

No. 23-852

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**In The  
Supreme Court of the United States**

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MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,  
*Petitioners,*

v.

JENNIFER VANDERSTOK, ET AL.,  
*Respondents.*

—◆—  
**On Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

—◆—  
**BRIEF OF THE NATIONAL RIFLE  
ASSOCIATION OF AMERICA AS *AMICUS*  
*CURIAE* IN SUPPORT OF RESPONDENTS**

—◆—  
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## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	4
I. Gunmaking by private individuals was a celebrated craft in colonial America.....	4
II. Privately made firearms were essential to the Americans' success during the Revolutionary War. ....	6
III. The Second Amendment reflected the Founders' experiences of British-imposed arms shortages and dependence on privately made arms during the war. ....	18
IV. Many of the greatest firearm innovations in history derived from amateur gunmakers. ....	21
V. Americans who make arms using purchased components nevertheless <i>make</i> arms.....	29
VI. There were no historical restrictions on private gunmaking.....	30
CONCLUSION .....	34

## TABLE OF AUTHORITIES

	Page
 CASES	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	19
 CONSTITUTIONAL PROVISIONS	
U.S. CONST. amend. II .....	18, 19
U.S. CONST. amend. III.....	18
U.S. CONST. amend. VI.....	18
U.S. CONST. art. III, § 1 .....	18
 OTHER AUTHORITIES	
A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789–1908, vol. 1 (James D. Richardson ed., 1909) .....	
	19
Ambrose, Graham, <i>Gunmaking at the Founding</i> , 77 STAN. L. REV. (forthcoming 2025) .....	30, 31, 32, 33
AMERICAN ARCHIVES, 4th ser., vol. 1 (Peter Force ed., 1837) .....	16
AMERICAN ARCHIVES, 4th ser., vol. 3 (Peter Force ed., 1840) .....	12
AMERICAN ARCHIVES, 4th ser., vol. 5 (Peter Force ed., 1844) .....	12, 13, 14
AMERICAN ARCHIVES, 5th ser., vol. 2 (Peter Force ed., 1851) .....	14

ARCHIVES OF MARYLAND: JOURNAL OF THE MARYLAND CONVENTION JULY 26 – AUG. 14, 1775 & JOURNAL AND CORRESPONDENCE OF THE MARYLAND COUNCIL OF SAFETY AUG. 29, 1775 – JULY 6, 1776, vol. 11 (William Hand Browne ed., 1892).....	11, 12
ARCHIVES OF MARYLAND: LAWS OF MARYLAND AT LARGE, vol. 75 (Thomas Bacon ed., 1765).....	32
Atkinson, Rick, <i>THE BRITISH ARE COMING</i> (2019) ....	16
Brown, M. L., <i>FIREARMS IN COLONIAL AMERICA: THE IMPACT ON HISTORY AND TECHNOLOGY, 1492–1792</i> (1980).....	4, 5, 16
Chase, Ellen, <i>THE BEGINNINGS OF THE AMERICAN REVOLUTION</i> , vol. 2 (1910).....	9
Clark, Charles, <i>The 18th Century Diary of Ezra Stiles</i> , 208 <i>N. AM. REV.</i> 410 (Sept. 1918) .....	17
Cramer, Clayton E., <i>LOCK, STOCK, AND BARREL: THE ORIGINS OF AMERICAN GUN CULTURE</i> (2018)....	6
DeLay, Brian, <i>The Myth of Continuity in American Gun Culture</i> , 113 <i>CALIF. L. REV.</i> (forthcoming 2025).....	18, 29, 34
DOCUMENTS AND RECORDS RELATING TO THE STATE OF NEW-HAMPSHIRE DURING THE PERIOD OF THE AMERICAN REVOLUTION, FROM 1776 TO 1783, vol. 8 (Nathaniel Bouton ed., 1874).....	12
Foley, Vernard, <i>Leonardo and the Invention of the Wheellock</i> , 278 <i>SCI. AM.</i> 96 (1998).....	21
<i>Garand Rifle</i> , <i>ENCYCLOPÆDIA BRITANNICA</i> .....	24
Gill, Jr., Harold B., <i>THE GUNSMITH IN COLONIAL VIRGINIA</i> (1974).....	5

Gorenstein, Nathan, THE GUNS OF JOHN MOSES BROWNING (2021).....	24
Greenlee, Joseph G.S., <i>The American Tradition of Self-Made Arms</i> , 54 ST. MARY'S L.J. 35 (2023) .....	6, 20, 26
Gross, Robert A., THE MINUTEMEN AND THEIR WORLD (1976) .....	9, 28
Halbrook, Stephen P., THE FOUNDERS' SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS (2008) .....	15
Harsanyi, David, FIRST FREEDOM: A RIDE THROUGH AMERICA'S ENDURING HISTORY WITH THE GUN (2018).....	6, 17, 23, 33
HISTORY OF BUCKS COUNTY, PENNSYLVANIA (J.H. Battle ed., 1887) .....	14
Johnson, Nicholas J., et al., FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY (3d ed. 2022).....	22
Johnson, Samuel, DICTIONARY OF THE ENGLISH LANGUAGE, vol. 1 (4th ed. 1773) .....	29
JOURNALS OF THE CONTINENTAL CONGRESS 1774– 1789, SEP. 1–DEC. 31, 1783, vol. 25 (1922) .....	19
JOURNALS OF THE PROVINCIAL CONGRESS, PROVINCIAL CONVENTION, COMMITTEE OF SAFETY AND COUNCIL OF SAFETY OF THE STATE OF NEW-YORK, vol. 1 (1842).....	16
Kauffman, Henry J., EARLY AMERICAN GUNSMITHS, 1650–1850 (1952) .....	27, 28
Kinard, Jeff, PISTOLS: AN ILLUSTRATED HISTORY OF THEIR IMPACT (2003) .....	22

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1996).....	30
Miller, Daniel A., SIR JOSEPH YORKE AND ANGLO- DUTCH RELATIONS 1774–1780 (1970) .....	7, 8
MINUTES OF THE PROVINCIAL CONGRESS OF PENNSYLVANIA, FROM THE ORGANIZATION TO THE TERMINATION OF THE PROPRIETARY GOVERNMENT, vol. 10 (1852) .....	15
Neumann, George C., <i>American-Made Muskets In The Revolutionary War</i> , AM. RIFLEMAN, Mar. 29, 2010 .....	17, 29, 33
PA. GAZETTE, Dec. 21, 1774 .....	8
PAPERS OF THE CONTINENTAL CONGRESS, COMPILED 1774–1789, vol. 1 (1957) .....	21
PARLIAMENTARY HISTORY OF ENGLAND, FROM THE EARLIEST PERIOD TO THE YEAR 1803, vol. 18 (1813) .....	10
RANDOM HOUSE WEBSTER'S COLLEGIATE DICTIONARY (1995).....	30
RECORDS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS IN NEW ENGLAND, 1776 TO 1779, vol. 8 (John Russell Bartlett ed., 1863) .....	14
Rose, Alexander, AMERICAN RIFLE: A BIOGRAPHY (2008) .....	21, 22, 23, 24, 25
Salay, David L., <i>The Production of Gunpowder in Pennsylvania During the American Revolution</i> , 99 PENN. MAG. HIST. & BIOGRAPHY 422 (Oct. 1975) .....	7, 15

Samuel Johnson, <i>DICTIONARY OF THE ENGLISH LANGUAGE</i> , vol. 1 (4th ed. 1773) .....	29
Sawyer, Charles Winthrop, <i>FIREARMS IN AMERICAN HISTORY</i> , vol. 1 (Palladium Press 2000) (1910) .....	4, 5
Sharpe, Philip B., <i>THE RIFLE IN AMERICA</i> (Odysseus Editions ed. 1995) (1938) .....	22
<i>Smokeless Powder</i> , <i>NAPA WEEKLY REPORTER</i> , vol. 34, Jan 10, 1890.....	24
Stephenson, Orlando W., <i>The Supply of Gunpowder in 1776</i> , 30 <i>AM. HIST. REV.</i> 271 (1925).....	7
<i>THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY</i> , vol. 19 (1918) .....	11
<i>THE ADAMS PAPERS: ADAMS FAMILY CORRESPONDENCE</i> , vol. 1 (Lyman H. Butterfield ed., 1963) .....	16
<i>THE COLONIAL RECORDS OF NORTH CAROLINA, 1775–1776</i> , vol. 10 (William L. Saunders ed., 1890) .....	8
<i>THE DECLARATION OF INDEPENDENCE (U.S. 1776)</i> ....	18
<i>THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA</i> , vol. 3 (Francis Newton Thorpe ed., 1909).....	4
<i>THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND</i>	

COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA, vol. 7 (Francis Newton Thorpe ed., 1909).....	4
THE GRANTS, CONCESSIONS, AND ORIGINAL CONSTITUTIONS OF THE PROVINCE OF NEW-JERSEY (Aaron Leaming & Jacob Spicer eds., 1881) (1752) .....	26
THE JOURNALS OF EACH PROVINCIAL CONGRESS OF MASSACHUSETTS IN 1774 AND 1775, AND OF THE COMMITTEE OF SAFETY (William Lincoln ed., 1838) .....	10
THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY, MAY 1665 (J. Hammond Trumbull ed., 1850).....	31
THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1751, TO FEBRUARY, 1757, INCLUSIVE (Charles J. Hoadly ed., 1877).....	32
THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1757, TO MARCH, 1762, INCLUSIVE (Charles J. Hoadly ed., 1880).....	32
THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1775, TO JUNE, 1776, INCLUSIVE (Charles J. Hoadly ed., 1890) .....	11, 15
THE WALDRON PHOENIX BELKNAP, JR. COLLECTION OF PORTRAITS AND SILVER (John Marshall Phillips et al. eds., 1955) .....	27
THE WORKS OF ALEXANDER HAMILTON, vol. 3 (John C. Hamilton ed., 1850).....	19, 20



THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES, vol. 4 (Charles Francis Adams ed., 1851) .....	9
THE WORKS OF THOMAS JEFFERSON, vol. 7 (Paul Leicester Ford ed., 1904).....	20
THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES 1745–1799, vol. 4 (John C. Fitzpatrick ed., 1930) .....	7
VA. GAZETTE, Apr. 22, 1775 .....	7
Washington, George, THE LIFE OF GENERAL WASHINGTON, vol. 1 (Charles W. Upham ed., 1851) .....	7
Webster, Noah, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE, vol. 1 (1828).....	4
Webster, Noah, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE, vol. 2 (1828).....	30
Whisker, James, THE GUNSMITH'S TRADE (1992) .....	5, 20, 27, 28, 33

**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The National Rifle Association of America (NRA) is America's oldest civil rights organization and America's foremost defender of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

The NRA is interested in this case because the ATF's Final Rule infringes upon the right to privately build firearms, which is deeply rooted in our nation's historical tradition and protected by the Second Amendment.



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<sup>1</sup> No counsel for any party authored this brief in any part. No person or entity other than *amicus* funded its preparation or submission.

## SUMMARY OF ARGUMENT

The ATF's Final Rule infringes upon the constitutionally protected right to privately build firearms.

Private individuals in America have always enjoyed the right to make firearms. In colonial America, because firearms were essential for food and protection, gunmakers appeared wherever the English settled. Many of these gunmakers worked in isolated cabins and completed all the work themselves. Their craft was widely celebrated and unregulated.

Privately made arms were critical during the Revolutionary War. When the British embargoed the importation of firearms, causing perilous arms shortages throughout the country, American governments depended on private gunmakers—gunsmiths and non-gunsmiths—to produce firearms. This homegrown cottage industry produced over one-quarter of the long arms used by American line troops during the war.

After winning the war, when forming their own federal government, Americans protected against the abuses they suffered under British rule. They knew firsthand that a tyrannical government could effectively eliminate the militia by suffocating the supply of arms. And they knew firsthand that a citizenry capable of producing its own arms could resist such tyranny. Thus, as Thomas Jefferson explained, American citizens were always free to make arms.

Through this tradition of private gunmaking, amateur gunsmiths developed many of the most

important innovations in firearms technology. Percussion caps, the Colt Revolver, Henry Rifle, Spencer Rifle, Lee-Metfield, Lee-Enfield, M1 Garand, detachable box magazines, and the AR-15 all derived from amateur gunmaking.

The tradition of private gunmaking includes building firearms with purchased components. Many early Americans made firearms by combining self-made components with imported locks and barrels. These gunmakers—like those who build firearms from precursors of frames or receivers or parts kits—“made” firearms just as much as gunmakers who built firearms from scratch.

Traditionally, private gunmaking was not regulated. But the Final Rule—without Congress’s authorization—subjects it to pervasive regulation. The ATF not only exceeded its authority but infringed upon constitutionally protected conduct.



## ARGUMENT

### I. **Gunmaking by private individuals was a celebrated craft in colonial America.**

“Everywhere the gun was more abundant than the tool” in colonial America. 1 Charles Winthrop Sawyer, *FIREARMS IN AMERICAN HISTORY 1* (Palladium Press 2000) (1910). Because firearms were essential for food and protection, it was critical for Americans to know how to build firearms. That knowledge was widespread and celebrated.

The colonists of the first permanent English settlements had the express right to import arms and the materials to make them. 7 *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 3787–88* (Francis Newton Thorpe ed., 1909) (1606 Virginia Charter); 3 *id.* at 1834–35 (1620 New England Charter). Gunsmiths and armorers appeared wherever the English settled.<sup>2</sup> “It is possible that English blacksmith James Read repaired firearms at Jamestown in 1607[.]” M. L. Brown, *FIREARMS IN COLONIAL AMERICA: THE IMPACT ON HISTORY AND TECHNOLOGY, 1492–1792*, at 149 (1980). More certainly, there was an armorer in Plymouth Colony by 1621, a gunsmith in the Massachusetts Bay Colony by 1630, gunsmiths in

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<sup>2</sup> An “armorer” was “[a] maker of armor or arms; a manufacturer of instruments of war.” 1 Noah Webster, *AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE* (1828) (unpaginated).

A “gunsmith” was “[a] maker of small arms; one whose occupation is to make or repair small fire-arms.” *Id.*

Maryland by 1631—a year before it was chartered—and an armorer in New Haven by 1640. *Id.* at 149–50. In colonial Virginia, “[g]unsmiths were found nearly everywhere: in port towns along the coast, in settled inland areas, and—probably the busiest ones—on the frontier.” Harold B. Gill, Jr., *THE GUNSMITH IN COLONIAL VIRGINIA* 1 (1974). Naturally, “[t]he number of gunsmiths active in North America dramatically escalated with the inordinate population explosion during the first quarter of the eighteenth century.” Brown, *FIREARMS IN COLONIAL AMERICA*, at 242.

The “great majority” of these gunsmiths worked in “mere cabins on the outskirts of the wilderness” and “with or without an apprentice did every part of the work.” Sawyer, *FIREARMS IN AMERICAN HISTORY*, at 145. “These lone, isolated workers ... not only made guns but also the tools with which to do their work.” *Id.* at 145–46.

“No guild, union or government agency attempted to regulate the gun making business.” James Whisker, *THE GUNSMITH’S TRADE* 6 (1992). “Each gunsmith was free to enter the free market and compete with others offering the same product.” *Id.* There was no “examination” nor did one “need [to] present one of his guns to any examining board.” *Id.* Rather, “[g]unsmiths considered it to be their right to make guns without regulation or interference.” *Id.* at 90.

Because the making and repairing of arms was so fundamental to daily life, “[t]he influence of the gunsmith and the production of firearms on nearly every aspect of colonial endeavor in North America cannot be overstated.” Brown, *FIREARMS IN COLONIAL AMERICA*, at 149. And their “pervasive influence

continuously escalated following the colonial era.” *Id.* Indeed, “the evidence is clear that gunsmiths were *very* common in Colonial, Revolutionary, and Early Republic America.” Clayton E. Cramer, LOCK, STOCK, AND BARREL: THE ORIGINS OF AMERICAN GUN CULTURE 30 (2018).

## **II. Privately made firearms were essential to the Americans’ success during the Revolutionary War.**

Privately made arms were critical during the early stages of the Revolutionary War. As tensions increased between Great Britain and its American colonies, Britain suffocated the colonists’ ability to acquire arms. First, in 1774, the British starting seizing control of powder houses where individuals, merchants, and towns stored large quantities of gunpowder, and sometimes confiscated the gunpowder altogether. *See* Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 ST. MARY’S L.J. 35, 48 n.86 (2023). Then on October 19, 1774, King George III imposed an embargo prohibiting the importation of firearms or ammunition into the colonies. *Id.* at 50 n.93.

Making matters worse for the Americans, the British had long “prohibited any large-scale manufacturing facility for guns in the colonies.” David Harsanyi, FIRST FREEDOM: A RIDE THROUGH AMERICA’S ENDURING HISTORY WITH THE GUN 68 (2018). And until May 1775, there was apparently only one powder mill in operation throughout America. *See* David L. Salay, *The Production of Gunpowder in*

*Pennsylvania During the American Revolution*, 99  
 PENN. MAG. HIST. & BIOGRAPHY 422, 422–23 (Oct.  
 1975).

The resulting arms shortages precluded many military operations during the early stages of the Revolutionary War. *See, e.g.*, Orlando W. Stephenson, *The Supply of Gunpowder in 1776*, 30 AM. HIST. REV. 271, 280 (1925). General Washington warned about the “melancholy situation” in August 1775, declaring that “the existence of the army, and the salvation of the Country, depends upon something being done” to acquire gunpowder. 1 George Washington, THE LIFE OF GENERAL WASHINGTON 142 (Charles W. Upham ed., 1851). Months later, he complained that the army was operating “without any money in our treasury, powder in our magazines, arms in our stores.” Letter from George Washington to Joseph Reed (Jan 14, 1776), in 4 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES 1745–1799, at 241 (John C. Fitzpatrick ed., 1930).

While the Americans sometimes succeeded in circumventing Britain’s arms embargo,<sup>3</sup> imports were severely curtailed, particularly in the early stages of

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<sup>3</sup> *See, e.g.*, VA. GAZETTE, Apr. 22, 1775, at 1 (“It is beyond doubt that six large ships sailed lately, three from Holland, and the rest from France, with arms, ammunition, and other implements of war, for our colonies, and more are absolutely preparing for the same place.”); Daniel A. Miller, SIR JOSEPH YORKE AND ANGLO-DUTCH RELATIONS 1774–1780, at 41 (1970) (“eighteen Dutch ships ... left Amsterdam” in May 1776, “with powder and ammunition for America,” in addition to “powder shipments disguised as tea chests, rice barrels, et cetera”).



the war.<sup>4</sup> Joseph Hewes, who represented North Carolina in the Continental Congress and signed the Declaration of Independence, complained on November 9, 1775, that:

Arms and Ammunition ... are very scarce throughout all the Colonies. I find on enquiry that neither can be got here, all the Gunsmiths in this Province are engaged and cannot make Arms near so fast as they are wanted. Powder is also very Scarce notwithstanding every effort seems to have been exerted both to make and import.

Letter from Joseph Hewes to Samuel Johnston (Nov. 9, 1775), *in* 10 THE COLONIAL RECORDS OF NORTH CAROLINA, 1775–1776, at 314 (William L. Saunders ed., 1890). Hewes argued that “Americans ought to be more industrious in making those articles at home, every Family should make saltpetre, every Province have powder Mills and every body encourage the making of Arms.” Letter from Joseph Hewes to Samuel Johnston (Feb. 13, 1776), *in id.* at 447.

Some communities took it upon themselves to manufacture arms. For example, on the eve of war in Concord, Massachusetts, “Deacon Thomas Barrett and his son turned out firearms and gun carriages at their

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<sup>4</sup> See, e.g., PA. GAZETTE, Dec. 21, 1774, at 2 (“Two vessels, laden with gun-powder and other military utensils, bound for [America], were stopped at Gravesend ... by the out clearers, in consequence of the King’s proclamation.”); Miller, SIR JOSEPH YORKE, at 39 (explaining that a British cutter in October 1774 intercepted a Rhode Island vessel that “had been sent expressly to load different sorts of firearms, and had already taken on board forty small pieces of cannon”).

blacksmith shop in the town center. Housewright Josiah Melvin ... produced saltpeter, saddler Reuben Brown fashioned cartridge boxes, holsters, and belts,” and 15-year-old Melisent Barrett “supervis[ed] the manufacture of cartridges by the young women of the town.” Robert A. Gross, *THE MINUTEMEN AND THEIR WORLD* 69 (1976).<sup>5</sup>

The Americans were confident in their ability to make arms. For example, John Adams boasted that “we [Americans] could make a sufficient quantity of both” arms and ammunition, and that “[w]e have many manufacturers of firearms now, whose arms are as good as any in the world.” 4 *THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES* 39 (Charles Francis Adams ed., 1851). Benjamin Franklin was “confident” that if “the Workmen” of the country were properly encouraged, “Arms may be made as good and as cheap in America as in any Part of the World.” Letter from Benjamin Franklin to Silas Deane (Aug. 27, 1775), in *LETTERS OF DELEGATES TO CONGRESS, AUG. 1774–AUG. 1775*, at 709 (Paul H. Smith ed., 1976). In November 1775, the Tory Richard

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<sup>5</sup> In April 1775, a British spy named John Howe was welcomed into Concord by claiming to be a gunsmith who could “make any kind [of gun] they wished.” *A Journal kept by Mr. John Howe while he was Employed as a British Spy*, in 2 Ellen Chase, *THE BEGINNINGS OF THE AMERICAN REVOLUTION* 304 (1910). “They said I was the very man they wanted to see,” Howe wrote, and “brought me several gun locks for me to repair.” *Id.* After gaining intelligence, Howe warned General Thomas Gage that if he marched “1,000 foot [soldiers] to destroy the stores” of arms in Concord, “the country would be alarmed; that the greater part of them [the British soldiers] would get killed or taken.” *Id.* at 308. Because Gage did not take Howe’s advice, the Battles of Lexington and Concord ensued.

Penn informed the House of Commons that the Americans produce arms “in great numbers, and very complete.” 18 PARLIAMENTARY HISTORY OF ENGLAND, FROM THE EARLIEST PERIOD TO THE YEAR 1803, at 913 (1813). Indeed, there was a widespread understanding that many Americans knew how to produce firearms and gunpowder. Before long, provincial congresses began encouraging and depending on these Americans to support the war.

Massachusetts’s First Provincial Congress adopted a resolution on December 8, 1774, noting that “firearms have been manufactured in several parts of this colony” and “recommend[ing] the making [of] gunlocks” by the colony’s inhabitants, as well as “the making of saltpetre [for gunpowder], as an article of vast importance.” THE JOURNALS OF EACH PROVINCIAL CONGRESS OF MASSACHUSETTS IN 1774 AND 1775, AND OF THE COMMITTEE OF SAFETY 63–64 (William Lincoln ed., 1838). On February 15, 1775, Massachusetts’s Second Provincial Congress directed “the towns and districts in this colony” to “encourage such persons as are skilled in the manufacturing of firearms and bayonets, diligently to apply themselves thereto, for supplying such of the inhabitants as may still be deficient.” *Id.* at 103. The Congress promised to purchase “so many effective arms and bayonets as can be delivered in a reasonable time[.]” *Id.* That November, the Congress declared that “it is of the utmost Importance to the Welfare and Happiness of these Colonies, that the Manufacturing of Fire Arms & Provisions of Military Stores be effectually promoted & encouraged,” and resolved to purchase “every effective & Substantial Fire Arm” that met certain

specifications. 19 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY 134–35 (1918). Further, “for the Accommodation & convenience of such Manufacturers,” military officers were empowered to purchase “all Fire-Arms which Shall be offered them for Sale & manufactured as aforesaid.” *Id.* at 135.

In May 1775, Connecticut guaranteed five shillings “for every stand of arms, including a good lock, that shall be manufactured within this Colony,” and one shilling and six pence “for every good gun-lock that shall be made and manufactured within this Colony.” THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1775, TO JUNE, 1776, INCLUSIVE 17 (Charles J. Hoadly ed., 1890).

Maryland’s Provincial Convention appointed a committee “to enquire into the practicability of establishing a manufactory of Arms within this Province,” which determined on August 2, 1775, that “Arms may be furnished sooner, and at less expense by engaging immediately all Gun Smiths, and others concerned in carrying on that business.” 11 ARCHIVES OF MARYLAND: JOURNAL OF THE MARYLAND CONVENTION JULY 26 – AUG. 14, 1775 & JOURNAL AND CORRESPONDENCE OF THE MARYLAND COUNCIL OF SAFETY AUG. 29, 1775 – JULY 6, 1776, at 64–65 (William Hand Browne ed., 1892). The Committee observed that many gunsmiths operated within the colony, and “apprehend[ed] that from the great encouragement Artificers in this business will receive, their number will soon be greatly increased.” *Id.* at 65. The next month, Maryland’s Council of Safety, “desirous of forwarding the Intentions of the

Convention in promoting the Manufacture of Salt, Saltpetre, Gunpowder, and fire Arms,” sought proposals in the *Maryland Gazette* from “any persons who are inclined to engage, on liberal Encouragement, in the Manufacture of Fire Arms, or to erect a powder Mill ... or Salt, or Saltpetre-works.” *Id.* at 77.

A commission appointed in Virginia “for superintending the manufactory of Small-Arms” explained that it would be convening on October 10, 1775, “for the purpose of engaging a further number of Gunsmiths, and other artists, capable of managing that business in its various branches.” 3 AMERICAN ARCHIVES, 4th ser., at 700 (Peter Force ed., 1840). “All persons who are willing to enter into the service for a year at the least, and can come recommended for skill and sobriety” were “desired to attend” and would be compensated for “their attendance and traveling.” *Id.*

New Hampshire’s House of Representatives resolved in January 1776 to pay three pounds “for every good firearm Manufactured in this Colony, made” according to certain specifications. 8 DOCUMENTS AND RECORDS RELATING TO THE STATE OF NEW-HAMPSHIRE DURING THE PERIOD OF THE AMERICAN REVOLUTION, FROM 1776 TO 1783, at 15–16 (Nathaniel Bouton ed., 1874).

On February 24, 1776, South Carolina’s Provincial Congress appointed commissioners “to contract for the making, or purchasing already made, any number, not exceeding one thousand stand, of good Rifles,” as well as “for the making, or purchasing already made, one thousand stand of good smooth-bored Muskets.” 5 AMERICAN ARCHIVES, 4th ser., at 581.

The following month, New York's Committee of Safety, empowered "to contract for a number of Muskets," ordered that an advertisement "be published in all the publick Newspapers in this Colony" stating that "this Committee are ready to receive proposals from, and treat with, any person or persons who are willing to engage in manufacturing good Muskets, or the Locks, Barrels, or any necessary parts thereof[.]" *Id.* at 1418.

John Hancock informed General Washington that month that he expected domestic arms production to adequately address the shortage caused by the arms embargo:

With regard to arms, I am afraid we shall, for a time, be under some difficulty. The importation is now more precarious and dangerous. To remedy this, a Committee is appointed to contract for the making arms; and, as there is a great number of gunsmiths in this and the neighbouring Colonies, I flatter myself we shall soon be able to provide ourselves without risk or danger.

*Id.* at 83.

North Carolina's Provincial Congress established a committee to "consider the most practicable and expeditious method of supplying the Province with Arms, Ammunition, Warlike Stores, and Sulphur." *Id.* at 1336. The committee concluded in April 1776 that "publick Manufactories" to make "good and sufficient Muskets" should be established throughout the colony and operated by "all Gunsmiths, and other mechanicks, who have been accustomed to make, or

assist in making Muskets, or who may ... be useful in carrying on such Manufactory.” *Id.* at 1337–38.

That same month, Pennsylvania’s Committee of Safety agreed to pay one Mr. Tomlinson fifty pounds “for making publick the art of boring and grinding Gun-barrels, and instructing such persons as they shall require to be taught that art.” *Id.* at 734.

Gunsmiths and others engaged in making firearms were considered so essential that they were often exempted from military service—where they were also badly needed.<sup>6</sup>

Great emphasis was also placed on encouraging the production of gunpowder or ingredients necessary for making gunpowder. In August 1774, for example, the *Royal American Magazine* published an engraving by Paul Revere demonstrating “how to refine

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<sup>6</sup> See, e.g., 2 AMERICAN ARCHIVES, 5th ser., at 783 (“Whereas it has been represented to this Board by Thomas Buckmore, of Concord, that he has been employed in making Fire-arms for this State ... and that the Armourers actually employed in making such Arms are doing more essential service to the State, while thus employed, than they could do as soldiers.... Captain George Minot ... is required and directed to discharge the said Thomas Buckmore and Silas Wood from the service for which they were drafted[.]”); 8 RECORDS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS IN NEW ENGLAND, 1776 TO 1779, at 149 (John Russell Bartlett ed., 1863) (“It is ... recommended to the independent company of the Kingstown Reds, that they excuse George Tefft and Jeremiah Sheffield (who are employed in making and stocking guns), from doing service in said company[.]”); HISTORY OF BUCKS COUNTY, PENNSYLVANIA 500 (J.H. Battle ed., 1887) (“[John Fitch] was among the first to enlist when the revolution began; but as his services were more valuable as a gunsmith than a soldier he was not permitted to enter the active service.”).

saltpeter, an essential component in the making of gunpowder.” Stephen P. Halbrook, *THE FOUNDERS’ SECOND AMENDMENT: ORIGINS OF THE RIGHT TO BEAR ARMS* 33 (2008).

In May 1775, Connecticut offered ten pounds “for every fifty pounds weight of salt petre that shall be made and manufactured from material found in this Colony” and five pounds “for every hundred pounds weight of sulphur that shall be made and manufactured within this Colony[.]” *PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1775, TO JUNE, 1776*, at 17.

On January 3, 1776, Pennsylvania’s Committee of Safety—including future signers of the Constitution Benjamin Franklin, George Clymer, Robert Morris, and John Dickinson—created a committee “for appointing proper persons to instruct the inhabitants of the different Counties in the manufactory of Salt Petre” and “to fix upon the number of hand bills to be printed & distributed in the English & German Languages, setting forth the process for extracting and refining Salt Petre[.]” *10 MINUTES OF THE PROVINCIAL CONGRESS OF PENNSYLVANIA, FROM THE ORGANIZATION TO THE TERMINATION OF THE PROPRIETARY GOVERNMENT* 443 (1852). “A number of counties responded by establishing model works and providing demonstrations.” Salay, *The Production of Gunpowder in Pennsylvania*, at 427.

“Printing presses throughout the colonies worked overtime, making and distributing broadsides and pamphlets with explicit instructions for manufacturing gunpowder and locating and preparing the ingredients.” Brown, *FIREARMS IN COLONIAL*



AMERICA, at 301. For example, on January 17, 1776, New York's Committee of Safety ordered 3,000 copies of "essays upon the manufacture of saltpetre and gunpowder" printed for distribution throughout the colony with the expectation that "the inhabitants of this Colony [will] do every thing in their power to supply the Continent with those necessary articles[.]" 1 JOURNALS OF THE PROVINCIAL CONGRESS, PROVINCIAL CONVENTION, COMMITTEE OF SAFETY AND COUNCIL OF SAFETY OF THE STATE OF NEW-YORK 253–54 (1842). Abigail Adams procured a similar pamphlet "de[s]cribing the proportions for the various sorts of powder, fit for cannon, small arms and pistols," and offered to send it to her husband. Letter from Abigail Adams to John Adams (Mar. 31, 1776), *in* 1 THE ADAMS PAPERS: ADAMS FAMILY CORRESPONDENCE 371 (Lyman H. Butterfield ed., 1963).

Likewise, "[s]altpeter recipes ... appeared in American newspapers and pamphlets for patriots willing to collect the 'effluvia of animal bodies' from outhouses, barns, stables, tobacco yards, and pigeon coops, preferably 'moistened from time to time with urine.'" Rick Atkinson, THE BRITISH ARE COMING 127–28 (2019). "Many patriot communities" throughout the war produced saltpeter and recovered sulphur "from the earth surrounding sulphurous springs." Brown, FIREARMS IN COLONIAL AMERICA, at 302.

Many Americans also cast their own bullets. For example, when thousands of patriots assembled to confront General Gage's redcoats who seized "two hundred and fifty half barrels of powder" from the Charlestown powder house, 1 AMERICAN ARCHIVES, 4th ser., at 762, according to a gentleman from

Litchfield, Connecticut, “at every house women and children [were] making cartridges” and “running bullets” while “animating their husbands and sons to fight for their liberties,” Charles Clark, *The 18th Century Diary of Ezra Stiles*, 208 N. AM. REV. 410, 419 (Sept. 1918). And when patriots took up arms to prevent arms confiscation from the Concord powder house—resulting in the Battles of Lexington and Concord—some of the patriots “brought along a handful of homemade musket balls.” Harsanyi, FIRST FREEDOM, at 43.

To be sure, arms imports were essential during the war. But domestic production was especially critical when the Americans were determining how to circumvent Britain’s arms embargo. The “homegrown cottage industry” of American gunsmiths “filled a vital gap in arming the early regiments and continued as the major repair and maintenance sources for Washington’s troops until the war was won.” George C. Neumann, *American-Made Muskets In The Revolutionary War*, AM. RIFLEMAN, Mar. 29, 2010.<sup>7</sup> One expert on the arms used during the Revolutionary War determined that “[o]ut of the more than 300,000 long arms used by the American line troops during the War for Independence, probably in excess of 80,000 were the products of America’s scattered gunsmiths using mixed components.” *Id.*<sup>8</sup>

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<sup>7</sup> <https://www.americanrifleman.org/content/american-made-muskets-in-the-revolutionary-war/>.

<sup>8</sup> One scholar notes that some colonies desired to purchase more firearms than local craftsmen were able to produce. Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113

**III. The Second Amendment reflected the Founders' experiences of British-imposed arms shortages and dependence on privately made arms during the war.**

After winning the war, when the Americans were forming their own federal government, they protected against many abuses that they suffered under British rule. *Compare, e.g.*, U.S. CONST. amend. VI (guaranteeing “public trial, by an impartial jury”), *with* THE DECLARATION OF INDEPENDENCE para. 20 (U.S. 1776) (complaining about being denied “the Benefits of Trial by Jury”); U.S. CONST. amend. III (prohibiting soldiers from being “quartered in any house” in time of peace), *with* DECLARATION OF INDEPENDENCE para. 16 (“large Bodies of Armed Troops” were quartered “among us”); U.S. CONST. art. III, § 1 (Judges “shall hold their Offices during good Behaviour” and their compensation “shall not be diminished”), *with* DECLARATION OF INDEPENDENCE para. 11 (King George “made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries”). The Second Amendment similarly reflected the Founders’ experiences of British-imposed arms shortages and dependence on privately made arms during the war.

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CALIF. L. REV. at 224–25 (forthcoming 2025). This is unsurprising considering the tremendous demand for firearms, the amount of time required to build one, and that less than half of Americans actively supported the war. But even if, as the scholar implies, it reveals that colonial governments believed that even more Americans made firearms than actually did, this accentuates the fact that gunmaking was never regulated.

The Founders repeatedly emphasized the necessity for a free people to produce their own arms. One month after the war concluded, a committee of the Continental Congress recommended establishing “manufactories of arms” because “every country ought to endeavor to have within itself all the means essential to its own preservation.” 25 JOURNALS OF THE CONTINENTAL CONGRESS 1774–1789, SEP. 1–DEC. 31, 1783, at 739 (1922). After the drafting of the Second Amendment but before its ratification, President Washington declared in his *First Annual Address* that, “A free people ought ... to be armed” and “independent of others for essential, particularly military, supplies.” 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789–1908, at 65 (James D. Richardson ed., 1909). On December 5, 1791, just days before the Second Amendment’s ratification, Alexander Hamilton remarked in his famous *Report on Manufacturers*, “The extreme embarrassments of the United States during the late war, from an incapacity of supplying themselves, are still a matter of keen recollection.” 3 THE WORKS OF ALEXANDER HAMILTON 239 (John C. Hamilton ed., 1850). Therefore, Hamilton, asserted, “[e]very nation with a view to” independence and security “ought to endeavor to possess within itself ... the means of defence.” *Id.*

The Founders, who codified the Second Amendment “to prevent elimination of the militia,” *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008), knew firsthand that a tyrannical government could effectively eliminate the militia by suffocating the supply of arms. They also knew firsthand that a

citizenry capable of producing its own arms could resist such tyranny. Based on their experiences and their desire for robust domestic arms production, it is implausible that the Founders would not have protected private arms-making in the Second Amendment. Indeed,

Gun crafting was one of several ways Americans expressed their unrestrained democratic impulses at the time of the adoption of the Bill of Rights.... The climate of opinion was clearly such that it would have supported a broad distribution of this right to the people over and against government. Anything else would have been inconceivable.

Whisker, GUNSMITH'S TRADE, at 91–92.

Thus, “there were no restrictions on the manufacture of arms for personal use in America during the seventeenth, eighteenth, or nineteenth centuries.” Greenlee, *American Tradition of Self-Made Arms*, at 78. Rather, American governments only ever *encouraged* it. *See supra*, Part II. As Thomas Jefferson explained soon after the Second Amendment's ratification, “Our citizens have always been free to make, vend, and export arms.” Letter from Thomas Jefferson to George Hammond (May 15, 1793), *in* 7 THE WORKS OF THOMAS JEFFERSON 326 (Paul Leicester Ford ed., 1904).

#### IV. Many of the greatest firearm innovations in history derived from amateur gunmakers.

Many of the most impressive and important innovations in firearms technology derived from amateur gunsmiths.

During the Revolutionary War, inventor Joseph Belton produced “a common small arm” that could “discharge sixteen, or twenty [rounds], in sixteen, ten, or five seconds of time.” Letter from Joseph Belton to the Continental Congress (Apr. 11, 1777), *in* 1 PAPERS OF THE CONTINENTAL CONGRESS, COMPILED 1774–1789, at 123 (1957) (Belton describing his invention).<sup>9</sup>

Percussion cap firearms, which replaced flintlocks, owed their invention to a reverend and an artist.<sup>10</sup> In 1807, Scottish Reverend John Forsyth, an avid fowler, grew frustrated that the sparks and noise created by the flintlock mechanism alerted the birds before his shot. So he invented a formula, using fulminate as priming powder, that created an instantaneous ignition and allowed a firearm to fire faster. Alexander Rose, *AMERICAN RIFLE: A BIOGRAPHY* 94–95 (2008). Joshua Shaw—a Philadelphia artist and scientist, Jeff Kinard, *PISTOLS: AN ILLUSTRATED HISTORY OF THEIR*

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<sup>9</sup> Belton demonstrated his rifle to leading military officers—including General Horatio Gates and Major General Benedict Arnold—and scientists—including David Rittenhouse—who verified that “[h]e discharged Sixteen Balls loaded at one time.” Letter from Joseph Belton to the Continental Congress (Jul. 10, 1777), *in* PAPERS OF THE CONTINENTAL CONGRESS, at 139.

<sup>10</sup> The flintlock was preceded by the wheellock, which was invented by Leonardo da Vinci, who was not a professional gunsmith. Vernard Foley, *Leonardo and the Invention of the Wheellock*, 278 *SCI. AM.* 96 (1998).

IMPACT 52 (2003)—then used Forsyth’s invention to create percussion caps—small cups containing fulminate. “The percussion cap made the flintlock obsolete.” Nicholas J. Johnson et al., *FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY* 435 (3d ed. 2022).

“[I]t was the percussion arm which interested” Samuel Colt “as the greatest advancement of the day” and inspired his famous revolvers. Philip B. Sharpe, *THE RIFLE IN AMERICA* 174 (Odysseus Editions ed. 1995) (1938). Colt began “experimenting with [an] old flintlock pistol” as a youth. *Id.* “As usual he had the old pistol along” during his first voyage as a sailor at sixteen, and “he set about correcting the gun’s greatest weakness—the necessity for laboriously reloading after every shot.” *Id.* Colt “carved out of a discarded tackle box a wooden model” of “a gun which had a revolving cylinder capable of being fired six times rapidly without stopping to reload.” *Id.* Colt’s revolver would shape American history.

The next great innovation began with Walter Hunt, “best known today as being the inventor of the safety pin” and “builder of America’s first sewing machine,” who also “came up with a fountain pen, a streetcar bell, a heating stove, a knife sharpener, [and] a road sweeper.” Rose, *AMERICAN RIFLE*, at 122. In 1848, Hunt invented an improved type of ammunition cartridge called the “Rocket Ball,” followed by a rifle to fire the “Rocket Ball,” called the “Volition Repeater.” *Id.* The Rocket Ball and Volition Repeater ultimately fell into the hands of Horace Smith, Daniel Wesson, and Benjamin Tyler Henry. Smith and Wesson’s work on the Rocket Ball led to the production of a metallic

cartridge that became “the forerunner of those used today.” *Id.* at 125. Meanwhile, Henry’s work on the Volition Repeater led to the historic Henry Rifle, “the world’s first dependable ‘16-shooter.’” *Id.* at 129.

The Henry’s main competitor was the Spencer Rifle. *Id.* The Spencer rifle’s inventor, Christopher Spencer, learned gunsmithing from his ninety-year-old grandfather, a Revolutionary War veteran. *Id.* at 130. Professionally, Spencer designed machines for businesses; “he engineered guns,” including the Spencer Rifle, “in his off time.” *Id.*

The next significant advancement once repeating arms dominated the market was the detachable magazine. James Paris Lee, a naturalized American citizen and jeweler who “worked on his beloved rifles in his spare time,” invented a series of firearms before inventing some of the first detachable box magazines in 1879 and 1882. *Id.* at 224–25. The Lee-Metfield rifle was the first mass-produced detachable-box-magazine rifle, and its successor, the Lee-Enfield bolt-action magazine rifle, was the standard firearm for the British military for over sixty years (1895–1957)—“its genes are present in even today’s small arms.” *Id.* at 225. The hundreds of millions of magazines that Americans own today are descendants of Lee’s.

John Browning Sr. began experimenting with firearms inventions as a child. “He became fascinated by firearms at an early age and was a self-taught gunsmith by nineteen.” Harsanyi, *FIRST FREEDOM*, at 174. As an adult, Browning Sr.’s self-taught gunsmithing skills helped him support his family while he worked at “a brickyard, a leather tannery, and a sawmill,” and as a blacksmith and a state



legislator. Nathan Gorenstein, *THE GUNS OF JOHN MOSES BROWNING* 15 (2021). Browning Sr. invented at least two notable repeating arms—a 5-shot harmonica rifle and a repeating rifle that utilized a revolving cylinder, similar to Colt’s revolver. *Id.* at 9, 12.

His son, John Moses Browning, built his first firearm in his father’s blacksmith shop at age 10. *Id.* at 6. John Moses Browning’s inventions changed firearms and the world forever.

In 1890, the U.S. Chief of Ordinance sought the public’s assistance in developing smokeless gunpowder. *Smokeless Powder*, *NAPA WEEKLY REPORTER*, vol. 34, Jan 10, 1890, at 7. The resulting “cooperative competition between Ordinance and private enterprise ... allowed the United States to catch up to its European rivals.” Rose, *AMERICAN RIFLE*, at 238.

In 1916, John Garand—naturally handy with tools and an excellent marksman—was working at a micrometer company in New York when he learned that the U.S. Army was searching for a machinegun. *Id.* at 297. He developed and submitted a gun. The Army did not adopt it, but it won him a job at Springfield Armory. *Id.* at 297–98. There, Garand developed the M1 Garand, which became the standard service rifle for the U.S. Military during World War II and the Korean War. *Garand Rifle*, *ENCYCLOPÆDIA BRITANNICA*.<sup>11</sup>

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<sup>11</sup> <https://www.britannica.com/technology/Garand-rifle> (last visited Aug. 17, 2024).

The most popular rifle in America today is the AR-15. Like so many revolutionary firearms before it, the AR-15's roots are in amateur-made arms. George Sullivan, "an aeronautical engineer, salesman, and self-described 'gun nut,'" was Lockheed Aircraft Corporation's chief patent counsel in the 1950s. Rose, *AMERICAN RIFLE*, at 359–60. Learning from the aviation industry's recent focus on innovative lightweight materials, Sullivan decided to apply that knowledge and technology to firearms. Together with Fairchild Engine and Airplane Corporation's president and fellow gun enthusiast, Richard Boutelle, Sullivan started a company called ArmaLite "in a building dubbed 'George's Backyard Garage,'" "to act not as a manufacturer but as a think tank." *Id.* at 360. When Sullivan was testing an ArmaLite prototype at a shooting range, he saw "a man firing what was obviously a homemade rifle." *Id.* at 361. The man was Eugene Stoner, a former Marine who after World War II worked as a design engineer for an aircraft equipment maker. *Id.* When Sullivan encountered Stoner shooting his homemade rifle, Stoner was employed making dental plates. *Id.* Sullivan was so impressed by Stoner's homemade rifle that he hired him as ArmaLite's chief engineer. *Id.* at 362. Soon after, in 1955, Stoner designed the innovative AR-10. *Id.* By 1957, Stoner introduced a prototype of what became the AR-15. *Id.* at 366. The AR-15 was adopted by the United States Military in 1963—its version called the M16—while the civilian, semiautomatic version of the AR-15 became the best-selling rifle in America.

This tradition of amateur gunmaking during the colonial era was evidenced, for example, by a 1675 New Jersey law ensuring that “no blacksmith, or locksmith, or any other person whatsoever within this Province, do make, mend or any way repair any Indians Gun or Guns.” THE GRANTS, CONCESSIONS, AND ORIGINAL CONSTITUTIONS OF THE PROVINCE OF NEW-JERSEY 103 (Aaron Leaming & Jacob Spicer eds., 1881) (1752).

Solicitations of amateur-made arms during the Revolutionary War make clear that this tradition continued into the founding era. *See supra*, Part II (Deacon Barrett making firearms for Concord; North Carolina soliciting “all Gunsmiths, and other mechanicks, who have been accustomed to make, or assist in making Muskets”; New York soliciting proposals for firearms from “any person ... willing to engage in manufacturing good Muskets”; Virginia soliciting “Gunsmiths, and other artists” to manage a small arms manufactory; Maryland seeking arms from “Gun Smiths, and others concerned in carrying on that business”; Pennsylvania “making publick the art of boring and grinding Gun-barrels”).

The tradition was also essential to western expansion. Pioneers had to be self-sufficient for nearly all their necessities, including gunsmithing. Thus, frontiersmen such as Daniel Boone, John Fraser, Meriwether Lewis, and Hugh Glass practiced gunsmithing as well. *See Greenlee, American Tradition of Self-Made Arms*, at 68–71.

Moreover, during the 17th, 18th, and 19th centuries, Americans who were professionals in other occupations traditionally engaged in gunsmithing as an additional occupation or hobby. These other

occupations included blacksmiths,<sup>12</sup> whitesmiths,<sup>13</sup> tinsmiths,<sup>14</sup> locksmiths,<sup>15</sup> silversmiths,<sup>16</sup> farmers,<sup>17</sup>

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<sup>12</sup> An 18th-century example is John Cutler from Massachusetts. Henry J. Kauffman, *EARLY AMERICAN GUNSMITHS, 1650–1850*, at 21 (1952). A 19th-century example is Mynham Cuttino from South Carolina. *Id.* at 22. Additionally, Jacob Reager, who “was a gunsmith in West Augusta, [West] Virginia during the Revolution” was referred to as a blacksmith in a 1780 court order. Whisker, *GUNSMITH’S TRADE*, at 23 (brackets in original).

<sup>13</sup> An 18th-century example is Samuel Bonsall from South Carolina. Kauffman, *EARLY AMERICAN GUNSMITHS*, at 10. A 19th-century example is Daniel Searles of Ohio. Whisker, *GUNSMITH’S TRADE*, at 155.

<sup>14</sup> Some 19th-century examples include Phineas Compton and Samuel Compton from Pennsylvania. *Id.*

<sup>15</sup> An 18th-century example is Reuben Cookson of Massachusetts. *Id.* at 155. “Edward H. Tucker was a gunsmith, locksmith, and whitesmith between 1797 and 1801 in Alexandria, Virginia.” *Id.* at 162.

<sup>16</sup> A 17th-century example is Hendrick Boelen from New York. *THE WALDRON PHOENIX BELKNAP, JR. COLLECTION OF PORTRAITS AND SILVER 116* (John Marshall Phillips et al. eds., 1955). An 18th-century example is Benjamin Campbell from Pennsylvania. Whisker, *GUNSMITH’S TRADE*, at 151. Some 19th-century examples include Absalom Garlick, Samuel Quest, and James Dillon of Pennsylvania. *Id.* at 148–49, 151. Quest advertised that he could “alter Gun Locks to the percussion principle, and warrant them to perform well.” *Id.* at 149.

<sup>17</sup> Some 18th-century examples include David Dickey of Pennsylvania and John Doddridge of Virginia. *Id.* at 126 (Doddridge), 145–46 (Dickey).

clock and watchmakers,<sup>18</sup> carpenters,<sup>19</sup> mechanics,<sup>20</sup> cutlers,<sup>21</sup> stonemasons,<sup>22</sup> merchants,<sup>23</sup> a deacon,<sup>24</sup> and an attorney.<sup>25</sup> Indeed, even once firearms were mass-produced, “[m]any later craftsmen made guns in small shops ... out of respect for the craft, or as a way to augment their incomes from other trades.” Whisker, *GUNSMITH’S TRADE*, at viii.

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<sup>18</sup> Examples from the 18th century include Thomas Floyd of South Carolina, Frederick Solliday of Pennsylvania, and Joel Bailey of Pennsylvania. Kauffman, *EARLY AMERICAN GUNSMITHS*, at 31 (Floyd); Whisker, *GUNSMITH’S TRADE*, at 70 (Bailey), 147 (Solliday).

Examples from the 19th century include Christian Plants, David Morton, Samuel Quest, Isaiah Lukens, and James Dillon of Pennsylvania. Whisker, *GUNSMITH’S TRADE*, at 147 (Morton), 148–49 (Quest), 149 (Dillon, Lukens), 149–50 (Plants).

<sup>19</sup> Examples from the 19th century include Godfrey Wilkin and John Wilkin of Virginia, as well as Alfred Marion Cone of Pennsylvania. *Id.* at 156–57.

<sup>20</sup> Examples from the 19th century include Christian Plants and Elias Brey of Pennsylvania. *Id.* at 149–50 (Plants); Kauffman, *EARLY AMERICAN GUNSMITHS*, at 12 (Brey).

<sup>21</sup> Examples from the 18th century include Jacob Buchanan and Walter Dick of South Carolina. Kauffman, *EARLY AMERICAN GUNSMITHS*, at 15 (Buchanan), 24 (Dick).

<sup>22</sup> An example from the 19th century is Christian Plants of Pennsylvania. Whisker, *GUNSMITH’S TRADE*, at 149–50.

<sup>23</sup> An 18th-century example is Joseph Parkinson of Virginia. *Id.* at 136–37. A 19th-century example is Andrew Saupp of Pennsylvania. *Id.* at 155.

<sup>24</sup> Gross, *THE MINUTEMEN*, at 69.

<sup>25</sup> Ignatius Leitner stated in an 1800 legal advertisement that he “continues ... making rifles.” Kauffman, *EARLY AMERICAN GUNSMITHS*, at 61.

There is a longstanding tradition of amateur-made arms. That tradition helped the Americans win the Revolutionary War and produced many of the greatest innovations in the history of firearms.

**V. Americans who make arms using purchased components nevertheless *make* arms.**

There is a long tradition of building firearms with purchased components. Many early Americans made firearms “with a mix of self-made components and imported locks and/or barrels,” DeLay, *The Myth of Continuity*, at 214. It made sense “that colonial gunsmiths would welcome the outsourcing of the most technically complex and consequential parts of a firearm,” especially “because it was more economical to do so.” *Id.* Consequently, “[c]olonial newspapers routinely note the importation of locks and barrels.” *Id.* Demonstrating how widespread this practice was, as noted *supra*, over one-quarter of all long arms used by American line troops during the Revolutionary War “were the products of America’s scattered gunsmiths using mixed components.” Neumann, *American-Made Muskets*, *supra*.

These gunmakers—like those who build firearms from precursors of frames or receivers or parts kits—“made” firearms just as much as gunmakers who built firearms from scratch. Historical and modern dictionaries both make this clear. In 1773, Samuel Johnson defined “Make” as both “To create” and “To form of materials.”<sup>1</sup> Samuel Johnson, *DICTIONARY OF THE ENGLISH LANGUAGE* (4th ed. 1773) (unpaginated). In 1828, Noah Webster defined “MAKE” as both “To

form of materials; to fashion; to mold into shape; to cause to exist in a different form, or as a distinct thing” and “To create; to cause to exist; to form from nothing.” 2 WEBSTER, AMERICAN DICTIONARY (unpaginated). Today, *Random House Webster’s* defines “make” as “to bring into existence by shaping, changing, or combining material” and “to put together; form.” RANDOM HOUSE WEBSTER’S COLLEGIATE DICTIONARY 820 (1995). And *Merriam-Webster’s* defines “make” as “to bring into being by forming, shaping, or altering material” and “to put together from components.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 702 (10th ed. 1996). Thus, all gunmakers who made firearms—whether from scratch or with imported parts—contributed to the American tradition of privately made firearms. So do individuals today who make firearms from precursors of frames or receivers or parts kits.

## **VI. There were no historical restrictions on private gunmaking.**

The Government’s *amici* claim that there is a “long tradition of gunmaking regulations.” Gun Violence Prevention Groups Br. 21. Specifically, *amici* argue that a law review article identified “six categories of gunmaking regulations: standard setting, identification, licensing and inspection, labor and impressment, restrictions on dangerous persons, and gunpowder-making.” *Id.* at 22 (citing Graham Ambrose, *Gunmaking at the Founding*, 77 STAN. L. REV. at 6 (forthcoming 2025)). None of the regulations restricted private gunmaking.

The “standard setting” laws established what arms could be used in militia service or sold to governments for militia use. Ambrose, *Gunmaking*, at 24–25, 36–37. The “inspection” laws required militiamen to prove to militia officers that they possessed the mandated militia arms. *Id.* at 25–26, 37. The “licensing” law was a 1642 Connecticut law requiring a license for any “Smith” to “doe any work for” hostile American Indians or for any person to “trade any Instrument or matter made of iron or steele” to them. *Id.* at 27; see THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY, MAY 1665, at 74 (J. Hammond Trumbull ed., 1850). The “labor” laws simply refer to the legal relationship between masters and apprentices.<sup>26</sup> Ambrose, *Gunmaking*, at 27, 34. The “impressment” laws were generally wartime measures that required gunsmiths to prioritize military arms. *Id.* at 27–28, 34–35. The “restrictions on dangerous persons” include prohibitions on providing firearms to allegedly dangerous persons and restrictions on repairing firearms for American Indians. *Id.* at 29–32, 37. The “gunpowder-making” regulations did not apply to firearms and instead targeted gunpowder storage and sales. *Id.* at 32, 38.

*Amici* place the greatest emphasis on “the longstanding practice of marking weapons—a precursor to modern-day serialization.” Gun Violence Prevention Groups Br. 22 (citing Ambrose, *Gunmaking*, at 28). *Amici* point to “examples from

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<sup>26</sup> As noted *supra*, Part I, one did not need to apprentice with a gunsmith to become one.



multiple states of eighteenth-century laws either requiring labeling of firearms or preventing defacement of labeling markings” and “colonial and state efforts to brand, stamp, label, and track weapons at the Founding.” *Id.* (citing Ambrose, *Gunmaking*, at 28, 32).<sup>27</sup> Again, none of the regulations restricted private gunmaking.

Maryland, “to prevent the Embezzlement of the Public Arms,” required in 1733 “That all the Public Arms shall be Marked ... to denote such Arms to belong to the Public” and ensure that “no Person ... shall presume to Sell or Purchase such Arms.” 75 ARCHIVES OF MARYLAND: LAWS OF MARYLAND AT LARGE 425 (Thomas Bacon ed., 1765). This law applied only to public arms owned by the colony, not to privately made or even privately owned arms. Connecticut, facing an arms shortage during the French and Indian War, impressed arms to supply soldiers, and marked them to ensure that they were later returned to their lawful owners. THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1751, TO FEBRUARY, 1757, INCLUSIVE 479–80 (Charles J. Hoadly ed., 1877) (1756 law); THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1757, TO MARCH, 1762, INCLUSIVE 123–24 (Charles J. Hoadly ed., 1880) (1758 law). Similarly, during the Revolutionary War, Connecticut initialed the arms confiscated from loyalists so they could properly be returned. Others whose arms were impressed to supply soldiers could demand a receipt to ensure the return of their arms.

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<sup>27</sup> *Amici* cite page 32, but it appears that they intended to cite page 33.

PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, FROM MAY, 1775, TO JUNE, 1776, at 419–21 (1776 law).

Other examples provided in the cited article include gunmakers who voluntarily placed identifiers on firearms they manufactured—for marketing purposes—and governments during the Revolutionary War requiring that the firearms they purchased be marked—to prevent them from being stolen or sold. Ambrose, *Gunmaking*, at 33. The requirements applied only to arms purchased by the government. Otherwise, “a gunsmith could choose to mark his guns, or not mark them, in any way he chose.” Whisker, GUNSMITH’S TRADE, at 6. “[T]here the gunsmith followed custom, not a law.” *Id.*

During the war, many “American gunmakers avoided putting their names or insignias on the firearms so that there remained few clues that might lead to retribution should the American experiment be squashed by the British.” Harsanyi, FIRST FREEDOM, at 68. Thus, “[t]he great majority of surviving muskets manufactured by the Colonists [during the war] are not identified by their maker or source.” Neumann, *American-Made Muskets*, *supra*. And even among the surviving government-purchased arms from the war, “most were not identified by the makers who feared retaliation by Royal authorities.” *Id.*; *cf.* Gill, GUNSMITH IN COLONIAL VIRGINIA, at 1 (“[M]any of [colonial Virginia’s gunsmiths] remain obscure. They left little trace[.]”).

Lastly, *amici* note that “[m]ajor arms manufacturers began stamping serial numbers on firearms as early as the mid-nineteenth century.” Gun Violence Prevention Groups Br. 22 (quoting DeLay,

*The Myth of Continuity*, at 192). Of course, these were not regulations at all. In fact, as the quoted article explains, “[t]he federal government first required serial numbers in 1958.” DeLay, *The Myth of Continuity*, at 192.

Throughout American history, private gunmaking was not regulated. But the ATF’s Final Rule—without Congress’s authorization—subjects it to pervasive regulation. The ATF not only exceeded its authority but infringed upon constitutionally protected conduct.



## CONCLUSION

The Court should affirm the judgment of the Fifth Circuit.

Respectfully submitted,

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