

No. 22-915

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*  
v.  
ZACKEY RAHIMI,  
*Respondent.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

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**BRIEF FOR THE CITY OF NEW YORK  
AND FOURTEEN OTHER CITIES AND  
COUNTIES AS AMICI CURIAE  
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT .....	1
ARGUMENT.....	4
I. <i>BRUEN'S</i> APPLICATION HERE SHOULD ACCOUNT FOR OUR HISTORICAL BLINDNESS TOWARD, AND THE INCREASED ACUTENESS OF, THE DANGERS OF DOMESTIC VIOLENCE. ....	4
A. Domestic violence was not perceived as a societal problem at the Founding or long after. ....	5
B. Dramatic technological changes have transformed the role of firearms in domestic violence.....	9
II. SECTION 922(g)(8) IS ANALOGOUS TO A SUBSTANTIAL BODY OF HISTORICAL LAWS.....	10
A. The statute's burdens are comparable to those imposed by historical laws ....	11
B. The statute's justification is com- parable to that of historical laws .....	15
CONCLUSION .....	25
ADDITIONAL COUNSEL .....	26

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Barrett v. United States</i> , 423 U.S. 212 (1976).....	18
<i>Bradley v. State</i> , 1 Miss. 156 (1824).....	5, 6
<i>Cheff v. Schnackenberg</i> , 384 U.S. 373 (1966).....	14
<i>Cooper v. State</i> , 26 Tex. Ct. App. 575 (Tex. App. 1888) .....	14
<i>Greer v. Greer</i> , 516 N.Y.S.2d 214 (N.Y. App. Div. 1987) ..	16
<i>Folajtar v. Atty. Gen.</i> , 980 F.3d 897 (3d Cir. 2020) .....	17
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019).....	11
<i>Klobuchar v. Purdue Univ.</i> , 553 N.E.2d 169 (Ind. App. 1990).....	16
<i>McCulloch v. Maryland</i> , 17 U.S. 316 (1819).....	3
<i>New York Rifle &amp; Pistol Ass’n v. Bruen</i> , 142 S. Ct. 2111 (2022).....	3-6, 9, 10, 15
<i>Or. Firearms Fed’n v. Kotek</i> , No. 2:22-cv-01815, 2023 U.S. Dist. LEXIS 121299 (D. Or. Jul. 14, 2023) .....	9, 10
<i>Poor v. Poor</i> , 8 N.H. 307 (1836).....	6
<i>Richards v. Richards</i> , 1 Grant 389 (Pa. 1857).....	6

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Simpson v. Simpson</i> , 473 So.2d 299 (Fla. App. 1985).....	16
<i>State v. Black</i> , 60 N.C. 266 (1864) .....	5, 6
<i>State v. Buckley</i> , 2 Del. 552 (1838) .....	5
<i>State v. Hussey</i> , 44 N.C. 123 (N.C. 1852).....	6
<i>Stimmel v. Sessions</i> , 879 F.3d 198 (6th Cir. 2018).....	18
<i>United States v. Holden</i> , 70 F.4th 1015 (7th Cir. 2023) .....	15

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18 U.S.C. § 922(g)(8)... 2-4, 8, 10, 11, 15-17, 21, 24	
18 U.S.C. § 922(g)(8)(A).....	15
Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Tit. XI, § 110401(b)(3), 108 Stat. 1796, 2014 (Sept. 13, 1994) .....	8
D.C. 27 Stat. 116, ch. 159, § 4 (1892), <a href="https://perma.cc/EH9V-7RN9">https:// perma.cc/EH9V-7RN9</a> .....	13

## TABLE OF AUTHORITIES—Continued

	Page(s)
Fla. Act of Feb. 12, 1885, ch. 3620, §§ 1, 3, Fla. Rev. Stat. tit. 2, pt. 5, § 2421, § 2424 (1892).....	12
1882 Md. Laws 257.....	14
1890 Md. Laws 297.....	14
N.J. Act of Dec. 21, 1771, An Act for the preservation of deer and other game, and to prevent trespassing with guns, § 3, 1771 N.J. Laws 343, 344, <i>reprinted in</i> <i>Laws of the State of New Jersey</i> (Trenton, N.J.: Joseph Justice, 1821), <a href="https://perma.cc/B8H7-XV77">https://perma.cc/B8H7-XV77</a> .....	11
1756-1776 N.C. Sess. Laws 168, An Act To Amend An Act Entitled, “An Additional Act To An Act, Entitled, An Act To Prevent Killing Deer At Unreasonable Times, And For Putting A Stop To Many Abuses Committed By White Persons Under Pretense Of Hunting,” (1768), <a href="https://perma.cc/5T2Q-FSMD">https://perma.cc/5T2Q-FSMD</a> .....	11
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## TABLE OF AUTHORITIES—Continued

	Page(s)
1852 Va. Acts 133 .....	14
Va. Offences Against the Peace, § 3780, <i>reprinted in</i> The Code of Virginia: With the Declaration of Independence and the Constitution of the United States; and the Constitution of Virginia (1887), <a href="https://perma.cc/6J6U-XHP6">https://perma.cc/6J6U-XHP6</a> .....	12
1883 Wis. Sess. Laws 713, An Act to Revise, Consolidate And Amend The Charter Of The City Of Oshkosh[, WI], The Act Incorporating The City, And The Several Acts Amendatory Thereof, ch. 6, § 3, pt. 56 .....	13
1883 Wis. Sess. Laws 1017, An Act To Incorporate The City of Nicolet[, WI], § 32, pt. 45.....	13
<b>MUNICIPLE CODES AND ORDINANCES</b>	
An Ordinance for Prohibiting the Firing of Guns in the Town of Columbia (1817), <i>reprinted in</i> Ordinances of the Town of Columbia[, SC], Passed Since the Incorporation of Said Town: To Which are Prefixed, the Acts of the General Assembly, for Incorporating the Said Town, and Others in Relation Thereto (1823), <a href="https://perma.cc/XRE6-PQHA">https://perma.cc/XRE6-PQHA</a> .....	14

## TABLE OF AUTHORITIES—Continued

	Page(s)
An Ordinance to Prohibit the Carrying of Concealed Weapons, <i>reprinted in</i> The Watchman and Southron, Sumter, SC (Jun. 16, 1885), in Library of Congress, <i>Chronicling America: Historic American Newspapers</i> .....	13
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Charter and Ordinances of the Town of Front Royal, VA (1899), <a href="https://perma.cc/LKK5-49FA">https://perma.cc/LKK5-49FA</a> .....	13
Concealed Weapons-License § 2 (Jan. 17, 1882), <i>reprinted in</i> The Municipal Code of Saint Paul[, MN], Revised to December 1, 1884, <a href="https://perma.cc/TFT6-QUU2">https://perma.cc/TFT6-QUU2</a> .....	13
Laws and Ordinances Governing the Village of Hyde Park[, IL] (1876), §§ 39, 40 .....	13
38 R. City of N.Y. § 3-03(f) .....	8

## TABLE OF AUTHORITIES—Continued

	Page(s)
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## TABLE OF AUTHORITIES—Continued

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## TABLE OF AUTHORITIES—Continued

	Page(s)
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## TABLE OF AUTHORITIES—Continued

	Page(s)
The Republic, Washington DC (June 1, 1853), in Library of Congress, <i>Chronicling America: Historic American Newspapers</i> .....	7
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<i>Effects of domestic violence on children</i> , U.S. Dep’t of Health & Human Services, Office on Women’s Health, <a href="https://perma.cc/L5TL-7X88">https://perma.cc/L5TL-7X88</a> (captured Aug. 17, 2023 9:26 am).....	22
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Ellen Ridley et al., <i>Domestic Violence Survivors At Work: How Perpetrators Impact Employment</i> , Maine Dep’t of Labor & Family Crisis Services (2005), <a href="https://perma.cc/HHL9-7E3Y">https://perma.cc/HHL9-7E3Y</a> .....	22
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Emily J. Sack, <i>Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders</i> , 98 NW. U. L. REV. 827 (2004) .....	7, 8
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## TABLE OF AUTHORITIES—Continued

	Page(s)
Jim Supica, <i>A Brief History of Firearms</i> , NRA MUSEUMS, <a href="https://perma.cc/AS3G-DBRY">https://perma.cc/AS3G-DBRY</a> (captured Aug. 14, 2023 1:23 am).....	9
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Nick Breul & Mike Keith, <i>Deadly Calls and Fatal Encounters</i> (2016) .....	18
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## TABLE OF AUTHORITIES—Continued

	Page(s)
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Rachel J. Voth Schrag & Tonya Edmond, <i>School sabotage as a form of intimate partner violence: provider perspectives</i> , AFFILIA: FEMINIST INQUIRY IN SOCIAL WORK, Vol. 32, No. 2 (2017) .....	22
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San Francisco Domestic and Family Violence Resources, <a href="https://perma.cc/2YS5-4MVK">https://perma.cc/2YS5-4MVK</a> (captured Aug. 17, 2023 11:31 pm) .....	24

## TABLE OF AUTHORITIES—Continued

	Page(s)
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U.S. Conference of Mayors, <i>Hunger and Homelessness Survey</i> (Dec. 2016), <a href="https://perma.cc/79JB-J3NW">https://perma.cc/79JB-J3NW</a> .....	23
1 W. Blackstone, <i>Commentaries on the Laws of England</i> (1765).....	5
The Washington Times, Washington, DC (May 29, 1895).....	14

## **INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT**

Amici, 15 of the nation's largest local governments,<sup>1</sup> are on the front lines of battling America's domestic-violence epidemic. Each year, over 12 million Americans suffer rape, physical violence, or stalking at the hands of an intimate partner. The devastation wrought to victims and their loved ones is plain. Perhaps less obvious is the far-reaching and long-lasting damage such violence causes to our communities more broadly.

On both scores, amici have a powerful interest in ensuring that local, state, and federal policy tools remain available to prevent and address domestic violence in our communities. Local governments commit substantial resources to fight domestic violence and provide critical services to survivors. Our law-enforcement officers place themselves at risk to intervene in rapidly unfolding and explosive domestic incidents. And in the aftermath, local governments assume key roles in providing redress and preventing further violence. Our police officers and child-protection case workers appear in criminal and family courts. Our social-services representatives visit homes and meet with abusers and survivors, often in emotionally charged encounters. Survivors and their families turn to our publicly run shelters and public-housing facilities and work with our social workers,

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<sup>1</sup> Amici are the Cities of New York, New York; Baltimore, Maryland; Boston, Massachusetts; Chicago, Illinois; Indianapolis, Indiana; Los Angeles, California; Minneapolis, Minnesota; Philadelphia, Pennsylvania; Portland, Oregon; Sacramento, California; and Syracuse, New York; the City and County of San Francisco, California; and the Counties of Los Angeles, California; King, Washington; and Santa Clara, California.

mental-health professionals, and child-protection and foster-care agencies.

Amici know from experience that 18 U.S.C. § 922(g)(8) and state-law counterparts serve as key tools in curbing the dangers of domestic violence—not just for survivors, but for law enforcement and other government actors and our communities beyond. Amici can also confirm that the presence of firearms greatly amplifies the dangers of domestic encounters. Nearly half of all murders of women are perpetrated by an intimate partner; the presence of a gun corresponds to a fivefold increase in that risk and makes multiple fatalities exponentially more likely. Research shows that laws prohibiting individuals subject to domestic-violence protective orders from owning guns significantly decrease intimate-partner homicides. They also lessen the perils for the thousands of police officers who respond to domestic disturbance calls each day. And those perils are very real: so far in 2023, more officers have been fatally shot responding to domestic-disturbance calls than in any other category of law-enforcement activity.

The Solicitor General has illuminated the through-line connecting historical firearms regulations to Section 922(g)(8). The Fifth Circuit missed the connection, positing an artificial dichotomy between firearm regulations that protect “society generally” and those that merely protect “identified individuals” (Pet. App. 24a)—and placing laws addressing domestic violence in the latter category. Victims of domestic violence, however, are not a special-interest group. Their plight reverberates through families and across our communities, affecting law enforcement, economies, healthcare networks, education, and social services. More than that, the notion that domestic violence is a

private and not public concern is reminiscent of attitudes that allowed it to go unaddressed in this country for centuries.

Amici support the full sweep of the Solicitor General's showing that Section 922(g)(8) is consistent with the Second Amendment under *New York Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). We write here to highlight two specific points. First, this case crystallizes *Bruen's* observation that "the Founders created a Constitution—and a Second Amendment—'intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.'" *Id.* at 2132 (quoting *McCulloch v. Maryland*, 17 U.S. 316 (1819)). Our historical tradition reflects an alarming blindness to the dangers of domestic violence and the need for concerted governmental efforts to respond to and prevent it. Any reasonable Second Amendment analysis must account for that reality in a manner that embraces—rather than frustrates—our profound civic, societal, and moral progress on the issue. Second, when that backdrop is appropriately considered—and, frankly, even if it is not—Section 922(g)(8) falls comfortably within our Nation's history of removing firearms from the hands of dangerous, non-law abiding people who threaten public safety and welfare.

**ARGUMENT****I. BRUEN'S APPLICATION HERE SHOULD ACCOUNT FOR OUR HISTORICAL BLINDNESS TOWARD, AND THE INCREASED ACUTENESS OF, THE DANGERS OF DOMESTIC VIOLENCE.**

Where a contemporary firearm regulation burdens conduct covered by the plain text of the Second Amendment, its validity turns on whether it is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2130. The inquiry’s touchstone is “reasoning by analogy,” which entails discerning whether a contemporary regulation and its antecedents are “relevantly similar.” *Id.* at 2132-33. A “historical twin” is not required. *Id.* at 2133. And as the Solicitor General has shown (at 13-36), by any reasonable measure, Section 922(g)(8) fits well within the historical tradition of disarming individuals who are not “responsible” and “law-abiding.”

That conclusion is only further reinforced by considering the vast social—and technological—changes involving domestic violence that have occurred since the Founding and Reconstruction eras. *Bruen* itself points the way on that score, noting that where a regulation implicates “unprecedented societal concerns or dramatic technological changes,” the historical record must be examined with particular “nuance[.]” 142 S. Ct. at 2132.

That nuanced treatment is starkly called for here. While domestic violence has always existed, a comprehensive response to the threat of firearm use in domestic violence would have been “unimaginable at the Founding.” *Id.* at 2133. Our nation has seen vast

transformations in social and legal attitudes toward abuse that takes place behind closed doors, as well as pronounced new risks that modern firearms have introduced in domestic-violence settings.

**A. Domestic violence was not perceived as a societal problem at the Founding or long after.**

In simple terms, domestic violence was not generally “perceived” as a “societal problem” by the Founding or Reconstruction generations. *Bruen*, 142 S. Ct. at 2132. Instead, for much of our Nation’s history, it was largely viewed as a private matter not requiring a coordinated societal or governmental response.

Since before the Founding, the legal system tolerated domestic violence under various legal theories.<sup>2</sup> While the law generally condemned spousal assault in its extremes and sometimes punished it, *see, e.g., State v. Buckley*, 2 Del. 552, 552 (1838); *Bradley v. State*, 1 Miss. 156, 158 (1824), courts routinely avoided holding abusers accountable and prevented women from escaping violent marriages. Some courts relied on the so-called right of chastisement, which allowed a husband to use a shocking degree of violence “as is necessary to control an unruly temper and make [his wife] behave herself.” *State v. Black*, 60 N.C. 266, 267 (1864) (husband may pull his wife to the floor by her hair during an argument); *see* 1 W. Blackstone, *Commentaries on the Laws of England* 433 (1765).

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<sup>2</sup> *See* U.S. Comm’n on Civil Rights [“USCCR”], *Under the Rule of Thumb: Battered Women and the Administration of Justice* 2 (Jan. 1982); Adeola Olaguju, *Thirteenth Annual Gender and Sexuality Law: Annual Review Article: Domestic Violence*, 13 *GEO. J. GENDER & L.* 203, 206 (2012).

Others invoked spousal privilege to deny women the right to testify about their abusers. *State v. Hussey*, 44 N.C. 123, 127 (1852). And some courts denied petitions for divorce on the grounds that wives “provoked” domestic abuse, *Poor v. Poor*, 8 N.H. 307, 311-13 (1836), or that the abuse was not severe enough to jeopardize the woman’s “life or health,” *Richards v. Richards*, 1 Grant 389, 392-93 (Pa. 1857).

These doctrines were animated by the widely held belief that domestic violence was a *private* matter, rather than a “societal” problem. *Cf. Bruen*, 142 S. Ct. at 2131. Courts reasoned that it was generally not the state’s role to look behind the curtain and intrude into the private, domestic sphere. *See, e.g., Black*, 60 N.C. at 267; *Richards*, 1 Grant at 393; *Bradley*, 1 Miss. at 158.

While early historical records about informal intervention into domestic violence are limited, it appears that some officials did on occasion act to disarm abusers in extreme circumstances. Reports of at least one such antebellum case are preserved in national newspaper accounts of the time because the husband, Daniel T. Woodward, was eventually executed for murdering his wife, Catherine.<sup>3</sup> Before the murder, Daniel had been arrested for “excessive cruelty” towards Catherine, and a local justice had directed that he be disarmed as a condition of

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<sup>3</sup> In 1853, Woodward was found guilty of murder and hung after President Pierce refused to pardon him. *See* The Daily Republic, Washington, DC, (Aug. 25, 1853), Images 3, in *Chronicling America*; Alexandria Gazette, Alexandria, DC (Sept. 3, 1853), Image 2, in Library of Congress, *Chronicling America: Historic American Newspapers* [*“Chronicling America”*].

dismissing charges and releasing him from custody.<sup>4</sup> Although the justice ordered “that he would surrender his pistols” and that “some person should stay” at the family home to protect Catherine overnight, follow-through was lacking, and Daniel fatally shot Catherine the next day.<sup>5</sup> Thus, the episode mainly reads today as an early but unheeded cautionary tale about the acute dangers that arise when domestic violence and firearms mix.

Such anecdotal accounts aside, state intervention into matters of domestic violence was minimal until well into the 20th century. Few states even specifically banned domestic violence by statute until the late 19th century.<sup>6</sup> And long beyond that time, policies in police departments and prosecutor’s offices prevented use of existing legal frameworks to protect victims of violence.<sup>7</sup>

It was not until roughly the last half-century that broad attitudes about the proper role of government with respect to domestic violence began to shift.<sup>8</sup> As a

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<sup>4</sup> The Republic, Washington DC (June 3, 1853), Image 3, in *Chronicling America*, *supra* n.3.

<sup>5</sup> *Id.*; The Republic, Washington, DC (June 1, 1853), Image 3, in *Chronicling America*, *supra* n.3

<sup>6</sup> See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 10, n.36 (1999); USCCR, *supra* n.2, at 2.

<sup>7</sup> See Olagaju, *supra* n.2 at 206-07; Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy* [“Battered Women”], 2004 WIS. L. REV. 1657, 1662-65 (2004).

<sup>8</sup> See Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and*

pertinent example, the number of jurisdictions with modern protective-order laws increased from only two states in 1976 to all 50 states by the mid-1990s.<sup>9</sup> Such orders not only restrained batterers from abusing their partners, but could also incorporate no-contact orders and orders pertaining to the custody and visitation of children, and could be issued either by civil courts, whether or not criminal proceedings were being pursued, or by criminal courts.<sup>10</sup> Congress's enactment of Section 922(g)(8) in 1994 buttressed that trend at the federal level.<sup>11</sup> And, as the Solicitor General has noted (at 34-35), 48 states and territories now have analogous laws disarming individuals who are subject to protective orders. Some municipalities have adopted similar measures as well.<sup>12</sup>

These new tools for combatting domestic violence would have been inconceivable at the Founding or at Reconstruction, when domestic violence was generally viewed as a private affair best addressed without deploying public resources and formal legal systems. In most cases, the absence of particular regulations is susceptible of multiple explanations not necessarily

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*Interstate Enforcement of Protection Orders* ["*Across State Lines*"], 98 NW. U. L. REV. 827, 833 (2004).

<sup>9</sup> See Sack, *Battered Women*, *supra* n.7, at 1667; Sack, *Across State Lines*, *supra* n.8, at 833.

<sup>10</sup> See Olagaju, *supra* n.2, at 207-210, 226-249; Sack, *Across State Lines*, *supra* n.8, at 843.

<sup>11</sup> Pub. L. 103-322, Tit. XI, § 110401(b)(3), 108 Stat. 1796, 2014 (Sept. 13, 1994).

<sup>12</sup> See, e.g., 38 R. City of N.Y. 3-03(f); Los Angeles City Attorney's Domestic Violence Policy, in Prosecutors Against Gun Violence & The Consortium for Risk-Based Firearm Policy, *Firearm Removal/Retrieval in Cases of Domestic Violence* 81-94 (Feb. 2016), <https://perma.cc/X24M-V8JC>.

indicative of any constitutional difficulty. But here, there is compelling evidence of a historical blindness toward the need for governmental intervention to address domestic violence that affirmatively dispels any inference from legislative inaction.

**B. Dramatic technological changes have transformed the role of firearms in domestic violence.**

“[D]ramatic technological changes” have also drastically intensified the dangers arising from firearms being in the hands of domestic abusers. *Bruen*, 142 S. Ct. at 2132. Until well into the 19th century, it would have been difficult to use a firearm of the type commonly possessed by civilians to shoot an intimate partner in the heat of passion.<sup>13</sup> But that started to change beginning with the Industrial Revolution and the Civil War and continuing through the turn of the 20th century. In that period, “guns [went] from primitive flintlocks to the basic systems that still dominate firearms designs today,” which can be stored loaded, quickly reloaded, and used to fire multiple shots.<sup>14</sup> Thus, with the advent of mass-produced handguns and ammunition, firearms

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<sup>13</sup> Early American firearms were typically rifles with flintlock, matchlock, or occasional wheellock systems, which were difficult to store loaded and “ready for use,” susceptible to humidity, and had to be primed and charged with two powders before use. See Jim Supica, *A Brief History of Firearms*, NRA MUSEUMS, <https://perma.cc/AS3G-DBRY>; see also *Or. Firearms Fed’n v. Kotek*, No. 2:22-cv-01815, 2023 U.S. Dist. LEXIS 121299, at \*45-\*49, \*51-\*55 (D. Or. Jul. 14, 2023).

<sup>14</sup> *A Brief History of Firearms*, *supra* n.13.

capable of being readily misused in domestic incidents became widely accessible to the general public.<sup>15</sup>

As smaller and more efficient firearms become easier to use and more broadly owned, they featured more frequently in domestic incidents—with grave outcomes for families, communities, and law enforcement. It is estimated that “[b]etween 1776 and 1860, only ten to fifteen percent of homicides between family members involved a firearm.”<sup>16</sup> In the late 20th century, approximately 60% of intimate-partner homicides were by firearm.<sup>17</sup> Thus, not only our recognition of the need for societal intervention—but the problem itself—has changed dramatically since the Founding and Reconstruction eras.

## **II. SECTION 922(g)(8) IS ANALOGOUS TO A SUBSTANTIAL BODY OF HISTORICAL LAWS.**

For the above reasons, the historical record should be reviewed here with a healthy measure of “nuance[.]” *Bruen*, 142 S. Ct. at 2132. But as the Solicitor General has shown, even without that nuance, Section 922(g)(8) easily withstands Second Amendment scrutiny. The “central considerations” under *Bruen*’s historical inquiry are twofold: “whether

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<sup>15</sup> *Firearms*, HISTORY.COM (Mar. 27, 2023), <https://perma.cc/3SRN-F96G> (discussing the first mass-produced multi-firing handguns manufactured by Samuel Colt in the mid-19th century); Pamela Haag, *Gunning of America: Business and the Making of American Gun Culture*, 25, 33 (2016).

<sup>16</sup> *Or. Firearms Fed’n*, 2023 U.S. Dist. LEXIS 121299, at \*49.

<sup>17</sup> Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 313 (2006).

[the] modern historical regulations impose a comparable burden on the right of armed self-defense” and “whether that burden is comparably justified.” *Id.* at 2133 (cleaned up). Because Section 922(g)(8)’s burdens and justifications are comparable to those that the Founding and Reconstruction generations found acceptable, it readily passes constitutional muster.

**A. The statute’s burdens are comparable to those imposed by historical laws.**

Section 922(g)(8) is a “lineal descendant[]’ of historical laws banning dangerous people from possessing guns.” *Kanter v. Barr*, 919 F.3d 437, 465 (7th Cir. 2019) (Barrett, J., dissenting). Its core burden—prohibiting individuals who are not responsible and law-abiding from possessing firearms, based on an individualized finding of dangerous or threatening conduct—is similar to the burdens imposed by those precursors.

The Solicitor General (at 13-27) has identified a robust and consistent historical practice, going back to the 14th century, of disarming dangerous and non-law-abiding individuals. We highlight a few additional historical examples from state and local governments.

In the Founding era, colonies had laws seizing the guns of illegal hunters.<sup>18</sup> Similarly, two 1777 treaties

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<sup>18</sup> See N.J. Act of Dec. 21, 1771 An Act for the preservation of deer and other game, and to prevent trespassing with guns, § 3 1771 N.J. Laws 343, 344 (providing that non-residents “shall forfeit his or their gun or guns” as a penalty for illegal hunting), *reprinted in* Laws of the State of New Jersey 26 (Trenton, NJ: Joseph Justice, 1821), <https://perma.cc/B8H7-XV77>; 1756-1776 N.C. Sess. Laws 168, An Act To Amend An Act Entitled, “An Additional Act To An Act, Entitled, An Act To Prevent Killing Deer At Unreasonable Times, And For Putting A Stop To Many Abuses Committed By White Persons Under Pretense Of

involving Virginia and North Carolina mandated the forfeiture of firearms illegally brought into Cherokee territories.<sup>19</sup> These early forfeiture provisions reenforce the Solicitor General's showing (at 16-18) that gun owners were disarmed at the Founding if they used firearms irresponsibly or threatened the peace.

Disarmament of individuals who were not law-abiding and responsible continued through the 19th century at both the state and local levels. Several states required those in violation of misdemeanor concealed-carry statutes to surrender their weapons.<sup>20</sup> And concealed-carry ordinances punishable by forfeiture of the weapon were enacted or authorized in such localities as Washington, DC; Georgetown, DC; Danville, IL; Hyde Park, IL; Baltimore, MD; St. Paul,

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Hunting," ch. 13 (1768) (providing for "penalty of five pounds and forfeiture of his gun" for illegal hunting), <https://perma.cc/5T2Q-FSMD>.

<sup>19</sup> Archibald Henderson, *The Treaty of Long Island of Holston*, NORTH CAROLINA HISTORICAL REVIEW, Vol. 8, No. 1, at 105, 108 (1931) (reprinting two treaties from July 20, 1777 between the Commonwealth of Virginia and the Cherokee, and the State of North Carolina and the Cherokee).

<sup>20</sup> Such provisions were enacted in Texas, Tex. Act of Apr. 12, 1871, An Act to Regulate the Keeping and Bearing of Deadly Weapons, ch. 34, § 1, 1871 Tex. Gen. Laws 25, § 1, <https://perma.cc/G35W-PB3F>; Florida, Fla. Act of Feb. 12, 1885, ch. 3620, §§ 1, 3, as codified in Fla. Rev. Stat. tit. 2, pt. 5 (1892) §§ 2421, 2424; Virginia, Offences Against the Peace, § 3780, *reprinted in* The Code of Virginia: With the Declaration of Independence and the Constitution of the United States; and the Constitution of Virginia, Page 897, Image 913 (1887), <https://perma.cc/6J6U-XHP6>; and Rhode Island, Offences Against Public Policy, §§ 23, 24, in General Laws of the State of Rhode Island and Providence Plantations to Which are Prefixed the Constitutions of the United States and of the State, Page 1010-1011, Image 1026-1027 (1896), <https://perma.cc/9D99-BXGD>.

MN; New Ulm, MN; Sumter, SC; Union, SC; Nashville, TN; Norfolk, VA; Front Royal, VA; La Crosse, WI; Nicolet, WI; and Oshkosh, WI.<sup>21</sup> State and local

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<sup>21</sup> 27 Stat. 116, ch. 159, § 4 (1892) (Washington, DC), <https://perma.cc/EH9V-7RN9>; Ordinances of the Corporation of Georgetown[, DC], An Ordinance Prohibiting the Carrying of Firearms (1859), <https://perma.cc/BD67-NHB7>; Revised Ordinances of the City of Danville[, IL], Page 66, Image 133 (1883), <https://perma.cc/RW9P-J4HN>; Concealed Weapons-License § 2 (Jan. 17, 1882), *reprinted in* The Municipal Code of Saint Paul[, MN], Revised to December 1, 1884, at 289, <https://perma.cc/TFT6-QUU2>; Laws and Ordinances Governing the Village of Hyde Park[, IL] 64 (1876), §§ 39, 40; *The Baltimore*[, MD] *City Code* (Vol. 1, 1888), § 742; Ordinance No. 22, An Ordinance Relating to the Promotion of the Public Peace, § 2 (Feb. 7, 1888), *reprinted in* Charter and Ordinances of the City of New Ulm[, MN] 110-11 (Jos. A. Eckstein ed., 1888), <https://perma.cc/5PFS-JYP2>; An Ordinance to Prohibit the Carrying of Concealed Weapons, *reprinted in* The Watchman and Southron, Sumter, SC (Jun. 16, 1885), Image 2, in *Chronicling America*, *supra* n.3; Ordinance Against Concealed Weapons, *reprinted in* The Union Times, Union, SC (Nov. 6, 1896), Image 5, in *Chronicling America*, *supra* n.3; Ordinances of the City of Nashville[, TN], § 738-741, in Claude Waller, Digest of the Ordinances of the City of Nashville, to Which are Prefixed the State Laws Incorporating, and Relating to, the City, with an Appendix Containing Various Grants and Franchises Page 364-365, Image 372-373 (1893), <https://perma.cc/HNN6-R4XG>; Carrying Concealed Weapons, ch. 8, *reprinted in* The Ordinances of the City of Norfolk, VA (1894), <https://perma.cc/9J54-EJBG>; Charter and Ordinances of the Town of Front Royal, VA, Page 18, Image 18 (1899), <https://perma.cc/LKK5-49FA>; An Ordinance to Provide for the Government and Good Order of the City of La Crosse[, WI], § 15, *reprinted in* Charter and Ordinances of the City of La Crosse, with the Rules of the Common Council, Page 176, Image 179 (1888), <https://perma.cc/9EUL-5KR8>; 1883 Wis. Sess. Laws 713, An Act to Revise, Consolidate And Amend The Charter Of The City Of Oshkosh[, WI], The Act Incorporating The City, And The Several Acts Amendatory Thereof, ch. 6, § 3, pt. 56; 1883 Wis. Sess. Laws 1017, An Act To Incorporate The City of Nicolet[, WI], § 32, pt. 45.

governments also maintained public safety by punishing individuals found guilty of various other nonfelony offenses, such as unlawful hunting or firearm discharge, by confiscating their arms.<sup>22</sup>

This history shows that a felony conviction was not required to disarm individuals considered threats to public safety. All of the laws cited in the preceding paragraph were punishable by no more than a fine or, at most, six months' imprisonment. Such "petty offenses," at common law, could be punished by summary trial without a jury. *Cheff v. Schnackenberg*, 384 U.S. 373, 379 (1966). The local laws cited above appear to have been tried summarily.<sup>23</sup> In this way,

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<sup>22</sup> See, e.g., 1852 Va. Acts 133 (forfeiture of gun used for illegal hunting, or 30 days' jail if the gun was not forfeited); 1882 Md. Laws 257 (fine and forfeiture of firearms used in illegal hunting); *Cooper v. State*, 26 Tex. Ct. App. 575, 576 (Tex. App. 1888) (fine and forfeiture of firearms carried to an election precinct on election day) (citing 1879 Tex. Crim. Stat. tit. IX, Ch. 4, art. 320); 1890 Md. Laws 297 (fine and forfeiture of firearms discharged on Sunday); An Ordinance for Prohibiting the Firing of Guns in the Town of Columbia (1817), *reprinted in* Ordinances of the Town of Columbia [SC], Passed Since the Incorporation of Said Town: To Which are Prefixed, the Acts of the General Assembly, for Incorporating the Said Town, and Others in Relation Thereto, Page 61-61, Image 61-62 (1823), <https://perma.cc/XRE6-PQHA> (fine and forfeiture of firearms discharged in defined areas of the city).

<sup>23</sup> See, e.g., Saint Paul Daily Globe, Saint Paul, MN (Mar. 29, 1883), Page 8, Image 9, in *Chronicling America*, *supra* n.3 (judge ordered man accused of carrying concealed revolver to pay \$15 and forfeit the weapon); The Roanoke Times, Roanoke, VA, Page 4, Image 4 (Feb. 24, 1892), in *Chronicling America*, *supra* n.3 (one day after man drew pistol on his wife, he appeared before a justice of the peace, who fined him \$10 and ordered the pistol be confiscated); The Washington Times, Washington, DC (May 29, 1895), Page 6, Image 6, in *Chronicling America*, *supra* n.3 (judge

the aforementioned laws imposed burdens comparable to if not more onerous than Section 922(g)(8), which requires a hearing but not a full-blown criminal trial. *See* 18 U.S.C. § 922(g)(8)(A).

**B. The statute’s justification is comparable to that of historical laws.**

Section 922(g)(8) is also “comparably justified” to the cited historical laws. *Bruen*, 142 S. Ct. at 2133. Both rest on the enduring precept that “[g]overnments may keep firearms out of the hands of dangerous people who are apt to misuse them.” *United States v. Holden*, 70 F.4th 1015, 1017 (7th Cir. 2023) (Easterbrook, J.). Like its antecedents, Section 922(g)(8) aims to protect public safety by disarming individuals who are dangerous or not law abiding. In particular, individuals subject to Section 922(g)(8) pose acute physical dangers to victims, their families, and governmental employees, including law enforcement and social-services providers, and also cause diffuse societal harms that are felt by the public more broadly.

1. Section 922(g)(8)’s primary justification is to prevent harm to victims of domestic abuse and their loved ones. Possessing a firearm makes domestic abusers five times more likely to kill their victims, and domestic violence plays a role in roughly half of mass shootings.<sup>24</sup> In a recent stark example from Colorado, a man fired a barrage of bullets at his girlfriend at a

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ordered defendant’s “pistol confiscated and took [his] personal bonds to leave town immediately”).

<sup>24</sup> *Guns and Violence Against Women: America’s Uniquely Lethal Intimate Partner Violence Problem*, EVERYTOWN FOR GUN SAFETY (Apr. 10, 2023), <https://perma.cc/92VN-AQWH>.

family celebration, killing her and five of her family members before killing himself.<sup>25</sup>

In response to such incidents, Congress acted to disarm domestic abusers who might otherwise use firearms to threaten, coerce, harm, or murder intimate partners and their children. See *Greer v. Greer*, 516 N.Y.S.2d 214, 215, 217 (N.Y. App. Div. 1987) (divorce settlement vacated as “product of duress” where husband, who had a prior history of domestic abuse that led to imposition of a protective order, possessed a gun and threatened wife’s life); *Klobuchar v. Purdue Univ.*, 553 N.E.2d 169, 170 (Ind. App. 1990) (husband, while subject to restraining order, shot his wife); *Simpson v. Simpson*, 473 So.2d 299 (Fla. App. 1985) (husband, who made prior threats, owned multiple guns, and was subject to a restraining order, killed his wife).

As a vital measure to protect victims, Section 922(g)(8) serves its purpose well. Since it was enacted, “there has been a swift decline in the number of intimate-partner homicides per capita.”<sup>26</sup> And a review of multiple studies on the impact of analogous state-level restrictions found that they reduced intimate-partner homicides, with most studies reporting statistically significant reductions ranging from 8% to 25%.<sup>27</sup>

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<sup>25</sup> Marlene Lenthang, *Domestic Violence shootings affect more than just partners*, ABC NEWS (May 19, 2021), <https://perma.cc/8ZX4-SJA3>.

<sup>26</sup> Aaron Edward Brown, *This Time I’ll Be Bulletproof: Using Ex Parte Firearm Prohibitions to Combat Intimate Partner Violence*, 50 COLUM. HUMAN RIGHTS L. REV. 159, 178 (2019).

<sup>27</sup> See Sierra Smucker, *Effects of Prohibitions Associated with Domestic Violence on Violent Crime*, RAND CORPORATION (updated Jan. 10, 2023), <https://perma.cc/N3VN-FMAX>.

Protecting victims of domestic abuse from threats and danger is an objective comparable to the historical firearm regulations discussed above and in the Solicitor General’s brief. The Fifth Circuit misapprehended how the same justifications that animated the broad tradition of historical laws also support Section 922(g)(8). The court discounted many of the analogues on the supposed basis that they were aimed at “preserv[ing] ... social order” (Pet App. 20a) or “disarming those who had been adjudicated to be a threat to society generally, rather than to identified individuals” (*id.* at 24a). But that is not a coherent basis on which to distinguish the laws. All members of society are “individuals,” after all—and the common goal of all laws of this kind is to protect them from an identified threat. More critically, it was a similar failure to recognize domestic violence as a public rather than solely private matter that led acts of domestic abuse to go unpunished in earlier times. We should not repeat that mistake now.

2. The Fifth Circuit’s view also sprang from an incomplete accounting of the harms of domestic violence, which extend well beyond survivors. Section 922(g)(8) is analogous to antecedent laws promoting public safety and social order for the additional reason that it protects law-enforcement officers and other public-facing local-government employees from firearms as they work to stop perpetrators of domestic abuse and assist families in crisis. Public-safety and law-enforcement concerns have long been a reason to disarm particularly dangerous individuals—from the Militia Act of 1662 and the stripping of loyalists’ arms during the American Revolution, *see Folajtar v. Atty. Gen.*, 980 F.3d 897, 914 (3d Cir. 2020) (Bibas, J., dissenting), to the Federal Firearms Act of 1938

combatting organized crime, *see Barrett v. United States*, 423 U.S. 212, 220 (1976).

To protect public safety, local governments assign our police officers the extremely dangerous and vitally important task of responding to the scene of domestic incidents. When responding to these calls, an officer may, and in some jurisdictions must,<sup>28</sup> make an arrest if there is probable cause to believe domestic violence has occurred. Consequently, these situations are frequently antagonistic and very dangerous for officers. *See Stimmel v. Sessions*, 879 F.3d 198, 210 (6th Cir. 2018) (citing Nick Breul & Mike Keith, *Deadly Calls and Fatal Encounters* 15 (2016)).

Adding firearms to the mix creates a grave risk that a responding officer will be shot, injured, or—in the most tragic cases—killed. Between 1996 and 2010, 116 officers were killed in the United States while responding to a domestic-disturbance call—accounting for roughly 1 of 7 officers killed in the line of duty.<sup>29</sup> Nearly all (94%) were killed by firearm.<sup>30</sup> So far in 2023, “[t]he leading circumstance of firearms fatalities were officers handling domestic disturbances.”<sup>31</sup> More police officers were fatally shot this year responding to domestic-disturbance calls than in attempting arrests,

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<sup>28</sup> Epstein, *supra* n.6, at 14.

<sup>29</sup> Cassandra Kercher et al., *Homicides of law enforcement officers responding to domestic disturbance calls*, 19 INJURY PREVENTION 331, 332 (2013).

<sup>30</sup> *Id.*

<sup>31</sup> National Law Enforcement Officers Memorial Fund, *2023 Mid-Year Preliminary Law Enforcement Officers Fatalities Report 2* (2023), <https://perma.cc/6STT-68NJ>.

conducting traffic enforcement, serving felony warrants, or responding to robbery-in-progress calls.<sup>32</sup>

These statistics are hardly surprising. Because domestic abuse typically takes place behind closed doors, officers often enter residences with limited tactical knowledge and without certainty about who is inside. Often, one or more persons at the scene are in the midst of a mental-health crisis, and officers must take control without exacerbating an already volatile situation. They may have only seconds or minutes to intervene in a tense, uncertain, and rapidly unfolding situation.

What's more, in addition to the individuals directly involved in the incident, there may be other family members, housemates, and children present, adding to the confusion and tension. And domestic violence can escalate in its severity over time, prompting officers to respond to the same address for increasingly risky calls of intimate-partner violence.<sup>33</sup> One study of domestic assaults and homicides found that in about 85% of cases, the police had previously responded to a disturbance call at the address at least once—and a median of five times—within the prior two years.<sup>34</sup>

Behind these statistics, of course, lie human stories. For example, two NYPD officers were shot the day before Thanksgiving 2020 in a shootout on a street in Queens, New York, when escorting a domestic-

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<sup>32</sup> *See id.* at 5.

<sup>33</sup> George Wattendorf, *Prosecuting Cases Without Victim Cooperation*, FBI Law Enforcement Bulletin 18 (Apr. 1996), <https://perma.cc/U6PN-BQ9Z>.

<sup>34</sup> G. Marie Wilt et al., *Domestic Violence and the Police: Studies in Detroit and Kansas City* 9 (1977), <https://perma.cc/8HDT-YXU8>.

violence victim home after she made a complaint against her husband, who had a history of violence against her and a license for multiple firearms.<sup>35</sup> A month later, on Christmas Eve, another NYPD officer was shot protecting a family in Brooklyn, New York, from a young woman's boyfriend, who led police on an armed chase through crowded streets.<sup>36</sup> In both instances, no bystanders were injured and the officers survived. Tragically, that is not always true.<sup>37</sup> Earlier this year, a Chicago police officer was shot and killed responding to a domestic-disturbance call about a man chasing a woman down the street with a gun.<sup>38</sup> In another Chicago incident, a gunman's fatal shooting of

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<sup>35</sup> *Two Cops Shot in Queens Responding to Domestic Violence Case; Suspect Dead*, NBC NEW YORK (Nov. 24, 2020), <https://perma.cc/LXS4-EGXC>.

<sup>36</sup> *'Christmas Miracle': NYPD Officer Home After Being Shot In The Back In Brooklyn On Christmas Eve; Suspect In Custody*, CBSNEWS (Dec. 25, 2020), <https://perma.cc/W83H-T47L>.

<sup>37</sup> *Riverside Sheriff's deputy Darnell Calhoun dies after being shot in Lake Elsinore; suspect arrested*, CBS LOS ANGELES (updated Jan. 14, 2023), <https://perma.cc/WL35-ZPSE>; Justine Verastigue, *Coverage: Remembering, honoring Las Vegas police officer Truong Thai*, KTNV LAS VEGAS (updated Oct. 17, 2022), <https://perma.cc/5X39-XCA8>; Alexis Stevens, *Slain Jackson County deputy 'didn't back down from anything'*, THE ATLANTA JOURNAL-CONSTITUTION (updated Nov. 15, 2021) (noting funerals for two Georgia police officers "shot a day apart while responding to unrelated domestic calls but [who] died within hours of each other"), <https://perma.cc/D5G3-3CK5>.

<sup>38</sup> Cate Cauquiran, *Chicago police officer shot, killed in Gage Park*, ABC NEWS (Mar. 1, 2023), <https://perma.cc/RTW8-W9QK>.

his ex-fiancé at a hospital also claimed the lives of a police officer and bystander.<sup>39</sup>

Police are not the only responders made safer when abusers are disarmed. Disarming abusers is critical to protecting the safety of the many social-service workers whose efforts begin after the police leave the scene. Child-protection case workers will visit the home again and again to ensure that children are safe from imminent physical and mental harm, as will social workers and counselors who work with survivors and their families. By disarming abusers subject to qualifying restraining orders, Section 922(g)(8) also protects these providers, who work together to help to end the cycle of violence.

Thus, Section 922(g)(8) advances public safety and social order by helping to remove firearms from the domestic-violence equation, which protects victims and enables government workers to safely intervene. These justifications for burdening the Second Amendment rights of domestic abusers are consistent with laws, stretching back to the Founding, that restricted firearms possession and required forfeiture of arms to protect the public from particularly dangerous individuals.

3. Domestic violence is also a scourge to our communities more broadly. As noted, the Fifth Circuit acknowledged that our Nation’s tradition of firearms regulation includes gun laws designed to protect “society generally” (Pet. App. 24a) and “social order” (*id.* at 20a). By failing to recognize how domestic violence itself harms the public writ large, the court

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<sup>39</sup> Bill Hutchinson, *Suspect in triple killing at Chicago hospital had confronted doctor who broke off their engagement: Officials*, ABC NEWS (Nov. 20, 2018), <https://perma.cc/B8HV-47SZ>.

repeated the error of courts past of treating domestic violence as solely affecting the individuals involved.

Research has shown that domestic violence leads to devastating consequences for the public. More than 15 million children live in homes in which domestic violence has happened at least once.<sup>40</sup> Even if they are not directly abused, bearing witness to such abuse inflicts psychological scars that ripple for the rest of their lives—including increasing the likelihood that they will enter abusive relationships or become abusers themselves.<sup>41</sup> Domestic-violence victims are above-average utilizers of our healthcare system.<sup>42</sup> And domestic abuse interferes with victims’ job productivity<sup>43</sup> and educational pursuits,<sup>44</sup> robbing society of their achievements and contributions.

Domestic violence has also been identified as “a leading cause of homelessness because access to

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<sup>40</sup> *Effects of domestic violence on children*, U.S. Dep’t of Health & Human Services, Office on Women’s Health, <https://perma.cc/L5TL-7X88>.

<sup>41</sup> *See id.*

<sup>42</sup> *See* Amy E. Bonomi et al., *Health Care Utilization and Costs Associated with Physical and Nonphysical-Only Intimate Partner Violence*, HEALTH SERV. RES., Vol. 44, No. 3, at 1052-67 (Jun. 2009), <https://perma.cc/D5WX-9XN6>.

<sup>43</sup> Ellen Ridley et al., *Domestic Violence Survivors At Work: How Perpetrators Impact Employment*, Maine Dep’t of Labor & Family Crisis Services (2005), <https://perma.cc/HHL9-7E3Y> (96% of domestic-abuse survivors reported impacts on job performance “often for months, and sometimes years”).

<sup>44</sup> *See* Rachel J. Voth Schrag & Tonya Edmond, *School sabotage as a form of intimate partner violence: provider perspectives*, AFFILIA: FEMINIST INQUIRY IN SOC. WORK, Vol. 32, No. 2, at 176 (2017) (reporting that abusers sabotage their partner’s educational pursuits by “disrupting financial aid, physical violence or stalking at school, disruption of academic efforts, and applying guilt”).

affordable housing is often unavailable” to victims trying to leave abusive relationships.<sup>45</sup> One survey of multiple American cities found that, on average, 17% of homeless adults were victims of domestic violence—a larger group than homeless veterans (who are 12% of homeless adults).<sup>46</sup> And this figure is much higher in some cities. In McKinney, Texas, one in four homeless adults is a domestic-violence survivor.<sup>47</sup> In Providence, Rhode Island, it is three in ten;<sup>48</sup> in San Francisco, nearly half.<sup>49</sup> Statistics like these refute the Fifth Circuit’s assumption that the harms of domestic violence do not run to society at large (Pet. App. 24a).

Given the extensive involvement of governments—at all levels, but most prominently at the local level—in providing services to victims, abusers, and their children, the effects of domestic violence are felt acutely by society, and its sizeable costs are borne by the public as a whole. Amici have made significant investments to help prevent and respond to domestic violence, including creation of specialized government agencies and police units dedicated to domestic

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<sup>45</sup> Hannah Brenner, *Transcending the Criminal Law’s “One Size Fits All” Response to Domestic Violence*, 19 WM. & MARY J. OF WOMEN & L. 301, 313 (2013); *see also* Urban Institute, Los Angeles County Women’s Needs Assessment 44 (July 2023), [perma.cc/6KVQ-8QTY](https://perma.cc/6KVQ-8QTY).

<sup>46</sup> See U.S. Conference of Mayors, *Hunger and Homelessness Survey 2* (Dec. 2016), <https://perma.cc/79JB-J3NW>.

<sup>47</sup> *See id.* at 59.

<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

violence, and maintaining round-the-clock shelter, counseling, and emergency services.<sup>50</sup>

Growing public awareness of the social consequences of domestic violence bespeaks a larger set of social advancements since the Founding. Firearms possession by dangerous domestic abusers cannot be excused by the antiquated notion that the government should stay out of the domestic sphere. Indeed, Congress's very enactment of Section 922(g)(8) demonstrates that domestic violence finally came to be recognized as a threat to "society generally" (Pet. App. 24a). And that legislative judgment is certainly analogous to those that underlay the historical laws addressing threats to the public order and welfare.

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<sup>50</sup> See, e.g., NYC Criminal Justice, <https://perma.cc/37W7-DPMY>; New York City Mayor's Office to End Domestic and Gender-Based Violence, <https://perma.cc/PQU5-HTN4>; Baltimore City Mayor's Office of Neighborhood Safety and Engagement Victim Services Team, <https://perma.cc/79AV-M2R7>; City of Chicago, Family & Support Services, Division on Domestic Violence, <https://perma.cc/BU27-MAJS>; Los Angeles City Attorney, *Domestic Violence*, <https://perma.cc/Y8QX-SJKY>; San Francisco Domestic and Family Violence Resources, <https://perma.cc/2YS5-4MVK>.

**CONCLUSION**

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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