

No. 12-1371

In The
Supreme Court of the United States

—◆—
UNITED STATES OF AMERICA,

Petitioner,

v.

JAMES ALVIN CASTLEMAN,

Respondent.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit**

—◆—
**BRIEF *AMICUS CURIAE* NEW YORK STATE
ASSOCIATION OF CHIEFS OF POLICE
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS CURIAE*¹

The New York State Association of Chiefs of Police writes in support of the Petitioner, the United States of America.

The New York State Association of Chiefs of Police is a not-for-profit organization; its membership composed of the most experienced and respected law enforcement officials in the State of New York. Current and past membership includes Police Chiefs, Commissioners, Superintendents, Executives, Administrators, and Agents-in-Charge. The Association advances the general welfare of the police profession through the education of its members, and its ultimate goal is to develop a more efficient and effective law enforcement and criminal justice system.

Amicus have a strong interest in this case based on their familiarity with the training of officers and officers' purposes in responding to domestic violence calls. *Amicus* are in a position to assist the Court in this case because its importance is not limited to the parties. The outcome of the case will affect all law

¹ Pursuant to Rule 37.6 of the Supreme Court of the United States, no counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution to the preparation or submission of the brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief and letters of consent have been filed with the Clerk pursuant to Rule 37.2 of the Supreme Court of the United States.

enforcement agencies across their State and across the country. Victims of domestic abusers legitimately demand effective law enforcement and look to the *amicus* to provide protection from abusers.



SUMMARY OF THE ARGUMENT

“For many battered women and abused children, whether their abuser gets access to a gun will be nothing short of a matter of life and death.”²

Violence between intimate partners is not exclusively exhibited as physical force or dominance. To permit Congress to address only domestic violence that presents itself as physical abuse alone is at best inept, and at worst, a fatal miscalculation. The Sixth Circuit’s holding on appeal unduly restricts the enforceability of the Gun Control Act (18 U.S.C. § 922) and the Lautenberg Amendment (18 U.S.C. § 922(g)) by limiting the definition of a “misdemeanor crime of domestic violence” to assault and battery offenses requiring *strong and violent physical force*.³ This limitation permits domestic abusers to possess weapons and endangers the safety of victims, members of law enforcement, and the general public.

² 142 Cong. Rec., S11876 (Sept. 30, 2006) (Floor Statement of Senator Frank Lautenberg).

³ *United States v. Castleman*, 659 F.3d 582 (2012).

An informed, evidence-based understanding of domestic violence encompasses the exertion of power and control, including but not limited to physical violence. The U.S. Department of Justice defines domestic violence as:

a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.⁴

⁴ U.S. Department of Justice, Office on Violence Against Women, *Domestic Violence*, available at <http://www.ovw.usdoj.gov/domviolence.htm> (updated March 2013). Domestic violence has also been recognized as a human rights violation. Rashida Manjoo declared that “Domestic Violence or Intimate Partner Violence (IPV) is a pervasive human rights violation that continues to affect women across the United States.” Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Rashida Manjoo (June 6, 2011). In its report responding to the petition presented on behalf of Jessica Lenahan, the Inter-American Commission on Human Rights (IACHR) asserted that “[d]omestic violence, for its part, has been recognized at the international level as a human rights violation and one of the most pervasive forms of discrimination, affecting women of all ages, ethnicities, races and social classes.” The IACHR, in its report, affirmed that States must take positive action to ensure that individuals within their jurisdiction can exercise their human rights, and that States may be liable for

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Similarly, Johns Hopkins University’s “Danger Assessment,” a scientifically tested fatality predictor for women experiencing domestic violence,⁵ illustrates that violence between intimate partners appears as dominance and control through various means, such as economic, emotional and psychological abuse. Of its twenty questions, only a few of the assessment’s questions reference physical force.⁶ The Gun Control Act embraces this modern understanding of the crime of domestic violence, acknowledging that the crime is not limited to violent physical force.⁷ The plain meaning of the Act and its legislative history fully support a more inclusive application of the firearms restriction – one of the few tools that police and prosecutors have to prevent officer and victim fatalities.



ARGUMENT

I. **Restricting Domestic Abusers’ Access to Firearms Enhances Public Safety**

Domestic violence threatens public safety. Abusers who have firearms are more likely to perpetrate

the action of non-state actors that violate the human rights of individuals within their jurisdiction. Therefore, the duty of States includes “prevention and response to the acts of private actors.”

⁵ Johns Hopkins School of Nursing, Danger Assessment, *available at* <http://www.dangerassessment.org/DA.aspx>.

⁶ *Id.*

⁷ Gun Control Act of 1968, 18 U.S.C. § 922 (1994), amended by 18 U.S.C. § 922(g)(9) (1996).

lethal violence against not only women and children,⁸ but also police officers⁹ and the general public, in the form of mass shootings.¹⁰ There is a strong correlation between lenient gun laws and an increase in gun violence, generally.¹¹ In the context of domestic violence, there is also a correlation between firearms possession and death. Therefore, when prosecutors' efforts to restrict abusers' access to firearms are hampered by an incorrect application of federal law, public safety is compromised and lethal violence is likely to increase.

A. Victim Safety Correlates to Firearms Possession

Perpetrators of domestic violence use firearms to threaten, intimidate, assault and kill their victims.¹²

⁸ See *infra* part IA.

⁹ See *infra* part IB.

¹⁰ See *infra* part IC.

¹¹ Arkadi Gerney, Chelsea Parsons, and Charles Posner, Center for American Progress, *America Under the Gun: A 50-State Analysis of Gun Violence and Its Link to Weak State Gun Laws*, April 2, 2013, available at <http://www.americanprogress.org/issues/civil-liberties/report/2013/04/02/58382/america-under-the-gun/>.

¹² A recent study revealed sixty-five percent (65%) of domestic violence victims residing in a shelter who previously lived in homes with guns reported their abuser using a gun to “scare, threaten or harm them.” Shannon Frattaroli, Johns Hopkins Center for Gun Policy and Research, *Removing Guns from Domestic Violence Abusers: An Analysis of State Level Policies to Prevent Future Abuse* (Oct. 2009) (citing Sorenson & Wiebe), available

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Between 2007 and 2011, the United States Department of Justice reported that a gun was used in 195,700 incidents of non-fatal, “violent” domestic abuse between intimate partners.¹³ In addition to non-fatal incidents, the link between access to firearms and victim fatality, especially female victims, is also well established. A firearm is the “most common weapon used by men to murder women, with nearly two-thirds of the women [homicide victims] having been murdered by male intimate partners.”¹⁴ In homicides of intimate partners, firearms are the most frequently used type of weapon.¹⁵ An abuser’s access to firearms in a home plagued by a history of domestic violence increases the risk of intimate partner

at <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/RemovingGunsfromIPVOffenders7Oct09.pdf>. Research indicates owning a gun is highly correlated with using the gun as a means to threaten and control intimate partners. E. Rothman, D. Hemenway, M. Miller, and D. Azrael, *Batterers’ Use of Gun to Threaten Intimate Partners*, J. of the Amer. Med. Women’s Assoc. 60, 62-68 (2005).

¹³ Michael Planty & Jennifer L. Truma, U.S. Department of Justice, *Firearm Violence: 1993-2011*, May 2013, available at <http://www.bjs.gov/index.cfm?iid=4616&ty=pbdetail>.

¹⁴ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Rashida Manjoo (June 6, 2011).

¹⁵ “On average, 3.5 people are killed by intimate partners every day in the United States. . . . About 60 [percent] of these homicides were committed using a firearm.” Elizabeth R. Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 Eval. Rev. 313 (2006) (citations omitted).

homicide by twenty (20) times.¹⁶ Abusers with a history of intimate partner violence are more likely to murder their intimate partner,¹⁷ and the risk of female homicide increases by five hundred percent (500%) when an abuser has access to firearms.¹⁸ Restricting access to firearms is one of the most effective ways to decrease these lethality rates.

B. Responding Law Enforcement Officers Are Safeguarded When Abusers' Access to Firearms is Restricted

The presence of firearms in a home where domestic violence is occurring compromises police officer safety. "Guns in the hands of dangerous individuals and criminals pose a significant threat to police

¹⁶ Johns Hopkins Bloomberg School of Public Health, Center for Gun Policy and Research, *Firearms and Intimate Partner Violence*, available at <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/> [hereinafter *Firearms and Intimate Partner Violence*].

¹⁷ Gerney, *supra* note 11 at 14 (citing *Firearms and Intimate Partner Violence*, *supra* note 15). Specifically, the risk of intimate partner homicide increases by 20 times when there is a history of domestic violence. Mayors Against Illegal Guns, Gun Laws and Violence Against Women Fact Sheet, 2, available at http://libcloud.s3.amazonaws.com/9/e9/e/1726/Gun_Laws_and_Violence_Against_Women.pdf.

¹⁸ *Id.* (citing J.C. Campbell, D.W. Webster, J. Koziol-McLain, et al., *Risk Factors for Femicide within Physically Abusive Intimate Relationships: Results from a Multi-Site Case Control Study*, 93 *Amer. J. of Public Health* 1089-97 (2003)).

officers.”¹⁹ The Federal Bureau of Investigation (FBI), assessing law enforcement officers assaulted and killed on the job, recognizes the heightened “potential hazard to an officer [when responding to] a domestic disturbance call.”²⁰ The Chairman and CEO of the National Law Enforcement Officers Memorial Fund describes the threat to officers in responding to a domestic violence situation as follows:

No assignment poses more uncertainty and danger to a law enforcement professional than a domestic disturbance call. The circumstances are emotionally charged, and weapons, alcohol and drugs are often involved. An officer who responds as a peacekeeper often becomes a target of the violence.²¹

The death of Officer John Falcone at the hands of an armed abuser illustrates the danger. In 2011, Officer Falcone responded to a report of shots fired in Poughkeepsie, New York.²² Upon arrival, Officer

¹⁹ Gerney, *supra* note 11.

²⁰ Cary Arberg, Domestic Disturbances: Deadly, Dangerous Calls, National Law Enforcement Memorial Fund (April 2011).

²¹ Campus Safety, Domestic Violence Takes a Heavy Toll on the Nation’s Law Enforcement Community, *available at* <http://www.campussafetymagazine.com/Channel/Mass-Notification/News/2007/10/09/Domestic-Violence-Takes-a-Heavy-Toll-on-Law-Enforcement-Community.aspx> (National Law Enforcement Officers Memorial Fund Press Release: October 8, 2008).

²² Larry Hertz, *City Mourns Officer John Falcone, “An Outstanding Member” of Police Department*, POUGHKEEPSIE
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Falcone encountered a man waving a gun and carrying a young child.²³ The man had just murdered his wife while holding his son. The couple had a long history of domestic violence prior to this final incident. Officer Falcone engaged in a struggle with the man after rescuing the child and handed the boy to a bystander.²⁴ During the struggle, Falcone was shot in the head and killed by the man before he turned the gun on himself.²⁵ Officer Falcone had served on the force for eighteen (18) years, and was forty-four (44) years old at the time of his death.²⁶

Between 1996 and 2009, fourteen percent (14%) of law enforcement officer murders were carried out while the officer was responding to a domestic disturbance call; ninety-seven percent (97%) of these deaths were perpetrated with a firearm.²⁷ A majority of law enforcement deaths that occur when responding to a domestic violence situation occur “without any warning, before [the officer] ha[s] made contact with the domestic violence suspect, and before [the]

JOURNAL (Feb. 19, 2011), *available at* <http://www.poughkeepsiejournal.com/article/20110219/NEWS05/102190338/>.

²³ Officer Down Memorial Page, *Detective John M. Falcone*, *available at* <http://www.odmp.org/officer/20752-detective-john-m-falcone>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Shannon Meyer & Randall H. Carroll, *When Officers Die: Understanding Deadly Domestic Violence Calls for Service*, 78 THE POLICE CHIEF 24 (May 2011).

officer[] perceive[s] any immediate threat to [his or her] safety.”²⁸ Therefore, the most effective means of reducing the incidence of officer fatalities that occur while responding to domestic calls is to prevent firearms from being present at the scene by removing these weapons from the hands of domestic abusers.

C. The Proliferation of Mass Shootings May Decelerate When Abusers’ Access to Firearms is Restricted

The increase in mass shootings, and the fact that many are often connected in some way to domestic violence, warrants the strict enforcement of existing federal firearms statutes as envisioned by Congress. Mayors Against Illegal Guns analyzed ninety-three (93) mass shootings (defined as shootings involving four (4) or more victims) occurring between January 2009 to September 2013.²⁹ In fifty-seven percent (57%) of the cases, the “shooter killed a current or former spouse, intimate partner or other family member” in the course of the mass shooting event.³⁰ In seventeen (17) of these mass shootings, the shooter had a prior domestic violence charge.³¹ Therefore, where

²⁸ Arberg, *supra* note 20.

²⁹ Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings* (Sept. 2013), available at <https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/analysis-of-recent-mass-shootings.pdf>.

³⁰ *Id.*

³¹ *Id.*

prosecutors can remove firearms from abusers' hands, at least this sub-set of mass shootings could be prevented or reduced in severity. Although a number of more restrictive regulatory proposals to curb mass shootings and gun violence have failed to gain political support, this more targeted approach requires mere enforcement of existing law.

II. The Plain Meaning of the Lautenberg Amendment Expressly Includes Predicate Misdemeanor Crimes that Do Not Require an Element of Violent Physical Force

As defined in 18 U.S.C. § 921(a)(33)(A) (the Firearms Statute), a “misdemeanor crime of domestic violence” includes “*any offense*” committed against a person with a specified domestic relationship “that is a misdemeanor under Federal, State, or Tribal law,” and has as an element,

- 1) the use of physical force, **or**
- 2) the *attempted use* of physical force, **or**
- 3) the *threatened use* of a deadly weapon.³²

³² § 921(a)(33)(A) (*emphasis added*). “Under the final agreement, the ban applies to crimes that have, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon. This is an improvement over the earlier version, which did not explicitly include within the ban crimes involving an attempt to use force, or the threatened use of a weapon, if such an attempt or threat did not also involve actual physical violence. In my view, anyone who attempts or threatens violence

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The Firearms Statute therefore unambiguously defines two of the three elements of a predicate misdemeanor offense without any mention of strong and violent physical force. A well-settled canon of statutory interpretation instructs that, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”³³ When the words of a statute are clear and unambiguous, “judicial inquiry is complete.”³⁴

The use of “attempted” and “threatened” language demonstrates Congress’s intent to include misdemeanor crimes requiring no actual physical force as a predicate “misdemeanor crime of domestic violence.”³⁵ As such, even a state misdemeanor crime involving the attempted use of force or the threatened use of a deadly weapon triggers the provisions of the Lautenberg Amendment. If Congress intended for a predicate offense to trigger the Lautenberg Amendment’s protections only when violent physical force was an element of the misdemeanor conviction, then Congress would not have included the “attempted use of physical force” and the “threatened use of a deadly

against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms.” 142 Cong. Rec., S11876 (Sept. 30, 2006) (Floor Statement of Frank Lautenberg).

³³ *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

³⁴ *Id.*

³⁵ § 921(a)(33)(A); see Petitioner-Government, Petition for a Writ of Certiorari, No. 12-1371, *U.S. v. Castleman*, at 10-14.

weapon” in its definition of the predicate offense.³⁶ Just as attempts and threats of force do not necessarily involve violent physical force, neither does domestic violence.

The lower court’s selective citation of the statutory language also obscures the plain meaning in order to advance an incomplete statutory analysis. By removing the word “domestic” from the statutory definition of a predicate misdemeanor offense, the Sixth Circuit provides an argument that rests on a false premise:

[B]ut the government asks us to put more weight on the term “misdemeanor” than Congress meant the term to bear. Had Congress intended the word “misdemeanor” to have the effect suggested by the government, then Congress would have had no need to modify “misdemeanor” with the phrase “**crime of violence.**” Congress could simply have prohibited any person convicted of a “misdemeanor domestic assault or battery offense” from possessing a firearm. It chose not to do so.³⁷

This reading mistakes what the term “misdemeanor” modifies. Contrary to the Court’s conclusion that “misdemeanor” is modified by the phrase “crime of

³⁶ *Id.*

³⁷ *Castleman*, 695 F.3d at 588 (*emphasis added*).

violence,” in the Firearms Statute, “misdemeanor” is modified by the phrase “crime of *domestic* violence.” The Court errs in removing the word “domestic” from their analysis of the statute’s plain meaning. Focused on the term “violence” alone, the Court ignored Congress’s deliberate use of “domestic violence” and all non-physical crimes reflected in those two words that together encompass much more than violent physical force. The plain language of the statute, therefore, contradicts the Sixth Circuit’s reading.

III. The Sixth Circuit’s Statutory Interpretation Frustrates Congress’s Manifest Purpose to Prohibit Domestic Abusers’ Access to Firearms

Examining the legislative history of the Gun Control Act and the Lautenberg Amendment further bolsters the plain meaning of the statutes.³⁸ Inconsistent

³⁸ See *Zuni School District No. 89 v. Department of Education*, 550 U.S. 81, 93 (2007) (relying on legislative history and congressional purpose when interpreting the statute at issue). In a concurring opinion, Justice Stevens declared, “Analysis of legislative history is, of course, a traditional tool of statutory construction. There is no reason why we must confine ourselves to, or begin our analysis with, the statutory text if other tools of statutory construction provide better evidence of congressional intent with respect to the precise point at issue.” *Id.* at 106. (Stevens, J., concurring); see *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 610-12 (1991) (“Our precedents demonstrate that the Court’s practice of utilizing legislative history reaches well into its past . . . We suspect that the practice will likewise reach well into the future.”).

Circuit Court decisions interpreting the force necessary to constitute a “misdemeanor crime of domestic violence”, including the one currently on appeal, have caused ambiguities in states’ application of the Lautenberg Amendment.³⁹ A close examination of the Congressional record assists in resolving these conflicts.⁴⁰

A. Congressional Intent Informs the Proper Application of the Lautenberg Amendment

In *U.S. v. Hayes*,⁴¹ this Court referred to the purpose of the Gun Control Act to resolve inconsistent application of federal law.⁴² This Court relied upon the

³⁹ See Petitioner-Government, Reply Brief for the United States, No. 12-1371, *U.S. v. Castleman*, at 8-11 (To constitute a misdemeanor crime of domestic violence, the Fourth, Ninth and Tenth Circuits require violent physical force, while the First, Eighth and Eleventh Circuits have held that any physical force is enough (state law misdemeanor crimes involving intentional offensive physical contact qualify as misdemeanor crime of domestic violence)).

⁴⁰ See *United States v. Hayes*, 555 U.S. 415 (2009) (relying on legislative history to inform the meaning of § 922(g)(9) and § 921(a)(33) and resolve circuit conflicts); see *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) (This Court granted Certiorari “in light of the sharp divisions among the courts regarding the proper standard for the admission of expert testimony.” This Court resolved these circuit conflicts by examining the text of the rule, the drafters’ intent, the drafting history, and the general purpose and approach of the Federal Rules of Evidence.).

⁴¹ *United States v. Hayes*, 555 U.S. 415 (2009).

⁴² *Id.* at 426-27.

legislative history and Congressional intent to support its holding that whether a crime involves domestic violence depends on the perpetrator's relationship to the victim rather than the elements of the offense.⁴³ Similarly, in the matter currently before the Court, circuit conflicts exist regarding the degree of force required to prompt the application of the firearms restriction.⁴⁴ Despite acknowledging conflicting circuit interpretations, the Sixth Circuit expressly rejected the need to examine the legislative history.⁴⁵ Given this Court's decision in *Hayes*, the Sixth Circuit erred by refusing to investigate the legislative history.

The legislative history supports the extension of the Lautenberg Amendment to all predicate misdemeanor crimes of domestic violence, the Senator's statements noted that the predicate offense is not limited to crimes involving "actual physical violence."⁴⁶ In fact, the definition was meant to include, "anyone who attempts or threatens violence against a loved one." The threat or attempt of violence alone is sufficient to establish a convicted abuser "pose[s]

⁴³ *Id.*

⁴⁴ See Petitioner-Government, Reply Brief for the United States, *supra* note 38 at 8-11 (To constitute a misdemeanor crime of domestic violence, the Fourth, Ninth and Tenth Circuits require violent physical force, while the First, Eighth and Eleventh Circuits have held that any physical force is enough (state law crimes involving intentional offensive physical contact qualifies as misdemeanor crime of domestic violence)).

⁴⁵ *Castleman*, 659 F.3d at 585-86.

⁴⁶ 142 Cong. Rec., S11878.

an unacceptable risk, and should be prohibited from possessing firearms.”⁴⁷

Ignoring Congressional intent, the Sixth Circuit erroneously concludes that a “misdemeanor crime of domestic violence” requires “violent physical force.”⁴⁸ This misinterpretation directly contradicts Congress’s manifest purpose and constrains the ability of prosecutors to remove and prohibit an abuser’s access to firearms.⁴⁹

B. The Sixth Circuit’s Misinterpretation of the Lautenberg Amendment Limits the Efficient and Successful Prosecution of Domestic Abusers and Hampers the Ability of Police Chiefs to Prevent Abusers from Joining their Ranks

In states that consistently prosecute firearms offenders and enforce firearm prohibitions, thirty-eight percent (38%) fewer women are shot to death by intimate partners.⁵⁰ Consistent enforcement of firearm

⁴⁷ *Id.* Senator Lautenberg’s statement does not make any reference to actual physical violence. Rather, the late Senator declares Congress’s near unanimous support for removing guns from abusers convicted of a predicate offense including either *attempted or threatened violence* against a loved one.

⁴⁸ *Castleman*, 659 F.3d at 585-89.

⁴⁹ 142 Cong. Rec., S11878, *supra* note 46.

⁵⁰ See U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Program Data: Supplementary Homicide Reports, 2010, *available at* http://www.icpsr.umich.edu/cgi-bin/file?comp=none&study=33527&ds=1&file_id=1082869

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prohibitions allows communities to increase victim, officer, and public safety by reducing the threat of lethal violence.⁵¹ A national report analyzing the enforcement of domestic violence firearm prohibitions concluded domestic homicides can be linked with failing to use all of the available prosecutorial resources to prevent offenders from possessing firearms.⁵²

Limiting prosecutors' enforcement of the Gun Control Act and the Lautenberg Amendment against abusers who are convicted of a predicate misdemeanor offense requiring strong and violent physical force constrains prosecutors' ability to remove guns from abusers convicted of crimes under common assault and battery statutes. Without proof of strong and violent physical force, prosecutors cannot even charge a qualifying misdemeanor, which means that abusers who do not leave trace evidence of violent physical

(excludes New York due to incomplete data); Mayors Against Illegal Guns, *supra* note 17 at 1.

⁵¹ See U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Program Data: Supplementary Homicide Reports, 2010 (excludes New York due to incomplete data), *available at* http://www.icpsr.umich.edu/cgi-bin/file?comp=none&study=33527&ds=1&file_id=1082869; U.S. Department of Justice, Office on Violence Against Women & National Center on Full Faith and Credit, *Enforcing Domestic Violence Firearm Prohibitions: A report on Promising Practices*, 3 (Sept. 2006), *available at* http://www.bwjp.org/files/bwjp/articles/Enforcing_Firearms_Prohibitions.pdf.

⁵² Office on Violence Against Women & National Center on Full Faith and Credit, *supra* note 51 at 3.

force on their victims would never be charged.⁵³ Such a narrow definition would exclude a large percentage of domestic violence offenders from the Amendment's reach, including those who strangle, stalk and molest their victims, to name a few.

Congress intended to empower prosecutors to remove firearms from domestic abusers, with the "hope that the enforcement of the law will be as rigid as the law very simply defines it."⁵⁴ In interpreting the Lautenberg Amendment to the Gun Control Act, the Criminal Division of the Department of Justice defined "misdemeanor crime of domestic violence" as including "all misdemeanors that involve the use *or attempted* use of physical force," thus recognizing that the statute was meant to empower federal prosecutors to, "prevent those individuals who have demonstrated *a propensity* for domestic violence from obtaining a firearm."⁵⁵ An abuser who attempts

⁵³ Moreover, nearly half of the states' common assault and battery statutes would not qualify as a predicate offense under the Sixth Circuit's holding. *See* Petitioner-Government, Reply Brief for the United States, *supra* note 39 at 14 ("the generic assault and battery laws of about half of the States do not draw distinctions between different degrees of force.").

⁵⁴ 142 Cong. Rec., S11876 (Sept. 30, 2006) (Floor Statement of Senator Frank Lautenberg).

⁵⁵ U.S. Department of Justice, Office of the United States Attorneys, Criminal Resource Manual, 1117 Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence, *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm01117.htm. In this memo, the Criminal Division of the Department of

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physical force or makes threats with a deadly weapon against a domestic partner has demonstrated such a propensity.

Likewise, in *Hayes*, this Court acknowledged the dilemma faced by prosecutors limited by the evidentiary requirement of physical violence. Articulating the legal basis for extending the firearm restriction to abusers convicted of a misdemeanor crime of domestic violence, this Court illustrated:

Existing felon-in-possession laws, Congress recognized, were not keeping firearms out of the hands of domestic abusers, because “many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies.” 142 Cong. Rec. 22985 (1996) (statement of Sen. Lautenberg). By extending the federal firearm prohibition to persons convicted of “misdemeanor crime[s] of domestic violence,” proponents of §922(g)(9) sought to “close this dangerous loophole.” *Id.*, at 22986.

Construing §922(g) to exclude the domestic abuser convicted under a generic use-of-force statute (one that does not designate a domestic relationship as an element of the offense) would frustrate Congress’ manifest purpose.

Justice defines “misdemeanor crime of domestic violence” as including “all misdemeanors that involve the use *or attempted* use of physical force.”

Firearms and domestic strife are a potentially deadly combination nationwide.⁵⁶

In the matter currently before this Court, excluding domestic abusers convicted under a statute requiring less than “strong and violent physical force” frustrates Congress’s manifest purpose by directly impeding robust enforcement of the law. Prosecutors will be limited to enforcing the law against a mere subset of abusers convicted of a predicate misdemeanor that has, as an element, the use of violent physical force.⁵⁷ Many domestic abusers would therefore have continued access to firearms as most assault and battery offenses do not require violent physical force.⁵⁸ Such restrictive enforcement directly contradicts Congressional intent to remove firearms from domestic abusers convicted of *any crime of domestic violence*.⁵⁹

A ruling from this Court rejecting the Sixth Circuit’s analysis ensures nationwide consistency in the application of the firearms restriction to any misdemeanor crime of domestic violence, rather than those involving only physical force. This will enable prosecutors and law enforcement to carry out Congress’s express intent to “decreas[e] the possibility of

⁵⁶ *Hayes*, 555 U.S. at 426-27.

⁵⁷ See Petitioner-Government, Petition for a Writ of Certiorari, *supra* note 35 at 24.

⁵⁸ *Id.*

⁵⁹ 142 Cong. Rec., S10377-01, S10378 (Sept. 12, 1996).

deadly violence,” by successfully removing firearms from the hands of abusers involved in “certain explosive domestic situations.”⁶⁰

The criminal justice and civil legal systems can significantly enhance victim, officer, and public safety through the proper enforcement of federal and state statutes prohibiting domestic abusers from possessing firearms.⁶¹ In a 2013 study, the Center for American Progress found a “clear link between high levels of gun violence and weak state gun laws.”⁶² This national study revealed that Tennessee ranked number eleven (11) for the weakest firearm laws in the United States, and in 2011, experienced the sixth highest number of males murdering females.⁶³ Upholding the Sixth Circuit decision will further prohibit prosecutors’ uniform enforcement of the Gun Control Act and likely contribute to Tennessee’s firearm violence.⁶⁴



⁶⁰ Criminal Resource Manual, *supra* note 55.

⁶¹ Office on Violence Against Women & National Center on Full Faith and Credit, *supra* note 51 at 3.

⁶² Gerney, *supra* note 11 at 1.

⁶³ *Id.*

⁶⁴ Notably, police chiefs have the discretion to disqualify any officer from employment previously convicted of a misdemeanor crime of domestic violence. The Sixth Circuit’s narrow reading would allow domestic abusers who stop short of physical violence to join the force, eroding the ability of police leadership to keep state-issued firearms out of abusers’ hands.

CONCLUSION

For the foregoing reasons, the Sixth Circuit Court of Appeals erred in finding that the Gun Control Act, including the Lautenberg Amendment, require that the underlying misdemeanor conviction have, as an element, violent physical force. Such a finding results from a misreading of the plain meaning of the statute, is inconsistent with Congressional intent, defies the evidence-based definition of domestic violence, frustrates the purpose of the statute and dramatically increases the potential threat that abusers with firearms pose to police officers and the public at large. These *amicus* respectfully request that Judgment of the Sixth Circuit Court of Appeals be reversed, and judgment entered for Petitioners.

Respectfully submitted,

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