



Written by [Joe Wolverton, II, J.D.](#) on October 12, 2023

# Supreme Court to Rule on Domestic Violence Protection Orders

Bipartisan gun safety organization [97Percent](#) has submitted an amicus brief to the Supreme Court, arguing that the Fifth Circuit's decision in *U.S. v. Rahimi* — which held unconstitutional a federal law that prohibits individuals subject to domestic violence protection orders from possessing firearms — should be reversed. In support of its position, the group made the following claims regarding the lower court's decision to disarm a person subject to the order of protection:



Bill Chizek/iStock/Getty Images Plus

Temporarily disarming individuals subject to domestic violence protection orders is consistent with historic restrictions on Second Amendment rights.

The challenged law guarantees the core due process requirements: notice and an opportunity to be heard in a court of law — which gives the accused a chance to refute allegations before the order is issued.

Modern threats to public and individual safety demand modern solutions that are in keeping with the Founders' intentions.

"The Second Amendment grants individuals the right to possess firearms for self-defense, but since the founding, laws have prohibited dangerous people from exercising that right," said 97Percent Board Member Abra Belke, an attorney and former NRA lobbyist. "Our amicus brief argues for a middle-ground approach that temporarily disarms domestic abusers but ensures that those accused receive substantial due process protections. It's a modern solution, entirely consistent with America's founding principles."

Entirely consistent with America's founding principles? Not quite.

Before supporting that statement, it is fair to credit the bipartisan brief for its advocacy of due process, a foundational principle upon which Anglo-American law has rested securely for centuries.

While the intent behind these orders is to protect victims and prevent potential harm, it's important to remember that our legal system is built on the presumption of innocence and the right to due process.



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This principle should apply consistently to all citizens, including those facing domestic-violence allegations.

One key argument against depriving individuals subject to such orders of their Second Amendment rights is the potential for abuse and misuse of the system. There have been cases where restraining orders have been sought for ulterior motives, such as gaining an advantage in divorce or custody battles. Without proper safeguards, depriving someone of their Second Amendment rights based solely on an accusation can lead to injustices and unintended consequences.

Another crucial point to consider is the effectiveness of such measures. Restricting a person's access to firearms through a protective order may seem like a proactive step, but it does not necessarily guarantee the safety of the victim. Violent individuals intent on causing harm can find alternative means to do so, rendering the firearms restriction ineffective in its intended purpose.

Additionally, depriving individuals of their Second Amendment rights based on a domestic violence order sets a potentially dangerous precedent. It could open the door to further erosion of constitutional rights, as there might be calls for similar restrictions in other situations. It's essential to maintain a balanced approach that respects individual liberties while addressing the complex issue of domestic violence.

The key is to ensure that due process is followed, and the rights of the accused are respected, in line with our fundamental principles of justice.

Even a cursory study of history reveals that good and evil will both exist within a free society. But given sufficient time, evil is all that will remain under tyranny. Denial of due process for any paeon to protecting the innocent is a step toward that tyrannical state where good is called evil and evil is called good.

Furthermore, there is the fact that so many who are allegedly the victims of domestic violence are themselves substantially restricted from obtaining a firearm, the only thing that could provide some sort of protection to those who would otherwise be defenseless.

In Volume I of his *Commentaries on the Laws of England*, William Blackstone declares, "The natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."

Would anyone in America — or the world, for that matter — argue that the "sanctions of society and laws" are sufficient to "restrain violence" or oppression, particularly in the case of women, the most frequent victims of domestic abuse, as well as the group statistically (and biologically) weaker than the aggressors?

Thus, the people — all the people — must be armed.

Moreover, and perhaps more on point, the forces committed to severing the fetters of the Constitution are just as happy to arouse the passions of the Right as of the Left. They have no partisan preference. Their single-minded mission is to subtly shepherd this country (and all others) along the gently sloping road to Gomorrah and to accomplish this goal they will syncretize the evangelical fury of all political denominations willfully and gleefully toward the worldwide establishment of their own debauched dogma: slavery is freedom.

As with any of these federal proposals to put a comma at the end of the Second Amendment and then add any number of conditional clauses after it, state governments must positively preempt any effort by



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federal authorities (or, in the case of the alphabet agencies, those *without* federal authority) to permanently deny “dangerous” people from ever owning weapons or ammunition.

Though encouraging, these valiant efforts to void and invalidate unconstitutional acts of the federal government are few and far between and frankly, should not be so frequently necessary to prevent such pernicious and pervasive tyranny on the part of the federal government.

And therein lies the completely balanced, constitutional, and workable solution to the problem of protecting the Second Amendment, as well as victims of abuse. States can reassert their independent and sovereign authority and construct laws that are more narrowly tailored toward their own populations and the problems, while not subjecting their citizens to tyrannical and hamfisted disarmament schemes of the federal government.

Finally, while protecting victims of domestic violence is unquestionably a crucial and just cause, it is important to approach any infringement on the rights protected by the Second Amendment for those subject to domestic violence orders of protection with careful consideration. Courts should not favor the need for safety over the preservation of individual rights and due process. The constitutionally correct approach is to uphold the principles of the Second Amendment while addressing the complex issue of domestic violence.



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