No. 12-1371

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

JAMES ALVIN CASTLEMAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE BRADY CENTER TO PREVENT GUN VIOLENCE, THE COALITION TO STOP GUN VIOLENCE, THE LAW CENTER TO PREVENT GUN VIOLENCE, MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA, STATES UNITED TO PREVENT GUN VIOLENCE, AND THE VIOLENCE POLICY CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Of Counsel:

Jonathan E. Lowy
Elizabeth M. Burke
BRADY CENTER TO PREVENT GUN VIOLENCE
1225 Eye St., N.W.
Washington, D.C. 20005
(202) 289-7319

Mitchell F. Dolin
Counsel of Record
Matthew J. Berns
Jeff Kosseff
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 662-6000
mdolin@cov.com

Counsel for Amici Curiae

November 2013

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INTEREST OF THE *AMICI CURIAE*[1]

The **Brady Center to Prevent Gun Violence** is a non-profit organization dedicated to reducing gun violence through education, research, and legal advocacy. The Brady Center has a substantial interest in ensuring that firearms are kept out of the hands of dangerous people who pose a significant risk of committing crimes, including an interest in ensuring that 18 U.S.C. § 922(g)(9) and other federal gun laws are properly applied to allow strong government action to prevent gun violence. This Court cited an *amicus* brief filed by the Brady Center in construing Section 922(g)(9) in *United States v. Hayes*, 555 U.S. 415, 427 (2009). Through its Legal Action Project, the Brady Center has also filed *amicus* briefs in numerous other cases involving the constitutionality and interpretation of firearms laws, including *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008); and *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013), *cert. denied*, No. 13-42, 2013 WL 3479421 (U.S. Oct. 15, 2013).

The **Coalition to Stop Gun Violence** is a non-profit organization that seeks to secure freedom from gun violence through research, strategic engagement, and policy advocacy. The Coalition filed an *amicus* brief in *Printz v. United States*, 521

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[1] The parties have consented to the filing of this brief, and letters confirming such consent have been lodged with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation of this brief.

U.S. 898 (1997), and its affiliated organization, the Educational Fund to Stop Gun Violence, has filed *amicus* briefs in numerous cases involving gun laws.

The **Law Center to Prevent Gun Violence**, formerly known as the Legal Community Against Violence, provides comprehensive legal expertise in support of gun violence prevention and the promotion of smart gun laws nationwide. The Law Center joined the Brady Center in filing an *amicus* brief in *United States v. Hayes*, 555 U.S. 415 (2009), and has filed numerous other *amicus* briefs in cases involving the constitutionality and interpretation of gun laws.

Moms Demand Action for Gun Sense in America is a non-partisan grassroots organization with more than 100,000 members and chapters in every state. A core purpose of Moms Demand Action is to advocate for common-sense federal and state gun laws in order to curtail the epidemic of gun violence in the United States.

States United to Prevent Gun Violence is a national non-profit organization that works to decrease gun death and injury by supporting existing state-based gun violence prevention organizations as well as building new organizations within the 50 states to prevent gun violence.

The **Violence Policy Center** is a non-profit organization that works to stop the broad-based public health crisis that is gun violence through research, advocacy, education, and collaboration. The Center regularly submits and joins *amicus* briefs in cases that involve gun laws.

SUMMARY OF ARGUMENT

18 U.S.C. § 922(g)(9) broadly prohibits any individual "who has been convicted in any court of a misdemeanor crime of domestic violence" from possessing firearms or ammunition. The breadth of this prohibition is no accident: After focusing on the relationship between domestic violence and firearm-related injuries and fatalities, Congress determined that all individuals convicted of domestic abuse offenses at the misdemeanor level should be prohibited from possessing firearms.

If the Court were to adopt the restrictive reading of Section 922(g)(9) endorsed by respondent and the Sixth Circuit, the end result would be to place deadly weapons in the hands of thousands of individuals who have a history of abusing their family members and domestic partners and who, when armed, pose a heightened risk to the members of their households and communities.

Numerous studies conducted both before and after Congress enacted Section 922(g)(9) support Congress's decision to include all domestic violence misdemeanors in the firearms ban. That social science learning demonstrates that individuals convicted of crimes involving domestic abuse are more likely to use a firearm to seriously injure or kill their intimate partners and family members in the future, as well as law enforcement and others who respond to domestic abuse situations. And laws that restrict domestic abusers' use of firearms have been associated with a significant reduction in domestic homicides.

The legislative history reveals that Congress enacted Section 922(g)(9) because its Members recognized that domestic abusers are likely to repeat their crimes, that the severity of these crimes typically escalates over time, and that the abuse is many times more likely to culminate in a death if the perpetrator has access to a firearm. As Senator Patty Murray, one of the bill's main proponents, aptly stated during debate on the legislation, "the gun is the key ingredient most likely to turn a domestic violence incident into a homicide." 142 Cong. Rec. 22,987 (1996) (statement of Sen. Murray).

The Sixth Circuit erred in interpreting Section 922(g)(9) to apply only to individuals convicted of offenses that have, as an element, the use or attempted use of "strong and violent physical force." Such a limitation has no basis in the plain language of Section 922(g)(9) or the definition of "misdemeanor crime of domestic violence" in 18 U.S.C. § 921(a)(33)(A), and would defeat the manifest purpose of the statute.

Our review of the legislative history did not reveal a single instance in which one of the bill's supporters (or even one of its few opponents) suggested that the prohibition should apply only to individuals who committed misdemeanors with "strong and violent physical force." This is unsurprising given Congress's understanding that misdemeanor crimes, more often than felony crimes, encompass conduct involving lower levels of physical force, and Congress's conclusion that all individuals convicted even of misdemeanors involving domestic abuse pose a serious threat of future harm.

ARGUMENT

I. Limiting Section 922(g)(9) To Those Convicted Of Offenses Requiring Proof Of "Strong And Violent Physical Force" Would Allow Many Domestic Abusers Ready Access To Firearms.

Any interpretation of 18 U.S.C. § 922(g)(9)[2] that limits its application to domestic abusers with

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[2] Section 922(g) reads in relevant part:

> It shall be unlawful for any person—
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> …
>
> (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g).

> [T]he term "misdemeanor crime of domestic violence" means an offense that—
>
> (i) is a misdemeanor under Federal, State, or Tribal law; and
>
> (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Id. § 921(a)(33)(A).

convictions for offenses that have, as an element, the use or attempted use of "strong and violent physical force" would permit many individuals with a history of domestic violence to escape the statute's reach. The point is well illustrated by two cases in which lower courts addressed the question presented here: *United States v. Smith*, 171 F.3d 617 (8th Cir. 1999), and *United States v. Armstrong*, 706 F.3d 1 (1st Cir. 2013). In each case, the court of appeals affirmed the defendant's conviction for a violation of Section 922(g)(9) after adopting the Government's reading of the statute; in each case, the defendant could have gone free under a more restrictive reading of the statute. The stories underlying these cases reveal the types of continuing domestic abuse that Congress intended to fall within the reach of Section 922(g)(9) so as to prevent future firearm-related violence.

William Maurice Smith and Lauralee Lorenson began living together in Iowa in 1993, shortly before Lauralee gave birth to their son. *See* Memorandum in Support of United States' Resistance to Defendant's Motion to Dismiss at 6, *United States v. Smith*, 964 F. Supp. 286 (N.D. Iowa 1997) (No. CR 96-2140), ECF No. 35 ("*Smith* Mem.").[3] According to the Government's submission, Smith abused Lauralee from the start. *Id.* He would lose his temper when Lauralee spoke to other men, when she did not wash the dishes, or when she did

[3] These facts about the Smith case are drawn from a brief filed by the United States in connection with Smith's prosecution under Section 922(g)(9). Smith appears to have disputed some of the Government's account. *See Smith* Mem. at 6 n.1.

not clean their house. *See id.* On one occasion, Smith pointed a gun at Lauralee's head. *Id.* at 7. Another time, he fired a 9mm revolver in her general direction to scare her. *See id.* at 6-7. When Lauralee threatened to leave Smith or to call the police, Smith responded with more physical threats. *See id.* at 7.

In September 1994, Lauralee finally talked to the police. A week later, Smith appeared at the nursing home where Lauralee worked and chased her into the building. After Smith cornered Lauralee in an elevator, he grabbed her by the throat and pushed her to the floor. *See id.* at 7-9. Lauralee pressed charges. Smith pleaded guilty to violating Iowa's simple misdemeanor assault statute and paid a small fine. *Id.* at 8-10.[4]

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[4] At the time, Iowa Code § 708.1 provided:

> A person commits an assault when, without justification, the person does any of the following:
>
> 1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
>
> 2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
>
> 3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Iowa Code § 708.1 (1994). Smith was charged under paragraph (1). *Smith*, 171 F.3d at 619.

The couple reconciled and married in 1995, but the abuse continued. *Smith* Mem. at 10-11. In October 1996, Lauralee's coworkers noticed conspicuous marks on her neck. *Id.* at 11. Smith had grabbed her by the neck and choked her. *Id.*

Smith was facing charges stemming from this incident on November 15, 1996, when he purchased a Grendel .380 pistol from a local pawn shop. *Id.* at 12. Around midnight the night after Smith bought the pistol, the couple fought. *Id.* at 13. At some point, Smith used his new gun to shoot Lauralee from behind. The bullet broke a rib and punctured her lung before exiting near her shoulder. *Id.* It came within inches of her heart, but Lauralee survived. *Id.* at 13-14.

After first telling police that her husband was not the shooter, Lauralee conceded that Smith had shot her but maintained that he had done so by accident. *Id.* Lauralee's unwillingness to cooperate with local prosecutors meant "there was little possibility that a prosecution under Iowa law would result in any significant sentence. It appeared that Smith, like so many other batterers, would escape with impunity." Tom Lininger, *A Better Way to Disarm Batterers*, 54 Hastings L.J. 525, 527 (2003) [hereinafter Lininger].

But the newly enacted Section 922(g)(9) permitted federal prosecutors to charge Smith with a violation of federal law based on his 1994 conviction. Smith conditionally pleaded guilty, and the Eighth Circuit affirmed his conviction even though the Iowa assault statute under which he had been convicted contained, as an element, "physical contact" that is merely "insulting or offensive"—*not* "strong and

violent." *Smith*, 171 F.3d at 619-21 & n.2. Under an unduly narrow interpretation of Section 922(g)(9), Smith's conviction would not have been a qualifying predicate offense, and he would likely have escaped federal prosecution.

Like Smith, William Armstrong III had a history of domestic violence. Also like Smith, Armstrong had prior convictions for misdemeanor assault, but none under a statute that requires the use of "strong and violent physical force." He too would retain ready access to firearms under a narrow reading of Section 922(g)(9).

In the early 1990s, Armstrong was convicted of assaulting a girlfriend. *See* Transcript of Sentencing Proceedings at 6-7, *United States v. Armstrong*, 1:11-cr-00050-JAW (D. Me. Feb. 14, 2012), ECF 60 ("*Armstrong* Tr."). His subsequent marriage was marked by "tension" and "problems … in his relationships with his wife and children." Defendant's Memorandum Regarding Sentencing at 1, *United States v. Armstrong*, 1:11-cr-00050-JAW (D. Me. Feb. 10, 2012), ECF 52 ("*Armstrong* Mem."). In 2002, Armstrong was convicted of simple assault against his wife, Rosanna, after pushing her and grabbing her in a manner that left marks on her body. *Id.* In 2008, an argument between Armstrong and Rosanna escalated until Armstrong "hit[] her hard" and then "lock[ed] her outside," in the middle of the Maine winter, with "only … her slippers on." *Armstrong* Tr. at 18.

The 2008 incident resulted in Armstrong's conviction for violating Maine's domestic violence assault statute. *See* Transcript of Plea & Sentencing Hearing, *Maine v. Armstrong*, No. FARSC-CR-2008-

00432 (Me. Super. Ct. Dec. 30, 2008). The allegations in the criminal complaint against Armstrong tracked the elements of Maine's domestic violence assault statute, which do not include the use of strong and violent physical force. *See* Complaint, *Maine v. Armstrong*, No. FARSC-CR-2008-00432 (Me. Super. Ct. Dec. 30, 2008).[5] The state trial judge nevertheless informed Armstrong that, as a result of his conviction, federal law would prohibit his possession of a firearm or ammunition. *See id.* at 3, 6-7. Armstrong, however, was later discovered to be in possession of three rifles, three shotguns, a revolver, and more than 1000 rounds of ammunition. *See* Indictment at 1-2, *United States v. Armstrong*, 1:11-cr-00050-JAW (D. Me. Feb. 13, 2011), ECF 2; Transcript of Conditional Guilty Plea at 14-16, *United States v. Armstrong*, 1:11-cr-00050-JAW (D. Me. Sept. 26, 2011), ECF 59. After his federal arrest, Armstrong was charged with yet another domestic violence assault against Rosanna. *See Armstrong* Mem. at 3; *Armstrong* Tr. at 9.

Armstrong pleaded guilty to violating Section 922(g)(9). The First Circuit adopted the Government's reading of the statute and affirmed Armstrong's conviction on that basis. *See Armstrong*, 706 F.3d at 1.

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[5] Under Maine law, "[a] person is guilty of assault if … [t]he person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person," Me. Rev. Stat. Ann. tit. 17-A, § 207(1), and "is guilty of domestic violence assault if … the victim is a family or household member," *id.* § 207-A(1).

Are William Maurice Smith and William Armstrong III individuals who Congress intended to shield from the reach of Section 922(g)(9) and thus to have ready access to guns? No. The manifest purpose of Section 922(g)(9) is to prohibit those with a history of domestic violence like Smith's or Armstrong's—including those convicted of simple misdemeanor assaults in domestic situations—from possessing firearms. Yet under a narrow reading of Section 922(g)(9) like the Sixth Circuit's, neither Smith nor Armstrong acted in violation of the statute. *Cf.* Pet. Br. 37-39 & n.18 (identifying Iowa and Maine's assault statutes as not giving rise to a qualifying conviction under the decisions below).

While these dangerous domestic abusers were originally able to obtain firearms due to other weaknesses in America's firearms laws, the fact remains that a properly construed Section 922(g)(9) makes such possession and violence less likely by punishing—and thus deterring—such dangerous conduct.

II. Social Science Studies Support Laws Prohibiting Domestic Abusers' Possession Of Firearms.

Tragedies like those in the *Smith* and *Armstrong* cases occur by the thousands in America when domestic abusers have access to firearms. Social science research confirms Congress's conclusion that *all* individuals who are convicted of domestic assault misdemeanors should be prohibited from owning firearms. A conviction for a domestic violence crime is highly correlated with the commission of future crimes against spouses and

intimate partners, regardless of whether the initial crime involved strong and violent physical force.

Domestic violence plagues hundreds of thousands of American households each year. The Justice Department reports that approximately 907,000 incidents of intimate partner violence occurred in 2010. Shannon Catalano, BUREAU OF JUSTICE STATISTICS, *Intimate Partner Violence, 1993–2010* 1 (2012). Women are at a significantly greater risk than men of being severely injured or murdered in a domestic dispute. Approximately one-third of female homicide victims were murdered by their intimate partners, compared with approximately four percent of male homicide victims. *See* April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large U.S. Cities*, 16 INJURY PREVENTION 90 (2010) [hereinafter Zeoli & Webster]. Women are four times as likely to be shot by a boyfriend or husband than by a stranger. *See* M. Miller et al., *State-Level Homicide Victimization Rates in the U.S. in Relation to Survey Measures of Household Firearm Ownership*, *2001-2003*, 64 SOCIAL SCIENCE & MEDICINE 656 (2007). Of 1,601 homicides of women in the United States in 2011, 1,509, or 94 percent, were committed by men who knew the victims. *See* VIOLENCE POLICY CENTER, *When Men Murder Women: An Analysis of 2011 Homicide Data* (2013), *available at* http://www.vpc.org/studies/wmmw2013.pdf.

Contrary to respondent's view,[6] "minor" domestic violence convictions often lead to more serious crimes, including homicide. Domestic abusers demonstrate a "pattern of coercive control in a partner relationship, punctuated by one or more acts of intimidating physical violence, sexual assault, or credible threat of physical violence." R. Lundy Bancroft et al., THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 3 (2002). For that reason, minor domestic violence incidents often lead to more serious crimes. *See* Alex R. Piquero et al., *Assessing the Offending Activity of Criminal Domestic Violence Suspects: Offense Specialization, Escalation, and De-Escalation Evidence from the Spouse Assault Replication Program* (2005), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/212298.pdf. More than 65 percent of women who are murdered by their intimate partners had previously been victims of domestic abuse. *See* Lawrence A. Greenfield et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, U.S. Department of Justice Report No.: NCJ-167237 (1998).

Individuals who have committed a previous domestic assault pose a particularly high risk of using firearms to harm others. Access to firearms by domestic abusers is strongly correlated with intimate partner female homicide. *See* Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships*: *Results from a Multisite Case Control*

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[6] *See* Resp. Brief in Opp. to Cert. at 13.

Study, 93 AM. J. OF PUB. HEALTH 1089, 1090 (2003). Similarly, the presence of a gun in a violent home increases the risk that domestic violence will lead to a fatality. A woman's risk of being a domestic homicide victim is said to increase seven fold if she lives in a house with at least one firearm. James E. Bailey et al., *Risk Factors for Violent Death of Women in the Home*, 157 ARCHIVES OF INTERNAL MEDICINE 777, 777-78 (1997); *see also* Shannon Frattaroli & Jon S. Vernick, *Separating Batterers and Guns: A Review and Analysis of Gun Removal Laws in 50 States*, 30 EVALUATION REV. 296, 299-312 (June 2006) (recommending that states develop procedures for police to confiscate firearms from domestic abusers); Emily F. Rothman et al., *Gun Possession Among Massachusetts Batterer Intervention Program Enrollees*, 30 EVALUATION REV. 283, 291-92 (2006) (concluding that convicted domestic batterers with access to firearms pose lethal threat to their partners); Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 J. AM. MED. ASS'N 3043, 3046 (1992) (firearms-related family and intimate assaults are three times as likely to be fatal than assaults involving knives). From 1980 to 2000, 60 percent to 70 percent of domestic abusers who killed their female intimate partners used firearms to do so. Emily F. Rothman et al., *Batterers' Use of Guns to Threaten Intimate Partners*, 60 J. AM. MED. WOMEN'S ASS'N 62, 62 (2005).

Accordingly, state laws that restrict access to firearms by individuals subject to a domestic violence restraining order see a 19 percent reduction in intimate partner homicide. Zeoli & Webster, *supra*,

at 90-95. Similarly, prohibiting violent misdemeanants from possessing firearms has been associated with a decrease in the risk of arrest for new firearm crimes and violent crimes. *See* Garen J. Wintemute, et al., *Effectiveness of Denial of Handgun Purchase by Violent Misdemeanants* 2 (2002), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/197063.pdf.

In addition to putting household members at greater risk, respondent's interpretation of Section 922(g) would endanger the lives of law enforcement officers who respond to domestic violence calls. Between 1996 and 2005, approximately 14 percent of all law enforcement fatalities occurred during responses to domestic violence reports. *See* National Law Enforcement Officers Memorial Fund, *Domestic Violence Takes a Heavy Toll on the Nation's Law Enforcement Community* (2007).

In short, domestic abuse is strongly correlated with future violent domestic crimes, including homicides. A narrow reading of § 922(g)(9) would put firearms in the hands of people who pose a serious risk to their spouses or partners, law enforcement officers, and others.

III. The Text And Legislative History Of Section 922(g)(9) Demonstrate That Congress Intended To Prevent Convicted Domestic Abuse Misdemeanants From Possessing Firearms.

Congress enacted Section 922(g)(9) to effectuate a policy of "zero tolerance" because there is "no margin of error when it comes to domestic abuse and guns." 142 Cong. Rec. at 19,415, 22,986

(statements of Sen. Lautenberg). Accordingly, Section 922(g)(9) broadly prohibits "any person" convicted of a "misdemeanor crime of domestic violence" from possessing a firearm. 18 U.S.C. § 922(g)(9). In turn, "misdemeanor crime of domestic violence" is defined to encompass any "misdemeanor" that has as an element "the use or attempted use of physical force, or the threatened use of a deadly weapon" in a domestic setting. *Id.* § 921(a)(33)(A). Conspicuously absent from the statute is any language that limits its scope to persons convicted under statutes requiring "strong and violent physical force."

Until the mid-1990s, the Gun Control Act prohibited convicted felons, but not misdemeanants, from possessing firearms. *See Hayes*, 555 U.S. at 418. Concerned that this ban was ineffective in keeping guns away from domestic abusers, Congress expanded the categories of persons subject to the firearm prohibition to reduce the risk posed by armed domestic abusers. In 1994, it extended the ban to individuals subject to domestic restraining orders. 18 U.S.C. § 922(g)(8). Then, in 1996 with Section 922(g)(9), Congress further extended the existing firearm prohibition to those with a conviction of even a "*misdemeanor* crime of domestic violence." 18 U.S.C. § 922(g)(9) (emphasis added). Congress did so based on its understanding that domestic violence tends to escalate over time, but that domestic abusers are often initially convicted of a misdemeanor "under a generic use-of-force statute," rather than of a felony. *Hayes*, 555 U.S. at 426. Since Congress recognized that such a history of abuse is more likely to culminate in homicide or

other serious bodily injury if the misdemeanant has access to a firearm, Congress adopted a broad ban that encompasses all domestic abuse convictions, including those under generic misdemeanor assault and battery statutes not requiring the use of "strong and violent" physical force.

Interpreting Section 922(g)(9) to apply only to individuals convicted of a misdemeanor offense that has, as an element, the use or attempted use of "strong and violent physical force" would undermine the policy underlying the statute. Instead, as it did in *United States v. Hayes*, 555 U.S. 415 (2009), the Court should apply Section 922(g)(9) in accord with its text and in a manner that furthers "Congress' aim in extending the gun possession ban." *Id.* at 422 n.5; *see also id.* at 426-27 (declining to adopt a reading of § 922(g)(9) that "would frustrate Congress' manifest purpose" in enacting the statute).

A. Congress Broadly Targeted The Problem Of Domestic Abuse And Guns.

Congress's enactment of Section 922(g)(9) was not its first action to combat the dangers of domestic violence and guns. Rather, it was a second major step in a series of reforms intended to protect victims of domestic abuse from firearm-related violence. The federal Gun Control Act of 1968 prohibited felons and other categories of potentially dangerous persons from possessing firearms. *See* 18 U.S.C. § 922(g)(1)-(7). In the 1990s, however, Congress became concerned that perpetrators of domestic violence were able to access guns despite the prohibitions of the Gun Control Act. To combat this problem,

Congress prohibited two new categories of persons from possessing firearms: those subject to domestic restraining orders and those convicted of misdemeanors involving domestic abuse. These new prohibitions show a sustained Congressional intent to go beyond the felony gun bar and single out an array of domestic abuse situations for intervention.

First, in 1994, Congress expanded the list of firearms disabilities by adding a prohibition against the possession of a firearm by any person "who is subject to a court order that … restrains such person from harassing, stalking, or threatening an intimate partner … or child." 18 U.S.C. § 922(g)(8). This reform stemmed from several competing bills offered in 1993 as amendments to an Omnibus Crime Bill. Senator Paul Wellstone and Representative Robert Torricelli proposed bills seeking to prohibit gun possession by anyone subject to a restraining order as well as by any person convicted of a misdemeanor crime of domestic violence. *See* S. 1570, 103d Cong. (1993) (Sen. Wellstone's bill); H.R. 3301, 103d Cong. (1993) (Rep. Torricelli's bill). Senator John Chafee proposed a version of the bill prohibiting gun possession only for those subject to a restraining order. *See* 139 Cong. Rec. 28,509 (1993) (language of amendment 1169 to S. 1607, the crime bill).

The sponsors of these bills emphasized the need to expand the law because of the dangers inherent in the possession of firearms by domestic abusers, and because differences in charging practices were otherwise resulting in ineffective protections for battered women and children under current law. *See, e.g.*, 139 Cong. Rec. at 30,578-79 (statement of Sen. Chafee) ("There have been far, far

too many dreadful cases in which innocent people … have been wounded or killed by a former boyfriend or girlfriend, partner, or other intimate using a gun—despite the fact that the attacker was subject to a restraining order."); *id.* at 28,360 (statement of Sen. Wellstone) (explaining that the bill says, "if you are not responsible enough to keep from doing harm to your spouse or your children, then society does not deem you responsible enough to have a gun"); 140 Cong. Rec. 14,998 (1994) (statement of Sen. Wellstone) (explaining how batterers can often escape the felony gun ban because they are not charged with felonies); *see also* H.R. Rep. No. 103-711, at 391 (1994) (Conf. Rep.) ("Congress finds … that domestic violence is the leading cause of injury to women in the United States between the ages of 15 and 44; firearms are used by the abuser in 7[%] of domestic violence incidents … ; and individuals with a history of domestic abuse should not have easy access to firearms."). In the end, the narrower bill prohibiting only those subject to restraining orders from gun possession became the law. *See* Lininger, *supra*, at 536-43.

By 1996, Congress determined that a further expansion of the firearms prohibition to domestic violence misdemeanants was necessary. Congress had recognized that domestic abuse tends to escalate over time, and saw that this escalation coupled with the presence of a gun was likely to result in a shooting death or injury but that"[e]xisting felon-in-possession laws … were not keeping firearms out of the hands of domestic abusers." *See Hayes*, 555 U.S. at 426. Senator Frank Lautenberg's bill proposing a misdemeanant possession ban was introduced to

"close this dangerous loophole." 142 Cong. Rec. at 22,986 (statement of Sen. Lautenberg).[7] Senator Lautenberg's bill passed nearly unanimously in the Senate on two occasions, *see id.* at 22,985 (explaining bill's earlier unanimous Senate passage as amendment to anti-stalking bill); *id.* at 22,988 (passing bill 97-2 as amendment to Treasury and Postal Service Appropriations Act), and Congress eventually enacted Section 922(g)(9) as part of an omnibus appropriations bill. *See* Pub. L. No. 104-208, § 658, 110 Stat. 3009, 3009-371 to -372 (Sept. 30, 1996).

Congress viewed Section 922(g)(9) as necessary in light of two related problems: First, unlike other crimes, domestic violence is historically underprosecuted and undercharged, meaning that many violent abusers end up with only misdemeanor rather than felony convictions, and specifically with convictions under statutes that do not require an element of strong and violent force. Second, and again unlike other crimes, domestic violence tends to escalate, and thus is particularly dangerous even as to those who have been prosecuted at the misdemeanor level. To ensure that both problems were addressed, Congress enacted Section 922(g)(9) as a broad, "zero tolerance," "no margin of error" ban on the possession of firearms by those with any conviction of a misdemeanor involving domestic

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[7] This Court has treated the floor statements of Senator Lautenberg, Section 922(g)(9)'s sponsor, as instructive albeit "not controlling." *Hayes*, 555 U.S. at 439.

abuse. 142 Cong. Rec. at 19,415, 22,986 (statements of Sen. Lautenberg).

1. Congress Understood That Domestic Abuse Crimes Were Not Routinely Charged Under Statutes Requiring Strong And Violent Physical Force.

As this Court has previously recognized, Congress intended Section 922(g)(9) to address the fact that domestic abusers were (and are) frequently convicted of misdemeanors under generic assault or battery statutes, rather than of more serious offenses. *See Hayes*, 555 U.S. at 427 (explaining that "domestic abusers were … routinely prosecuted under generally applicable assault or battery laws").

The Senate debate is replete with references to the need broadly to target those convicted of misdemeanors, recognizing that such crimes may in fact have been more serious than suggested by the statute under which conviction was secured. Senator Lautenberg referred to "convictions" for "assault" without any suggestion that only assaults accompanied by strong and violent physical force would qualify. 142 Cong. Rec. at 26,675 (statement of Sen. Lautenberg) ("[C]onvictions for domestic violence-related crimes often are for crimes, such as assault … .").

Members of Congress found that "[o]utdated or ineffective laws often treat[ed] domestic violence as a lesser offense." *Id.* at 22,988 (statement of Sen. Feinstein); *see also id.* at 19,415 (statement of Sen. Lautenberg) ("[O]ne-third of the cases that would be considered felonies if committed by strangers are,

instead, filed as misdemeanors."); *id.* at 22,986 (statement of Sen. Wellstone) ("In all too many cases, unfortunately, if you beat up or batter your neighbor's wife, it is a felony. If you beat up or batter, brutalize your own wife or your own child, it is a misdemeanor."). A leading proponent of Section 922(g)(9) also observed that "plea bargains often result in misdemeanor convictions for what are really felony crimes." *Id.* at 22,988 (statement of Sen. Feinstein). Failing to treat domestic violence as "a serious crime" was seen as a problem "enormous" in scope. *Id.* at 22,986 (statement of Sen. Lautenberg).

To ensure that state charging practices and variations in state misdemeanor definitions did not impede its goal of disarming domestic abusers nationwide, Congress did not limit the new firearm prohibition's application to statutes requiring any particular degree of force. Senator Lautenberg accordingly described the bill's aim in sweeping and unqualified terms. *E.g.*, *id.* (statement of Sen. Lautenberg) ("no margin of error when it comes to domestic abuse and guns"); *id.* at 19,415 (statement of Sen. Lautenberg) ("zero tolerance when it comes to guns and domestic violence").

2. Congress Understood That Domestic Abuse Tends To Escalate.

In applying Section 922(g)(9), it bears emphasis that the provision was crafted in accord with a well-documented intent to meet the unique dangers inherent in situations of domestic abuse. As respondent correctly observes, *see* Resp. Brief in Opp. to Cert. at 11-12, Congress was concerned about

violent physical conduct. *See, e.g.*, 142 Cong. Rec. at 22,987 (statement of Sen. Lautenberg) (describing "the fellow who first treated [his wife] to a fist in the face"). But its concerns did not stop there: Congress felt that domestic abuse, unlike other types of violence, poses a unique risk even at the misdemeanor level because of its tendency to escalate.

Senator Lautenberg explained that, "[b]y their nature, acts of domestic violence are especially dangerous and require special attention." *Id.* at 22,986 (statement of Sen. Lautenberg). It was Congress' view that all domestic abusers are dangerous, not only those who have already committed offenses that would come close to meeting the definition of a felony. *Cf. id.* at 22,985 (explaining that the amendment, to use the "simplest words," says that "a spouse abuser, wife beater, or child abuser should not have a gun").

Congress was particularly concerned because of evidence that domestic violence tends to escalate, both over time and within the context of a single incident. Within a single incident, the presence of a gun can turn a domestic confrontation deadly in an instant. *See, e.g.*, *id.* at 22,987 (statement of Sen. Murray) ("[T]he gun is the key ingredient most likely to turn a domestic violence incident into a homicide."). Similarly, a spouse who starts with a "minor" beating and resulting misdemeanor conviction might inflict more serious harm the next time around, including potentially fatal harm if a gun is present.

> These crimes involve people who have a history together and perhaps share a home or

> a child. These are not violent acts between strangers, and they don't arise from a chance meeting. Even after a separation, the individuals involved, often by necessity, have a continuing relationship of some sort, either custody of children or common property ownership.

Id. at 19,415 (statement of Sen. Lautenberg). Congress recognized that the ongoing nature of most relationships involving domestic violence made it likely that abuse would continue to occur again and again, and get worse and worse over time.

Congress therefore saw a need to protect past and future victims, often women and children, by taking away the gun that might turn the next incident deadly. The new law, in Senator Lautenberg's view, would "save the life" of the "ordinary American woman" caught in an escalating cycle of domestic abuse. This woman's "generally . . . decent, law-abiding" husband occasionally "loses his temper" when "the stresses of life build," sometimes even "los[ing] control" and lashing out at his family. *Id.* at 26,674 (statement of Sen. Lautenberg). The hypothetical abuser that Senator Lautenberg envisioned had once before beaten his wife and pleaded to a misdemeanor. In the future, Senator Lautenberg foresaw, this husband would "lose his cool at work, or with the boys," "get into another argument with his wife." *Id.* Next, things will "escalate" and "get out of control":

> As their children huddle in fear, the anger will get physical, and almost without knowing what he is doing, with one hand he will strike his wife and with the other hand he will reach

> for the gun he keeps in his drawer. In an instant their world will change. And this woman, this loving mother, this ordinary American, will die or be severely wounded.

Id. Removing the gun from this situation would not prevent the argument or even perhaps the violence, Senator Lautenberg explained, but it would "save [this woman's] life." *Id.*

As this Court recognized in describing legislative intent in *Hayes*, "[f]irearms and domestic strife are a potentially deadly combination nationwide." 555 U.S. at 427. "Domestic violence, *no matter how it is labeled*, leads to more domestic violence, and guns in the hands of convicted wife beaters lead[] to death." 142 Cong. Rec. at 22,986 (statement of Sen. Lautenberg) (emphasis added). Aware of the reality that the likelihood of escalation makes *any* level of domestic violence misdemeanant especially dangerous, Congress did not limit its firearms ban only to those offenders who have already escalated to using "strong and violent physical force." For some victims, waiting that long might be too late. *See id.* (statement of Sen. Lautenberg) ("It may sound like a tough policy, but when it comes to domestic violence it is time to get tough. There is no margin of error when it comes to domestic abuse and guns. A firearm in the hands of an abuser all too often means death.").

B. The Statutory Text And Legislative History Confirm That Section 922(g)(9) Is Not Limited To Persons Convicted Of A Misdemeanor Offense That Has, As

An Element, The Use Of "Strong And Violent Physical Force."

The statutory text and legislative history of Section 922(g)(9) demonstrate that the Sixth Circuit erred in interpreting the provision to apply only to individuals convicted under statutes which proscribe the use of "strong and violent physical force" yet "which happen[] to be … misdemeanor[s]." Pet. App. 12a.

The Sixth Circuit rested its decision on the statutory phrase "has, as an element, the use or attempted use of physical force." *Id.* at 7a (internal quotation marks omitted). This phrase, which was added to the bill as an "apparently last-minute insertion," *Hayes*, 555 U.S. at 428, does not by its terms require "strong and violent physical force," and the legislative history does not support grafting such a requirement onto the statutory language.

First, Members of Congress recognized that offenses that have, as an element, the use or threatened use of strong and violent physical force are likely to be felonies, not misdemeanors. *See, e.g.*, 142 Cong. Rec. at 22,986-87 (statement of Sen. Wellstone) ("For example, in my State of Minnesota, an act of domestic violence is not characterized as a felony unless there is permanent physical impairment, the use of a weapon, or broken bones."). The central purpose of Section 922(g)(9), however, is to prohibit the possession of a firearm by individuals who have *not* been convicted of a felony. The Sixth Circuit's reading of the statute would thus undermine Section 922(g)(9)'s purpose and diminish its practical effect.

Second, when Congress enacted Section 922(g)(9), "domestic abusers were … routinely prosecuted under generally applicable assault or battery laws," *Hayes*, 555 U.S. at 427, which typically do not require proof of strong and violent physical force. *See* Pet. Br. 37-39; *cf.* 142 Cong. Rec. at 26,675 (statement of Sen. Lautenberg) ("[C]onvictions for domestic violence-related crimes often are for crimes, such as assault … ."). Even if there were misdemeanor laws targeting only "strong and violent physical force," it is highly unlikely that Congress intended Section 922(g)(9) to cover only such a limited category of offenses. *Cf. Hayes*, 555 U.S. at 427 ("[W]e find it highly improbable that Congress meant to extend 922(g)(9)'s firearm possession ban only to the relatively few domestic abusers prosecuted under laws rendering a domestic relationship an element of the offense.").

Nor is there any indication in the legislative record that Congress believed that the states would need to enact new assault-and-battery laws redefining those generic misdemeanors if they wished to trigger Section 922(g)(9). Congress saw convicted domestic abusers' uninhibited access to firearms as a pervasive problem, *supra* Part III.A, and meant for Section 922(g)(9) to address that problem from the day the statute took effect. *Cf. Hayes*, 555 U.S. at 427 ("Given the paucity of state and federal statutes targeting *domestic* violence, we find it highly improbable that Congress meant to extend § 922(g)(9)'s firearms possession ban only to the relatively few domestic abusers prosecuted under laws rendering a domestic relationship an element of the offense.").

Third, neither the word "violence" in the term "misdemeanor crime of domestic violence" nor the phrase "physical force" in the accompanying definition should be understood to limit the statute's reach to offenses involving strong and violent physical force. "Domestic violence" is both a defined term and a term of art, and considered in either light does not require a showing of strong violence. By statute, the "use or attempted use" of mere "physical force" is sufficient.

Moreover, the term "domestic violence" is one that is used to describe the pervasive problem and special dangers of abuse in the home and to describe a range of types and degrees of abuse. Rather than emphasizing the word "violence" or asserting that it connotes extreme force, Members of Congress used the phrase "domestic violence" interchangeably with "domestic abuse" during legislative discussions. *See, e.g.*, 142 Cong. Rec. at 21,438; *id.* at 22,986; *id.* at 25,001-02.

Finally, respondent is incorrect that the statute's "use or attempted use of physical force" language "reflect[s] Congress's desire to focus specifically on the use of actual violence against a family member, rather than acts that are violent in some more abstract sense." Resp. Brief in Opp. to Cert. at 12 n.3. This language was added to exclude property crimes from the definition of "misdemeanor crime of domestic violence," not to differentiate between classes of crimes against the person. *See* 142 Cong. Rec. at 26,675 (statement of Sen. Lautenberg) (explaining that this language prevents Section 922(g)(9) from applying to someone convicted of "cutting up a credit card with a pair of scissors");

cf. 18 U.S.C. § 16(a) (defining "crime of violence" as "an offense that has as an element the use, attempted use, or threatened use of physical force against the person *or property* of another" (emphasis added)).

CONCLUSION

For the foregoing reasons, the judgment of the Sixth Circuit should be reversed.

Respectfully submitted,

Of Counsel:

Jonathan E. Lowy
Elizabeth M. Burke
BRADY CENTER TO PREVENT GUN VIOLENCE
1225 Eye St., N.W.
Washington, D.C. 20005
(202) 289-7319

Mitchell F. Dolin
Counsel of Record
Matthew J. Berns
Jeff Kosseff
COVINGTON & BURLING LLP
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 662-6000
mdolin@cov.com

Counsel for Amici Curiae

November 2013