

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

—◆—  
BILLY YORK WALKER,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

—◆—  
**AMICUS CURIAE BRIEF OF  
NATIONAL RIFLE ASSOCIATION OF AMERICA  
IN SUPPORT OF PETITIONER**

—◆—  
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**QUESTION PRESENTED**

Federal law bars anyone who has been convicted of a felony from possessing a firearm, but further provides that “[a]ny conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction” for purposes of this prohibition. 18 U.S.C. § 921(a)(20). Petitioner was convicted of a non-violent felony in federal court and later had his state civil rights restored through a Tennessee state court action. By operation of federal law, the state court proceeding had the effect of allowing Petitioner to once again sit on federal juries, and vote in federal elections.

The question presented is whether one who regains his or her federal civil rights by operation of federal law has had his civil rights “restored” within the meaning of 18 U.S.C. § 921(a)(20), and therefore may exercise the fundamental constitutional right guaranteed by the Second Amendment.

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**AMICUS CURIAE BRIEF OF NATIONAL  
RIFLE ASSOCIATION OF AMERICA  
IN SUPPORT OF PETITIONER**

Pursuant to Supreme Court Rule 37.2, National Rifle Association of America, Inc. (the “NRA” or “Amicus”) respectfully submits this amicus curiae brief in support of Petitioner Billy York Walker and supporting the grant of certiorari.<sup>1</sup>



**IDENTITY AND INTEREST  
OF AMICUS CURIAE**

The NRA was founded in 1871 by Colonel William C. Church and General George Wingate to promote rifle marksmanship skills in the United States. Over the past 150 years, its membership has grown to include over five million members. The NRA has remained true to its founding principles, still working tirelessly today to advocate for safe firearm shooting, quality marksmanship, thorough training, and sound education.

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a), notice of NRA’s intent to file this amicus curiae brief was received by counsel of record for all parties at least 10 days prior to the due date of this brief, and all parties consent to the filing of this amicus curiae brief. The undersigned further affirms that no counsel for a party authored this brief in whole or in part, and no person or entity, other than NRA, its members, or its counsel, made a monetary contribution specifically for the preparation or submission of this brief.

The NRA is familiar with lawsuits around the country involving interests protected by the Second Amendment at both the state and federal level. The NRA's expertise allows it to provide the Court with a unique perspective on the issues. Moreover, because of the breadth of its knowledge of prior litigation, the NRA is in a unique position to provide the Court with an analysis of the relevant caselaw and the impact of a decision in this case on fundamental Second Amendment rights.



### **SUMMARY OF THE ARGUMENT**

This Court should grant the Petition in order to ensure that the fundamental, natural right of self-defense is not unconstitutionally infringed by a holding that an individual who has been convicted of a non-violent federal felony, but who has had his federal civil rights restored, is nonetheless permanently prohibited from possessing a firearm under federal law.

This Court held in *Beecham v. United States*, 511 U.S. 368 (1994), that 18 U.S.C. § 921(a)(20) requires the restoration of the right to possess a firearm to be determined according to the law of the convicting jurisdiction. This Court expressly reserved for future determination, however, the question of “whether a federal felon can[] have his civil rights restored under federal law.” *Beecham*, 511 U.S. at 373 n.\*. The instant case presents this important question in the



context of Petitioner Walker’s inability to exercise his fundamental right to possess a firearm. A declaratory judgment from a federal court that Walker’s federal civil rights, including those protected by the Second Amendment, have been restored satisfies *Beecham*’s requirement that restoration occur under the law of the convicting jurisdiction.<sup>2</sup>

Resolving the question reserved by this Court in *Beecham* in the affirmative is necessary to preserve the ability of all who are eligible to exercise their Second Amendment right to keep and bear arms. *See* SUP. CT. R. 10(c). As this Court recognized in *McDonald v. Chicago*, 561 U.S. 742 (2010), the Second Amendment protects a fundamental right, and it follows necessarily that, once a federal felon has had other fundamental rights restored such that he is able to vote in federal elections and sit on federal juries, he also should be able to exercise his Second Amendment right to possess a firearm unless such restoration expressly provides otherwise. 18 U.S.C. § 921(a)(20) (“unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms”).

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<sup>2</sup> The affirmative act of seeking a declaratory judgment from a federal court clearly will satisfy *Beecham* in the context of a federal conviction. As discussed below, *Caron v. United States*, 524 U.S. 308 (1998), held that civil rights could be restored by mere operation of law in the context of a state conviction.

Finally, this Court should grant the Petition pursuant to SUP. CT. R. 10(a) to address the jurisdictional split between the United States Court of Appeals for the Sixth Circuit in this case and the New Hampshire Supreme Court in *DuPont v. Nashua Police Dep't*, 113 A.3d 239 (N.H. 2015), *cert. denied sub nom. McDonough v. Dupont*, 136 S. Ct. 533 (2015), regarding whether restoration of a federal felon's firearms rights under state law shall be considered a restored civil right that must be taken into account under § 921(a)(20). The Sixth Circuit's omission of fundamental Second Amendment rights as relevant to a restoration of rights analysis cannot be reconciled with *McDonald*.



## ARGUMENT

### **I. The Petition addresses the question expressly reserved in *Beecham*.**

#### **A. *Beecham* does not foreclose consideration of the question presented here.**

In *Beecham*, this Court held a state's restoration of a federal felon's civil rights was not necessarily sufficient to lift the federal disqualification on possessing firearms. In so holding, this Court reasoned that a federal conviction required that the restoration of civil rights occur under federal law, because the jurisdiction in which the conviction occurred was federal court. *Beecham*, 511 U.S. at 374.

Walker was the president of a Tennessee bank who engaged in fraudulent banking transactions in the early 1980s. In 1987, he was convicted in federal court of various financial crimes and sentenced to three years in prison and ordered to pay restitution. Walker served his sentence and was released in 1991. All of his convictions were for non-violent, white collar crimes.<sup>3</sup> There is no dispute that Walker was convicted of federal felonies or that at the time of his conviction and during his incarceration he was not a law-abiding, responsible citizen and had lost his civil rights – by operation of law – including the right to sit on a state or federal jury, the right to vote in state or federal elections, the right to run for or hold state office, and the right to possess a firearm under state and federal law.

In 2010, Walker petitioned a Tennessee state court for a restoration of his civil rights, pursuant to TENN. CODE ANN. § 40-29-105(b)(1). The state court ordered a restoration of his civil rights on June 1, 2010. The order specifically stated that “Billy York

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<sup>3</sup> While Walker’s white collar convictions are prohibiting offenses under § 921(a)(20), many white collar convictions fall outside its boundaries. *See* 18 U.S.C. § 921(a)(20). Furthermore, courts have noted “that § 922(g)(1) may be subject to an overbreadth challenge at some point because of its disqualification of all felons, including those who are non-violent[.]” *United States v. Williams*, 616 F.3d 685, 693 (7th Cir. 2010). Allowing Walker to petition for declaratory relief safeguards his Second Amendment rights, and helps keep § 922(g)(1) within the bounds of the Second Amendment.

Walker is eligible to have all civil and citizenship rights restored, including, without limitation, the right to vote, the right to serve on a jury, and the right to hold an office of public trust.” On March 22, 2012, the same court issued an additional order stating that “Billy York Walker shall have the explicit right to bear and possess firearms.” On July 15, 2013, Walker filed an action in the United States District Court for the Western District of Tennessee seeking a declaration under federal law that he could now lawfully possess firearms.

The facts of the cases decided in *Beecham* differ from the facts in this case in two critical ways. First, the petitioners in *Beecham* were criminal defendants attempting to escape criminal penalties for being felons in possession of firearms. Walker, by contrast, has already obtained restoration of his right to possess firearms under state law and has invoked federal court jurisdiction to affirmatively remove his disability from possessing firearms under federal law because he has met the statutory criteria. This distinction is the linchpin of this case, in that it is Walker’s affirmative petitioning of the federal court that allows the “convicting jurisdiction” to act to restore his federal firearms right.<sup>4</sup>

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<sup>4</sup> Compare, e.g., *Wesson et al. v. Town of Salisbury et al.*, 13 F. Supp. 3d 171 (D. Mass. 2014) (holding that two Massachusetts statutes prohibiting individuals with drug convictions from obtaining carry permits and permits to purchase were unconstitutional, under the Second Amendment, as applied to two

(Continued on following page)

Second, this case differs from *Beecham* because the state of Tennessee, along with restoring Walker's other civil rights, expressly restored Walker's right to possess firearms under state law. Walker has been adjudicated to be sufficiently responsible to possess firearms within the state of Tennessee – a status the defendants in *Beecham* never sought or attained.

By obtaining a restoration of his civil rights under Tennessee law, Walker's right to vote in federal elections and his right to sit on federal juries have been restored by operation of federal law. By seeking a declaratory judgment that his federal civil rights, including the right to possess a firearm, have been restored under federal law, Walker has affirmatively invoked action by the convicting jurisdiction of the federal court. In doing so, he has satisfied the requirement established in *Beecham*, that restoration of

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individuals with 30- and 40-year-old marijuana convictions); and *Binderup v. Holder*, No. 13-cv-0675, 2014 WL 4764424 (E.D. Pa. Sept. 25, 2014) (holding that § 922(g) was unconstitutional as applied to an individual with a 16-year-old corruption of minors conviction that resulted from a consensual sexual relationship with the plaintiff's 17-year-old employee); with *State v. Craig*, 826 N.W.2d 789, 794 (Minn. 2013) (collecting authorities of federal defendants failing to succeed on facial and as applied Second Amendment attacks to 922(g)). Of course, if a federal district court properly can hold that § 922(g) is unconstitutional as applied to any individual plaintiff, then a federal district court is empowered to declare that § 921(a)(20) has been satisfied by a restoration of civil rights. The Petition does not challenge, and this brief takes no position on, the validity of 18 U.S.C. § 922(g) on Second Amendment grounds.

federal rights “is governed by the law of the convicting jurisdiction.” *Id.* at 371. Thus, *Beecham* does not preclude, but rather supports, the relief sought in this case.

**B. This Court has resolved most of the issues not reached in *Beecham*, leaving only the question presented here.**

While this case is materially different than *Beecham*, the *Beecham* footnote does frame the analysis in this case:

We express no opinion on whether a federal felon cannot have his civil rights restored under federal law. This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, see U.S. Const., Art. I, § 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. § 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. § 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by § 922(g); and the determination whether civil rights must be restored by an affirmative act of a Government official, see *United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), *cert. denied*, 506 U.S. 934, 121 L. Ed. 2d 277, 113 S. Ct. 364 (1992), or whether they may be restored automatically by operation of law, see *United States v. Hall*, 20 F.3d 1066 (CA10

1994). We do not address these matters today.

*Beecham*, 511 U.S. at 373 n.\*.<sup>5</sup> A review of the sources cited in the *Beecham* footnote and this Court's post-*Beecham* jurisprudence answers the questions of whether, when, and how a federal felon can have his civil rights restored under federal law.

18 U.S.C. § 925(c) establishes a mechanism for restoring a federal felon's right to possess a firearm through an administrative process. Though 18 U.S.C. § 925(c) is not at issue here, its existence demonstrates both that it is possible for a federal felon to have his right to possess a firearm restored under federal law, and that Congress intentionally created a mechanism for rehabilitated felons to regain their Second Amendment rights. This understanding is confirmed by the legislative history of the Firearms Owners' Protection Act. *See* H.R. Rep. 495, 99th Cong., 28-29 (1986) (“[Section 925(c)] would allow any

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<sup>5</sup> In addition to setting the stage for the question presented by the Petition here, the footnote in *Beecham* underscores one critical point. Contrary to the holding of the Sixth Circuit, the one thing this Court *did not* hold in *Beecham* was that state action could *never* serve to restore federal firearms rights. This Court cited *Hall* for the question of whether rights may be restored automatically by operation of law. But the underlying conviction in *Hall* was a *state* conviction, and there would be no reason to cite that case in the context of a restoration following a *federal* conviction unless this Court were intimating that restoration under those circumstances (the very same circumstances presented in this case) could be attained.

person in the disqualified class to petition the Secretary for relief of the disability.”). Thus, the question of whether a federal felon can have his right to possess a firearm under federal law restored must be answered in the affirmative. What remains to be confirmed is that there is an additional path to restoration as invoked by Walker here.

With respect to the right to vote in federal elections, the Constitution sets forth the relevant framework: “[t]he States . . . define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State.” *Ex Parte Yarbrough*, 110 U.S. 651, 663 (1884) (citing U.S. CONST. art. I, § 2). Thus, when a federal felon has lost the right to vote in his state elections, the Constitution provides the federal law that operates to strip him of his right to vote in federal elections. That same body of federal law also operates to restore the federal felon’s right to vote in federal elections, once the state has restored his right to vote in state elections. Thus, a federal felon can have his federal civil right to vote in federal elections restored by operation of federal law.

Similarly, 28 U.S.C. § 1865 provides that eligibility to serve on a federal jury is lost when a person is convicted of a state or federal crime punishable by more than one year in prison. 28 U.S.C. § 1865(b)(5). It also provides, however, that eligibility is restored if the convict’s “civil rights have been restored.” *Id.* Thus, by operation of federal law, when a felon’s right



to sit on a state jury is restored, his right to sit on a federal jury is restored. *Ballard v. United States*, 329 U.S. 187, 192 (1946) (“Congress has referred to state law merely to determine who is qualified to act as a juror.”); *see also United States v. Boney*, 977 F.2d 624, 642 (D.C. Cir. 1992) (Randolph, J., concurring in part) (stating that the bar on jury service “‘applies only to felons whose civil rights have not been restored,’ 28 U.S.C. § 1865(b)(5) (a determination made by each state), and thereby preserves some state influence on who may sit on federal juries”).

Finally, in *Caron v. United States*, 524 U.S. 308, 313 (1998), this Court confirmed that a restoration of rights subsequent to a state conviction can occur by operation of law, and not just by an affirmative act of a government official. This Court held that there need not be “an affirmative act of a Government official” or a case-by-case determination of whether civil rights should be restored to a particular felon. *Id.* at 313. It is enough that a felon’s civil rights have been restored by operation of law:

First, Massachusetts restored petitioner’s civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of § 921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term “pardon” connotes a case-by-case determination, “restoration of civil rights” does not. Massachusetts has chosen a broad

rule to govern this situation, and federal law gives effect to its rule.

*Id.*

In sum, several things are quite clear. First, provisions of the Constitution and the United States Code make clear that the federal civil rights of voting in federal elections and sitting on federal grand juries can be restored. Second, at least in the context of a state conviction, this Court's decision in *Caron* demonstrates that it is possible for that restoration to occur by operation of law and still satisfy Section 921(a)(20). Finally, 18 U.S.C. § 925(c) demonstrates that it is possible for a felon to have the right to possess a firearm restored under federal law. At issue in this case is the natural intersection of these legal tenets: a rehabilitated federal felon applying in federal court for restoration of his firearms rights under federal law. This Court should grant certiorari to address the issue left open in *Beecham* and confirm that Walker appropriately petitioned the district court to reinstate his right to possess a firearm under federal law and that he is entitled to do so, contrary to the holding of the Sixth Circuit.

**C. The Sixth Circuit's decision conflicts with this Court's decisions in *Beecham* and *Caron* and misapplies its decision in *Logan*.**

The Sixth Circuit assumed that the civil rights it needed to evaluate to determine whether a felon's

federal civil rights have been restored were the right to vote in federal elections, the right to hold federal office, and the right to sit on federal juries. *Walker v. U.S.*, 800 F.3d 720, 723 (6th Cir. 2015). As a preliminary matter, this assumption is not consistent with the *Beecham* footnote, where this Court did not include the right to run for federal office as a relevant factor. The Sixth Circuit erred in inserting this consideration for a simple reason: it is not possible to lose the right to run for federal office by virtue of a conviction. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 (1995) (“we reaffirm that the qualifications for service in Congress set forth in the text of the Constitution are ‘fixed,’ at least in the sense that they may not be supplemented by Congress”). Thus, it is not possible to have this civil right restored for purposes of 18 U.S.C. § 921(a)(20). *See Logan v. U.S.*, 552 U.S. 23 (2007). Restoration of the right to run for and hold state office is relevant to whether state civil rights have been restored under state law, but including the right to hold federal office within the panoply of civil rights that must be restored in order to have a federal firearm disability lifted only serves to burden the rehabilitated federal felon with an impossible task and set him up for inevitable failure.

The majority correctly recognized, however, that Walker’s civil right to serve on a federal jury had been restored by operation of law when his civil

rights were restored by Tennessee. *Id.* at 723.<sup>6</sup> Where the Sixth Circuit lost its way, though, and a place where this Court's guidance is needed, was in its treatment of the right to vote under federal law.

Walker's ability to vote in federal elections was lost when he was convicted of his federal crimes because Tennessee prohibits felons from voting. *Walker*, 800 F.3d at 724; TENN. CODE ANN. § 40-20-112. He regained his right to vote in Tennessee elections when his rights were restored, under Tennessee law, pursuant to a court order. *Id.* at 722. As explained above, however, at the same moment that Walker regained his right to vote in Tennessee elections, he also regained his right to vote in federal

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<sup>6</sup> The determination of the court below that Walker's civil rights (*plural*) had not been restored likely renders incorrect its assumption that Walker's right to sit on a federal jury had been restored, as his eligibility to do so hinges on having his civil rights (*plural*) restored. 28 U.S.C. § 1865(b)(5). As the Sixth Circuit would have it, Walker did not have his federal firearms rights restored, did not have his right to hold federal office restored, and did not have his right to vote in federal elections restored. How then could he have had his right to sit on a federal jury restored, in the absence of the restoration of any other right? The Sixth Circuit's assumption that "restoration of civil rights in this statutory context refers to the restoration of civil rights in one's state of residence," *Walker*, 800 F.3d at 723, has no articulated basis. There is no apparent reason in the Sixth Circuit's decision to differentiate between the right to sit on a federal jury and the right to keep and bear arms, and its treatment of the restoration of Walker's civil rights is internally inconsistent, further demonstrating the need for this Court's intervention. The Sixth Circuit's fixation on the restoration of more than one civil right simply cannot be correct.

elections by operation of federal law because “[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature[s],” U.S. CONST. art. I, § 2, meaning that “under federal law a person has the right to vote in elections for Congress so long as the state where that person resides permits him to vote in state legislative elections.” *Walker*, 800 F.3d at 724 (citing *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)); see also *Ex Parte Yarbrough*, 110 U.S. at 663. Thus, Walker’s right to vote in federal elections was restored by operation of federal law at the same time his right to vote in Tennessee elections was restored by the Tennessee state court.

The Sixth Circuit, however, determined that Walker’s right to vote under federal law had not been restored because he had not received a “token of forgiveness from the government.” *Walker*, 800 F.3d at 725. The court relied upon its belief that “[f]orgiveness always involves a consideration of the wrong committed,” *id.*, to support its erroneous conclusion that Walker’s right to vote had not been restored.

The Sixth Circuit’s error was based on an erroneous interpretation of this Court’s decision in *Logan*, 552 U.S. at 23. There, this Court held that a misdemeanant who had never lost his civil rights as a result of his convictions had not had his civil rights restored for purposes of 18 U.S.C. § 921(a)(20). This Court’s holding was based on the plain meaning of the word “restored,” requiring that a civil right actually

be lost. *Logan*, 552 U.S. at 37. The phrase “token of forgiveness” referred to the existence of a process for restoring the convict’s right, which cannot exist when a civil right is never lost. The Sixth Circuit extended the holding in *Logan* beyond its breaking point by interpreting it to require an affirmative token of forgiveness in cases in which a felon *did* lose his civil rights.

The Sixth Circuit’s application of *Logan* is contrary to this Court’s decision in *Caron*, in which this Court expressly disavowed any need for a “case-by-case” determination in analyzing whether a “restoration of civil rights” has occurred. *Caron*, 524 U.S. at 313. In so doing, this Court also expressly held that a restoration of civil rights can occur by operation of law, without any case-by-case consideration of the wrongdoing at issue: “Nothing in the text of § 921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender.” *Id.* Yet, by misinterpreting the phrase a “token of forgiveness” to “always involve[] a consideration of the wrong committed,” *Walker*, 800 F.3d at 725, the Sixth Circuit has effectively required the case-by-case analysis already rejected in *Caron*.

The Sixth Circuit tried to explain how its decision was “fully consistent with *Caron*.” *Walker*, 800 F.3d at 726-727. The court reasoned that the “constitutional provisions *Walker* relies on, which articulate the scope of a generalized voting right applicable to all citizens,” *id.* at 727, were unlike the state statutes at issue in *Caron* because the federal constitutional

provisions “do not reflect any judgment regarding the consequences of criminal convictions in particular.” *Id.* This reasoning cannot be reconciled with this Court’s decision in *Caron*. There, this Court expressly stated that “Massachusetts has chosen a broad rule to govern this situation and federal law gives effect to this rule.” *Caron*, 524 U.S. at 313. In the same vein, the drafters of our Constitution chose a broad rule in determining who is eligible to vote in federal elections, and federal law must give effect to this federal rule just as it must for a state rule.

**D. Walker’s application to the federal court to secure restoration of federal civil rights under federal law satisfies *Beecham*.**

The final piece to the puzzle is the fact that Walker petitioned the federal district court for a declaration that there had been a restoration of his right to possess a firearm under federal law. By taking this step, Walker has differentiated himself from the *Beecham* defendants and initiated a process by which restoration of the right to possess a firearm under federal law can occur: a judicial review of the relevant facts and a determination that the operation of federal law has restored Walker’s rights under federal law.

As stated above, *Beecham* requires only that federal felons have “their civil rights restored under federal law.” *Id.* at 374. By invoking federal jurisdiction in

the form of a declaratory judgment action, Walker has satisfied this requirement. To be sure, this process is more than a ministerial act or a “rubber stamp,” as there will be scenarios where the restoration of civil rights at the state level may indeed fail to satisfy the rigors imposed by federal law. *See, e.g., Caron*, 524 U.S. at 317 (state restoration that allowed former felon to possess only long guns, and not handguns, failed to satisfy the exemption set forth in 18 U.S.C. § 921(a)(20)). In those cases, the federal court may declare that the former felon has not had his federal firearms rights restored. But this is not that case. In this case, Walker sought and attained full restoration of his state firearms rights.

This Court should grant certiorari to remove the confusion in this area of the law by confirming that Walker, unlike the defendants in *Beecham*, appropriately requested a declaration that his right to possess a firearm under federal law had been restored.

## **II. Granting certiorari is necessary to safeguard the fundamental right to keep and bear arms.**

This Court should grant the Petition for Certiorari to ensure that the fundamental right to keep and bear arms protected by the Second Amendment is not inappropriately abridged. In *McDonald*, 561 U.S. at 780, this Court confirmed that the right to possess firearms for self-defense is a fundamental right protected by the Second Amendment. The Sixth



Circuit’s decision, if left intact, will mean that no federal felon can ever have his federal civil rights restored within the meaning of 18 U.S.C. § 921(a)(20), and thus, will never be able to exercise his fundamental Second Amendment rights,<sup>7</sup> despite a determination that he is currently a law-abiding, responsible citizen who has paid his debt to society and had his relevant civil rights restored by the state – including his state firearms rights – and by operation of federal law.

The Sixth Circuit held that the right to hold federal office cannot be restored because it cannot be lost. *Walker*, 800 F.3d at 724. It also held that a felon who regains his right to vote in federal elections has not had his rights restored within the meaning of 18 U.S.C. § 921(a)(20), because he lacks a “token of forgiveness.” *Id.* at 725. Finally, it held that “judgment that a single civil right ought to be restored thus does not reflect the same degree of forgiveness as the restoration of multiple civil rights, and so it is not sufficient for purposes of § 921(a)(20).” *Id.* at 727. These holdings taken together mean that federal felons can have each and every one of their relevant federal civil rights restored, but they still have not had a “restoration of rights” sufficient to permit them

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<sup>7</sup> Administrative relief from federal firearms disability under 18 U.S.C. § 925(c) is not actually obtainable because Congress has barred use of federal funds to process individual applications under this Section since 1992. *United States v. Bean*, 537 U.S. 71 (2002); *Walker*, 800 F.3d at 729.

to keep and bear arms. This not only runs afoul of the general concept of rehabilitating criminals, but also reduces the Second Amendment to a “second class” right.

Whether or not a person is a “law-abiding, responsible citizen” under a Second Amendment analysis is not static fact. All persons are presumptively law-abiding until they are convicted of committing a crime. It is only after that conviction that they lose the ability to exercise their Second Amendment rights. Conversely, citizens who have been convicted of committing crimes can, and often do, become law-abiding citizens once again. The fact that a citizen, such as Walker, may have been convicted of committing a non-violent crime decades ago does not foreclose a determination that he is currently a law-abiding, responsible citizen.

The determination of whether a person is a law-abiding, responsible citizen must be made at the time he attempts to exercise his fundamental Second Amendment rights. Any other method of making such a determination would permit the government to restrict, or in this case prohibit, the exercise of fundamental rights on mere speculation. Thus, a court must look to whether Walker *currently* is a law-abiding, responsible citizen. While the determination of whether a person who has committed a crime in the past is currently law-abiding may, at first blush,

appear to be a difficult endeavor,<sup>8</sup> this is precisely what the state of Tennessee has done in this case, to which the federal government gives effect by operation of federal law.

States have adopted various mechanisms for restoring civil rights to persons who have committed crimes.<sup>9</sup> These mechanisms vary greatly, but each serves as a method for determining whether an individual is currently law-abiding under the laws of the state in which they reside. As relevant here, Tennessee has determined that a person is sufficiently law-abiding to restore his civil rights after a pardon, the expiration of the maximum sentence imposed, or being granted final release from incarceration or supervision, except that a person convicted of certain serious felonies can never be considered sufficiently law-abiding to have his civil rights restored. For example, Tennessee law prohibits individuals convicted of first degree murder, aggravated

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<sup>8</sup> This Amicus is not suggesting that every person who has been convicted of a crime necessarily becomes law-abiding immediately after serving his sentence or that a court cannot look to previous crimes committed when determining whether a person is law-abiding. Rather, if a state already has enacted a process for making such a determination that takes into account such varying factors, that process should be respected by federal law.

<sup>9</sup> See NACDL, Restoration of Rights Project, [https://www.nacdl.org/uploadedFiles/files/resource\\_center/2012\\_restoration\\_project/Loss\\_and\\_Restoration\\_of\\_Civil\\_Rights\\_and\\_Firearms\\_Privileges.pdf](https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Loss_and_Restoration_of_Civil_Rights_and_Firearms_Privileges.pdf) (providing information for loss and restoration of civil rights in all 50 states).

rape, treason, or voter fraud from ever having their right to vote restored. TENN. CODE ANN. § 40-29-105(b)(2).

Tennessee, the relevant jurisdiction with a mechanism for determining whether Walker is a law-abiding, responsible citizen, has determined that he is fully rehabilitated and has restored his state civil rights, including his firearms rights. Operation of federal law gives force to that determination with respect to Walker's exercise of his federal civil rights to sit on a jury and to vote. Yet, the federal government is currently prohibiting him from possessing firearms for self-defense in the home. This permanent prohibition on the exercise of a fundamental right based on a criminal conviction, not involving any violence, made decades ago, would not be permitted in the context of any other right, as evidenced by the restoration of Walker's other federal civil rights. Today, Walker is free to vote in state and federal elections, free to sit on state and federal juries, and free to run for and hold state and federal office, but he is not free to keep and bear arms in his home. The rights secured by the Second Amendment are not second-class rights, *McDonald*, 561 U.S. at 780, and this Court should grant certiorari to ensure that they are not relegated to that disfavored status.

### III. Granting certiorari is necessary to resolve a jurisdictional split.

This Court should also grant certiorari to resolve the jurisdictional split regarding the relevant civil rights that must be examined to determine whether a felon's civil rights have been restored within the meaning of 18 U.S.C. § 921(a)(20). As noted above, the Sixth Circuit assumed that the only relevant civil rights were the right to vote, the right to run for office, and the right to sit on a jury. The law upon which the Sixth Circuit relied, however, predates this Court's decision in *McDonald*, which subsequently affirmed that the right to possess a firearm is a fundamental civil right.

The New Hampshire Supreme Court recognized this point and concluded that “the ‘civil rights’ contemplated by § 921(a)(20) are not limited to the three ‘core’ civil rights and that the Second Amendment right to keep and bear arms is a civil right within the statute’s ambit.” *DuPont*, 113 A.3d at 247. This is undoubtedly the correct analysis in light of *McDonald*.

Courts’ use of three “core” civil rights (the right to vote, the right to run for office, and the right to sit on a jury) is grounded in decisions that predate this Court’s decision in *McDonald*. See *Walker*, 800 F.3d at 723 (relying upon *United States v. Cassidy*, 899 F.2d 543 (6th Cir. 1990), for which rights should be evaluated). By failing to update their jurisprudence in the same way that the New Hampshire Supreme Court

has, lower federal courts have failed to give this Court's decisions regarding the Second Amendment proper respect.

In this case, Walker had his unqualified right to possess a firearm expressly restored by Tennessee. What restoration of right could be more relevant to the federal court's determination of his eligibility to possess firearms under federal law? The Sixth Circuit should have taken this into account when determining whether Walker had his civil rights restored sufficiently for purposes of § 921(a)(20). Its failure to do so raises serious concerns regarding the respective powers of the federal and state governments, and the ability of the former to simply disregard the restoration of a fundamental civil right by a state empowered to grant such a restoration. This Court should grant certiorari to resolve the jurisdictional split and confirm the procedure followed by the New Hampshire Supreme Court.



**CONCLUSION**

This Court should grant review to answer the question expressly left open in *Beecham*, to safeguard the fundamental right to keep and bear arms, and to resolve the jurisdictional split over the inclusion of firearms rights among the relevant restored civil rights under § 921(a)(20).

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