunnigan, State Representative

Ben Ferry, State Representative

Julie Fisher, State Representative

Lorie Fowlke, State Representative

Craig Frank, State Representative

Gage Froerer, State Representative

Kevin S. Garn, State Representative

Kerry Gibson, State Representative

James Gowans, State Representative

Richard Greenwood, State Representative

Jonathan Greiner, State Senate

Keith Grover, State Representative

Neal B. Hendricksen, State Representative

Lyle Hillyard, State Senate

David Hinkins, State Senate

Greg Hughes, State Representative

Don Ipson, State Representative

Sheldon Killpack, State Senate

Brad Last, State Representative

Daniel Liljenquest, State Senate

Rebecca Lockhart, State Representative

Mark Madsen, State Senate

Steven Mascaro, State Representative

John Gordon Mathis, State Representative

Ronda Menlove, State Representative

Mike Morley, State Representative

Michael Noel, State Representative

Curtis Oda, State Representative

Ralph Okerlund, State Senate

Patrick Painter, State Representative

Paul Ray, State Representative

Stephen Sandstrom, State Representative

Howard Stephenson, State Senate

Ken Swanson, State Representative

Stephen Urquhart, State Senate

Kevin T. Van Tassell, State Senate

Christine Watkins, State Representative

R. Curt Webb, State Representative

Mark Wheatley, State Representative

Ryan Wilcox, State Representative

Larry Bruce, Wiley State Representative

Carl Wimmer, State Representative

VERMONT

Tom Koch, State Representative

Dick Sears, State Senate

VIRGINIA

Bill Carrico, State Delegate

Mark Cole, State Delegate

Morgan Griffith, State Delegate

Emmett Hanger, Jr., State Senate

Edd Houck, State Senate

Bill Howell, State Delegate

Robert Hurt, State Senate

Bill Janis, State Delegate

Johnny Joannou, State Delegate

Bob Marshall, State Delegate

Steve Martin, State Senate

Stephen Newman, State Senate

Dave Nutter, State Delegate

Chap Petersen, State Senate

Phillip Preston Prickett, State Senate

Preston Puckett, State Senate

Edward Scott, State Delegate

Beverly Sherwood, State Delegate

Ralph Smith, State Senate

Frank Wagner, State Senate

WASHINGTON

Bradley Allen, State Representative

Randi Becker, State Senate

Brian Blake, State Representative

Mike Carrell, State Senate

Cary Condotta, State Representative

Brett Davis, State Representative

Jerome Delvin, State Senate

Brian Hatfield, State Senate

Jaime Herrera, State Representative

Janea Homquist, State Senate

Jim Honeyford, State Senate

Lynn Kessler, State Representative

Curtis King, State Senate

Linda Evans Parlette, State Senate

Pam Roach, State Senate

Charles Ross, State Representative

Mark Schoesler, State Senate

Matt Shea, State Representative

Val Stevens, State Senate

David Taylor, State Representative

Kevin Van De Wege, State Representative

Deb Wallace, State Representative

Joseph Zarelli, State Senate

WEST VIRGINIA

Troy Andes, State Delegate

Robert Beach, State Delegate

Richard Browning, State Senate

Samuel Cann, State Delegate

H. Truman Chafin, State Senate

Gerald Crosier, State Delegate

Timothy Ennis, State Delegate

Michael Ferro, State Delegate

John Frazier, State Delegate

Roy Givens, State Delegate

Daniel Hall, State Delegate

Lynwood Ireland, State Delegate

Jeff Kessler, State Senate

Orphy Klempa, State Delegate

William Laird, IV, State Senate

Linda Longstreth, State Delegate

Virginia Mahan, State Delegate

Dale Martin, State Delegate

Harold Michael, State Delegate

Jonathan Miller, State Delegate

Ricky Moye, State Delegate

David Perry, State Delegate

Dave Pethtel, State Delegate

Doug Reynolds, State Delegate

Robert Schadler, State Delegate

Stan Shaver, State Delegate

Margaret Anne Staggers, State Delegate

Sally Susman, State Delegate

Scott Varner, State Delegate

David Walker, State Delegate

Ronald Walters, State Delegate

C. Randy White, State Senate

Bob Williams, State Senate

Larry Williams, State Delegate

WISCONSIN

Robert Cowles, State Senate

Chris Danou, State Representative

Alberta Darling, State Senate

Scott Fitzgerald, State Senate

Jeff Fitzgerald, State Representative

Scott Gunderson, State Representative

Jim Holperin, State Senate

Randy Hopper, State Senate

Ann Hraychuck, State Representative

Mike Huebsch, State Representative

Dan Kapanke, State Senate

Steve Kestell, State Representative

Alan Lasee, State Senate

Mary Lazich, State Senate

John Nygren, State Representative

Marlin Schneider, State Representative

Scott Suder, State Representative

Gary Tauchen, State Representative

Karl Van Roy, State Representative

Robin Vos, State Representative

Leah Vukmir, State Representative

Mary Williams, State Representative

Robert Wirch, State Senate

WYOMING

Pat Childers, State Representative

Roy Cohee, State Representative

Stan Cooper, State Senate

Ken Esquibel, State Representative

Tom Lubnau, State Representative

Bryan Pederson, State Representative

Timothy Stubson, State Representative