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September 18, 2013

The Hon. Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

Re: *Dearth* v. *Holder*, No. 12-5305
To be argued September 19, 2013

Notice of Supplemental Authority, Fed. R. App. P. 28(j)

Dear Mr. Langer:

Plaintiffs-Appellants argue that 18 U.S.C. § 922(a)(9) is unconstitutional because it literally forbids a core aspect of the Second Amendment—the use of firearms for self-defense. Means-ends scrutiny should thus play no role in adjudicating this provision. See Appellants' Br. at 30-33.

On September 12, 2013, the Illinois Supreme Court adopted this interpretive approach, unanimously holding Illinois' complete ban on the carrying of handguns outside the home violates the Second Amendment's core self-defense guarantee:

> [I]n the form presently before us, [the provision] categorically prohibits the possession and use of an operable firearm for self-defense outside the home. In other words, [the provision] amounts to a wholesale statutory ban on the exercise of a personal right that is specifically named in and guaranteed by the United States Constitution, as construed by the United States Supreme Court.

> In no other context would we permit this, and we will not permit it here either.

People v. *Aguilar*, 2013 IL 112116, at ¶ 21.

Aguilar followed the Seventh Circuit's earlier decision in *Moore* v. *Madigan*, 702 F.3d 933 (7th Cir. 2012), which had reached the same conclusion, in the same manner. "[O]ur analysis is not based on degrees of scrutiny, but on Illinois's failure to justify the most restrictive gun law of any of the 50 states." *Id.* at 941. "The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside." *Id.* at 942. Since the "theoretical and empirical evidence (which overall is inconclusive) is consistent with concluding that a right to carry firearms in public may promote self-defense," Illinois's asserted policy rationales for barring gun carrying were insufficient. *Id.* "The Supreme Court's interpretation of the Second Amendment therefore compels us to [strike down the gun carry prohibition]." *Id.*

In this case, there does not even exist a theoretical question of whether Section 922(a)(9) proscribes the Second Amendment's core self-defense interest in acquiring firearms. This Court should follow the interpretive approach reconfirmed in *Aguilar* and *Moore*.

Sincerely,

/s/ Alan Gura
Alan Gura

This body of this letter contains 338 words.

cc: Counsel of Record via ECF

CERTIFICATE OF SERVICE

On this, the 18th day of September, 2013, I served the foregoing by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 18th day of September, 2013.

/s/ Alan Gura
Alan Gura