

No. 23-852

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

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MERRICK B. GARLAND, ATTORNEY GENERAL, *ET AL.*,  
*Petitioners,*

v.

JENNIFER VANDERSTOK, *ET AL.*,  
*Respondents.*

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

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**BRIEF OF *AMICUS CURIAE* FOUNDATION FOR  
MORAL LAW IN SUPPORT OF RESPONDENTS**

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

*Amicus curiae* Foundation for Moral Law is an Alabama-based nonprofit law firm dedicated to the defense of the United States Constitution as written according to the strict intent of its Framers. The Foundation believes the Supreme Court’s prescription in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), requiring that firearm regulations be analyzed according to whether they are “consistent with the Nation’s historical tradition of firearm regulation” is necessary and relevant to the questions presented in the instant case.

**SUMMARY OF THE ARGUMENT.**

The right to “keep and bear arms” necessarily includes the right to make arms, and the Founders would have understood this as a matter of everyday reality. At the time of the Founding, gunsmithing was ubiquitous in the colonies. *See* Joseph G.S. Greenlee, *The American Tradition of Self Made Arms*, 54 St. Mary’s L.J. 35, 46 (2023). This deep colonial tradition disturbed the British who began to take gun control measures in fear of an American uprising. *Id.* at 48. Once the War for American Independence broke out, individual gunsmithing played a crucial role in the war effort. *Id.* at 60.

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<sup>1</sup> Pursuant to Rule 37.6, *amicus curiae* certifies that no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

Of course, the Founders enshrined this rich cultural appreciation for firearms—the tools by which they had won independence from tyranny—in the Second Amendment. Since then, everyday Americans have made some of the most significant firearm innovations in history, many in the course of pursuing gunsmithing as a hobby. However, the ATF’s reading of the Gun Control Act is a radical infringement on the Second Amendment as understood by the Founding generation.

## **ARGUMENT**

### **I. The history leading up to the adoption of the Second Amendment demonstrates an intent to protect the manufacture of firearms.**

Gunsmithing is inextricable from the historical American experience. From the beginning of the colonies, through the Revolutionary War period, America has a long lineage of firearm manufacturing. This history indicates that the Founders would have necessarily contemplated the manufacture of firearms within the Second Amendment.

#### **A. Gunsmithing was ubiquitous from the earliest days of Colonial America.**

In 1606, King James I granted Virginia the right to import “the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said Apparel, Food, Defence, or otherwise.” Greenlee, *supra* at 45 (quoting The First Charter of Virginia (1606), reprinted in 7 The Federal And State Constitutions: Colonial Charters, And Other Organic Laws Of The States, Territories, And

Colonies Now Or Heretofore Forming The United States Of America 3783, 3787–88 (Francis Newton Thorpe ed., 1909). The Charter of New England contained a likewise grant. *Id.*

One of the first roles fulfilled in each of the fledging colonies was the gunsmith. Greenlee, at 46. Maryland even had its first gunsmith in 1631, a year before it was officially chartered. *Id.* at 46. For the colonists, the skill of gunsmithing was cherished because it was their key to survival—and prosperity. Firearms historian Charles Winthrop Sawyer renowned the colonists as “the greatest weapon-using people of that epoch in the world.” *Id.* “Everywhere the gun was more abundant than the tool,” and gunsmiths were likewise. *Id.*

Gunsmiths were a part of every kind of community in the colonies, whether the seaside, inland, or the frontier. *Id.* James Whisker, a historian of gunsmiths, has estimated that there were over 4,000 gunsmiths throughout colonial America. *Id.* at 48. And as the population grew, so did the demand for more gunsmiths. While oftentimes the colonial gunsmith’s methods may have been crude, they were nevertheless effective and highly sought-after:

Those lone, isolated workers were men of wonderful resource; poor, and without machinery, they not only made guns but also the tools with which to do their work. They were ignorant of science, and they cared nothing for cause, but they were skilful in effect. They could not calculate in advance the chamber pressure in foot-tons, the velocity of

the bullet, bearing surface, friction, trajectory, flip, drift, penetration, and work in accord with the calculations; they did not bore their barrels correct to the five-thousandth part of an inch; they could not cut all the grooves of exactly the same width and depth; but after the gun was done they adjusted the bullet, the powder, and the sights until the rifle would shoot into the bull's-eye at a measured distance—perhaps a two-inch bull's-eye at eight rods would do for the average, some would better it.

*Id.* at 47.

**B. Britain's gun control measures were a major cause of the War for American Independence.**

The British attempts to maintain a yoke of subjugation on the Americans included gun control measures that sought to disarm the people. The British began preventing Americans from accessing their gunpowder reserves stored in central powder houses. *Id.* at 48. In addition to organized raids to steal gunpowder from the British, Americans began to heartily encourage more self-production of gunpowder. *Id.*

After several near skirmishes between the Redcoats and Patriots over the gunpowder restrictions, King George III opted to totally cut off the importation of all arms and ammunition into the colonies on October 19, 1774. *Id.* Naturally, the American response to this gun control measure was to smuggle arms shipments from other countries,



steal arms from the British, and manufacture their own arms. *Id.*

Once the Revolution was in full swing, colonial gunsmiths became even more vital to the cause of American Independence because the Patriots were up against a much larger and better supplied foe in Britain. Not only that, but Britain had intentionally prevented the development of any larger scale manufacturing facility for guns in the colonies, making individual gunsmiths the sole resource for new weapons, aside from smuggling abroad and raiding the British. *Id.* at 51.

Britain's ransacking of public powder houses only highlighted the necessity for Americans to manufacture their arms and munitions at home. *Id.* at 50. During the war, George Washington emphasized that "No Quantity [of powder], however Small, is beneath notice" as a result of the dire reality facing the colonies concerning a shortage of gunpowder. *Letter from George Washington to Governor Nicholas Cooke* (Aug. 4, 1775), in 3 *The Writings Of George Washington From The Original Manuscript Sources 1745–1799*, at 385, 386 (John C. Fitzpatrick ed., 1935).

As the war raged on, several of the colonial governments began making official requests and offering financial incentive for citizens to begin manufacturing firearms. Greenlee, *supra* at 55-60. These efforts were not limited to gunsmiths by trade, but extended to all of the citizenry because the state governments knew that the knowledge and skills to build guns was widespread among the colonists. *Id.* at 56-57. A published notice from New

York's Provincial Congress in March 1776 is an illustrative example: "this Committee are ready to receive proposals from, and treat with, *any person or persons* who are willing to engage in manufacturing good Muskets, or the Locks, Barrels, or any necessary parts thereof." *Id.* at 57 (emphasis added) (quoting Report of the New York Committee of Safety (Mar. 30, 1776), in 5 American Archives, Fourth Series. 83, 1418 (Peter Force ed., 1843). New York's notice even offered rewards for those who could manufacture the greatest number of firearms; notably, however, they only offered these rewards to those who were not already in the firearms business in order to incentivize people to begin gunsmithing.

In fact, the colonies also encouraged gunsmithing among the general public in more direct ways as well. Saltpeter recipes (a core component of gunpowder) were published in newspapers and circulated in pamphlets. *Id.* at 58. Pennsylvania's efforts are particularly noteworthy. The state's Committee of Safety—including future signatories to the Constitution Benjamin Franklin, George Clymer, Robert Morris, and John Dickinson—established a program to instruct the public on the creation of saltpeter throughout Pennsylvania. The effort was so successful that the state went from one mill to ten in just one year. *Id.* at 59.

The colonies likewise encouraged the manufacture of firearms. Pennsylvania's Committee of Safety also contracted with three gunsmiths "for making publick the art of boring and grinding Gun-barrels, and instructing such persons as they shall require to be taught that art." *Id.* at 60 (quoting

Report of the Pennsylvania Committee of Safety (Apr. 2, 1776), in 5 American Archives, *supra* at 734). One scholar has estimated that a bare minimum 612 gunsmiths were working in America between 1775 and 1783. *Id.* at 61.

**C. America owes its independence to a well-armed citizenry capable and willing to manufacture their own firearms.**

Without the individual manufacture of firearms by the colonial citizenry, America would have lost its War for Independence. The British themselves understood that this was a key factor to the American cause for liberty. In 1777, when the British were well on their way to winning the war, their post-war plan, *What is Fit to Be Done with America?* included gun control as an indispensable measure:

The Militia Laws should be repealed and none suffered to be re-enacted, & the Arms of all the People should be taken away . . . nor should any Foundry or manufactuary of Arms, Gunpowder, or Warlike Store, be ever suffered in America, nor should any Gunpowder, Lead, Arms or Ordinance be imported into it without a Licence.

William Knox, Considerations On The Great Question, What Is Fit To Be Done With America (1777).

The background of the Second Amendment at the Founding is one of war-torn bloodshed. Without firearms and the capability and willingness of the citizenry to manufacture and use them, America

would have remained mere colonies subjugated under the heel of Britain. The Founders enshrined the Second Amendment to serve as a perpetual call to arms against tyranny. To treat it any less is to facilitate the roots of tyranny slowly choking the tree of liberty until it has complete reign. To the Founders, the ATF's rule would sound much more similar to William Knox's plan than anything a patriot would write.

### CONCLUSION

The Court should hold the Rule unlawful and affirm the Fifth Circuit decision below.

Respectfully submitted,

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