[ORAL ARGUMENT NOT REQUESTED]

No. 21-4121

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MELYNDA VINCENT,

Plaintiff-Appellant,

v.

MERRICK GARLAND, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Utah
District Court Case No. 2:20-cv-00883 (Judge Barlow)

BRIEF FOR FEDERAL APPELLEES

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TABLE OF CONTENTS

Page

STATEMENT OF RELATED APPEALS

STATEMENT OF JURISDICTION 1

STATEMENT OF THE ISSUE 1

PERTINENT STATUTES 1

STATEMENT OF THE CASE 1

A. Statutory Background 1

B. Factual Background and Prior Proceedings 3

SUMMARY OF ARGUMENT 5

STANDARD OF REVIEW 8

ARGUMENT 8

THE DISTRICT COURT CORRECTLY REJECTED VINCENT'S CONSTITUTIONAL CHALLENGE. 8

A. This Court's precedent upholding longstanding prohibitions on firearm possession by felons forecloses Vincent's challenge. 8

B. Text and history confirm that the application of 18 U.S.C. § 922(g)(1) to Vincent is consistent with the Second Amendment. 16

1. The text of the Second Amendment and its historical context make plain that Vincent, a convicted felon, cannot mount a successful attack on 18 U.S.C. § 922(g)(1). 16

2. A comprehensive review of historical tradition confirms legislatures' authority to prohibit felons from possessing firearms. 25

3. Vincent's contrary arguments lack merit. 42

CONCLUSION 51

STATEMENT REGARDING ORAL ARGUMENT

CERTIFICATE OF COMPLIANCE

ADDENDUM

TABLE OF AUTHORITIES

Cases (Supreme Court and Appellate): **Page(s)**

Baze v. Rees,
553 U.S. 35 (2008) 38

Binderup v. Attorney General,
836 F.3d 336 (3d Cir. 2016) 10, 46, 47

District of Columbia v. Heller,
554 U.S. 570 (2008) 4, 6, 8, 9, 11, 12, 13, 20, 21, 23, 24, 25, 26, 28, 33, 34, 36, 43

Folajtar v. Attorney Gen.,
980 F.3d 897 (3d Cir. 2020) 10, 32, 36, 38, 44, 46, 47, 49

Hamilton v. Pallozzi,
848 F.3d 614 (4th Cir. 2017) 10, 44

Heller v. District of Columbia,
670 F.3d 1244 (D.C. Cir. 2011) 15

Johnson v. United States,
576 U.S. 591 (2015) 48

Kanter v. Barr,
919 F.3d 437 (7th Cir. 2019) 46, 48

M.A.K. Inv. Grp., LLC v. City of Glendale,
897 F.3d 1303 (10th Cir. 2018) 8

McDonald v. City of Chicago,
561 U.S. 742 (2010) 8

Medina v. Whitaker,
913 F.3d 152 (D.C. Cir. 2019) 7, 10, 16, 22, 35, 37, 38, 41, 44, 46, 47

New York State Rifle & Pistol Ass'n v. Bruen,
142 S. Ct. 2111 (2022) 6, 12, 13, 14, 15, 16, 20, 21, 23, 24, 25, 26, 28, 36, 37, 41, 43, 45

New York State Rifle & Pistol Ass'n v. City of New York,
140 S. Ct. 1525 (2020) 14

Range v. Attorney General:
53 F.4th 262 (3d Cir. 2022), *vacated upon granting of rehearing en banc*,
No. 21-2835, 2023 WL 118469 (3d Cir. Jan. 6, 2023) 17, 26, 28, 30, 31, 33, 34, 41, 44, 47
No. 21-2835, 2023 WL 118469 (3d Cir. Jan. 6, 2023)..... 10

Reedy v. Werholtz,
660 F.3d 1270 (10th Cir. 2011)..... 11

Richardson v. Ramirez,
418 U.S. 24 (1974) 22

Spencer v. Kemna,
523 U.S. 1 (1998) 22

Terminiello v. City of Chicago,
337 U.S. 1 (1949) 45

Thompson v. Weyerhaeuser Co.,
582 F.3d 1125 (10th Cir. 2009)..... 14

Tyler v. Hillsdale Cty. Sheriff's Dep't,
837 F.3d 678 (6th Cir. 2016) 22, 23

United States, In re,
578 F.3d 1195 (10th Cir. 2009) (unpublished) 5, 9

United States v. Anderson,
559 F.3d 348 (5th Cir. 2009)..... 10

United States v. Baker,
49 F.4th 1348 (10th Cir. 2022)..... 14

United States v. Bean,
537 U.S. 71 (2002) 48

United States v. Bena,
664 F.3d 1183 (8th Cir. 2011) 23

United States v. Carpio-Leon,
701 F.3d 974 (4th Cir. 2012) 23

United States v. Gieswein,
887 F.3d 1054 (10th Cir. 2018) 9

United States v. Griffith,
928 F.3d 855 (10th Cir. 2019) 9

United States v. McCane,
573 F.3d 1037 (10th Cir. 2009), *cert denied*,
559 U.S. 970 (2010) 4, 5-6, 6, 9, 11, 15

United States v. Molina,
484 F. App'x 276 (10th Cir. 2012) 9

United States v. Rozier,
598 F.3d 768 (11th Cir. 2010) 10

United States v. Scroggins,
599 F.3d 433 (5th Cir. 2010) 9

United States v. Vongxay,
594 F.3d 1111 (9th Cir. 2010) 23

United States v. Yancey,
621 F.3d 681 (7th Cir. 2010) 23

Wallach v. Van Riswick,
92 U.S. 202 (1875) 40

Cases (District Court):

Campiti v. Garland, No. 3:22-cv-177,
2023 WL 143173 (D. Conn. Jan. 10, 2023)..... 17

United States v. Baker, No. 2:20-cr-301,
2022 WL 16855423 (D. Utah Nov. 10, 2022) 14, 18

United States v. Burrell, No. 21-cr-20395,
2022 WL 4096865 (E.D. Mich. Sept. 7, 2022) 20

United States v. Burton, No. 3:22-cr-362,
2022 WL 16541139 (D.S.C. Oct. 28, 2022) 19

United States v. Butts, No. 22-cr-33, --- F. Supp. 3d ----,
2022 WL 16553037 (D. Mont. Oct. 31, 2022) 19

United States v. Cage, No. 3:21-cr-68,
2022 WL 17254319 (S.D. Miss. Nov. 28, 2022) 18

United States v. Campbell, No. 22-cr-138,
2022 WL 17492255 (W.D. Okla. Sept. 27, 2022) 19

United States v. Carleson, No. 3:22-cr-32,
2022 WL 17490753 (D. Alaska Oct. 28, 2022) 19

United States v. Carpenter, No. 1:21-cr-86,
2022 WL 16855533 (D. Utah Nov. 10, 2022) 18

United States v. Carrero, No. 2:22-cr-30,
--- F. Supp. 3d. ----, 2022 WL 9348792 (D. Utah Oct. 14, 2022) 14-15, 19

United States v. Charles, No. 22-cr-154,
--- F. Supp. 3d ----, 2022 WL 4913900 (W.D. Tex. Oct. 3, 2022) 19, 44

United States v. Cockerham, No. 5:21-cr-6,
2022 WL 4229314 (S.D. Miss. Sept. 13, 2022) 19-20

United States v. Coleman, No. 3:22-cr-8-2,
2023 WL 122401 (N.D. W. Va. Jan. 6, 2023) 17

United States v. Collette, No. 22-cr-141,
--- F. Supp. 3d ----, 2022 WL 4476790 (W.D. Tex. Sept. 25, 2022)..... 19

United States v. Coombes, No. 22-cr-189,
--- F. Supp. 3d ----, 2022 WL 4367056 (N.D. Okla. Sept. 21, 2022)..... 19

United States v. Daniels, No. 1:03-cr-83,
2022 WL 5027574 (W.D.N.C. Oct. 4, 2022) 19

United States v. Dawson, No. 3:21-cr-293,
2022 WL 17839807 (W.D.N.C. Dec. 21, 2022) 18

United States v. Delpriore, No. 3:18-cr-136,
--- F. Supp. 3d ---, 2022 WL 17490771 (D. Alaska Oct. 4, 2022)..... 19

United States v. Doty, No. 5:21-cr-21,
2022 WL 17492260 (N.D. W.Va. Sept. 9, 2022) 20

United States v. Ford, No. 21-cr-00179,
2022 WL 17327499 (W.D. Mo. Nov. 29, 2022) 18

United States v. Garrett, No. 1:18-cr-880,
2023 WL 157961 (N.D. Ill. Jan. 11, 2023)..... 17

United States v. Goins, No. 5:22-cr-00091,
2022 WL 17836677 (E.D. Ky. Dec. 21, 2022) 18

United States v. Good, No. 21-180-1-cr,
2022 WL 18107183 (W.D. Mo. Nov. 18, 2022),
report and recommendation adopted,
2023 WL 25725 (W.D. Mo. Jan. 3, 2023)..... 18

United States v. Grant, No. 3:22-cr-161,
2022 WL 16541138 (D.S.C. Oct. 28, 2022) 19

United States v. Gray, No. 22-cr-247,
2022 WL 16855696 (D. Colo. Nov. 10, 2022) 18

United States v. Grinage, No. 21-cr-00399,
2022 WL 17420390 (W.D. Tex. Dec. 5, 2022) 18

United States v. Harper, No. 21-cr-4085,
2022 WL 8288406 (N.D. Iowa Sept. 9, 2022),
report and recommendation adopted,
2022 WL 4595060 (N.D. Iowa Sept. 30, 2022) 20

United States v. Hill, No. 21-cr-107,
--- F. Supp. 3d ----, 2022 WL 4361917 (S.D. Cal. Sept. 20, 2022) 19

United States v. Hill, No. 22-cr-249,
2022 WL 17069855 (S.D. Tex. Nov. 17, 2022) 18

United States v. Hunter, No. 1:22-cr-84,
2022 WL 17640254 (N.D. Ala. Dec. 13, 2022) 18

United States v. Ingram, No. 0:18-cr-557,
--- F. Supp. 3d -- --, 2022 WL 3691350 (D.S.C. Aug. 25, 2022)..... 20

United States v. Jackson, No. 21-cr-51,
2022 WL 4226229 (D. Minn. Sept. 13, 2022) 20

United States v. Jones, No. 20-cr-00354,
2022 WL 17327498 (W.D. Mo. Nov. 29, 2022) 18

United States v. Jordan, No. 22-cr-1140,
2023 WL 157789 (W.D. Tex. Jan. 11, 2023)..... 17

United States v. Kelly, No. 3:22-cr-37
2022 WL 17336578 (M.D. Tenn. Nov. 16, 2022) 45

United States v. King, No. 21-CR-255 (NSR),
2022 WL 5240928 (S.D.N.Y. Oct. 6, 2022) 19

United States v. Law, No. 20-cr-341,
2022 WL 17490258 (W.D. Pa. Oct. 27, 2022) 19

United States v. Medrano, No. 3:21-cr-39,
2023 WL 122650 (N.D. W. Va. Jan. 6, 2023) 17

United States v. Melendrez-Machado, No. 22-cr-634,
--- F. Supp. 3d ----, 2022 WL 17684319 (W.D. Tex. Oct. 18, 2022) 19

United States v. Minter, No. 3:22-cr-135,
--- F. Supp. 3d ----, 2022 WL 10662252 (M.D. Pa. Oct. 18, 2022) 19

United States v. Mitchell, No. 1:22-111,
2022 WL 17492259 (S.D. Ala. Nov. 17, 2022) 18

United States v. Moore, No. 21-cr-121,
2022 WL 17490021 (W.D. Pa. Nov. 9, 2022) 18-19

United States v. Moore, No. 3:20-cr-474,
2023 WL 154588 (D. Or. Jan. 11, 2023) 17

United States v. Nevens, No. 19-cr-774,
2022 WL 17492196 (C.D. Cal. Aug. 15, 2022) 20

United States v. Perez, No. 3:21-cr-508,
2022 WL 17484969 (S.D. Cal. Sept. 26, 2022) 19

United States v. Price, No. 2:22-cr-97,
--- F. Supp. 3d ----, 2022 WL 6968457 (S.D. W. Va. Oct. 12, 2022) 19

United States v. Raheem, No. 3:20-cr-61,
2022 WL 10177684 (W.D. Ky. Oct. 17, 2022) 19

United States v. Ramos, No. 2:21-cr-395,
2022 WL 17491967 (C.D. Cal. Aug. 5, 2022) 20

United States v. Reese, No. 19-cr-257,
2022 WL 16796771 (W.D. Pa. Nov. 8, 2022) 19

United States v. Ridgeway, No. 22-cr-175,
2022 WL 10198823 (S.D. Cal. Oct. 17, 2022) 19

United States v. Riley, No. 1:22-cr-163,
--- F. Supp. 3d ----, 2022 WL 7610264 (E.D. Va. Oct. 13, 2022)..... 19

United States v. Siddoway, No. 1:21-cr-205,
2022 WL 4482739 (D. Idaho Sept. 27, 2022) 19

United States v. Spencer, No. 2:22-cr-106,
2022 WL 17585782 (E.D. Va. Dec. 12, 2022) 18

United States v. Teerlink, No. 2:22-cr-0024,
2022 WL 17093425 (D. Utah Nov. 21, 2022) 18

United States v. Trinidad, No. 21-cr-398,
2022 WL 10067519 (D.P.R. Oct. 17, 2022) 19

United States v. Wagoner, No. 20-cr-00018,
2022 WL 17418000 (W.D. Va. Dec. 5, 2022) 18

United States v. Williams, No. 1:21-cr-00362,
2022 WL 17852517 (N.D. Ga. Dec. 22, 2022) 18

United States v. Willis, No. 22-cr-00186,
2022 WL 17177470 (D. Colo. Nov. 23, 2022) 18

United States v. Wondra, No. 1:22-cr-00099,
2022 WL 17975985 (D. Idaho Dec. 27, 2022) 18

United States v. Young, No. 22-cr-54,
2022 WL 16829260 (W.D. Pa. Nov. 7, 2022) 19

Walker v. United States, No. 20-cv-31,
2022 WL 16541183 (S.D. Cal. Oct. 28, 2022) 19

U.S. Constitution:

Amend. II 20

Federal Statutes:

An Act for the Punishment of Certain Crimes Against the United States,
1 Stat. 112-15 (1790) 38, 45

An Act to Strengthen the Federal Firearms Act,
Pub. L. No. 87-342, sec. 2, 75 Stat. 757, 757 (1961) 2, 43

Federal Firearms Act,
Pub. L. No. 75-785, secs. 1(6), 2(e)-(f), 52 Stat. 1250, 1250-51 (1938) 43

Firearms Owners' Protection Act,
Pub. L. No. 99-308, secs. 102(6)(D), 104(b),
100 Stat. 449, 452, 459 (1986) 43

Gun Control Act of 1968,
Pub. L. No. 90-618, 82 Stat. 1213:
tit. I, sec. 101, 82 Stat. at 1213-14.....2
tit. I, sec. 102, § 922(g)(1), 82 Stat. at 1220 43
tit. I, sec. 102, § 922(h)(1), 82 Stat. at 1220 43

Omnibus Crime Control and Safe Streets Act of 1968,
Pub. L. No. 90-351, 82 Stat. 197:
tit. IV, sec. 901(b), 82 Stat. at 226 2
tit. IV, sec. 902, § 922(e)-(f), 82 Stat. at 230-31..... 43
tit. VII, sec. 1202(a)(1), 82 Stat. at 236 .....2, 43

18 U.S.C. § 921(a)(20) 3

18 U.S.C. § 921(a)(20)(A) 3

18 U.S.C. § 921(a)(20)(B) 3

18 U.S.C. § 922(g) 43

18 U.S.C. § 922(g)(1) 1, 2, 5, 10, 16

18 U.S.C. § 925(c) 48

18 U.S.C. § 1344 ..... 1, 3

28 U.S.C. § 1291 1

28 U.S.C. § 1331 1

28 U.S.C. § 1865(b)(5) 22

State Statutes:

Colo. Rev. Stat. § 18-12-203(1)(c) 12

Ga. Code Ann. § 16-11-129(b)(2)(B) 12

Kan. Stat. Ann. § 75-7c04(a)(2) 12

La. Stat. Ann. § 40:1379.3(C)(6) 12

Miss. Code. Ann. § 45-9-101(2)(d) 12

N.C. Gen. Stat. § 14-415.12(b)(1) 13

N.H. Rev. Stat. Ann. § 159:6(I)(a) 12-13

18 Pa. Const. Stat. § 6109(e)(1)(viii) 13

Tex. Gov't Code Ann. § 411.172(a)(3) (West) 13

W. Va. Code § 61-7-4(b)(5) 13

Rule:

Fed. R. App. P. 4(a)(1)(B) 1

Legislative Materials:

Bill of Rights [1688], https://www.legislation.gov.uk/aep/WillandMarSess2/1/2 27

H.R. Rep. No. 87-1202 (1961) 49

H.R. Rep. No. 102-618 (1992) 48

H.R. Rep. No. 104-183 (1995) 48

14 *Journals of the House of Lords 1685-1691* (1767-1830) 27

S. Rep. No. 90-1097 (1968) 2

1 W. & M., Sess. 1, c. 15, in 6 *The Statutes of the Realm* (1688) 27, 28

1 W. & M., Sess. 2, c. 2, in 6 *The Statutes of the Realm* (1688) 28

Other Authorities:

A Complete Revisal of All the Acts of Assembly, of the Province of North-Carolina, Now in Force and Use (1773) 29

A Digest of the Laws of Maryland (1799) 40

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Acts of the General Assembly of the State of New-Jersey at a Session Begun on the 27th Day of August, 1776 (1777) 31

Akhil Reed Amar, *The Bill of Rights* (1998) 21, 36

Stuart Banner, *The Death Penalty: An American History* (2002) 38

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Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (2006)..... 29

Digest of the Laws of the State of Georgia From Its First Establishment as a British Province Down to the Year 1798, Inclusive, and the Principal Acts of 1799 (1800) 29

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Grants, Concessions, and Original Constitutions of the Province of New Jersey: The Acts Passed During the Proprietary Governments, and Other Material Transactions Before the Surrender Thereof to Queen Anne (1753) 29

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4 *Journals of the Continental Congress 1774-1789* (1906) 31

Laws and Ordinances of New Netherland, 1638-1674 (1868)..... 29

Laws of New York From The Year 1691 to 1773 (1752)..... 29

2 *Laws of the State of New York Passed at the Sessions of the Legislature (1785-1788)* (1886).....39, 40

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Mass. Const. of 1780, *in The Complete Bill of Rights: The Drafts, Debates, Sources, And Origins* (Neil Cogan ed., Oxford University Press 2d ed., 2014) 33

N.C. Declaration of Rights of 1776, *in The Complete Bill of Rights: The Drafts, Debates, Sources, And Origins* (Neil Cogan ed., Oxford University Press 2d ed., 2014) 33

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5 *Records Of The Colony Of New Plymouth* (1856) 29

2 *Records of the Colony of Rhode Island and Providence Plantations* (1857)..... 29

7 *Records of the Colony of Rhode Island and Providence Plantations in New England* (1862) 31, 32

2 Bernard Schwartz, *The Bill of Rights: A Documentary History* (1971) 34, 35, 36

5 *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay* (1886) 31, 32

1 *The Laws of Maryland, With The Charter, The Bill of Rights, The Constitution of The State, and Its Alterations, The Declaration Of Independence, And The Constitution Of The United States, And Its Amendments* (1811) 29

1 *The Public Acts of the General Assembly of North Carolina* (1804) 31, 32

6 *The Public Records Of The Colony Of Connecticut* (1872) 29

The Public Records of the Colony of Connecticut From May, 1775 to June, 1776 (1890) 31

1 *The Statutes at Large; Being A Collection of All the Laws of Virginia* (1823) 29

2 *The Statutes at Large; Being A Collection of All the Laws of Virginia* (1823) 29

7 *The Statutes at Large; Being A Collection of All the Laws of Virginia* (1820) 30

9 *The Statutes at Large; Being A Collection of All the Laws of Virginia* (1821) 31, 32, 33

9 *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature* (1821) 40

2 *The Statutes at Large of Pennsylvania from 1682 to 1801* (1896) 29

6 *The Statutes at Large of Pennsylvania from 1682 to 1801* (1899) 29

9 *The Statutes at Large of Pennsylvania from 1682 to 1801* (1903) 31, 32

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STATEMENT OF RELATED APPEALS PURSUANT TO CIR. R. 28.2(C)(1)

Counsel for the federal appellees are not aware of any prior or related appeals.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. The district court entered final judgment on October 5, 2021, App.116, and plaintiff timely appealed the same day. *See* Fed. R. App. P. 4(a)(1)(B); App.117. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Federal law prohibits the possession of firearms by felons. *See* 18 U.S.C. § 922(g)(1). Plaintiff Melynda Vincent is subject to that prohibition because she was convicted in 2008 of bank fraud under 18 U.S.C. § 1344, a federal felony punishable by up to 30 years of imprisonment. Vincent is also subject to an analogous prohibition under state law. The issue presented with respect to Vincent's claim against the federal government is whether the district court correctly rejected Vincent's as-applied Second Amendment challenge to Section 922(g)(1).

PERTINENT STATUTES

Pertinent statutes are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

Federal law has long restricted the shipment, transport, possession, and receipt of firearms and ammunition by certain categories of individuals. One

such disqualification is 18 U.S.C. § 922(g)(1), which generally prohibits the possession of firearms by any person "who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year."

Section 922(g)(1) reflects Congress's longstanding recognition that the "ease with which" firearms could otherwise be acquired by "criminals[] . . . and others whose possession of firearms is similarly contrary to the public interest" is "a matter of serious national concern." S. Rep. No. 90-1097, at 28 (1968); *see* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, sec. 2, 75 Stat. 757, 757 (1961) (prohibiting those who have been convicted of a "crime punishable by imprisonment for a term exceeding one year" from shipping, transporting, or receiving firearms); Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. VII, sec. 1202(a)(1), 82 Stat. 197, 236 (adding prohibition on possession). Congress has explained that "it is not the purpose" of this or similar provisions of federal law "to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens." Omnibus Crime Control and Safe Streets Act of 1968, tit. IV, sec. 901(b), 82 Stat. at 226; Gun Control Act of 1968, Pub. L. No. 90-618, tit. I, sec. 101, 82 Stat. 1213, 1213-14.

A conviction is not disqualifying for purposes of Section 922(g)(1) if it was for a "State offense classified by the laws of the State as a misdemeanor

and punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20)(B). Also excluded is "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored." *Id.* § 921(a)(20). And there is an additional exclusion for "Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices." *Id.* § 921(a)(20)(A).

B. Factual Background and Prior Proceedings

1. Plaintiff Melynda Vincent pleaded guilty in 2008 to bank fraud, a federal felony punishable by up to 30 years of imprisonment. *See* 18 U.S.C. § 1344; App.028 ¶¶ 10-11. As part of her plea agreement, Vincent admitted that she had cashed a document "purporting to be [a] check" drawn on a Wells Fargo account, but that she "knew that the check was fraudulent." App.065 ¶ 11.A(1). Vincent also acknowledged that, for purposes of sentencing, the government would offer evidence that Vincent had cashed, passed, or deposited 10 additional stolen or fraudulent checks on several occasions between January and March of 2007. App.065 ¶ 11.B(1), 072. Vincent expressly acknowledged that she understood that the maximum possible penalty for her offense was "imprisonment of up to 30 (thirty) years, a fine of up to $1 million, and a term of supervised release of up to 5 (five) years."

App.063 ¶ 2. She was sentenced to five years of supervised release and was ordered to pay $8,954.99 of restitution to her victims. App.076, 078.

2. In 2020, Vincent filed suit in the United States District Court for the District of Utah seeking a declaration and injunctive relief directing that she be permitted to lawfully possess firearms notwithstanding her felony conviction. App.032. Vincent acknowledged that she is barred from doing so by Section 922(g)(1) as well as state law, App.030 ¶¶ 25-26, 30, but asserted that these statutes are unconstitutional as applied to her.

The district court granted the federal and state governments' motions to dismiss. App.110-116. The court explained that the Supreme Court, in recognizing an individual right to keep and bear arms, has cautioned that "'the right secured by the Second Amendment is not unlimited'"—and that the Supreme Court has specifically indicated that "nothing in [*District of Columbia v. Heller*, 554 U.S. 570 (2008),] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.'" App.112 (quoting *Heller*, 554 U.S. at 626). The district court further recognized that, in applying the Supreme Court's precedents, "the Tenth Circuit has not permitted either facial or as-applied Second Amendment challenges to § 922(g)(1)." App.113. In *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), *cert. denied*, 559 U.S. 970 (2010), this Court held that Section 922(g)(1) did not violate the

Second Amendment, thereby rejecting "the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)." *In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) (unpublished).

The district court explained that Vincent "wishes to challenge" "precisely the prohibition on the possession of firearms by those convicted of a felony" that was at issue in the binding decisions of this Court. App.112. As the district court summarized, "Vincent invites this court to do what the Tenth Circuit has not authorized. She invites the court to reject some of the analysis in *Heller* and put aside *McCane*." App.113. Accordingly, Vincent's as-applied challenge "fail[s] as a matter of law." App.114.

SUMMARY OF ARGUMENT

Congress has generally prohibited the possession of firearms by persons "convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). Plaintiff Melynda Vincent is subject to that prohibition because she was convicted of felony bank fraud punishable by imprisonment for up to 30 years. Application of that prohibition to Vincent comports with the Second Amendment, so her claim fails.

A. Vincent's challenge is foreclosed by this Court's precedent upholding felon-possession prohibitions. In rejecting a challenge to Section 922(g)(1) in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), *cert. denied*, 559 U.S.

970 (2010), this Court explained that when the Supreme Court recognized an individual right to bear arms in *Heller*, it "explicitly stated . . . that 'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.'" *Id.* at 1047 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). The Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), leaves no doubt that the Supreme Court has not altered its view of felon-dispossession statutes—a point several Justices emphasized in concurrence. *See id.* at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring); *id.* at 2157 (Alito, J., concurring). Under that precedent, the district court's judgment should be affirmed.

B. Vincent fails even to reference this Court's decision in *McCane* and does not attempt to demonstrate that the Court's precedent is no longer good law. Instead, Vincent urges the Court to find the application of Section 922(g)(1) inconsistent with the Second Amendment's text and history. The Court need not reach these contentions, but were it to do so, they provide no basis for sustaining Vincent's challenge.

The Supreme Court has repeatedly stated that the Second Amendment protects the rights of "law-abiding" citizens, which necessarily excludes felons. And legislatures have historically had wide latitude to determine that, upon

committing a felony, an individual may forfeit a variety of rights that are tied to participation in the political community. Just as a felony conviction has long provided a sufficient basis for excluding an individual from the rights to vote, to serve on a jury, and to hold public office, so too can it support forfeiture of the right to bear arms.

An exhaustive review of historical tradition confirms the constitutionality of Section 922(g)(1). By the time of the Second Amendment's ratification in 1791, there was a robust tradition of legislatures exercising broad authority to categorically prohibit groups from possessing firearms based on a judgment that the members of the group could not be trusted to adhere to the rule of law. Moreover, the severity of founding-era penalties for felony crime further supports the conclusion that legislatures have long possessed the authority to take the comparatively modest step of concluding that a felony conviction renders someone untrustworthy to possess firearms. *See Medina v. Whitaker*, 913 F.3d 152, 157-61 (D.C. Cir. 2019). An important precursor to the Second Amendment even made explicit that the legislature possesses the authority to disarm criminals, and that pre-existing feature of the right to bear arms is borne out by a number of representative firearms regulations that were adopted from seventeenth century England through the early Republic.

Collectively, the tradition of firearm regulation amply reflects that Section 922(g)(1) falls well within Congress's authority.

STANDARD OF REVIEW

The Court reviews the district court's dismissal de novo. *M.A.K. Inv. Grp., LLC v. City of Glendale*, 897 F.3d 1303, 1308 (10th Cir. 2018).

ARGUMENT

THE DISTRICT COURT CORRECTLY REJECTED VINCENT'S CONSTITUTIONAL CHALLENGE.

A. This Court's precedent upholding longstanding prohibitions on firearm possession by felons forecloses Vincent's challenge.

1. The Constitution protects an individual right to keep and bear arms, but, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Thus, a "variety" of firearm regulations are consistent with the Second Amendment. *Id.* at 636. In recognizing an individual right to bear arms, the Supreme Court in *Heller* cautioned that "nothing in [the Court's] opinion should be taken to cast doubt" on "longstanding prohibitions on the possession of firearms by felons." *Id.* at 626. And in *McDonald v. City of Chicago*, a plurality of the Court "repeat[ed]" the "assurances" that *Heller*'s holding "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons.'" 561 U.S. 742, 786 (2010) (quoting *Heller*, 554 U.S. at 626).

In rejecting a challenge to Section 922(g)(1) in *United States v. McCane*, this Court thus recognized that the Supreme Court has "explicitly stated" that its Second Amendment jurisprudence should not "'be taken to cast doubt on'" this statute. 573 F.3d 1037, 1047 (10th Cir. 2009) (quoting *Heller*, 554 U.S. at 626), *cert. denied*, 559 U.S. 970 (2010); *see also id.* 1049-50 (Tymkovich, J., concurring) (noting that the Supreme Court's "clear direction" regarding the constitutionality of felon-dispossession laws "forecloses" the need for further analysis); *United States v. Griffith*, 928 F.3d 855, 870 (10th Cir. 2019) ("'[I]t is evident neither *Heller* nor *McDonald* changes the constitutional status of § 922(g) in its prohibition of firearms by felons.'" (quoting *United States v. Molina*, 484 F. App'x 276, 285 (10th Cir. 2012))); *United States v. Gieswein*, 887 F.3d 1054, 1064 n.6 (10th Cir. 2018) (constitutional challenge to Section 922(g)(1) was "foreclose[d]" by *McCane*). These cases preclude both facial and as-applied challenges to the felon-possession prohibition. *See In re United States*, 578 F.3d 1195, 1200 (10th Cir. 2009) (unpublished) (explaining that this Court has "rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)" (citing *McCane,* 573 F.3d at 1047)). Other circuits have likewise rejected challenges to Section 922(g)(1). *See, e.g.*, *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010) (explaining that after *Heller*, the Fifth Circuit—in a decision cited by this Court in *McCane*—

"reaffirmed [its] prior jurisprudence" holding that "criminal prohibitions on felons (violent or nonviolent) possessing firearms did not violate" the Second Amendment (citing *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009))); *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010) (per curiam) (holding that "statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment"); *accord Hamilton v. Pallozzi*, 848 F.3d 614, 625-27 (4th Cir. 2017) ("hold[ing] that a challenger convicted of a state law felony generally cannot satisfy step one" of the then-prevailing framework). Indeed, "no circuit" has ever "held [18 U.S.C. § 922(g)(1)] unconstitutional as applied" to an individual convicted of an offense labeled a felony. *Medina v. Whitaker*, 913 F.3d 152, 155 (D.C. Cir. 2019) (rejecting as-applied challenge by individual convicted of felony fraud).[1]

[1] Some courts of appeals before *Bruen* left open the theoretical possibility of a successful as-applied challenge to Section 922(g)(1), but the only court of appeals decision holding the statute unconstitutional in any of its applications is *Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016), where a narrow majority of the en banc Third Circuit held Section 922(g)(1) unconstitutional as applied to two state-law misdemeanants. Vincent's challenge would have failed under that decision because she committed a felony bank fraud offense punishable by 30 years' imprisonment. *See, e.g.*, *Folajtar v. Attorney General*, 980 F.3d 897, 910 (3d Cir. 2020) (rejecting as-applied challenge under the *Binderup* framework where underlying offense was for felony tax fraud); *see also Range v. Attorney General*, No. 21-2835, 2023 WL 118469 (3d Cir. Jan. 6, 2023) (reflecting that the en banc Third Circuit will again be considering an as-applied Second Amendment challenge to Section 922(g)(1) by a state-law misdemeanant).

McCane correctly applied the Supreme Court's guidance in *Heller* regarding statutes prohibiting felons from possessing firearms, and, as the district court correctly held, this Court's decisions foreclose Vincent's challenge here.

2. Vincent's opening brief fails even to reference *McCane.* Vincent does not explain why the district court erred in applying governing precedent and gives the government no opportunity to address whatever arguments she might belatedly offer as to how she is entitled to reversal of a district court decision whose reasoning she has not addressed in her opening brief. "The general rule in this circuit is that a party waives issues and arguments raised for the first time in a reply brief." *Reedy v. Werholtz*, 660 F.3d 1270, 1274 (10th Cir. 2011) (alteration omitted) (quotation marks omitted). Vincent is not entitled to an exception from that rule.

In any event, there is no basis for disregarding governing precedent. The Supreme Court in *Heller* "explicitly stated" that it was not casting doubt on the constitutionality of longstanding felon-dispossession laws, and this Court relied on those explicit statements in categorically holding that Section 922(g)(1) is not susceptible to Second Amendment challenges. *McCane*, 573 F.3d at 1047. The Supreme Court's statements reflect its recognition that the right to bear arms is limited to "law-abiding, responsible citizens." *Heller*, 554 U.S. at 635.

And since *Heller* and *McCane*, the Supreme Court has twice reaffirmed—first in *McDonald*, then in *Bruen*—that the right to bear arms is limited to law-abiding citizens. Indeed, *Bruen* defines the Second Amendment as belonging to "law-abiding" citizens 14 times. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2122, 2125, 2131, 2133-34, 2135 n.8, 2138 & n.9, 2150, 2156 (2022). Consistent with that principle, while *Bruen* invalidated New York's "may-issue" licensing regime, it approved "shall-issue" regimes that "require applicants to undergo a background check or pass a firearms safety course."[2] *Id.* at 2138 n.9; *see id.* at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring) ("[S]hall-issue licensing regimes are constitutionally permissible[] . . . ."). The Court explained that such regimes—many of which prohibit the issuance of licenses to felons—generally pass constitutional muster because they "are designed to ensure only that those bearing arms . . . are, in fact 'law-abiding, responsible citizens.'" *Id.* at 2138 n.9 (majority op.) (quoting *Heller*, 554 U.S. at 635); *see also, e.g.*, Colo. Rev. Stat. § 18-12-203(1)(c); Ga. Code Ann. § 16-11-129(b)(2)(B); Kan. Stat. Ann. § 75-7c04(a)(2); La. Stat. Ann. § 40:1379.3(C)(6); Miss. Code. Ann. § 45-9-101(2)(d); N.H. Rev. Stat. Ann.

[2] A "shall-issue" regime is one in which "authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements." *Bruen*, 142 S. Ct. at 2123. By contrast, a "may-issue" regime vests "authorities [with] discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria." *Id.* at 2124.

§ 159:6(I)(a); N.C. Gen. Stat. § 14-415.12(b)(1); 18 Pa. Cons. Stat. § 6109(e)(1)(viii); Tex. Gov't Code Ann. § 411.172(a)(3) (West); W. Va. Code § 61-7-4(b)(5). That reasoning underscores that Section 922(g)(1), which likewise aims to ensure that "those bearing arms" are "'law-abiding, responsible citizens,'" accords with the Second Amendment. *Bruen*, 142 S. Ct. at 2138 n.9 (quoting *Heller*, 554 U.S. at 635).

Bruen stressed that it was "reiterat[ing]" *Heller*'s approach, clarifying the legal standard "[i]n keeping with *Heller*," and "apply[ing]" the "test that [the Court] set forth in *Heller*." 142 S. Ct. at 2126, 2129, 2131. Indeed, Justices who joined the Court's decision in *Bruen* took pains to underscore the limits of the decision, including specifically with respect to felon-possession prohibitions. *See id.* at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring) (reiterating that "longstanding prohibitions on the possession of firearms by felons" are constitutional under *Heller* and *McDonald* (quotation marks omitted)); *id.* at 2157 (Alito, J., concurring) (explaining that *Bruen* did not "disturb[] anything that [the Court] said in *Heller* or *McDonald* about restrictions that may be imposed on the possession or carrying of guns" (citation omitted)).[3] Because *Bruen*'s "holding decide[d] nothing about who

[3] In total, eight members of the *Bruen* Court have joined at least one opinion expressly approving of *Heller*'s and *McDonald*'s reassurances regarding

Continued on next page.

may lawfully possess a firearm," *id.* at 2157 (Alito, J., concurring), the Supreme Court's decision plainly does not "abrogate[]" *McCane*'s "holding" that felons may be categorically prohibited from possessing firearms, *United States v. Baker*, 49 F.4th 1348, 1358 (10th Cir. 2022) ("'Unless and until the holding of a prior decision is overruled by the Supreme Court or by the en banc court, that holding is the law of this Circuit regardless of what might have happened had other arguments been made to the panel that decided the issue first.'" (alteration omitted) (emphasis omitted) (quoting *Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125, 1130 (10th Cir. 2009)). As district judges within this circuit have recognized, "[t]here is nothing in *Bruen* to indicate that either *Heller*, Tenth Circuit precedent based on *Heller*, or § 922(g)(1), are no longer valid." *United States v. Baker*, No. 2:20-cr-301, 2022 WL 16855423, at *3 (D. Utah Nov. 10, 2022); *see also United States v. Carrero*, No. 2:22-cr-30, --- F.

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felon-dispossession statutes. The three dissenters in *Bruen* agreed with the concurrences cited in the text that "the Court's opinion" should be understood as "cast[ing] no doubt on [the] aspect of *Heller*'s holding" permitting felons to be prohibited from possessing firearms. *Bruen*, 142 S. Ct. at 2189 (Breyer, J., joined by Sotomayor and Kagan, JJ., dissenting). And two years earlier, Justices Thomas and Gorsuch also agreed that *Heller* "recognized that history supported the constitutionality of some laws limiting the right to possess a firearm," including laws "prohibiting possession by felons and other dangerous individuals." *New York State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525, 1540-41 (2020) (Alito, J., joined by Thomas and Gorsuch, JJ., dissenting).

Supp. 3d. ----, 2022 WL 9348792, at *4 (D. Utah Oct. 14, 2022) ("The opinions in *Bruen* indicate that the constitutional status of § 922(g) remains unchanged and that *McCane* remains good law.").

Bruen did abrogate a separate aspect of this Court's Second Amendment precedent that has no bearing on the issue here. As *Bruen* explained, the courts of appeals had generally adopted a "two-step" Second Amendment framework, first ascertaining whether a law regulates activity falling within the scope of the constitutional right based on its original historical meaning, then applying means-end scrutiny. *Bruen*, 142 S. Ct. at 2126-27. *Bruen* held that whereas "[s]tep one" is "broadly consistent with *Heller*," "*Heller* and *McDonald* do not support applying means-end scrutiny." *Id.* at 2127-30. That aspect of *Bruen's* holding casts no doubt on the holding in *McCane*, which did not involve means-end scrutiny. *See McCane*, 573 F.3d at 1047 (relying on *Heller's* explicit statements regarding felon-dispossession laws); *id.* at 1050 (Tymkovich, J., concurring) (reasoning that in light of *Heller*'s explicit approval, "we need not address the standard of review applicable to gun dispossession laws—strict scrutiny, intermediate, rational basis, or something else"—in resolving challenges to Section 922(g)(1)); *see also Heller v. District of Columbia*, 670 F.3d 1244, 1278 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (reasoning that "the Court in *Heller* affirmatively *approved* a slew of gun laws," including "felon-in-

possession laws," "based on a history- and tradition-based test," not based on means-end scrutiny).

B. Text and history confirm that the application of 18 U.S.C. § 922(g)(1) to Vincent is consistent with the Second Amendment.

As explained above, the district court correctly dismissed Vincent's Second Amendment challenge based on this Court's precedent, and the court's judgment should be affirmed under that precedent. Nevertheless, because Vincent's brief focuses entirely on contentions about text and history without regard to this Court's precedent addressing the specific statute she is challenging, we address those contentions here as well.

1. The text of the Second Amendment and its historical context make plain that Vincent, a convicted felon, cannot mount a successful attack on 18 U.S.C. § 922(g)(1).

Where the validity of a restriction is challenged, a court looks to "the Second Amendment's plain text," as informed by "this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2126. As a matter of both text and history, the Second Amendment does not prevent legislatures from prohibiting firearm possession by those who have demonstrated disregard for the rule of law through the commission of felony offenses—a conclusion reached by the D.C. Circuit before *Bruen* as well as in a persuasive post-*Bruen* panel opinion of the Third Circuit. *See Medina*, 913 F.3d at 157-61 ("hold[ing]

that those convicted of felonies are not among those entitled to possess arms" and "reject[ing] the argument that non-dangerous felons have a right to bear arms" based on "tradition and history," making it unnecessary to "reach the second"—now abrogated—"step" of that court's pre-*Bruen* precedent); *Range v. Attorney General*, 53 F.4th 262, 266 (3d Cir. 2022) (per curiam) (holding that "those who have demonstrated disregard for the rule of law through the commission of felony and felony-equivalent offenses" can be prohibited from possessing firearms consistent with the Second Amendment's text and history, "whether or not those crimes are violent"), *vacated upon granting of rehearing en banc*, No. 21-2835, 2023 WL 118469 (3d Cir. Jan. 6, 2023).[4] In at least 86 cases since *Bruen*, district courts have rejected Second Amendment challenges to Section 922(g)(1) based on text, history, precedent, or a combination of the three, and we are not aware of any case in which a court has held Section 922(g)(1) unconstitutional under *Bruen*.[5]

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[4] Though the panel opinion in *Range* has been vacated pending rehearing en banc, the opinion retains its persuasive value.

[5] *See United States v. Spencer*, No. 2:22-cr-561, Dkt. No. 24 (S.D. Tex. Jan. 12, 2023); *United States v. Moore*, No. 3:20-cr-474, 2023 WL 154588 (D. Or. Jan. 11, 2023); *United States v. Jordan*, No. 22-cr-1140, 2023 WL 157789 (W.D. Tex. Jan. 11, 2023); *United States v. Garrett*, No. 1:18-cr-880, 2023 WL 157961 (N.D. Ill. Jan. 11, 2023); *Campiti v. Garland*, No. 3:22-cv-177, 2023 WL 143173 (D. Conn. Jan. 10, 2023); *United States v. Coleman*, No. 3:22-cr-8-2, 2023 WL 122401 (N.D. W. Va. Jan. 6, 2023); *United States v. Medrano,* No. 3:21-cr-39, 2023 WL 122650 (N.D. W. Va. Jan. 6, 2023)*; United States v. Olson*, No. 1:22-

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cr-20525, Dkt. No. 33 (S.D. Fla. Jan. 5, 2023); *United States v. Wondra*, No. 1:22-cr-00099, 2022 WL 17975985 (D. Idaho Dec. 27, 2022); *United States v. Jones*, No. 5:22-cr-376, Dkt. No. 59 (W.D. Okla. Dec. 23, 2022); *United States v. Williams*, No. 1:21-cr-00362, 2022 WL 17852517 (N.D. Ga. Dec. 22, 2022); *United States v. Dawson*, No. 3:21-cr-293, 2022 WL 17839807 (W.D.N.C. Dec. 21, 2022); *United States v. Goins*, No. 5:22-cr-00091, 2022 WL 17836677 (E.D. Ky. Dec. 21, 2022); *United States* v. *Mugavero*, No. 3:22-cr-1716, Dkt. No. 29 (S.D. Cal. Dec. 19, 2022); *United States v. Hunter*, No. 1:22-cr-84, 2022 WL 17640254 (N.D. Ala. Dec. 13, 2022); *United States v. Spencer*, No. 2:22-cr-106, 2022 WL 17585782 (E.D. Va. Dec. 12, 2022); *United States v. Dotson*, No. 3:22-cr-1502, Dkt. No. 26 (S.D. Cal. Dec. 12, 2022); *United States v. Tran*, No. 3:22-cr-331, Dkt. No. 63 (S.D. Cal. Dec. 12, 2022); *United States v. Fencl*, No. 3:21-cr-3101, Dkt. No. 81 (S.D. Cal. Dec. 7, 2022); *United States v. Perez-Garcia*, No. 3:22-cr-1581, Dkt. No. 70 (S.D. Cal. Dec. 6, 2022); *United States v. Walker*, No. 2:19-cr-234, Dkt. No. 83 (E.D. Cal. Dec. 6, 2022); *United States v. Grinage*, No. 21-cr-00399, 2022 WL 17420390 (W.D. Tex. Dec. 5, 2022); *United States v. Wagoner*, No. 20-cr-00018, 2022 WL 17418000, at *5-8 (W.D. Va. Dec. 5, 2022); *United States v. Gay*, No. 4:20-cr-40026, Dkt. No. 412 (C.D. Ill. Dec. 5, 2022); *United States v. Glaze*, No. 5:22-cr-425, Dkt. No. 23 (W.D. Okla. Dec. 1, 2022); *United States v. Ford*, No. 21-cr-00179, 2022 WL 17327499 (W.D. Mo. Nov. 29, 2022); *United States v. Jones*, No. 20-cr-00354, 2022 WL 17327498 (W.D. Mo. Nov. 29, 2022); *United States v. Jacobs*, No. 2:22-cr-160, Dkt. No. 28 (C.D. Cal. Nov. 28, 2022); *United States v. Cage*, No. 3:21-cr-68, 2022 WL 17254319 (S.D. Miss. Nov. 28, 2022); *United States v. Willis*, No. 22-cr-00186, 2022 WL 17177470 (D. Colo. Nov. 23, 2022); *United States v. Teerlink*, No. 2:22-cr-0024, 2022 WL 17093425 (D. Utah Nov. 21, 2022); *United States v. Good*, No. 21-180-1-cr, 2022 WL 18107183 (W.D. Mo. Nov. 18, 2022), *report and recommendation adopted*, 2023 WL 25725 (W.D. Mo. Jan. 3, 2023); *United States v. Brunson*, No. 22-cr-149, Dkt. No. 66 (S.D. Cal. Nov. 18, 2022); *United States v. Hill*, No. 22-cr-249, 2022 WL 17069855 (S.D. Tex. Nov. 17, 2022); *United States v. Blackburn*, No. 1:22-cr-209, Dkt. No. 28 (M.D. Pa. Nov. 17, 2022); *United States v. Mitchell*, No. 1:22-cr-111, 2022 WL 17492259 (S.D. Ala. Nov. 17, 2022); *United States v. Dumont*, No. 22-cr-53 (D.N.H. Nov. 14, 2022); *United States v. Baker*, No. 2:20-cr-301, 2022 WL 16855423 (D. Utah Nov. 10, 2022); *United States v. Carpenter*, No. 1:21-cr-86, 2022 WL 16855533, at *4 (D. Utah Nov. 10, 2022); *United States v. Gray*, No. 22-cr- 247, 2022 WL 16855696 (D. Colo. Nov. 10, 2022); *United States v. Moore*, No. 21-cr-121, 2022 WL

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17490021 (W.D. Pa. Nov. 9, 2022); *United States v. Reese*, No. 19-cr-257, 2022 WL 16796771 (W.D. Pa. Nov. 8, 2022); *United States v. Young*, No. 22-cr-54, 2022 WL 16829260 (W.D. Pa. Nov. 7, 2022); *United States v. Butts,* No. 22-cr-33, --- F. Supp. 3d ----, 2022 WL 16553037 (D. Mont. Oct. 31, 2022); *United States v. Burton*, No. 3:22-cr-362, 2022 WL 16541139 (D.S.C. Oct. 28, 2022); *United States v. Carleson*, No. 3:22-cr-32, 2022 WL 17490753 (D. Alaska Oct. 28, 2022); *United States v. Grant*, No. 3:22-cr-161, 2022 WL 16541138 (D.S.C. Oct. 28, 2022); *Walker v. United States*, No. 20-cv-31, 2022 WL 16541183, at *3-4 (S.D. Cal. Oct. 28, 2022); *United States v. Law*, No. 20-cr-341, 2022 WL 17490258 (W.D. Pa. Oct. 27, 2022); *United States v. Borne*, No. 22-cr-83, Dkt. No. 35 (D. Wyo. Oct. 24, 2022); *United States v. Minter*, No. 3:22-cr-135, --- F. Supp. 3d ----, 2022 WL 10662252 (M.D. Pa. Oct. 18, 2022); *United States v. Melendrez-Machado*, No. 22-cr-634, --- F. Supp. 3d ----, 2022 WL 17684319 (W.D. Tex. Oct. 18, 2022); *United States v. Raheem*, No. 3:20-cr-61, 2022 WL 10177684, at *1-4 (W.D. Ky. Oct. 17, 2022); *United States v. Ridgeway*, No. 22-cr-175, 2022 WL 10198823 (S.D. Cal. Oct. 17, 2022); *United States v. Trinidad*, No. 21-cr-398, 2022 WL 10067519 (D.P.R. Oct. 17, 2022); *United States v. Carrero*, No. 2:22-cr-30, --- F. Supp. 3d ----, 2022 WL 9348792 (D. Utah Oct. 14, 2022); *United States v. Ortiz*, No. 21-cr-2503, Dkt. No. 91 (S.D. Cal. Oct. 14, 2022); *United States v. Riley*, No. 1:22-cr-163, --- F. Supp. 3d ----, 2022 WL 7610264, at *6-13 (E.D. Va. Oct. 13, 2022); *United States v. Price*, No. 2:22-cr-97, --- F. Supp. 3d ----, 2022 WL 6968457, at *6-9 (S.D. W. Va. Oct. 12, 2022); *United States v. King*, No. 21-CR-255 (NSR), 2022 WL 5240928, at *4-5 (S.D.N.Y. Oct. 6, 2022); *United States v. Daniels*, No. 1:03-cr-83, 2022 WL 5027574, at *4 (W.D.N.C. Oct. 4, 2022); *United States v. Charles*, No. 22-cr-154, --- F. Supp. 3d ----, 2022 WL 4913900 (W.D. Tex. Oct. 3, 2022); *United States v. Williams*, No. 21-cr-478, Dkt. No. 76 (S.D. Cal. Sept. 30, 2022); *United States v. Campbell*, No. 22-cr-138, 2022 WL 17492255 (W.D. Okla. Sept. 27, 2022); *United States v. Siddoway*, No. 1:21-cr-205, 2022 WL 4482739 (D. Idaho Sept. 27, 2022); *United States v. Perez*, No. 3:21-cr-508, 2022 WL 17484969 (S.D. Cal. Sept. 26, 2022); *United States v. Collette*, No. 22-cr-141, --- F. Supp. 3d ----, 2022 WL 4476790 (W.D. Tex. Sept. 25, 2022); *United States v. Delpriore*, No. 3:18-cr-136, --- F. Supp. 3d ---, 2022 WL 17490771 (D. Alaska Oct. 4, 2022); *United States v. Coombes*, No. 22-cr-189, --- F. Supp. 3d ----, 2022 WL 4367056, at *1-11 (N.D. Okla. Sept. 21, 2022); *United States v. Hill*, No. 21-cr-107, --- F. Supp. 3d ----, 2022 WL 4361917 (S.D. Cal. Sept. 20, 2022); *United States v. Rojo*, No. 21-cr-682, Dkt. No. 50 (S.D. Cal. Sept. 14, 2022); *United States v. Cockerham*, No.

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Felon disarmament laws are consistent with the Second Amendment's text, as historically understood. The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Felons do not fall within "the people" protected by the Second Amendment, and "the right . . . to keep and bear Arms" is not "infringed" by longstanding laws prohibiting felons from possessing firearms due to their convictions.

The Amendment's protections extend to "ordinary, law-abiding, adult citizens," *Bruen*, 142 S. Ct. at 2134, who are entitled to be "members of the political community," *Heller*, 554 U.S. at 580. Section 922(g)(1) imposes a

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5:21-cr-6, 2022 WL 4229314 (S.D. Miss. Sept. 13, 2022); *United States v. Jackson*, No. 21-cr-51, 2022 WL 4226229 (D. Minn. Sept. 13, 2022); *United States v. Havins*, No. 21-cr- 1515, Dkt. No. 62 (S.D. Cal. Sept. 12, 2022); *United States v. Patterson*, No. 19-cr-231 (S.D.N.Y. Sept. 9, 2022); *United States v. Doty*, No. 5:21-cr-21, 2022 WL 17492260 (N.D. W.Va. Sept. 9, 2022); *United States v. Harper*, No. 21-cr-4085, 2022 WL 8288406, at *2 (N.D. Iowa Sept. 9, 2022), *report and recommendation adopted*, 2022 WL 4595060 (N.D. Iowa Sept. 30, 2022); *United States v. Burrell*, No. 21-cr-20395, 2022 WL 4096865, at *3 (E.D. Mich. Sept. 7, 2022); *United States v. Randle*, No. 3:22-cr-20, Dkt. No. 34 (S.D. Miss. Sept. 6, 2022); *United States v. Ingram*, No. 0:18-cr-557, --- F. Supp. 3d ----, 2022 WL 3691350 (D.S.C. Aug. 25, 2022); *United States v. Nevens*, No. 19-cr-774, 2022 WL 17492196 (C.D. Cal. Aug. 15, 2022); *United States v. Farris*, No. 22-cr-149, Dkt. No. 29 (D. Colo. Aug. 12, 2022); *United States v. Adams*, No. 20-cr-628 (S.D.N.Y. Aug. 10, 2022); *United States v. Ramos*, No. 2:21-cr-395, 2022 WL 17491967 (C.D. Cal. Aug. 5, 2022); *United States v. Doss*, No. 4:21-cr-74, Dkt. No. 126 (S.D. Iowa Aug. 2, 2022); *United States v. Maurice*, No. 22-cr-48 (S.D.N.Y. Jul. 14, 2022).

status-based restriction on who can possess firearms that reflects a longstanding recognition that individuals who commit crimes punishable by more than one year of imprisonment and are subject to disarmament laws on that basis are not "ordinary, law-abiding, adult citizens," *Bruen*, 142 S. Ct. at 2134, who are "members of the political community," *Heller*, 554 U.S. at 580.

Consistent with that understanding, legislatures historically have had wide latitude to exclude felons from the political community as a consequence of their convictions. As Thomas Cooley explained in his "massively popular 1868 Treatise on Constitutional Limitations," *Heller*, 554 U.S. at 616, "the *people* in whom is vested the sovereignty of the State . . . cannot include the whole population," and "[c]ertain classes have been almost universally excluded"—including "the idiot, the lunatic, and the felon, on obvious grounds." Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 28-29 (1868). Felons could therefore historically be excluded from "exercis[ing] the elective franchise," *id.* 29, as well as from other, closely related "political rights"—including the rights to "hold public office," to "serve on juries," and, most relevant here, "the right to bear arms," Akhil Reed Amar, *The Bill of Rights* 48, 48 * (1998) (explaining that these were all historically understood as "political

rights" and that in particular, "arms bearing and suffrage were intimately linked [in the late eighteenth century] and have remained so").

It remains the case that the commission of a felony often results in the "forfeiture of a number of rights" tied to membership in the political community, including not just the right to bear arms but also "the right to serve on a jury and the fundamental right to vote." *Medina*, 913 F.3d at 160 (first citing 28 U.S.C. § 1865(b)(5), which bars convicted felons from serving on a federal jury; and then citing *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974), which upheld state felon disenfranchisement); *see also Spencer v. Kemna*, 523 U.S. 1, 8-9 (1998) (noting that consequences of a felony conviction can include deprivation of the right to hold office).

Just as Congress and the States have required persons convicted of felonies to forfeit other rights belonging to members of the political community, Section 922(g)(1) accords with the historical meaning of the Second Amendment by imposing a firearms-related disability "as a legitimate consequence of a felony conviction," *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 708 (6th Cir. 2016) (en banc) (Sutton, J., concurring in most of the judgment). While "[t]he Second Amendment establishes a fundamental right for American citizens to possess a gun," the decision in "*Heller* recognizes an exception for some Americans—to respect 'longstanding prohibitions on the

possession of firearms by felons and the mentally ill,'" exceptions that are "historically grounded and sensible." *Id.* (quoting *Heller*, 554 U.S. at 626); *see also, e.g.*, *United States v. Carpio-Leon*, 701 F.3d 974, 979-80 (4th Cir. 2012); *United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011); *United States v. Yancey*, 621 F.3d 681, 684-85 (7th Cir. 2010) (per curiam); *United States v. Vongxay*, 594 F.3d 1111, 1118 (9th Cir. 2010).

Vincent suggests that *Heller* held that "the people" means "'all Americans.'" Br. 9 (quoting *Heller*, 554 U.S. at 581). But *Heller* makes clear that the Second Amendment's protections are limited to those who are "members of the political community" and "law-abiding, responsible citizens." 554 U.S. at 580, 635; *see also id.* at 644 (Stevens, J., joined by Souter, Ginsburg, and Breyer, JJ., dissenting) (explaining that *Heller* "limits the protected class" in these ways).

Bruen makes particularly plain that those who are not law-abiding and responsible cannot successfully challenge laws that apply to them based on that status. As noted above, on 14 occasions *Bruen* defined the Second Amendment as belonging to "law-abiding" citizens. 142 S. Ct. at 2122, 2125, 2131, 2133-34, 2135 n.8, 2138 & n.9, 2150, 2156. In one passage, the Court connected its explanation that the plaintiffs were "part of 'the people' whom the Second Amendment protects" with its observation that they were

"ordinary, law-abiding, adult citizens." *Id.* at 2134. In another passage, noted above at pp. 12-13, *Bruen* approved "shall-issue" licensing regimes, explaining that such regimes "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* at 2138 n.9 (quoting *Heller*, 554 U.S. at 635). In another passage, *Bruen* explained the historical analysis focuses on "how and why" a challenged regulation and a potential analogue each "burden a *law-abiding* citizen's right to armed self-defense." *Id.* at 2133 (emphasis added). Applying that historical test as the Court has described it would be superfluous where, as here, the challenged law applies only to those who are not law-abiding—and thus does not impose *any* "burden" on "a law-abiding citizen's right to armed self-defense." *Id.*

That non-law-abiding citizens can be disarmed under a proper understanding of the constitutional text also explains the Court's specific assurances regarding the permissibility of prohibitions on the possession of firearms by felons. *Heller*, 554 U.S. at 626-27, 627 n.26, 635. In *Heller*, the Supreme Court parsed the text of the Second Amendment and incorporated into its holding the recognition that the plaintiff would be entitled to keep a handgun in his home "[a]ssuming that [he] is not disqualified from the exercise of Second Amendment rights," *id.* at 635. Vincent, by contrast, is a felon and therefore is "disqualified from the exercise of Second Amendment rights." *Id.*;

see also id. at 631 (explaining that the District of Columbia had "apparently" used the word "disqualified" to "mean if [the plaintiff] is not a felon and is not insane"). Laws such as Section 922(g)(1) are therefore constitutional under the Second Amendment's text as informed by a variety of "historical justifications," *id.* at 635.

2. A comprehensive review of historical tradition confirms legislatures' authority to prohibit felons from possessing firearms.

A comprehensive review of "this Nation's historical tradition of firearm regulation," *Bruen*, 142 S. Ct. at 2126, confirms the validity of laws disarming people because of felony convictions, whether or not the felonies were violent. Beginning in England and lasting at least through the founding era, history is replete with "representative historical analogue[s]" for Section 922(g)(1) that shed light on the scope of the Second Amendment and the power of legislatures. *Id.* at 2133-34 (emphasis omitted). Two types of historical laws are particularly pertinent: (a) laws categorically disqualifying groups from possessing firearms based on a judgment that the group could not be trusted to adhere to the rule of law; and (b) laws authorizing capital punishment and estate forfeiture for felonies.[6]

[6] The Addendum to this brief includes a list of the cited laws with a link to an online database where each can be accessed. *See* Addendum, pp. A3-A7.

a. Firearm disqualification laws

By the time of the Second Amendment's ratification in 1791, there was a robust tradition of legislatures exercising broad authority to "categorically disqualif[y] people from possessing firearms based on a judgment that certain individuals were untrustworthy parties to the nation's social compact." *Range*, 53 F.4th at 274. Compelling evidence from the constitutional ratification debates confirms that in light of this longstanding tradition of analogous regulation, the founders also understood that the precise type of regulation at issue in this case is constitutional: a legislature would not, in the founders' view, infringe the right to bear arms by "disarming the people . . . for crimes committed." *See infra* pp. 34-35 (quotation marks omitted) (discussing Pennsylvania Antifederalists' proposal in 1787).

England. Because the Second Amendment "'codified a right inherited from our English ancestors,'" English legal tradition sheds light on the scope of the "'right secured by the Second Amendment'"—which, as with the English right, "'is not unlimited.'" *Bruen*, 142 S. Ct. at 2127-28 (quoting *Heller*, 554 U.S. at 599, 626). Among the limits well-established in England was the authority to disarm classes of people who, in the legislature's view, could not be depended upon to obey the rule of law. In 1689, for example, the government passed an "Act for the better secureing the Government by

disarming Papists and reputed Papists," which provided that any Catholic who refused to make a declaration renouncing his or her faith could not "have or keepe in his House or elsewhere" any "Arms[,] Weapons[,] Gunpowder[,] or Ammunition (other than such necessary Weapons as shall be allowed to him by Order of the Justices of the Peace . . . for the defence of his House or person)." 1 W. & M., Sess. 1, c. 15, in 6 *The Statutes of the Realm* 71-73 (1688).[7] Enacted shortly after the Glorious Revolution of 1688—when the Protestants King William and Queen Mary succeeded the Catholic King James II—this statute reflected the new government's perception that Catholics who refused to renounce their faith would have "disrespect for and disobedience to the Crown and English law." *Range*, 53 F.4th at 275. Far from "rest[ing] on the implausible premise that all Catholics were violent," *id.*, the statute made clear that its concern was with propensity to disobey the sovereign by providing that anyone who decided to make the declaration after having previously refused

[7] Though the statutory compilation identifies this as a 1688 act, it was enacted in 1689. *See* 14 *Journals of the House of Lords 1685-1691*, at 208-09 (1767-1830) (reflecting enactment on May 11, 1689); *Bill of Rights [1688]*, https://www.legislation.gov.uk/aep/WillandMarSess2/1/2 (explaining that "[i]t appears that all the Acts of" the first Parliament of William and Mary "were treated as being Acts of 1688" in official sources under an "old method of reckoning"—including the English Bill of Rights, discussed below, which was similarly enacted in 1689).

would regain the ability to keep and bear arms. 1 W. & M., Sess. 1, c. 15, *in* 6 *The Statutes of the Realm*, *supra*, at 72.

This example is particularly relevant because the same Parliament "wr[ote] the 'predecessor to our Second Amendment' into the 1689 English Bill of Rights," which similarly drew a religion-based distinction, among other limitations. *Bruen*, 142 S. Ct. at 2141 (quoting *Heller*, 554 U.S. at 593). That predecessor specified that "Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law." 1 W. & M., Sess. 2, c. 2, in 6 *The Statutes of the Realm* 143 (1688). "Englishmen had never before claimed the right of the individual to arms." *Bruen*, 142 S. Ct. at 2142 (alteration and quotation marks omitted). And when they first formally claimed that right, the English ensured that the government retained the power—which it in fact exercised—to disarm a class of the population based on concerns that the members of that class had failed to demonstrate that they would abide by the law, whether or not they had previously exhibited violence.

Colonial America. The American colonies inherited the English tradition of broad legislative authority to disarm classes of people who were viewed as untrustworthy. Firearm regulations directed toward disarming Native

Americans and Black people were pervasive.[8] These specific "status-based regulations of this period are repugnant (not to mention unconstitutional)," *Range*, 53 F.4th at 276 n.18, but "colonial history furnishes numerous examples in which full-fledged members of the political community as it then existed—*i.e.*, free, Christian, white men—were disarmed due to conduct evincing inadequate faithfulness to the sovereign and its laws," *id.* at 276. Massachusetts, for example, disarmed the supporters of an outspoken preacher in the 1630s "not because those supporters had demonstrated a propensity for

[8] *See* Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* 28-29 (2006); *see also, e.g.*, *Laws and Ordinances of New Netherland, 1638-1674*, at 18-19 (1868) (1639 New Netherland law); 1 *The Statutes at Large; Being A Collection of All the Laws of Virginia* 255-56 (1823) (1643 Va. law); 5 *Records Of The Colony Of New Plymouth* 173 (1856) (1675 Plymouth law); 2 *Records of the Colony of Rhode Island and Providence Plantations* 561 (1857) (1677 R.I. law); 2 *The Statutes at Large; Being A Collection of All the Laws of Virginia* 481-82 (1823) (1680 Va. law); *Grants, Concessions, and Original Constitutions of the Province of New Jersey: The Acts Passed During the Proprietary Governments, and Other Material Transactions Before the Surrender Thereof to Queen Anne* 341 (1753) (1694 N.J. law); 2 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 235 (1896) (1706 Pa. law); 1 *The Laws of Maryland, With The Charter, The Bill of Rights, The Constitution of The State, and Its Alterations, The Declaration Of Independence, And The Constitution Of The United States, And Its Amendments* 117-18 (1811) (1715 Md. Law); 6 *The Public Records Of The Colony Of Connecticut* 381-82 (1872) (1723 Conn. law); *Laws of New York From The Year 1691 to 1773*, at 199 (1752) (1730 N.Y. Law); *A Complete Revisal of All the Acts of Assembly, of the Province of North-Carolina, Now in Force and Use* 152-54 (1773) (1753 N.C. law); 6 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 319-20 (1899) (1763 Pa. law); *Digest of the Laws of the State of Georgia From Its First Establishment as a British Province Down to the Year 1798, Inclusive, and the Principal Acts of 1799*, at 153-55 (1800) (1768 Ga. Law).

violence," but because of their "disavowal of the rule of law" and failure to demonstrate "obedience to the commands of the government." *Id.* (first citing Edmund S. Morgan, *The Case Against Anne Hutchinson*, 10 New Eng. Q. 635, 637-38, 644, 648 (1937); then citing Ann Fairfax Withington & Jack Schwartz, *The Political Trial of Anne Hutchinson*, 51 New Eng. Q. 226, 226 (1978); then citing James F. Cooper, Jr., *Anne Hutchinson and the "Lay Rebellion" Against the Clergy*, 61 New Eng. Q. 381, 391 (1988); and then citing John Felipe Acevedo, *Dignity Takings in the Criminal Law of Seventeenth-Century England and the Massachusetts Bay Colony*, 92 Chi.-Kent L. Rev. 743, 761 (2017)). To take another example, during the French and Indian War, Virginia imported the English tradition of disarming Catholics who refused to take a loyalty oath. *See* 7 *The Statutes at Large; Being A Collection of All the Laws of Virginia* 35-39 (1820) (1756 Va. law). Like the English law discussed above, the Virginia statute tied disarmament to failure to take a loyalty oath—and exempted those who took the oath after previously refusing. *Id.* at 38.

The Revolutionary War. Over the course of the Revolutionary War, American legislatures passed numerous laws "disarming non-violent individuals because their actions evinced an unwillingness to comply with the legal norms of the nascent social compact"—often specifically targeting those who failed to demonstrate loyalty to the emergent American government.

Range, 53 F.4th at 277. An early example is a 1775 Connecticut law providing that any person convicted of "libel[ing] or defam[ing]" any acts or resolves of the Continental Congress or the Connecticut General Assembly "made for the defence or security of the rights and privileges" of the colonies "shall be disarmed and not allowed to have or keep any arms." *The Public Records of the Colony of Connecticut From May, 1775 to June, 1776*, at 1993 (1890) (1775 Conn. law). In 1776, the Continental Congress recommended that the colonial governments disarm those who were "notoriously disaffected to the cause of America" or who simply "have not associated" with the colonial governments in the war effort. 4 *Journals of the Continental Congress 1774-1789*, at 205 (1906) (resolution of March 14, 1776). At least six of the governments enacted legislation in this vein. *See* 5 *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay* 479-84 (1886) (1776 Mass. law); 7 *Records of the Colony of Rhode Island and Providence Plantations in New England* 567 (1862) (1776 R.I. law); 1 *The Public Acts of the General Assembly of North Carolina* 231 (1804) (1777 N.C. law); *Acts of the General Assembly of the State of New-Jersey at a Session Begun on the 27th Day of August, 1776*, at 90 (1777) (1777 N.J. law); 9 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 112-13 (1903) (1777 Pa. law); 9 *The Statutes at Large; Being A Collection of All the Laws of Virginia* 282 (1821) (1777 Va. law).

The enacting legislatures, like their historical predecessors, made categorical judgments about disarmament that were not tied to an individual's past violent acts but rather to the legislature's judgment about who is included among the law-abiding, trustworthy members of the political community. A common feature of this set of laws was to require oaths of loyalty to the government and to strip anyone who failed or refused to take the oath of the right to bear arms. *See, e.g.*, 1776 Mass. law at 479-80; 1776 R.I. law at 566-67; 1777 N.C. law at 229-31; 1777 Pa. law; at 111-13; 1777 Va. law at 281-82. Many of these laws provided that failing or refusing to take the oath resulted in forfeiture of a bundle of additional political rights, including the rights to vote, to serve on juries, and to hold public office—further reinforcing the longstanding connection between arms-bearing and these related rights, *see supra* pp. 21-22. *See, e.g.*, 1776 Mass. law at 481; 1777 N.C. law at 231; 1777 Pa. law at 112-13; 1777 Va. law at 282.

A law like Connecticut's, disarming those who had libeled the government, certainly does not "narrowly target citizens who committed inherently violent or dangerous crimes." *Folajtar v. Attorney General*, 980 F.3d 897, 909 (3d Cir. 2020). The Pennsylvania law had the effect of depriving "sizable numbers of pacifists" of the right to bear arms "because oath-taking violated the religious convictions of Quakers, Mennonites, Moravians, and

other groups." *Range*, 53 F.4th at 278. That law is also particularly informative because the year before enacting it, Pennsylvania became one of the first states to adopt a state constitutional provision protecting an individual right to bear arms. *Heller*, 554 U.S. at 601; *see* Pa. Declaration of Rights of 1776 § XIII, *in The Complete Bill of Rights: The Drafts, Debates, Sources, And Origins* 278 (Neil Cogan ed., Oxford University Press 2d ed., 2014); *see also* N.C. Declaration of Rights of 1776 § XVII, *in The Complete Bill of Rights*, *supra*, at 277-78 (individual rights-based constitutional provision adopted the year before the North Carolina disarmament law cited above); Mass. Const. of 1780, pt. I, art. XVII, *in The Complete Bill of Rights*, *supra*, at 277 (individual rights-based constitutional provision adopted four years after the Massachusetts disarmament law cited above). And the Virginia law required those who were disarmed to attend militia trainings and run drills without weapons—a consequence reinforcing the "social function" of publicly identifying those who were not "law-abiding members of the civic community," and a consequence that is not compatible with conceiving of those who were disarmed as "dangerous spies or threats of violence," *Range*, 53 F.4th at 279. *See* 1777 Va. law at 282 ("[T]he person so disarmed shall, nevertheless, be obliged to attend musters[] . . . .").

In sum, the disarmament measures adopted during this early period of the Republic reflect that "legislatures were understood to have the authority and broad discretion to decide when disobedience with the law was sufficiently grave to exclude even a non-violent offender from the people entitled to keep and bear arms." *Range*, 53 F.4th at 279.

Ratification debates. The historical background of the Second Amendment's adoption provides particularly persuasive evidence that the founders understood that the constitutional right to bear arms is compatible with broad legislative authority to disarm groups legislatures did not trust to follow the law. One "Second Amendment precursor[]" that the Supreme Court has described as "highly influential," *Heller*, 554 U.S. at 604, is particularly instructive. When the Pennsylvania ratifying convention met in 1787, one of the "main issues throughout the . . . debate" was the Antifederalists' objection to the Constitution's "lack of a Bill of Rights." 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 627 (1971). Although the Antifederalists did not persuade a majority of the convention to reject ratification on this basis, their principal objections were ultimately vindicated four years later through the adoption of the Bill of Rights, eight provisions of which—including the Second Amendment—echoed a set of amendments first proposed by the Pennsylvania Antifederalists. *Id.* at 628

(explaining that these specific proposals are "of great importance in the history of the federal Bill of Rights"). And the Pennsylvania Antifederalists' proposed constitutional amendment regarding the right to bear arms stated that: "no law shall be passed for disarming the people or any of them *unless for crimes committed*, or real danger of public injury from individuals." *Id.* at 665 (emphasis added).

Thus, the founding generation recognized that "crimes committed"—violent or not—can supply an independent ground for a legislature to prohibit firearm possession. As the D.C. Circuit explained, "[t]he use of the word 'or'" in this proposal reflects that "criminals, in addition to those who posed a 'real danger,'" have historically been "proper subjects of disarmament." *Medina*, 913 F.3d at 158-59.

The Pennsylvania Antifederalists were not alone in proposing a Second Amendment precursor that expressly permitted laws disarming untrustworthy people. At the Massachusetts convention, Samuel Adams proposed an amendment providing that the "Constitution be never construed to authorize Congress . . . to prevent the people of the United States, *who are peaceable citizens*, from keeping their own arms." 2 Schwartz, *supra*, at 675, 681 (emphasis added) (quotation marks omitted). And in New Hampshire, the convention recommended an amendment providing that "Congress shall never

disarm any Citizen unless such as are or have been in *Actual Rebellion*." *Id.* at 758, 761 (emphasis added). These proposals, like the Pennsylvania one, recognize the prevailing historical tradition of broad legislative power to disarm people who fell outside the trustworthy, law-abiding citizenry—so the proposals cannot be "shoehorn[ed] . . . into the silo of dangerousness." *Folajtar*, 980 F.3d at 908-09.

The Second Amendment as adopted does not include the same language as these proposals. But it would have been "obvious" to the founders that certain groups, including (but not necessarily limited to) "the felon," Cooley, *supra*, at 29, could properly be subject to disarmament laws consistent with the "*pre-existing* right" that was "codified" in the Second Amendment, *Bruen*, 142 S. Ct. at 2127 (quoting *Heller*, 554 U.S. at 592). *See also* Amar, *supra*, at 48; Stephen P. Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* 273 (2008) (explaining that founding-era proponents of a constitutional right to bear arms "did not object to the lack of an explicit exclusion of criminals from the individual right to keep and bear arms" during the debates over "what became the Second Amendment," because this limitation "was understood"). Given the language of these influential proposals along with the apparent absence of any meaningful founding-era "disputes regarding the lawfulness" of potential regulations disarming

criminals, courts "can assume it settled" that such regulations are "consistent with the Second Amendment." *Bruen*, 142 S. Ct. at 2133 (discussing the proper inference to draw from the historical record regarding "sensitive places," which "yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited").

Summary. Each regulation discussed above demonstrates that the founders inherited a tradition under which a legislature has broad discretion to disarm classes of people they did not trust to follow the law. And collectively, the effect was that only a subset of the founding generation would have "fully enjoyed the right to keep and bear arms." Adam Winkler, *Gunfight: The Battle Over the Right to Bear Arms in America* 116 (2011) (explaining that the founders "were perfectly willing to confiscate weapons from anyone deemed untrustworthy").

b. Felony punishment laws

In a separate vein, for centuries, felonies have been "the most serious category of crime." *Medina*, 913 F.3d at 158. In 1769, Blackstone defined a felony as "an offence which occasions a total forfeiture of either lands, or goods, or both, at the common law; and to which capital or other punishment may be superadded, according to the degree of guilt." 4 William Blackstone, *Commentaries on the Laws of England* 95 (1769). Blackstone observed that "[t]he

idea of felony is indeed so generally connected with that of capital punishment, that we find it hard to separate them." *Id.* at 98.

Capital punishment and forfeiture of estate were also commonly authorized punishments in the American colonies (and then the states) up to the time of the founding. *Folajtar*, 980 F.3d at 904-05. Capital punishment for felonies was "ubiquit[ous]" in the late eighteenth century and was "'the standard penalty for all serious crimes.'" *See Baze v. Rees*, 553 U.S. 35, 94 (2008) (Thomas, J., joined by Scalia, J., concurring in the judgment) (quoting Stuart Banner, *The Death Penalty: An American History* 23 (2002)). Indeed, the First Congress (which drafted and proposed the Second Amendment) made a variety of felonies punishable by death, including not only offenses like treason, murder on federal land, and piracy on the high seas, but also non-violent conduct relating to forging or counterfeiting a public security. *See* An Act for the Punishment of Certain Crimes Against the United States, 1 Stat. 112-15 (1790). States in the early Republic likewise treated "nonviolent crimes such as forgery and horse theft" as "capital offenses." *Medina*, 913 F.3d at 159; *see* Banner, *supra*, at 18 (referring to specific examples of individuals in Georgia who "escaped from jail after being condemned to death" for "forgery" or "horse-stealing"). And many American jurisdictions up through the end of the 1700s authorized complete forfeiture of a felon's estate. *See* Beth A. Colgan,

Reviving the Excessive Fines Clause, 102 Cal. L. Rev. 277, 332 & nn.275-276 (2014) (citing statutes).

A few specific examples of state laws demonstrate the severe consequences of committing a felony at the time. In 1788, just three years before the Second Amendment's ratification, New York passed a law providing for the death penalty for crimes including counterfeiting (as well as burglary, robbery, arson, and malicious maiming and wounding). 2 *Laws of the State of New York Passed at the Sessions of the Legislature (1785-1788)*, at 664-65 (1886) (1788 N.Y. law). The act established that every person convicted of such an offense was "liable to suffer death, shall forfeit to the people of this State, all his[] or her goods and chattels, and also all such lands, tenements, and hereditaments[] . . . at the time of any such offence committed, or at any time after." *Id.* at 666. For other felonies, the authorized punishment for "the first offence" was a "fine, imprisonment, or corporal punishment," and the punishment "for any second offense . . . committed after such first conviction" was "death." *Id.* at 665.

Two years earlier, New York had passed a law severely punishing counterfeiting of bills of credit. 2 *Laws of the State of New York Passed at the Sessions of the Legislature (1785-1788)*, at 260-61 (1886) (1786 N.Y. law). The law said a counterfeiter "shall be guilty of felony, and being thereof convicted, shall

forfeit all his or her estate both real and personal to the people of this State, and be committed to the [correction house] of the city of New York for life, and there confined to hard labor." *Id.* at 261. In addition, "to prevent escape," the defendant was to be "branded on the left cheek with the letter C, with a red hot iron." *Id.*

Similarly, in 1777, Virginia adopted a law for the punishment of forgery, which the legislature believed previously "ha[d] not a punishment sufficiently exemplary annexed thereto." 9 *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature* 302 (1821) (1777 Va. forgery law). The act stated that anyone convicted of forging, counterfeiting, or presenting for payment a wide range of forged documents "shall be deemed and holden guilty of felony, shall forfeit his whole estate, real and personal, shall receive on his bare back, at the publick whipping post, thirty nine lashes, and shall serve on board some armed vessel in the service of this commonwealth, without wages, for a term not exceeding seven years." *Id.* at 302-03.[9] *See also, e.g.*, *A Digest of the Laws of Maryland* 255-56 (1799) (collecting

[9] The act provided that "the governour and council may make out of the offender's estate such an allowance as they shall think necessary for the maintenance of his wife and children" and, reflecting an American trend, provided that "no attainder for any offence hereby made felony shall work any corruption of blood, or [disinheritance] of heirs." 1777 Va. forgery law at 303; *see Wallach v. Van Riswick*, 92 U.S. 202, 210 (1875) (explaining that "[w]hen the

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Maryland forgery laws enacted between 1776 and 1778, each of which provided that those convicted "shall suffer death as a felon, without benefit of clergy").

As the D.C. Circuit has observed, "it is difficult to conclude that the public, in 1791, would have understood someone facing death and estate forfeiture to be within the scope of those entitled to possess arms." *Medina*, 913 F.3d at 158; *accord Range*, 53 F.4th at 280-81 ("*A fortiori*, given the draconian punishments that traditionally could be imposed" for "non- violent" felonies including larceny, repeated forgery, and false pretenses, "the comparatively lenient consequence of disarmament under 18 U.S.C. § 922(g)(1) is permissible."). Thus, "tradition and history" show that "those convicted of felonies are not among those entitled to possess arms" under the Second Amendment. *Medina*, 913 F.3d at 158, 160.

c. Comparison to Section 922(g)(1)

Both sets of historical traditions surveyed above demonstrate Section 922(g)(1)'s constitutionality. *Bruen* calls for an analysis of "how and why" the historical and challenged regulations "burden a law-abiding citizen's right to armed self-defense." 142 S. Ct. at 2133. Of course, Section 922(g)(1)

Federal Constitution was framed," corruption of blood "was felt to be a great hardship, and even rank injustice").

imposes *no* burden on "a law-abiding citizen's right to armed self-defense" because it only applies to people who have removed themselves from the law-abiding citizenry by committing offenses punishable by more than one year of imprisonment. In any event, what the historical record shows is that legislatures historically disqualified categories of persons from possessing firearms, just as felon-dispossession statutes do today. History shows that legislatures' reasons for doing so could include a legislative judgment that the disarmed persons could not be counted upon to be responsible, law-abiding members of the polity, just as felon-dispossession statutes do today. And history demonstrates that people who committed felonies at the time of the founding would have been exposed to far more severe consequences than disarmament including capital punishment and estate forfeiture.

3. Vincent's contrary arguments lack merit.

Each of Vincent's arguments serves only to underscore that her Second Amendment claim fails.

a. A historical inquiry does not turn on whether a challenged regulation is identical to earlier prohibitions.

It is of no moment that specific legislation prohibiting felons as a class from possessing firearms appears to be, as Vincent observes, "exclusively a twentieth century phenomenon." Br. 20-23. As an initial matter, felon-

dispossession laws are themselves "longstanding" pillars of our Nation's legal system, and, notwithstanding their twentieth-century pedigree, the Supreme Court has endorsed these laws as consistent with its text-and-history approach to the Second Amendment. *Heller*, 554 U.S. at 626.[10] But perhaps more importantly, it is not necessary to mine the history for a "dead ringer" or a "historical *twin*"—Section 922(g)(1) is "analogous enough" to the array of English and early American historical precursors discussed above "to pass constitutional muster." *Bruen*, 142 S. Ct. at 2133.

Vincent fares no better in contending that fraud offenders like her were historically subject to penalties short of disarmament. Br. 13-20. It would be "'absurd'" to interpret *Bruen* as "'robotically . . . requir[ing] the Government in

[10] Section 922(g)(1) can be directly traced back to a 1938 statute prohibiting individuals convicted of a limited list of "crime[s] of violence" from shipping, transporting, or receiving firearms. *See* Federal Firearms Act, Pub. L. No. 75-785, secs. 1(6), 2(e)-(f), 52 Stat. 1250, 1250-51 (1938). In 1961, Congress expanded that law to cover felonies generally, regardless of violence. *See* An Act to Strengthen the Federal Firearms Act, Pub. L. No. 87-342, sec. 2, 75 Stat. 757, 757 (1961). In 1968, Congress prohibited possession, in addition to reenacting the prohibitions on shipment, transportation, and receipt. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. VII, sec. 1202(a)(1), 82 Stat. 197, 236; *id.* at tit. IV, sec. 902, § 922(e)-(f), 82 Stat. at 230-31; *see also* Gun Control Act of 1968, Pub. L. No. 90-618, tit. I, sec. 102, §§ 922(g)(1), 922(h)(1), 82 Stat. 1213, 1220 (reenacting and recodifying the prohibitions on shipping, transportation, and receipt); Firearms Owners' Protection Act, Pub. L. No. 99-308, secs. 102(6)(D), 104(b), 100 Stat. 449, 452, 459 (1986) (consolidating the prohibitions on shipping, transportation, possession, and receipt into 18 U.S.C. § 922(g)).

an as-applied challenge'" to Section 922(g)(1) "to find an analogy specific to the crime charged." *Range*, 53 F.4th at 285 (alteration omitted) (quoting *United States v. Charles*, No. 22-cr-154, --- F. Supp. 3d ----, 2022 WL 4913900, at *9 (W.D. Tex. Oct. 3, 2022)). Instead, Vincent can be disarmed under *Bruen* because the law prohibiting her from possessing a firearm is part and parcel of a historical tradition of broad authority for a legislature to disarm categories of people who cannot be trusted to follow the law. That tradition encompasses the authority to disarm felons in general as well as felony fraud offenders in particular. *See Medina*, 913 F.3d at 158 ("[F]elonies were—and remain—the most serious category of crime deemed by the legislature to reflect 'grave misjudgment and maladjustment.'" (quoting *Hamilton*, 848 F.3d at 626)); *see also id.* at 160 (rejecting as-applied challenge by someone "convicted of felony fraud—a serious crime, *malum in se*, that is punishable in every state"); *Folajtar*, 980 F.3d at 910 (rejecting as-applied challenge by someone convicted of felony tax fraud, which "is no less serious than larceny, one of the nine common law felonies, or forgery, one of the first felonies in the United States").[11]

[11] In any event, founding-era punishment for "those convicted of fraud and financial crimes" (Br. 13) was hardly lenient. As discussed above, certain non-violent fraud-related offenses were historically subject to capital punishment and estate forfeiture. *See supra* pp. 37-41. For example, while Vincent is correct to observe (Br. 14) that larceny was not a capital offense under the federal Crimes Act of 1790, she fails to note the statute's penalty for

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As a district court applying *Bruen* has observed, "a list of the laws that *happened to exist* in the founding era is, as a matter of basic logic, not the same thing as an exhaustive account of what laws would have been theoretically *believed to be permissible* by an individual sharing the original public understanding of the Constitution." *United States v. Kelly*, No. 3:22-cr-37, 2022 WL 17336578, at *2 (M.D. Tenn. Nov. 16, 2022). To presume that founding-era legislatures legislated to the full limits of their constitutional authority would mistakenly reduce "analogical reasoning under the Second Amendment" to "a regulatory straightjacket." *Bruen*, 142 S. Ct. at 2133; *see also Kelly*, 2022 WL 17336578, at *2 ("No reasonable person would, for example, think that the legislatures of today have adopted every single hypothetical law capable of comporting with our understanding of the Constitution, such that any law that has not yet been passed simply must be unconstitutional."); *cf. Terminiello v. City of Chicago*, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting) (warning against "convert[ing] the constitutional Bill of Rights into a suicide pact").

b. Vincent's argument that non-violent offenders are entitled to an exception from disarmament

"falsely mak[ing], alter[ing], forg[ing] or counterfeit[ing][] . . . any certificate, indent, or other public security of the United States . . . with intention to defraud any person, knowing the same to be false, altered, forged or counterfeited": "every such person [convicted of the offense] shall suffer death." 1 Stat. at 115.

laws lacks support in text and history and would be unworkable in practice.

Relying heavily on a view articulated in a few pre-*Bruen* minority opinions, Vincent argues that "history and tradition permit a lifetime ban for violent or dangerous conduct only." Br. 11-13 (capitalization altered); *see also Folajtar*, 980 F.3d at 912-15 (Bibas, J., dissenting); *Kanter v. Barr*, 919 F.3d 437, 451, 454, 464 (7th Cir. 2019) (Barrett, J., dissenting); *Binderup v. Attorney General*, 836 F.3d 336, 357, 367-69 (3d Cir. 2016) (en banc) (Hardiman, J., joined by Fisher, Chagares, Jordan, and Nygaard, JJ., concurring in part and concurring in the judgments); Amicus Br. of Firearms Policy Coalition (FPC) 5-27.

This minority view is incorrect. As an initial matter, the argument is at odds with the Supreme Court's recognition that Second Amendment rights belong to "law-abiding" citizens, as well as the Court's related express endorsement of felon-dispossession laws. *See Medina*, 913 F.3d at 159 ("[W]e see no reason to think that the Court meant 'dangerous individuals' when it used the word felon" in *Heller*.). The dangerousness argument also disregards the latitude historically accorded to legislatures to make categorical judgments regarding firearm disqualifications. While it may be possible to cobble together "cherry-picked history" suggesting that "dangerousness was one

reason to restrict firearm possession," "it was hardly the only one." *Folajtar*, 980 F.3d at 909; *see also Medina*, 913 F.3d at 158-59 (similar).

Nor does the history reflect that there is a tradition of legislation specifically "prevent[ing]" disarmament of a fraud offender. Br. 19; *see also* Amicus Br. of FPC 30-31. The laws Vincent and her *amici* rely on reflect only that "legislatures did not *always* exercise their authority" to seize arms in particular circumstances; ultimately, these examples simply "underscore legislatures' power and discretion to determine when disarmament is warranted." *Range*, 53 F.4th at 284.

Declining to adopt the historically unsupported dangerousness limitation also produces an outcome that, "[a]s a practical matter," "makes good sense." *Medina*, 913 F.3d at 159. If the constitutionality of felon-possession prohibitions were to turn on the "dangerousness" of the disqualifying offense, courts "would face the unenviable task of weighing the relative dangerousness of hundreds of offenses already deemed sufficiently serious to be classified as felonies." *Folajtar*, 980 F.3d at 906. If the relevant question were focused on the violence of the offense, that would "raise[] the question of *how violent*, exactly, a crime has to be for application of § 922(g)(1) to be constitutional." *Binderup*, 836 F.3d at 410 (Fuentes, J., joined by McKee, C.J., and Vanaskie, Shwartz, Krause, Restrepo, and Roth, JJ., concurring in part, dissenting in

part, and dissenting from the judgments); *see also Johnson v. United States*, 576 U.S. 591, 598 (2015) (striking down Armed Career Criminal Act's residual clause, while citing the Court's "repeated attempts and repeated failures to craft a principled and objective standard" for defining what crimes qualify as violent). And if the analysis were to proceed as a case-by-case assessment of the danger posed by an individual felon, that would bear a striking resemblance to a process Congress already tried—before making a policy judgment to abandon it. *See Kanter*, 919 F.3d at 439, 450 (explaining that before 1992, 18 U.S.C. § 925(c) authorized the government to assess whether an individual applicant should be granted an exception from § 922(g)(1), but that Congress "abandoned that approach after finding that the dangerousness inquiry was a 'very difficult' and time-intensive task, and that 'too many of these felons whose gun ownership rights were restored went on to commit violent crimes with firearms.'" (citations omitted) (first quoting H.R. Rep. No. 102-618, at 14 (1992); and then quoting H.R. Rep. No. 104-183, at 15 (1995))); *see also United States v. Bean*, 537 U.S. 71, 77 (2002) (explaining that the now-defunct process under § 925(c) was "performed by the Executive, which, unlike courts, is institutionally equipped for conducting a neutral, wide-ranging investigation").

In any event, even if the relevant standard did account for whether any particular conviction demonstrates that the offender "present[s] a danger to the public," Br. 13 (quotation marks omitted), that would not help Vincent here. As courts have recognized, empirically, convicted felons—including ones who committed offenses that do not involve violence—are more likely than ordinary, law-abiding citizens "to engage in illegal and violent gun use." *Kanter*, 919 F.3d at 448 (quotation marks omitted). The evidence reflects that fraud and forgery offenders, for example, commit future violent crimes at a significant rate, approaching the rate of future violent crimes by similarly situated individuals convicted of burglary and drug offenses. *Folajtar*, 980 F.3d at 909 (citing Matthew R. Durose, et al., Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010, Supplemental Tables: Most serious commitment offense and types of post-release arrest charges of prisoners released in 30 states in 2005*, at app. tbl.2 (Dec. 2016), https://bjs.ojp.gov/content/pub/pdf/rprts05p0510_st.pdf)). For decades, Congress has not deviated from its reasonable determination that felony convictions broadly, not just violent felonies, are disqualifying. *See* H.R. Rep. No. 87-1202, at 2 (1961) (touting the inclusion of felonies generally as "an integral part of an anticrime legislative program" that would respond to

pressing "national concern" by "mak[ing] it more difficult for the criminal elements of our society to obtain firearms").

c. Vincent is not entitled to an exception based on the amount of time that has passed since her conviction.

Finally, Vincent errs in arguing that felon-possession prohibitions must come with an expiration date. Br. 23-25; *see also* Amicus Br. of FPC 17-19. The Second Amendment permits Congress to disarm individuals based on their status as convicted felons. The historical examples on which Vincent relies, similar to her other arguments, show at most that in certain circumstances legislatures may have determined a temporary firearm regulation was adequate—not that legislatures lack the authority to determine, as Congress did here, that a lengthier prohibition is necessary.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

The federal appellees do not believe that oral argument is necessary in this case because Vincent's challenge is foreclosed by this Court's precedent. If the Court believes that oral argument would be of assistance, the federal appellees stand ready to present argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,364 words, excluding the parts of the brief exempted under Rule 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Calisto MT 14-point font, a proportionally spaced typeface.

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