



## **Voisine v. United States**

- ❑ **Bottom Line:** The Supreme Court's decision in *Voisine v. United States* ensures that people convicted of misdemeanor crimes of domestic violence will continue to be prohibited from purchasing and possessing firearms. Everytown for Gun Safety filed an amicus brief in the case explaining the connection between domestic violence and gun violence and how a decision for the plaintiffs would have been contrary to the clear intent of the law and would have eviscerated its effect in at least 34 states.
  
- ❑ **The Challenge to the Law Keeping Guns Out of the Hands of Domestic Abusers:**
  - Current federal law prohibits firearm possession by anyone convicted of a misdemeanor crime of domestic violence.<sup>1</sup>
  - The petitioners in the *Voisine* case challenged the application of the law to their convictions, claiming that the firearm prohibition should not apply to domestic violence crimes that may be committed with a mental state of "recklessness," but should be limited to those crimes that must be committed knowingly or intentionally.
  - If the challenge had succeeded, it would have resulted in any misdemeanor crime of domestic violence with a *possible* mental state of recklessness no longer prohibiting the offender from possessing firearms, regardless of what the actual intent was of the person who committed the particular crime. This is because courts are required to view a crime that can be committed with multiple culpable mental states as if it was committed with the least serious mental state.<sup>2</sup>
  - A successful challenge would have resulted in misdemeanor domestic violence crimes no longer being prohibiting in at least 34 states, with the result that many dangerous domestic abusers would no longer be blocked from buying guns.
  - Everytown filed a brief drafted in partnership with a team of attorneys at Davis Polk and Wardwell LLP explaining the connection between domestic violence and gun violence and emphasizing how ruling in favor of the plaintiffs would have severe consequences for public safety.<sup>3</sup>
  
- ❑ **The Importance of Preventing Domestic Abusers from Accessing Guns:**
  - The presence of a gun makes domestic violence more deadly. When a gun is present in a domestic violence situation it increases the risk of homicide for women fivefold.<sup>4</sup>
  - Guns are also far and away the most common weapon used when domestic violence turns deadly. More intimate partner homicides are committed with guns than with all other means combined.<sup>5</sup>
  - Domestic violence is closely tied to mass shootings. Fifty-seven percent of mass shootings that occurred between January 2009 and July 2015 involved the killing of a current or



former spouse, intimate partner or family member. As a result, while women make up only thirteen percent of overall shooting victims, they account for fifty-one percent of mass shooting victims.<sup>6</sup>

❑ **Justice Thomas's Constitutional Concerns:**

- At oral arguments in *Voisine*, Justice Clarence Thomas broke a ten-year silence to call into question the constitutionality of the misdemeanor crime of domestic violence prohibitor, and in his dissenting opinion in the case, he wrote that the majority's reading of the statute rendered it unconstitutional.<sup>7</sup>
- No other Justice joined this part of Justice Thomas's opinion. And the Supreme Court has now heard cases involving this statute at least three times without ever questioning its constitutionality.<sup>8</sup>
- Every federal circuit court to evaluate the misdemeanor crime of domestic violence prohibitor at issue in this case has found that it does not violate the Second Amendment.<sup>9</sup>

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<sup>1</sup> 18 U.S.C. § 922(g)(9).

<sup>2</sup> See *Taylor v. United States*, 495 U.S. 575 (1990); *Shepard v. United States*, 544 U.S. 13 (2005).

<sup>3</sup> Everytown Brief is available at <http://bit.ly/28UfwvO>.

<sup>4</sup> Everytown for Gun Safety, "Guns and Violence Against Women: America's Uniquely Lethal Domestic Violence Problem," June 16, 2014, available at <http://every.tw/24jaN6H>.

<sup>5</sup> *Id.*

<sup>6</sup> Everytown for Gun Safety, "Analysis of Mass Shootings," August 20, 2015, available at <https://everytownresearch.org/reports/mass-shootings-analysis/>

<sup>7</sup> Transcript of Oral Argument at 35-42, *Voisine v. United States*, 14-10154 (Feb. 29, 2016)(J. Thomas).

<sup>8</sup> See *United States v. Castleman*, 695 F. 3d 582 (2014); *Logan v. United States*, 453 F. 3d 804 (2007).

<sup>9</sup> *United States v. Armstrong*, 706 F.3d 1 (1st Cir. 2013); *United States v. Staten*, 666 F.3d 154 (4th Cir. 2011); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013)