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July 24, 2023

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for
the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Christian v. Nigrelli*, No. 22-2987(L)

Dear Ms. Wolfe:

I represent state defendant-appellant Steven Nigrelli in the above-captioned appeal. I write in response to plaintiffs' letter (ECF No. 152) concerning *National Rifle Association v. Bondi*, 61 F.4th 1317, *reh'g en banc granted, opinion vacated*, No. 21-12314, 2023 WL 4542153 (11th Cir. July 14, 2023).

The Eleventh Circuit order granting rehearing en banc is immaterial to this appeal for two reasons. First, this Court need not weigh into the debate as to which time period—Founding- or Reconstruction-era—is *controlling* for purposes of understanding the right to bear arms. The State simply argues that Reconstruction-era laws are relevant to the historical understanding of that right, an argument that finds support in *Bruen* itself, Supreme Court decisions predating *Bruen*, and lower court decisions relying on *Bruen*. See *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2145-53 (2022); accord *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 770-78 (2010); *Frey v. Nigrelli*, No. 21-cv-5334, 2023 WL 2473375, at *5 (S.D.N.Y. Mar. 13, 2023); *Maryland Shall Issue, Inc. v. Montgomery Cnty., Maryland*, No. 21-cv-1736, 2023 WL 4373260, at *8 (D. Md. July 6, 2023). Further, as the State explained in its briefs, the Founding-

and Reconstruction-era understanding of the right to bring guns onto others' property are substantially the same.

Second, while the Eleventh Circuit has vacated the *Bondi* panel's opinion upholding Florida's age-restrictions on firearm purchasing, there is no indication that the en banc court will reach a different conclusion on the question of whether historical evidence from the time of the ratification of the Fourteenth Amendment is relevant to determining the scope of the Second Amendment as applied to the States.

Respectfully,

/s/ Sarah Coco

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cc: Counsel of record (by ECF)