

No. _____

In the Supreme Court of the United States

ANDREW HANSON, ET AL.,

Applicants,

v.

DISTRICT OF COLUMBIA AND PAMELA A. SMITH,

Respondents.

Consent Application to the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia Circuit, For an Extension of Time within Which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Edward M. Wenger

Counsel of Record

HOLTZMAN VOGEL BARAN

TORCHINSKY & JOSEFIK PLLC

2300 N Street, NW, Ste 643

Washington, DC 20037

Phone: (202) 737-8808

Fax: (540) 341-8809

emwenger@holtzmanvogel.com

Counsel for Applicants

*To the Honorable John G. Roberts, Chief Justice of the United States and
Circuit Justice for the District of Columbia Circuit:*

Pursuant to this Court’s Rule 13.5, Andrew Hanson, et al, (“Applicants”) hereby move for an extension of time of thirty (30) days, up to and including February 26, 2025, for the filing of the petition for a writ of certiorari to the District of Columbia Circuit in the above-captioned case. Should the extension be denied, the deadline for filing the petition for writ of certiorari will be January 27, 2025. Applicants have conferred with counsel for the District of Columbia and Pamela Smith (“Respondents”) and Respondents’ counsel consents to this request.

GOOD CAUSE EXISTS FOR GRANTING THE 30-DAY EXTENSION

In support of this request, Applicants state the following:

1. The United States District Court for the District of Columbia rendered its decision on April 20, 2023. *Hanson v. District of Columbia*, 671 F. Supp. 3d 1 (D.D.C. 2023). The district court denied Applicants’ motion for a preliminary injunction against the District of Columbia’s prohibition on ammunition feeding devices capable of holding more than ten rounds of ammunition. Applicants appealed that denial, and on October 29, 2024, the District of Columbia Circuit affirmed the district court’s decision. Applicants now seek to file a petition for a writ of certiorari.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

2. The United States Court of Appeals for the District of Columbia rendered its decision on October 29, 2024. The District of Columbia Circuit affirmed the district court’s denial of Applicants motion for a preliminary injunction.

Applicants contend that the District of Columbia Circuit erred in concluding that the District’s prohibition on magazines capable of holding more than ten rounds is likely consistent with the Nation’s historical tradition of firearm regulation.

3. The judgment for which review is sought is *Hanson v. Smith*, 120 F.4th 223 (D.C. Cir. 2024). The opinion is attached as Exhibit A.

JURISDICTION

4. This Court has jurisdiction under 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before January 27, 2025. This deadline is 90 days from October 29, 2024, the date on which the United States Court of Appeals for the District of Columbia issued its opinion and judgment. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

5. Applicants bring a Second Amendment challenge to the District of Columbia’s prohibition on so-called “large-capacity magazines” that hold more than ten rounds of ammunition. Applicants contend that this ban violates their rights to keep and bear arms under the Second Amendment. In its October 29, 2024 decision, the District of Columbia Circuit Court of Appeals affirmed the district court’s denial of a preliminary injunction, concluding that the District of Columbia’s magazine ban is likely consistent with historical firearm regulations. The D.C. Circuit’s opinion reasoned that modern large-capacity magazines could be analogized to historical

restrictions on especially “dangerous and unusual” weapons and accessories, and this historical tradition in support of the ban was adequately demonstrated. *Hanson v. Smith*, 120 F.4th 223, 233 (D.C. Cir. 2024)

6. This case presents issues of exceptional importance under the Second Amendment because it implicates how lower courts should apply *Bruen’s* historical-analogue framework to modern firearms and accessories. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2126 (2022). The details of this case are highly complex, involving the nature of historical firearm regulations and their application to modern-day creations.

7. The District of Columbia Circuit’s decision also highlights unresolved aspects of the post-*Bruen* analysis. Applicants will demonstrate that the opinion’s reliance on generalized public safety interests and unrelated statutes involving other arms such as Bowie knives, without sufficiently concrete historical precedents, risks diluting the robust text and history inquiry that *Bruen* mandated. *Bruen*, 142 S. Ct. at 2126. Thus, this Court’s intervention is warranted to clarify the constitutional limits on modern firearm regulations and to ensure that lower courts uniformly apply the historically grounded standard set forth in *Bruen. Id.*

8. Further good cause exists because undersigned counsel Edward Wenger, as well as other attorneys assisting in the preparation of the petition, require additional time to prepare the petition to address the issues noted above fully. This is because Mr. Wenger and attorneys at his firm have prior engagements and filings

in the weeks immediately prior to and including that of January 27, 2025. The following are some examples:

- A Reply brief at this Court in *Upstate Jobs Party v. Kosinski et al.*, No. 24-503, in response to an opposing brief due January 21, 2025;
- A merits brief in *Wheatland Tube, LLC v. Mexico*, No. 496 M.D. 2024, in Pennsylvania Commonwealth Court’s original jurisdiction, due January 21, 2025.
- An opening merits brief in *Angelo et al. v. DC et al.*, No. 24-7127 in the D.C. Circuit Court of Appeals due February 10, 2025;
- An opening merits brief in *Thompson v. Keliher*, No. 25-1007 in the First Circuit Court of Appeals due February 24, 2025;
- Opposition to a forthcoming motion to dismiss in *Yzaguirre v. District of Columbia*, No. 1:24-cv-01828 (D.D.C.), is due on February 12, 2025;
- A motion to dismiss briefing is underway in *StandWithUs Center for Legal Justice v. Code Pink*, No. 2:24-cv-06253 (C.D. Cal.);
- An initial brief due for filing in the D.C. Circuit in *United States v. Zabavsky*, No. 24-3131 is currently due on January 21, 2025.

9. Additionally, the 90-day period for filing the petition for certiorari has spanned multiple major holidays, including Thanksgiving, Christmas, Hanukkah, and New Year’s, as well as the federal holiday to commemorate President Carter, when courts, offices, and supporting services typically operate with reduced staff and availability. The confluence of these holiday periods and the undersigned counsel’s

and associates' busy caseload has collectively limited the time available to finalize the petition, further justifying the request for an extension.

10. As indicated by Respondents' consent to this request, an extension of time will not cause prejudice to Respondents. Should this Court grant the petition in this case, the briefing and oral argument will be set for October 2025 term and therefore of no rush.

WHEREFORE, for the foregoing reasons, Applicants respectfully request the application for an extension of time, up to and including February 26, 2025, be granted.

Dated: January 16, 2025

Respectfully submitted,



Edward M. Wenger

Counsel of Record
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste 643
Washington, DC 20037
Phone: (202) 737-8808
Fax: (540) 341-8809
emwenger@holtzmanvogel.com

Counsel to Applicants

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5(b), undersigned counsel certifies that the Applicants have filed the foregoing with the Court in both electronic and paper format. Undersigned counsel further certifies that the foregoing has been served on all counsel of record at the address below via overnight delivery service and electronic mail.

Ashwin P. Phatak, Principal Deputy Solicitor General
Brian L. Schwalb, Attorney General
Caroline S. Van Zile, Solicitor General
Thais-Lyn Trayer, Deputy Solicitor General
Sonya L. Lebsack, Assistant Attorney General
Office of the Attorney General for the District of Columbia
400 6th Street, NW Suite 8100 Washington, DC 20001
202-727-3400
ashwin.phatak@dc.gov

Dated: January 16, 2025



Edward M. Wenger
Counsel of Record
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
2300 N Street, NW, Ste 643
Washington, DC 20037
Phone: (202) 737-8808
Fax: (540) 341-8809
emwenger@holtzmanvogel.com