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1 P R O C E E D I N G S

2 (11:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next in case 06-6911, Logan v. United States.

5 Mr. Coad.

6 ORAL ARGUMENT OF RICHARD A. COAD

7 ON BEHALF OF PETITIONER

8 MR. COAD: Mr. Chief Justice, and may it
9 please the Court:

10 The provision at issue determines which
11 convictions constitute a prior felony for imposition of
12 the Federal firearms ban and its increased penalties.
13 Its exemption clause prescribes certain ways in which a
14 conviction that otherwise meets that definition is
15 nevertheless exempt. Specifically, it looks to a
16 State's indication that an offense is deprived of any
17 continuing effect, such as whether the status of an
18 offender's civil rights are the same after a conviction
19 as they were before conviction.

20 The issue before the Court is whether the
21 statute should be read to exempt convictions for which
22 civil rights were lost and later regained while at the
23 same time not exempting a conviction for which civil
24 rights were never lost, even though both -- in the end,
25 both offenders have their civil rights following their

1 conviction.

2 Congress's underlying objective in drafting
3 the exemption clause was to ensure that Federal law
4 respected a State's considered judgment that a
5 particular offense should not subject a person to the
6 Federal firearms law. The Seventh Circuit's
7 interpretation, which counted convictions for which
8 rights were never lost, fails to respect that judgment.
9 It disregards the State's unequivocal indication to the
10 Federal statute that an offender is worthy of fully
11 participating in civic life.

12 JUSTICE GINSBURG: So if you had a
13 statute -- a State like, I'm told, Vermont, that doesn't
14 take away any one's civil rights, not even a first
15 degree murderer's, then that first degree murderer would
16 be equated to someone whose civil rights were taken away
17 and then restored.

18 MR. COAD: That's correct. And I think that
19 the Government points to Maine as an example where no
20 offenders lose their civil rights, but felons lose their
21 gun rights and certain misdemeanants also lose their gun
22 rights, but get that gun right back. And in States like
23 Maine and in Vermont, the "unless" clause still applies
24 and still precludes those types of convictions. So I
25 think when the Government alleges that there are certain

1 anomalies that arise from our interpretation, it is
2 simply not the case, and if they are anomalies that
3 arise from our interpretation --

4 JUSTICE GINSBURG: They're not anomalies
5 because the gun prohibition would cover them, even
6 though they never had their civil rights taken away? Is
7 that -- is that what you're saying?

8 MR. COAD: Correct. We have to read the --
9 both clauses, the exemption clause and the unless cause.
10 And --

11 JUSTICE SCALIA: Mr. Coad, how are -- how
12 are civil rights which have been taken away typically
13 restored? What is -- what is the process for restoring
14 them? Just if you don't commit another offense within a
15 certain number of years?

16 MR. COAD: It depends on the State. In the
17 NACDL lodging that the Court has -- I believe 29 States
18 were identified as having some type of restoration
19 procedures. The majority of those, it is by automatic
20 operation of law. So there's no subsequent conditions
21 met by the offender.

22 JUSTICE KENNEDY: Well, but even -- even
23 there I assume the law waits for a certain passage of
24 time, and I would assume that there can be no felony
25 committed during that interim period or the person's

1 sentence has to be served or something? It's ongoing,
2 it's prospective. And so restoration has a real
3 component, in that -- that is not present in the statute
4 that we're faced with here.

5 MR. COAD: Well, I think that there really
6 isn't a difference between -- by operation of law, a
7 State taking away someone's rights and giving it back or
8 allowing a offender to retain civil rights --

9 JUSTICE KENNEDY: Well, it is of -- maybe no
10 difference if the operation of law is 24 hours later.

11 MR. COAD: It could be a matter --

12 JUSTICE KENNEDY: But I assume that's not
13 the case. I assume that there's in every case, as
14 Justice Scalia's question indicates, a certain passage
15 of time that takes place.

16 MR. COAD: It could be as short as 24 hours.
17 In certain States if a probationer is convicted, rights
18 aren't taken away. But if a felony offender is
19 sentenced to even one day in jail those rights are in
20 theory taken away for that one day and restored to that
21 offender the minute he walks out of jail.

22 JUSTICE SCALIA: Well, you -- you can say,
23 however, that -- that in the restoring situation, there
24 is at least a greater individuation of the -- of the
25 State's determination of the -- the trustworthiness of

1 the individual to be -- to be trusted with arms.

2 That is to say well, this person has not
3 committed an offense within so many years. Or maybe in
4 some States, it may be an individual determination.
5 That's why I asked you the question. Is it ever one by
6 one, you apply to have them restored?

7 MR. COAD: In a minority of States, yes.

8 JUSTICE SCALIA: Well, I mean, that's --
9 that's a totally different thing from just a gross
10 determination by a State that everybody who commits this
11 crime does not lose -- does not lose firearm rights.

12 I think it's -- it's -- there's a greater
13 degree of assurance when you're dealing with those
14 States that -- that have some degree of individuation.
15 At least this is an individual who hasn't committed an
16 offense for so many years. Or in those States where you
17 have to apply personally, I think they're different
18 situations.

19 MR. COAD: I -- I don't think they are, Your
20 Honor. As I just mentioned there are States in which a
21 day in jail, your rights are lost and restored. And
22 there really isn't any difference between a broad
23 legislative determination by a State --

24 JUSTICE KENNEDY: Well, but I'm
25 suggesting -- and I haven't done the research -- that

1 that's atypical.

2 MR. COAD: No, it's not atypical. In 18 out
3 of the 29 States identified in the NACDL lodging, rights
4 are automatically restored. There's no --

5 JUSTICE KENNEDY: I think it's atypical to
6 give a felon one day in jail.

7 MR. COAD: Well, it could be a misdemeanor.
8 There are certainly misdemeanors punishable by more than
9 two years. In fact two of the misdemeanors at question
10 here that were punishable by more than two years, my
11 client did not serve a day in jail.

12 JUSTICE SCALIA: But a misdemeanor? I see.

13 MR. COAD: So there are misdemeanors --

14 CHIEF JUSTICE ROBERTS: I understand that --
15 I understand that it is rare for misdemeanants to lose
16 their civil rights.

17 MR. COAD: It -- that's the assumption. But
18 here we've identified in at least 12 States -- excuse
19 me, 16 States misdemeanors punishable by more than two
20 years or felonies, rights are retained.

21 So there are States, for example, Maryland,
22 where rights are lost for a misdemeanor punishable by
23 more than two years.

24 CHIEF JUSTICE ROBERTS: But certainly the
25 minority approach. In most States if you are convicted

1 of a misdemeanor you do not lose civil rights?

2 MR. COAD: Absolutely.

3 CHIEF JUSTICE ROBERTS: So your argument, if
4 accepted, would essentially weed out, or at least for a
5 majority of the States, weed out subdivision
6 (a)(20)(A)(b) -- (a)(20)(B)? In other words, there's
7 coverage under the statute if you are convicted under a
8 misdemeanor and you want to say, well, if your civil
9 rights were never taken away, you shouldn't be covered.
10 Well, that would mean most misdemeanors aren't going to
11 be covered.

12 MR. COAD: Well, in, for example, Maryland,
13 that's not the case. In many -- in 12 States, it is the
14 case.

15 CHIEF JUSTICE ROBERTS: Well, if I say most
16 misdemeanors aren't going to be covered, it's not an
17 answer to say, well, here's one State where they are
18 covered. It's maybe 49 are not.

19 MR. COAD: There really are only 16 States
20 in total that have misdemeanors punishable by more than
21 two years where rights are retained. We're not talking
22 about a very big group to begin with. This certainly is
23 an issue on the margins.

24 JUSTICE SOUTER: Mr. Coad, may I ask you a
25 question that involves the comparison of what, for

1 shorthand purposes I'll call Subsection (20) and
2 Subsection (33). I take it, it is your position that --
3 and (20) applies here. But I take it that it's your
4 position that under (33), your argument could not
5 prevail because the language of (33) makes it clear that
6 there's got to be a -- in effect, a revocation of the
7 right first, before there can be a restoration within
8 the meaning of that statute?

9 You accept that?

10 MR. COAD: That's correct, Your Honor.

11 JUSTICE SOUTER: Now that applies as I
12 recall to cases, or primarily to cases, in which there
13 has been a misdemeanor conviction for domestic violence,
14 is that correct?

15 MR. COAD: It only applies in that instance.

16 JUSTICE SOUTER: Okay. If your position
17 prevails, then Subsection (20), which applies to more
18 serious offenses, would in effect be held to provide for
19 a restoration when, in fact, nothing had been taken
20 away.

21 Whereas under (33), which applies simply to
22 a relatively minor set of crimes in relation to (20),
23 would not provide this relief. So you would have the
24 anomaly that in the more serious cases, you would win.
25 In the less serious cases, you would lose, because the

1 statute was more onerous. That's anomalous.

2 And my point is, and this is what I want you
3 to comment on, I'll assume for the sake of argument that
4 you're pointing out an anomaly here if you just look at
5 (20) alone. But if you look at (20) and (33), by going
6 your way, we're going to create another anomaly, the
7 other anomaly being that the more serious offense or the
8 more serious offender gets better treatment than the
9 less serious offender.

10 So either way we go, there's going to be
11 some anomaly. Am I right in reading it that way?

12 MR. COAD: Well, in part. Congress was
13 specific in 1996 when it enacted the Lautenberg
14 Amendment, which was the genesis for the (a)(33) and the
15 prohibition on firearms for misdemeanor crimes of
16 domestic violence, it was very -- Congress was very
17 specific that it thought those types of offenders were
18 particularly dangerous. Whereas when you look at
19 (a)(20), yes, it generally applies to felons and to
20 misdemeanors punishable by more than two years.

21 But in that group of people, you had varying
22 degrees of seriousness. You could have embezzlement
23 convictions --

24 JUSTICE SOUTER: But none of them is less
25 serious in the classification of the crime than those

1 covered by 33, because 33 simply covers a misdemeanor of
2 domestic violence.

3 MR. COAD: I think what we have to look to
4 here is Congress's clear choice in both. In The
5 Firearms Owners' Protection Act for (a)(20), Congress
6 wanted to provide a broad exemption for individual
7 States deemed to be trustworthy. Whereas in (a)(33),
8 Congress was legislating under a very different purpose,
9 which was to target misdemeanor crimes of domestic
10 violence as particularly dangerous offenders in relation
11 to gun possession.

12 JUSTICE SOUTER: Yes, but the State's
13 judgment about trustworthiness may very well be the same
14 in each case. So the trustworthiness criterion, it
15 seems to me, is being -- would be applied differently in
16 the two cases if we take your position.

17 MR. COAD: It is. And I think that it is
18 okay for the Court to decide that because of the very
19 specific nature of only one type of offender in (a)(33),
20 which Congress decided they didn't want them to possess
21 guns. Whereas in (a)(20), The Firearms Owners'
22 Protection Act had a very different purpose. It was to
23 expand gun ownership to even felons who States determine
24 to be otherwise trustworthy.

25 CHIEF JUSTICE ROBERTS: Isn't there another

1 difficulty for you in this statutory comparison that
2 Justice Souter has noted? You're argument under (a)(20)
3 is that it would be absurd for Congress to take people,
4 exempt people, whose rights have been restored, but not
5 people whose rights were never taken away. That is
6 exactly what Congress did in (a)(33).

7 So if Congress thought it was all right even
8 in albeit in a different context, it seems to me to be
9 very difficult to argue that it is inherently absurd to
10 do it somewhere else.

11 MR. COAD: Our absurdity argument you've
12 identified for (a)(20) is more particular than that. It
13 is when you look to a particular State, because again
14 we're in the realm here of delegation or at least
15 deferring to States this trustworthy judgment. It is
16 within a particular State that a less serious offender
17 as determined by that State ends up being punished more
18 harshly than its more serious offenders.

19 Whereas in (a)(33) you don't run into that
20 problem. You accept the anomalies amongst the States.
21 There are varying States -- ways to -- States handle
22 these types of issues. But with (a)(33) you have one
23 type of offender, and a State treats that offender in
24 one particular way.

25 You aren't comparing State by State. We

1 don't look to Wisconsin versus Louisiana to see an
2 absurdity. We look within a particular State, for
3 example, in Wisconsin to identify an absurdity. There
4 certainly is an acceptance when Congress decided --

5 JUSTICE SCALIA: Are you sure about that?
6 (33) applies to a number of different crimes, it seems
7 to me, within every State. Are you sure that in none of
8 those crimes the civil rights are not taken away for
9 some of them, but are taken away for others?

10 MR. COAD: The difference here, I think,
11 between (a)(20) and (a)(33) is that Congress was
12 legislating under the assumption for a felony you're
13 going to lose your civil rights. Whereas in (a)(33)
14 Your Honor is correct. Typically misdemeanors
15 punishable by nine months or up to a year, rights are
16 not lost.

17 And so I think that's the difference Your
18 Honor is getting to. I'm not sure if I answered the
19 question.

20 JUSTICE ALITO: Well, with respect to the
21 in-State anomaly that you were talking about, the
22 government argues on page 30 -- 29 and 30 of its brief
23 that there really are only a few States where this
24 exists, and even in those -- even in the States where it
25 exists, there are very significant restrictions on the

1 ability of the felon to obtain restoration of civil
2 rights.

3 Is that incorrect?

4 MR. COAD: I think it is incorrect in the
5 sense that when the government sort of narrowed the
6 number of States that we identified as being problem
7 States, what it ignores is that the Armed Career
8 Criminal Act and the prohibition against firearms goes
9 back forever really. You have to look at all of State
10 law for 1980s, '70s '60s.

11 Now, the government argued, well, right now
12 there are only a handful of States. That might be
13 correct for now. But State laws have changed over the
14 years. And so, we have to look back farther. So, it is
15 a deeper problem than the government identified.

16 And I think what's key is that we're talking
17 about Congress separating dangerous offenders from those
18 who are otherwise considered trustworthy by a particular
19 State. And this Court has recognized this principal in
20 both Caron and in Small. And when you are excluding
21 from the protections of the exemption clause offenders
22 for which a State has clearly identified as its most --
23 if you want to consider them its most trustworthy
24 offenders, that is absurd.

25 And it certainly offends the societal norm

1 that, all things being equal, we don't punish less
2 serious offenders more harshly than we do more serious
3 offenders.

4 JUSTICE GINSBURG: Well, then, maybe the
5 problem was that Congress included misdemeanants who
6 were subject to over a two- year sentence.

7 The point has been made that, on your
8 reading, that was a futile gesture, or Congress did one
9 thing that was cancelled out by someone else, by another
10 provision. And then they put in this group of
11 misdemeanants who were subject to an over-two-year
12 sentence; but most of that group -- and in many states
13 all of them -- would not have their civil rights taken
14 away.

15 So what is left of the group that was put
16 in, misdemeanants with over-two-year sentences?

17 MR. COAD: I'm not sure I understand Your
18 Honor's question.

19 JUSTICE GINSBURG: What was the point of
20 putting that group in the statute as covered by the
21 Career Criminal Act?

22 MR. COAD: Well, I -- I think the point is
23 that -- that we can't ignore Congress's clear intent to
24 exempt the -- the most trustworthy offenders in a -- in
25 a given State. And that's --

1 JUSTICE GINSBURG: But how many would be --
2 take a State that doesn't take civil rights away and gun
3 rights from misdemeanants.

4 What effect in that State would this
5 legislation have -- what effect would the provision of
6 this legislation -- that says misdemeanants who are
7 subject to a two-year -- over-two-year term are covered?
8 It wouldn't be covered because the -- because they're
9 not having their civil rights taken away.

10 MR. COAD: Well, certainly, the Federal
11 statute set a two-year floor, if you will. But I don't
12 think that we should read the civil-rights-restored
13 exception in isolation. I mean we have to make sense of
14 Congress's choice to look to civil rights.

15 JUSTICE SCALIA: But does it make much
16 sense, as -- as Justice Ginsburg suggests, to read
17 (a)(20)(B) as covering almost nothing?

18 I mean, you know, why go to the trouble of
19 putting in that provision if it's only going to make a
20 difference in those -- in those very few States where --
21 well --

22 MR. COAD: Well, we're talking about very
23 few States overall. I mean even the problem we've
24 identified is certainly a limited one. We're talking
25 about a dozen States, at most.

1 And so we can say, well, you know, it
2 vitiates (B) because only two States are left that fall
3 into (B). But when we're talking about the civil rights
4 restoration provision as applying to rights retained,
5 we're still only talking about a dozen States. So I
6 don't think that that necessarily vitiates (B).

7 CHIEF JUSTICE ROBERTS: You phrased
8 Congress's intent as allowing an exemption for people
9 the State has found trustworthy. But I don't think
10 that's how this legislative process works.

11 You have additional punishment, and then
12 somebody says: Oh, let's not apply it to people who are
13 convicted of antitrust violations. And you say: Yeah,
14 yeah.

15 And then somebody says: Let's not apply it
16 to people whose civil rights have been restored. And
17 they say: Fine.

18 And then nobody pipes up and says: Well,
19 let's not apply it to people whose civil rights were
20 never taken away.

21 In other words, it's not an intent that is
22 not effectuated. It is just you want the intent to
23 reach more broadly.

24 MR. COAD: I think that the intent was
25 broad, and Congress was operating under the assumption

1 that rights would generally be lost for those serious
2 types of offenses that it thought it was covering in
3 (a)(20). And I think there is no evidence in the
4 Congressional Record --

5 CHIEF JUSTICE ROBERTS: So it's based on a
6 congressional mistake, in other words, about the
7 breadth, but it still doesn't --

8 MR. COAD: It is an unthought-of application
9 of the statute that -- that leads to absurd results,
10 which, if we go with the government's interpretation, we
11 frustrate Congress's intent with passing legislation.

12 JUSTICE SCALIA: Can we rewrite statutes
13 like that? Because, gee, look at this statute.
14 Congress didn't think about this, and it makes a really
15 bad result here. So we're going to add this -- this
16 new -- I don't think that that's how we operate.

17 MR. COAD: In the context of identifying an
18 absurdity, it certainly strengthens the absurdity
19 argument where --

20 JUSTICE SCALIA: It's not that absurd if
21 Congress did the same thing in (a)(33).

22 MR. COAD: It's -- it's -- it might not be
23 absurd in (a) (33). But Congress, when it showed that
24 -- when it chose to limit the concept of restoration, it
25 knew how to do so.

1 It was aware of three circuit courts
2 evaluating (a)(20) to include rights retained, and so it
3 did it there. But it didn't do it in (a)(20).

4 CHIEF JUSTICE ROBERTS: What about
5 securities law violations? (A)(20)(A)says this doesn't
6 apply if it's an antitrust violation. Now, did
7 Congress -- you could say: Well, they would have
8 applied it to securities law violations, too. It's a
9 business offense. They're not interested in that. So
10 we should read this as applying to securities law
11 violations.

12 MR. COAD: I think that's different, because
13 that's a separate type of violation; whereas, here we're
14 talking about an area that Congress clearly identified,
15 which is how a State treats the civil rights of its
16 offenders.

17 And you're also talking about, in most
18 instances, a broad, legislative determination that a
19 State decides: Well, we're not going to take them away,
20 or we're going to take them away and give them back; but
21 it has nothing to do with the offender. There is no act
22 of forgiveness on the part of the State. It is just a
23 broad, legislative rule.

24 CHIEF JUSTICE ROBERTS: That kind of begs
25 the question for you to say Congress is worried about

1 offenders States think are trustworthy. What they
2 actually said are, of course, offenders who have had
3 their civil rights restored.

4 Maybe if they focused on the question of
5 whether or not civil rights were taken away in the first
6 place, they would have made a different judgment, as
7 they did, of course, in (a)(33).

8 MR. COAD: Well -- and, again, in (a)(33)
9 they did it for a very particular type of offender and a
10 different type of offender.

11 And I think, if you even just look at the
12 NACDL lodging, the expansiveness of it and the amount of
13 detail, none of that is in the Congressional Record.
14 It's clear that Congress didn't consider exactly what
15 was going to happen with the civil rights restored
16 provision. They just assumed rights would generally be
17 lost for those types of convictions.

18 CHIEF JUSTICE ROBERTS: Well, isn't -- under
19 our precedents, isn't what you just said fatal to your
20 case: In other words, Congress didn't think about this,
21 or they made a mistake in thinking about it?

22 In either case it's clear that they didn't
23 legislate with respect to it.

24 MR. COAD: I -- I think that they did
25 legislate with respect to civil rights. They just

1 didn't consider that this certain circumstance would
2 exist. And it's -- and it's absurd to conclude that a
3 less serious offender should be included within the
4 Federal ban; whereas, a more serious offender should not
5 as the State has determined.

6 And I think if you look at it this way, too,
7 the -- a State, in order to -- if the Court decides:
8 Well, sorry, you're out of luck to civil rights
9 retained, if a State wishes to have its less serious
10 offenders avoid the Federal ban, it would have to treat
11 them more harshly than it currently does in order for
12 those offenders to be treated better under Federal law.
13 And I think that that's an absurd notion.

14 And I also -- I think -- I just want to give
15 one what I think is the most clear example, which is the
16 State of North Dakota. We're not talking about
17 misdemeanors here. We're talking about felony
18 convictions.

19 In North Dakota the State has decided that
20 if a felon is not sentenced to imprisonment, then the
21 felon retains his civil rights, and his right to possess
22 a firearm is restored after a short waiting period.

23 Whereas, a felon who is convicted to -- and
24 sent to prison, his rights are taken away and later
25 restored. So we have the result here of the complete

1 opposite of what North Dakota intended, which is to
2 treat the less serious offender accordingly and treat
3 the more serious offender accordingly.

4 And that's directly contrary to Congress's
5 purpose in passing a firearm owner's protection act,
6 which was in direct response to this Court's holding in
7 Dickerson, which ignored a State's expungement of -- of
8 a conviction, which, again, is another way of a State
9 identifying an individual as trustworthy.

10 JUSTICE KENNEDY: Do you know, since you
11 seem to have looked at it: In North Carolina, for the
12 person whose had his civil rights taken away, is -- is
13 there any mechanism to get them back earlier by -- by
14 applying for clemency or a pardon or --

15 MR. COAD: In North Dakota -- in North
16 Dakota you can apply for a pardon, I believe. I'd have
17 to check, but I think --

18 JUSTICE KENNEDY: That would be about the
19 only way?

20 MR. COAD: Yes. And so you're talking about
21 requiring less serious offenders to seek, in some
22 instances, extraordinary relief in order to get on the
23 same footing as more serious offenders.

24 And I -- and I would look to point to the
25 example of Wisconsin and the offenses, in particular,

1 that we're talking about here.

2 For a misdemeanor crime as a repeat
3 offender, before 2003, it was punishable by up to three
4 years. Now Wisconsin has changed that law, and it is
5 only punishable by two years. So it would be exempt
6 under (b).

7 But Wisconsin allows that type of offender
8 to retain civil rights and to retain the rights to
9 possess a firearm. And, yet, under the government's
10 reading and the Seventh Circuit's reading the Federal
11 statute would ignore that determination by the State and
12 would impose the ban on that individual and require that
13 individual to get on the same footing as a felon to
14 receive a pardon, which are generally not available to
15 misdemeanants but are readily available to -- to felons.

16 And so you are talking about a less serious
17 offender having to seek extraordinary remedies under
18 State laws -- and this, I think, is not just unique to
19 the State of Wisconsin -- in order to put themselves on
20 the same footing as a more serious offender as
21 identified by that State.

22 And if I can reserve the rest of my time?
23 Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you, Mr. Coad.
25 Mr. Joseffer.

1 ORAL ARGUMENT OF DARYL JOSEFFER

2 ON BEHALF OF THE RESPONDENT

3 MR. JOSEFFER: Mr. Chief Justice, and may it
4 please the Court:

5 We just have a two points. The first is
6 that restoring a right does not mean leaving it alone,
7 and the second is that the statute is not absurd. And
8 for those reasons, Petitioner's prior offenses are
9 violent felonies under the meaning of the act.

10 The statute is clear on point. It says
11 "restored," and restoring a right means giving back a
12 right that has been taken away. It does not mean
13 leaving a right alone. And though words can sometimes
14 have different meanings in contexts, we are aware of no
15 context in which "restore" was "leave alone."

16 And this is certainly not such a context
17 because the statute refers to a pardon, a set-aside, an
18 expungement, or a restoration of rights. And the one
19 thing that those four items all have in common is that
20 there are ways which a State essentially undoes its
21 conviction by relieving a defendant of some or all of
22 the consequences of that conviction.

23 Giving back rights that have been taken away
24 as part of the conviction has that effect. Simply
25 leaving the rights alone does not. And for that reason,

1 because the statute is so clear, the only question in
2 this case is whether the scope of the statutory
3 exemption is so absurd that this Court should take the
4 liberty to amend it in order to add an additional
5 exemption for defendants who never lost their civil
6 rights in the first place. And the Court should not
7 do so for numerous reasons. The first is that the
8 absurd results canon applies only if it is clear that
9 Congress could not possibly have intended the result of
10 the plain statutory text.

11 And as the Chief Justice pointed out, and
12 Justice Souter did as well, we know from the subsequent
13 enactment of the domestic violence misdemeanor provision
14 that this result is not something that's beyond
15 Congress's comprehension. Everyone agrees that Congress
16 did in fact mandate the supposedly alleged absurd
17 results in a closely analogous statute. And that's just
18 fatal to the absurdity argument.

19 JUSTICE GINSBURG: Everyone in this case.
20 The point might be arguable in a case that involved that
21 domestic violence statute.

22 Everyone in this case. This case doesn't
23 involve that other provision.

24 MR. JOSEFFER: Well, that's true, but my
25 point is just that on the face of the domestic violence

1 statute, and what it says is that the restoration of
2 rights exception is limited to circumstances where the
3 law of the applicable jurisdiction provides for the loss
4 of civil rights. So on the face of that provision --
5 the provision says restoration occurs only if civil
6 rights have been lost. So it's clear as day that what
7 Congress was saying there was it was mandating the
8 allegedly absurd result here in situations where rights
9 were not lost.

10 And what that means is that you can't say
11 that it's impossible that Congress --

12 JUSTICE GINSBURG: There are cases in the
13 pipeline that don't think it's as clear as day.

14 MR. JOSEFFER: There is -- in the context of
15 subsection (33) -- in the context of the domestic
16 violence misdemeanor provision --

17 JUSTICE GINSBURG: Yes.

18 MR. JOSEFFER: -- there is one circuit that
19 has applied -- that has basically overlooked the plain
20 language there, not even attempted to deal with the
21 plain language there. And it's true, and it's found
22 that that exemption was somehow satisfied in a situation
23 where civil rights were never taken away or restored.
24 But the fact that, you know, a court of appeals reached
25 that conclusion without even attempting to take a look

1 at the statutory language doesn't diminish the very
2 plain meaning --

3 JUSTICE SCALIA: What court --

4 MR. JOSEFFER: -- of the statutory language.

5 JUSTICE SCALIA: What court of appeals was
6 that? I didn't get that.

7 MR. JOSEFFER: It was the Sixth Circuit in
8 the Burgin case, I believe it's called. And the Sixth
9 Circuit there, similar to the First Circuit in
10 construing this statute, was very clear that it was just
11 skipping the language and doing what it thought Congress
12 would have wanted to do if it had thought about it.

13 But the plain language in the domestic
14 violence provision is unmistakable because it expressly
15 refers to civil rights --

16 JUSTICE ALITO: If Congress thought about
17 the problem, what reason could they have for saying that
18 the firearms ban should apply to someone who never lost
19 his or her civil rights, but not -- but would not apply
20 to someone who had civil rights restored?
21 Automatically, let's say. Automatically and within a
22 short period of time. What rationale reason could there
23 be for doing that?

24 MR. JOSEFFER: The reason is that Congress
25 was balancing two policies. On the one hand, what it

1 was looking to do in this provision was to defer to a
2 State's decision to essentially undo its conviction.
3 And that applies where rights have been taken away and
4 restored, but does not have anything to do with rights
5 being left alone.

6 On the other hand, and a couple of Justices
7 already made this point as well, Congress wanted to
8 apply the Federal firearms disability to serious
9 felonies, to felonies punishable by more than two years
10 of imprisonment, but if Congress had included a
11 retention of rights exemption, that would have all but
12 gutted the statutory prohibition on serious
13 misdemeanants possessing firearms. And that's why,
14 consistent with Congress's desire to get tough on
15 firearms and impose the firearms disability on serious
16 felons, it couldn't include a retention of rights
17 exemption.

18 So it's a situation where Congress had a
19 couple of different policies. It clearly pursued both
20 of them, and as a result, there is a seam, there is this
21 anomaly that Petitioners have pointed to, but that's an
22 inevitable consequence of Congress's desire to balance
23 these two policies. And because that's an inevitable
24 and probably foreseen result of Congress's intent, it
25 doesn't call Congress's intent into question.

1 In addition, the scope of the anomalies here
2 is really quite minor. There are -- if you -- read
3 according to its plain language, there are a few States
4 in which the Petitioner -- the anomaly the Petitioner
5 points to occurs. It's currently about three States.
6 It used to be about six States.

7 On the other hand, if you take Petitioner's
8 view, you create anomaly in a couple other States, which
9 Justice Ginsburg referred to, whereby the most serious
10 offenders, first-degree murderers, would not be treated
11 as having their civil rights restored.

12 But in all of these States, the effect of
13 the anomaly is greatly reduced by the firearms exception
14 to the restoration of rights exemption because in --
15 Petitioner's example was North Carolina, where he said
16 that a more serious offender would be able to get
17 firearms rights back promptly. I guess what he meant by
18 "shortly" was that the offender could get them back 10
19 years after completing the sentence if he had not
20 committed further crimes.

21 So the incidence of this issue is really not
22 very significant. Instead, the real significance to
23 departing from the plain statutory language would be to
24 gut the statute as applied to misdemeanors punishable by
25 tiers of imprisonment, which is contrary to Congress's

1 clearly expressed intent by including such misdemeanors
2 within the scope of the statute.

3 Petitioner has also argued at length that
4 what Congress was looking at here was trustworthiness.
5 Did the State find the defendant trustworthy to possess
6 firearms? But we know, and this Court explained in
7 Caron, that that's not what this provision goes to
8 because the whole point of the Federal firearms laws is
9 to prohibit firearms possession in some circumstances
10 where at least some States were permitting it.

11 So the fact that a State would let a person
12 possess firearms is not relevant here. Instead,
13 Congress was not deferring generally to the States'
14 trustworthiness views but instead was looking to defer
15 to their specific determination to essentially undo
16 their own conviction. If a State wanted to undo its own
17 conviction, Congress was willing to give effect to that,
18 but that's the only thing it was deferring to.

19 And it also bears emphasis that Congress --

20 JUSTICE ALITO: I can understand that
21 argument where there's an individualized determination
22 about each -- each defendant, but I don't quite
23 understand it when it's a blanket restoration of rights.

24 MR. JOSEFFER: Right. That's --

25 JUSTICE ALITO: It's a formal difference

1 matter. There's no substance to it, is there?

2 MR. JOSEFFER: Well, there's still substance
3 to the fact that rights were, in fact, taken away and
4 were, in fact, restored, as opposed to someone having
5 his rights all the time. There's certainly a
6 substantive legal difference there, but as a practical
7 matter, I mean one reason that Congress may have decided
8 not to distinguish between automatic and individualized
9 restorations of rights is simply that it didn't want to
10 attempt to micromanage the States in how they would go
11 about choosing to do a pardon or a restoration of
12 rights. I mean -- and -- with respect to restoration or
13 rights. Louisiana automatically pardons most first-time
14 offenders. As this Court explained in Dickerson, of the
15 States that expunge convictions, many of them do it
16 automatically as well. And so Congress from -- because
17 of what it was doing here was advocating Dickerson, was
18 presumably aware of these points this Court had made in
19 Dickerson regarding the great variance in the laws and
20 the fact some of it was automatic.

21 CHIEF JUSTICE ROBERTS: Louisiana
22 automatically pardons all first-time offenders?

23 MR. JOSEFFER: Most.

24 CHIEF JUSTICE ROBERTS: Most?

25 MR. JOSEFFER: Most, and --

1 JUSTICE SCALIA: Not murderers, I assume?

2 MR. JOSEFFER: I don't -- I think that they
3 are not automatically pardoned.

4 JUSTICE SCALIA: No, that's --

5 MR. JOSEFFER: In fact, this practice is
6 enshrined in the Louisiana Constitution.

7 But in any event, I think the point is just
8 that Congress was going to defer to the States' decision
9 to effectively undo their convictions, but was not going
10 to micromanage how the States did it. But the most that
11 one might determine from that point of view is that if
12 you think that Congress was really thinking about an
13 individualized determination, then what that would mean
14 is that some offenders who get automatic restorations
15 are currently essentially catching a break from the fact
16 that they got an automatic one. But the fact that the
17 plain language of the statute may give someone of the
18 offenders a break is no reason to depart from the plain
19 language of the statute, to give other offenders a break
20 that Congress clearly did not intend.

21 And, Justice Scalia, you asked about what's
22 a typical restoration process. At the time the statute
23 was enacted in 1986, of the States that did
24 restorations, about half of them did it automatically
25 and about half of them required individualized

1 consideration before returning at least one of the
2 rights.

3 JUSTICE KENNEDY: And in the automatic
4 category, I take it, it's usually after the sentence has
5 been served?

6 MR. JOSEFFER: There's some variance. In
7 fact, the 50 States follow 49 different approaches to
8 revoking and restoring civil rights. So there's an
9 exception to just about anything in this area, which
10 again underscores why anomalies are inevitable, and
11 therefore don't really call Congress's intention into
12 question.

13 But the standard practice is that after a
14 defendant has finished serving his sentence, and that
15 would include not just maybe one day in jail but also
16 the probationary period following that -- but after the
17 defendant has finished serving his sentence, if
18 restoration is automatic, it will either be at the
19 conclusion of the sentence or at some time period
20 thereafter, which in some instances can be significantly
21 thereafter.

22 JUSTICE STEVENS: At any time in
23 consideration of these statutes did Congress consider,
24 to your knowledge, perhaps making the test be the length
25 of the actual sentence served rather than eligibility

1 for -- it seems to me one normal way of differentiating
2 between those who are most trustworthy and those less
3 trustworthy would be by looking at the actual sentence
4 served.

5 MR. JOSEFFER: I think that's true. I guess
6 there are two parts to that. One is that, I mean, the
7 provisions at issue here about the length of sentence
8 served, were in the statute before this amendment was
9 made. They were in the statute before 1986. So they're
10 not directly relevant to the intent of the '86 Congress.
11 But I'm not aware of -- I mean, of legislative history
12 predating 1986 in which Congress looked at the length as
13 opposed to the maximum term. And also, one thing that
14 reflects is that what Congress was not doing here was
15 just looking to defer to the States' trustworthiness
16 determinations as this Court explained in Caron. The
17 whole point of this law was to get tougher on gun crime
18 than many of the States were at the time.

19 If the Court has no further questions?

20 CHIEF JUSTICE ROBERTS: Thank you,
21 Mr. Joseffer.

22 Mr. Coad, you have three minutes remaining.

23 REBUTTAL ARGUMENT OF RICHARD A. COAD

24 ON BEHALF OF PETITIONER

25 MR. COAD: Thank you, Your Honor.

1 First I would like to respond to my
2 colleague's last point. He speculates that -- about
3 legislate history and I think actually it is the exact
4 -- exact opposite. Congress enacted a Firearm Owners
5 Protection Act to broaden exemptions to the gun control
6 act. There's no question about that, and it did so in a
7 way that would respect State law decisions about who
8 should be eligible for exemptions.

9 And secondly, I was asked about -- by the
10 Court about substantive difference between automatic
11 restoration of rights versus a State automatically
12 allowing an individual to retain rights. In many
13 instances there's no passage of time. There are no
14 additional conditions that an offender must meet in
15 order to get that restoration. It is just as automatic
16 as not having them taken away in the first instance.

17 And I think my last point to the Court: If
18 the meaning of restored in (a)(20) is so clear, as the
19 Government says it is, then I don't know why Congress
20 would need to have added language to (a)(33) to clarify
21 that they were limiting that concept to only rights that
22 were taken away and restored.

23 Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you, Mr. Coad.
25 The case is submitted.

1 (Whereupon, at 11:42 a.m., the case in the
2 above-entitled matter was submitted.)
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