

18-9536

No. 18 - 6220

IN THE  
SUPREME COURT OF THE UNITED STATES

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SHAWN J. GIESWEIN  
Petitioner

v.

UNITED STATES OF AMERICA  
Respondent

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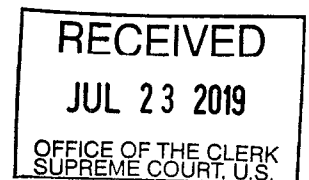
On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Tenth Circuit

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**SUPPLEMENTAL BRIEF  
IN LIGHT OF REHAIF**

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### QUESTION ASKED

1. Does "knowingly" apply to all three elements in 18 U.S.C. 922(g)(1) in that a person had to know that the firearm he/she possessed was in commerce or affecting commerce?

2. Does a person charged with possession of a firearm under 18 U.S.C. 922(g)(1) have to prove that he/she was not charged with "receiving" a firearm, which is a different "nexus" than possession, to show the gun was not in or affecting commerce? (See United States v. Bass, 92 S.Ct. 515 (Dec. 20, 1971))

3. Does Mr. Gieswein's conduct and record show that he possessed firearms without criminal intent and that his possession of firearms was purely innocent.

4. Does the government have to prove to the jury that Mr. Gieswein had knowledge that he fell within a restricted class of people who could not possess firearms?

5. Does the Second Amendment protect Mr. Gieswein's right to possess firearms and the lower Courts can not use a "interest balanced" approach to deny Mr. Gieswein his Second Amendment Constitutional right?

## SUPPLEMENTAL BRIEF

The Supreme Court just ruled in Rehaif that; "Possessing a gun can be entirely innocent. It is the defendant's status, not his conduct alone, that makes the difference, without knowledge of his status, a defendant lack the intent needed to make his behavior wrongful." Rehaif v. United States, 888 F.3d 1138 (S.Ct. June 21, 2019)

The record will show that Mr. Gieswein did not know that the firearm was under the bed in the structure and that he did not know that he could not possess firearms.

Mr. Gieswein's prior plea agreements did not state that he could not possess firearms and the judge never told Mr. Gieswein that he could not possess firearms. Mr. Gieswein has never been to prison and has only served 14 days in the county jail in 1995 and 45 days of weekends in the county jail in 2000. (See plea agreements)

18 U.S.C. 922(g)(1) has three different elements, "to ship or transport in interstate or foreign commerce" or "possess in or affecting commerce" or "receive

The Supreme Court ruled in Bass that: "a person 'possesses... in commerce or affecting commerce' if at the time of the offense the gun was moving interstate or on an interstate facility, or if possession affects commerce. Significantly broader in reach, however, is the offense of receiving... in commerce or affecting commerce,' for we conclude that the government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce." Bass v. United States, 92 S.Ct. 515 (Dec. 20, 1971)

The governments relied upon the receiving nexus in the jury instructions in Mr. Gieswein's case. Mr. Gieswein was charged with possession of a firearm and not receiving, and the record shows that the firearm in Mr. Gieswein's case was not on an interstate facility, was not moving interstate, and did not affect commerce. Mr. Gieswein owned that firearm for 11 years in Oklahoma and never traveled with that firearm out of the State of Oklahoma or on an interstate. That firearm was out of commerce for 11 years.

Knowledge must apply to all elements of 18 U.S.C. 922(g)(1).

"Congress gave us three elements in a particular order. And it makes no sense to read the word 'knowingly' as so modest that it might blush in the face of the very first element only to regain its composure and reappear at the second." Id. at 1144. "The Supreme Court has long held that courts should presume a mens rea requirement attaches to each of the statutory elements that criminalize otherwise innocent conduct." Id. at 1145 Judge Gorsuch, concurrence in United States v. Games-Perez, 667 F.3d 1136, 1142 (10th Cir. 2012)

It would make no sense to apply the "knowingly" to the first and second elements and not to the third element. example; If a person possessed something that was stolen, yet didn't **know** that the item was stolen, the government must prove that the person had knowledge that the item was stolen in order to convict that person.

The lower courts are not following Supreme Court precedence in the Heller opinion. Instead, the lower courts are using Justice Breyer's dissent and his "interest balanced" approach, in that, the government interest makes 922(g)(1) Constitutional.

The majority in the Supreme Court chides Justice Breyer's "interest balanced" approach, which would make all firearm laws valid.

The Supreme Court clearly stated in Heller that: "We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balanced" approach. The very enumeration of the right takes out of the hands of the government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope to broad." Heller v. United States, 128 S.Ct. 2783 (2008)

The Second Amendment right to Keep and Bear arms protects Mr. Gieswein from laws/statutes that conflict with the Constitution.

## CONSTITUTIONAL RIGHTS OF PRISONERS

### 1.1.1 The Constitutional Framework

The Constitution of the United States is the supreme law of the land. Further, it has been doctrine since 1803. Any laws, statutes, regulations, or government policies in conflict with the Constitution are unenforceable. It is the standard by which all government action is measured.

Individuals are protected under the Constitution and its amendments. The Bill of Rights, adopted at the same time as the Constitution, protects individuals from actions of the Federal government.

18 U.S.C. 922(g)(1) is in conflict with the Constitution and the Second Amendment of the Bill Of Rights. The statute bans all firearms from millions of American citizens that has been labeled a felon. For 165 years people that was labeled felons could possess firearms. 18 U.S.C. 922(g)(1) was passed in Congress in 1968, 51 years ago. Congress did not discuss or evaluate if 18 U.S.C. 922(g)(1) was Constitutional or was even within Congress's power to pass and adopt this law/statute.

After the Supreme Court ruling in Rehaif it is going to be difficult to charge a person with possessing a firearm because the government must prove that the person had "knowledge" of his status and that the person had "knowledge" that the firearm was in or affect commerce.

"In commerce or affecting commerce" is present tense and is a vague statement. What defines "in or affecting commerce"? The commerce clause states that once an object is removed from its package that it is no longer in commerce. Does possession in ones home, for protection, affect commerce?

This Court should clarify what "nexus" the lower courts should use in 18 U.S.C. 922(g)(1) and clarify and define "in or affecting commerce".

This Court should rule if 18 U.S.C. 922(g)(1) is in conflict with the Constitution and if Congress has the authority and power to pass and adopt 18 U.S.C. 922(g)(1).

Mr. Gieswein lacked the "knowledge" that he was in a class of people that could not possess firearms.

Mr. Gieswein was never in prison and he only served 45 days of weekends in the county jail. Mr. Gieswein never signed a plea deal that stated he could not possess firearms. The Judge never told Mr. Gieswein that he could not possess firearms.

Mr. Gieswein has argued from the beginning of this charge that his Second Amendment right to Keep and Bear arms, protects him from being convicted of possession of a firearm.

Mr. Gieswein can show and quote multiple cases, Supreme Court and other, that Congress does not have the power or authority to infringe upon the Second Amendment. Congress can not disarm American citizens, Congress can regulate firearms, but a complete ban on all firearms to certain classes of people is beyond their power and authority.

#### CONCLUSION

Mr. Gieswein is asking this court to clarify what "in or affecting commerce" nexus must apply to possession of a firearm.

Mr. Gieswein is asking this court to clarify if 18 U.S.C. 922(g)(1) is in conflict with the Constitution and the Second Amendment of the Bill OF Rights.

Mr. Gieswein is asking this court to vacate his sentence in light of Rehaif, in that Mr. Gieswein lacked the Knowledge that he was in a class of people that could not possess firearms.

Mr. Gieswein is asking this court to clarify what standard of scrutiny must apply to a 18 U.S.C. 922(g)(1) conviction and if the lower courts can use a "interest-balanced" approach.

July 15, 2019  
Date

Shawn J. Gieswein  
Shawn J. Gieswein