

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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MARK AND PATRICIA MCCLOSKEY,  
*Petitioners,*

v.

MISSOURI OFFICE OF CHIEF DISCIPLINARY COUNSEL,  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
Supreme Court of Missouri**

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the Second Amendment and Due Process Clause of the Fourteenth Amendment of the United States Constitution permit an attorney to be sanctioned for professional misconduct based upon a finding of “moral turpitude,” where the attorneys were exercising lawful rights to bear arms in defense of their person, family, and home, and the resulting misdemeanor conviction for each attorney was subsequently commended by the President of the United States and pardoned by the state’s governor.

**PARTIES TO THE PROCEEDING**

The parties to this proceeding are Mark and Patricia McCloskey, Petitioners, and the Missouri Supreme Court through its Office of Chief Disciplinary Counsel, Respondent.

**STATEMENT OF RELATED PROCEEDINGS**

The following cases are directly related proceedings within the meaning of Rule 14.1(b)(iii):

*In re Mark T. McCloskey*, Case No. SC99301 (February 8, 2022) (Missouri Supreme Court)

*In re Patricia McCloskey*, Case No. SC99302 (February 8, 2022) (Missouri Supreme Court)

## TABLE OF CONTENTS

QUESTIONS PRESENTED . . . . .	i
PARTIES TO THE PROCEEDING . . . . .	ii
STATEMENT OF RELATED PROCEEDINGS . . . . .	iii
TABLE OF AUTHORITIES . . . . .	vi
PETITION FOR WRIT OF CERTIORARI . . . . .	1
OPINIONS BELOW . . . . .	1
JURISDICTION . . . . .	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED . . . . .	2
INTRODUCTION . . . . .	3
A. The Second Amendment unequivocally protects Americans’ right to keep and bear Arms . . . . .	3
STATEMENT . . . . .	5
Factual Background and the Proceedings Below . . . . .	5
REASONS TO GRANT THE PETITION . . . . .	11
CONCLUSION . . . . .	12
APPENDIX	
Appendix A Opinion in the Supreme Court of Missouri, <i>In re: Mark T. McCloskey</i> (February 8, 2022) . . . . .	App. 1

Appendix B Opinion in the Supreme Court of  
Missouri, *In re: Patricia McCloskey*  
(February 8, 2022) . . . . . App. 4

**TABLE OF AUTHORITIES**

**CASES**

*District of Columbia v. Heller*,  
554 U.S. 570 (2008) . . . . . 3, 4, 12

*McDonald v. Chicago*,  
561 U.S. 742 (2010) . . . . . 4, 12

**CONSTITUTION AND STATUTES**

U.S. Const. amend. II. . . . . 1, 2, 3, 4, 5, 8, 11, 12

U.S. Const. amend. XIV, § 1 . . . . . 2, 4, 11, 12

28 U.S.C. § 1257 . . . . . 1

**RULES**

Missouri Supreme Court Rule 5.21 . . . . . 11

## PETITION FOR WRIT OF CERTIORARI

Petitioners Mark T. and Patricia McCloskey (also the “McCloskeys”) respectfully petition this Court for a writ of certiorari to review and reverse the judgments of the Supreme Court of Missouri, which found the McCloskeys had engaged in conduct involving “moral turpitude” and sanctioned the McCloskeys’ law license when the McCloskeys had in June 2020 exercised rights guaranteed by the Second Amendment to the United States Constitution by displaying firearms to defend their home and property from threatening protestors, and were subsequently praised by the President of the United States and pardoned by the Governor of Missouri for their conduct.

### OPINIONS BELOW

The opinions of the Supreme Court of Missouri in the underlying companion cases *In re Mark T. McCloskey*, Case No. SC99301 (February 8, 2022), and *In re Patricia McCloskey*, Case No. SC99302 (February 8, 2022), are unreported.

### JURISDICTION

The Orders of the Supreme Court of Missouri were entered in each case on February 8, 2022. This Petition for Writ of Certiorari was timely filed, and this Court has jurisdiction under 28 U.S.C. § 1257.



**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

AMENDMENT II of the United States Constitution provides:

A well regulated Militia, being necessary the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT XIV, Section 1 of the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

## INTRODUCTION

The United States Constitution contains numerous provisions that protect the rights of Americans to bear arms and to protect themselves, their home and their property. Nevertheless, the Missouri Supreme Court deemed it “moral turpitude” and deserving of discipline for Petitioners and lawyers Mark and Patricia McCloskey to stand outside their home and brandish (but not discharge) firearms to protect their lives and property while a large group of threatening protestors passed. The McCloskeys now ask this Court to rule, as a matter of constitutional law, that a lawyer does not engage in conduct involving “moral turpitude” when undertaking actions protected by the United States Constitution, in particular the Second Amendment, and those actions are subsequently praised by the President of the United States, Donald J. Trump.

### **A. The Second Amendment unequivocally protects Americans’ right to keep and bear Arms.**

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

This Court has relatively recently affirmed an individual’s rights to use firearms in the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 570 (2008). In *Heller*, this Court held that the Second Amendment protects citizens’ right to keep and bear Arms for the purpose of self-defense, and recognized that the right to self-defense was one such

“fundamental” and “deeply rooted” right. This was the Supreme Court’s first ever “in-depth” examination of the Second Amendment’s meaning. *Id.* at 635.

Ultimately, this Court held that the Second Amendment (1) “guarantee[s] the individual right to possess and carry weapons in the case of confrontation (*id.* at 593); (2) that “central to” this right is “the inherent right of self-defense” (*id.* at 628); (3) that “the home” is “where the need for defense of self, family, and property is most acute” (*id.* at 628); and (4) that “above all other interests,” the Second Amendment elevates “the right of law-abiding, responsible citizens to use arms in defense of hearth and home” (*id.* at 635).

Two years later, in *McDonald v. Chicago*, 561 U.S. 742 (2010), this Court held that the Fourteenth Amendment makes the Second Amendment right to keep and bear Arms for the purpose of self-defense applicable to the states. Like *Heller*, this Court in *McDonald* restated that rights that are “fundamental to the Nation’s scheme of ordered liberty” or “deeply rooted in this Nation’s history and tradition” are applied to the states through the Fourteenth Amendment (*id.* at 767).

The present case involves the intersection of the U.S. Constitution’s prescribed right to bear Arms with the privilege to be licensed to practice law in the state of Missouri. The Office of Chief Disciplinary Counsel takes the position that a Missouri attorney is convicted of a misdemeanor of “moral turpitude” when the lawyer uses a firearm to defend the lawyer’s self, family, and home with the use of a firearm, even when the President of the United States commends the lawyers’

actions, the Governor of the applicable state pardons the lawyers, and the public broadly praises the lawyers for their conduct.

This Court has not determined whether an individual exercising his or hers Second Amendment right can be subsequently deemed to have engaged in conduct involving “moral turpitude” for exercising that Constitutional right. Petitioners’ case presents this issue.

## STATEMENT

### Factual Background and the Proceedings Below

This case and its related proceedings stem from an incident that took place in the summer of 2020. The summer of 2020 was a period of civil unrest unlike anything the United States had seen in more than forty years, after George Floyd was killed by Minneapolis police officers in March 2020. Many of these protests – including in St. Louis, Missouri, and throughout the country – involved armed protestors and turned violent, resulting in more than 2,385 looting incidents, 624 arson incidents, and extensive damage to persons and property.

On the evening of Sunday, June 28, 2020, protestors gathered at a St. Louis intersection to march on the home of St. Louis Mayor Lyda Krewson and demand her resignation. After gathering at the intersection of Kingshighway Boulevard and Maryland Avenue and blocking traffic, the protestors set off to march a few blocks to Mayor Krewson’s house on Lake Avenue.

During this march, an estimated 350 to 500 protestors – some carrying weapons – broke off from the main group. This breakaway group ignored three signs that announced “Private Street,” “Residents Only,” and “No Trespassing” and used force to break through and destroy a 132-year-old wrought iron gate. This group then massed in front of the McCloskeys’ home, the first house inside the gate on the private street Portland Place.

When the protestors forcefully trespassed onto the private Portland Place, Mark and Patricia McCloskey were sitting on their home patio, barefoot, eating a family dinner. The assembled rioters began shouting death, rape and arson threats at the McCloskeys, causing the McCloskeys to fear for themselves, their daughter, and their property, including their cherished 110-year-old home that the McCloskeys had spent three decades carefully restoring. Mr. McCloskey stood up on his patio and shouted: “Private property!” at the gathering mob as it poured through the gate, while Ms. McCloskey and the McCloskey’s adult daughter retreated inside and called 911. The 911 operator offered Ms. McCloskey no assurance police protection was en route. This reminded Ms. McCloskey of an incident less than a month earlier where, without police intervention, protestors had looted and burned down a Seven-Eleven convenience store only a few miles from the McCloskeys’ home. Meanwhile, the protestors continued to stream through the broken gate onto the private Portland Place.

Fearing for his life and his family’s life, Mr. McCloskey retrieved a rifle he lawfully owned from

inside the McCloskeys' home. He stood on his patio and ordered the gathering, threatening mob to stay off his property and out of his neighborhood. Mr. McCloskey held the semi-automatic AR-15 style rifle and repeatedly yelled: "Get out! Private property!" Mr. McCloskey did not fire his gun and did not harm any person or property.

Ms. McCloskey meanwhile realized other protestors were moving onto the McCloskeys' property out of Mr. McCloskey's view. She obtained a pistol that, having been used as evidence in a court proceeding, was inoperable. Holding this pistol, Ms. McCloskey likewise shouted at protestors including to stay away from the McCloskeys' home and off their property.

The police report regarding the confrontation on June 28, 2020, between the McCloskeys and the massing protestors include numerous identifications that protestors were armed, and that at least one was wearing body armor. That protestor in body armor challenged Mr. McCloskey, pulling loaded ammunition magazines from his pockets and showing those magazines to Mr. McCloskey. This protestor clicked the magazines together and shouted, "You're next!" Also, an NBC reporter subsequently told Mr. McCloskey that a man with an AK-47 style rifle who was with the same group of protestors confronted the reporter's security guard while at the Mayor Krewson later that same evening, on June 28, 2020.

To the McCloskeys' knowledge, none of the trespassing rioters called 911 or the police when the McCloskeys stood guard over their property with firearms displayed. Also, at no point on June 28, 2020,

did the police appear, either to relieve the McCloskeys or to cite them for any criminal conduct. Rather, after perhaps twenty minutes, the breakaway group of protestors left the vicinity of the McCloskeys' home and continued on to Mayor Krewson's home a few blocks away.

On July 3, 2020, rioters returned to the McCloskeys' home with, the McCloskeys feared, the specific intent to kill the McCloskeys and burn down their home. The McCloskeys had received advanced warning of this second protest and were joined by ex-military and off-duty police officers, who helped the McCloskeys ward off a mob of perhaps 1,000 people.

Between June 28 and July 19, 2020, no criminal charges were brought against anyone (either protestors or the McCloskeys) related to events on June 28 and July 3 at the McCloskeys' residence. Nevertheless, threats and rumors of potential criminal charges against the McCloskeys continued to circulate throughout local and national media.

On July 20, 2020, Missouri Governor Mike Parson promised during an interview that he would pardon the McCloskeys if they were charged criminally for the events on June 28, 2020. Later that same day, also on July 20, 2020, the Circuit Attorney of the City of St. Louis announced felony charges against both Mark and Patricia McCloskey for unlawful use of a weapon.

The public and leading public figures reacted strongly to the Circuit Attorney of the City of St. Louis charging the McCloskeys. Most significantly, President Trump called the Circuit Attorney's actions "absolutely

absurd” because the McCloskeys were merely “defending themselves against violent protesters.” United States Senator Joshua Hawley – a lawyer, law professor, and former clerk for this Court’s Chief Justice John Roberts – similarly called the Circuit Attorney’s actions “an outrageous abuse of power.” Governor Parson meanwhile reiterated his promise that, if the McCloskeys were convicted, he would pardon them.

The public also made an outpouring of support for the McCloskeys. Since June 28, 2020, the McCloskeys have received hundreds of letters of support from across the United States, including letters from President Donald J. Trump and a letter signed by 14 sitting members of the U.S. House of Representatives asking then-U.S. Attorney General William Barr to investigate the City of St. Louis Circuit Attorney for violating the McCloskeys’ civil rights in threatening criminal charges against the McCloskeys. The McCloskeys were also invited to and did speak at the August 2020 Republican National Convention, where the Republican Party also nominated President Trump for re-election.

On October 10, 2020, the Circuit Attorney of the City of St. Louis indicted the McCloskeys on charges related to their conduct on June 28, 2020, of standing in front of their house, displaying firearms, and telling the protestors to stay away from their home and property. Knowing that Missouri Governor Mike Parson intended to pardon them, the McCloskeys each entered guilty pleas on June 17, 2021, with Mr. McCloskey pleading guilty to fourth-degree



misdeemeanor assault charge, a Class C misdemeanor, and Ms. McCloskey pleading guilty to second-degree misdemeanor harassment, a class A misdemeanor. Thirteen days later, on July 30, 2021, Missouri Governor Parson pardoned Mr. and Ms. McCloskey.

On or about September 16, 2021, approximately three months after Governor Parson's pardon, the Office of Chief Disciplinary Counsel filed an Information in the Missouri Supreme Court, asking the Supreme Court of Missouri to suspend the McCloskeys' law licenses based upon their criminal convictions. *See In re Mark T. McCloskey*, Case No. SC99301; *In re Patricia McCloskey*, Case No. SC 99302. On or about September 17, 2021, the Supreme Court of Missouri issued an Order for both McCloskeys to show cause as to why they should not be disciplined by the Supreme Court of Missouri based upon the Office of Chief Disciplinary's Information.

On November 17, 2021, the McCloskeys each responded with a 37-page verified response explaining why they should not be sanctioned for engaging in lawful and pardoned conduct. Particularly relevant here, the McCloskeys argued that they could be disciplined only if their conduct constituted a crime of "moral turpitude," and that exercising their right to bear arms and to protect their lives, home and property could not constitute acts of "moral turpitude," particularly when they had received approbation from President Trump and a pardon from Missouri Governor Parson.

On February 8, 2022, the Supreme Court of Missouri issued a short, three-paragraph Order

imposing indefinite suspension with no leave to apply for reinstatement for a period of six months against both Mr. and Ms. McCloskey, with these suspension stayed on the condition that the McCloskeys be placed on and successfully complete one year of probation.

This petition for writ followed.

### **REASONS FOR GRANTING THE WRIT**

In entering its rulings for sanctions against Petitioners Mark T. and Patricia McCloskey, the Supreme Court of Missouri necessarily determined that the McCloskeys' actions in standing guard of their home and property with firearms displayed constitutes conduct of "moral turpitude," despite the protections for such action under the Second and Fourteenth Amendments to the United States Constitution, and despite the fact the McCloskeys were praised by President Trump and pardoned by Missouri Governor Parson.

To obtain discipline against the McCloskeys, Respondent, the Missouri Office of Chief Disciplinary Counsel, argued to the Supreme Court of Missouri that under Missouri Supreme Court Rule 5.21(a)(2) and (3) the McCloskeys defense of themselves, their home, and their property amounted to an offense of "moral turpitude" founded in "baseness, vileness, or depravity." Thus, it was "moral turpitude" for the McCloskeys to exercise their right to bear Arms permitted by the Second Amendment, despite the widespread public and even the President of the United States supporting the McCloskeys' actions, and the Governor of Missouri pardoning the McCloskeys and

absolving them of all legal consequences stemming from their convictions.

Petitioners Mark T. and Patricia McCloskey bring this Petition and ask this Court to review the imposition of discipline against them in this case, on the basis that branding firearms – conduct protected by the Second and Fourteenth Amendments – cannot and should not constitute conduct involving “moral turpitude,” particularly when that same conduct receives praise from the President of the United States and a pardon from the State’s Governor. After all, in *Heller* and *McDonald*, this Court has recognized that Americans have a long-standing and well-recognized right to protect themselves and their home under the Second and Fourteenth Amendments.

This Court should grant the Petition for Certiorari, further affirm that the Second and Fourteenth Amendments of the United States Constitution and this Court’s precedent allow individuals to use firearms in self-defense at their home, and vacate the discipline premised solely upon such actions constitute conduct of “moral turpitude.” In doing so, this Court will strengthen and uphold the rights afforded to Americans under the Second Amendment and Fourteenth Amendment.

### CONCLUSION

The Petition for Writ of Certiorari should be granted.

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