No. 22-13893

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

VERA COOPER,
NICOLE HANSELL,
NEILL FRANKLIN,
PLAINTIFFS – APPELLANTS,

v.

ATTORNEY GENERAL OF THE UNITED STATES,
UNITED STATES OF AMERICA,
DIRECTOR OF BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,
DEFENDANTS – APPELLEES.

BRIEF OF *AMICUS CURIAE* THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML) IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4), amicus curiae The National Organization for the Reform of Marijuana Laws ("NORML") is a non-profit corporation, which is not publicly held, does not issue stock, and has no parent corporation.

STATEMENT OF IDENTITY, INTEREST OF AMICUS CURIAE

For the past 53 years, NORML's mission has been to move public opinion sufficiently to legalize the responsible use of marijuana by adults, and to serve as an advocate for consumers to assure they have access to high quality marijuana that is safe, convenient, and affordable.[1]

[1] In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), 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 amicus curiae, or its counsel, made a monetary contribution intended to fund its preparation or submission.

SUMMARY OF ARGUMENT

Historically, cannabis is more American than apple pie. From the founding of the Virginia colony in 1607, when colonists were required to grow cannabis, to its prohibition in 1937 with the passage of the federal Marihuana Stamp Tax Act legislation, America was the largest producer and exporter of cannabis and its byproducts. Cannabis, as a medicine, a textile fabric, and food source, is truly rooted in American history. As an agricultural product, it was a significant contributor to the viability, stability, and economic hegemony of the United States on a global scale for hundreds of years.

While in 2018 the federal government re-legalized industrial hemp and its associated cannabinoid compounds (containing less than 0.3% of Delta 9-tetrahydrocannabinol, hereinafter "THC"), medical cannabis (containing more than 0.3% THC) has made a pronounced resurgence since 1996, when California legalized medical marijuana with passage of the Compassionate Use Act, Compassionate Use Act (1996), California State Legislature, Health and Safety Code, Division 10, Chapter 6, Article 2, 11362.5. Since then, some 37 additional states, the District of Columbia and three U.S. territories, have legalized cannabis for medicinal and/or responsible adult use.

That state nullification of the federal prohibition of cannabis has actually been sanctioned and supported by Congress since 2014. It started with approval of the Rohrbacher-Farr Spending Appropriations Amendment, Rohrabacher-Farr Amendment (2015), 114th United States Congress, H. Amdt. 332 to H.R. 2578 (Commerce, Justice, Science, and Related Agencies Appropriations Act), which prohibited federal funds from being used by federal law enforcement agencies to investigate or prosecute state compliant medical cannabis providers and their patients. Every two years since then, Congress has passed successive spending appropriations measures with the specific intent to continue to handcuff federal authorities from enforcing the federal prohibition of cannabis as medicine so as not to interfere with those state-based medical programs which continue to flourish. As such, the federal government is returning to America's original embrace and promotion of cannabis cultivation and consumption despite the fact that it continues to be illegal under the federal Controlled Substances Act of 1970.

While there is no doubt that exposure to certain levels of THC and cannabinoid compounds may cause a medical patient to experience limited periods of impairment, that condition is temporary and passes in a matter of hours. Similar to imbibers of alcohol, who historically may be penalized

and/or deprived of their right to carry a firearm during the period of impairment, *see United States v. Harrison*, 22-cr-00328-PRW (W.D.Ok.), Dkt. 36, 2/3/23, at fn. 32, *citing State v. Weber*, 168 N.E.3d 468, 489-96 (Ohio 2020)(prohibiting carrying or use of a firearm "while under the influence of alcohol or any drug of abuse"), and at fn. 34 (collecting cases), the same should also apply to medical cannabis patients. They too should only be disallowed the right to bear arms during that temporary, limited, window where the effects of the medicine may impair them, not banned as a class of individuals based solely on their choice of medicine to alleviate certain afflictions. Creating that type of parity between those two types of substances and their consumption, and parity with regard to windows of impairment, does have historical foundation to permit a temporary impingement upon their right to bear arms.

However, rather than create parity with the historically permitted impingement of Second Amendment rights when the possessor of a firearm is actually under the influence of an intoxicant like alcohol, federal law in 18 U.S.C. 922(g)(3), instead prohibits a medical cannabis patient's right to own a firearm simply because of their status. The impact of that legislation is not a mere temporary impingement on the patient's constitutionally guaranteed right, it is an outright blanket ban on their free exercise of the

right to carry and bear arms at any time. As such, the statute should be found unconstitutional under the United States Supreme Court's ruling last term in *New York State Rifle & Pistol Association, Inc. v. Bruen*, _ U.S. _, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). There, the Court held that the constitutionality of a statute intended to impinge upon or curtail the right to carry and bear arms requires an historical analysis of the Second Amendment and a close look at the societal norms and legislative landscape around that right in both in 1791, when the Second Amendment was adopted, and 1868 when the Fourteenth Amendment made it applicable to the states.

Historically, there is no analog akin to 18 U.S.C. 922(g) which has served a legislative basis to strip a person of their right to carry and bear arms based upon their medical status, not their medical condition. That is not permissible under *Bruen*. While certain classes of individuals have been proscribed from ownership, use or possession of firearms due to, *inter alia*, prior felony convictions, serious drug addiction issues, mental instability, or dishonorable discharge from the armed forces, *see* 18 U.S.C. 922(g)(1)-(6), no class of medical patients has categorically been prohibited from the exercise of their right to bear arms. At issue here is the reality that the 18 U.S.C. 922(g) medical cannabis ban results in a class-based proscription

that is not limited to temporary periods of actual impairment. That blanket prohibition is not tethered to any historical precedent in 1789 or 1868. Further, there is no historical analog that would constitutionally permit this complete impingement based solely on class status, rather than individualized cases of impairment. As such, this Court should find that there is no adequate constitutional basis under *Bruen* to prevent and prohibit medical cannabis patients from the right to carry and bear arms.

ARGUMENT

The Second Amendment guarantees individuals the right to carry and bear arms which shall not be infringed. *See, U.S. Constitution, Amend. II*. That amendment "codifie[s] a pre-existing right" (*Dist. of Columbia v. Heller*, 554 U.S 570, 592 (2008)), which is a "guarantee…which we inherited from our English ancestors." *See*, *U.S. v. Jimenez-Shilon*, 34 F.4th 1042, 1046 (11th Cir. 2022). That guaranteed right, admittedly, is not absolute. Certain classes of individuals based upon factors such as prior criminal conduct and mental infirmity may be deprived of that right by laws such as 18 U.S.C. 922(g). However, that distinction is not based upon a status, like the type of medicine or treatment which a state makes available to a medical patient to treat a physical affliction. Rather, historically, it has been based upon actual criminal behavior and evidence of an actual mental

condition – not a blanket prohibition. Sweeping impingement based on conduct and mental infirmity is not the same as sweeping prohibition across a membership class that elects one form of medicine over another as automatically disqualifying and debilitating, as 18 U.S.C. 922(g)(3) does, and has no historical analog that does not look instead at limited windows of impairment experienced by the particular individual.

The constitutional question before this Court is whether medical cannabis patients may be stripped of that guaranteed right for mere status, instead of prior or ongoing conduct, or temporary periods of impairment from said medicine. In the lower court proceeding, the legal issue wrongly boiled down to the notion that to be able to obtain and use medical cannabis was the effective equivalent of being impaired for the entirety of time that a patient was registered in Florida's medical cannabis program. Such a complete prohibition against a class of individuals, based upon the potential, but not actual intoxication or impairment due to a controlled substance, is untenable. There is no historical precedent for the unlimited duration of such a prohibition, and therefore no basis upon which to sustain that sweeping a prohibition under *Bruen*.

The *Bruen* analysis starts with an examination of whether the same social concerns regarding cannabis and the possession and carrying of

firearms was extant in 1791, when the Bill of Rights was adopted, or in 1868, when the 14th Amendment made the Bill of Rights applicable to the states. In short, they were not.

Here, the issue before the Court is whether the prohibition of gun possession and ownership by a person addicted to or an unlawful user of any 'controlled substance' (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), which includes marijuana (27 C.F.R. 478.11 (1968)), may be applied to medical cannabis patients who are lawfully using medical marijuana in conformity with Florida state law. As the Court stated in *Bruen*, the historical "relevant evidence" is lacking to support such a blanket prohibition that would allow that infringement and impingement on the right to carry and bear arms. 142 S.Ct. at 2131.

I. THE BRUEN HISTORICAL ANALYSIS TEST

The Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, established new precedent and analytic framework when evaluating the constitutionality of a law that may impede upon the guarantees under the Second Amendment. 142 S.Ct. at 2129–301. It held that the plain text and meaning of the Second Amendment covers an individual's conduct, namely, the right to carry and bear arms. In defending any legislation that may impede that right, the government must

then justify its regulation of said guaranteed right by demonstrating that the law is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Id.* at 2129–30, *quoting*, *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961); *accord*, *US v. Harrison*, 22-cr-00328-PRW (W.D.Ok) (Dkt. 36), 2/3/23.

This historical framework analysis set forth in *Bruen* was a significant departure from prior precedent in that deference was no longer to be extended by the lower courts to the legislature(s). Such deference to the other branch of government "…is not the deference that the Constitution demands" where impingement on the Second Amendment is concerned. *Bruen*, at 2131. Rather:

> "[t]he inquiry is 'fairly straightforward' when the challenged regulation addresses a 'general societal problem that has persisted since the 18th century' because there 'the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment."

Harrison, Doc. #36, Pg. 10, *quoting*, *Bruen*, 142 S.Ct. at 2129-30.

By emphasizing the importance of the historical context and treatment of regulations around the right to carry and bear arms, the Court

further observed that, "[i]f earlier generations addressed the societal problem, but did so through materially different means,' that too is evidence that the modern regulation is unconstitutional." *Bruen,* 142 S.Ct. at 2131.

As such, the Supreme Court established that because "[c]onstitutional rights are enshrined with the scope they were understood to have when people adopted them," historical analogues in existence near the time the Second Amendment was adopted in 1791 are of primary relevance" and again in 1868 after passage of the 14th Amendment, making the Constitution and Bill of Rights applicable to the state. *Harrison*, Fn. 28, *quoting*, *Bruen*, at 2130, n. 6.

When determining whether 18 U.S.C. 922 establishes a sufficient basis to deprive Appellants of the right to bear arms simply because they are registered patients in Florida's medical marijuana program requires a historic review of the prominent role of cannabis in American history, and its federal penalization since 1937, to determine if the statute passes constitutional muster.

For over 300 years from the colonies to the present, the United States has had a rich history of cannabis cultivation, manufacturing, and consumption.

Cannabis was not only essential to the formation and economic success of our nation, it was also required to be grown since the days of the nation's founding. Devoid of that history, a court could readily overlook the agricultural, mercantile, and pharmacologic role of cannabis in human history and particularly in the colonies through to its prohibition in 1937 with the passage of the Marijuana Stamp Tax Act, P.L. 75-238 (1937). So deprived, the court would then be unable to review the fact that the passage of the federal Controlled Substances Act signed into law by President Nixon in 1970 (21 U.S.C. 801, *et. seq.*), which designated cannabis as a Schedule I drug ostensibly with no medical or societal validity, was predicated on racism and political/social oppression, not valid science. Despite the Schedule I designation, there has been an extraordinary resurgence of cannabis as legitimate medicine in 38 individual states, the District of Columbia, and three U.S. territories since 1996.

While that conflict between the supremacy of federal law and the nullification of it by states which have established those medical cannabis programs is quixotic, since 2015 Congress has effectively bypassed federal prohibition and instead protected and promoted those state medical cannabis programs. As stated by Justice Clarence Thomas: "[I]n every fiscal years [sic] since 2015, Congress has prohibited the Department of Justice

from 'spending funds to prevent states' implementation of their own medical marijuana laws." *Standing Akimbo, LLC v. U.S.*, 141 U.S. 2236, 2237 (2021)(Thomas, C., regarding the denial of certiorari). In fact, the most recent appropriations amendment was passed under section 531 of the Consolidated Appropriations Act of 2022. The constitutionality of those limitations restricting the abilities of federal law enforcement due to those spending appropriations has been upheld. *See, e.g.*, *U.S. v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016); *U.S. v. Bilodeau*, 24 F.4th 705, 714 (1st Cir. 2022).

This critical history, as set forth herein, should be dispositive of the issue before this Court. In neither 1791 nor 1868 was legislation permitted that restricted an individual's right to carry and bear arms solely because of their status as a cannabis farmer or consumer of the plant for medical or other purposes. Cannabis was ubiquitous in that culture. To the extent that it has temporarily intoxicating effects, like alcohol, that historically was not sufficient grounds to establish a blanket prohibition stripping one of their Second Amendment rights. As such, the federal statutes here which prohibit medical cannabis patients from owning or possessing firearms solely because of their status in Florida's medical marijuana program, are unconstitutional. Those federal statutes were passed 200 or more years

after the critical threshold dates of 1791 and 1868 – two eras where cannabis cultivation and use were widespread and legally permitted.

Today, medical cannabis use is widespread, decriminalized and/or legal within 41 states[2], and effectively sanctioned by the United States Congress which originally designated it as a Schedule I drug.

II. CANNABIS IS HISTORICALLY MORE AMERICAN THAN APPLE PIE

Few plants have been as important to American history as cannabis. From the establishment of the colonies in the 1600s, when colonists were required by the King to cultivate and export cannabis[3], to the passage of the 1937 Marihuana Stamp Tax Act[4] nearly 300 years later, the United States was the world's largest producer and exporter of the product. [5] It was

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[2] "Marijuana Legality by State." DISA Compliance and Safety Solutions. https://disa.com/maps/marijuana-legality-by-state, last accessed March 22, 2023.

[3] Robert Deitch, HEMP -AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY (2003), note 1 at 16 (In 1619, "[t]he Virginia Company, by decree of King James I ..., ordered every [property-owning] colonist ... to grow 100 [hemp] plants specifically for export.")

[4] P.L. 75-238 (1937).

[5] The cannabis plant has often been referred to as "hemp" or "marijuana" a derogatory slang term for the intoxicating form of the plant. Legally, the only difference between hemp and marijuana is the level of Delta-9 Tetrahydrocannabinol (THC), the euphoria creating compound found in the plant and products produced from it. Under the 2018 Farm Bill, P.L. 115–334 (Dec. 20, 2018), Congress established that a cannabis plant with less than 0.3% THC content is hemp, and is federally legal and may be put into the stream of interstate commerce. A cannabis plant or product with

farmed as early as 1619 by mandate of the Virginia, Maryland, and Pennsylvania colonies, and many of the Founding Fathers, including George Washington, Thomas Jefferson, James Madison, and a host of others, were producers of it.[6] Cannabis plants were positioned as an acceptable form of legal tender for barter as established by the colonies of Virginia (1682), Maryland (1683), and Pennsylvania (1706).[7]

Some of the Founders and Framers of the Constitution, including Washington and Madison, were known to smoke cannabis for its pleasurable and satiating qualities.[8] As participants in the drafting of the Constitution and Bill of Rights, who purportedly consumed cannabis, it is notable that prior to and after ratification of the Second Amendment in 1791, none of the Founding Fathers proposed any exception to or

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more than that threshold amount is marijuana, which has been designated a Schedule I drug under 21 U.S.C. 801, et. seq., and is federally illegal for all purposes. Agriculture Improvement Act (2018), 115th United States Congress, Public Law 115–334. https://www.govinfo.gov/content/pkg/PLAW-115publ334/uslm/PLAW-115publ334.xml, last accessed March 21, 2023.

[6] Robert Deitch, HEMP -AMERICAN HISTORY REVISITED: THE PLANT WITH A DIVIDED HISTORY (2003), note 1 at 14; Marijuana Timeline, PBS, http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html (Reviewed 3/4/2023).

[7] Deitch, *supra*, note 1 at 19.

[8] Sonny, Julian: "The Presidents Who Admitted Smoking Weed", Elite Daily (2/18/2013), http://elitedaily.com/news/politics/presidents-admitted-smoking-weed/; *See also*, Deitch, at note 1 supra at 25.

impingement upon the right to bear arms based upon cannabis cultivation or usage. That is a critical factor under *Bruen*'s historic analysis.

Having homeopathic medical roots, pharmacologically, cannabis was formally introduced into the field of western medicine by Dr. William O'Shaughnessy in the 1830's and was readily adopted in the United States.[9] Studies regarding the therapeutic properties of cannabis began as early as 1840 and were published in academic medical journals. Its medical intervention potential was rapidly explored; by 1850 cannabis was entered into the United States Pharmacopoeia as a treatment for a host of ailments and afflictions including "neuralgia, alcoholism, and opiate addiction, convulsive-inducing conditions."[10] The nationwide adoption of cannabis as a medicine was not reversed or rejected in the ensuing decades, nor in 1868 when the Fourteenth Amendment made the guaranteed right of the Second Amendment applicable to the states. This too is a critical historical fact under the *Bruen* analysis. While federal law has effectively prohibited the possession or use of cannabis for any reason for the last 86 years (since the 1937 Marijuana Stamp Tax Act and re-emphasized in 1970 with enactment of the Controlled Substances Act), a number of grave medical conditions

[9] Booth, Martin: CANNABIS: A HISTORY 109-10 (2003).
[10] Booth, *supra*, note 70 at 113-14.

have been treated by cannabis for the past 27 years, since 1996 when California and then 37 other states, three territories and the District of Columbia legalized and established medical marijuana programs in the ensuing decades.

THE RISE OF RACISM AND PROHIBITION

Over the ensuing 200 plus years from colonial times to 1937, the United States was the global juggernaut of cannabis. However, due to the economic effects of the Great Depression, xenophobia, racism, and societal manipulation by American industrialists, the cannabis prohibition movement fomented into the passage of the Marihuana Stamp Tax Act of 1937. Specific groups of individuals and migrants from certain socio-economic circumstances were prime proponents of that early prohibition movement. This is readily evident from the statements of Harry Anslinger, the U.S. Department of Treasury's Commissioner of the Federal Bureau of Narcotics and driving force behind the 1937 prohibition law.[11] He was quoted often with statements such as:

> "There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz and swing, result from marijuana usage. This marijuana causes white

[11] https://en.wikipedia.org/wiki/Harry_J._Anslinger

> women to seek sexual relations with Negroes, entertainers, and any others."[12]
>
> "Reefer makes darkies think they're as good as white men."[13]
>
> "The primary reason to outlaw marijuana is its effect on the degenerate races."[14]

Anslinger's sentiments about cannabis as a social evil were clearly not based on science, but on racism and social oppression. President Richard Nixon, too, would become a similar advocate of such atrocious rationalizations for placing cannabis "temporarily" as a Schedule I drug under the Controlled Substances Act.

WAR ON PEOPLE OF COLOR REBRANDED AS WAR ON DRUGS

President Nixon signed the federal Controlled Substances Act into law in 1970. *21 U.S.C. 801, et. seq*. As a result, cannabis was relegated to Schedule I based on purported findings that it: (1) lacked medical validity, (2) had a high risk of abuse, and (3) could not be researched without extreme caution and federal oversight.[15]

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[12] A-Z Quotes: https://www.azquotes.com/quote/666390.
[13] A-Z Quotes: https://www.azquotes.com/quote/543538.
[14] A-Z Quotes: https://www.azquotes.com/quote/543536.
[15] 21 U.S.C. 812. That same Schedule I designation persists today 53 years later despite the 37 states, three territories, and District of Columbia that have established medical programs in spite of it.

Nixon had a motive for placing cannabis in Schedule I, and it was to weaponize marijuana as a means to put down political challenges to his administration and supplant protest leaders and their movements that criticized him. This is amply evidenced in the following quote of John Ehrlichman, former Chief of Staff to President Nixon:

> "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."[16]

CONGRESS ACTIVELY PROMOTES MEDICAL CANNABIS

In 1996, California passed the Compassionate Use Act, also known as "Prop 215," which established the nation's first medical marijuana program.[17] Since then, the vast majority of the United States has passed

[16] Baum, Dan: "Legalize It All", Harper's Weekly, April, 2016 - https://harpers.org/archive/2016/04/legalize-it-all/.
[17] California Uniform Controlled Substances Act, Health and Safety Code, Chapter 6, Art. 2, 11362.5 (1996). https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.5.&lawCode=HSC.

similar legislation legalizing the medical use of cannabis, including the state of Florida.[18]

Congress has the power under the Constitution to shut these programs down because they nullify the supremacy of the federal Controlled Substances Act and its Schedule I designation and prohibition of cannabis. *See Gonzales v. Raich*, 545 U.S. 1 (2005). Instead, Congress has actually attempted to protect and promote those programs. In 2014, Congress approved a spending appropriations measure designed to prohibit the Department of Justice from using federal funds to investigate and prosecute medical cannabis patients and the medical facilities that supplied them provided the operators were in compliance with the state law where they resided.[19] Every two years since then, Congress has passed similar spending appropriations measures ensuring that there would be no federal interference with state medical cannabis programs.[20]

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[18] Amendment 2 to Florida Constitution, passed by 71% voter approval, November 8, 2016.
[19] "Rohrbacher-Farr Amendment" to the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2015 (H.R. 4660).
[20] That Amendment was signed into law by President Obama on December 16, 2014. It was extended as the "Rohrbacher-Blumenauer Amendment" by means of Consolidated Appropriations Act of 2016 (2016 Omnibus Spending Bill, Pub. L. 114-113), signed into law on December 18, 2015. Further extensions have been in the Consolidated Appropriations Act 2018 (2018 Omnibus Spending Bill, Pub. L. 115-141) signed by President Trump

These years' federally condoned nullification of the federal prohibition of cannabis by Congress, to affirmatively sanction, promote, and protect state cannabis programs must be included in the historical analysis and added to the sum total of the years in which cannabis has been or is effectively made federally legal in the United States.

III. THERE WAS NO IMPINGEMENT OF 2ND AMENDMENT RIGHTS DUE TO CANNABIS IN EITHER 1791 OR 1868

Applying *Bruen*'s historic analysis, with close attention to 1791 and 1868, makes clear that neither the Founders, Framers, nor elected leaders of the United States, all of whom had intimate knowledge of the role of cannabis cultivation and consumption in the colonies and new nation, took any legislative action to disarm cannabis consumers of the right to bear arms. It is telling that there is no analog in American history akin to 18 U.S.C. 922(g)(3) which caused citizens to be stripped of their guaranteed Second Amendment right simply because of their membership in a class of people. Rather, the closest analog laws related to individuals who were

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on March 23, 2018, and extended again by him to November 21, 2019 (H.R. 4378). On December 20, 2019, President Trump signed the "Consolidated Appropriations Act, 2020" (H.R. 1158). President Biden has also approved those appropriations with section 531 of the Consolidated Appropriations Act of 2022 and section 531 of the Consolidated Appropriations Act of 2023 (H.R. 2617, p. 103, https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf).

under the influence of an intoxicant for the period of time that the intoxicant was actively impairing them.

From the Virginia colony's measures in 1609, to the ratification of the Second Amendment in 1791, to the ratification of the Fourteenth Amendment in 1868, the colonies and later United States readily embraced cannabis cultivation and tolerated its consumption without any impingement or restriction on any guaranteed rights under the Constitution.

The federal prohibition of cannabis in 1937 with passage of the Marihuana Stamp Tax Act, and its reiteration again in 1970 with the Schedule I designation under the Controlled Substances Act, spans just four score and seven years for a total of 87 years. That brief period pales in comparison to the hundreds of years where cannabis had been deeply rooted in American culture, agriculture, and economic hegemony.

From 1609 when the Virginia colony was mandated to grow cannabis to 1937 when the Marihuana Stamp Tax Act was enacted equals 328 years. While California rolled out its medical marijuana program in 1996 in contravention of federal law and therefore those years are not accounted for here, there is an additional 9-year period from 2014 to the present day where Congress has intentionally approved spending appropriations

measures shielding state medical programs from federal interference. As such, cannabis has been lawfully cultivated and consumed for 335 years in this country's history.

In sum, viewed through the historical lens of *Bruen*, cannabis has been an essential to American agriculture and social culture for 335 years without impingement on a cultivator or consumer's right to carry and bear arms. As such, this Court should find that 18 U.S.C. 922(g)(3) is unconstitutional.

CONCLUSION

For the reasons set forth herein, the lower court's Decision and Order should be reversed, and the Complaint reinstated.

Dated: March 22, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Type–Volume certification

Undersigned counsel hereby certifies that the Amicus Brief attached to this Motion for Leave to File an Amicus Brief by the NORML organization complies with the word count set forth in FRAP 32, excluding the parts exempted by FRAP 32(f). The total word count of the Amicus Brief is 4,605 words.

Typeface and Type-Style certification

Undersigned counsel further certifies that the attached Amicus Brief complies with typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

Dated: March 22, 2023
New York, New York

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