
No. 23-3155

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

GLEN PRINCE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois, No. 1:22-cr-00240
The Honorable Robert W. Gettleman, District Court Judge

**BRIEF FOR *AMICI CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN
VIOLENCE AND BRADY CENTER TO PREVENT GUN VIOLENCE
IN SUPPORT OF PETITIONER AND IN SUPPORT OF REVERSAL**

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Appellate Court No: 23-3155

Short Caption: United States of America v. Glen Prince

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Amici curiae, Giffords Law Center to Prevent Gun Violence and Brady Center to Prevent Gun Violence

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Morrison & Foerster LLP

(3) If the party, amicus or intervenor is a corporation:
i) Identify all its parent corporations, if any; and
None
ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:
None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:
N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:
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Attorney's Signature: /s/ Kelly M. Percival Date: March 19, 2024

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N/A

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Attorney's Signature: /s/ Shira Lauren Feldman Date: March 19, 2024

Attorney's Printed Name: Shira Lauren Feldman

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E-Mail Address: sfeldman@bradyunited.org

DISCLOSURE STATEMENT

Giffords Law Center to Prevent Gun Violence and Brady Center to Prevent Gun Violence state that each organization does not have parent corporations. They do not have stock, and therefore no publicly held company owns 10% or more of their stock.

/s/ Nicole K. Serfoss

NICOLE K. SERFOSS

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TABLE OF CONTENTS

| | Page |
|--|-------------|
| INTEREST OF AMICI CURIAE | 1 |
| INTRODUCTION AND SUMMARY OF ARGUMENT | 4 |
| ARGUMENT | 5 |
| I. 18 U.S.C. § 922(g)(1) Is Constitutional..... | 5 |
| A. <i>Bruen</i> Is Not a “Regulatory Straightjacket.”..... | 5 |
| B. Congress May Constitutionally Restrict Categories of People from Accessing Firearms | 8 |
| II. Firearm Regulations Throughout History Protect Public Safety and the Exercise of Civil Rights and Civil Liberties | 10 |
| III. The Court Should Not Disturb Lawful Limits Imposed by Congress on Firearm Access..... | 13 |
| CONCLUSION..... | 15 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>Armstrong v. Exceptional Child Ctr., Inc.</i> , 575 U.S. 320 (2015)..... | 13 |
| <i>Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.</i> , 910 F.3d 106 (3d Cir. 2018)..... | 2 |
| <i>Counterman v. Colorado</i> , 600 U.S. 66 (2023)..... | 12 |
| <i>Dist. of Columbia v. Heller</i> , 554 U.S. 570 (2008)..... | <i>passim</i> |
| <i>Dodge v. Woolsey</i> , 59 U.S. 331 (1855)..... | 13 |
| <i>Friedman v. City of Highland Park</i> , 784 F.3d 406 (7th Cir. 2015) | 2 |
| <i>Hanson v. Dist. of Columbia</i> , 671 F. Supp. 3d 1 (D.D.C. 2023)..... | 3 |
| <i>Henson v. Santander Consumer USA Inc.</i> , 582 U.S. 79 (2017)..... | 14 |
| <i>Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives</i> , 417 F. Supp. 3d 747 (W.D. Va. 2019)..... | 2 |
| <i>Husted v. A. Philip Randolph Inst.</i> , 584 U.S. 756 (2018)..... | 14 |
| <i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)..... | <i>passim</i> |
| <i>Md. Shall Issue v. Hogan</i> , 353 F. Supp. 3d 400 (D. Md. 2018)..... | 2 |
| <i>Nat’l Ass’n for Gun Rts., Inc. v. City of San Jose</i> , Case No. 22-cv-00501-BLF, 2023 WL 4552284 (N.D. Cal. July 13, 2023)..... | 2 |
| <i>Nat’l Ass’n for Gun Rts. v. Lamont</i> , ___ F. Supp. 3d ___, Civ. No. 3:22-1118 (JBA), 2023 WL 4975979 (D. Conn. Aug. 3, 2023) | 2 |

New York State Rifle & Pistol Ass’n v. Bruen,
597 U.S. 1 (2022)..... *passim*

New York v. Quarles,
467 U.S. 649 (1984).....12

Peruta v. Cnty. of San Diego,
824 F.3d 919 (9th Cir. 2016) (en banc)2

State v. Wilson,
No. SCAP-22-0000561, 2024 WL 466105 (Haw. Feb. 7, 2024).....13

Stimmel v. Sessions,
879 F.3d 198 (6th Cir. 2018)2

United States v. Jackson,
69 F.4th 495 (8th Cir. 2023), *petition for cert. filed*, No 23-6170 (Dec. 6,
2023)9

United States v. Alaniz,
69 F.4th 1124 (9th Cir. 2023)7

United States v. Dubois,
No. 22-10829, 2024 WL 927030 (11th Cir. Mar. 5, 2024).....5

United States v. Hayes,
555 U.S. 415 (2009).....2

United States v. Rahimi,
143 S. Ct. 2688 (2023).....1, 2

United States v. Skoien,
614 F.3d 638 (7th Cir. 2010) (en banc), *cert. denied*, 562 U.S. 1303 (2011).....9, 12

Wilson v. Cook Cnty.,
937 F.3d 1028 (7th Cir. 2019)2

Constitutional Provisions

U.S. Const. art. I, § 8.....13

U.S. Const. art. III.....14

U.S. Const., amend. I9, 11, 12

U.S. Const., amend. II..... *passim*

U.S. Const., amend. XIV4

Statutes

18 U.S.C. § 922(g)(1)4, 5, 9, 14

Other Authorities

2 Edw. 3, ch. 3 (1328), in 1 THE STATUTES OF THE REALM 2586

Annual Gun Law Scorecard, GIFFORDS LAW CENTER,
<https://giffords.org/lawcenter/resources/scorecard/> (last visited Mar. 19, 2024)10

Brady United Against Gun Violence, *The Mental Health Impact of Mass Shootings* (last visited Mar. 19, 2024), <https://s3.amazonaws.com/brady-static/Report/MentalHealthImpactOfMassShootings.pdf>.....10

Brennan Center for Justice, *Local Election Officials Survey* (Apr. 25, 2023),
<https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>12

Connor Brooks, *Background Checks for Firearm Transfers, 2018*, US DEPARTMENT OF JUSTICE: BUREAU OF JUSTICE STATISTICS (2021),
<https://bjs.ojp.gov/content/pub/pdf/bcft18.pdf>14

Eric W. Fleegler, et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, JAMA INTERN MED. (2013),
<https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1661390>10

Giffords Law Center, *Armed Protestors Inspire Fear, Chill Free Speech* (last updated Dec. 15, 2022), <https://giffords.org/report/armed-protesters-inspire-fear-chill-free-speech/>11

Global Project Against Hate and Extremism, *Americans’ Fears Suppressing Participation in Democracy* (Aug. 4, 2022),
<https://globalextrémism.org/post/fear-and-elections/>11

JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT (1690)6

Joseph Blocher & Reva B. Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller*, 116 NW. U. L. REV. 139 (2021).....10

Kim Parker, et al., *2. Guns and Daily Life: Identity, experiences, activities and involvement*, PEW RSCH. CTR. (June 22, 2017),
<https://www.pewsocialtrends.org/2017/06/22/guns-and-daily-life-identity-experiences-activities-andinvolvement/> [<https://perma.cc/RW76-WU6Q>]10

Michael Siegel, et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991-2016: a Panel Study*, J. GEN INTERN MED 34 (2019), <https://rdcu.be/dAdx2>14

Saul Cornell & Emma Cornell, *The Second Amendment and Firearms Regulation: A Venerable Tradition Regulating Liberty While Securing Public Safety*, AM. J. PUB. HEALTH 108 (2018), <https://doi.org/10.2105/AJPH.2018.304501>13

Tom Jackman, *Chicago man charged with firing gun during Jan. 6 Capitol riot*, WASH. POST (Mar. 14, 2024, 5:54 PM), <https://www.washingtonpost.com/dc-md-va/2024/03/14/banuelos-gun-jan6-capitol-riot/>12

4 WILLIAM BLACKSTONE, COMMENTARIES (1769)6

INTEREST OF AMICI CURIAE¹

Amicus Curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a nonprofit law and policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.² The organization was founded more than 30 years ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords.

Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Together with its partner organization, Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that gun-safety legislation and community violence prevention strategies are not only consistent with the Second Amendment—they are essential to protecting the health, safety, and lives of every person in the nation.

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., Dist. of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); *United States v. Rahimi*, 143 S. Ct. 2688 (2023) (granting cert.). Several courts have cited

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. The parties have consented to the filing of this brief.

² Giffords Law Center’s website, <https://giffords.org/lawcenter/gun-laws/>, is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

research and information from Giffords Law Center’s *amicus* briefs in Second Amendment rulings. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 121–22 (3d Cir. 2018); *Nat’l Ass’n for Gun Rts. v. Lamont*, ___ F. Supp. 3d ___, Civ. No. 3:22-1118 (JBA), 2023 WL 4975979, at *12 (D. Conn. Aug. 3, 2023); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403–05 (D. Md. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (en banc) (Graber, J., concurring).³

Amicus curiae the Brady Center to Prevent Gun Violence (“Brady”) is a nonprofit organization dedicated to reducing gun violence through education, research, and legal advocacy. Brady has a substantial interest in ensuring that the Constitution is properly construed with the safety of our society in mind, and in protecting the authority of democratically elected officials to address the nation’s gun violence epidemic.

Brady has filed numerous briefs as *amicus curiae* in cases involving firearms regulations, including in this Court, *see, e.g., Wilson v. Cook Cnty.*, 937 F.3d 1028 (7th Cir. 2019), *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), and in the United States Supreme Court, *see, e.g., United States v. Rahimi*, No. 22-915 (filed Aug. 21, 2023), *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008). Multiple decisions have cited Brady’s research and expertise on these issues. *See, e.g., United States v. Hayes*, 555 U.S. 415, 427 (2009); *Lamont*, 2023 WL 4975979, at *32 & n.52; *Nat’l Ass’n for Gun Rts., Inc. v. City of San*

³ Giffords Law Center filed the last two briefs under its former name, the Law Center to Prevent Gun Violence.

Jose, Case No. 22-cv-00501-BLF, 2023 WL 4552284, at *5–6 (N.D. Cal. July 13, 2023);

Hanson v. Dist. of Columbia, 671 F. Supp. 3d 1, 14, 20, 23 & n.8, 10 (D.D.C. 2023).

Giffords Law Center and Brady submit this brief in support of the government’s position that Congress may, consistent with the Second Amendment as interpreted by the Supreme Court, make categorical determinations in establishing reasonable firearm restrictions and regulations.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 922(g)(1) is constitutional because it falls within the government’s longstanding authority and is supported by a historical tradition of firearm regulation. As the Supreme Court has made clear time and again, the right to bear arms that it recognizes in the Second Amendment is not unlimited. *See, e.g., Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (“Like most rights, the right secured by the Second Amendment is not unlimited”); *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (plurality opinion) (citation omitted) (“[T]he right to keep and bear arms is not a ‘right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose’”) (citation omitted); *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 80 (2022) (Kavanaugh, J., Roberts, C.J., concurring) (“Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.”).

Consistent with the Second Amendment—and with regulations dating at least as far back as to the ratifications of both the Second and Fourteenth Amendments—the government may set limits, including categorical restrictions, to prohibit firearm possession by certain individuals. Indeed, the health and safety of the public is obviously one of the highest priorities of government. Pervasive gun violence threatens not only public safety but also the exercise of other constitutionally protected rights and liberties.

Here, Congress made a reasoned determination in section 922(g)(1) that categorical treatment of individuals with a felony conviction was appropriate when it came to firearm access. Such a categorical approach has been recognized as legitimate and constitutional by both this Court and the Supreme Court. The District Court’s decision in this case improperly impedes Congress’s legislative discretion, overruling Congress’s policy judgment that a categorical restriction is appropriate in this instance.

Section 922(g)(1) is constitutional, and the District Court’s judgment should be vacated.

ARGUMENT

I. 18 U.S.C. § 922(g)(1) Is Constitutional.

Nothing in the Second Amendment can reasonably be understood to prevent Congress from disarming individuals with a felony conviction. Such a regulation falls within the government’s longstanding authority, is supported by a historical tradition of regulating firearms, and is consistent with the Supreme Court’s recognition that the Second Amendment is not unlimited. *See United States v. Dubois*, No. 22-10829, 2024 WL 927030, at *5 (11th Cir. Mar. 5, 2024) (upholding section 922(g)(1) against Second Amendment challenge “because the Supreme Court ‘made it clear in *Heller* that [its] holding did not cast doubt’ on felon-in-possession prohibitions, and because the Court made it clear in *Bruen* that its holding was ‘[i]n keeping with *Heller*’”) (citing *McDonald*, 561 U.S. at 786 (plurality opinion) and *Bruen*, 597 U.S. at 17).

A. *Bruen* Is Not a “Regulatory Straightjacket.”

In *Bruen*, the Supreme Court established a new test for evaluating Second Amendment challenges but made clear that its opinion did not change the government’s fundamental ability to regulate firearms in a manner consistent with that Amendment, and did not overrule *Heller*. Rather, *Bruen* reinforces what history and Supreme Court precedent have consistently recognized—that the right to bear arms, like most constitutional rights, is subject to limitations.

In *Heller*—the seminal decision interpreting the Second Amendment to protect an individual’s right to possess a firearm unconnected with service in the militia—the Court articulated the government’s longstanding authority to set reasonable limits on that right: “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” 554 U.S. at 626. *Heller* framed the Second Amendment as rooted in Anglo-

American common law, and it looked to ancient common law regulation of weapons in interpreting the government’s authority to regulate weapons. *See id.* at 593–94. Among other sources, the opinion refers to Blackstone’s discussion of the Statute of Northampton,⁴ which provided that “no Man great nor small” should bring “force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets. . . nor in no part elsewhere.”⁵

Blackstone articulated that the law was designed to protect the public peace and the safety of the community because “riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land.”⁶ Thus, *Heller* recognized that the historical antecedents of gun regulation set a precedent for the government to regulate guns in the interest of community peace and safety. *See Heller*, 554 U.S. at 626–27 (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”).⁷

In *Bruen*, the Court repeatedly reiterated the government’s ability to regulate firearms as

⁴ *See Heller*, 554 U.S. at 627 (citing to 4 WILLIAM BLACKSTONE, COMMENTARIES *148–149 (1769)).

⁵ 2 Edw. 3, ch. 3 (1328), in 1 THE STATUTES OF THE REALM 258.

⁶ 4 WILLIAM BLACKSTONE, COMMENTARIES *149.

⁷ The understanding of gun regulations in *Heller* is rooted in Anglo-American political thought of the “social contract.” As John Locke wrote, an individual in the “state of nature” has the power “to do whatever he thinks fit for the preservation of himself,” but he “gives up” this unfettered freedom “when he joins in . . . politic society.” JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT § 128 (1690). Governments exist because people joined together to entrust institutions with the power to preserve peace and protect the public from a state of individual vigilantism. *See generally* Brief for Brady as Amicus Curiae in Support of Respondents, *Bruen*, 597 U.S. 1 (2022) (No. 20-843), 2021 WL 4353029. Accordingly, the Statute of Northampton excepted “the king’s servants in his presence, and his ministers in executing of the king’s precepts, or of their office” from the statute’s restrictions and granted various “wardens of the peace within their wards” the “power to execute this act.” 2 Edw. 3, ch. 3.

articulated in *Heller*, saying: “[a]fter holding [in *Heller*] that the Second Amendment protected an individual right to armed self-defense, we also relied on the historical understanding of the Amendment to demark the limits on the exercise of that right. We noted that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Bruen*, 597 U.S. at 21 (alteration in original) (quoting *Heller*, 554 U.S. at 626). The Court again confirmed that “the right to bear commonly used arms in public [is] subject to certain reasonable, well-defined restrictions.” *Id.* at 70 (quoting *Heller*, 554 U.S. at 581). Like *Heller*, *Bruen* also acknowledged the nation’s history and tradition of firearm regulations, including regulations to preserve the public peace. *See id.* at 51–52 (citing restrictions on the use of firearms to prevent “terror to the people” or those who did not carry firearms “peaceably”); *see generally United States v. Alaniz*, 69 F.4th 1124, 1129 (9th Cir. 2023) (“*Bruen* itself confirms that the right to keep and bear arms was understood at the Founding to be limited where there was a likelihood of a breach of peace.”) (citations omitted).

Under *Bruen*’s new test, a challenger must first establish that a restriction implicates conduct protected by the Second Amendment’s plain text. 597 U.S. at 24. If the challenger meets that burden, the government must justify the regulation by showing that it is “relevantly similar” to historical analogues. *Id.* at 24, 29. *Bruen* was explicit that “analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.” *Id.* at 30 (emphasis in original).

Bruen thus made clear that “analogical reasoning under the Second Amendment” is not “a regulatory straightjacket.” *Id.* Not only did the Court state that a modern-day regulation need not have a “dead ringer for historical precursors” in order to pass constitutional muster, *id.* at 30, but the Majority opinion recognized that “regulatory challenges posed by firearms today are not

always the same as” historical concerns, and that modern societal concerns (or technological changes) “may require a more nuanced approach.” *Id.* at 27–28.

B. Congress May Constitutionally Restrict Categories of People from Accessing Firearms.

Heller, *McDonald*, and *Bruen* further recognize the enduring principle from history and tradition that Congress may constitutionally take a categorical approach when restricting people from accessing firearms.

In *Heller*, the Supreme Court explicitly said that the government can make categorical limitations without running afoul of the Second Amendment. *See Heller*, 554 U.S. at 626–27. There, the Court described the right to bear arms as a “right of law-abiding, responsible citizens.” *Id.* at 635. *Heller* provided a non-exhaustive list of “presumptively lawful regulatory measures,” including “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and “laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626–27 & n.26. Two years later, in *McDonald*, the Court “repeat[ed] [Heller’s] assurances” that certain categorical laws, such as those disarming individuals with a felony conviction, should not be called into question. 561 U.S. at 786.

The *Bruen* Court reiterated these limits, including repeatedly describing the right to bear arms as one of “law-abiding, responsible citizens.” *Bruen*, 597 U.S. at 26 (quoting *Heller*, 554 U.S. at 635); *see also Bruen*, 597 U.S. at 38, n.9 (referencing right of “law-abiding, responsible citizens”).

Justices Kavanaugh and Alito, each concurring in *Bruen*, also endorsed the fundamental principle that Congress may, consistent with the Second Amendment, categorically disarm those who are not responsible. For example, Justice Alito reaffirmed that *Bruen* “does not expand the categories of people who may lawfully possess a gun . . .” *id.* at 73, pointing specifically to

regulations that categorically prohibit gun possession by minors. *Id.* Justice Kavanaugh, joined by the Chief Justice, echoed this principle. He dedicated a large portion of his concurrence to a block quote passage from *Heller* explaining that the Second Amendment is not “unlimited” and is subject to certain “longstanding prohibitions on the possession of firearms by felons and the mentally ill” and other “important limitation[s].” *Id.* at 81.

Numerous circuit courts interpreting *Heller* and *Bruen* agree. For example, in interpreting *Heller*, the Seventh Circuit has acknowledged Congress’s ability to place categorical limits on firearm access. In *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc), *cert. denied*, 562 U.S. 1303 (2011), this Court wrote that “statutory prohibitions on the possession of weapons by some persons are proper . . .” and “*some* categorical limits are proper . . . , leaving to the people’s elected representatives the filling in of details.” Chief Judge Easterbrook further noted, “Categorical limits on the possession of firearms would not be a constitutional anomaly. Think of the First Amendment, which has long had categorical limits: obscenity, defamation, incitement to crime, and others.” *Id.* at 641 (citation omitted).

And post-*Bruen*, the Eighth Circuit reaffirmed this basic principle, explaining, “History shows that the right to keep and bear arms was subject to restrictions that included prohibitions on possession by certain groups of people.” *United States v. Jackson*, 69 F.4th 495, 502 (8th Cir. 2023), *petition for cert. filed*, No 23-6170 (Dec. 6, 2023) (surveying historical laws categorically disarming groups). The Eighth Circuit concluded that Congress “acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons.” *Id.* at 505.

In short, history and tradition support the durable principle that Congress can disarm categories of people who are not responsible and/or not law-abiding.

II. Firearm Regulations Throughout History Protect Public Safety and the Exercise of Civil Rights and Civil Liberties.

By regulating firearm access, the government furthers a longstanding interest not only in keeping the community safe from harm,⁸ but also in preserving citizens' ability to exercise all their constitutionally protected civil rights and liberties.⁹ This interest is rooted in historical Anglo-American tradition¹⁰ and is fundamental to preserving democratic institutions in a pluralistic democracy like the United States.

Firearm regulations further the government's longstanding aim of promoting public safety. Strong gun laws save lives. As Giffords Law Center's annual Gun Law Scorecard has made clear for the past 13 consecutive years, states with strong gun laws have lower gun death rates.¹¹ Over the last year, of the 15 states with the highest gun death rates, 12 received a grade

⁸ There is both a physical and mental component to the immense harm that results from mass shootings, which includes PTSD, and intense psychological trauma that can result in the long-term in "substance misuse, self-harm, major depressive disorders, and panic attacks, among others." Brady United Against Gun Violence, *The Mental Health Impact of Mass Shootings* at 3–4 (last visited Mar. 19, 2024), <https://s3.amazonaws.com/brady-static/Report/MentalHealthImpactOfMassShootings.pdf>.

⁹ The impact of gun violence reaches beyond physical safety to psychological, political, and social harms. Conceptualizing gun violence broadly better accounts for the breadth of harm that gun regulations can mitigate. *See generally* Joseph Blocher & Reva B. Siegel, *When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller*, 116 NW. U. L. REV. 139 (2021). For example, one study shows that nearly 25% of Americans say that "someone has used a gun to threaten or intimidate them or their family," including a third of Black Americans. Kim Parker, et al., *2. Guns and Daily Life: Identity, experiences, activities and involvement*, PEW RSCH. CTR. (June 22, 2017), <https://www.pewsocialtrends.org/2017/06/22/guns-and-daily-life-identity-experiences-activities-andinvolvement/> [<https://perma.cc/RW76-WU6Q>].

¹⁰ Blocher & Siegal, *supra* note 9, at 163–72 (summarizing historical antecedents of gun regulation that demonstrate gun regulations serve to protect the peace and political community, beyond just physical safety).

¹¹ *See Annual Gun Law Scorecard*, GIFFORDS LAW CENTER, <https://giffords.org/lawcenter/resources/scorecard/> (last visited Mar. 19, 2024). *See also* Eric W. Fleegler, et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, JAMA INTERN MED. (2013),

of “F,” connoting their weak gun laws, on Giffords’ Scorecard. *Id.* Moreover, states that have passed significant numbers of gun safety laws (such as Illinois, California, and New Jersey) have noticeably lower gun death rates than states that have weakened their laws or done nothing (such as Idaho, Kentucky, and Missouri). *Id.*

Firearm regulations further permit members of the political and social community, whether or not they are gun owners, to exercise their own constitutional interests on equal footing. “In various contexts, the threat of gun violence undoubtedly chills the exercise of rights, depriving Americans of the security to speak, protest, learn, shop, pray, and vote.”¹² Left unchecked—that is, not subject to reasonable regulation, including categorical restrictions—firearms and the threat of gun violence undermine democratic expression, institutions, and other constitutional and civic rights. For example, use of guns to intimidate and threaten voters, elected officials, and peaceful demonstrators, poses a serious threat to democracy. Since 2020, there has been an alarming uptick in the number of incidents of armed protestors across the country openly carrying firearms to stoke fear and chill others from engaging in protected First Amendment activities.¹³ And unsurprisingly, these gun-fueled fear tactics are working: in a nationwide poll, less than half of all voting-age respondents, just 41%, reported that they feel safe at their polling places;¹⁴ in a 2023 poll, 45% of local election officials reported fearing for

<https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1661390> (finding that states with stronger gun laws saw 42% lower total gun death rates).

¹² Blocher & Siegel, *supra* note 9, at 188–89.

¹³ For a representative sampling, see Giffords Law Center, *Armed Protestors Inspire Fear, Chill Free Speech* (last updated Dec. 15, 2022), <https://giffords.org/report/armed-protestors-inspire-fear-chill-free-speech/>.

¹⁴ Global Project Against Hate and Extremism, *Americans’ Fears Suppressing Participation in Democracy* (Aug. 4, 2022), <https://globalextrmism.org/post/fear-and-elections/>. Fears were even higher in communities of color, with just 37% of Hispanic voters reporting they feel safe at their polling places, and a mere 28% of Black voters.

the safety of their colleagues, with a significant number of seasoned election officials choosing to leave the profession since 2020.¹⁵ Surely, if the Second Amendment right is elevated above other American rights—if the threat of violence scares voters away from voting and election workers away from running elections—our democracy will be put at even graver risk.

In short, firearm regulations are integral to a safe and free democracy. Much like reasonable time, place, and manner restrictions on First Amendment rights,¹⁶ such regulations balance the various constitutional rights and liberties that collectively protect government and society. Recent events have laid bare that some Americans are willing to use firearms to advance their political objectives, and underscored how our democracy would be fatally undermined by elevating the Second Amendment above all others.¹⁷ Indeed, that is one of the many reasons why constitutional rights are not limitless but are constrained by the right of every individual to remain free from violence and the threat of it. *See Counterman v. Colorado*, 600 U.S. 66, 74 (2023) (noting that, although threats are speech, threats are not subject to First Amendment protection when they “subject individuals to fear of violence and to the many kinds of disruption that fear engenders” and “[t]he existence of a threat depends not on the mental state of the author, but on what the statement conveys to the person on the other end”) (internal quotations omitted); *New York v. Quarles*, 467 U.S. 649, 655 (1984) (holding that there is a

¹⁵ Brennan Center for Justice, *Local Election Officials Survey* (Apr. 25, 2023), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.

¹⁶ As discussed above, *supra* at 9, the First Amendment “has long had categorical limits: obscenity, defamation, incitement to crime, and others” such as speech as part of a public employee’s job. *Skoien*, 614 F.3d at 641.

¹⁷ *See* Tom Jackman, *Chicago man charged with firing gun during Jan. 6 Capitol riot*, WASH. POST (Mar. 14, 2024, 5:54 PM), <https://www.washingtonpost.com/dc-md-va/2024/03/14/banuelos-gun-jan6-capitol-riot/> (reporting that 10 people have been charged, and 8 convicted of, possessing guns at or near the U.S. Capitol when insurrectionists stormed the building on January 6, 2021).

“public safety” exception to the requirement that Miranda warnings be given before a suspect’s answers may be admitted into evidence); *see also State v. Wilson*, No. SCAP-22-0000561, 2024 WL 466105, at *19 (Haw. Feb. 7, 2024) (noting that “[a] free-wheeling right to carry guns in public degrades other constitutional rights” and that laws regulating firearms advance the Hawaiian constitutional rights to “life, liberty, and the pursuit of happiness.”)

Thus, consistent with American history, protecting the community’s ability to exercise other constitutional rights, in part through gun regulation, has compounding safety and societal benefits. *See generally* Saul Cornell & Emma Cornell, *The Second Amendment and Firearms Regulation: A Venerable Tradition Regulating Liberty While Securing Public Safety*, AM. J. PUB. HEALTH 108, 867–68 (2018), <https://doi.org/10.2105/AJPH.2018.304501> (Modern gun regulations “that seek to remove firearms from those who demonstrate a threat to personal or public safety are thus part of a long legal history extending back more than five centuries, a venerable tradition that seeks to regulate liberty while securing public safety.”) And it helps ensure that all members of society have equal access to civic participation and exercise of all their constitutional rights.

III. The Court Should Not Disturb Lawful Limits Imposed by Congress on Firearm Access.

Article I of the Constitution establishes Congress as a co-equal branch of government and sets forth its broad discretion to legislate. *See* U.S. Const. Art. I; *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325 (2015) (quoting U.S. Const. Art. I, § 8) (“Article I vests Congress with broad discretion over the manner of implementing its enumerated powers, giving it authority to ‘make all Laws which shall be necessary and proper for carrying [them] into Execution.’”) Congress alone is given the power to legislate. U.S. Const. Art. I § 8; *Dodge v.*

Woolsey, 59 U.S. 331, 349 (1855) (“All legislative powers in the constitution are vested in a congress of the United States. . . .”)

Federal courts have not been so empowered. *See* U.S. Const. Art. III. By express constitutional design, courts “have no authority to second-guess Congress.” *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 779 (2018). The “proper role of the judiciary” is “to apply, not amend, the work of the People’s representatives,” even where “reasonable people can disagree with how Congress balanced the various social costs and benefits.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 90 (2017). This separation of powers is critical to American democracy.

Under section 922(g)(1), Congress, consistent with its lawmaking authority, made a reasoned determination that a categorical prohibition on firearm access was appropriate to protect lives, safety, health, and the welfare of American society.¹⁸ As explained above, *supra* at I, this categorical limit is constitutional and within Congress’s discretion. Congress’s determination that this categorical limitation was appropriate should be the end of the inquiry. Accordingly, the Court should vacate the District Court’s decision.

¹⁸ For example, section 922(g)(1) affects a set of databases maintained by the FBI, the National Instant Criminal Background Check System (NICS), which is crucial in the fight against gun violence. Background checks are proven to reduce gun violence. *See* Michael Siegel, et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991–2016: a Panel Study*, J. GEN INTERN MED 34 (2019), <https://rdcu.be/dAdx2> (a 2019 study conducted by medical researchers at Boston University and Harvard University found that over a 26-year period, 10 states with universal background checks for all gun sales had a 14.9% reduction in overall homicide rates compared to states without such laws). Since the federal background check requirement was adopted in 1994, more than 4 million people legally prohibited from possessing a gun have been stopped from purchasing a gun or denied a permit to purchase. *See* Connor Brooks, *Background Checks for Firearm Transfers, 2018*, US DEPARTMENT OF JUSTICE: BUREAU OF JUSTICE STATISTICS (2021), <https://bjs.ojp.gov/content/pub/pdf/bcft18.pdf>. Almost thirty-five percent of the denials involved people convicted of felony offenses. *Id.*

CONCLUSION

For the reasons set forth above, this Court should vacate the decision of the District Court.

Dated: March 19, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and 7th Cir. R. 29 because it contains 4,391 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 12-point font.

Dated: March 19, 2024

/s/ Nicole K. Serfoss

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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