No. 12-1493

In the Supreme Court of the United States

BRUCE JAMES ABRAMSKI, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA, 25 OTHER STATES, AND GUAM IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

When a person buys a firearm from a federally licensed firearm dealer intending to later sell it to someone else, the government often prosecutes the initial buyer under 18 U.S.C. § 922(a)(6) for making a false statement about the identity of the ultimate buyer that is "material to the lawfulness of the sale." These prosecutions rely on the court-created "straw purchaser" doctrine, a legal fiction that treats the ultimate recipient of a firearm as the "actual buyer," and the immediate purchaser as a mere "straw man."

The lower courts uniformly agree that a buyer's intent to resell a firearm to someone who cannot lawfully buy it is a fact "material to the lawfulness of the sale." But the Fourth, Sixth, and Eleventh Circuits have split with the Fifth and Ninth Circuits about whether the same is true when the ultimate recipient can lawfully purchase and possess a firearm. The questions presented are:

1. Is a firearm buyer's intent to sell a firearm to another lawful buyer in the future a fact "material to the lawfulness of the sale" of the firearm under 18 U.S.C. § 922(a)(6)?

2. Is a firearm buyer's intent to sell a firearm to another lawful buyer in the future a piece of information "required . . . to be kept" by a federally licensed firearm dealer under § 924(a)(1)(A)?

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Amici States seek to protect their citizens' freedom to determine how, if at all, to regulate private intrastate firearm transfers between individuals who may lawfully possess firearms. No federal law directly governs those transfers. But the United States's effort in this case to broadly criminalize *all* "straw purchases" of firearms—not just those for prohibited individuals, but also those for individuals who could legally have bought the firearm themselves—is an attempt to impose indirect federal regulation on such transfers. The point of the rule, after all, is to eliminate private intra-state transfers between "straw purchasers" and their ultimate lawful recipients. It will also have an undeniable deterrent effect on private sellers who fear being mistakenly prosecuted. *Amici* States file this brief to highlight the United States's significant executive overreach and to raise critical federalism and Second Amendment concerns.

Amici constitute a majority of the States. *Amici* are the States of West Virginia, Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming; the Commonwealths of Kentucky and Virginia; and Guam.

Importantly, this is not a case concerning the possession of firearms by prohibited persons or an attempt to circumvent federal law by transferring firearms to such prohibited persons. This is a case about a lawful private transfer between two individuals legally permitted to possess firearms, each of whom could also have lawfully purchased the firearm in question from a federally licensed dealer (commonly known as a "federal firearms licensee" or an "FFL"). The case is here solely because the United States wishes to ensure that federal records document as often as possible the ultimate possessors of firearms, and has aggressively and erroneously interpreted two statutes to achieve that end. *Amici* States urge this Court to prevent this intrusion on their sovereignty and their citizens' constitutionally guaranteed right to bear arms.

SUMMARY OF ARGUMENT

The United States, through purely executive action, seeks to unlawfully create federal regulation of private intrastate firearms transfers between two individuals who are legally permitted to possess firearms. No federal law directly prohibits or regulates such private transfers. Instead, the States regulate those transactions to the extent their citizens deem necessary and appropriate.

According to the United States, two statutes concerning representations made to federally licensed dealers may be broadly interpreted to prohibit *all* "straw purchases" and therefore indirectly regulate such private intrastate transfers.

But neither reading squares with the plain text of the statutes. To the extent the first statute is concerned with "straw purchases," it clearly distinguishes between cases involving "straw purchases" on behalf of prohibited persons and this case, where the "straw purchase" was for a person legally permitted to possess a firearm. As for the second statute, nothing in its plain language prohibits or relates to "straw purchases."

What is more, the United States's interpretations would fundamentally expand the scope of federal firearm regulation and registration. The prohibition is intended, of course, to eliminate private intrastate transfers between "straw purchasers" and their ultimate lawful recipients. But it would have a farther reaching effect still, including deterring the common practice of purchasing firearms as gifts. The logic that the United States advances to forbid "straw purchases" for individuals legally permitted to possess firearms should, if fairly applied, also forbid the purchase of firearms from a federally licensed dealer to give as gifts. And although the United States claims today that it will not prosecute the purchase of firearms as gifts, prudent individuals will recognize that there is no logical distinction and refrain from doing so.

The United States's approach also displaces the States from deciding whether and how to regulate the private intrastate transfer of firearms. In the absence of a federal statute and in response to their citizens' preferences, the States have enacted a

variety of different regimes relating to the private intra-state transfer of firearms. The United States threatens to usurp these state legislative decisions by federal executive fiat.

Finally, the United States's position unnecessarily brings the Second Amendment into this case because it limits the ability of individuals between 18 and 21 years of age to obtain a handgun. Under federal law and in many States, 18- to 20-year-old adults can lawfully possess firearms. But federally licensed firearms dealers are prohibited by statute from selling them handguns. To lawfully obtain a handgun, an 18- to 20-year-old individual in these jurisdictions must either acquire it through a private intrastate sale or receive it as a gift. Because the United States's position in this case will deter such private sales and gifts, it will reduce the already limited means by which these 18- to 20-year-olds can lawfully obtain a handgun. To adopt the United States's view, this Court would have to decide for the first time whether such a further restriction on the access of 18- to 20-year-old adults to handguns implicates the Second Amendment and, if so, whether it survives constitutional scrutiny. Rather than wading into this contested area of law, this Court should adopt *amici* States' reading of the statutes, which does not raise any potential constitutional questions.

ARGUMENT

Unlike those who intentionally transfer firearms to prohibited persons, individuals in the same State who may legally possess firearms have any number of legitimate reasons to transfer firearms to each other. They might do so for convenience (a person already at or going to the store might also purchase a firearm for the other), to save money (one individual might get a discount at the store because, for example, he or she is a current or former member of law enforcement, as was true here), out of necessity (individuals between 18 and 21 years of age cannot purchase a firearm from a federally licensed firearms dealer even though they often may legally possess one), or because of changed circumstances or preferences (one person may simply have no further desire to keep a firearm that another person would be happy to have).

In the absence of a federal statute and reflecting their citizens' varying preferences, the States have adopted different approaches to these private intrastate firearm transfers between individuals who are legally permitted to possess firearms. For example, West Virginia does not regulate such transfers, while Colorado requires the transferee undergo and pass a background check coordinated through a licensed firearms dealer.

The United States, however, has convinced the Fourth Circuit (and several other courts) that it should be allowed to regulate those transfers indirectly, even though there is no federal law that

directly does so. Interpreting several federal statutes exceedingly broadly, the United States seeks to treat those who transfer firearms to prohibited persons the same as those who transfer firearms to non-prohibited persons. As explained more fully below, this is unlawful and raises federalism and potential constitutional concerns.

I. The United States Wrongly Interprets Federal Law To Indirectly Regulate The Private Intrastate Transfer Of Firearms Between Two Individuals Legally Permitted To Possess Firearms.

No federal law directly regulates the private intrastate transfer of firearms between two individuals who are legally permitted to possess firearms. Congress has banned interstate private firearm transfers, the sale by federally license dealers of any firearm to a minor and handguns to young adults, and the possession of firearms by certain categories of individuals, including convicted felons, fugitives from justice, users of illegal drugs, and mental incompetents. 18 U.S.C. §§ 922 (a)(3), (b)(1), (c)(1), (d). But there is no direct federal regulation of private intrastate transfers between non-prohibited individuals. *See* U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms & Explosives, Firearms-Frequently Asked Questions-Unlicensed Persons, http://www.atf.gov/content/firearms-frequently-asked-questions-unlicensed-persons (ATF FAQ) ("A person may sell a firearm to an unlicensed resident of his State, if he does not know or have

reasonable cause to believe the person is prohibited from receiving or possessing firearms under Federal law. . . . When a transaction takes place between private (unlicensed) persons who reside in the same State, the Gun Control Act (GCA) does not require any record keeping.").

Nevertheless, the United States contends that two federal statutes concerning representations made to federally licensed dealers may be broadly interpreted to indirectly restrict such private intrastate transfers. Neither reading, however, comports with the plain text of the statutes. Moreover, the far-reaching consequences of the United States's interpretations show that they cannot be consistent with Congress's intent. As this Court has cautioned, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

A. The first federal law is 18 U.S.C. § 922(a)(6), which the United States has used in other cases to prosecute individuals acting as "straw purchasers" for persons *prohibited* under federal from possessing a firearm. The statute makes it unlawful for a person buying a firearm from a federally licensed firearms dealer "knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive" the dealer "with respect to any fact material to the lawfulness of the sale." 18 U.S.C. § 922(a)(6). The United States has argued in other

cases, and courts have agreed, that a "straw purchaser" for a prohibited person knowingly makes a material false statement about the buyer's identity when he claims on ATF Form 4473 that he is the "actual buyer" of the firearm. *See, e.g.*, *United States v. Moore*, 109 F.3d 1456, 1460-61 (9th Cir. 1997) (en banc).

This case involves a "straw purchase" for a *non*-prohibited person—*i.e.*, a person legally permitted to purchase and possess a firearm—but the United States urges that the statute be broadly read to apply as it would in the case of a purchase for a prohibited person. That expansive reading is inconsistent, however, with the statute's plain text. Section 922(a)(6) forbids only knowing false statements "intended or likely to deceive" a licensed firearms dealer "with respect to any fact *material* to the *lawfulness* of the sale." 18 U.S.C. § 922(a)(6) (emphases added). That last qualification is quite significant. It distinguishes between the case where a "straw purchaser" fails to disclose an ultimate recipient who *cannot* lawfully possess a firearm and this case, where the ultimate recipient *can* lawfully purchase and possess a firearm. In the former case, the failure to disclose the ultimate recipient's identity is arguably "material" to the "lawfulness" of the sale, because that individual could not himself lawfully purchase and possess the firearm. But in this case, the failure to disclose is plainly immaterial to the "lawfulness" of the sale, since the original sale would be lawful even if the ultimate recipient had

gone to the dealer himself. *See United States v. Polk*, 118 F.3d 286, 295 (5th Cir. 1997).

The importance of the "lawfulness" requirement is reflected in the statute's statement of purpose and legislative history. "[I]t is not the purpose of this title," the Act states, "to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms." Gun Control Act of 1968, Pub. L. 90–618, § 101, 82 Stat. 1213, 1213-1214. Furthermore, the Act was expressly "not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for *lawful purposes*." *Ibid.* (emphasis added). Rather, the statute's "broadly stated principal purpose was 'to make it possible to keep firearms out of the hands of those *not legally entitled to possess them* because of age, criminal background, or incompetency.'" *Barrett v. United States*, 423 U.S. 212, 220 (1976) (quoting S. Rep. No. 90-1501, at 22 (1968)) (emphasis added).

The United States effectively reads the "lawfulness" element out of the statute's materiality requirement. It would punish a "straw purchaser's" failure to disclose the ultimate recipient's identity *regardless* of whether that identity *actually affects* the lawfulness of the purchase. In its view, the statute forbids an individual from knowingly making false statements about any facts that *could affect* a sale. But if that were Congress's intent, the statute could simply have prohibited any knowing false

statement "with respect to any fact material to . . . the sale." The addition of the "lawfulness" element must have independent meaning. The United States's approach violates the "cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted).

Significantly, the United States's interpretation would criminalize a variety of harmless statements. Consider, for example, a 55-year-old buyer who is legally permitted to possess firearms, but who represented her age as 50. The buyer's age is not material to the *lawfulness* of the sale, because the sale would be lawful whether her age was 50 or 55. But under the United States's reading of the statute, this entirely harmless statement would be criminally punishable because the age of an individual could theoretically affect the sale. That result cannot be squared with Congress's clear desire "not . . . to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms." § 101, 82 Stat. at 1213-1214.

B. The second federal law is 18 U.S.C. § 924(a)(1)(A), which similarly criminalizes certain knowing false statements to federally licensed firearms dealers. Specifically, the statute subjects to criminal penalty any person who "knowingly makes

any false statement or representation with respect to the information required *by this chapter* to be kept in the records of" a federally licensed firearms dealer. 18 U.S.C. § 924(a)(1)(A) (emphasis added). A federally licensed dealer is required to record the "name, age, and place of residence" of every individual to whom the dealer sells a firearm. *Id.* § 922(b)(5) (making it unlawful for a licensed dealer "to sell or deliver . . . any firearm or armor-piercing ammunition to any person unless the licensee notes in his records . . . the name, age, and place of residence of such person").

The United States reads this statute to forbid a "straw purchaser" from representing on ATF Form 4473 that he is the "actual buyer" of the firearm. But again, the United States's interpretation is inconsistent with the plain text. The statute prohibits knowing false statements about information that a federally licensed dealer is required *by statute* to record. The statute requires a dealer only to record the "name" of "such person" to whom a dealer "sell[s] or deliver[s]" a firearm. *Ibid.* Here, that person was Bruce Abramski. The statute nowhere requires a dealer to record the person's answer to the "actual buyer" question on ATF Form 4473 or make any notation whatsoever relating to whether the person might be a "straw purchaser." Where a statute's text is "plain and unambiguous," it must be applied "according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009).

C. The United States's interpretations of these statutes not only contravene the laws' plain text, but also must be wrong because they would fundamentally expand the scope of federal firearms regulation and registration. No federal law directly regulates private intrastate firearm sales or gifts. As interpreted by the United States, however, these statutes would significantly affect both.

First, as a practical matter, a rule that forbids "straw purchases" for individuals legally permitted to possess firearms would dramatically decrease private intrastate sales. The prohibition is intended, of course, to eliminate all sales between such "straw purchasers" and their subsequent lawful buyers. But it would also have a wide-reaching deterrent effect.

Some individuals who currently own firearms, or who purchase firearms in the future for themselves, would be hesitant to privately resell those firearms. Unless beyond the statute of limitations, every such sale could be Exhibit 1 in a federal prosecution for an unlawful "straw purchase." And though the government would still have to prove the individual's requisite intent at the time of purchase, the mere risk of being charged with a crime—no matter how meritless the charge—would, for some, outweigh whatever financial gain might come from selling the used firearm. Moreover, the reality is that many firearm buyers have, at the time of purchase, some thought that they might one day sell their firearms for profit or simply to obtain funds to purchase

something new. Those individuals might have a heightened belief—rightly or wrongly—that actually reselling their firearms privately would put them at risk of prosecution.

Second, the United States's position would curtail the common practice of purchasing firearms as gifts. The logic that the United States advances to forbid "straw purchases" for individuals legally permitted to possess firearms should, if fairly applied, also forbid the purchase of firearms from federally licensed dealers as gifts. If it is unlawful to claim to be the "actual buyer" when purchasing a firearm to sell to another lawful individual, it should also be unlawful to do so when buying one to give to another lawful individual. In either case, the buyer has falsely represented the identity of the recipient of the sale. Although the United States claims today that it will not prosecute the purchase of firearms as gifts, prudent individuals will recognize that there is no logical distinction and act accordingly. The "gift exemption" is a fiction created by ATF Form 4473 and could easily be revoked at the whim of the agency.

In short, the United States suggests an interpretation of these statutes that would significantly impair private intrastate transfers of firearms, transfers that Congress has never shown any intent to prohibit. Motivated by a desire to avoid prosecution for a "straw purchase," individuals who want to transfer a firearm in-state will go through federally-licensed firearms dealers rather than doing

so privately. Each such transfer will require a background check, with attendant cost to the person, and generate federal records, expanding the scope of federal firearms regulation and registration.

But as this Court has said before, "[t]he idea that Congress gave the [Executive] such broad and unusual authority through an implicit delegation . . . is not sustainable." *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006). If Congress wanted to discourage or prohibit private intrastate firearm sales, it could have said so. It did not, and this Court should not permit the Executive to do so unilaterally.

II. The United States's Expansive View Of The Statutes At Issue Unlawfully Infringes On The States' Ability To Be Responsive To Their Citizens' Preferences.

By unlawfully expanding federal law beyond Congress's intent, the United States also displaces the States from deciding whether and how to regulate the private intrastate transfer of firearms. In the absence of actual federal regulation and in response to their citizens' preferences, the States have enacted a variety of different regimes relating to the private intrastate transfer of firearms. *See, e.g.*, ATF FAQ (concluding that no federal statutes govern private firearm sales and noting "[t]here may be State or local laws or regulations that govern this type of transaction."). Some states, like California and New York, stringently regulate the private market for firearms with laws that require universal background checks or firearm owner identification

cards.[1] But many states, including West Virginia, are either silent or have few laws regulating private intrastate firearm transfers beyond proscriptions on transferring a firearm to a prohibited person.[2]

In fact, the States have specifically shown that they can and will directly regulate "straw purchases" when that suits their citizens. Many states do not prohibit "straw purchases," but at least one has set forth a particularized regime targeting such actions. Under Maryland law, a "straw purchase" is defined as "a sale of a regulated firearm in which a person uses another, known as the straw purchaser, to: (1) complete the application to purchase a regulated firearm; (2) take initial possession of the regulated firearm; and (3) subsequently transfer the regulated firearm to the person." Md. Code Ann., Pub. Safety § 5-101. But in contrast to the United States's position, Maryland forbids only the "knowing participa[tion] in a straw purchase of a regulated firearm *to a minor or to a person prohibited by law from possessing a regulated firearm*." *Id.* § 5-141(a) (emphasis added); *see also* 93 Md. Op. Att'y Gen. 126

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[1] *E.g.*, Colo. Rev. Stat. § 18-12-112; Cal. Penal Code § 28050; N.Y. Gen. Bus. § 898; N.J. Stat. Ann. § 2C:58-3.

[2] *E.g.*, Ala. Code §§ 13a-11-3, *et seq.*, 13A-11-57, 13A-11-72, 13A-11-76; Ark. Code Ann. §§ 5-73-101, *et seq.*, 5-73-132; Ga. Code Ann. §§ 16-11-131, 16-11-132, 16-11-172; Idaho Code Ann. §§ 18-3302A, 18-3302F, 18-3308, 18-3316; Kan. Stat. Ann. § 21-6303; Ky. Rev. Stat. Ann. § 237.070; La. Rev. Stat. Ann. § 14:95.1.1; Minn. Stat. § 624.7141; Mont. Code Ann. § 45-8-313; Neb. Rev. Stat. § 28-1211; Nev. Rev. Stat. § 202.254; W. Va. Code §§ 61-7-1, *et seq.*, 61-7-10.

(2008) ("In general, a 'straw purchase' occurs when the apparent buyer illegally acquires a firearm on behalf of a person who is prohibited by law from acquiring, owning, or possessing a firearm."). The United States threatens to overrun this and all the other state legislative decisions by federal executive fiat.

As Congress implicitly recognized by regulating only *interstate* private firearms sales, state-based decision-making in this area makes sense and is consistent with this nation's foundational commitment to federalism. Attitudes toward firearm ownership and lawful use vary significantly from state to state. *See, e.g.*, Colin Woodward, *Up in Arms*, Tufts Magazine, Fall 2013, *available at* http://www.tufts.edu/alumni/magazine/fall2013/features/up-in-arms.html. These differences are reflected, in a way, by the varying degrees that state constitutions protect the right to bear arms. *See* Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 Tex. Rev. L. & Pol. 191 (2006). In West Virginia, for example, a person has the constitutional "right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use." W. Va. Const., art. III, § 22. In Connecticut, "[e]very citizen has a right to bear arms in defense of himself and the state." Conn. Const., art. 1, § 15. And in California, the state constitution includes no express right to bear arms. State-by-state flexibility allows the States to be responsive to their own citizenry and to "perform their role as laboratories for experimentation," to the

extent consistent with the Second Amendment, of course. *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring).

III. The United States's Expansive View Of The Statutes At Issue Needlessly Brings the Second Amendment Into This Case.

The United States's position also unnecessarily brings the Second Amendment into this case because it limits the ability of individuals between 18 and 21 years of age to obtain a handgun. U.S. Const. amend. II. Under federal law and in many States,[3] 18- to 20-year-old adults can lawfully possess firearms. But because federally licensed firearms dealers are prohibited by statute from selling them handguns, *see* 18 U.S.C. § 922(b)(1), (c)(1), an 18- to 20-year-old individual in these jurisdictions can

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[3] *E.g.*, Ala. Code § 13A-11-76; Alaska Stat. § 11.61.210; Ariz. Rev. Stat. Ann. § 13-3109; Ark. Code Ann. §§ 5-73-109, -119; Colo. Rev. Stat. § 18-12-108.7; Fla. Stat. § 790.17; Ga. Code Ann. § 16-11-101.1; Idaho Code Ann. § 18-3302A; Ind. Code § 35-47-2-7; Kan. Stat. Ann. § 21-6301; La. Rev. Stat. Ann. § 14:91; Me. Rev. Stat. tit. 17-A, § 554-B; Minn. Stat. § 609.66; Miss. Code Ann. § 97-37-13; Mo. Rev. Stat. § 571.060; Mont. Code Ann. § 45-8-321; Neb. Rev. Stat. § 28-1204.01; Nev. Rev. Stat. § 202.310; N.H. Rev. Stat. Ann. § 159:12; N.C. Gen. Stat. § 14-315; N.D. Cent. Code § 62.1-03-02; Okla. Stat. tit. 21, § 1273; Or. Rev. Stat. § 166.470; Pa. Cons. Stat. Ann. § 6302; S.C. Code Ann. § 16-23-30(A)(3); S.D. Codified Laws § 23-7-46; Tenn. Code Ann § 39-17-1303; Tex. Penal Code Ann. § 46.06(a)(2); Utah Code Ann. § 76-10-509.9; Vt. Stat. Ann. tit. 13, § 4007; Va. Code Ann. § 18.2-309; Wash. Rev. Code §§ 9.41.040, 9.41.080; Wisc. Stat. § 948.60(2)(b); W. Va. Code §§ 61-7-7, -8.

lawfully obtain a handgun only through a private intrastate sale or as a gift. The United States's position in this case will further restrict those remaining means of access. As discussed earlier, the statutory interpretation advanced by the United States would dramatically curtail the private intrastate transfer of firearms, whether by sale or gift. *See supra* I.C.

To adopt the United States's view, this Court would have to resolve the debate over whether such a limitation on access implicates the Second Amendment. Though some States permit 18- to 20-year-old adults to lawfully possess handguns, others do not. And in the past year, the full Fifth Circuit Court of Appeals divided deeply over the question. After a panel of the court upheld the statutory prohibition on handgun sales by federally licensed dealers to 18- to 20-year-olds, *see Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 203 (5th Cir. 2012), seven judges dissented from the denial of rehearing en banc, asserting that "18- to 20-year-olds ha[ve] full Second Amendment rights," *Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 714 F.3d 334, 339 (5th Cir. 2013) (Jones, J., dissenting from denial of rehearing en banc).

These constitutional concerns further bolster the straightforward reading of the laws offered by *amici* States. As this Court has said, "[i]t is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court

will not decide a constitutional question if there is some other ground upon which to dispose of the case." *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (quoting *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984)). In contrast to the United States, *amici* States offer plausible interpretations of the federal false statement and recordkeeping statutes that raise no Second Amendment questions. This Court should adhere to its "settled policy to avoid an interpretation of a federal statute that engenders constitutional issues [where] a reasonable alternative interpretation poses no constitutional question." *Gomez v. United States*, 490 U.S. 858, 864 (1989).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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