

No. 22-915

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

ZACKEY RAHIMI

Respondent.

**On Writ of Certiorari To The United States
Court Of Appeals For The Fifth Circuit**

**BRIEF OF GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE AS *AMICUS
CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

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. 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 Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

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., District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010);

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or its counsel made a monetary contribution to this brief’s preparation or submission. *See* Sup. Ct. R. 37.6.

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. __ (2022). It submits this brief to explain why and how evidence that disarming domestic abusers is critical for public safety is relevant in assessing the constitutionality of 18 U.S.C. § 922(g)(8). Giffords Law Center also seeks to demonstrate that both history and unprecedented societal concerns counsel in favor of deferring to Congress's legislative findings and judgment that those subject to a court order covered by Section 922(g)(8) can and should be disarmed.

SUMMARY OF THE ARGUMENT

Contemplating independence in March of 1776, Abigail Adams implored her husband to “Remember the Ladies” and to put “cruelty and indignity” “out of the power of the vicious and the Lawless” as he helped architect the laws of a new nation.² Her plea was ignored. It would take nearly a century and a half for women to be “bound by any Laws in which [they] ha[d] [a] voice, [and] Representation”³ and nearly two hundred years for society to view violence against women for what it is: a threat to both the physical safety of others and democracy as a whole.

At the time the Constitution was ratified, white male property owners were the only group routinely permitted to vote and participate in official civic and political life. With the ratification of the Nineteenth Amendment, however, the right to vote could no longer “be denied or abridged . . . on account of sex.” U.S. Const. amend. XIX. And in the years following ratification, as excluded Americans continued their march towards formal and factual equality, the harms attendant to domestic violence and society’s understanding of those harms took on new, constitutional dimensions, giving rise to “societal concerns” without “[p]recedent[]” from the time of the Founding. *Bruen*, 142 S. Ct. at 2132.

18 U.S.C. § 922(g)(8) reflects those changing societal understandings, helps to secure those hard-earned rights, and redounds to the benefit of the entire

² Letter from Abigail Adams to John Adams (Mar. 31, 1776), <https://founders.archives.gov/documents/Adams/04-01-02-0241>.

³ *Id.*

democratic system. Domestic violence is—and has long been—primarily perpetrated by men against women. It reflects disturbing efforts to exercise over intimate partners a degree of control our society no longer accepts. But for much of this nation’s history, domestic violence was tolerated, broadly permitted, or both. *See, e.g.*, Brief for the United States at 40, *United States v. Rahimi*, No. 22-915 (U.S. Aug. 14, 2023).

By disarming domestic abusers, Section 922(g)(8) both helps prevent the use of guns to commit domestic abuse and hampers abusers’ efforts to control their intimate partners. This helps democratic society as a whole by shielding victims of domestic abuse who are entitled to a full array of rights—including the freedoms of association, speech, and religious exercise, and the right to vote—that domestic abusers armed with firearms can eliminate or chill.

Section 922(g)(8) is a paradigmatic example of a permissible regulation under the Second Amendment. The provision carefully balances Second Amendment interests with critical public safety and constitutional concerns. “History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns.” *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated by Bruen*, 142 S. Ct. 2111; *United States v. Jackson*, 69 F.4th 495, 504 (8th Cir. 2023). And those subject to Section 922(g)(8)’s prohibition have been specifically adjudged to have used, or to be likely to use, unjustified force, or the threat of unjustified force, offensively. *See* 18 U.S.C. § 922(g)(8); *see also United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001), *cert. denied*, 536 U.S.

907 (2002). Data corroborates the soundness of those findings. Decades of research show that gun ownership by domestic abusers puts those in their immediate orbit in grave danger. It was this connection between armed domestic violence perpetrators and the deaths of their partners and children that prompted Congressional action. The result—a time-limited restriction applicable only after an alleged domestic abuser receives a judicial hearing with “actual notice” and “an opportunity to participate,” *see* 18 U.S.C. § 922(g)(8)(A)—is a manifestly reasonable response that accords with this nation’s history and tradition of firearms regulation.

Section 922(g)(8) also helps to protect the physical safety of the public. Mass shootings are frequently tied to domestic violence, and mass shootings involving domestic or intimate partner violence perpetrators tend to be especially fatal. The threat posed by armed domestic violence perpetrators thus extends far beyond the home and to the public at large. And Section 922(g)(8) addresses these unprecedented public safety concerns. Fortunately, Congress may disarm those with a “demonstrated proclivity for violence.” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). And it is well-established that Congress can engage in legislative factfinding to determine who, precisely, those people are. As this Court has explained, Congress is afforded even more legislative latitude when it responds to “unprecedented societal concerns,” as it has here. *Bruen*, 142 S. Ct. at 2132.

Section 922(g)(8) cuts to the core of who we are as a society. It reflects a careful congressional balance of the rights of domestic abusers—including their Second Amendment rights—as well as the constitutional

rights of victims and survivors and the need for our nation’s leaders to protect the public. The Fifth Circuit’s invalidation of Section 922(g)(8) is dangerous. This Court should reverse in full and reaffirm both that the Second Amendment is not a “regulatory straightjacket,” and that it does not require the government to sit idly by in the face of documented, historic, and pervasive threats to public safety.

ARGUMENT

I. Armed Domestic Violence Offenders Chill And Restrict Constitutionally Protected Activities

Temporarily restricting domestic abusers from accessing firearms protects critical constitutional rights, and especially the rights of women. The status of women as possessing and deserving equal rights is a relatively recent societal and constitutional innovation. At the time of the Founding, a woman had little to no legal recourse when she was subjected to spousal abuse. And women’s enfranchisement was still nearly a century away when James Madison—the last survivor of the Constitutional Convention—died in 1836. But as women won more equal footing in society, their constitutional status changed, and along with it, society developed an “unprecedented . . . concern[]” about domestic violence and, importantly, its impact on democracy. *Bruen*, 142 S. Ct. at 2132. One function of Section 922(g)(8) is to protect that constitutional status, because women living under threat from an abuser with a firearm are often unable to participate in democracy as the Constitution guarantees. Thus, reducing the risk that domestic violence is used as a tool for control and a means to limit civic participation helps protect women’s constitutionally endorsed role

in society, to the benefit of the People as a whole.

Although by no means the only victims of domestic violence, women are—and have long been—disproportionately affected by it. But for too much of this country’s history, women had little or no legal recourse in the face of domestic abuse: their abuse was legally authorized or at least largely tolerated when both the Bill of Rights and the Fourteenth Amendment were ratified. See *Fulgham v. State*, 46 Ala. 143 (1871) (marking Alabama as the first state to rescind a husband’s right to beat his wife); see also, e.g., Jill Elaine Hasday, *Contest And Consent: A Legal History Of Marital Rape*, 88 Calif. L. Rev. 1373, 1389-90 (2000); S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 Colum. L. Rev. 1097, 1112-14 (2022).

From the Colonial era until the mid-nineteenth century, a married woman’s rights were subsumed into her husband’s by virtue of the concept of coverture marriage. She could not vote, she could not own property, and she could not sue (or be sued) in a court of law without her husband’s participation. See, e.g., 1 William Blackstone, *Commentaries on the Laws of England* *442 (1st ed. 1753); see also *Bradwell v. Illinois*, 83 U.S. 130, 141-42 (1872) (Bradley, J., concurring) (“The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.”). By the early nineteenth century, however, some began to question the propriety of sanctioned spousal abuse—*i.e.*, chastisement. In 1816, for example, the first U.S. treatise on family law called into question its status as good law. See Tapping Reeve, *The Law of Baron and Femme; of Parent and Child; of Guardian and Ward;*

of *Master and Servant* 65 (New Haven, Oliver Steele 1816). But even as “some states began to criminalize wife-beating by the mid- to late-nineteenth century, many courts continued to take the position that unless ‘serious violence’ had occurred, the government should not interfere in these cases.” Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 Wisc. L. Rev. 1657, 1661-62 (2004). In other words, “[b]y the late nineteenth century, public policy in domestic violence began to move from overt legal approval to toleration, so that men who assaulted their wives were granted immunity from prosecution on grounds of marital privacy and preservation of domestic harmony.” *Id.* at 1662.

In parallel, voices in the women’s rights movement expressly linked domestic violence and women’s rights as *de jure* protections for domestic violence perpetrators were receding but *de facto* ones remained. “As one of the movement’s newspapers argued in the 1870s, domestic violence exposed the ‘fiction of Woman’s protection by man’ and thus demonstrated ‘the necessity that women should have increased power, social, civil, legal, political and ecclesiastical, in order to protect themselves.’” Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative & Privacy*, 105 Yale L. J. 2117, 2129 (1996) (quoting *Crimes Against Women*, *Woman’s J.*, Dec. 25, 1875, at 413, 413 (column signed C.C.H. of East Orange, New Jersey)). And as another late-nineteenth century writer opined, “Equal Rights and Impartial Suffrage are the only radical cure for these barbarities.” *Id.* (quoting *Crimes of a Single Day*, *Woman’s J.*, Jan. 29, 1876, at 34, 34 (column signed H.B.B.)).

In 1920, women gained the right to vote after ratification of the Nineteenth Amendment. “Few rights are as fundamental as the right to participate meaningfully and equally in the process of government.” *Schuette v. BAMN*, 572 U.S. 291, 366 (2014) (Sotomayor, J., dissenting) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)); *see also Frontiero v. Richardson*, 411 U.S. 677, 685 (1973) (Brennan, J.) (noting that the right to vote “is itself preservative of other basic civil and political rights” (quotation marks omitted)). Thus, the Nineteenth Amendment changed women’s constitutional status in society by giving them the right to vote and participate in the body politic. U.S. Const. amend. XIX. As a result, the character and concerns of American society fundamentally changed.⁴

Domestic abuse, however, still loomed as a threat to that fundamental change. Domestic abuse has always been and continues to be a tool that men have used to control women. *See, e.g.*, L. Kevin Hamberger, *Men’s and Women’s Use of Intimate Partner Violence in Clinical Samples: Toward a Gender-Sensitive Analysis*, 20 *Violence & Victims* 131, 141, 144-45 (2005) (noting that “men . . . tend to use violence to dominate and control their partners”); *What is*

⁴ This is not to say constitutional parity gave rise to lived parity then or even now. *See, e.g.*, *Schuette*, 572 U.S. at 342 (Sotomayor, J., dissenting) (“For much of its history, our Nation has denied to many of its citizens the right to participate meaningfully and equally in its politics [This is] a history that still informs the society we live in.”); Jessica Jones Capparell, *Voting Rights History is Black History*, League of Women Voters (Feb. 23, 2022), <https://www.lwv.org/blog/voting-rights-history-black-history> (“[I]t wasn’t until the 1960s and the passage of the VRA that Black men and women had a clear path to the voting booth.”).

Domestic Violence?, U.S. Dep't of Justice, Office on Violence Against Women (Mar. 17, 2023) ("Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner."), <https://www.justice.gov/ovw/domestic-violence>. To that end, a 2019 report by the Centers for Disease Control and Prevention found, for example, that "over half . . . of female [intimate partner violence] victims were concerned for their safety and nearly half . . . of female victims reported being fearful as a result of intimate partner violence."⁵ And for the over 4.5 million women who have reported being threatened by an intimate partner with a gun,⁶ the presence of a firearm undoubtedly makes that fear and those safety concerns extraordinarily acute.

Abusers often isolate victims from friends, family, and anyone else who could be seen as a threat to the

⁵ Ashley S. D'Inverno et al., *The Impact of Intimate Partner Violence: A 2015 NISVS Research-in-Brief* at 6, Ctrs. for Disease Control & Prevention (Aug. 2019), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvs-impactbrief-508.pdf>; see also *Elonis v. United States*, 575 U.S. 723, 748 (2015) (Alito, J., concurring) ("Threats of violence and intimidation are among the most favored weapons of domestic abusers, and the rise of social media has only made those tactics more commonplace.").

⁶ *Domestic Violence & Firearms*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>; see also Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. Dep't of Justice (Nov. 2000), <https://www.ojp.gov/pdffiles1/nij/183781.pdf>;

abuser’s control. They also intimidate or abuse their victims for asserting independent preferences.⁷ Together, these acts limit core associational rights and the exchange of ideas and expression. Victims’ ability or desire to engage in religious exercise may also be curtailed—whether because the victim’s religious views differ from her abuser’s, the victim (or her family) can be readily located at houses of worship,⁸ or the victim is less isolated in that community setting. In the voting context, victims may be unwilling or unable to freely exercise the franchise for fear of violent reprisal, for fear of being found if their address is listed in public voting rolls, or for want of important information about an upcoming election, including where and when to vote, due, in part, to restricted access to the internet.⁹ And when domestic violence

⁷ See, e.g., Danielle Root, *Obstacles to Voting for Survivors of Intimate Partner Violence*, Ctr. for Am. Progress (Nov. 1, 2018), <https://www.americanprogress.org/article/obstacles-voting-survivors-intimate-partner-violence/>.

⁸ See Kate Shellnutt, *A Top Reason for Church Shootings: Domestic Abuse*, Christianity Today (Nov. 7, 2017), <https://www.christianitytoday.com/news/2017/november/top-reason-church-shooting-domestic-violence-texas.html> (“Domestic violence . . . has increasingly led to violence on church property.”). “[A]mong violent attacks at houses of worship where the cause was known in 2016, 25 percent of victims were killed as a result of a domestic abuse incident, all by male attackers.” *Id.*

⁹ See Root, *supra* note 7; Charles J. Pults, *America’s Data Crisis: How Public Voter Registration Data Has Exposed the American Public to Previously Unforeseen Dangers and How to Fix It*, 105 Iowa L. Rev. 1363, 1377-1378 (2020) (noting that victims often must “choose between having their data exposed or exercising their right to vote”); see also *Access to and Use of Voter Registration Lists*, Nat’l Conf. St. Legis. (Feb. 27, 2023),

perpetrators possess firearms, they wield even greater control over their victims, and the consequent curtailment of rights is even more severe. The presence of a gun may preclude public participation altogether.¹⁰

The drive for control that produces fear in an abused person is a hallmark of domestic abuse, both historical and modern. Whereas in the Colonial era, that control was deemed a private matter, we now recognize it as disturbing and unacceptable. And, critically, an abusive man’s control over a woman partner now holds constitutional and democratic significance. An abused woman cannot properly enjoy her full constitutional rights; especially so when the abuser has a gun. Broader societal harms are inevitable, too. When women are excluded from social and civic life, our entire society and our democratic system suffer.

Neither the Second Amendment nor *Bruen* requires this Court to strip back all of the forward progress that has been made to protect women from domestic violence. Fundamental societal changes, including women’s enfranchisement, invite a nuanced and properly contextualized approach to Constitutional analysis under the *Bruen* historical-analogical

<https://www.ncsl.org/elections-and-campaigns/access-to-and-use-of-voter-registration-lists>.

¹⁰ Cf. Kaitlin Sidorsky, *Inequality across State Lines: How Policymakers Have Failed Domestic Violence Victims in the United States* 27 (2023) (“[T]here is ample evidence that [domestic violence] can be a barrier to voting and political participation for women.”); Kimberly D. Bailey, *Lost in Translation: Domestic Violence, the Personal is Political, and the Criminal Justice System*, 100 J. of Crim. L. & Criminology 1255, 1263 (2010) (noting the view that “the public and private spheres” are “interrelated[]”).

framework.

II. Congress Can Regulate The Deadly Mix Of Domestic Violence And Firearms

Courts have been clear that, at a minimum, “[t]he historical evidence [demonstrates] . . . that the legislature may disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety.” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting); *see, e.g., Jackson*, 69 F.4th at 504 (“[H]istory supports the authority of Congress to prohibit possession of firearms by persons who have demonstrated disrespect for legal norms of society.”); *Medina v. Whitaker*, 913 F.3d 152, 159 (D.C. Cir. 2019) (noting “[p]ersuasive evidence that the scope of the Second Amendment was understood to exclude more than just individually identifiable dangerous individuals”).¹¹ Congress is

¹¹ *See also, e.g., Atkinson v. Garland*, 70 F.4th 1018, 1035 (7th Cir. 2023) (Wood, J., dissenting) (“[S]ince the founding, governments have been understood to have the power to single out categories of persons who will face total disarmament based on the danger they pose to the political community if armed.”); *Folajtar v. Att’y Gen.*, 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting) (“As an original matter, the Second Amendment’s touchstone is dangerousness. Historically, all citizens enjoyed that right unless they posed a danger.”); *Binderup v. Att’y Gen.*, 836 F.3d 336, 357 (3d Cir. 2016) (Hardiman, J., concurring in part) (“The most cogent principle that can be drawn from traditional limitations on the right to keep and bear arms is that dangerous persons likely to use firearms for illicit purposes were not understood to be protected by the Second Amendment.”); *United States v. Carter*, 669 F.3d 411, 415 (4th Cir. 2012) (“[T]he Anglo-American right to bear arms has always recognized and accommodated limitations for persons perceived to be dangerous.”); *cf. Couterman v. Colorado*, 143 S. Ct. 2106, 2117 (2023)

thus far from powerless to address the likelihood that individuals subject to restraining orders—because they threaten violence—will actually use deadly force if permitted to possess guns. “Properly interpreted, the Second Amendment allows a ‘variety’ of gun regulations.” *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636). And this Court has never prevented Congress from enacting regulations that address such problems, nor required Congress to turn a blind eye to data revealing their prevalence.

Like Respondent himself, the individuals subject to Section 922(g)(8) have “demonstrated a proclivity for violence.” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting). For Section 922(g)(8)’s prohibition to apply, a court order must either “include[] a finding that [the individual] represents a credible threat to the physical safety of [an] intimate partner or child,” or “by its terms[,] explicitly prohibit[] the use, attempted use, or threatened use of physical force against [an] intimate partner or child that would reasonably be expected to cause bodily injury.” 18 U.S.C. § 922(g)(8)(C). In other words, those subject to Section 922(g)(8) have already and specifically been adjudged to pose a threat to other people. *See Emerson*, 270 F.3d at 262 (“Congress . . . proceeded on the assumption that . . . court orders, issued after notice and hearing, should not embrace the prohibitions of paragraph (C)(ii) unless such either were not contested or evidence credited by the court reflected a real threat or danger of injury to the protected party by the party enjoined.”).

(explaining that “profound harms, to both individuals and society, . . . attend true threats of violence”).

And decades of data confirm the premise of these adjudications is sound: domestic violence perpetrators who have access to firearms pose a significant likelihood of harming or killing people in their immediate orbit.¹² For instance, one study found that an abuser’s access to a gun is associated with at least a 5-fold increase in the risk that a male abuser will kill

¹² Social science plays a key role in assessing the permissibility of a regulation under the Second Amendment. Under *Bruen*, courts engage in, among other things, a comparative inquiry to determine “whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” 142 S. Ct. at 2133. Social science helps elucidate the “why” of a modern regulation. And it helps ensure Congress and the courts do not become “divorced from both reality and the law.” *United States v. Alaniz*, 69 F.4th 1124, 1129 (9th Cir. 2023).

his female partner.¹³ In fact, intimate partner homicide “[p]erpetrators are more likely to use a gun than all other means combined to murder their female intimate partners.”¹⁴

The scale of this threat is expansive. Millions of women have *reported* being threatened by an intimate partner with a gun.¹⁵ And nearly 25 million adults in the United States have experienced some type of non-fatal firearm abuse by an intimate partner—*e.g.*, “were threatened with a firearm, had a firearm used

¹³ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003); *see also* Julie M. Kafka et al., *What is the Role of Firearms in Nonfatal Intimate Partner Violence? Findings from Civil Protective Order Case Data*, 283 Soc. Sci. & Med. 1 (2021) (finding gun access was associated with higher rates of intimate partner violence); Patrizia Zeppegno et al., *Intimate Partner Homicide Suicide: a Mini-Review of the Literature (2012–2018)*, 21 Current Psychiatry Reps. 1, 12 (2019) (finding that intimate partner homicide-suicide is mainly committed by married men, who are living with, or recently separated from, their partner, and the victim was usually the current or former female partner); Madelyn L. Diaz et al., *Out of Sight, Out of Mind: An Analysis of Family Mass Murder Offenders in the US, 2006-2017*, 1 J. Mass Violence Rsch. 25, 32 (2022) (utilizing a USA Today database on family mass murder incidents from 2006 to 2017 to provide descriptive statistics about these types of incidents, and finding that the majority of cases (62%) stemmed from relationship issues with current or former intimate partners and that most “offenders used a gun as their weapon of choice”).

¹⁴ Natalie Nanasi, *Disarming Domestic Abusers*, 14 Harv. L. & Pol’y Rev. 559, 563 (2020).

¹⁵ *Domestic Violence & Firearms*, Giffords Law Center to Prevent Gun Violence, *supra* note 6.

on them, or were threatened by a partner who possessed or had easy access to a firearm.”¹⁶ In short, as a sponsor of what would become Section 922(g)(8) recognized, “often the only difference between a battered woman and a dead woman is the presence of a gun.” 140 Cong. Rec. 14998 (1994) (Statement of Sen. Wellstone).

Children are also often victims of armed domestic abusers.¹⁷ A study in the *Journal of Pediatric Surgery* found that between 2009 and 2016, children accounted for 44% of the fatalities in mass shootings that took place in the home that were perpetrated by either a family member or current or former intimate partner of a family member.¹⁸ Another found that, when a firearm was involved in a domestic homicide, there was a 70.9% increased incidence of additional

¹⁶ Avanti Adhia et al., *Nonfatal Use of Firearms in Intimate Partner Violence: Results of a National Survey*, 147 *Preventative Med.* 1, 6 (2021); see also *Gun Violence Statistics*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/law-center/gun-violence-statistics/> (noting 25 million U.S. adults have been threatened or nonfatally injured by an intimate partner with a firearm, domestic violence victims are five times more likely to be killed when their abuser has access to a gun, and women in the United States are 21 times more likely to be killed with a gun than women in other high-income countries).

¹⁷ See, e.g., Katherine A. Fowler et al., *Childhood Firearm Injuries in the United States*, 140 *Pediatrics* 1, 5-6 (2017).

¹⁸ Marc Levy et al., *Mass Shootings: Are Children Safer in the Streets than in the Home?*, 54 *J. Pediatric Surgery* 150, 151 (2019).

victims.¹⁹

Concerns like these were the impetus for Section 922(g)(8)'s restriction on the possession of firearms by individuals subject to domestic violence restraining orders. When considering the provision, Congress noted that “[o]ver 4,000 women [were] killed each year at the hands of their spouse or a relative or a friend.” 139 Cong. Rec. 28360 (1993) (Statement of Sen. Wellstone). The Bill’s Conference Report included several key Congressional findings: “that domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44; firearms are used by the abuser in 7 percent of domestic violence incidents and produces an adverse effect on interstate commerce; and individuals with a history of domestic abuse should not have easy access to firearms.” *United States v. Baker*, 197 F.3d 211, 216 n.2 (6th Cir. 1999) (quoting H.R. Rep. No. 103-711, at 391 (1994) (Conf. Rep.)); see also Tom Lininger, *A Better Way to Disarm Batterers*, 54 *Hastings L. J.* 525, 538-42 (2003) (noting that Section 922(g)(8) originated in both Democratic and Republican-proposed bills and that a sponsor of what became Section 922(g)(8) “stressed the great dangers posed by firearms in the hands of domestic abusers”).

Section 922(g)(8) is a reasonable way for Congress to have accomplished its goal of preventing those tragedies. First, the provision applies only to court orders issued “after a hearing of which [the individual subject to Section 922(g)(8)] received actual notice, and at

¹⁹ Aaron J. Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 *J. Am. Acad. Psychiatry L.* 26, 29 (2020).

which [the individual] had an opportunity to participate.” 18 U.S.C. § 922(g)(8)(A). Indeed, “the minimum requirements of the statute comport with the requirements of due process,” *United States v. Calor*, 340 F.3d 428, 431 (6th Cir. 2003), and the civil legal system is well equipped to protect the due process rights of the individuals potentially subject to such court orders. Second, Section 922(g)(8) applies only to an individual who “is” subject to a “court order.” 18 U.S.C. § 922(g)(8). In other words, the restriction is temporary, so an individual may again possess firearms once the court order expires or is revoked. And data indicates that laws restricting access to firearms for domestic abusers are effective in preventing gun violence and consequently saving lives.²⁰

In sum, individuals subject to Section 922(g)(8) “have demonstrated a proclivity for violence,” *Kanter*, 919 F.3d at 454 (Barrett, J., dissenting), and a tailored, temporary prohibition on the possession of firearms by those individuals sits squarely within Congress’s powers and this country’s history and tradition of regulating firearm possession by those that legislatures have determined pose a danger to others.

²⁰ See April M. Zeoli & Jennifer K. Paruk, *Potential to Prevent Mass Shootings Through Domestic Violence Firearm Restrictions*, 19 *Criminology & Pub. Pol’y* 129, 140-41 (2020); see also Fowler, *supra* note 17 at 8; April M. Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations With Intimate Partner Homicide*, 187 *Am. J. Epidemiology* 2365, 2367 (2018).

III. Section 922(g)(8) Protects The Public

Most mass shootings from 2014 to 2019 were either related to a domestic violence incident or were committed by perpetrators of domestic and intimate partner violence. Over that period, 59% of mass shootings were domestic violence-related in that at least one victim was a partner or family member.²¹ In an additional 9% of mass shootings, the perpetrator had a suspected history of domestic or intimate partner violence, but none of the victims were partners or family members.²² That means that nearly 70% of all mass shootings during that period were tied to domestic or intimate partner violence.²³ Further, mass shootings that involve domestic or intimate partner abusers are often especially dangerous and fatal. Mass shootings committed by abusers result in more deaths,²⁴ are

²¹ Lisa B. Geller et al., *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014-2019*, 8 J. Injury Epidemiology 38, at 4 (2021).

²² *Id.* at 4-5.

²³ *Id.* at 5.

²⁴ See Zeoli, *Potential to Prevent Mass Shootings*, *supra* note 20, at 137 (finding that the mean number of individuals killed in mass shootings involving domestic violence was 7.11, whereas the mean number killed in cases that did not involve domestic violence was 6.20).

more likely to have fatalities,²⁵ and have higher fatality rates.²⁶

Many of the deadliest recent mass shootings were preceded by acts of domestic violence. In 1980, for example, a man killed 5 people and injured at least 10 others at the First Baptist Church in Daingerfield, Texas, after he was charged with raping his daughter.²⁷ In 1999 in Fort Worth, Texas, a man who was violent toward a family member killed 7 people and injured at least 7 others at Wedgwood Baptist Church.²⁸ In June 2016, a gunman killed 49 people and injured many more at the Pulse nightclub in Orlando, Florida. According to both his ex-wife and his

²⁵ Jackie Gu, *Deadliest Mass Shootings Are Often Preceded by Violence at Home*, Bloomberg (June 30, 2020), <https://www.bloomberg.com/graphics/2020-mass-shootings-domestic-violence-connection/#xj4y7vzkg> (finding that in shootings with no fatalities, only 15% of aggressors had records of domestic violence, whereas in shootings with six or more deaths, 70% of aggressors had records of domestic violence).

²⁶ See Geller, *supra* note 21 at 5 (finding significant differences in the average number of injuries and fatalities between domestic violence-related mass shootings and non-domestic violence-related mass shootings, with the former having a markedly higher fatality rate (83.7% vs. 63.1%)).

²⁷ See Meredith Shamburger, *Daingerfield Knows Church's Pain After Shooting*, Longview News-Journal, Nov. 9, 2017 (updated Feb. 22, 2018), https://www.news-journal.com/news/local/daingerfield-knows-churchs-pain-after-shooting/article_bfa3ba00-2620-5b9f-8870-6a1e13e7f023.html.

²⁸ See Jim Yardley, *Gunman Kills 7, and Himself, At Baptist Church in Fort Worth*, N.Y. Times (Sept. 16, 1999), <https://www.nytimes.com/1999/09/16/us/gunman-kills-7-and-himself-at-baptist-church-in-fort-worth.html>.

wife at the time of the mass shooting, the gunman regularly abused them.²⁹ In February 2018, a former student murdered 17 students and staff members at Marjory Stoneman Douglas High School in Parkland, Florida.³⁰ According to news reports, the student had an abusive relationship with his ex-girlfriend.³¹ In 2022, a man with a long history of domestic violence shot and killed his three daughters during a supervised visit, the man supervising the visit, and then himself, in a church in Sacramento, California.³² His ex-girlfriend alleged a decade of violent abuse.³³ And in the instant case before this Court, the record shows

²⁹ See Adam Goldman et al., *'He Was Not A Stable Person': Orlando Shooter Showed Signs of Emotional Trouble*, Washington Post (June 12, 2016), https://www.washingtonpost.com/world/national-security/ex-wife-of-suspected-orlando-shooter-he-beat-me/2016/06/12/8a1963b4-30b8-11e6-8ff7-7b6c1998b7a0_story.html; Kate Santich, *Report: Pulse Gunman's Widow Noor Salman Says She Was Victim Too*, Orlando Sentinel (Oct. 15, 2021), <https://www.orlandosentinel.com/2021/10/15/report-pulse-gunmans-widow-noor-salman-says-she-was-victim-too/>.

³⁰ See Sarah Gangraw, *New Details About The Threatening Messages Nikolas Cruz Sent His Ex-Girlfriend — And Other Violent Warning Signs The Florida School Shooter's Classmates Witnessed*, Yahoo! News (Feb. 20, 2018), <https://www.yahoo.com/news/details-threatening-messages-nikolas-cruz-050417977.html>.

³¹ See *id.*

³² See Mackenzie Mays & Richard Winton, *Woman Warned Court Her Boyfriend Was Dangerous Before He Killed 4 at Sacramento-area Church*, L.A. Times (Mar. 1, 2022), <https://www.latimes.com/california/story/2022-03-01/father-who-killed-kids-at-church-had-restraining-order-gun>.

³³ *Id.*

that the Respondent abused and threatened to shoot one girlfriend and threatened yet another woman with a gun before being involved in five separate shootings. Sadly, as abusive and frightening a threat as Respondent is, he is not an outlier. He is, in many ways, typical.

Although households are often the epicenters of domestic violence, the shockwaves of such violence often reverberate far beyond the confines of the home when domestic violence perpetrators have access to firearms. Permitting individuals like Respondent to legally possess firearms will therefore have grave consequences not only for partner-victims and close relations, but also for the public as a whole.

Congress's hands are not tied. The growing frequency of mass violence often perpetrated by domestic abusers is an unprecedented societal concern. Section 922(g)(8)'s temporary prohibition on possession of firearms by individuals subject to domestic violence restraining orders responds to this concern. It is plainly constitutional.

CONCLUSION

Allowing perpetrators of domestic violence to have access to firearms puts their partners, children, communities, and our cherished rights and democratic system at risk. By temporarily preventing individuals subject to domestic violence restraining orders from obtaining firearms, Section 922(g)(8) helps to ensure that victims of domestic violence can enjoy all of the rights secured by the Constitution and to protect civil and political society generally. Section 922(g)(8) carefully balances Second Amendment interests and rights with the critical constitutional and public

safety concerns Congress considered when enacting the statute. For all of the foregoing reasons, the decision of the United States Court of Appeals for the Fifth Circuit should be reversed.

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August 21, 2023