No. 23-852

In The

Supreme Court of the United States

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

v.

JENNIFER VANDERSTOK, ET AL.,

Respondents.

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

BRIEF OF THE NATIONAL ASSOCIATION FOR GUN RIGHTS AND THE NATIONAL FOUNDATION FOR GUN RIGHTS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

The National Association for Gun Rights, Inc. ("NAGR") is a non-profit social welfare organization exempt from income tax operating under IRC section 501(c)(4). NAGR was established to inform the public on matters related to the Second Amendment, including publicizing the related voting records and public positions of elected officials. NAGR encourages and assists Americans in public participation and communications with elected officials and policymakers to promote and protect the right to keep and bear arms through the legislative and public policy process.

The National Foundation for Gun Rights, Inc. ("NFGR") is a non-profit organization exempt from income tax under IRC 501(c)(3). NFGR is the legal wing of the NAGR and exists to defend the Second Amendment in the court system.

INTRODUCTION

This case asks this Court to yet again answer the question "who decides?" *See, e.g.*, *Biden v. Nebraska*, 143 S. Ct. 2355, 2372 (2023) ("The question here is not whether something should be done; it is who has the authority to do it.").

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[1] No counsel for a party authored this brief in whole or part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than amici or their counsel contributed money intended to fund its preparation or submission.

Congress passed a law, the Gun Control Act of 1968, that set the parameters for what the federal government can regulate as a "firearm." These parameters are important, because violations of such regulations are serious criminal offenses. *See* 18 U.S.C. §§ 922–24. For purposes of the Act, the term "firearm" includes not only a functional weapon, but also "the frame or receiver of such weapon." 18 U.S.C. § 921(a)(3).

For over fifty years, everyone understood Congress's clear direction the same way—that "frame or receiver" meant what it said. But for some, this understanding was a problem. It did not include everything some thought should be restricted.

Rather than make their case to Congress and the American people, anti-gun advocates went to their allies in the federal bureaucracy and persuaded the Bureau of Alcohol, Tobacco, Firearms, and Explosives to "reinterpret" the statute, effectively changing the law by administrative fiat.

Worse still, the ATF rewrote the law to be a Rorschach test, where the ATF can stare into the ink blot of potential firearms parts and accessories and see restricted frames and receivers in any manner they choose, with no set standards for the American people to use to govern their own conduct. Indeed, the ATF itself makes clear that this uncertainty is a *feature*, not a bug, warning it "is not the purpose of the rule to provide guidance so that persons may structure transactions to avoid the requirements of

the law." Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24652, 24692 (Apr. 26 2022) (Frame and Receiver Rule).

In our constitutional system, this is not a choice the ATF gets to make. The framers took great pains to vest the power to write laws—especially criminal laws—in Congress, not unaccountable executive branch agencies. And even Congress cannot write laws that subject fundamental constitutional rights, such as the Second Amendment right to keep and bear arms, to inscrutable multifactor balancing tests tailor-made to chill the exercise thereof.

SUMMARY OF THE ARGUMENT

The power to write criminal laws is an inherently legislative power that rests with Congress, not administrative agencies. This is a fundamental element of the separation of powers. Informed by their experiences with English law and history, the framers viewed separating the power to write the law and the power to enforce the law as critical for the preservation of individual liberty.

The value of this separation of powers was reinforced by the constitutional structure of the legislative branch. Congress itself is divided into two houses, writing new laws requires bicameralism and presentment, and the members of Congress are accountable to different electoral constituencies and elected at different times. All of these factors ensure that passing new criminal laws is difficult and requires broad democratic support.

Petitioners' Frame and Receiver Rule effectively rewrote the Gun Control Act of 1968. To wit, Petitioners' Rule reregulated firearms "parts"—a category of goods Congress explicitly removed from the ATF's regulatory scope. By doing so, Petitioners exceeded their authority and usurped legislative authority.

Even if it were a proper exercise of the ATF's regulatory authority—and it is not—the Frame and Receiver Rule is unconstitutionally vague and impermissibly chills the exercise of Second Amendment rights. The Frame and Receiver Rule relies on an inscrutable, interlocking web of multifactor balancing tests that fails to provide people of ordinary intelligence with notice of what is prohibited.

Finally, just as vague and prolix laws chill speech and are thus impermissible in the First Amendment context, vague and prolix laws that dissuade Americans from exercising their Second Amendment rights cannot stand. The Second Amendment is not a second class right. Yet, by creating inherent uncertainty, the Frame and Receiver Rule chills American citizens from exercising their Second Amendment rights.

The Frame and Receiver Rule cannot stand. The judgment of the Fifth Circuit should be affirmed.

ARGUMENT

I. The Frame and Receiver Rule is Irreconcilable with the Constitutional Separation of Powers

a. Congress, Not Administrative Agencies,Writes Criminal Laws

This Court has long held that Congress—and *only* Congress—has the power to write criminal laws. *See, e.g.*, *Liparota v. United States*, 471 U.S. 419, 424 (1985) ("The definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." (citing *United States v. Hudson*, 11 U.S. 32, 32–34 (1812)); *United States v. Worrall*, 2 U.S. 384, 394 (C.C.D. Pa. 1798) (opinion of Chase, J.) ("The question, however, does not arise about the power; but about the exercise of the power . . . . Now, it appears to my mind, to be as essential, that Congress should define the offences to be tried[.]"); *United States v. Wiltberger*, 18 U.S. 76, 95 (1820) (recognizing "the plain principle that the power of punishment is vested in the legislative" branch, so "[i]t is the legislature . . . which is to define a crime, and ordain its punishment").

Separating the power to write the law from the power to enforce the law is a necessary feature of our system of separation of powers.

i. Separating the Power to Write the Law from the Power to Enforce the Law is Critical to the Maintenance of Individual Liberty

The views of the framers were informed by their experiences with English common law and its recent history. Under the British system, the making of criminal law was a fundamentally legislative act, such that David Hume "observe[d] that, when Parliament 'gave to the king's proclamation the same force as to a statute enacted by parliament,' it 'made by one act a total subversion of the English constitution.'" *Dep't of Transp. v. Ass'n of American Railroads*, 575 U.S. 43, 71–72 (2015) (Thomas, J., concurring) (quoting 3 D. Hume, The History of England from the Invasion of Julius Ceasar to the Revolution in 1688, p. 266 (1983)).

As a result, it is hardly a surprise that framers such as James Madison viewed the division of the legislative and executive powers as a necessary element of the Constitution's design of separated powers. While "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny[,]" the combination of two of the three powers in one entity similarly poses a grave threat to liberty. THE FEDERALIST NO. 47 (J. Madison), at 269 (Mentor 1999) (Clinton Rossiter ed.). Accordingly, it is equally important to guard against a combination of the

executive and legislative. *See Gundy v. United States*, 588 U.S. 128, 155–56 (2019) (Gorsuch, J., dissenting). Such careful division is necessary because "[t]here can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates[.]" THE FEDERALIST NO. 47 (J. Madison), at 270 (citing MONTESQUIEU, COMPLETE WORKS, VOL. 1 THE SPIRIT OF THE LAWS 199–200 (1748) (T. Evans ed.)). "[T]here can be no liberty, because apprehensions may arise lest *the same*" body "*enact* tyrannical laws to *execute* them in a tyrannical manner." THE FEDERALIST NO. 47 (J. Madison), at 271 (emphases in original) (citing Montesquieu, *supra*, at 199–200).

If "the nation's chief law enforcement officer [were] to write the criminal laws he is charged with enforcing[,]" it "would be to mark the end of any meaningful enforcement of our separation of powers and invite the tyranny of the majority that follows when lawmaking and law enforcement authorities are united in the same hands." *Gundy*, 588 U.S. at 172 (Gorsuch, J., dissenting).

This is not a mere abstract concern. The Constitution's "rule vesting federal legislative power in Congress is 'vital to the integrity and maintenance of the system of government ordained by the Constitution.'" *West Virginia v. EPA*, 597 U.S. 697, 737 (2022) (Gorsuch, J., concurring) (quoting *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892)).

ii. The Structure of the Legislative Branch Serves to Protect Individual Liberty

Because the framers understood the legislative power to be to "prescribe[] the rules by which the duties and rights of every citizen are to be regulated[,]" THE FEDERALIST NO. 78, at 433 (A. Hamilton), the framers viewed it as the most dangerous of those vested in the federal government, THE FEDERALIST NO. 48, at 277–281 (J. Madison). And because the framers viewed the legislative power as the "most dangerous," they "went to great lengths to make lawmaking difficult" by imposing several structural checks and balances on it throughout the constitutional design. *Gundy*, 588 U.S. at 154 (Gorsuch, J., dissenting).

Congress is divided into two chambers. This design intentionally creates intra-branch institutional rivalry and gums up the gears of legislation. *See* THE FEDERALIST NO. 62, at 344–350 (J. Madison).

Bicameralism and presentment require both chambers of Congress to pass the exact same text and the President to sign that text before a bill becomes a law. And the supermajority requirements to overcome the President's veto ensure that no law rejected by the President—the only official elected by the entire nation—takes effect unless it can obtain overwhelming support. *Gundy*, 588 U.S. at 154 (Gorsuch, J., dissenting). These checks and balances ensure "the citizen cannot be coerced" through a new

law unless all "the required actors . . . concur in the coercion[.]" Hon. Raymond M. Kethledge, *Hayek and the Rule of Law: Implications for Unenumerated Rights and the Administrative State*, 13 NYU J. L. & LIBERTY 193, 212 (2020).

Finally, the congressional electoral system is also meant to slow down the legislative process while promoting democratic accountability. *See, e.g.*, THE FEDERALIST NO. 62 (J. Madison). This intricately layered electoral system accomplishes these goals in multiple ways.

First, the House and Senate are elected by different constituencies. Because "majorities can threaten minority rights, the framers insisted on a legislature composed of different bodies subject to different electorates as a means of ensuring that any new law would have to secure the approval of a supermajority of the people's representatives." *Gundy*, 588 U.S. at 155 (Gorsuch, J., dissenting).

Second, the House and Senate are elected to different length terms. While the House turns over every two years, only a third of the Senate turns over in an election cycle. This design breeds stability in the law and inhibits radical swings from election to election. *See* THE FEDERALIST NO. 63, at 352–58 (J. Madison).

In sum, "by effectively requiring a broad consensus to pass legislation, the Constitution sought to ensure that any new laws would enjoy wide social acceptance, profit from input by an array of different perspectives during their consideration, and thanks to

all this prove stable over time. *West Virginia v. EPA*, 597 U.S. at 738 (Gorsuch, J., concurring) (citing THE FEDERALIST NO. 10 (J. Madison)).

b. The Frame and Receiver Rule Usurps Legislative Power

In the predecessor to the Gun Control Act, Congress defined "firearm" in 1938 as "any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon." Federal Firearms Act of 1938, ch. 850, Pub. L. 75-785, 52 Stat. 1250, 1250 (June 30, 1938) (repealed 1968).

Thirty years later, in 1968, Congress changed the "firearm" definition as follows (additions in *italics*; deletions with ~~strikethrough~~):

> "*(A)* any weapon~~, by whatever name known,~~ *(including a starter gun)* which *will or* is designed to *or may be readily converted to* expel a projectile ~~or projectiles~~ by the action of an explosive*; (B) the frame or receiver of any such weapon; (C)* ~~and a~~ *any* firearm muffler or firearm silencer*;* ~~or any part or parts of such weapon~~ *or (D) any destructive device. Such term does not include an antique firearm*.

Thus, the amended text—which remains in force unchanged today—defines a "firearm" as:

> (A) any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. 18 U.S.C. § 921(a)(3).

In adopting the Frame and Receiver Rule, ATF rewrote the Gun Control Act by undoing Congress's 1968 amendments. ATF expanded the definition of a "firearm" to include "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 27 C.F.R. § 478.11. ATF also expanded the definitions of "frame" and "receiver" to include "a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver[.]" 27 C.F.R. § 478.12(c).

The statute does not talk about "a weapons parts kit," nor does it reference "partially complete" frames or receivers. To the contrary, Congress explicitly and deliberately *withdrew* authority to regulate "any part or parts" of a firearm.

Allowing an executive agency to write laws through administrative fiat "risks substituting" the Constitution's legislative "design for one where

legislation is made easy, with a mere handful of unelected" bureaucrats "free to 'condemn all that they personally disapprove and for no better reason than they disapprove it." *Sessions v. Dimaya*, 584 U.S. 148, 182 (2018) (Gorsuch, J., concurring) (quoting *Jordan v. De George*, 341 U.S. 223, 242 (1951) (Jackson, J., dissenting)) (cleaned up). ATF's attempt to unilaterally rewrite the Gun Control Act—and therefore effectively pass a statute outside the legislative process—undermines Article I's careful institutional and procedural design before a bill can become a law.

Unhappy with the scope of the authority it has, ATF effectively rewrote the statute through regulation to give itself the power it wants. This is a usurpation of legislative authority that is irreconcilable with our constitutional structure.

II. The ATF's Frame and Receiver Rule is a Rorschach Test that Violates Due Process and Impermissibly Chills the Exercise of Second Amendment Rights

The ATF's improper usurpation of legislative power, standing alone, is sufficient to uphold the judgment of the Fifth Circuit. Nevertheless, the Frame and Receiver rule fails for two additional, independent and adequate reasons: its reliance on indeterminate multifactor balancing tests (1) violates Due Process of Law and (2) impermissibly chills the exercise of Second Amendment rights.

a. The Frame and Receiver Rule Creates a Web of Multi-Factored Tests and Measureless Standards

The ATF's Frame and Receiver Rule replaces clear, readily understood standards that prevailed for over a half a century with vague multifactor tests and know-it-when-I-see-it standards.

Start with ATF's redefinition of "firearm." In addition to the statutory definition, ATF adds: "The term shall include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive." 87 Fed. Reg. at 24735.

What does "readily" mean? Instead of providing a clear standard, the Frame or Receiver Rule provides a non-exhaustive list of eight factors ATF may consider to determine when various pieces of metal and plastic may "readily" become a federally-regulated "firearm": "(1) Time, *i.e.*, how long it takes to finish the process; (2) Ease, *i.e.*, how difficult it is to do so; (3) Expertise, *i.e.*, what knowledge and skills are required; (4) Equipment, *i.e.*, what tools are required; (5) Parts availability, *i.e.*, whether additional parts are required, and how easily they can be obtained; (6) Expense, *i.e.*, how much it costs; (7) Scope, *i.e.*, the extent to which the subject of the process must be changed to finish it; and (8) Feasibility, *i.e.*, whether the process would damage or destroy the subject of the process, or cause it to malfunction." 87 Fed. Reg. at 24735 (formatting omitted).

"But what happens when the factors point in different directions, some in favor and others against" finding a kit may be readily converted? *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 207 (2023) (Gorsuch, J., concurring). "No one knows." *Id.* Those trying to comply "get to *guess*." *Id.* (emphasis in original). Indeed, ATF emphasizes it will deem incomplete kits to be "firearms" based on "a case-by-case evaluation of each kit." 87 Fed. Reg. at 24685. And ATF absolves itself from providing clear requirements because it "is not the purpose of the rule to provide guidance so that persons may structure transactions to avoid the requirements of the law." *Id.* at 24692.

Next consider ATF's redefinition of "frame or receiver." ATF defined them by regulation in 1968: The "frame or receiver" of a firearm is "[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel." 33 Fed. Reg. 18555, 18558 (Dec. 14, 1968); *see also* 43 Fed. Reg. 13531, 13537 (Mar. 31, 1978) (formerly codified at 27 C.F.R. § 478.11 (2020)). That definition "is clear: It tells law-abiding gun owners, hobbyists, and gunsmiths when a piece of metal stops being a just a piece of metal and starts being the 'frame or receiver' of a federally regulated firearm subject to federal gun laws and felony penalties." Pet. App. 34a (Oldham, J., concurring).

The Frame and Receiver Rule, however, newly defines the terms "frame" and "receiver" to include "a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts

kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver[.]" 87 Fed. Reg. at 24739.

What does it mean to be partially complete or disassembled? To answer that question, ATF provides another non-exhaustive list of eight factors that it may balance in considering whether a material counts as a partially complete or disassembled "frame or receiver": "[T]he Director may consider any associated [1] templates, [2] jigs, [3] molds, [4] equipment, [5] tools, [6] instructions, [7] guides, or [8] marketing materials that are sold, distributed, or possessed with [or otherwise made available to the purchaser or recipient of] the item or kit." Pet. App. 38a (Oldham, J., concurring) (quoting 87 Fed. Reg. at 24739).

The ATF claims this definition does not include any "forging, casting, printing, extrusion, unmachined body, or similar article that has not reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.*, unformed block of metal, liquid polymer, or other raw material." 87 Fed. Reg. at 24739.

When does a forging casting, printing, extrusion, unmachined body, or similar article cease being a primordial raw material and become "clearly identifiable as an unfinished component part of a weapon?" Mercifully, ATF does not provide another non-exhaustive eight-factor balancing test. Instead, the ATF leaves the phrase as an impossible-to-comply with-in-advance ATF-knows-it-when-ATF-sees-it

standard. *See Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

b. The ATF's Matryoshka Doll of Multi-Factored Balancing Tests is Impermissibly Vague

The Constitution prohibits the government from taking "someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015).

The Frame and Receiver Rule's mixture of multi-factored balancing tests and know-it-when-I-see-it standards "fails to comply with due process" and is void-for-vagueness because it "'fails to provide a person of ordinary intelligence fair notice of what is prohibited'" and "'is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *FCC v. Fox Television Stations Inc.*, 567 U.S. 239, 253 (2012) (quoting *United States v. Williams*, 553 U.S. 285, 306 (2008)). Indeed, the Rule's matryoshka doll of nested tests, each with a dizzying array of factors where everything is relevant but nothing dispositive, produces "more unpredictability and arbitrariness than the Due Process Clause tolerates." *Sessions v. Dimaya*, 584 U.S. at 162 (citation omitted); *see also The Enterprise*, 8 F. Cas. 732, 735 (C.C.D.N.Y. 1810) (Livingston, J.) (noting that "[i]f no sense can be discovered" from the statute's or regulation's text, "the court had better pass them by as unintelligible and useless, than to put on them, at great uncertainty, a

very harsh signification, and one which the legislature may never have designed").

Taking its provisions together, the Frame and Receiver "Rule is limitless. It purports to regulate any piece of metal or plastic that has been machined beyond its primordial state for fear that it might one day be turned into a gun, a gun frame, or a gun receiver." Pet. App. 65a–66a (Oldham, J., concurring).

To make matters worse, the ATF makes clear that it views the Rule's indeterminacy as a feature, not a bug. For example, the ATF claims it "is not the purpose of the rule to provide guidance so that persons may structure transactions to avoid the requirements of the law." 87 Fed. Reg. at 24692. But ever since Hammurabi erected the stele bearing his Code so that anyone in his kingdom could see what the law was, that has been understood to be precisely the point of having a written code of laws. If a person of ordinary intelligence cannot "structure their transactions to avoid the requirements of the law"—otherwise known as "comply with the law"—they cannot be said to have fair notice of what is prohibited.

The Frame and Receiver Rule is intentionally inscrutable and cannot pass muster under basic principles of Due Process.

c. The Frame and Receiver Rule Chills Second Amendment Rights

The Frame and Receiver Rule's vague standards also impermissibly chill law-abiding

Americans' exercise of their Second Amendment rights.

"Prolix laws chill speech for the same reason that vague laws chill speech: People 'of common intelligence must necessarily guess at the law's meaning and differ as to its application.'" *Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926)) (cleaned up).

In First Amendment jurisprudence, the Court recognizes that legal standards "must eschew the open-ended rough-and-tumble of factors, which invite[] complex argument in a trial court and a virtually inevitable appeal[,]" because of the predictable chilling effect the prospect of protracted litigation has on the exercise of First Amendment rights. *Citizens United*, 558 U.S. at 336 (internal quotation marks and citations omitted). Accordingly, *Citizens United* rejected the FEC's regulatory regime of "ambiguous tests"—including an 11-factor balancing test—as constituting "an unprecedented governmental intervention into the realm of speech" that required parties who wanted "to avoid litigation and the possibility of civil and criminal penalties" to "either refrain from speaking or ask the FEC to issue an advisory opinion approving the political speech in question." *Id.*

Second Amendment rights are not afterthoughts of the Bill of Rights. The same protections other parts of the Bill of Rights receive must apply to laws that impact the ability of American

citizens to keep and bear arms. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022); *see also District of Columbia v. Heller*, 554 U.S. 570, 582, 595, 606, 618, 634–635 (2008) (arguing Second Amendment rights receive similar protections to First Amendment rights). After all, Second Amendment rights are "not 'a second-class [of] right[s], subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Bruen*, 597 U.S. at 70 (quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010) (plurality)).

The constitutional quagmire the Frame and Receiver Rule creates for law-abiding Americans exceeds the one the Court held unconstitutional in *Citizens United*–and not just because ATF bests the FEC's outrageous 11-factor test with a combined 16 factors of its own. The Rule's "throw-it-in-a-blender approach to" defining crucial gun regulation terms "imposes serious and needless costs on litigants and lower courts alike." *Axon*, 598 U.S. at 212 (Gorsuch, J., concurring). "The cost, time, and uncertainty associated with litigating" the Rule's "raft of opaque" definitional "factors will deter many people from even trying to" exercise the Second Amendment rights "to which they are entitled" by natural right and which the Constitution secures. *Id.* at 215.

As with prolix or vague regulations in the First Amendment context, the Frame and Receiver Rule's opacity impermissibly chills the lawful exercise of a constitutional right—in this case, the Second Amendment right to acquire arms. *See* Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*,

54 ST. MARY'S L. J. 35, 38–45 (2023) (collecting authorities holding the Second Amendment protects the right to acquire arms, including self-made arms).

By its own boast, the Frame and Receiver Rule makes it impossible for law-abiding Americans to determine its bounds and adjust their conduct accordingly. They are left with only the Hobson's choice of act—and risk prosecution—or stay far away from the subject of Petitioners' regulation—and voluntarily relinquish their rights to engage in lawful conduct. The Rule does what it is designed to do: chill the exercise of Second Amendment rights. As such, on its own merits, it cannot stand.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit should be affirmed.

Respectfully submitted,

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