

No. 20-1903

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

UNITED STATES,

Appellee,

v.

WILLIE RICHARD MINOR,

Defendant-Appellant.

On Appeal from the United States District Court for the District of Maine in Case
No. 2:17-cr-21-DBH Before the Honorable D. Brock Hornby

**BRIEF FOR AMICUS CURIAE EVERYTOWN FOR
GUN SAFETY SUPPORT FUND IN SUPPORT OF
THE UNITED STATES ON REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus Everytown for Gun Safety Support Fund states that it has no parent corporation and does not issue stock.

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Campbell, Jacquelyn, et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089 (2003).....4, 7

Davis, Robert, et al., *Preventing Repeat Incidents of Family Violence: Analysis of Data from Three Field Experiments*, 2 J. Experimental Criminology 183 (2006)6

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Farrell, Graham & Pease, Ken, *Once Bitten, Twice Bitten: Repeat Victimization and Its Implications for Crime Prevention*, Police Research Group, Crime Prevention Unit Series Paper No. 46 (1993), <https://tinyurl.com/575ftmm>6

Lloyd, Sam, et al., *Preventing Repeated Domestic Violence: A Demonstration Project on Merseyside*, Police Research Group, Crime Prevention Unit Series Paper No. 49 (1994), <https://tinyurl.com/3j55e439>.....6

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Huecker, Martin, et al., *Domestic Violence*, National Center for Biotechnology Information (Sept 9, 2022), <https://tinyurl.com/wyz5hzh4>3

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Sorenson, Susan & Schut, Rebecca, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 *Trauma, Violence, & Abuse* 431 (2018)8

Walker, Lenore, *Psychology and Domestic Violence Around the World*, 54 *Am. Psychol.* 21 (1999).....7

Wallace, Maeve, et al., *Firearm Relinquishment Laws Associated with Substantial Reduction in Homicide of Pregnant and Postpartum Women*, 40 *Health Affairs* 1654 (2021)9

Zeoli, April, et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 *Am. J. of Epidemiology* 2365 (2018).....8

INTEREST OF AMICUS CURIAE¹

Everytown for Gun Safety Support Fund is the education, research, and litigation arm of Everytown for Gun Safety (“Everytown”). Everytown is the nation’s largest gun violence prevention organization with nearly ten million supporters across the country, including over 475,000 in Maine, Massachusetts, New Hampshire, and Rhode Island. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a 20-year-old gunman murdered twenty children and six adults at an elementary school in Newtown, Connecticut (after shooting and killing his mother in their home). The mayors of 29 cities and other localities in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island are members of Everytown’s Mayors Against Illegal Guns coalition. Over the past several years, Everytown has devoted substantial resources to researching and developing expertise in gun laws, including in the First Circuit.

A critical part of Everytown’s mission is advocating for comprehensive, consistent enforcement of laws designed to keep dangerous weapons out of the hands

¹ Counsel for Appellant and Appellee consent to the filing of this brief. Amicus curiae has been granted leave to file this brief. *See* Oct. 24, 2022 Order. No party or party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or any other person other than amicus or amicus’ counsel contributed money intended to fund preparing or submitting this brief.

of convicted domestic abusers. Everytown submits this amicus brief to demonstrate that keeping American communities safe for everyone—including victims of domestic violence—requires interpreting 18 U.S.C. § 922(g)(9) in accordance with the manifest intent of Congress to prohibit any person convicted of any “misdemeanor crime of domestic violence” from possessing a firearm. Everytown also includes a large network of gun violence survivors who are empowered to share their stories and advocate for responsible gun laws such as Section 922(g)(9).

Everytown’s mission includes filing amicus briefs that provide context and doctrinal analysis that might otherwise be overlooked, including in cases related to the connection between domestic violence and firearms. *E.g.*, *Rehaif v. United States*, No. 17-9560 (U.S. filed April 1, 2019) (proper interpretation of 18 U.S.C. §§ 922(g) & 925(a)(2)); *Voisine v. United States*, No. 14-10154 (U.S. filed Jan. 26, 2016) (proper interpretation of 18 U.S.C. § 922(g)(9)); *Jones v. Becerra*, No. 20-56174 (9th Cir. filed Jan. 26, 2021) (Second Amendment challenge to California law prohibiting sale of firearms to individuals under 21); *Smits v. Park Nicollet Health Services*, No. A20-0711 (Minn. Sup. Ct. filed Sept. 27, 2021) (healthcare provider’s duty of care to a patient who may be a perpetrator of domestic violence and their family who may be victims).

Everytown’s research demonstrates the empirically interconnected relationship between domestic violence and gun violence. The Court should take

this relationship into account in interpreting Section 922(g)(9), which was intended to close a dangerous loophole in the federal prohibition on gun possession by domestic abusers convicted of misdemeanor offenses.

INTRODUCTION

This appeal is before the Court because of firearm possession by an individual convicted of a domestic violence offense. Everytown believes that in resolving this appeal, it is critical that the Court consider the interconnected epidemics of domestic violence and gun violence.

Domestic violence is devastatingly common and devastatingly cyclical.² Domestic violence affects millions of people in the United States every year and it occurs in all communities.³ There are many risk factors for domestic violence, including a history of domestic violence. Someone who has engaged in domestic

² The terms “domestic violence” and “intimate partner violence” are both used to describe abuse perpetrated within intimate relationships and other close family or household relationships. Some researchers, service providers, and other stakeholders use the terms interchangeably. Others use the terms in slightly different ways, depending on the scope of the abuse. *See Guns and Violence Against Women: America’s Uniquely Lethal Intimate Partner Violence Problem*, Everytown for Gun Safety Support Fund (Jan. 26, 2002), <https://tinyurl.com/mr2wtsep>. For purposes of this brief, amicus uses the term “domestic violence” inclusively to cover all abuse perpetrated within intimate partner, close family, and household relationships.

³ Huecker et al., *Domestic Violence*, Nat’l Ctr. for Biotechnology Information (Sept. 9, 2022), <https://tinyurl.com/wyz5hzh4>.

violence before is likely to abuse again. And an abuser's access to a gun greatly increases the likelihood that domestic violence will turn deadly.

The data demonstrating the lethal connection between gun access and domestic violence are staggering. If a male domestic abuser has access to a gun, it becomes five times more likely that his female partner will be killed.⁴ According to a recent study published by Everytown, at least 53% of mass shootings with four or more people killed between 2009 and 2020 involved a perpetrator shooting a current or former intimate partner or a family member, and nearly 3 in 4 children and teens killed in mass shootings died in a domestic violence related incident.⁵ An average of 72 women are shot and killed by an intimate partner every month in the United States.⁶ The stories that survivors have shared in this brief, as well as the stories of countless others, highlight the immense pain and suffering that these numbers represent.

Preventative steps can, and should, be taken. The studies and stories described in this brief demonstrate that lethal domestic violence can be foreseen and therefore

⁴ Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (2003).

⁵ *Mass Shootings in America: Twelve Years of Mass Shootings in the United States*, Everytown for Gun Safety Support Fund (Jun. 4, 2021), <https://tinyurl.com/yckd9b8s>.

⁶ Everytown, *Demographics: Intimate Partner Homicide*, EveryStat Tool, <https://everystat.org> (last visited Oct. 26, 2022).

prevented. Because individuals who have committed acts of domestic violence are likely to be repeat offenders, ensuring that individuals who have been convicted of domestic violence offenses are prohibited from possessing guns is a critical step to reducing the tragic loss of life caused by domestic violence. Congress recognized as much in enacting 18 U.S.C. § 922(g)(9), which it intended to close a loophole that had permitted individuals convicted of domestic violence offenses to possess guns.

Everytown respectfully submits that the Court should consider the relationship between gun possession and lethal acts of domestic violence in resolving this appeal.

ARGUMENT

I. DOMESTIC VIOLENCE CAN BE PREDICTED AND PREVENTED

Domestic violence can be difficult to detect. It often happens in the home, behind closed doors, and involves the exercise of coercive control that prevents victims from disclosing the abuse. But that does not mean that acts of domestic violence are unforeseeable. One well-established risk factor for domestic violence is a history of domestic violence. And, as Congress recognized in enacting Section 922(g)(9), access to a gun plays an outsize role in making domestic violence deadly.

A. A History Of Domestic Violence Is A Significant Risk Factor For Domestic Violence

Domestic violence is not an isolated, individual event, but rather a pattern of

escalating behaviors used against a victim throughout the course of the relationship. Domestic violence offenders, including those who have been convicted or restrained, are likely to abuse their victim again. In fact, of all criminal convictions, domestic violence has the highest rate of recurrence.⁷ The risk of a domestic violence victim suffering from another incident is greatest in the period soon after the previous victimization.⁸ In one study, more than 65% of the women killed in a domestic violence situation had experienced physical abuse by the perpetrator prior to the fatal event.⁹ Surveys of domestic violence victims as well as police records demonstrate that abusers are highly likely to reoffend.¹⁰

While some abusers repeat a particular set of abusive acts, others use a wide variety of tactics with no particular pattern.¹¹ Each episode of domestic violence is linked to the others; every instance of abuse builds upon the previous one. Victims

⁷ Davis et al., *Preventing Repeat Incidents of Family Violence: Analysis of Data from Three Field Experiments*, 2 J. Experimental Criminology 183 (2006).

⁸ Farrell & Pease, *Once Bitten, Twice Bitten: Repeat Victimization and Its Implications for Crime Prevention* 11-12, Police Research Grp., Crime Prevention Unit Series Paper No. 46 (1993), <https://tinyurl.com/575ftmmn>.

⁹ McFarlane et al., *Stalking and Intimate Partner Femicide*, 3 Homicide Studies 300, 309 (1999).

¹⁰ Lloyd et al., *Preventing Repeated Domestic Violence: A Demonstration Project on Merseyside*, Police Research Group, Crime Prevention Unit Series Paper No. 49 (1994), <https://tinyurl.com/3j55e439>.

¹¹ Ganley, *Understanding Domestic Violence*, Alliance for Hope Int'l (2008), <https://tinyurl.com/22672884>.

of intimate partner violence often believe that the first violent episode is a one-time event. But research shows that abusive behaviors are cyclical. Whether physical, verbal, psychological, or sexual abuse, domestic abusers tend to continue abusing in order to exercise control over their partners.

Research shows that leaving the relationship often does not stop the abuse. Many abusers continue to harass, stalk, and harm their victims long after they have left, even to the point of murder.¹² In one U.S. study, 70% of reported injuries from domestic violence occurred after the separation of a couple.¹³

Thus, a history of domestic violence is a significant indicator of future domestic violence.

B. An Abuser's Possessing Firearms Makes Domestic Violence Much More Likely To Turn Deadly

A domestic violence offender who has access to a firearm is far more likely to commit a lethal act of domestic violence than an offender who does not have such access. In fact, if a male domestic abuser has access to a gun, he is five times more likely to kill his female partner.¹⁴ “Estimates from the most recent nationally

¹² Rakovec-Felser, *Domestic Violence and Abuse in Intimate Relationship from public health perspective*, 2 Health Psychology Research 62, 63 (2014).

¹³ Walker, *Psychology and Domestic Violence Around the World*, 54 Am. Psychol. 21, 24 (1999).

¹⁴ Campbell et al., *Risk Factors for Femicide in Abusive Relationships*, *supra* note 4.

representative study of [intimate partner violence] that asked about guns mean that about 4.5 million U.S. women have been threatened by an intimate partner with a gun and nearly 1 million have had an intimate [partner] actually use a gun against them[.]”¹⁵ An estimated average of 72 women are shot and killed by an intimate partner every month in the United States.¹⁶ In one study, 11 out of 14 male perpetrators indicated that they would not have been able to murder their partners without access to a firearm.¹⁷ Domestic violence homicide rates are 65% higher in states with high gun ownership than states with low gun ownership.¹⁸ And rates of domestic violence incidents involving firearms fall by 14-16% when states restrict abusers under a domestic violence restraining order from accessing guns.¹⁹

Moreover, access to firearms increases the risk of multiple fatalities in episodes of domestic violence. Most mass shootings between 2009 and 2020 were

¹⁵ Sorenson & Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 *Trauma, Violence, & Abuse* 431 (2018) (citation omitted).

¹⁶ See Everytown, *Demographics: Intimate Partner Homicide*, *supra* note 6.

¹⁷ *Hearing on Gun Control Legislation before the Joint Comm. on Pub. Safety & Homeland Security*, 2013 Leg., 188th Sess. (Mass. 2013) (David Adams, Co-Executive Director, Emerge), *reproduced at* tinyurl.com/bddjk77x.

¹⁸ *Guns and Violence Against Women*, Everytown for Gun Safety Support Fund, *supra* note 2, at 13.

¹⁹ Zeoli et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 *Am. J. of Epidemiology* 2365, 2369 (2018).

rooted in domestic violence.²⁰ Male perpetrators are almost twice as likely to kill at least one additional victim when using a gun to commit domestic violence homicide.²¹ Further, murder is one of the leading causes of maternal mortality in pregnant and postpartum women.²² The majority of these killings are perpetrated by an intimate partner with a firearm.²³

Thus, it is foreseeable that domestic violence will become deadly if the abuser has access to a firearm.

II. STORIES OF SURVIVORS EXEMPLIFY HOW ACCESS TO FIREARMS MAKES ACTS OF DOMESTIC VIOLENCE DEADLY

The studies described above demonstrate the interconnectedness of domestic violence and gun violence. Many of those affiliated with Everytown have been affected by abusers who used firearms in their abuse. Three members of the Everytown Survivor Network, a nationwide community of survivors working together to end gun violence, have agreed to share their stories with the Court to

²⁰ *Mass Shootings in America*, Everytown for Gun Safety Support Fund, *supra* note 5.

²¹ Kivisto & Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 J. Am. Acad. Psychiatry and Law 1, 5 (2020).

²² Lawn et al., *Homicide is a Leading Cause of Death for Pregnant Women in U.S.*, BMJ Publishing Group 1 (2022), <https://tinyurl.com/2p9xtwpd>.

²³ Wallace et al., *Firearm Relinquishment Laws Associated With Substantial Reduction In Homicide Of Pregnant And Postpartum Women*, 40 Health Affairs 1654 (2021).

provide perspective on and information about the danger of gun violence in the context of domestic violence.²⁴

A. Jane Doe²⁵

Jane Doe became a survivor of domestic violence in 1993, when her sister Lucy's husband killed Lucy with a gun in their home. After the murder, Jane learned that her sister's death was the result of ongoing, escalating abuse that Lucy's husband had been committing against her and her children, including at gunpoint.

Jane and Lucy were always close, not just with one another, but with the rest of their large, loving family. Lucy was a warm, quiet soul who lit up the room and left lasting impressions on everyone she met. Nick was one of those people. Nick and Lucy were high school sweethearts who reconnected after relationships and children with other people, eventually married, and added another daughter to their family.

At some point during Lucy and Nick's marriage, Jane noticed a shift. Lucy, so close with her family, stopped coming around often, and had to call Nick to check in when she did. Lucy sometimes seemed afraid. Nick was controlling and often stressed. He did not want Lucy to work outside the home, so she quit her job, and

²⁴ Jane Doe's and Doreen's stories were previously included in an amicus brief that Everytown filed in *Smits v. Park Nicollet Health Services*, No. A20-0711 (Minn. Sup. Ct.).

²⁵ For safety reasons, Jane Doe's story uses pseudonyms.

then slowly stopped doing other things she loved, such as attending school and going to church. Jane also recalls that Nick attended therapy and dealt with anger and abandonment issues.

At the time, Jane did not know these and other changes in her sister's life were warning signs of domestic violence, and Lucy never expressly told Jane that she and the children were experiencing abuse. Still, one day she called Jane to ask that "if anything happened," Jane would take care of her girls. Jane said "of course," but did not understand then the veiled warning behind the request.

During this time, it became hard for the sisters to have time alone, so Jane and Lucy instituted weekly Sunday night movie dates, where they would watch a movie together and chat on the phone after Lucy had put her daughters to bed. One summer night while Lucy and Jane were on the phone having one of their movie nights, Lucy said, "I hear something. I'm going to call you back." It was the last time Jane would ever hear her sister's voice. Around 3 a.m., Nick began calling Jane's family to say that Lucy was missing, but they knew Lucy would never go out at night and leave her daughters home alone. The police found Lucy's body locked in a storage bin at her apartment building. She had been shot four times, stabbed, and subject to blunt force trauma. Her daughters were found locked in their apartment closet—Nick had threatened to kill them too if they revealed what had happened. They were 8 and 3 years old.

Jane and her family later learned that Lucy had worked up the courage to ask Nick to leave; he told her that if he could not have her, no one could. He premeditated her killing and took several steps to cover it up. They later learned that Nick had also sexually assaulted Lucy's 8-year-old daughter (his stepdaughter), brutally beaten Lucy on multiple occasions, and threatened Lucy and her daughters with a gun repeatedly before the night he carried out the threats to their lethal endpoint.

Nick was convicted of Lucy's homicide and sentenced to imprisonment for 20 years to life. Jane's family attend his parole hearings, and so far his requests for parole have been denied. He has never admitted to his crime and never apologized. For Jane and her family, 29 years have not taken away the pain of Lucy's murder; it is an "agony" she lives with every day. Jane and Lucy's older brother never recovered from his sister's death, and eventually died by suicide. Lucy's oldest daughter was deeply traumatized. Her youngest daughter lived with her mother's killer's family.

In the years since, Jane has come to recognize the red flags of Nick's abuse, including his desire for control, restriction of Lucy's activity outside the home, history of non-lethal abuse, anger, and other mental health issues. Similarly, it is only in hindsight that she understands that Nick had access to a gun during the course of his abuse, and she still does not know how he acquired it.

Jane has channeled some of her pain into advocacy against domestic and gun violence. Based on her personal experience and her further training as an advocate, she wants mental health providers and other community members to understand that domestic violence has no single profile—it affects families of all backgrounds, including close-knit, educated, economically-advantaged families like her own. And it is important that people learn the signs of potential abuse and gun violence. As Jane and her family learned to their deep sorrow, the chance of someone being murdered by a domestic abuser escalates exponentially in two common scenarios: when a person takes steps to take their power back from their abuser, and when the abuser has access to a gun.

B. Doreen

Doreen survives her sister-in-law, Laura, and her three nieces. The family was shot and killed in 1995 by Laura’s husband and the girls’ father, Dave, in front of Laura’s mother, who was also shot. Doreen’s sister-in-law Laura was a “tender soul,” a brilliant and loving mom to three beautiful, curious daughters. Laura was raised in and involved with a conservative church. She internalized its values, and strongly believed that her role was to submit to the leadership of her husband, who was a known pastor’s son in their small, rural community.

In public, Dave maintained a devout and loving persona, but for Doreen, who was both a dedicated aunt to her nieces and a trained psychologist, there were

warning signs regarding Dave—symptoms of anxiety in the children, hints of Dave’s intimidation of his family, and his impulsivity. And, as Doreen later learned, Laura’s private journals detailed threats of physical violence, and her fear that Dave would kill her.

The couple met with church counselors and pastors, who encouraged Laura to stay with her husband. Dave agreed to see a medically trained mental health professional once, but then refused to return. Still, with the help of her brother and Doreen, Laura worked up the courage to leave Dave, move herself and her daughters to live with her mother, Margaret, and seek a restraining order against Dave. One night when Margaret was out, Dave talked his way into the house and sexually assaulted Laura, resulting in pregnancy and the birth of their youngest daughter.

Five months after Laura gave birth to their youngest daughter and on the eve of her oldest daughter’s first day of kindergarten, Doreen’s family gathered at Margaret’s home, where Laura and her daughters continued to live, to celebrate the big day with gifts of new school supplies. Doreen recalls a joyful evening. That night, Doreen and her husband looked forward to hearing from their niece about her first day of school.

Instead, the next afternoon, Doreen came home to a voicemail: Laura and all three children were dead. Margaret had been shot and was in the hospital. Doreen and her husband raced there; he had to stop to vomit at a gas station along the way,

where Doreen overheard the gas station attendants already talking about the murders of her family.

Despite having two restraining orders against him, Dave had been able to access a shotgun and bring it across state lines to commit the ultimate act of domestic violence against his entire family. Dave had shot his wife and young daughters in their faces, and Margaret was shot and wounded. After killing Laura and the girls, he threw his gun at Margaret's feet and begged her to shoot him, which she had refused to do. At the hospital, Doreen learned that Dave had shot Margaret as she tried to protect one of her grandchildren, who died in her arms. Later, Doreen would wash her niece's blood from Margaret's hair. The children were 5, 3, and 5 months old when their father shot them to death.

Twenty-six years later, Laura's family and community still suffer from their loss. Margaret experienced immediate severe physical and mental trauma, was retraumatized by her grand jury testimony following Dave's arrest, and experienced trauma-related disabilities for the rest of her life. Laura's siblings experienced long-lasting and severe mental health challenges. Doreen, who cared for Margaret after her shooting, experienced caregiver trauma, and her own children were deeply affected. Many of the children in their small town's class of kindergarteners, who lived and learned in the shadow of their young classmate's murder by her own father, suffered from their loss and fear.

Today, Doreen advocates to educate people that what happened to her family is not an outlier—domestic violence can and does happen in any community. She now understands that the ability to procure a firearm significantly increases the risk that domestic violence will become deadly; in her family’s case, she believes that Dave would not have had the nerve to commit the murders if he had not had access to a firearm. She understands that shame, stigma, and even denial can hinder the ability of abused persons to come forward and believes that providers have a role to play in interrupting domestic violence. As a practicing psychologist, Doreen believes that mental health practitioners must investigate whether a patient has issues with control, impulsivity, and other markers that, when tied to gun access, are risk factors that can indicate that a perpetrator has both the means, and the inclination, to act lethally.

C. LaTonya

LaTonya is the mother and survivor of Tyesha, who was murdered by the father of her two young daughters on the morning of October 13, 2009. The daughters were six months and two years old at the time of Tyesha’s death. Her killer shot Tyesha with a stolen firearm.

Tyesha grew up in Topeka, Kansas, with her mother, LaTonya, and younger siblings. Tyesha and LaTonya were very close. LaTonya describes Tyesha as “a fighter who was protective of her family, especially her younger siblings, and

unafraid to speak her mind.” Tyesha had a strong sense of style and enjoyed dressing well. After high school, she became a certified nursing assistant.

When Tyesha was about 17, she moved to Georgia, where she met and began a relationship with the man who later took her life. When she was 18, she became pregnant, and the father began physically abusing her. When LaTonya and her mother learned about this, they drove to Georgia to get Tyesha. This was the first time LaTonya met Tyesha’s abuser. She immediately felt there was something off about him; she would later learn that he was on probation for statutory rape.

Tyesha gave birth to her first daughter at home in Kansas, but despite LaTonya’s efforts, Tyesha moved back to Georgia. Tyesha firmly believed that a child needed two parents. In Georgia, the abuse continued. The police were called a couple times. On one occasion, Tyesha had to lock herself and her daughter in a room while they waited hours for the police to arrive. At one point, Tyesha managed to leave her abuser and obtained a protective order against him, but he continued to harass and manipulate her. Tyesha gave him another chance, and soon she was pregnant with their second child.

Tyesha gave birth to her second daughter in March 2009. Soon after, she ended her relationship with her abuser. At this time, LaTonya and Tyesha spoke on the phone every day. LaTonya was afraid for her daughter and granddaughters, but

Tyesha assured her mother that she was strong and unafraid of her abuser. The harassment and physical abuse escalated, and Tyesha got a second protective order.

On October 12, 2009, LaTonya called Tyesha as usual. To her surprise, the abuser picked up the phone. He said he was there to see his children and that Tyesha was in the shower. The next day, while LaTonya was at work, her mother showed up, crying. As soon as LaTonya got into the car with her mother, her mother said “Tyesha.” LaTonya immediately knew that her worst fear had come true: Tyesha’s abuser had killed her daughter. She later learned that he had shot and killed not only Tyesha, but also her friend, who had come over to help Tyesha move into a new apartment. Though her abuser could not legally possess firearms, he had stolen the gun from a friend.

LaTonya’s first thought was, “how am I going to tell my granddaughters that their mother is now in heaven?” She wondered if Tyesha had died instantly; the thought of her 21-year-old daughter suffering before death was devastating. Afterwards, when sorting through Tyesha’s things, LaTonya found the second protective order that Tyesha had gotten against her abuser. LaTonya wondered, “what good did this piece of paper do?” As far as LaTonya knows, the police never took steps to learn if Tyesha’s abuser possessed any guns after Tyesha obtained the protective order.

Tyesha's murderer was tried and convicted of two murders and illegal possession of a firearm. He received two life sentences for the murders and an additional ten years for the firearm. LaTonya now suffers from PTSD. Tyesha's daughters were formally adopted by a family friend, and they still don't have an answer as to why their father killed their mother. Tyesha's younger daughter, who was only six months old when she lost her mother, struggles with her inability to remember her mother. Tyesha's extended family also has been impacted by her death. Tyesha was family-oriented and had been the driving force behind family gatherings on Christmas, Thanksgiving, and Easter. The family no longer eats all together on those holidays.

LaTonya strongly believes that if the abuser did not have access to a firearm, Tyesha and her friend would both be alive today. LaTonya says, "they say as time goes on, your grief should get better. It does not. I still grieve as I did the same day as my daughter's life was taken away from me."

III. CONGRESS RECOGNIZED THAT PROHIBITING INDIVIDUALS CONVICTED OF PAST DOMESTIC VIOLENCE OFFENSES FROM OWNING FIREARMS HELPS PREVENT LETHAL DOMESTIC VIOLENCE

Congress passed Section 922(g)(9) to close loopholes that allowed domestic abusers to possess firearms, with the understanding that domestic violence can, and all too often does, escalate to murder when a firearm is part of the equation. Congress intended the statute to be a broad, "zero tolerance," "no margin of error,"

prohibition on the possession of firearms by those convicted of domestic abuse. 142 Cong. Rec. S8,831, S8,831-32 (daily ed. July 25, 1996) (statement of Sen. Lautenberg).

The federal Gun Control Act, passed in 1968, “prohibited possession of a firearm by any person convicted of a felony.” *United States v. Hayes*, 555 U.S. 415, 418 (2009) (citing 18 U.S.C. § 921). Even before the enactment of Section 922(g)(9), Congress recognized that certain individuals who have not been convicted of a felony should still be precluded from possessing firearms. Falling into that category are individuals who were ordered restrained “from harassing, stalking, or threatening an intimate partner . . . or child.” 18 U.S.C. § 922(g)(8)(B).

A dangerous loophole still remained: domestic abusers who had not been convicted of a felony or subject to restraining order. Domestic violence offenses were frequently either charged as, or pleaded down to, misdemeanors. 142 Cong. Rec. S, 11872, S11,876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (noting that most domestic violence offenders plead down to a misdemeanor and “g[et] away with a slap on the wrist”). As a result, these offenses fell outside the prohibitions triggered by a felony conviction. And domestic abusers were able to keep their guns.

In 1996, Congress closed that loophole when it extended the gun possession prohibition to include “anyone convicted of a crime involving domestic violence

from possessing firearms” without exception. 142 Cong. Rec. S11,876. This legislation is known as the “Lautenberg Amendment.” As Senator Lautenberg explained on the Senate floor:

Under current Federal law, it is illegal for persons convicted of felonies to possess firearms. Yet, many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies. At the end of the day, due to outdated thinking, or perhaps after a plea bargain, they are-at most- convicted of a misdemeanor. In fact, Mr. President, most of those who commit family violence are never even prosecuted. When they are, one-third of the cases that would be considered felonies, if committed by strangers are, instead, filed as misdemeanors. The fact is, that in many places today, domestic violence is not taken as seriously as other forms of criminal behavior. Often, acts of serious spouse abuse are not even considered felonies.

142 Cong. Rec. S8,831 (statement of Sen. Lautenberg).

The drafters of the Lautenberg Amendment understood the danger that convicted domestic abusers posed. *See* 142 Cong. Rec. S8,831 (statement of Sen. Lautenberg) (explaining that the amendment, “[i]n simple words,” says that “wife beaters and child abusers should not have guns”); 142 Cong. Rec. S10379 (daily ed. Sept. 12, 1996) (statement of Sen. Murray) (“[T]he gun is the key ingredient most likely to turn a domestic violence incident into a homicide.”).²⁶ They understood

²⁶ Others in Congress advocated for the statute’s broad application. For example. Senator John Kerry stated that “guns absolutely must be forbidden for those who abuse their spouses,” 142 Cong. Rec. S12,136, S12,141 (daily ed. Oct. 1, 1996); Representative Lynn Woolsey stated: “It is simple. Wife-beaters, child abusers, and other domestic violence offenders should not have access to a gun. Period,” 142 Cong. Rec. H8100 (daily ed. July 23, 1996); and Senator Chris Dodd

that domestic abuse may evolve into homicide when the abuser has access to a gun, and sought to prevent this lethal escalation by taking guns out of the hands of abusers. *E.g.*, 142 Cong. Rec. S11,226, S11,227 (daily ed. Sept. 25, 1996) (statement of Sen. Lautenberg) (“[T]he presence of a gun increases the likelihood that a woman will be killed threefold.”); 142 Cong. Rec. S, 10,377, S10,378 (daily ed. Sept. 12, 1996) (statement of Sen. Lautenberg) (“The statistics and the data are clear. Domestic violence, no matter how it is labeled, leads to more domestic violence, and guns in the hands of convicted wife beaters leads to death.”).

The legislative history is consistent and unmistakably plain: Congress intended a broad application of the statute. The interpretation advocated by Appellant and adopted by the panel is inconsistent with that intent. This unduly constrained interpretation of the statute would take Appellant outside the ambit of Section 922(g)(9) because Appellant did not know that his state court conviction for assaulting his then-wife legally constituted a “misdemeanor crime of domestic violence” under federal law, even though he did know that his prior conviction was for an assault of his then-wife. This loophole is the kind Congress sought to avoid by enacting the Lautenberg Amendment. Congress intended to keep guns out of the hands of all individuals who had been convicted of domestic violence, regardless of

indicated that the law would “prevent anyone convicted of any kind of domestic violence from owning a gun.” 142 Cong. Rec. S12,341 (daily ed. Oct. 3, 1996).

whether they had precise knowledge that their abuse specifically qualified as a “misdemeanor crime of domestic violence” under 18 U.S.C. §§ 921(a)(33)(A), 922(g)(9). That is why the statute contains no notice requirement. Indeed, “opponents of the gun ban proposed to limit the ban only to offenders who had been notified of the ban when they were originally convicted,” “want[ing] to say that ignorance of the law would be an excuse.” 142 Cong. Rec. S11,872 (statement of Sen. Lautenberg). That proposal was rejected.

This Court should decline Appellant’s invitation to rewrite federal gun laws, contravene clear legislative intent, and undermine public safety by reopening a loophole allowing certain convicted domestic abusers to possess firearms. Congress drafted a “zero tolerance” “amendment [to] say[]: Beat your wife, and lose your gun ... no ifs, ands, or buts.” 142 Cong. Rec. S8,831-32 (statement of Sen. Lautenberg). Congress’s intent was to close all loopholes that allowed domestic abusers to possess guns, based on the clear link between domestic violence and gun violence. The Court should not now allow any of those loopholes to reopen.

CONCLUSION

For the foregoing reasons, the Court should consider the connection between domestic violence and gun violence in interpreting Section 922(g)(9).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the page limitation set by this Court's September 14, 2022 order because it is 23 pages.

/s/ Alan E. Schoenfeld
ALAN E. SCHOENFELD

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit via the CM/ECF system this 26th day of October, 2022. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Alan E. Schoenfeld _____

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