No. 25-5150

IN THE SUPREME COURT OF THE UNITED STATES

DAVID ROBINSON JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the registration and taxation requirements for short-barreled rifles in the National Firearms Act, 26 U.S.C. 5801 et seq., violates the Second Amendment.

2. Whether the National Firearms Act exceeds Congress's taxing power.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is available at 2025 WL 870981. The order of the district court (Pet. App. 17a-29a) is available at 2023 WL 12066735.

JURISDICTION

The judgment of the court of appeals was entered on March 20, 2025. On June 2, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including July 18, 2025. The petition was filed on July 16, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Middle District of Florida, petitioner was convicted of possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. 5841, 5861(d), 5871. Judgment 1. He was sentenced to 18 months of probation, with six months to be served in home detention. Judgment 2-4. The court of appeals affirmed. Pet. App. 1a-16a.

1. The National Firearms Act (NFA), 26 U.S.C. 5801 et seq., enacted in 1934, imposes a federal tax on the manufacture, sale, and transfer of "firearm[s]," a term the statute defines to include machineguns, bombs, grenades, silencers, short-barreled shotguns, and any "rifle having a barrel or barrels of less than 16 inches in length." 26 U.S.C. 5845(a). A "rifle" is defined, in relevant part, as a weapon "designed or redesigned, made or remade, and intended to be fired from the shoulder." 26 U.S.C. 5845(c).

The Act requires manufacturers, importers, and dealers of NFA firearms to register and pay an occupational tax. 26 U.S.C. 5801, 5802. For those not subject to the occupational tax, the Act also requires registration and payment of a $200 excise tax upon the manufacture or transfer of an NFA firearm. 26 U.S.C. 5811, 5812, 5821, 5822, 5841.[1] Violating the Act's requirements, or possessing

[1] Effective January 1, 2026, Congress has reduced the tax for certain NFA firearms, including short-barreled rifles, to $0. Act of July 4, 2025, Pub. L. No. 119-21, § 70436(a), 139 Stat. 247.

an NFA firearm that has been transferred in violation of the Act's requirements, is a felony. 26 U.S.C. 5861(d), 5871.

2. In September 2022, police officers in Florida responded to a complaint of a suspicious car parked in front of a house. See Pet. App. 3a. They found petitioner in the driver's seat of the car, apparently asleep. See ibid. After being woken up and ordered to put his hands on the steering wheel, petitioner drove away. See ibid. But he then stopped the car once the officers activated their emergency lights. See ibid. The officers detained petitioner and recovered a loaded, unregistered short-barreled rifle from the car. See ibid.

A federal grand jury indicted petitioner for possessing an unregistered short-barreled rifle, in violation of 26 U.S.C. 5841, 5861(d), 5871. Indictment 1. Petitioner moved to dismiss the indictment, arguing, as relevant here, that the NFA's registration requirement violates the Second Amendment in light of NYSRPA v. Bruen, 597 U.S. 1 (2022), and that its transfer tax exceeds Congress's constitutional taxing authority. See Pet. App. 18a. The district court denied the motion. See id. at 17a-29a. After a bench trial based on stipulated facts, the court found petitioner guilty and sentenced him to 18 months of probation, with six months to be served in home detention. See Judgment 1-4.

3. The Eleventh Circuit affirmed. Pet. App. 1a-16a. The court determined that petitioner's Second Amendment claim was

foreclosed by United States v. Miller, 307 U.S. 174 (1939), which rejected a Second Amendment challenge to the NFA's prohibition on the possession of an unregistered short-barreled shotgun. Pet. App. 7a-11a. The court found that petitioner had failed to establish "a relevant and material difference" between a short-barreled shotgun and a short-barreled rifle "that would make one regulation constitutional and the other not." Id. at 13a. The court also rejected petitioner's claim that the NFA exceeded Congress's taxing power -- a claim that petitioner conceded was foreclosed by circuit precedent. See id. at 15a (citing United States v. Bolatete, 977 F.3d 1022, 1033-1034 (11th Cir. 2020), cert. denied, 141 S. Ct. 1754 (2021)).

ARGUMENT

Petitioner renews (Pet. 8-23) his contention that the NFA's prohibition on possessing unregistered short-barreled rifles violates the Second Amendment. He also contends (Pet. 23-35) that the NFA's transfer tax exceeds Congress's Article I taxing power and violates the Tenth Amendment. The court of appeals correctly rejected those contentions, and its decision does not conflict with that of any other court of appeals. No further review is warranted.

1. The NFA makes it unlawful "to receive or possess" an NFA firearm, such as a short-barreled rifle, "which is not registered" in accordance with the Act. 26 U.S.C. 5861(d). For three

independent reasons, the court of appeals was correct to reject petitioner's facial Second Amendment challenge to that provision.

First, a facial challenge to a federal statute is the "'most difficult challenge to mount successfully,' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid.'" United States v. Rahimi, 602 U.S. 680, 693 (2024) (citation omitted). The NFA provision at issue here has at least some valid applications. For example, because the Second Amendment protects the right to possess arms for "traditionally lawful purposes, such as self-defense within the home," District of Columbia v. Heller, 554 U.S. 570, 577 (2008), the government may apply Section 5861(d) to individuals who instead pursue unlawful purposes, for instance by sawing off rifle barrels to make their firearms more useful in criminal activity or to engage in unlawful firearms trafficking.

Second, this Court's precedent forecloses petitioner's claim. In United States v. Miller, 307 U.S. 174 (1939), this Court upheld the application of the NFA to short-barreled shotguns, holding that the Second Amendment does not guarantee the right to possess such weapons. See id. at 178. The Court then reaffirmed Miller in Heller, explaining that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns," and that this limitation is "fairly supported by the historical tradition of

prohibiting the carrying of 'dangerous and unusual weapons.'" Heller, 554 U.S. at 625, 627 (citation omitted). As the court of appeals observed, petitioner does not meaningfully distinguish the short-barreled rifle here from the short-barreled shotguns in Miller. See Pet. App. 13a. Petitioner argues (Pet. 10-11) that Miller's analysis is outdated because such weapons are in common use today, but he cites no evidence establishing any material change in the use of short-barreled rifles or short-barreled shotguns since this Court decided Miller or since it reaffirmed that decision in Heller. See Johnson v. United States, 576 U.S. 591, 640 (2015) (Alito, J., dissenting) (short-barreled shotguns "are not typically possessed for lawful purposes").

Third, even apart from Miller, requiring the registration and taxation of short-barreled rifles is "consistent with this Nation's historical tradition of firearm regulation." NYSRPA v. Bruen, 597 U.S. 1, 17 (2022). American legislatures have long imposed special taxes on arms that are especially susceptible to criminal misuse. See David B. Kopel & Joseph G.S. Greenlee, The History of Bans on Types of Arms Before 1900, 50 J. Legis. 223, 227 (2024). For instance, many 19th-century legislatures taxed weapons such as dueling pistols, sword canes, Bowie knives, Arkansas toothpicks, and dirks. See id. at 293-328 (collecting statutes). Similarly, many States have long regulated the size of firearms. For example, many States banned or taxed pocket pistols.

See, e.g., id. at 288-289, 324. Those regulations applied to "pistols of small size which are not borne as arms but which are easily and ordinarily carried concealed." State v. Kerner, 107 S.E. 222, 225 (N.C. 1921); accord Andrews v. State, 50 Tenn. 165, 186-187 (1871); Fife v. State, 31 Ark. 455, 461 (1876); Wilson v. State, 33 Ark. 557, 559 (1878).

The NFA resembles those historical laws in both "how and why the regulation burden[s] a law-abiding citizen's right to armed self-defense." Bruen, 597 U.S. at 29. Like its historical precursors, the provision at issue here regulates the size of firearms but does not prohibit any class of firearms altogether. See 26 U.S.C. 5845(a)(3) ("rifle having a barrel or barrels of less than 16 inches in length").

And, significantly, because short-barreled rifles combine high destructive power with easy concealability, they are especially susceptible to criminal misuse. See, *e.g.*, United States v. Thompson/Center Arms Co., 504 U.S. 505, 517 (1992) (plurality opinion) ("short-barreled rifles" are "likely to be used for criminal purposes"); Johnson, 576 U.S. at 640, 642 (Alito, J., dissenting) (short-barreled shotguns are "notoriously dangerous" and are "uniquely attractive to violent criminals" because they "combine the deadly characteristics of conventional shotguns with the more convenient handling of handguns"). Indeed, "sawed-off shotguns were a weapon of choice for gangsters and bank

robbers during the Prohibition Era." Johnson, 576 U.S. at 640. "Al Capone's south-side Chicago henchmen used sawed-off shotguns when they executed their rivals from Bugs Moran's north-side gang during the infamous Saint Valentine's Day Massacre of 1929," and when "Bonnie and Clyde were killed by the police in 1934, Clyde was found 'clutching a sawed-off shotgun.'" Id. at 640 n.9 (citation omitted).

The decision below is consistent with the decisions of other courts of appeals. After Heller, several courts of appeals rejected Second Amendment challenges to the NFA's restrictions on short-barreled rifles and shotguns. See United States v. Cox, 906 F.3d 1170, 1184-1188 (10th Cir. 2018) (short-barreled rifles), cert. denied, 587 U.S. 1051 (2019); United States v. Wilson, 979 F.3d 889, 903 (11th Cir. 2020) (short-barreled shotguns); United States v. Hatfield, 376 Fed. Appx. 706, 707 (9th Cir. 2010) (short-barreled shotguns). Courts of appeals have continued to do so since Bruen. See United States v. Rush, 130 F.4th 633, 645 (7th Cir. 2025), petition for cert. pending, No. 24-1259 (filed June 6, 2025); United States v. Saleem, No. 23-4693, 2024 WL 5084523, at *1 (4th Cir. 2024) (short-barreled shotguns). Petitioner cites no case in which a court of appeals has held the NFA unconstitutional.

2. The court of appeals also correctly rejected petitioner's claim that the NFA's transfer tax exceeds Congress's taxing power. In Sonzinsky v. United States, 300 U.S. 506 (1937),

this Court upheld the NFA's tax on dealers as an appropriate exercise of Congress's taxing power, expressly rejecting the argument that the tax "is not a true tax, but a penalty imposed for the purpose of suppressing traffic in a certain noxious type of firear[m]." 300 U.S. at 512. Petitioner observes (Pet. 27 n.6) that this case involves the NFA's tax on firearms transfers rather than its tax on dealers, but he does not meaningfully distinguish those taxes from each other.

Petitioner contends (Pet. 30-31) that the transfer tax exceeds the scope of the taxing power because it "serves as a pretext for criminalizing the receipt or possession of a [short-barreled rifle], which should be a matter for the States rather than the Federal Government." Sonzinsky explained, however, "a tax is not any less a tax because it has a regulatory effect." 300 U.S. at 513. "Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed." Ibid. Since Sonzinsky, the Court has reiterated that "taxes that seek to influence conduct are nothing new," NFIB v. Sebelius, 567 U.S. 519, 567 (2012), and that "taxes may be enacted to deter or even suppress the taxed activity," Department of Revenue v. Kurth Ranch, 511 U.S. 767, 787 (1994).

Petitioner also argues (Pet. 31) that "Congress does not seek with the $200 payment to produce revenue for the government"

because "the amount of the $200 payment has not changed for inflation since 1934." The relevant question under this Court's precedents, however, is whether the tax "produces at least some revenue," NFIB, 567 U.S. at 564, not whether Congress "seek[s]" to produce revenue, Pet. 31. A tax that produces at least some revenue remains valid, even if "the revenue obtained is negligible." Minor v. United States, 396 U.S. 87, 98 n.13 (1969). The NFA satisfies that test. For example, in fiscal years 2022 and 2023, it produced more than $101 million in occupational taxes and more than $106 million in excise taxes. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep't of Justice, Firearms Commerce in the United States: Statistical Update 2024, at 8.[2] By way of comparison, the Act produced an average of just $5000 a year around the time this Court upheld it in Sonzinsky. See 300 U.S. at 514 n.1.

Petitioner observes (Pet. 31) that, "since 2003, responsibility for enforcing the NFA no longer lies with the Treasury Department and its IRS, but with the Justice Department and its ATF." But the constitutionality of a tax does not depend on the agency that administers it. See Cox, 906 F.3d at 1180. Further, as petitioner acknowledges (Pet. 31-32), ATF originally was housed within the Department of the Treasury; Congress moved

[2] http://www.atf.gov/resource-center/docs/report/2024firearmscommercereportpdf/download

it to the Department of Justice during the reorganization of federal departments that occurred after the attacks of September 11, 2001. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2274. Petitioner does not explain why the transfer of an agency from one department to another transforms a tax it collects into something other than a tax.

Petitioner's taxing-power claim does not warrant further review. Petitioner does not contend that the court of appeals' rejection of that claim creates a circuit conflict. See, e.g., Cox, 906 F.3d at 1183 & n.12 (noting the "unifor[m] agree[ment]" among courts of appeals that "the NFA falls within Congress's power to tax"). In addition, this Court has denied previous petitions inviting it to reconsider Sonzinsky.[3] And because Congress has eliminated the transfer tax on short-barreled rifles effective next year, see p. 2 n.1, supra, the question presented is of diminishing prospective importance.

[3] See Kettler v. United States, 587 U.S. 1051 (2019) (No. 18-936); Thompson v. United States, 543 U.S. 859 (2004) (No. 03-10935); Gresham v. United States, 522 U.S. 1052 (1998) (No. 97-5420); Milojevich v. United States, 522 U.S. 969 (1997) (No. 97-5207).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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