

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

04-5016, 04-5081

**SANDRA SEEGARS, GARDINE HAILES, ABSALOM F. JORDAN, JR.,
CARMELA B. BROWN, and ROBERT N. HEMPHILL**

Appellants and Cross-Appellees

v.

ALBERTO GONZALES, Attorney General of the United States,

Appellee and Cross-Appellant

and

ANTHONY A. WILLIAMS, Mayor, District of Columbia,

Appellee

**PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC**

Appeal from the U.S. District Court
for the District of Columbia
District Ct. Civil No. 1-03CV00834(RGW)

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STATEMENT

In a 2-1 opinion, the panel held that plaintiffs lack standing to challenge the District of Columbia's prohibitions on possession of firearms in the home. An *en banc* rehearing is appropriate because (1) *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions, and (2) the proceeding involves a question of exceptional importance. F.R.App.P. 35(a).

Pursuant to Rule 35(b)(1), counsel states that the panel decision conflicts with *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979), and related precedent. Consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

Further, the proceeding involves questions of exceptional importance. First, the panel decision, as it acknowledges (slip op. 13), squarely conflicts with the decision in *Peoples Rights Organization, Inc. v. Columbus*, 152 F.3d 522, 528-29 (6th Cir.1998). Second, the decision adopts a rule of standing that is so narrow that it leaves law-abiding citizens threatened with criminal violence with no realistic means of adjudicating their constitutional and statutory rights other than by violating the criminal law.

ARGUMENT

Law-abiding residents of the District of Columbia wish to possess pistols and usable firearms in their dwellings for security and protection against crime. These measures are

prohibited by D.C. Code § 7-2502.02(a) (prohibits registration of pistol),¹ § 7-2507.02 (requires firearms to be unloaded and disassembled or locked),² and § 22-4504(a) (prohibits carrying pistol in one's dwelling).³ “[N]o specific intent to use the gun” need be proven,⁴ and it is no defense that a person is a crime victim merely seeking to protect him or herself.⁵

Plaintiffs seek a declaratory judgment that these prohibitions (1) are inconsistent with D.C. Code § 1-303.43, the enabling act in which Congress authorized the District to pass only “usual and reasonable police regulations . . . necessary for the regulation of firearms,”⁶ and (2) infringe on “the right of the people to keep and bear arms” guaranteed by the Second Amendment to the U.S. Constitution.⁷ The plain language of the enabling act, together with the canon of constitutional avoidance, which rests “on the reasonable presumption that

¹ See § 7-2502.01(a) (requires firearms to be registered); § 7-2507.06 (violation punishable by one year imprisonment, \$1000 fine).

² See § 7-2507.06 (violation punishable by one year imprisonment, \$1000 fine).

³ See *id.* (punishable by 5 years imprisonment and \$5000 fine, or one year imprisonment and \$1000 fine if defendant proves dwelling house exception); *Fortune v. United States*, 570 A.2d 809, 810 (D.C. 1990).

⁴ *Bsharah v. United States*, 646 A.2d 993, 999-1000 (D.C. 1994).

⁵ *Yoon v. United States*, 594 A.2d 1056, 1057 (D.C. 1991) (market owner repeatedly robbed and shot at).

⁶ Viewing the “usual” prong alone, the District’s pistol ban is most unusual, as not one of the 50 States in the United States bans pistols. The Supreme Court has held that a “national consensus” of what is “cruel and *unusual*” is established by 30 States. *Roper v. Simmons*, 2005 WL 464890, *9 (U.S. 2005).

⁷ See *United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001) (Second Amendment “protects the rights of individuals, including those not then actually a member of any militia . . . , to privately possess and bear their own firearms, such as the pistol involved here”), *cert. denied*, 536 U.S. 907 (2002). The U.S. Attorney General endorsed the *Emerson* decision.

Congress did not intend the alternative which raises serious constitutional doubts,” *Clark v. Suarez Martinez*, 125 S.Ct. 716, 724 (2005), may easily be applied to invalidate the ordinances at issue and to avoid the constitutional issue.

Plaintiffs are lawfully eligible to possess firearms. They reside in high crime neighborhoods and are crime victims. But for the above provisions, they would forthwith obtain pistols to keep at home for self protection. Plaintiff Jordan already owns a pistol which he must store outside the District, but he would keep it at home but for the law at issue. Plaintiff Hailes possesses a registered shotgun and, but for the law, would remove the trigger lock when she deems it necessary to defend herself in her home. *See slip op.* 4.

Defendants include the U.S. Attorney General and the D.C. Mayor. Both head law enforcement agencies and departments of prosecuting attorneys which enforce and prosecute violations of the above prohibitions. *Copening v. United States*, 353 A.2d 305, 307 n.2 (D.C. 1976).

Plaintiffs suffer injury by being forced into the dilemma of forgoing prudent security measures and being threatened by criminals, or violating the law and being subjected to arrest and prosecution. Their injuries would be redressed by a favorable decision.⁸

The panel decision itself provides an excellent discussion of the conflict within the case law on standing which this court sitting *en banc* should resolve. It begins by quoting

⁸ For standing, plaintiffs must suffer injury in fact, *i.e.*, invasion of a legally protected interest which is concrete and not hypothetical; the injury must be traceable to the challenged action; and it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

the following from *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)

(slip op. 5):

When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.⁹

That case involved a union's pre-enforcement challenge to a state criminal law on unfair labor practices. While the state pointed out that the criminal penalty had not been (and might never be) applied, the Court noted that "the State has not disavowed any intention of invoking the criminal penalty provision against unions that commit unfair labor practices," and that the fear of prosecution was not "imaginary or wholly speculative." 442 U.S. at 302. Based on that, the panel decision concludes: "Thus *United Farm Workers* appeared to find a threat of prosecution credible on the basis that plaintiffs' intended behavior is covered by the statute and the law is generally enforced." Slip op. 7.¹⁰ As the panel readily concedes, plaintiffs easily meet that test. Slip op. 12.

The above test has been applied in cases both involving and not involving the First Amendment. Slip op. 7 (citations omitted). Indeed, the panel decision states:

[T]he idea of a special First Amendment rule for preenforcement review of

⁹ "It is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974).

¹⁰ "As appellants allege a similarly realistic fear of prosecution, I would hold *United Farm Workers* controlling, and conclude that appellants have standing to bring the Second Amendment challenge." Slip op. 2 (Sentelle, J., dissenting).

statutes seems to have no explicit grounding in Supreme Court decisions. In *United Farm Workers*, for example, although plaintiffs in fact attacked the statute on First Amendment grounds, the Court conspicuously neglected to mention the point in its discussion of standing. *United Farm Workers*, 442 U.S. at 297-302. (Slip op. 11.)

Despite the above, the panel felt bound by what it viewed as a contrary holding in “our circuit’s single post-*United Farm Workers* case” involving a preenforcement review of a criminal law not involving the First Amendment or the appeal of an agency decision. Slip op. 9, citing *Navegar, Inc. v. United States*, 103 F.3d 994 (D.C. Cir.1997).

Navegar found preenforcement standing to challenge the federal “assault weapon” prohibition regarding products of particular companies actually named in the law, finding that the threat of prosecution could be deemed speculative “only if it is likely that the government may simply decline to enforce these provisions at all.” Slip op. 9, quoting 103 F.3d at 1000. However, standing did not exist to challenge portions of the statute prohibiting firearms by general characteristics rather than by name. *Id.*, citing 103 F.3d at 1001.

To be sure, *Navegar* contains the same internal conflicts that the panel in *Seegars* describes. *Navegar* stated:

A credible threat of imminent prosecution can injure the threatened party by putting her between a rock and a hard place--absent the availability of preenforcement review, she must either forego possibly lawful activity because of her well-founded fear of prosecution, or willfully violate the statute, thereby subjecting herself to criminal prosecution and punishment. *See Babbitt*, 442 U.S. at 298-99, 99 S.Ct. at 2308-09. In such situations the threat of prosecution provides the foundation for justiciability as a constitutional and prudential matter, and the Declaratory Judgment Act, 28 U.S.C. § 2201 (1994), provides the mechanism for seeking preenforcement review in federal court. *See Steffel v. Thompson*, 415 U.S. 452, 480, 94 S.Ct. 1209, 1226, 39 L.Ed.2d 505 (1974) (“the declaratory judgment procedure is an alternative to

pursuit of the arguably illegal activity”) (Rehnquist, J., concurring).

Navegar, 103 F.3d at 998-99.

Indeed, *Navegar* could have been applied to uphold standing here. *Navegar* observed that to require litigants “to violate the law and subject themselves to criminal prosecution before their challenges may be heard would create incentives that are perverse from the perspective of law enforcement [and] unfair to the litigants” 103 F.3d at 1000-01. Yet that is exactly where the Seegars plaintiffs are left.

Navegar upheld standing to challenge provisions that clearly applied, but “the general nature of the language of these [other] portions of the Act makes it impossible to foretell precisely how these provisions may be applied” *Id.* at 1001. The latter involved allegedly vague definitions that the agency had not applied in a manner injurious to plaintiffs.¹¹ Yet no doubt exists that the challenged provisions in the case at bar apply to plaintiffs here.¹² *Navegar* could thus have easily been distinguished.

The panel decision instead settles on a reading of *Navegar* to require very specific threats to prosecute, at the same time acknowledging contrary precedents. “There is . . .

¹¹ Standing was rejected in a similar challenge to the same law on vagueness grounds where plaintiffs merely asked “a hypothetical question” and the agency answered that “the questioned activity *could* subject them to federal prosecution.” *NRA v. Magaw*, 132 F.3d 272, 293-94 (6th Cir. 1997). “Plaintiffs do not allege that the law ‘chills’ because it forces them to forego constitutionally protected activity in order to avoid becoming enmeshed in a criminal proceeding.” *Id.* at 294 & n.15.

¹² “This is not to say that there must always be an explicit and specific threat of enforcement in order that one may obtain a judicial declaration such as that sought here.” *Lion Manufacturing Corp. v. Kennedy*, 330 F.2d 833, 838 n.10 (D.C. Cir. 1964) (but plaintiffs failed to describe how allegedly vague law applied to them).

tension between *Navegar* and our cases upholding preenforcement review of First Amendment challenges to criminal statutes.” Slip op. 10 (citations omitted).

Moreover, “*Navegar*’s analysis is in sharp tension with standard rules governing preenforcement challenges to agency regulations,” where the litigants have standing because they face the dilemma of costly compliance measures or the risk of enforcement. Slip op. 9-10, citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). “The passage from *United Farm Workers* quoted at the outset alludes to precisely this hardship.” Slip op. 10.

One might attempt to explain the recognition of hardship caused by a regulation while rejecting equivalent hardship caused by a statute by the need to avoid resolving constitutional issues posed by the latter. “That answer seems weak, as courts reviewing agency action commonly give preenforcement review not only to statutory claims but to constitutional attacks on the underlying statute.” Slip op. 10, citing *Time Warner Entertainment Co. v. FCC*, 93 F.3d 957, 965, 973 (D.C. Cir. 1996).

This seemingly irrational distinction is particularly egregious here. Law-abiding citizens who wish to protect themselves from criminal violence in their own homes by obtaining firearms apparently must, in order to have standing to protect their constitutional and statutory rights, break the law and inform law enforcement so that they will become sufficiently threatened with prosecution.

This Circuit does not apply such a rule to other entities seeking legal review of their inability to obtain firearms based on governmental action. Corporations seeking to transfer or import firearms for commercial purposes have standing to challenge agency denials

purportedly pursuant to statute. *E.g.*, *F. J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448 (D.C. Cir. 1994) (regarding transfer of firearms, plaintiff “is entitled to a decision on these questions now. Violation of 18 U.S.C. § 922(o) is a criminal offense, punishable by fine and imprisonment.”); *Springfield Inc. v. Buckles*, 292 F.3d 813 (D.C. Cir. 2002) (deciding whether agency properly denied permits to import firearms).¹³ No one suggests that the businesses lack standing because it is uncertain that they would be prosecuted for unlawfully transferring or importing firearms.

All kinds of injuries, from economic to aesthetic, have been recognized for purposes of standing. *See Lujan*, 504 U.S. at 562, 573 (reaffirming cases finding standing on aesthetic grounds and for purposes like whale watching). If avoidance of psychological harm by not being able to enjoy seeing some animal confers standing, so too does the avoidance of psychological harm knowing that one has a defense to criminal attack. Indeed, “The right to defend oneself from a deadly attack is fundamental.” *United States v. Panter*, 688 F.2d 268, 271 (5th Cir. 1982).¹⁴ The District has no legal duty to protect plaintiffs.¹⁵

¹³ *See also Gavett v. Alexander*, 477 F. Supp. 1035, 1041 (D. D.C. 1979) (finding standing to bring constitutional challenge where “plaintiff would be able to purchase an Army rifle at a discount but for the NRA membership requirement imposed by the statute, and he is thus ‘injured’ by it”).

¹⁴ “The right of defense of self, property and family is a fundamental part of our concept of ordered liberty. . . . For many, the mere possession of a firearm in the home offers a source of security.” *Arnold v. Cleveland*, 616 N.E.2d 163, 169-70 (Ohio 1993). “If the constitutional right to keep and bear arms for security is to mean anything, it must, as a general matter, permit a person to possess, carry, and sometimes conceal arms to maintain the security of his private residence” *State v. Hamdan*, 2003 Wis. 113, 665 N.W.2d 785, 808 (2003).

¹⁵ “A government and its agents are under no general duty to provide . . . police protection, to any particular individual citizen.” *Warren v. District of Columbia*, 444 A.2d 1, 3 (D.C. 1981) (*en*

“An identifiable trifle is enough for standing” *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14 (1973) (e.g., a stake of \$5). A preenforcement challenge to a criminal statute may be every bit as much a case or controversy as a challenge to a civil statute or regulation, and may be far more compelling due to the risk of loss of liberty, property, livelihood, and reputation.

The panel does recognize that violation of a constitutional right may confer an element of standing, but is not sufficient. It states:

Whatever the ultimate understanding of the Second Amendment, compare *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), with *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), the conduct that plaintiffs would engage in is at least arguably affected with a constitutional interest, but proscribed by a statute. Thus, the first requirement of *United Farm Workers and Navegar* is satisfied. (Slip op. 12)

Indeed, *Navegar* noted that standing may derive from “the ‘zone of interests’ intended to be protected or regulated by the statute or constitutional guarantee in question.” 103 F.3d at 998, citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982).¹⁶ See *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710-11 (7th Cir. 1999) (plaintiff “suffered a cognizable injury as a result of the statute’s enactment [depriving him of firearm], and that injury is one that would be redressed through a favorable ruling on his Second Amendment challenge”), *cert. denied*, 528 U.S. 1116

banc).

¹⁶ “Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.” *Linda R. S. v. Richard D.*, 410 U.S. 614, 617, n.3 (1973).

(2000).

The panel duly notes that the District “enforces its gun laws, prosecuting ‘all violators of the statute under normal prosecutorial standards.’” Slip op. 12, quoting *Austin v. United States*, 847 A.2d 391, 393-94 (D.C. 2004).¹⁷ However, “plaintiffs allege no prior threats against them or any characteristics indicating an especially high probability of enforcement against them.” Slip op. 12. Yet requiring prior threats and the like to be the tail which wags the standing dog would mean that law-abiding citizens could never bring a preenforcement action, which would thereby be confined only to actual lawbreakers or persons who recklessly live on the murky edge, because only such persons receive threats of prosecution or have a high probability of enforcement against them. It ignores that good citizens do not risk getting criminal records and do not violate the law even if they will not be caught. It also disregards this Court’s decision in *Lion Manufacturing, supra*, that there need not “always be an explicit and specific threat of enforcement in order that one may obtain a judicial declaration such as that sought here.” 330 F.2d at 838 n.10. It is enough that such citizens, as here, would engage in proscribed conduct “forthwith” but for a law which is duly enforced, and will engage in that conduct on a judicial determination that the law is invalid.

Not only do the plaintiffs allege that they will forthwith obtain pistols in that circumstance, but also plaintiff Jordan owns and stores a pistol outside the District, and would keep it at his home in the District if he could lawfully do so. “Plaintiffs correctly

¹⁷ This is not a case where the law is not enforced, as in *Poe v. Ullman*, 367 U.S. 497, 501 (1961) (ban on contraceptives), and *Doe v. Duling*, 782 F.2d 1202, 1204 (4th Cir. 1986) (fornication law).

argue that *Peoples Rights Organization, Inc. v. Columbus*, 152 F.3d 522, 528-29 (6th Cir.1998) (“*PRO*”), supports preenforcement standing in precisely this circumstance.” Slip op. 13. That court found standing where plaintiffs faced the Hobson’s choice of the following: “They can either possess their firearms in Columbus and risk prosecution under the City’s law, or, alternatively, they can store their weapons outside the City, depriving themselves of the use and possession of the weapons.”¹⁸ Slip op. 13, quoting *PRO*, 152 F.3d at 529.

“*PRO* is plainly inconsistent with *Navegar*.” Slip op. 13. The panel found the threat in *Navegar* as even greater than that in *PRO*, in which the plaintiffs argued that the law was vague. Yet the allegedly vague portions of the federal assault weapon law challenged in *Navegar* and in *NRA v. Magaw*, *supra*, were subject to clarification by the agency that enforced it. By contrast, the law in *PRO* was fit for review because it “is not subject to any type of clarifying interpretation Rather, the words of the ordinance provide the sole source of guidance for firearms’ owners.”¹⁹ *PRO*, 152 F.3d at 530.

The plaintiffs in *PRO* did the only thing that responsible firearm owners could have done – seek a judicial resolution. “[A] citizen should be allowed to prefer ‘official

¹⁸ “[Plaintiffs] risk prosecution and possible imprisonment if they possess their weapons within Columbus, as the City has assured us that it will prosecute those who violate its assault weapons ban.” *PRO*, 152 F.3d at 530.

¹⁹ A challenge to a firearms prohibition is justiciable where “the plaintiffs wish to engage in conduct plainly prohibited on the face of the allegedly unconstitutional statute.” *Coalition of New Jersey Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 673 n.10 (D. N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) (*mem.*), *cert. denied*, 534 U.S. 1039 (2001).

adjudication to public disobedience.” *Id.* The alternative would have entailed the “perverse” result mentioned by *Navegar* – to flaunt one’s disobedience of the law sufficiently to provoke law enforcement authorities into threatening or issuing an arrest warrant.

Steffel recalled the words of Professor Borchard, author of the Declaratory Judgment Act, about courts forcing a plaintiff into the alternatives of violating a statute to test its constitutionality or of foregoing the exercise of his claimed rights:

Into this dilemma no civilized legal system operating under a constitution should force any person. The court, in effect, by refusing an injunction informs the prospective victim that the only way to determine whether the suspect is a mushroom or a toadstool, is to eat it. Assuming that the plaintiff has a vital interest in the enforcement of the challenged statute or ordinance, there is no reason why a declaratory judgment should not be issued, instead of compelling a violation of the statute as a condition precedent to challenging its constitutionality.

Steffel, 415 U.S. at 468 n.18, quoting Hearings on H.R. 5623 before a Subcommittee of the Senate Committee on the Judiciary, 70th Cong., 1st Sess., 75-76 (1928).

Plaintiff Hailes possesses a shotgun in her home secured by a trigger lock. But for the District’s prohibition, she would remove it when necessary to defend herself in her home. The district court found that she had standing because she must forego possibly lawful activity based on her “well-founded fear of prosecution,” and she lacked an administrative remedy. Slip op. 14. The panel disagreed: “But the lack of an administrative remedy, while it increases the hardship resulting from denial of preenforcement review, still does not enable Hailes to meet the *Navegar* test.” Slip op. 15.

The panel states that the *Navegar* plaintiffs apparently had no administrative remedy,

slip op. 15, but in fact they did. “The Crime Control Act at issue in *Magaw* delegated authority to the Secretary of the Treasury to make rules designating in greater specificity the requirements of the statute, and we found the plaintiffs’ vagueness challenges to be premature due to the lack of any final agency action.” *PRO*, 152 F.3d at 530, citing *Magaw*, 132 F.3d at 293.

In his dissenting opinion, Judge Sentelle “commend[s] the balanced tone and thoroughness of the majority opinion,” but “would find standing based on the authority of cases cited by the majority.” Slip op. 1 (Sentelle, J., dissenting). “As the majority notes, a long line of cases upholds pre-enforcement review of First Amendment challenges to criminal statutes by plaintiffs with bases for standing no different than that asserted by appellants herein for their Second Amendment challenge.” *Id.* at 2, citing *Virginia v. American Booksellers Ass’n*, 484 U.S. 383 (1988).

In *American Booksellers*, plaintiffs challenged a prohibition on the display for sale of certain sexually-related material. Injury was threatened “as the law is aimed directly at plaintiffs, who . . . will have to take significant and costly compliance measures or risk criminal prosecution.” 484 U.S. at 392. The Court found preenforcement review proper:

The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution.

Id. at 393.

As Judge Sentelle comments about the above: “The only difference between that harm and the harm alleged in this case is that there it was to First Amendment interests, here to Second. I know of no hierarchy of Bill of Rights protections that dictates different standing analysis.”²⁰ Slip op. 3. Judge Sentelle would apply precedents alleging violation of constitutional rights and would distinguish *Navegar*. He concludes: “The allegedly constitutionally protected conduct in the record before us is clearly defined and clearly unlawful under a statute that the District apparently enforces regularly, and under which there is certainly no doubt that plaintiffs reasonably apprehend enforcement.” Slip op. 4 (Sentelle, J., dissenting).

In sum, the panel decision frankly states that “*United Farm Workers* appeared to find a threat of prosecution credible on the basis that plaintiffs’ intended behavior is covered by the statute and the law is generally enforced.” Slip op. 7. However, it read *Navegar* essentially to eschew this rule and to require a rule so stringent that law-abiding citizens could never attain it, in that it virtually requires breaking the law. The various “tensions” and inconsistencies ably set forth in the panel decision persuasively explain why this Court sitting en banc should resolve what it takes to bring a preenforcement review of a criminal law where violation of constitutional and statutory rights are asserted.

²⁰ No constitutional right is “less ‘fundamental’ than” others, and “we know of no principled basis on which to create a hierarchy of constitutional values or a complementary ‘sliding scale’ of standing” *Valley Forge*, 454 U.S. at 484.

CONCLUSION

This petition for rehearing and petition for rehearing *en banc* should be granted.

Respectfully submitted,

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ADDENDUM

CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to Circuit Rule 28(a)(1)(A), Plaintiffs in the district court and appellants/cross-appellees in this court include Sandra Seegars, Gardine Hailes, Absalom F. Jordan, Jr., Carmela B. Brown, and Robert N. Hemphill. Defendants in the district court and appellees in this court include John D. Ashcroft, Attorney General of the United States, and Anthony A. Williams, Mayor of the District of Columbia. Ashcroft is also cross-appellant in this court. Ashcroft has been succeeded in office by Alberto Gonzales.

Amici in both the district court and in this court include the Violence Policy Center and the Brady Center to Prevent Gun Violence. Amici in this court include the States of Texas, Alabama, Florida, Georgia, Idaho, Kansas, Louisiana, Michigan, Mississippi, Montana, Nebraska, Ohio, South Dakota, Utah, Virginia, and Wyoming.

DISCLOSURE STATEMENT

Circuit Rule 26.1 is inapplicable inasmuch as all plaintiffs/appellants are natural persons.

Stephen P. Halbrook

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 2005, two (2) true and correct copies of the foregoing were served by first class mail, postage prepaid, to:

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