

COMMONWEALTH OF MASSACHUSETTS SUPREME JUDICIAL COURT

S.J.C. No. 10558

COMMONWEALTH OF MASSACHUSETTS, Plaintiff-Appellee

v.

NATHANIAL DEPINA, Defendant-Appellant

ON DIRECT APPELLATE REVIEW FROM
THE BRISTOL COUNTY SUPERIOR COURT

**AMICI CURIAE BRIEF OF BRADY CENTER TO PREVENT GUN
VIOLENCE, INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS, LEGAL COMMUNITY AGAINST VIOLENCE,
MASSACHUSETTS CHIEFS OF POLICE, MASSACHUSETTS MILLION
MOM MARCH CHAPTER OF THE BRADY CAMPAIGN TO PREVENT GUN
VIOLENCE, AND STOP HANDGUN VIOLENCE IN SUPPORT OF
APPELLEE**

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INTEREST OF AMICI

Brady Center to Prevent Gun Violence

The Brady Center to Prevent Gun Violence is a non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. The Brady Center has a substantial interest in ensuring that gun laws are properly interpreted to allow strong government action to prevent gun violence. Through its Legal Action Project, the Brady Center has filed numerous *amicus curiae* briefs in cases relating to gun violence prevention and firearms laws, including in the Massachusetts Supreme Judicial Court gun cases *Jupin v. Kask* and *Commonwealth v. Runyan* and the U.S. Supreme Court Second Amendment case *District of Columbia v. Heller*.

International Brotherhood of Police Officers

The International Brotherhood of Police Officers ("IBPO") is one of the largest police unions in the country, representing more than 50,000 members. While the IBPO fully supports and defends the Second Amendment right to keep and bear arms, it strongly supports Massachusetts' common sense licensing and carrying requirements, which protect the public and

law enforcement officers by helping to keep dangerous weapons out of the wrong hands.

Legal Community Against Violence

Legal Community Against Violence ("LCAV") is a national law center dedicated to preventing gun violence. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, LCAV is the country's only organization devoted exclusively to providing legal assistance in support of gun violence prevention. LCAV tracks and analyzes federal, state and local firearms legislation, as well as legal challenges to firearms laws. As an *amicus*, LCAV has provided informed analysis in a variety of firearm-related cases, including those brought on the basis of the Second Amendment.

Massachusetts Chiefs Of Police

The Massachusetts Chiefs of Police Association, Inc. is a non-profit corporation composed primarily of the police chiefs of cities and towns of the Commonwealth, and also includes federal law enforcement agencies, campus police chiefs, and other law enforcement and homeland security agencies. It is the largest law enforcement executive membership organization in Massachusetts. Established in 1887,

the Association provides traditional membership services, including meetings, member support, legislative advocacy, training and legal assistance. Through its affiliate, the Municipal Police Institute, Inc., a private non-profit charitable research and training organization, sample Policies & Procedures, Rules & Regulations, Legal Updates, training manuals and both classroom and on-line training are provided to police officers of all ranks across the state.

Massachusetts Million Mom March Chapter of the Brady Campaign to Prevent Gun Violence

The Massachusetts Million Mom March Chapter of the Brady Campaign to Prevent Gun Violence is part of a nationwide network of local volunteer activists of the Brady Campaign to Prevent Gun Violence, the country's largest, non-partisan, grassroots organization leading the fight to prevent gun violence. The Massachusetts chapter works locally on federal and state legislation and elections, education and awareness campaigns, linking with victims, and coalition building and community outreach. It is devoted to creating an America free from gun violence, where all Americans are safe at home, at school, at work, and in their communities.

Stop Handgun Violence

Stop Handgun Violence ("SHV") is a non-profit organization founded in 1995 by a group of businesspeople, including gun owners and victims of gun violence, concerned about the increasing number of gun deaths and injuries in America. SHV works to prevent firearm violence through education, public awareness and sensible legislation, without banning guns. SHV was a lead advocate of the Massachusetts Gun Control Act of 1998, which included safe storage mandates and has been successful in keeping guns out of the hands of children and criminals. Since the law was passed, SHV has seen significantly reduced numbers of accidental injuries and deaths among 0-19 year olds and Massachusetts currently has the second lowest firearm fatality rate in the nation, second only to Hawaii.

STATEMENT OF THE ISSUE

In a prosecution for unlawful carrying of a firearm, unlawful carrying of a loaded firearm, and possession of ammunition without a firearm identification card, did the motion judge correctly deny the defendant's motion to dismiss, which challenged the constitutionality of MASS GEN. LAWS ch.

140, § 131, and MASS. GEN. LAWS ch. 269, § 10, in light of *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).¹

ARGUMENT

I. INTRODUCTION

A. Summary of the Gun Violence Problem.

Massachusetts has a strong public interest in preventing firearm deaths and injuries. This Court noted in *Jupin v. Kask* the "societal concern with weapons reaching the hands of unauthorized users." *Jupin v. Kask*, 447 Mass. 141, 154 (2006). As the Director of the Harvard Injury Research Center and the Youth Violence Prevention Center stated, "gun violence is a modern-day public health epidemic." DAVID HEMENWAY, *PRIVATE GUNS, PUBLIC HEALTH*, 9 (Mich. Univ. Press 2004). In 2006, firearms killed 30,896 people across the

¹ Appellant was convicted of carrying a firearm without a license, in violation of MASS. GEN. LAWS ch. 269, § 10(a) (2009), and carrying a loaded firearm without a license, in violation of MASS. GEN. LAWS ch. 269, § 10(n) (2009). The violations of ch. 269 § 10(a), § 10(n) implicate Massachusetts' licensing statute, MASS. GEN. LAWS ch. 140, § 131 (2009). Appellant was also convicted of possessing ammunition without a firearm identification card, in violation of MASS. GEN. LAWS ch. 269 § 10(h) (2009), which implicates Massachusetts' firearm identification card statute, MASS. GEN. LAWS ch. 140, §§ 129B, 129C (2009). The trial judge dismissed the charge of illegally carrying ammunition as duplicative of the charge of unlawfully carrying a loaded firearm. The charge is addressed in this brief, as requested by the Court.

country and more than 200 in Massachusetts.² Between 1999 and 2006, guns killed 1,614 people in the Commonwealth.³

The Commonwealth's interest in protecting the public from gun violence requires and demands that the legislature act to regulate firearms in public and keep firearms from the wrong hands. Indeed, while gun violence is a serious problem in Massachusetts and throughout the nation, the gun violence problem is particularly acute in jurisdictions with lax gun laws.⁴ The licensing and carrying statutes at issue here help respond to this public health epidemic without violating the narrow Second Amendment right to bear arms established by the Supreme Court in *Heller*.⁵

² Ctrs. For Disease Control and Prevention, Nat'l Ctr. For Injury Prevention and Control, WISQARS Fatal Injuries: Mortality Reports, available at <http://webappa.cdc.gov/sasweb/ncipc/mortrate.html> (last visited October 10, 2009) [hereinafter Mortality Reports].

³ *Id.*

⁴ For example, in states and regions with a high prevalence of gun ownership, a disproportionately high number of five to fourteen year olds died from suicide, homicide, and accidental firearm related incidents. Matthew Miller, M.D. et al., *Availability and Unintentional Firearm Deaths, Suicides, and Homicides Among 5-14 Year Olds*, 52 J. TRAUMA 267 (2002).

⁵ The *amici curiae* particularly wish to thank Patrick M. Murphy (J.D. 2010) for his extensive assistance in researching and analyzing the issues discussed herein.

