

No. 08-1521

**In The
Supreme Court of the United States**

OTIS McDONALD, ET AL.,
Petitioners,

v.

CITY OF CHICAGO, ILLINOIS,
Respondent.

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

**MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AND FOR
DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rules 28.4 and 28.7, the State of Texas and 37 other States (collectively the amici States) request that the Court divide oral argument for Petitioners, and allow Greg Abbott, Attorney General of Texas, on behalf of the amici States, 10 minutes of argument time. Petitioners support this motion, and have agreed to cede 10 minutes to the amici States.

In recognition of the important and independent interests of the States in certain cases, the Court has often granted motions for divided arguments. *See, e.g., Smith v. Texas*, 549 U.S. 1104 (2007); *Holmes v. South Carolina*, 546 U.S. 1162 (2006); *Halbert v. Michigan*, 544 U.S. 969 (2005); *Clingman v. Beaver*, 543 U.S. 1041 (2005); *Jackson v. Birmingham Bd. of Educ.*, 543 U.S. 953 (2004); *City of Littleton v. Z.J. Gifts*

D-4, L.L.C., 541 U.S. 901 (2004); *Aetna Health Inc. v. Davila*, 540 U.S. 1175 (2004); *City of Boerne v. Flores*, 519 U.S. 1088 (1997).

This request reflects the profound importance of this case to the States. As sovereign governmental entities, the amici States have interests that are distinct from, yet aligned with, Petitioners. The individual right to keep and bear arms is protected not only by the United States Constitution, but also by the constitutions of forty-four States. *See* Appendix to Brief for the State of Texas et al. as Amici Curiae in Support of Petitioners. And the legislatures of all 50 States are united in their rejection of bans on the possession of handguns, *see id.*, the “quintessential self-defense weapon” in America. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2818 (2008). Given the significance of the fundamental right to arms, the 38 amici States, as guardians of their citizens’ constitutional rights, have a substantial interest in ensuring that those rights are accorded their proper scope.

In *Heller*, this Court confirmed that the Second Amendment right to keep and bear arms is a critical liberty interest, essential to preserving individual security and the right to self-defense. But whether this right fully extends to the vast majority of citizens who live not in a federal enclave, but in one of the several States, remains an open question. Unless the ruling of the court of appeals below is reversed, millions of Americans will be deprived of their constitutional right to keep and bear arms as a result of actions by local governments, such as the ordinances challenged in this case.

Here, because they are sovereign governmental bodies, with strong interests in preventing crime and in maintaining their extant regulations on firearms, the amici

States represent interests unique from those of Petitioners. And the amici States are well positioned to address any federalism concerns regarding the application of the Second Amendment to state and local governments. As “independent sovereigns in our federal system,” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996), the amici States are particularly concerned when the Court engages in constitutional or statutory interpretation that implicates federalism issues. But the amici States firmly believe that the incorporation of the Second Amendment presents no such concerns. Denying local governments the power to nullify the Amendment will not increase federal power, mandate any state action pursuant to federal directives, or preclude reasonable state and local regulation of firearms. It will simply prevent local governments, like the federal government, from abrogating the fundamental, individual right to keep and bear arms. *See Pointer v. Texas*, 380 U.S. 400, 413-14 (1965) (Goldberg, J., concurring) (“[T]o deny to the States the power to impair a fundamental constitutional right is not to increase federal power, but, rather, to limit the power of both federal and state governments in favor of safeguarding the fundamental rights and liberties of the individual.”).

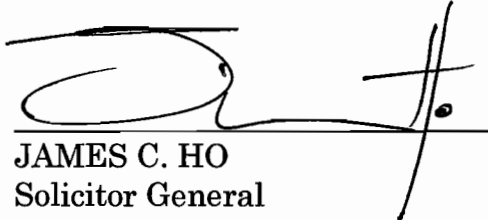
In sum, *amici* States bring to the Court a perspective that is both distinct from, yet complementary to, that offered by Petitioner. That perspective may be particularly meaningful to the Court in resolving federalism concerns related to the consequences of holding that the Second Amendment applies to state and local governments. For these reasons, amici States respectfully submit that this Court would benefit from divided argument.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'J. Ho', is written over a horizontal line. The signature is stylized with a large loop and a vertical stroke that extends upwards and to the right.

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December 17, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true and correct copy of this Motion for Leave to Participate in Oral Argument and for Divided Argument was served via Federal Express (Next Day Air Delivery) and via electronic mail, on December 17, 2009 to:

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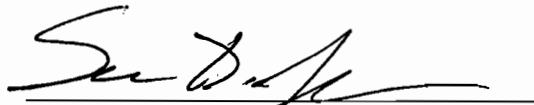
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The undersigned also certifies that on December 17, 2009, the original and 11 copies of this Motion for Leave to Participate in Oral Argument and for Divided Argument was dispatched to the clerk, as addressed below, via Federal Express (Next Day Air Delivery) and via electronic mail:

Hon. William K. Suter, Clerk
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