No. 25-5280

In the Supreme Court of the United States

PHILIP MARQUIS
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Judicial Court of Massachusetts

BRIEF OF *AMICUS CURIAE* GUN OWNERS' ACTION LEAGUE, INC. IN SUPPORT OF PETITIONER

JOHN PARKER SWEENEY
Counsel of Record
JAMES W. PORTER, III
TIMOTHY R. WILLMAN
BRADLEY ARANT BOULT CUMMINGS LLP
1900 K STREET N.W., SUITE 800
WASHINGTON, DC 20006
(202) 719-8216
jsweeney@bradley.com

Counsel for Amicus Curiae

(Additional counsel listed on inside cover)

September 8, 2025

W. CHADWICK LAMAR, JR.
BRADLEY ARANT BOULT CUMMINGS LLP
1819 FIFTH AVENUE NORTH
BIRMINGHAM, AL 35203
(205) 521-8533
clamar@bradley.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE* [1]

Gun Owners' Action League, Inc. ("GOAL") formed in 1974, is a membership organization focused on promoting and defending the fundamental right to keep and bear arms for competition, recreation, and self-defense. GOAL promotes shooting sports, provides firearms safety training, educates the public about firearms, and defends the Second Amendment rights of ordinary citizens. GOAL's primary endeavor is to safeguard Americans' constitutional rights, including the fundamental right to keep and bear arms, which is "necessary to the security of a free State." U.S. CONST. amend II. GOAL firmly believes, as America's Founders did, that the power of government to act is justly limited by the fundamental rights of the people, including the right to keep and bear arms for lawful purposes including self-defense.

GOAL has a paramount interest in this case, which impacts the fundamental right to keep and bear arms. This Court's precedents and our Nation's historical tradition of firearm regulation forbid prosecution of a New Hampshire citizen for driving into Massachusetts with his firearm in his vehicle without first acquiring a nonresident license where he lawfully carried his firearm under New Hampshire law. GOAL submits this brief in support of Petitioner because its non-Massachusetts resident members

---

[1] Pursuant to Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, counsel for all parties received notice of *amicus*' intention to file this brief at least ten days before the due date.

wish to exercise their right to travel into the state with their lawfully carried firearms without fearing prosecution.

INTRODUCTION

Philip Marquis, a New Hampshire citizen, lawfully carried his handgun in New Hampshire. The Commonwealth of Massachusetts seeks to prosecute and incarcerate him because he did not obtain a Massachusetts nonresident carry license before he drove into the Commonwealth with his handgun. Massachusetts law prohibits a nonresident from knowingly carrying a firearm on their person or in a vehicle, loaded or unloaded, without first obtaining a license from Massachusetts. Mass. Gen. Laws ch. ("M.G.L. c.") 269, § 10(a) (2024) ("Nonresident Carry License Regime"). But the historical record yields no comparable pre-condition on the right to keep and bear arms. The Commonwealth's statutory scheme violates the Second Amendment under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).

The same court that necessitated this Court's intervention in *Caetano v. Massachusetts*, 577 U.S. 411 (2016) has, once again, issued a decision that cannot be squared with precedent or history. The Massachusetts Supreme Judicial Court rejected Mr. Marquis's facial challenge to the nonresident licensing scheme by invoking irrelevant historical analysis from *United States v. Rahimi*, 602 U.S. 680 (2024) and dicta about licensing in *Bruen* without requiring the Commonwealth to provide evidence of a justifying tradition in the actual historical record.

The Court should grant Mr. Marquis's Petition. The decision below cannot be reconciled with this Court's precedents. *Bruen* forbade open-ended, discretionary licensing regimes like the one at issue here. The Nonresident Carry License Regime vests discretion in the licensing official who may deny an applicant as unsuitable for "behavior that suggests ... the applicant may create a risk to public safety or a risk of danger to self or others." M.G.L. c. 140 § 121F(k). And both *Bruen* and *Rahimi* foreclosed any construction of a "dangerousness" tradition that could justify categorical *ex ante* disarmament.

Certiorari is also warranted because the decision deepens conflicts of authority. The courts disagree about whether the Second Amendment's plain text even covers arms-bearing conduct burdened by licensing schemes. And they disagree about whether this Court's dicta rather than its holding requiring courts to apply a text and history standard should drive the Second Amendment analysis in licensing scheme challenges.

SUMMARY OF ARGUMENT

Bruen prohibited carry-license regimes that vest licensing officials with "discretion to deny licenses based on a perceived lack of need **or suitability**." 597 U.S. at 13 (emphasis added). But Massachusetts' Nonresident Carry License Regime provides its licensing officials broad and unrestricted discretion to deny an application for suitability based on undefined and amorphous language. And both on-the-ground accounts and judicial applications confirm that, in Massachusetts, the Second Amendment has been forced to yield to discretionary suitability

determinations. Although this is reason enough for intervention, other justifications abound.

The Massachusetts Supreme Judicial Court rejected Mr. Marquis's facial challenge because a tradition "restrict[ing] possession of firearms by demonstrably dangerous persons" justified the Commonwealth's precondition to armed self-defense. App.36. No such conclusion can be gleaned from a fair reading of *Bruen*, *Rahimi*, or history, which demonstrate that historical surety and affray laws cannot support *ex ante* disarmament of citizens until the citizen proves that he or she is not dangerous. Without intervention, other courts will continue to over-extend ahistorical dangerousness traditions.

The decision below deepens at least two divisions of authority. For one, it furthers a deepening division concerning whether and when the Second Amendment's plain text covers the keeping and bearing of arms in cases challenging licensing schemes. For another, it worsens a divide concerning whether firearms restrictions must be justified by text and history notwithstanding dicta about issues not relevant to the case.

The Massachusetts Supreme Judicial Court's decision warrants this Court's review.

ARGUMENT

I. The decision below conflicts with this Court's precedents and upholds the same discretion struck down in *Bruen*.

The Massachusetts Supreme Judicial Court's decision upholding the Nonresident Carry License Regime conflicts with this Court's Second Amendment precedents. The Nonresident Carry License Regime vests licensing officials with unfettered discretion to deny an application for a handgun license. *Bruen*, in no uncertain terms, declared such ahistorical and burdensome regimes unconstitutional.

A. *Bruen* forbade discretionary carry-license regimes.

After *Bruen*, states can no longer deploy licensing regimes that "grant[] licensing officials discretion to deny licenses based on a perceived lack of need or suitability." 597 U.S. 1, 13, 38; *see also id.* at 79 (Kavanaugh, J., concurring). "[L]icensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability for the relevant license," are historically unsupported and unconstitutional. *Id.* at 14–15.

A hallmark of unconstitutionally discretionary regimes is that they allow licensing officials to undertake "appraisal of facts, the exercise of judgment, and the formation of an opinion," rather than conditioning armed self-defense on the satisfaction of objective requirements. *Id.* at 38 n.9 (citation omitted). As Justice Kavanaugh explained in

his concurrence, these "discretionary licensing regimes" are unconstitutional because they "grant[] open-ended discretion to licensing officials." *Id.* at 79.

B. The Nonresident Carry License Regime defies *Bruen* by providing licensing officials unfettered discretion.

The text of the Commonwealth's Nonresident Carry License Regime provides its licensing officials with the same unconstitutional discretion that *Bruen* rejected. Under the Nonresident Carry License Regime, a licensing official may deny an applicant as unsuitable if "the applicant has exhibited or engaged in behavior that **suggests** that, if issued a permit, card or license, the applicant **may** create a risk to public safety or a risk of danger to themselves or others." M.G.L. c. 140 §§ 121F(k), 131(d) (emphasis added). Moreover, the statutory text requires no real standard of proof, only that an "unsuitability" determination "be based on reliable, articulable and credible information" of the applicant's past "behavior." *Id.* § 121F(k). This low evidentiary standard, coupled with the vague suitability criteria, empowers discretionary application. *See Bruen*, 597 U.S. at 38 n.9.

The Massachusetts Supreme Judicial Court struck the prior regime that gave the licensing official "unfettered discretion" to deny a temporary non-resident license "based on such terms and conditions as [the] colonel may deem proper." *Commonwealth v. Donnell*, 495 Mass. 471, 481 (2025) (applying pre-*Bruen* non-resident licensing regime) (quotations omitted; alteration in original). That regime was held

constitutionally infirm because, "[t]o be consistent with the Second Amendment, the Commonwealth's nonresident firearm licensing scheme cannot vest an official with the discretion to deny a license to a qualified applicant." *Id*. at 483. The court made clear that "[l]icensing schemes that confer on officials the unfettered discretion to deny licenses even where the applicant is otherwise qualified do not find support in this nation's history of firearm regulations and cannot be upheld." *Id*. at 481.

The Massachusetts Legislature recently updated the text of the Nonresident Carry License Regime to remove the explicit "may issue" phrasing, but that update was, at best, form over function. The current regime is an unconstitutional "may-issue" regime cloaked in "shall-issue" language.

The Commonwealth's regime continues to authorize unconstitutional discretion under the guise of updated text. The "suitability" language is undefined, amorphous, and subject to the whims of the licensing official. It empowers the chief of police, a non-neutral decisionmaker, to make an "appraisal of facts" about the applicant's history, exercise judgment about the applicant's dangerousness, and form an opinion about an applicant's risk of danger. *Bruen*, 597 U.S. at 38 n.9. Each of these features renders the Nonresident Carry License Regime indefinite and unobjective—in other words, unconstitutionally discretionary.

The fundamental constitutional defect of the Nonresident Carry License Regime is that, as a matter of statutory text, armed self-defense is conditioned on a non-neutral arbiter's judgment as to

the applicant's **dangerousness**. It anticipatorily disarms **everybody**, including all applicants who are law-abiding citizens of good character. And, because the decisionmaker is not a neutral third party, the nonresident regime cannot be justified by historical traditions requiring adjudication of an individual's dangerousness that this Court invoked in *Rahimi*, 602 U.S. at 693–700. This scheme empowers law enforcement officials—based on the mere suggestion that an applicant may be a risk—to deny Second Amendment rights to those who have not been adjudicated dangerous under *any* standard by a neutral arbiter.[2]

Real-world accounts confirm the new suitability standard is impermissibly discretionary. One GOAL member, who is a police officer in Massachusetts,[3] proactively sought treatment for mental illness in early 2025. The police chief suspended his license to carry under the "suitability" standard. The police officer successfully completed treatment for his condition. He passed his fitness for duty test, and two city-hired licensed psychologists

---

[2] The Massachusetts Supreme Judicial Court refused to consider Mr. Marquis's as-applied challenge to the Nonresident Carry License Regime. Although this refusal was error, *Wilson v. Hawaii*, 145 S. Ct. 18, 20–21 (2024) (Thomas, J., statement respecting the denial of certiorari), the outcome is no different under a facial or as-applied challenge. Discretionary licensing schemes are unconstitutional on their face and, when considering the relevant facts and circumstances, the application of the Nonresident Carry License Regime to Mr. Marquis is as unconstitutional as it is to all law-abiding, responsible adult citizens.

[3] The licensing regimes for nonresidents and residents apply identical suitability requirements. M.G.L. c. 140 § 131(d).

cleared him to return to duty as a police officer. But the police chief denied reinstatement of his carry permit. This active-duty police officer carries a handgun for work but is prohibited from carrying for self-defense when he is off the clock. Such an outcome defies logic and, more importantly, the Second Amendment, because it undeniably illustrates the unfettered discretion of the licensing official.

A Massachusetts licensing official likewise exercised unconstitutional discretion under the current framework to deny an application on suitability grounds based on the applicant's driving-related misdemeanor plea from **25 years earlier**. In 2000, the applicant was accused of driving while ability impaired ("DWAI"). He took a plea deal that resulted in a fine and suspended license for three months to avoid incarceration. He had not had any arrests or run-ins with the law prior to or after his DWAI. Yet, in the view of the police colonel, the applicant's plea rendered him too dangerous to carry a firearm for self-defense.

Massachusetts judicial decisions also show that the discretionary "suitability" requirement has been applied and upheld in questionable contexts. One citizen had his license suspended after the licensing official determined him "unsuitable," based on nothing more than improper storage of a firearm. *Dupras v. Deputy Chief of Police of Fall River*, No. 2173CV00881, 2025 WL 1085407, at *3 (Mass. Super. Feb. 12, 2025) (rejecting Second Amendment challenge and affirming suspension). Another affirmed an unsuitability determination based on unsubstantiated criminal charges, even though the underlying allegations had been recanted and the case

dismissed. *See Dennis v. Chief of Police of Wareham*, 105 Mass. App. Ct. 1134, 2025 WL 1693363 (2025).

In making suitability determinations, officials are afforded broad discretion to deny applications based on medical evidence unrelated to criminal or dangerous conduct, "uncharged and untried criminal conduct[,]" including unsubstantiated and unproven allegations, and a decades-old plea for a misdemeanor unrelated to firearms. *Id.* at *2. On the face of the text and as applied in practice, carry licensing in Massachusetts hangs on the unbridled discretion of a police chief. That discretion—as Massachusetts case law and on-the-ground experience make clear—has no objective standard and may even be based on little or even no evidence at all.

The Commonwealth's discretionary licensing framework violates the Second Amendment under *Bruen*. This Court should grant certiorari.

C. The decision below defies the "dangerousness" teachings of *Bruen* and *Rahimi*.

The Supreme Judicial Court held below that a tradition of "restrict[ing] possession of firearms by demonstrably dangerous persons" supports the Commonwealth's Nonresident Carry License Regime. App.36. To get there, the court pointed to this Court's analysis in *Rahimi*. But the *ex ante* licensing pre-condition for all applicants at issue in this case is determinatively distinct from the *ex post* disarmament of an individual adjudicated dangerous at issue in *Rahimi*. As *Bruen* and *Rahimi* demonstrate, the surety and affray laws underlying that dangerousness tradition cannot justify *ex ante*

disarmament of ordinary citizens—like the Nonresident Carry License Regime does.

This Court held in *Bruen* that surety laws could not justify generally applicable licensing schemes. 597 U.S. at 55. Unlike New York's licensing scheme, surety laws "were not *bans* on public carry" but, rather, "targeted only those threatening to do harm." 597 U.S. at 55 (emphasis in original). And *Rahimi* explained that surety laws applied only to persons "found to threaten the physical safety of another," and only after an individualized assessment of "cause exist[ing] for the charge." *Rahimi*, 602 U.S. at 697-98. Those surety laws could not justify the licensing scheme in *Bruen*, 597 U.S. at 55, but they helped justify the individualized prohibition based on judicial findings of domestic violence in *Rahimi*, 602 U.S. at 698. *Bruen* and *Rahimi* make clear that surety laws cannot justify a "broad prohibitory regime" like the Commonwealth's Nonresident Carry License Regime. *See Rahimi*, 602 U.S. at 700.

Bruen and *Rahimi* also addressed affray laws. *Bruen* explained that affray laws barred "bearing arms to terrorize," rather than for ordinary self-defense. 597 U.S. at 47. *Rahimi* likewise explained that these laws "provided a **mechanism for punishing** those who had menaced others with firearms." 602 U.S. at 697 (emphasis added). These laws, *Rahimi* held, justified **temporary** disarmament of a single **individual** determined **by a neutral third party** to represent a credible threat of harm. They do not justify pre-conditioning access to armed self-defense by all ordinary citizens—or even a discrete category such as non-residents traveling in the state—on each individual proving that he is not

dangerous. Affray laws cannot justify the Commonwealth's scheme that "broadly restrict[s] arms use by the public generally." *Id.* at 698.

Under this Court's precedents, surety and affray laws can (at most) justify narrow *ex post* prohibitions following individualized adjudications of dangerousness. But the Commonwealth's nonresident carry-license regime is nothing of the sort: it is a broad prohibitory regime, applying *ex ante*, that categorically disarms every nonresident until they prove that they are not dangerous. And, as explained above, the right to carry is left to the unbounded discretion of licensing officials. That scheme does not pass constitutional muster.

As Judge Richardson of the Fourth Circuit recently explained, licensing schemes cannot be justified by dangerousness traditions because of "the undeniable difference between the burdens on the right imposed by *ex ante* disarmament of all citizens and *ex post* punishment of a dangerous individual who poses a threat." *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 248 n.10 (4th Cir. 2024) (*en banc*) (Richardson, J., dissenting).

To be sure, historical evidence shows that reasonable regulations, like surety or affray laws, are permissible in certain contexts. *See Bruen*, 597 U.S. at 5 ("the historical evidence from antebellum America does demonstrate that the manner of public carry was subject to reasonable regulation, but none of these limitations on the right to bear arms operated to prevent law-abiding citizens with ordinary self-defense needs from carrying arms in public for that purpose"). And, no doubt, a licensing scheme that does

not overburden or delay the applicant, or vest discretion in the licensing official, may pass muster. The Commonwealth's nonresident regime, however, crosses from the "reasonable regulation" threshold into constitutional infirmity by functionally disarming all nonresident travelers unless they first prove to the colonel of the state police that they are "not unsuitable."

The Nonresident Carry License Regime imposes gratuitous and greatly inconvenient burdens on nonresidents who are legally entitled to carry in their home jurisdictions. It onerously requires all first-time applicants to pay a $100 fee, complete a safety course from a state-certified instructor, appear for an in-person appointment in Massachusetts, and renew the license annually (with possible additional in-person appearances that "may be required at the discretion of the [Firearms Record Bureau]"). M.G.L. c. 140, § 131F; *see also* Non-Resident Temporary License to Carry Firearms, Mass. Dep't of Crim. Just. Info. Servs., Firearms Records Bureau (Revised Mar. 2024). This regime also is exceedingly time-consuming: GOAL's out-of-state members have reported being forced to wait ten months after applying to receive an in-person interview or waiting six months or longer for the Commonwealth to process their application, all for a temporary carry license that only lasts for one year.

The regime's perils are not far-fetched hypotheticals. The facts of this case prove it. Ordinary and law-abiding nonresident travelers who have not obtained a Massachusetts license, like Mr. Marquis, are subject to disarmament and incarceration under the Nonresident Carry License Regime, despite their

lawful carry in their home state, merely because they crossed state lines with a firearm.

There is no place in Second Amendment jurisprudence for citizens to be stripped of their right to bear arms—and subject to prosecution and incarceration—because they failed to convince a licensing official that they are suitable to exercise a constitutional guarantee. *Bruen* put an end to pre-conditioning the exercise of Second Amendment rights on the exercise of discretion by licensing officials.

II. The decision below worsens multiple divisions of authority.

A. Any regulation that even temporarily "hinders" the bearing of arms satisfies the plain-text inquiry.

The decision below implicates a division of authority concerning whether and when the Second Amendment's plain text is satisfied in licensing challenges. App.18 ("The type of regulated conduct at issue falls within the 'Second Amendment's plain text'"). The Tenth Circuit recently held that New Mexico's seven day waiting period for firearm purchases triggered the Second Amendment's plain text, notwithstanding the state's argument that "minimal" and "temporary" burdens fall outside its scope. *Ortega v. Grisham*, --- F.4th ----, 2025 WL 2394646, at *5–6 (10th Cir. Aug. 19, 2025). That makes good sense. As the Third Circuit similarly explained, the Second Amendment's plain text "forbids lesser violations that hinder a person's ability to hold on to his guns." *Frein v. Penn. State Police*, 47 F.4th 247, 254 (3d Cir. 2022) (cleaned up). Although *Frein* was not a licensing challenge, it demonstrates

that laws pre-conditioning access to armed self-defense on satisfying licensing requirements triggers the Second Amendment's presumptive protections.

The *en banc* Fourth Circuit, however, recently held the opposite. *Md. Shall Issue, Inc.*, 116 F.4th at 229 (holding that Maryland's handgun license requirement does not implicate the plain text of the Second Amendment). The Fifth Circuit has also held that expanded background checks for prospective firearm purchasers do not implicate the plain text of the Second Amendment. *See United States v. Peterson*, --- F.4th ----, 2025 WL 2462665, at *4–6 (5th Cir. Aug. 27, 2025) (holding that licensing regime with extensive background-check requirements does not implicate the plain text of the Second Amendment and is a presumptively constitutional "shall-issue" regime); *see also McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024) ("The right to 'keep and bear' can implicate the right to purchase. That is why the Court prohibits shoehorning restrictions on purchase into functional prohibitions on keeping. But such an implication is not the same thing as being covered by the plain text of the amendment.").

This Court should grant certiorari here to resolve this important and deepening split. Doing so would aid lower courts and state courts struggling to determine what the Second Amendment's plain text covers, as well as whether licensing restrictions trigger the government's historical-tradition burden.

B. Firearms restrictions must be justified by *Bruen*'s text and history standard—not this Court's dicta.

The Massachusetts Supreme Judicial Court relied heavily on *Bruen*'s dicta about shall-issue carry-license regimes. App.21–23 (discussing *Bruen*, 597 U.S. at 38 n.9). This also deepens a division of authority concerning whether firearms restrictions can be justified by anything other than text and history. *Compare, e.g.*, *Md. Shall Issue, Inc.*, 116 F.4th at 219–22 (holding that *Bruen*'s dicta rendered many licensing regimes "presumptively constitutional"), *Peterson*, 2025 WL 2462665, at *4–6 (similar), *and McRorey*, 99 F.4th at 838–39 (similar), *with United States v. Williams*, 113 F.4th 637, 648 (6th Cir. 2024) (holding that applying *Heller*'s dicta "uncritically would be at odds with *Heller* itself"). As the Tenth Circuit recently explained, lower courts have taken "dicta" from this Court's Second Amendment cases and, without conducting "the exacting historical scrutiny" mandated by *Bruen*, have "carried [it] forward and enmeshed [it] into Second Amendment jurisprudence." *Ortega*, 2025 WL 2394646, at *7.

That cannot be. *Bruen* emphatically declared that the Second Amendment "demands a test rooted in the [constitutional] text, as informed by history." 597 U.S. at 19. There is no room in that analysis for reflexive invocation of dicta about issues that were not before the Court. That is exactly why *Heller* reserved "expound[ing] upon the historical justifications" of exceptions to the right for future cases, *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008), and why *Bruen* relied on what "the historical record yield[ed]"

for issues like the so-called "sensitive places" doctrine. 597 U.S. at 30.

This Court has cautioned against taking "stray comments and stretch[ing] them beyond their context—all to justify an outcome inconsistent with this Court's reasoning and judgments," *Brown v. Davenport*, 596 U.S. 118, 141 (2022), and against "read[ing] a footnote" as "establish[ing] the general rule" for a case. *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 755 n.6 (2023). Yet lower courts continue to "replace[] the Constitution's text with a new set of judge-made rules," elevating dicta over the text and history analysis. *NLRB v. Noel Canning*, 573 U.S. 513, 614 (2014) (Scalia, J., concurring in the judgment). That practice is what necessitated *Heller* and *Bruen* in the first place. This Court should grant certiorari and make clear that the text-and-history standard does not yield to dicta about issues not relevant to the case.

III. This case presents urgent questions of exceptional importance requiring correction of the decision below now.

The Court should grant certiorari because the question and issues presented here are exceptionally important. As demonstrated in Mr. Marquis's Petition and above, courts continue to find creative ways to defy *Bruen*. There is no reason to believe that this will stop without intervention by this Court.

The Commonwealth's updated suitability requirement continues to provide licensing officials with unconstitutional discretion in circumvention of *Bruen* and the Constitution itself. Mr. Marquis has

already been deprived of his right to bear arms and will be deprived of his freedom if he is convicted and incarcerated. The Commonwealth's Nonresident Carry License Regime burdens every nonresident wishing to travel through the Commonwealth while exercising their constitutionally guaranteed right to bear arms. Granting certiorari and correcting the decision below is urgently necessary.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests this Court grant Mr. Marquis's Petition for Writ of Certiorari and reverse the decision below.

Respectfully submitted,

JOHN PARKER SWEENEY
Counsel of Record
JAMES W. PORTER, III
TIMOTHY R. WILLMAN
BRADLEY ARANT BOULT CUMMINGS LLP
1900 K STREET N.W., SUITE 800
WASHINGTON, DC 20006
(202) 719-8216
jsweeney@bradley.com

W. CHADWICK LAMAR, JR.
BRADLEY ARANT BOULT CUMMINGS, LLP
1819 FIFTH AVENUE NORTH
BIRMINGHAM, AL 35203
(205) 521-8533

Counsel for Amicus Curiae