No. 25-5150

IN THE

Supreme Court of the United States

DAVID ROBINSON, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICUS CURIAE ROBERT M. MILLER, PH.D. IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

Amicus Curiae Robert M. Miller, Ph.D. is Plaintiff in *Robert M. Miller v. Pamela J. Bondi*, 1:23-cv-195 (E.D. Va), a civil action that challenges the constitutionality of the taxation and regulation of, *inter alia*, short-barreled rifles ("SBRs"). A decision in the case before this court will substantially resolve issues in Amicus's case as well as other pending challenges to the National Firearms Act of 1934, Pub. L. 73-474, 48 Stat. 1236 (1934) ("NFA") and the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213 (1968) ("GCA") in district and circuit courts.

Amicus is the owner of Raging Host LLC, a federally licensed manufacturer and seller of firearms including those regulated under the NFA. Amicus has a substantial interest in the outcome of the case as touching on his right to make and sell NFA regulated firearms without bearing all or part of the $200 tax and its adverse economic effects on demand for NFA-regulated firearms. Amicus has a Ph.D. in Economics. Amicus has more than forty years of experience shooting, owning, making, repairing, buying, and selling firearms. He owns more than twenty-five SBRs. This part Brandeis brief part legal brief brings to Court's attention relevant matter not already brought to its attention by the parties, and it will be of considerable help to the Court.[1]

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[1] No counsel for any party authorized this brief in whole or in part, nor did such counsel make a monetary contribution to fund this brief. No person other than Amicus made a monetary contribution intended to fund the preparation or submission of this brief. Amicus notified the parties of his intention to file this brief on September 3, 2025, in compliance with Rule 37.2.

SUMMARY OF THE ARGUMENT

The Court should grant Petitioner's petition for a writ of certiorari ("Petition") because it addresses issues of great national importance, federal law has not been settled but should be addressed by this Court, and the lower court's ruling is clearly erroneous in defiance of this Court's prior decisions. A decision from this Court will also resolve the issue of regulating semi-automatic rifles disparagingly called "assault weapons" in numerous States, with lawsuits percolating up through the several district and circuit courts. A decision in this case will greatly enhance the interests of judicial economy and protection of fundamental rights.

This Court's landmark ruling in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) ("*Bruen*"), established that the Second Amendment to the United States Constitution protects the right of individuals to keep and bear arms that are in common use for lawful purposes and that are not dangerous and unusual. The Court established a test of whether a particular sort of firearm is protected by looking to the relevant historical evidence of regulation at or near the time of the Founding Era.

SBRs are presumptively protected by the Second Amendment as bearable arms. SBRs have existed in civilian and military use since before the Founding Era. They remained legal and in common use throughout the Nation's history until the National Firearms Act of 1934 ("NFA") regulated them at the federal level. Subsequent to the NFA, more than one million SBRs have been registered.

The NFA sought to regulate, *inter alia*, SBRs because Congress believed these to be the weapons preferred by criminals, with little to no use for lawful

self or common defense. This Court's decision in *Bruen* expressly overturned that fallacious reasoning. The dispositive inquiry is not whether certain weapons are favored for criminal uses, but whether they are lawfully used in self and common defense.

NFA hearing testimony made clear that the purpose of the $200 tax was to price regulated firearms out of the market for most citizens, evading Second Amendment protections. Hearing testimony explicitly said that NFA regulations would not be enforced against the ordinary citizen but would be used solely against criminals. The use of a tax to infringe fundamental rights has been held unlawful by this Court in First Amendment jurisprudence; that should be extended to the Second Amendment. Empirical evidence demonstrates that the NFA tax and registration requirements have powerful prohibitive effects on private ownership.

ARGUMENT

I. This Court's Decisions in *Bruen* and *Heller* Are Controlling.

This Court has held that the Second Amendment presumptively protects an individual right to keep and bear arms for lawful purposes, including self-defense. *Bruen*, 597 U.S. 1-2. "[T]o justify a firearm regulation, the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation." *Id.* "The Second Amendment is the very product of interest balancing by the people, and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense. *Id.*, citing *District of Columbia v. Heller*, 554 U.S. 570, 635

(2008) ("*Heller*") (internal quotes omitted). "[T]he Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Bruen*, 597 U.S. at 28. "Thus, even though the Second Amendment's definition of 'arms' is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense." *Id.* "We therefore read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes," *Heller*, 554 U.S. at 625.

Respondents did not and cannot identify any historical record in the Founding Era of regulating SBRs. These firearms have been in common use for lawful purposes for centuries.

II. Eleventh Circuit's Decision Is Erroneous

In the opening breath of its Standards of Review, Petition at 4a, the Eleventh Circuit says it "must follow Supreme Court precedent," but it did exactly the opposite throughout its decision. As a member of this Court recently reminded, "Lower court judges may sometimes disagree with this court's decisions, but they are never free to defy them." *Nat'l Institutes of Health v. Am. Pub. Health Ass'n,* 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J. concurring in part).

The Eleventh Circuit's decision relied on pre-*Heller* and *Bruen* decisions that "discussed the dangerousness of firearms covered by the NFA…." Petition at 12a. In each of those cases, rather than find SBRs to be presumptively lawful and require the *government* to prove them to be dangerous and unusual and bearing no reasonable relationship to the preservation of a well-regulated militia, they

piggybacked on the decision in *Miller v. U.S.*, 307 U.S. 174 (1939) relating solely to short-barreled shotguns ("SBS") and put the onus on criminal defendants, like Mr. Robinson, to prove that SBRs were meaningfully different than SBSs. Importantly, the decision in *Miller* was *evidentiary*; the deceased petitioner failed to prove that SBSs had a reasonable relationship to the effectiveness of a well-regulated militia; the court did not consider whether SBRs had such a relationship. *Miller* was also an *as-applied* challenge, not a facial challenge as presented by Petitioner.

This Court's decision in *Bruen* implies that courts must conduct an independent analysis for each "sort[] of weapon"[2] regulated by the government when conducting the historical analysis. The lower court's shortcut amounts to saying, "NFA regulated firearms are dangerous and unusual because the NFA regulates them." As described in Section VI.B., courts and government may not simply declare facts that courts are required to independently examine.

The Eleventh Circuit relies on *dicta* in *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517 (1992) saying, "It is of course clear from the face of the Act that the NFA's object was to regulate certain weapons likely to be used for criminal purposes…." Petition at 12a. This Court has since expressly rejected that analysis, holding that the dispositive inquiry *is not* whether a firearm is commonly used by criminals, such as handguns, but whether they are commonly used by citizens for lawful purposes. *Heller*, 554 U.S. at 628-29; *Caetano v. Massachusetts*, 577 U.S. 411, 416-18, 420 (2016); *Bruen,* 579 U.S. at 17, 22. ("To justify its regulation, the government may not simply posit that the regulation promotes an

[2] Heller, 554 U.S. at 570.

important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."). The Eleventh Circuit's reliance on *Thompson/Ctr.* also implicitly invokes means-end scrutiny that *Heller* and *Bruen* foreclose. The NFA cannot be self-justifying. "We must…guard against giving postenactment history more weight than it can rightly bear." *Bruen*, 579 U.S. at 35. "[P]ost-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text." *Heller v. District of Columbia*, 670 F. 3d 1244, 1274 n.6 (D.C. Cir. 2011) (Kavanaugh, J., dissenting). Certainly, if the "belated innovations of the mid- to late-19th-century courts come too late to provide insight into the meaning of [the Constitution in 1787]," then court decisions in the 20th century upholding the NFA before *Heller* and *Bruen* have no usefulness. *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.,* 554 U.S. 269, 312 (2008) (Roberts, C.J., joined by Scalia, J., Thomas, J., Alito, J, dissenting).

III. Congress Has No Plenary Police Powers to Regulate SBRs for Crime Reduction.

In debating the NFA, Congress and the Government admitted that Congress had no police powers while casually discussing how their use of the Interstate Commerce Clause and taxation powers would circumvent that Constitutional prohibition. *Hearings Before the Committee on Ways and Means*, House of Representatives, Seventy-Third Congress, Second Session on H.R. 9066, Apr. 16, 18, and May 14, 16, 1934 ("*NFA Hearings*") at 8, 102, 134.

It is well-established that Congress has no plenary police powers to reduce crime in the several states. *United States v. Lopez*, 514 U.S. 549, 566 (1995).

IV. SBRs Have Been in Common Use for Lawful Purposes for Centuries.

Contrary to anti-gun propaganda opposing private ownership of "weapons of war," this Court held, by negative application, that individuals have the right to keep and bear weapons that have a "reasonable relationship to the preservation or efficiency of a well regulated militia," or "its use could contribute to the common defense." *Miller*, 307 U.S. at 178. Indeed, for every rifle in U.S. history from the *Brown Bess* musket to the AR-15 carbine,[3] there has *never* been any distinction between "weapons of war" and those commonly used for self-defense or hunting.

Longer barreled firearms were preferred by militias for technical and military reasons. Eighteenth century firearms had a poor fit between crudely forged barrels and hand-cast lead balls, which allowed propellant gases to slip past the lead ball, reducing velocity, and diminishing range, accuracy, and terminal energy. Longer barreled firearms were also preferred to host bayonets for use as spears. Yet it does not follow from historical requirements for militiamen to muster with long-barreled muskets that shorter barreled firearms were prohibited. No such regulations existed until the NFA. SBRs had military and civilian uses for ease of carry and use, especially in canoes, on coaches, or on horseback.

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[3] The AR-15 carbine is the semi-automatic equivalent of the U.S. military's standard-issued, select fire, M4 carbine.

SBRs have been used in common defense since before the Founding of the United States and long thereafter without any historical restrictions. The Giovanni Beretta Folding Stock Snaphaunce Pistol, produced in 1683, could be concealed under a cloak.[4] The Springfield Model 1795 musket, produced from 1795-1814 with a 44 inch barrel, was often shortened to 10-14 inches by users for close quarters use.[5] Colt's New Model Revolving Rifle, notably used by the Pony Express, was produced from 1855-1863 with a barrel length as low as 16 inches.[6] The Springfield Model 1855 musket was produced in a pistol-carbine version with barrel lengths of 10 and 12 inches.[7] The Smith & Wesson New Model No. 3 Single Action Revolver,

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[4] https://www.nramuseum.org/the-museum/the-galleries/ancient-firearms/case-10-artcraftsmanship-in-the-old-world-iii/giovanni-beretta-(brescia,-italy)-folding-stock-snaphaunce-pistol.aspx

[5] Philip A. Schmidt, U.S. Military *Flintlock Muskets and their Bayonets: The Early Years, 1790—1815*, at 75 (2006); U.S. Springfield Model 1795 Flintlock Musket Type I, Nat'l Rifle Assoc. Museum, https://www.nramuseum.org; Springfield Model 1795 Musket: America's First Production, Forgotten Weapons.com. Apr. 8, 2021, https://www.forgottenweapons.com/springfield-model-1795-musket-americas-first-military-production/.

[6] McAulay, John D. (2004). "Col. Colt's Revolving Rifle in the Civil War." American Rifleman. National Rifle Association of America. https://www.americanrifleman.org/content/colt-s-model-1855-revolving-rifle-in-the-civil-war/

[7] National Museum of American History Behring Center; Norm Flayderman, *Flayderman's Guide to Antique American Firearms and their Values*, Gun Digest Books, Iola, 2007. 9th ed.; Col. Robert E. Gardner, *Small Arms Makers: A Directory of Fabricators of Firearms, Edged Weapons, Crossbows and Polearms*, Crown Publishers Inc, New York: 1963. 185.

produced from 1870-1915 with a 6.5-inch barrel, was sometimes made with a detachable shoulder stock.[8, 9]

V. SBRs Are Useful and Desirable for Home Defense and Sporting Purposes.

The need for armed self-defense is perhaps most acute in the home. *Heller*, 554 U.S. at 628. A homeowner in bed is awakened by the sound of people breaking in. There is no time to dial 911, and police would arrive too late. The homeowner's eyes are not accustomed to light, and he is not wearing hearing protection. The hallways and doorways of his home are narrow, making it difficult to wield a full-length rifle. Amicus's preferred and recommended weapons for home defense are SBRs and SBSs. SBRs can have an ammunition capacity of up to 30 rounds for multiple attackers or a prolonged gunfight. They can use a silencer and subsonic ammunition to prevent the homeowner from being dazed by the flash and report of his own gun. Subsonic bullets are less likely to penetrate walls, causing inadvertent harm.

SBRs are also permitted and routinely used for sporting purposes, such as competitions organized by the National Rifle Association (NRA), United States Practical Shooting Association (USPSA), the International Defensive Pistol Association (IDPA), and the National Shooting Sports Foundation (NSSF).

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[8] https://www.rockislandauction.com/riac-blog/smith-and-wesson-revolvers-jim-supica-gun-collection#:~:text=One%20of%20the%20most%20obscure,3%20revolver.

[9] Amicus is also aware of short-barreled shotguns (blunderbusses) in common military and civilian use before and long after the Founding.

VI. SBRs Are Not Dangerous or Unusual.

A. NFA's Legislative History Lacks Any Evidence that SBRs Are Dangerous and Unusual.

The initial NFA draft did not regulate SBRs. Nothing in hearing testimony reveals why Congress believed SBRs were dangerous. The addition of rifles was based on a congressman's erroneous belief that omitting rifles would adversely affect his constituents:

> CONG. KNUTSON. General, would there any objection, on page 1, line 4. After the word 'shotgun' to add the words 'or rifle' having a barrel less than 18 inches? The reason I ask that is I happen to come from a section of the State where deer hunting is a very popular pastime in the fall of the year and, of course, I would not like to pass any legislation to forbid or make it impossible for our people to keep arms that would permit them to hunt deer.
>
> AG CUMMINGS. Well, as long as it is not mentioned at all, it would not interfere at all.
>
> CONG. KNUTSON. It seems to me that an 18-inch barrel would make this provision stronger than 16 inches, knowing what I do about firearms.

NFA Hearings at 13.

B. Congress May Not Declare a Firearm Dangerous and Unusual by Legislative Fiat.

Congress cannot simply declare that a firearm is "dangerous and unusual." "The Supreme Court has said repeatedly…that the courts must 'determine independently,' or some equivalent expression, the facts when constitutional questions of congressional power are presented." *National Maritime Union of America v. Herzog*, 78 F. Supp. 146, 184 (D.D.C. 1948) (Prettyman, J. dissenting). "Congress cannot establish its own power by a mere affirmation of fact." *Id.* at 185. "Congress has no power, by mere legislative fiat, to create a fact or to change a fact." *Nat'l Labor Relations Bd. v. Mackay Radio & Telegraph Co.*, 92 F.2d 761, 762 (9th Cir. 1937). This Court rejected a State's factual assertion when evidence disproved it. *United States v. Virginia*, 518 U.S. 515, 516 (1996).

If Congress could declare facts by legislative fiat, it could simply declare handguns to be "dangerous and unusual," and regulate them notwithstanding the results in *Heller* and *Bruen*. Courts must, for each sort of firearm, rely on physical characteristics, frequency in lawful use, historical use, and other factual information to determine whether they are "dangerous and unusual." It is crucial that a court not rely on infrequency of use caused by the prohibition itself, else the prohibition would be self-justifying.

D. SBRs Are Not More Dangerous than Longer-Barreled Rifles.

Bullets from firearms are deadly or incapacitating for two main reasons. First, they cause tissue damage and blood loss. Second, more powerful weapons impart substantial energy into the target, creating hydrostatic shock that causes damage far outside the wound channel. The formula for kinetic energy is $K = \frac{1}{2}mv^2$ where m is the mass of the bullet and v is its velocity. Since velocity is squared in the equation, increases in velocity increase kinetic energy at an increasing rate. A bullet with a mass of 220 grains (14.26 grams) and a velocity of 950 feet per second has kinetic energy of about 600 joules.[10] The same bullet at a velocity of 1,400 feet per second has kinetic energy of almost 1,300 joules, i.e., a 50% increase in velocity creates a 117% energy increase.

Bullets begin losing velocity as soon as the hot gases propelling them reach the muzzle and spread out. All else equal, the longer the barrel, the higher the velocity. Using 55-grain 5.56mm ammunition with a 12-inch barrel, the muzzle velocity will be 2,919 feet per second with 1,411 joules of energy. With a 16.5-inch barrel, muzzle velocity will be 3,187 feet per second with 1,681 joules of energy; 4.5 additional inches of barrel increases energy by 19%.[11]

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[10] Calculator Soup Kinetic Energy Calculator, https://www.calculatorsoup.com/calculators/physics/kinetic.php

[11] Rifleshooter.com, December 7, 2015, 223/5.56mm NATO Barrel length and velocity: 26 inches to 6 inches, https://rifleshooter.com/2015/12/223-remington-5-56mm-nato-barrel-length-and-velocity-26-inches-to-6-inches/

E. SBRs Are No More Concealable than Non-NFA Regulated Firearms.

Legislative history of the NFA reveals that Congress was concerned about firearms that were ***concealable***. It is crucial to distinguish this from Founding Era laws prohibiting the ***concealment*** of firearms. Respondent has not identified any regulations from the Founding Era regulating weapons because they *can be* concealed. Logical, reasonable, and lawful reasons to conceal firearms are to be less provocative and to prevent theft.[12]

SBRs are defined as firearms with rifled barrels less than 16 inches in length that are intended to be fired from the shoulder. 18 U.S.C. § 921(a)(7)-(8); 26 U.S.C. § 5845(c). ATF imputes the design intent when a rifle possesses a shoulder stock.

Figure 1, below, shows four *identical* firearms with the same barrel length in different configurations. The SBR (bottom) is the same length as a pistol with a stabilizing brace (second from top), the latter of which is not NFA regulated. The SBR is *longer* than a pistol without a brace or stock (top), which is also not NFA regulated. According to erroneous ATF classifications, adding a vertical forward grip to a pistol (third from top) makes the pistol into an NFA regulated Any Other Weapon. Figure 1 therefore shows that SBRs are *less concealable* than non-NFA regulated firearms.

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[12] Ironically, some states that previously prohibited concealed carry now require or encourage it: California, Connecticut, Florida, Illinois, New York, District of Columbia, Hawaii, Maryland, Massachusetts, New Jersey.

Figure 1

F. SBRs Are Not Unusual.

According to ATF, there were 870,286 SBRs registered as of May 2024, likely surpassing one million in the subsequent year.[13] Importantly, the number of SBRs is limited by the NFA itself, with

[13] Firearms Commerce in the United States, Statistical Update 2024, ATF. 12.

between 3 and 7 million[14] braced pistols in private hands and *hundreds of millions* more rifles and pistols that could be made into SBRs if the NFA did not exist.

VII. NFA's Taxing Provision Is Unlawful.

Petitioner presents the question whether the NFA exceeds Congress's power to tax under Article I and violates the Tenth Amendment. Petition at i. This Court should grant certiorari because longstanding precedent forbids taxation of fundamental rights, and the NFA's legislative history proves that its purpose was to infringe the right to bear arms. Regardless of its intent or purpose, the tax has the effect of infringement.

A. Taxing Rights Is Unconstitutional.

This Court previously sustained the government's authority to tax NFA regulated firearms. *Sonzinsky v. United States*, 300 U.S. 506 (1937). Based on this Court's decisions in *Heller, Bruen* and other authorities below, *Sonzinsky* should be overruled.

This Court has repeatedly held that taxes infringing fundamental rights are unconstitutional. *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943) ("A State may not impose a charge for the enjoyment of a right granted by the Constitution."). "The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious as the imposition of a censorship or previous restraint." *Follett v. McCormick*, 321 U.S.

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[14] *Factoring Criteria for Firearms with Attached "Stabilizing Braces,"* RIN 1140-AA55, 88 FR 6478, Bureau of Alcohol, Tobacco, Firearms, and Explosives (2023)("ATF Brace Rule (2023)"), 88 FR 6478, 6560.

573, 577 (1944). Even absent a motive to infringe the right, a tax that burdens free speech is incompatible with the First Amendment. *Arkansas Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 222 (1987). In *Grossjean v. American Press Co.,* 297 U.S. 233 (1936), this Court affirmed a lower court decision striking down Louisiana's 2% gross receipts tax on newspapers, finding it was a deliberate attempt to suppress speech and penalize specific publishers. In *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue,* 460 U.S. 575 (1983), this Court struck down a special use tax on paper and ink by newspapers despite no censorial motive.

This Court has yet to apply these principles to the right to bear arms, but it should because the "right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 780 (2010); *Bruen*, 579 U.S. at 1, 6.

This Court also struck down fees and costs on rights such as access to courts, *Boddie v. Connecticut*, 401 U.S. 371 (1971) and taxes on interstate travel, *Crandall v. Nevada,* 73 U.S. 35 (1868).

Not all taxes on firearms are unconstitutional. This Court upheld taxes on fundamental rights that were neutral, generally applicable, and not targeted at protected activities. *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 391 (1990).

B. The NFA's Purpose Was to Tax Regulated Firearms into Near Oblivion.

Courts will not invalidate otherwise constitutional statutes merely because a party alleges that

legislators had illicit intentions. *United States v. O'Brien*, 391 U.S. 367, 382-84 (1968). But when the text and legislative history prove that the *purpose* is to infringe a right, this Court's hands are not so tied. *Board of Education of Westside Community Schools (Dis. 66) v. Mergens*, 496 U.S. 226, 249 (1990). Congress scarcely hid its purpose to make NFA firearms expensive to skirt the Second Amendment.

> AG CUMMINGS. Oh, we do not attempt to escape [the Second Amendment]. We are dealing with another power, namely, the power of taxation, and of regulation under the interstate commerce clause. You see, if we made a statute absolutely forbidding any human being to have a machine gun, you might say there is some constitutional question involved. But when you say, "We will tax the machine gun" and when you say that "the absence of a license showing payment of the tax has been made indicates that a crime has been perpetrated", you are easily within the law.

NFA Hearings at 19.

The purpose of the NFA tax was to make regulated firearms so expensive that it would reduce private firearm ownership to such a low degree that they could focus on criminals.

> AAG KEENAN. The amount of tax is not important except from this standpoint; it

> would be desirable to have the sale of guns in the hands of as few people as possible as a matter of efficiency to keep track of these weapons and see whether they are sold to the wrong people.

NFA Hearings at 91.

The NFA was targeted to drive pawn brokers out of the firearm business; "the purpose of taxing is for control only," not for revenue collection. *Id.*

As a professional economist, Amicus attests, and it is obvious, that a sumptuary tax can ***either*** raise lots of revenue ***or*** greatly dissuade the undesired activity; it cannot achieve both in large measure. Even today, with record-high purchases, the NFA tax raised only $145 million in 2024;[15] this revenue falls well short of funding ATF's fiscal year 2024 budget of $1.9 billion.[16] Alcohol tax revenues, by contrast, were $11.1 billion in 2023, covering ATF's budget nearly six times over.[17]

C. The NFA Tax Has the Effect of Infringement.

Tax records indicate that no machineguns, SBRs, or SBSs were sold in 1934 after the effective date of

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[15] Bureau of Alcohol, Tobacco, Firearms, and Explosives. Fact Sheet – Facts and Figures for Fiscal Year 2024.

[16] Bureau of Alcohol, Tobacco, Firearms and Explosives. *Fiscal Year 2024 Congressional Budget Submission*. Washington D.C. U.S. Dep't of Justice, 2024: 13.

[17] Anthony A. Cillufo and Jane G. Gravelle, Congressional Research Service, Report R48181. Sept. 12, 2024.

the NFA.[18] From 1934-35, there were only 4,686 transfers of regulated firearms.[19] Even if Congress intended to raise revenue, the NFA tax had the inevitable, unlawful effect of infringing the right to bear arms. *Grossjean,* 297 U.S. at 244-47. The $200 NFA tax in 1934 is equivalent to $4,894.67 in today's dollars.[20] The tax was 17.2% of the 1935-36 median family income of about $1,160 – more than two months wages.[21] Black families earned 18-51% of what white families earned, making regulated guns even less accessible to them.[22]

Rifles amenable to becoming SBRs in 1934 included the Stevens Challenge Model 52 rifle ($3.98), Stevens No. 27 rifle ($7.75), and Browning Automatic rifle ($46.45).[23] Thus, the NFA tax rate on making an SBR from these rifles ranged from 430% to 5,000%.

Amicus's current distributor inventory shows the least expensive SBRs or rifles readily made into SBRs

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[18] "Machine Guns' Sale Is Halted," The Washington Post, December 25, 1934.

[19] U.S. Treasury Department. Annual Report of the Commissioner of Internal Revenue for the Fiscal Year Ended June 30, 1935. Washington, D.C.: U.S. Government Printing Office, 1935: 18.

[20] U.S. Bureau of Labor Statistics CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm.

[21] National Resource Committee, "Consumer Incomes in the United States: Their Distribution in 1935-36." U.S. Gov't Printing Office, Washington, D.C. August 1938: 4.

[22] Census Bureau. *The Social and Economic Status of the Black Population*. Current Population Reports, series P-23, no. 80. Washington, D.C. U.S. Government Printing Office, 1979: 30.

[23] 1932 Winter Sears Catalog, pp. 554-557.

range from $115 to $1,033 – an NFA tax rate between 19.38% and 174%.[24]

Even though the adverse economic effects of the fixed $200 tax have declined since 1934 due to inflation, it remains a substantial deterrent to owning SBRs. Proving this proposition, when ATF issued a rule allowing the tax-exempt making of SBRs from pistols outfitted with stabilizing arm braces, it received 255,162 applications in addition to tax-paid applications.[25,26,27] This natural experiment shows that, holding all else constant, the $200 tax was the *but for* reason for at least a quarter million Americans in one year to not make an SBR. On January 1, 2026, when the NFA tax is reduced to zero for SBRs pursuant to the One Big Beautiful Bill Act, Pub. L. 119-21 (2025), the Court will likely observe *millions* of Americans buying NFA regulated firearms.

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[24] Raging Host LLC, www.raginghost.com

[25] ATF Brace Rule (2023), 88 FR at 6569.

[26] Stephen Gutowski. The Reload. June 2, 2023. https://thereload.com/atf-says-a-quarter-million-guns-registered-under-pistol-brace-rule/#:~:text=The%20ATF%20told%20The%20Reload,to%20seven%20million%20devices%20exist.

[27] While it may seem odd that firearm owners would pay the NFA tax when ATF offered a tax exemption, many firearm owners were not aware of the Rule, and many others feared that the exemption was a "forbearance," and that ATF would collect or enforce the tax later.

VIII. NFA Was Never Intended to Punish Law-Abiding Citizens or to Prevent Criminals from Obtaining Firearms.

Congress admitted that only law-abiding citizens, not criminals, would comply with the NFA provisions.

> CHAIR. DOUGHTON. Do you believe that the criminal classes will comply with that provision?
>
> AAG KEENAN. We do not.
>
> CHAIR. DOUGHTON. Those who obey the law will, of course, comply, but the criminal classes will not do so.
>
> AAG KEENAN. We have recognized that from the beginning. We do not believe that this bill will disarm the hardened gangster, nor do we believe that it will prevent him from obtaining firearms. We do believe that it will permit effective and adequate prosecution, and take that man out of circulation when he does not comply. We think it will be much more difficult to do that if we do not have this means of identification….

NFA Hearings at 92.

DOJ admitted that registration by law-abiding citizens served no useful purpose for law enforcement, and criminals would not obey the law.

> CONG. VINSON. Do you think that there will be any affirmative benefit to the Department of Justice in knowing the names and addresses of citizens of this country who report and register a pistol or revolver that they now legally own?
>
> AAG KEENAN. Not directly; no.
>
> CONG. VINSON. The crook or gangster will not register that weapon?
>
> AAG KEENAN. We believe not.

NFA Hearings at 94.

DOJ admitted that the Constitution does not permit banning of firearms, including machineguns:

> AAG KEENAN. We have not the power to [ban machineguns] under the Constitution of the United States… I do not think we can prohibit anybody from owning them. I do not think that power resides in Congress… The Federal Government has no police powers.

NFA Hearings at 100.

At least one Congressman and State AG believed that mere *possession* of regulated items was *prima facie* evidence of criminal conduct.

> CONG. FULLER. If a man is carrying that type of weapon, if he is not an officer, he ought to be taken into custody anyway, because we know that he is carrying it for an unlawful purpose; I am referring to such a weapon as a sawed-off shotgun or machine gun, or a silencer.
>
> MD. AG RECKORD. We agree with that.

NFA Hearings at 111.

IX. Registration of SBRs Infringes the Right to Bear Arms.

The Government considered compliance by law-abiding citizens with the NFA's onerous provisions to be a minor inconvenience and a civic virtue if they wished to end gang violence. *NFA Hearings* at 25, 78, 109, 124, 157. Government has no authority to demand from citizens what it considers a civic virtue. Far from a "minor inconvenience," empirical evidence demonstrates the registration requirement is costly and a strong deterrent to the right to keep and bear arms.

In 2023, ATF attempted to reclassify pistols outfitted with stabilizing arm braces ("braced pistols") as SBRs. At the time, it estimated that there were between 3 and 7 million braced pistols in private hands.[28] The Brace Rule provided for the exemption of the $200 tax for the making of an SBR.[29] ATF received only 255,162 applications for the tax-exempt making

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[28] ATF Brace Rule (2023), 88 FR at 6560.

[29] *Id*. at 6570.

of SBRs. This indicates that between 91.5% and 99.36% of persons *refused* to register their braced pistols even when registration was free, demonstrating a substantial deterrent effect of the registration requirement to own SBRs. The reasons gun owners are unwilling to register their firearms are obvious: they reasonably fear from many historical examples that registration is a precursor to future confiscation, and they do not wish government to know which firearms they possess.

CONCLUSION

For the foregoing reasons and those presented by Petitioner and other amici supporting Petitioner, this Court should grant Petitioner's writ of certiorari.

September 19, 2025 Respectfully submitted:

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