

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

DANIEL DEFENSE, LLC, ET AL.,

Petitioners,

v.

KAREN LOWY, INDIVIDUALLY AND AS PARENT
AND NEXT FRIEND OF N. T., ET AL.,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

**BRIEF OF THE NATIONAL RIFLE ASSOCIATION
OF AMERICA AND SECOND AMENDMENT
FOUNDATION AS *AMICI CURIAE* IN SUPPORT
OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise among 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.

Second Amendment Foundation (SAF) is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in several Second Amendment-related lawsuits and thus has great interest in the outcome of this case.

Amici are interested in this case because lawsuits that seek to hold the firearms industry liable for third-party crimes threaten lawful arms commerce—and, with it, the right to keep and bear arms.



¹ Counsel for all parties received timely notice of *Amici*'s intent to file this brief. No counsel for any party authored this brief in any part. Only *Amici* funded its preparation and submission.

SUMMARY OF ARGUMENT

Respondents seek to hold firearms manufacturers liable for a third party's crime based on advertisements that allegedly promoted a "warrior mentality" and appealed to young men with "militaristic fantasies." The Fourth Circuit held that Respondents' allegations that Spencer was "exposed to and influenced by" such advertising satisfy Article III's standing requirement.

That theory mistakes a centuries-old form of firearms advertising for a causal connection to a particular crime. Military themes have long accompanied civilian firearms commerce—appropriately so, since the Second Amendment itself declares the necessity of the militia.

The exercise of the right to keep and bear arms has always had a synergistic relationship with military use of arms. In the colonial and Founding eras, militiamen had to provide their own arms, suitable for military use. Ordinary citizens also participated in law enforcement through the posse comitatus, watch and ward, and hue and cry. That tradition continued into the twentieth century. In both World Wars, states established home guards and volunteer units when regular forces were elsewhere. Congress, from 1903 on, promoted civilian marksmanship and authorized the sale of surplus service arms to the public—a program that continues today.

The arms themselves have defied the distinction that Respondents treat as decisive. For example, in the eighteenth century, fowling pieces were commonly

sold with bayonets to be suitable for both hunting and militia duty. In the nineteenth century, many of the most popular firearms—including Colt revolvers, Spencer rifles, Henry rifles, and Winchester rifles—were sold to civilians even as the same models were used for military purposes. Surplus military arms were also sold to civilians.

Likewise, for centuries firearms advertisements have emphasized military adoption, combat imagery, and readiness. For example, Colt revolvers were engraved with battle scenes. Ballard rifles were advertised as “made for both sporting and military purposes.” Colt’s Single Action Army revolver was presented as “The Peacemaker.” And the Henry rifle was advertised as “ALWAYS LOADED AND ALWAYS READY.” These are the same themes Respondents treat as the cause of Spencer’s crime.

That history exposes the speculative nature of Respondents’ claimed causal link to the crime. Traceability requires more than a distant ripple between the defendant’s conduct and the plaintiff’s injury, particularly where the chain runs through an independent third party’s intervening choices. The asserted injury must in fact be the consequence of the defendant’s conduct rather than the independent action of a third party.

Respondents do not allege that Spencer saw the particular advertisements they challenge. They rely instead on the continuation of themes that have accompanied civilian firearms commerce for centuries. That cannot establish that Petitioners’ particular posts caused this shooting. Otherwise, every manufacturer whose ads use historically

ordinary military, patriotic, or law-enforcement themes could be hauled into court after a third party commits a crime with a similar product. The decision below treats ordinary firearms advertising as the Article III cause of a third party's criminal act.

The Court should grant review and hold that historically ordinary speech about lawful arms—including military, law-enforcement, and combat themes that have accompanied civilian firearms commerce for centuries—does not make a third party's crime fairly traceable to the speaker. Traceability fails when the path from the speech to the injury runs through an independent criminal choice. That is so whether or not the complaint alleges that the offender saw a particular advertisement. A contrary rule would turn commonplace marketing, and the Second Amendment activity it describes, into a basis for standing after every tragedy.



ARGUMENT

Respondents sued lawful manufacturers of firearms and related products on the theory that they “recklessly advertise, market, promote, and sell a warrior mentality,” App. 10, and “feed the desires of [disturbed] young men to act out their militaristic fantasies,” App. 12. The Fourth Circuit held that Article III was satisfied because the complaints alleged that such ads targeted young men like Spencer, that he was “exposed to and influenced by” them while planning the shooting, and that some of the ads “bear a striking resemblance” to the attack. App. 42.

That theory mistakes a longstanding form of firearms advertising for a causal connection to Spencer’s crime. Martial language has been used to sell arms to civilians for centuries. Civilian arms have long been used for military and law-enforcement purposes, and service-pattern arms have long been sold over the counter. Respondents’ theory treats that ordinary commerce as the Article III cause of this shooting. A standing rule that deems historically ordinary speech about lawful products “fairly traceable” to a third party’s crime would put ordinary firearms advertising in court after nearly every tragedy. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024) (“plaintiffs attempting to show causation generally cannot ‘rely on speculation about the unfettered choices made by independent actors not before the courts’”) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 415 n.5 (2013)).

I. Militaristic advertising reflects how the right to keep and bear arms has long been exercised.

Respondents complain about the “military, patriotic, and law enforcement themes” that are “commonplace” in “contemporary gun advertising.” *Complaint* ¶ 56, *Lowy v. Daniel Defense, LLC*, No. 1:23-cv-01338 (E.D. Va. Oct. 1, 2023), ECF No. 1 (quotation marks omitted); *Complaint* ¶ 54, *Harris v. Daniel Defense, LLC*, No. 1:23-cv-01501 (E.D. Va. Nov. 5, 2023) (quotation marks omitted). They then treat those commonplace themes as the cause of this shooting.

The exercise of the right to keep and bear arms has always had a synergistic relationship with military use of arms. The Second Amendment itself begins with a prefatory clause declaring the necessity of “a well regulated militia.” U.S. CONST. amend. II. Indeed, “the right was codified[] to prevent elimination of the militia.” *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008); *see also* C.D. Michel & Konstadinos Moros, *Restrictions “Our Ancestors Would Never Have Accepted”: The Historical Case Against Assault Weapon Bans*, 24 WYO. L. REV. 89, 93–101 (2024) (collecting Founding-era commentary on the armed citizenry and militia as a check against standing armies and tyranny).

In the colonial and Founding eras, militiamen had to provide their own arms, suitable for military use. *See Heller*, 554 U.S. at 624 (“Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.”) (quoting *United*

States v. Miller, 307 U.S. 174, 179 (1939)) (brackets omitted). The 1792 federal militia act specified the firearms and edged weapons that militiamen had to possess and bring to service. 1 Stat. 271 (1792). Hundreds of colonial and early state arms statutes ordered most of the free population (sometimes including females) to own particular types of firearms and bladed weapons. *See generally* David B. Kopel & Joseph G.S. Greenlee, *The Second Amendment Rights of Young Adults*, 43 S. ILL. U. L.J. 495 (2019) (describing hundreds of pre-1800 statutes). These mandates were enacted so that the population would have combat weapons.

Additionally, ordinary citizens have participated in law enforcement throughout American history by being obliged to join in the “hue and cry” to pursue fleeing criminals, the “watch and ward” to guard towns during day (“ward”) and night (“watch”), and the posse comitatus to assist the sheriff in keeping the peace. *Id.* at 534–35; *see also South v. State of Maryland for use of Pottle*, 59 U.S. 396, 402 (1855) (A sheriff “may command the posse comitatus or power of the country; and this summons, every one over the age of fifteen years is bound to obey, under pain of fine and imprisonment.”).

The ownership of civilian arms for militaristic purposes continued into the twentieth century. During World War I, “while the Army, including the National Guard, was either overseas or in training camps, states formed home guard companies to guard bridges, power plants, and other potential targets for sabotage.” Robert J. Cottrol & Brannon P. Denning, *TO TRUST THE PEOPLE WITH ARMS* 69 (2023). That

same decade, “Faced with incursions from revolutionaries and bandits caught up in the bloody Mexican Revolution of 1910–1920, sheriffs and their posses in the American Southwest occasionally joined soldiers from the US Army or acted alone to fight off invaders from south of the border.” *Id.*

During World War II, “several states formed state guard units to guard critical installations and to be available for civil disturbances.” *Id.* After Pearl Harbor, Hawaii relied heavily on volunteer civilians, and “created a more extensive militia system than any other state or territory.” Barry M. Stentiford, *THE AMERICAN HOME GUARD* 149 (2002). The volunteers were responsible for “breach defense, watching strategic and vulnerable points such as hilltops, runways, and crossroads, traffic control, providing guides and scouts for the army, and, if all else failed, implementation of scorched earth in the path of invaders.” *Id.* Maryland’s governor called forth volunteer citizens “to furnish immediately, local protection against parachute troops, saboteurs, or organized raiding parties.” 3 *STATE PAPERS AND ADDRESSES OF GOVERNOR HERBERT R. O’CONOR* 618 (1947). The best arms that citizens could bring were arms suitable for defending the community against enemy invaders.

To encourage responsible Americans to learn the skills required if their country needed their armed service, Congress in 1903 created the Civilian Marksmanship Program and the National Board for the Promotion of Rifle Practice. Militia Act, 32 Stat. 775 (1903). Then Congress authorized the sale of surplus military firearms to the public. 33 Stat. 986

(1905). The NRA was the chosen distribution agent via its many affiliated clubs.

In 1916, Congress created the Office of the Director of Civilian Marksmanship to administer the civilian marksmanship program, commonly called “DCM.” *See* Nicholas J. Johnson et al., FIREARMS LAW AND THE SECOND AMENDMENT: REGULATION, RIGHTS, AND POLICY 550–52 (3d ed. 2022). Since 1979, all citizens have been able to purchase DCM arms, because the requirement of club membership was held to violate Equal Protection. *Gavett v. Alexander*, 477 F. Supp. 1035 (D.D.C. 1979). In 1996, Congress reconstituted the program as the Corporation for the Promotion of Rifle Practice and Firearms Safety, which still sells surplus service arms to civilians today. 36 U.S.C. § 40701 *et seq.*

Military themes and uses have long accompanied the ordinary exercise of the right to keep and bear arms. Civilian ownership, militia service, and law enforcement have overlapped throughout American history. Petitioners’ advertisements reflect that longstanding tradition.

II. Military and civilian arms have long overlapped.

Arms have served dual purposes throughout American history. For instance, fowling pieces—“light gun[s] for shooting fowls,” 1 Noah Webster, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828) (unpaginated) (“Fowlingpiece”)—were often sold with bayonets so they could be used for both hunting and militia purposes. *See, e.g.*, PENNSYLVANIA

GAZETTE, Nov. 2, 1758; GEORGIA GAZETTE, Dec. 1, 1763, at 3; SOUTH-CAROLINA GAZETTE; AND COUNTRY JOURNAL, July 1, 1766, at 3. Similarly, bayonets were offered with “sockets to fit to any gun,” SOUTH-CAROLINA GAZETTE, Oct. 13, 1758, at 3, so hunting firearms could be made suitable for militia purposes.

The same pattern continued throughout the nineteenth century. Isaiah Jennings’s repeating arm was sold to citizens across the country and also to the Pennsylvania and New York militias. See Keren Karmiel, Jonathan S. Goldstein & Joseph G.S. Greenlee, *Nothing New Under the Gun* 63–65 (Firearms Rsch. Ctr., Working Paper No. 2026-9).²

Colt sold a great number and variety of “Army,” “Navy,” “Dragoon,” and “Police” model revolvers to citizens in the nineteenth century. Norm Flayderman, *FLAYDERMAN’S GUIDE TO ANTIQUE AMERICAN FIREARMS AND THEIR VALUES* 84–87, 89, 94–103 (9th ed. 2007). These included revolvers with cylinder roll-engravings depicting the Texas–Mexico fight at Campeche, a Ranger–Comanche fight, and a stagecoach holdup. See Phil Spangenberg, *Colt Cylinder Scenes: History or Promotion?*, TRUE WEST, Jan. 20, 2023.³ Law enforcement and the military both used Colts, and twenty different models were used during the Civil War. Flayderman, *FLAYDERMAN’S GUIDE*, at 100; John Graf, *STANDARD CATALOGUE OF CIVIL WAR FIREARMS* 187–233 (2008).

² Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7390899.

³ <https://www.truewestmagazine.com/article/colt-cylinder-scenes-history-or-promotion/>.

Like Colt, several other nineteenth-century handgun manufacturers sold “Army” or “Navy” models to civilians, including Pettengill, Remington, Rogers & Spencer, Rupertus, Savage & North, Savage, Shawk & McLanahan, Springfield, and Starr. See Flayderman, *FLAYDERMAN’S GUIDE*, at 367–74.

Spencer rifles were deployed in large numbers during the Civil War, with over 150,000 manufactured. In addition to being offered on the civilian market, the government sold Spencers after the war to soldiers who wanted to take theirs home. See David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 278–79 & n.425 (2024).

The Henry rifle, still sold to civilians today, started in 1862 as an arm for Union soldiers in the war. See Wiley Sword, *THE HISTORIC HENRY RIFLE* 25–31 (2006). The Henry evolved into Winchester’s lever-action firearms. “Easily one of the most treasured endorsements of the [Model] 1873 was from Colonel William F. ‘Buffalo Bill’ Cody, whose letter from Fort McPherson, Nebraska, was published in Winchester’s 1875 catalogue” and declared that “for general hunting, or Indian fighting, I pronounce your improved Winchester *the boss*.” R. L. Wilson, *WINCHESTER: AN AMERICAN LEGEND* 55 (1991). Winchester’s Model 1895 was initially offered in .30-40 Krag and often stamped “.30 U.S. Army.” Dave Campbell, *Winchester Model 1895: A Look Back*, AM. RIFLEMAN (June 6, 2011).⁴ It sold a .22 single-shot

⁴ <https://www.americanrifleman.org/content/winchester-model-1895-a-look-back/>.

“musket” “[d]esigned especially for military Indoor Target Shooting and Preliminary Outdoor Practice,” including to the public, the U.S. military, and for NRA competitions. Michael F. Carrick, *Rifleman Q&A: Winchester .22-Cal. Single-Shot Military Rifle*, AM. RIFLEMAN (Oct. 28, 2024).⁵ And starting in 1917, it offered the Model 1897 in a trench configuration with a heat shield and bayonet lug. Dave Campbell, *The Winchester Model 1897: A Look Back*, AM. RIFLEMAN (July 15, 2020).⁶

The old-fashioned .30-06 bolt-action rifle is beloved by generations of American hunters. Introduced in 1903 and adapted to the 1906 cartridge, it was the standard U.S. service rifle for decades. See Joseph W. Shields, *FROM FLINTLOCK TO M1* 153–60 (1954).

Additionally, some nineteenth-century dealers specialized in selling military surplus arms to civilians. Francis Bannerman VI built a large military-surplus trade that he began with his father shortly after the Civil War. Thom Johnson & Barbara H. Gottlock, *BANNERMAN CASTLE* 15 (2006). He later bought Pollepel Island to store the stock and sold surplus service arms nationwide through illustrated catalogues. See, e.g., Francis Bannerman, *CATALOGUE OF MILITARY GOODS* (1903).⁷ The company was still

⁵ <https://www.americanrifleman.org/content/rifleman-q-a-winchester-22-cal-single-shot-military-rifle/>.

⁶ <https://www.americanrifleman.org/content/the-winchester-model-1897-a-look-back/>.

⁷ Available at <https://archive.org/details/francis-bannerman-military-goods-catalogue-1903/mode/2up>.

listing rifles, pistols, and muskets in its 1955 catalogue. Francis Bannerman Sons, 90TH ANNIVERSARY MILITARY GOODS CATALOGUE (Jan. 1955).

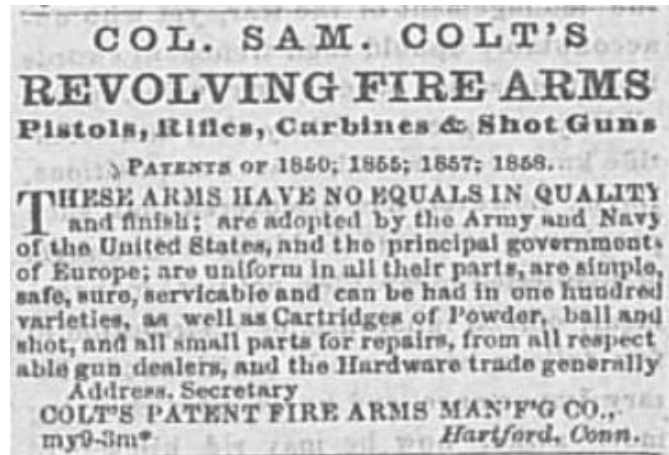
III. Civilian advertisements have long embraced military themes.

Advertisers have always boasted that the same firearm served civilian and military purposes. In 1748, shortly after organizing a volunteer militia, Benjamin Franklin advertised in the *Pennsylvania Gazette* “[a] Parcel of good Muskets, all well fitted with Bayonets, Belts and Cartouch-Boxes, and Buff Slings” while noting that the slings were “very useful to such as have Occasion to ride with their Arms.” PENNSYLVANIA GAZETTE, Mar. 8, 1748, at 3. Fourteen years later, Robert Lettis Hooper offered Spanish muskets suitable for militia service and emphasized that they would also be “very handy and convenient for common Use.” PENNSYLVANIA GAZETTE, Sept. 22, 1763, at 1.

Newspaper reports in 1822 lauded Jennings’s repeating arm as “importan[t], both for public and private use.” *See, e.g.*, WOODSTOCK OBSERVER, Apr. 9, 1822, at 2; RUTLAND WEEKLY HERALD, May 15, 1822, at 3. They extolled its benefits for cavalry, marines, “defending a breach,” “defence against pirates,” defending “our small [frontier] garrisons,” and also as “a sporting or hunting gun.” *Id.* Finally, they added, “This gun has been shown to many of the principal officers of our navy and army, and has been highly approved of.” *Id.*

Samuel Colt first found financial success with military contracts. Flayderman, *FLAYDERMAN'S GUIDE*, at 77. "Colt understood that on some level he would be reliant on military contracts for his success. More than merely a fiscal benefit, such deals were a way to spread the word. 'Government patronage . . . *is an advertisement* if nothing else,' he later noted." David Harsanyi, *FIRST FREEDOM: A RIDE THROUGH AMERICA'S ENDURING HISTORY WITH THE GUN* 100 (2018) (emphasis added). After the Seminole War, "Colt spent the rest of his life directly approaching military men, building relationships that helped him not only sell his gun but build its legend." *Id.* at 101. "By the time the Civil War was brewing, in fact, Colt could count on enough military supporters to print a twenty-page brochure extolling the virtues and tangible upside of using the Colt. He attached a long list of 'distinguished officers' who would provide testimonials. It included military heroes, future presidents, and senators known to most Americans." *Id.* at 102.

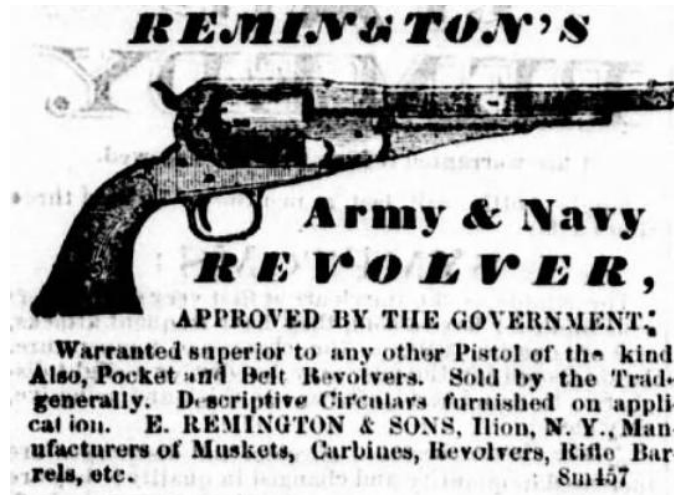
In 1845 John Ehlers sold leftover Paterson Colts to New Yorkers by emphasizing that "[t]he Texan Army and Navy are supplied with them, and the United States Navy has been supplied with them to some extent, and the officers have given a most favourable report of Colt's repeating fire arms." John Doggett, Jr., *THE GREAT METROPOLIS: OR, GUIDE TO NEW-YORK, FOR 1846*, at 159 (1846). Similarly, an 1861 advertisement boasted that Colt firearms were "adopted by the Army and Navy of the United States and the principal governments of Europe." *WHEELING DAILY INTELLIGENCER*, Aug. 2, 1861, at 1.



B. Kittredge & Co. took a full page in *The Turf, Field and Farm*—a paper for “country gentlemen”—for Colt’s cavalry .45, “adopted by the War Department for the Cavalry Service of the United States,” and sold it as “The Peacemaker.” *B. Kittredge & Co., The Agents of Colt’s Army Company, Offer to the Public: New Model Colt Pistols, Five Pocket Pistols, and The Peacemaker, in THE TURF, FIELD AND FARM, Oct. 27, 1876, at 268.*

A January 1864 Merwin & Bray advertisement in *Harper’s Weekly* told readers that Ballard rifles and carbines “are made for both sporting and military purposes, and have been adopted both by the General Government and a number of States.” *HARPER’S WEEKLY, Jan. 30, 1864, at 80.*

In the same paper, Remington marked revolvers “Approved by the Government.” *Id.*



A civilian handbill for the Henry rifle emphasized its self-defense, hunting, and military uses in one place. It called the Henry “The Most Effective Weapon in the World” and “ALWAYS LOADED AND ALWAYS READY.” “For a House or Sporting Arm,” the handbill said, “it has no Equal.” It declared that “A resolute man, armed with one of these Rifles, particularly if on horseback, CANNOT BE CAPTURED.” A testimonial highlighted its “ARMY USES” and benefits for “all our citizens in secluded places.” Wilson, WINCHESTER, at 18. New Haven Arms’s 1865 catalog was replete with battlefield testimonials and stressed its benefits for hunting and self-defense. *Henry’s Repeating Rifle, Manufactured by New Haven Arms Co.* (1865), in 1 *THE OLD GUN CATALOGS FOR THE COLLECTOR* 86–129 (L.D. Satterlee ed., 1962).

Spencer rifles were advertised in 1879 as useful “for any purpose, such as very large game, Indians, &C.” Matt Sears, *Spencer Sporting Rifles*, AM. SOCIETY OF ARMS COLLECTORS BULLETIN, vol. 53, at 57

(Fall 1985) (reproducing advertisement in J.H. Johnston 1879 catalogue).⁸

Sellers touted government pedigrees. For instance, an 1887 notice offering “Starr Army Revolvers” highlighted that they were unused standard U.S. Army arms the United States had furnished to Vermont. *For Sale! The Starr Army Revolvers*, VERMONT WATCHMAN (MONTPELIER), Oct. 12, 1887, at 6.

FOR SALE!

The STARR ARMY REVOLVERS,

That have been held by the State of Vermont will be closed out

AT \$3.00 EACH.

These goods were standard U. S. Army 44 cal. Revolvers, with 8 inch blued steel barrel, six shooters, using powder and ball. They are new (not worn out goods) having been furnished the State of Vermont by the United States Government and have never been used; have all the latest improvements of a powder and ball Revolver—small bottom tubes and tip-up barrel—similar to the Smith & Wesson, and for accurate shooting and pistol practice have no superiors. Charges can be varied for large or small game. We can furnish the regulation (leather) Army Revolver **HOLSTER**, Waterproof, with solid brass button for 75cts; also **BRASS MOULDS** for Revolver for 50cts; or the **Revolver, Holster and Moulds for \$3.75.** If to be sent by Mail 50cts will have to be added to the price of the Revolver for postage.

THE STARR ARMY REVOLVER, FOR \$3

Twentieth-century catalogs continued to use the same theme. A 1902 Smith & Wesson ad boasted, “A Smith & Wesson Revolver is the choice of the Japanese Navy.” *COLLIER’S ILLUSTRATED WEEKLY*, Mar. 8, 1902, at 35. A 1917 Colt advertisement headed “Ready for Duty” sold Colt firearms as effective “On the Battlefield — In the Preservation of Law and Order — The Protection of Home and Country — Whenever and wherever armies or individuals have had to enforce right with might.” It closed by stating, “You make no mistake when you follow the

⁸ <https://americansocietyofarmscollectors.org/wp-content/uploads/2019/06/2011-B103-Spencer-Sporting-Rifles.pdf>.

Government's example." THE LITERARY DIGEST, Sept. 15, 1917, at 82. In 1942 Winchester told *Life* readers, "Here's where my Hunting Pays Off," and added "how fortunate that America now has the help of tens of thousands of men who were already good wing shots before they entered the service." LIFE, Nov. 23, 1942, at 133.

Respondents treat such marketing as novel, but it is how firearms have been advertised for centuries. And it does not establish a causal link between a particular Instagram post and Spencer's crime.

IV. Traditional advertising does not establish traceability.

The Fourth Circuit treated the tradition described above—the longstanding American practice of selling service-pattern arms to civilians in military terms—as the Article III cause of someone else's crime. That tradition does not establish traceability here.

Traceability fails when the path from the conduct to the injury is only "distant (even if predictable) ripple effects," *Food & Drug Admin.*, 602 U.S. at 383, or when the injury "results from the independent action of some third party not before the court," *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 42 (1976)). Indeed, "The whole purpose of the traceability requirement is to ensure that 'in fact, the asserted injury was the consequence of the defendants' actions,' rather than of 'the independent action' of a third party." *Murthy*, 603 U.S. at 69 n.8 (quoting *Simon*, 426 U.S. at 42, 45). Respondents

cannot establish traceability by treating a centuries-old industrywide style of advertising as the cause of someone else's crime.

Respondents allege that Petitioners' social-media posts appeal to impulsive young men by depicting combat use. The same language appears in the historical advertisements. For instance, Daniel Defense's posts "that feature imagery of combat soldiers in the field of war," *see Lowy Compl.* ¶ 57, are no more novel than Colt's 1850 advertisements depicting the use of revolvers in a Texas–Mexico naval fight at Campeche, a Ranger fight, and a stagecoach holdup. FAB's description of its arms as "Ready for Duty," *see Lowy Compl.* ¶ 62, is the same claim as Henry's 1864 "ALWAYS LOADED AND ALWAYS READY." Magpul's "peace through superior firepower," *see Lowy Compl.* ¶ 66, is the idea Kittredge sold in 1876 when it dubbed Colt's Single Action Army revolver "The Peacemaker." The complaints treat that language as a new "warrior mentality" and as "militaristic" messaging aimed at impulsive young men. *Lowy Compl.* ¶¶ 9, 65; *Harris Compl.* ¶¶ 8, 63. It is the same vocabulary used in the advertisements described in Part III—and the same "military ... themes" Respondents' own cited source called "commonplace." *Lowy Compl.* ¶ 56; *Harris Compl.* ¶ 54 (quoting Lisa Jordan et al., *Characteristics of Gun Advertisements on Social Media: Systematic Search and Content Analysis of Twitter and YouTube Posts*, 22 J. MED. INTERNET RES. e15736 (2020)). Petitioners' continuation of those themes does not establish a path from these posts to Spencer's crime.

Even if those themes were new, the complaints still do not allege that Spencer saw the particular posts they challenge. They allege only that, while already “researching and planning the Shooting,” he was “exposed to and influenced by” Petitioners’ “marketing acts and practices.” *Lowy* Compl. ¶ 123; *Harris* Compl. ¶ 121. Exposure during a plan already formed does not make these posts the Article III cause of the shooting.

Nor would alleging that Spencer saw the posts cure the defect. The same combat and readiness themes Respondents condemn saturate American culture, and the vast majority of people who see the same messaging do not commit crimes like Spencer’s. Singling out Petitioners’ posts as the cause of Spencer’s crime amid that background is “speculation about the unfettered choices made by independent actors not before the courts.” *Food & Drug Admin.*, 602 U.S. at 383 (quoting *Clapper*, 568 U.S. at 415 n.5).

If such a pleading is enough, every manufacturer or dealer who advertises a common arm in the traditional way becomes a defendant after every crime committed with a similar product. This Court rejected a similar theory on the merits when Mexico treated the production, sale, and marketing of popular rifles as the cause of cartel violence. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025). The decision below would make that remote-harm theory a standing rule and allow a case to proceed without a decision on the Protection of Lawful Commerce in Arms Act or the First Amendment.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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